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

Proceeding	91206761
Party	Plaintiff University Athletic Association
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Signature	/R. Charles Henn Jr./
Date	06/10/2013
Attachments	2013.06.10 Joint Stipulation (Incentive Marketing).pdf(101832 bytes) Exhibit 1 - Fincher Transcript.pdf(361511 bytes)

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

UNIVERSITY ATHLETIC)	Opposition 91206761
ASSOCIATION, INC.,)	
)	
Opposer,)	In the matter of Application
)	Serial No. 85/480,582
v.)	for the mark GATOR SHOP
)	
INCENTIVE MARKETING, INC.,)	
)	
Applicant.)	
)	

**JOINT STIPULATION REGARDING
DISCOVERY DEPOSITION OF APPLICANT**

The parties stipulate as follows:

1. On April 11, 2013, Opposer, University Athletic Association, Inc., took the discovery deposition of Applicant Incentive Marketing, Inc. pursuant to Rule 30(b)(6), by deposing its owner, Joe N. Fincher. A true and correct copy of the transcript is attached hereto as Exhibit 1 (the "Discovery Deposition").
2. Pursuant to Trademark Rule 2.120(j)(2), and to avoid the inconvenience and expense of a separate testimonial deposition of the same witness, the parties stipulate and agree that the Discovery Deposition may be offered in evidence in the same manner as if it had been taken as a testimonial deposition during Opposer's Testimony Period.

Dated: June 10, 2013

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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ASSOCIATION, INC.,)	
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)	
INCENTIVE MARKETING, INC.,)	
)	
Applicant.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing JOINT STIPULATION REGARDING DISCOVERY DEPOSITION OF APPLICANT has been served on Applicant by mailing a copy on June 10, 2013, via first Class Mail, postage pre-paid, and addressed as follows:

Sven W. Hanson, Esq.
PO Box 357429
Gainesville, Florida 32635-7429

/R. Charles Henn Jr./
Attorney for Opposer

EXHIBIT 1

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

3 Opposition: 91206761

4 UNIVERSITY ATHLETIC
5 ASSOCIATION, INC.,

6 Opposer, In the matter of
7 vs. Application Serial No.
85/480,582 for the mark
8 INCENTIVE MARKETING, INC.,
GATOR SHOP

9 Applicant.

10

11 -----

12

DEPOSITION

13

OF

14

15 JOE N. FINCHER
taken on behalf of the Opposer

16

17 DATE: Thursday, April 11, 2013

18 TIME: 8:58 a.m.

19 PLACE: Office of Sven Hanson
20 926 N.W. 13th Street
Gainesville, Florida 32635

21 REPORTER: Debora M. Holloway
22 Notary Public, State of
Florida at Large

23

24

25

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22 REPORTER'S KEY TO PUNCTUATION:

23 -- At end of question or answer references
interruption.

24

25 ... References a trail-off by the speaker.

No testimony omitted.

1 "Uh-huh" References an affirmative sound.

2 "Huh-uh" References a negative sound.

3 THEREUPON:

4 JOE N. FINCHER

5 having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. HENN:

8 Q. Please state your full name.

9 A. Joe Neal Fincher.

10 Q. What is your home address?

11 A. 4072 Northwest 37th Terrace. Gainesville, of
12 course, 32606.

13 Q. Have you ever been deposed before?

14 A. Yes.

15 Q. How many times?

16 A. I don't know.

17 Q. A lot?

18 A. Several.

19 Q. Have you ever been deposed in a case
20 involving trademarks?

21 A. Yes.

22 Q. What was the case, if you remember?

23 A. Wal-Mart, using the Gator Shop name.

24 THE COURT REPORTER: The what name?

25 THE WITNESS: Gator Shop.

http://www.yeslaw.com/dep

1 BY MR. HENN:

2 Q. When was that?

3 A. A couple of years ago.

4 Q. Was it the Wal-Mart here in Gainesville?

5 A. Yes.

6 Q. And you were deposed in that case?

7 A. Yes, I was.

8 Q. Did the case ultimately go to trial or was
9 there a hearing?

10 A. No, there was an arbitration.

11 Q. Did you testify during the arbitration?

12 A. No.

13 Q. Did the arbitrators make a final decision or
14 did it resolve itself before that?

15 A. We came to an agreement that afternoon, yeah.

16 Q. What were the terms of the agreement, if you
17 remember?

18 A. Undisclosed. They made me sign a waiver that
19 said that I wouldn't discuss the outcome of the case.

20 Q. Do you know whether Wal-Mart today uses the
21 Gator Shop name?

22 A. I will assure you they do not.

23 Q. How were they using the Gator Shop name?

24 A. They just put up "The Gator Shop" inside the
25 store, both stores here in town, on 13th Street and

<http://www.courtreporterhelp.com>

1 Butler Plaza.

2 Q. Was it the part of the store that had the

3 Florida Gator's stuff?

4 A. Merchandise, yes.

5 Q. Other than the case against Wal-Mart, have

6 you been deposed in any cases involving trademarks?

7 A. Not that I remember. I don't think.

8 Q. So did you attend college.

9 A. Yes, I did.

10 Q. Where?

11 A. University of North Carolina at Charlotte, is

12 where I graduated from. I went originally to NC State

13 University.

14 Q. When did you graduate?

15 A. 1970.

16 Q. After you graduated, how were you employed?

17 A. General Tire & Rubber.

18 Q. How long were you there?

19 A. Over a year. Not quite two years.

20 Q. What did you do next?

21 A. College bookstore business.

22 Q. Where?

23 A. Really covering from, I was an independent

24 manufacturer's representative, covered from Virginia

25 down to Florida and west to Alabama, including

<http://www.secdatabase.com>

1 Tennessee.

2 Q. Were you selling bookstore's books or other
3 merchandise?

4 A. Everything but books.

5 Q. How long did you do that?

6 A. Until 1997.

7 Q. So from about '72 to '97?

8 A. Yes. Is that 25 years?

9 Q. That's about 25 years.

10 A. I told myself when I got in that business
11 that if I didn't get the job done in 25 years, I was
12 going to retire from it, so I did.

13 Q. During that time, did you call on the
14 University of Florida Bookstore?

15 A. Yes, I did.

16 Q. Were you at the time representing
17 manufacturers of licensed collegiate products?

18 A. There was no licensing in those days.

19 Q. In 1997?

20 A. No. When I started calling on the University
21 of Florida, was in 1972, there was no licensing.

22 Q. Let's sort of jump ahead to the last couple
23 decades, from say the last ten years --

24 A. It makes me sound old, doesn't he?

25 Q. In the last ten years that you were an

<http://www.secdatabase.com>

1 independent rep calling on bookstores --

2 A. Okay.

3 Q. -- were you representing manufacturers of
4 collegiate products?

5 A. Yes, I was.

6 Q. Which companies do you recall representing at
7 that time?

8 A. MJ Softe was my number one company, was a
9 T-shirt company out of Fayetteville, North Carolina.

10 Q. Anyone else you remember?

11 A. JanSport, Eastpak. Both backpack companies.
12 CSA Stationery. Cosmos, spiral notebooks that you take
13 your class notes in. Had a mug company, a stationery
14 company, an umbrella company. I had about 15 lines. So
15 I don't remember all the names of them.

16 Q. And with regard to each of those lines of
17 product, were you licensed -- were they licensed by
18 multiple colleges?

19 A. Yes.

20 Q. Were all, do you recall whether all 15 were
21 licensed by the University of Florida?

22 A. No. They all weren't, because there were
23 some companies that didn't use the name or the logo.
24 And some companies that we didn't even use the colors of
25 the school, it was just a particular product that you

1 know how fads come and go, like the Pet Rock, for
2 instance, are you too young for that?

3 Q. I have heard of it.

4 A. Okay. The rest of us in here remember it.

5 MR. HANSON: Exactly.

6 THE WITNESS: Exactly. Yeah, that's right.

7 BY MR. HENN:

8 Q. When you talk about the colors of the school,
9 with regard to Florida, are you talking about orange and
10 blue?

11 A. Yes.

12 Q. So 1997 you retired from being an independent
13 rep. What did you do next?

14 A. I have continued to run the Gator Shop. And
15 Gators Plus. I have had a hand in it. I haven't been
16 running it on a daily basis, I have a partner in it. I
17 have had a store in Orlando; Gator, Seminole, Knight
18 Fever. And I have been managing a boat, mission boat on
19 the Amazon since 2000 that has taken really the majority
20 of my time.

21 Q. All right. Let's take them one at a time.
22 So in 1997 were you involved at all with the Gator Shop
23 before you retired from being an independent rep?

24 A. Yeah. But I wasn't there on a daily basis.

25 Q. When did your involvement with the Gator Shop

<http://www.yeslaw.com/help>

1 begin?

2 A. 1994.

3 Q. At that point, what was your role with the

4 Gator Shop?

5 A. I owned it. I bought it in '84. Made most
6 of the major decisions in what we did with the store at
7 that time. Had a manager who ran it.

8 Q. After you retired from being an independent
9 rep, did you take a more active role in the day-to-day
10 operations of the Gator Shop?

11 A. Somewhat, yeah.

12 Q. How did your role change?

13 A. I became the pack mule.

14 Q. What does that mean?

15 A. We have a warehouse. And I carted
16 merchandise back and forth from the warehouse to the
17 store, the store to the warehouse. We were receiving
18 merchandise every day. Or well not every day, but every
19 week. Throughout the week you received goods in,
20 continued to replenish what you're selling.

21 So you have to check it in, you have to
22 re-box it, take it to the warehouse, store it, take --
23 bring the stuff back from the store that needs to be
24 brought back to the store and replace the merchandise
25 that's been sold off the shelf.

1 Q. At the time that you bought the Gator Shop in
2 1984, where was it located?

3 A. 1702 West University Avenue.

4 Q. Is the Gator Shop, physical Gator Shop still
5 open today?

6 A. The physical Gator Shop is not. That does
7 not have a location right at this particular point, no.

8 Q. When did the location there on West
9 University shut down?

10 A. March of 2012.

11 Q. Why did it close down?

12 A. The guy above me wanted the leased space more
13 than I wanted it.

14 Q. In other words, the price of the lease was
15 going to go up?

16 A. Well, we were paying an exorbitant price for
17 the lease but he wanted the space because he was
18 upstairs, and he wanted a larger space. He has a
19 concept that he wanted to promote, so he was willing to
20 buy out my remaining lease from me.

21 Q. All right. And since March 2012 has there
22 been a brick and mortar Gator Shop store anywhere?

23 A. Well, we set up at the church down from us,
24 the Catholic church down from us, during football
25 season. We have had merchandise in a couple of other

<http://www.secdatabase.com>

1 stores with the Gator Shop logo up there. So yes, on
2 and off there has been a Gator Shop physical presence
3 throughout the course of the year.

4 Q. All right. Let's talk about each of those
5 independently. So during the football season on the
6 weekend, for example, you'll set up a temporary
7 tented --

8 A. Tented, yeah.

9 Q. -- retail location in a church parking lot?

10 A. Right. Which actually it's on the church
11 lawn that fronts University there.

12 Q. So during the football season, in that
13 temporary space, are you selling licensed University of
14 Florida merchandise?

15 A. Yes.

16 Q. All right. You mention in addition to the
17 temporary tented sales on the weekends in the fall, you
18 also have set up since March 2012 some sort of mini
19 store within a store at other locations; is that
20 correct?

21 A. Correct.

22 Q. What other places?

23 A. I own a plaza in Alachua, and I have had some
24 stuff in an available store there, empty space. I have
25 had a corner, a space in a friend of mine's shop,

1 actually is a fireworks store in Starke and Macclenny.

2 So I have had different things going on.

3 Q. During what time period did you have a mini

4 Gator Shop store set up at the plaza in Alachua?

5 A. During the course of the summer last year,

6 probably right on through football season, I guess we --

7 I don't remember when we took it out.

8 Q. Does that currently exist as we're sitting

9 here in --

10 A. No, it does not.

11 Q. -- March or April of 2013?

12 It doesn't?

13 A. No.

14 Q. You mentioned that at one point you had some

15 product being sold in a friend's fireworks store?

16 A. Uh-huh.

17 Q. Yes?

18 A. Yes.

19 Q. Where is that?

20 A. Starke.

21 Q. Does it -- is it still there?

22 A. No.

23 Q. During what time period was that set up?

24 A. This past year.

25 Q. Sometime --

1 A. I don't remember when I put it in and when I
2 took it out. The course of maybe four to six months
3 there.

4 Q. During 2012?

5 A. Yeah.

6 Q. Okay. And just so I'm clear, we're now in
7 2013. Are there any physical Gator Shop retail stores
8 right now?

9 A. No.

10 Q. You mentioned in addition to Gator Shop
11 Gators Plus. What is Gators Plus?

12 A. Same shop as Gator Shop, just about 100 yards
13 up the road.

14 Q. Does it still exist?

15 A. Oh, yes.

16 Q. When did Gators Plus begin?

17 A. 1984.

18 Q. Where is it located?

19 A. 1620 West University Avenue.

20 Q. You said it's the same. Do you mean Gators
21 Plus also sells University of Florida licensed
22 merchandise?

23 A. Yes.

24 Q. This case involves an attempt to register the
25 trademark Gator Shop. Have you undertaken to try and

<http://www.yeslaw.com/ehp>

1 register the mark Gators Plus?

2 A. No.

3 Q. Why not?

4 A. My partner, Bill Olander, I let him basically
5 run this store, he has since we took it over, bought it
6 out in '84. I let him make the major daily decisions on
7 it. He does consult with me on things and. You know,
8 it's just a regular partnership, but he is the more the
9 decision maker than I am.

10 Q. Does Gators Plus have a separate website from
11 the Gator Shop dot com site?

12 A. Yes.

13 Q. What its website?

14 A. I think it's Gator Plus dot com. His
15 daughter, Christina, handles that. So honestly I don't
16 really know.

17 Q. You mentioned another store, Gator, Seminole,
18 Knight Fever?

19 A. Yes.

20 Q. Where is that?

21 A. Orlando.

22 Q. What does it sell?

23 (No response.)

24 Q. What does it sell?

25 A. Gator merchandise, Seminole merchandise and

<http://www.secdatabase.com>

1 University of Central Florida Knights merchandise.

2 Q. When you say Gator merchandise, you mean

3 University of Florida merchandise?

4 A. Yes.

5 Q. And when you say Seminole merchandise, you

6 mean Florida State?

7 A. Florida State University.

8 Q. How long has it been in existence?

9 A. I don't remember when we started it, to be
10 honest. It's been about 15 years, but I don't remember
11 the exact date that we opened it up.

12 Q. And it still exists?

13 A. It still exists, but I do not own it anymore.

14 Q. When did you sell it?

15 A. March of 2012.

16 Q. Was there something, an event that occurred
17 in March 2012, that caused you to sell Gator, Seminole,
18 Knight Fever and close the Gator Shop physical location?

19 A. No. It just happened that way.

20 MR. HENN: All right. I'll mark them.

21 (Discussion off the record.)

22 MR. HENN: I'm showing you what's been marked

23 Exhibit 1.

24 (Thereupon, Exhibit 1 was marked for

25 identification.)

<http://www.courtreporterhelp.com>

1 BY MR. HENN:

2 Q. This is the Third Amended Notice of
3 Deposition of Incentive Marketing, Inc. Have you seen
4 this before?

5 A. Yeah, I think I have.

6 Q. It essentially includes a list of topics that
7 begin on page 2 and run through the top of page 4, which
8 are topics for which we have asked Incentive Marketing,
9 Inc. to provide a witness, and they designated you.

10 Do you understand that you're here to testify
11 on behalf of the applicant today?

12 A. I do.

13 Q. What is Incentive Marketing, Incorporated?

14 A. It's the parent name for the Gator Shop.

15 Q. Does Incentive Marketing, Inc. own anything
16 other than the Gator Shop?

17 A. No.

18 Q. Who owns Incentive Marketing?

19 A. I do.

20 Q. Do you have any partners in that business?

21 A. No.

22 Q. What, if anything, did you do to prepare for
23 your deposition today?

24 A. Had a cup of coffee with Sven. Actually, I
25 don't think he drank any coffee.

<http://www.secdatabase.com>

1 Q. So you met with your lawyer?

2 A. I did.

3 Q. Did you review any documents in preparation
4 for your testimony today?

5 A. Can I say I don't know?

6 Q. If you're telling the truth.

7 A. I don't know. We looked at something
8 yesterday, but I don't remember.

9 THE WITNESS: Did we look at this? I don't
10 remember.

11 MR. HANSON: Yes.

12 THE WITNESS: Okay. We looked at this
13 yesterday.

14 BY MR. HENN:

15 Q. Anything else that you recall looking at
16 besides Exhibit Number 1?

17 A. No.

18 Q. Did you speak with anyone in preparation for
19 your testimony today?

20 A. No.

21 Q. How many employees of Incentive Marketing are
22 there?

23 A. It's a family business. It used to be larger
24 than it was over the last, I don't know how many years,
25 but as people opened up spots here in town, like name

<http://www.secdatabase.com>

1 somebody, everybody's got a Gator corner nowadays. We
2 were doing more business, we had to have more employees.
3 But we got down to the point where the family could
4 operate the business. So it's been that way for several
5 years. And I don't know when we stopped using
6 employees, but it's been that way for several years. So
7 it's a family business now.

8 Q. How many people run the business?

9 A. My wife and I, and my three daughters.

10 Q. Did anybody in the family go to Florida,
11 University of Florida?

12 A. All three of them. All three of the
13 daughters did.

14 Q. You mentioned you're the sole owner of
15 Incentive Marketing. Are you the sole officer?

16 A. No. My wife is, I guess you would call
17 secretary treasurer. I'm the president, vice president,
18 so to speak.

19 Q. Is there a board of directors other than you
20 and your wife?

21 A. No.

22 Q. Was there a time before you narrowed your
23 staff down to family where you had employees outside the
24 family?

25 A. Yes.

<http://www.secdatabase.com>

1 Q. Did your employees include students,
2 university students I mean?

3 A. That's exactly what they were, yeah.
4 Part-time.

5 Q. Do you have any sense of at its peak the
6 number of employees ya'll had running Gator Shop?

7 A. Probably six or eight. I don't really
8 remember what the maximum we ever had hired at one time
9 is.

10 Q. Now that you no longer have a physical
11 location, what are the responsibilities of the members
12 of your family in terms of running the Gator Shop
13 website business?

14 A. Nobody is, at this point, doing that.

15 Q. What do you mean by that?

16 A. The daughters are doing three different
17 things now. My wife and I are, if anything comes up
18 with the Gator Shop, we'll handle it. But we're not
19 having a lot of interaction right now.

20 Q. When you say "interaction", you're not making
21 a lot of sales through the website?

22 A. No. We've got a problem with that, so we're
23 working on it.

24 Q. What do you mean by you have a "problem"?

25 A. We have another entity that has chosen to use

<http://www.courtreport.com>

1 our name like Wal-Mart did.

2 Q. What's that entity?

3 A. I don't know what they're calling it now, to
4 be honest with you. I don't know what the parent name
5 is. But we have another attorney, the same attorney
6 that was working on the Wal-Mart case working on that
7 situation.

8 Q. Is it a brick and mortar store, online
9 presence?

10 A. You know, I don't know if they have brick and
11 mortar or not. But they are basically online as far as
12 I know. I don't know what the extent of the ownership
13 and the parent company is.

14 Q. Do you know what website they are using?

15 A. Gator Zone dot com. I think. I'm not
16 positive about that, but I think that's what it is.

17 Q. Who's responsible for maintaining your
18 website?

19 A. My daughter, Kim was. There's no maintenance
20 going on with it right now. I mean, we do retrieve the
21 orders off of it and we do ship merchandise off of it.
22 To me maintenance, change it, bring in new ideas, you
23 know, that type of thing. We have a company that keeps
24 us up in the top five or top ten, that we pay a
25 percentage of the sales on. I don't know what the name

<http://www.secdatabase.com>

1 of the company is. She would now that. But we --

2 Q. When you say it keeps you in the top ten, do
3 you mean on search engine results?

4 A. When you type in the Gator Shop, it goes
5 to -- it's supposed to go to our website location.

6 Q. You don't know the name of the company that
7 does that for you?

8 A. No.

9 Q. Is it a local company here in Gainesville?

10 A. I think they're out of Sarasota. It could be
11 Tampa, could be St. Pete, I don't know. But they're the
12 southwest coast of Florida. They were in Gainesville,
13 but they moved. And that's why I don't know where they
14 are right now, so ...

15 Q. Is it fair to say that the reason the retail
16 store was named the Gator Shop was because you were
17 selling University of Florida related products?

18 A. No.

19 Q. All right. Why was it called the Gator Shop?

20 A. Because the guy that opened it before myself
21 called it that. I bought it from him.

22 Q. And when you bought it, you never changed the
23 name?

24 A. Never did.

25 Q. But you don't think it was called that

<http://www.courtreport.com>

1 because you were selling University of Florida related
2 products?

3 A. He was selling adidas at the time. Do you
4 know what adidas tennis shoes are?

5 Q. Yes.

6 A. Nike. Sold a lot of stuff. He called it the
7 Gator Shop. I don't know why he chose that name. I
8 don't know why the University of Florida has always
9 wanted that name, but so be it.

10 Q. Why did you continue to call it the Gator
11 Shop?

12 A. Because that's why I bought it. I bought the
13 good will from him for the 20 years he had had it
14 running. And the location there, he was right on
15 University; good location, good name.

16 Q. And when you say "right on University", you
17 mean the road that runs right in front of the University
18 of Florida, right?

19 A. University Avenue, yes.

20 Q. You know that the University of Florida
21 mascot is the Gators?

22 A. Yes.

23 Q. Do you also know that the University of
24 Florida owns the Gators trademark?

25 A. I think I came across that somewhere along

<http://www.secdatabase.com>

1 the line.

2 Q. Do you recall how long ago you learned that?

3 A. No. No, it's been a while.

4 MR. HENN: I'm going to show you what's been
5 marked Exhibit 2 in the case.

6 (Thereupon, Exhibit 2 was marked for
7 identification.)

8 BY MR. HENN:

9 Q. Which is a printout from the trademark office
10 website showing a registration for the mark Gators.
11 It's Registration Number 1222098.

12 Have you ever seen this before?

13 A. I don't think I have. If I did, I don't
14 remember seeing it.

15 Q. So this doesn't refresh your recollection as
16 to when you learned that Gators was a registered
17 trademark by the University of Florida?

18 A. No.

19 MR. HENN: Okay. I'm going to show you
20 what's been marked Exhibit 3.

21 (Thereupon, Exhibit 3 was marked for
22 identification.)

23 BY MR. HENN:

24 Q. Which is another printout from the trademark
25 office website of Registration Number 2206967, which is

<http://www.secdatabase.com>

1 a registration for the Gators trademark for clothing.

2 Have you ever seen this before?

3 A. Not that I know of.

4 Q. Do you know through your work as an

5 independent rep or as owner of the Gator Shop that

6 Florida owns the trademark Gators for clothing?

7 A. I know that they own the Gators trademark for

8 a lot of things. And I don't know that it's

9 specifically clothing, but I do know that it's for a lot

10 of things.

11 Q. And in fact, a number of the products that

12 were sold at the Gator Shop store, whether they be

13 clothing or umbrellas or bags or notebooks or other

14 things, were licensed by the University of Florida,

15 correct?

16 A. They were from licensed companies that worked

17 on the license with the University of Florida, yeah. I

18 didn't buy them directly from the University of Florida.

19 Q. You understood, though, that in order to sell

20 products with the Gators trademark on them, you needed

21 to work through licensed merchandisers, manufacturers?

22 A. Yes.

23 Q. With regards to the product currently offered

24 for sale on the Gator Shop website, are there -- are all

25 of your suppliers licensees of the University of

<http://www.secdatabase.com>

1 Florida?

2 A. I don't think that they are, because I think
3 we sell some things that don't include the logo. I
4 would have to look at each one of them individually. I
5 took a look at that when this whole thing first started.
6 It seemed to me that there were several things on there
7 that didn't have logos or names or anything on them. So
8 all of my -- it would not be all.

9 Q. All right. With regard to products that bear
10 the University of Florida trademarks, though, it is
11 correct that you purchased those from manufacturers who
12 are licensed by the university?

13 A. I don't know that every one of them comes
14 from that. The majority of them do.

15 Q. Do you maintain somewhere in your records a
16 list of who your suppliers are?

17 A. I should have a supply list somewhere. I
18 don't know whether QuickBooks calls for that or not. If
19 it does, then yeah, we have it. If we don't, then we
20 would have to go through the records to come up with
21 that.

22 Q. And when you say "go through the records",
23 what records would you have to go through?

24 A. The ones where we have paid the bills to
25 suppliers.

<http://www.secdatabase.com>

1 Q. Do you maintain inventory now or do you
2 essentially drop ship for manufacturers?

3 A. We, when we need something, get it from
4 Gators Plus.

5 Q. Got it. So if an order comes in the Gator
6 dot com website, you obtain the products from Gators
7 Plus to ship out?

8 A. Correct.

9 Q. I think you said this already, but Gators
10 Plus operates the same way in the sense that if it has a
11 University of Florida trademark on it, they're obtaining
12 those from licensed manufacturers, correct?

13 A. I would say just what I said a minute ago,
14 I'm not positive it's 100 percent, but it is the
15 majority. There are companies that dispute that
16 license, that manufacturer, that the University of
17 Florida cannot shut down. Because when Champion -- when
18 this all started, Champion filed a lawsuit, and Champion
19 won, saying they developed those logos, not the
20 University of Florida, not the University of Georgia,
21 not the University of Southern California, and won that
22 lawsuit.

23 However, the university said, well, if you
24 don't pay the license then we're not going to buy from
25 you. So they had to finally knuckle under and start

1 selling -- forget that whatever you want to call it that
2 they won -- and play the ballgame and go ahead and pay
3 the license fee, if they were going to do business with
4 the major universities. Because they were a major
5 player at that time. Which eventually eliminated
6 Champion as a major player in the business. They are
7 still a pretty good sized company, but they're not a
8 major player in the college bookstore business anymore.

9 So there are companies that dispute that.
10 There are companies that do logos that the University of
11 Florida has not been able to keep from selling their
12 merchandise. So I don't know if we're buying from one
13 of those companies or not.

14 Q. As a general practice, was it your intent to
15 purchase products if they bore university logos, to buy
16 products from manufacturers that were licensed?

17 A. Yes.

18 Q. And in terms of unlicensed product that would
19 be sold, that would be product that maybe was orange but
20 didn't have a UF registered trademark on it?

21 A. Correct. I'll give you an example of one
22 product. We had a frog, and the name of the company was
23 Wards Sales, I still remember it. Green with a white
24 belly on it. Don't ask me why, but I sold thousands of
25 'em to the University of Florida Bookstore, as well as

<http://www.secdatabase.com>

1 some other entities in town. Didn't have anything to do
2 with the University of Florida. But we sold thousands
3 of them.

4 And we have had products like that over the
5 course of the years. So there are products there that
6 sell like wildfire, like the Pet Rock, that have nothing
7 to do with the University of Florida, no rhyme, no
8 reason, it just does.

9 Q. Got it. Fair to say, though, that the vast
10 majority of products --

11 A. Vast majority, you are correct.

12 Q. -- were University of Florida licensed
13 products, correct?

14 A. Correct.

15 Q. Have you or Incentive Marketing ever been
16 directly a licensee of the University of Florida?

17 A. I don't think I ever applied or got a license
18 from them. There was some discussion about that at one
19 time. But in the maintenance of everything that you
20 have to do, back in the early days, I had enough going
21 on that I didn't need to get involved in that, so I
22 didn't.

23 (Phone interruption.)

24 THE WITNESS: And I apologize for that. I
25 thought I had that off.

<http://www.secdatabase.com>

1 BY MR. HENN:

2 Q. Did you ever undertake efforts to confirm the
3 licensee status of your suppliers; in other words, did
4 you ask to see their licenses or anything like that?

5 A. No. I have asked in the past if they were
6 licensed, and they would tell me yes. But I didn't say,
7 well, produce the license and let me see it now. Debbie
8 Gay had a license list. And we would check the license
9 list. And to my recollection, I do not remember anyone
10 that wasn't on there that if they were not on there,
11 that we would call and see if they were licensed, and
12 they would tell us yes, they are or no, they aren't.

13 Q. And generally speaking, if they weren't on
14 the list, you wouldn't buy product from them that had
15 the university's trademarks on it?

16 A. Correct. We have had a couple of companies
17 that were on that cusp. I don't know how you want to
18 define that. And I don't know the name of the companies
19 out of Tampa, they made up a shirt when Warrick, was it
20 Peter Warrick or Warrick Dunn, I can't remember which
21 one, from Florida State, when he stole all the shoes and
22 was in contention for the Heisman Trophy. And he said,
23 well, it's not like I shot the president or anything.
24 They did a Heisman figure on the shirt with a Dillards
25 bag in his hand instead of a football, saying, well,

<http://www.secdatabase.com>

1 it's not like I shot the president or anything.
2 And I think we ended up selling about 10,000
3 of those. It had nothing to do with licensing. And
4 they said it was supposed to be licensed. I said, well,
5 if it is, you can have the shirts. But the guy that was
6 in their from licensing said, well, no, I can't touch
7 the shirts. I said, well, you can have them, it's up to
8 you. I have already told the guy, you know, if there's
9 a licensing problem, he's dealing with the licensing
10 problem. But they didn't pick them up. So I assume
11 they were okay to sell, and I sold them.

12 We have had instances like that that how do
13 you know what is what, how do you know whether they're
14 licensed or they're not licensed, if the university says
15 they are not, if they won't touch the merchandise, how
16 do you figure it out? I don't know.

17 Q. So in that instance, for example, where it
18 was a shirt that maybe wasn't technically licensed, it
19 was because it bashed a player for Florida State, you
20 were still selling them at the Gator Shop because
21 Florida fans want that kind of product?

22 A. They definitely do. And vice versa.

23 Q. Do you know when the website first launched,
24 Gator Shop dot com?

25 A. No, I don't.

<http://www.yeslaw.com/help>

1 Q. Who would know that information?

2 A. Nobody that I know of. Unless one of my
3 daughters has got a really good memory. I don't know.

4 Q. Do you recall whether there was a website,
5 that Gator Shop dot com website in place in '97 when you
6 came back a little bit more full-time?

7 A. We were doing a catalog. We were printing
8 out about 50,000 catalogs a year. I do not remember
9 when we went away from the catalog and went to dot com.
10 I don't even know that I was aware of dot com in 1997,
11 so I can't tell you. I really can't tell you. I don't
12 know.

13 Q. All right. When the website first launched,
14 was your daughter, Kim, responsible for setting it up?

15 A. No, sir. She was going to college.

16 Q. Who set up the original website?

17 A. Oh, I don't remember. I do not remember. To
18 me, it was all a, I don't know -- I don't know what the
19 word is I'm looking for, dot com. I kept asking, what
20 is the internet, where does this thing go, who has the
21 major computer that it goes into and then it goes to
22 somebody else? I couldn't get -- I'm not sure that I
23 still have the gist of how everything, when you type it
24 in the computer and hit send, how it does what it's
25 supposed to do and go where it's supposed to go. I

<http://www.courtreport.com>

1 don't know. I really don't.

2 Q. I know you're not going to know exact
3 figures, but as a percentage of Gator Shop's overall
4 sales over the years, what's the comparison between the
5 sales at the physical location versus on the website?

6 A. This is going to be a guess. But I would say
7 about one-third before we had the incident that we have
8 going on now where the company is directing sales from
9 the Gator Shop to their website.

10 Q. So about a third of your sales were through
11 the website?

12 A. Yeah.

13 Q. And two-thirds to the retail physical store?

14 A. Right.

15 Q. Do you recall whether when you first obtained
16 the Gator Shop dot com domain name, the web address
17 itself, did you obtain it from someone who had already
18 registered it or did you go out and was it available?

19 A. We did it ourself, I'm pretty sure. I think
20 my daughter, Amy, did that, but I'm not sure either. We
21 may have contacted somebody that knew about that and how
22 to do it and they did it. I don't know. She started
23 telling me, you see that at the bottom of the TV right
24 there, that dot com thing, that's going to be big. And
25 I'm like (makes noise). See, I didn't believe Al Gore.

<http://www.yeslaw.com/help>

1 THE WITNESS: You got that, right?
2 I didn't get the whole concept of the website
3 situation. But eventually she convinced me that
4 we needed to stop doing a paper catalog and start
5 doing an online situation. And I don't know what
6 the year was, all I know is that we got into it.

7 BY MR. HENN:

8 Q. Did you end up stopping the paper catalog
9 entirely?

10 A. I did.

11 Q. Do you know when the last one was?

12 A. No.

13 Q. Was it 2010, before that?

14 A. Oh, yeah, it was before 2010. I would say --
15 I remember, I think seeing some catalogs with 2003 or
16 2004 on them. So probably right along in there. I'm
17 not sure but I would say somewhere in there we stopped
18 it.

19 MR. HENN: Okay. I'm showing you what's been
20 marked Exhibit 4.

21 (Thereupon, Exhibit 4 was marked for
22 identification.)

23 BY MR. HENN:

24 Q. This is a copy of the trademark application
25 that's the subject of this dispute.

<http://www.secdatabase.com>

1 Have you seen this before?

2 A. I don't think so. Might have, but I don't
3 think so.

4 Q. Let me have you flip through it just so you
5 see the whole thing before you confirm whether you have
6 seen it or not.

7 THE WITNESS: Did you give me a copy of this?

8 MR. HANSON: No.

9 THE WITNESS: So I guess I haven't seen it.

10 BY MR. HENN:

11 Q. Okay. On the first page of Exhibit 4, if you
12 kind of go back to the first page.

13 A. Okay.

14 Q. You'll see there under "Mark Information",
15 there's a line that says "Mark", and then it says "Gator
16 Shop"?

17 A. Uh-huh.

18 Q. Do you see that?

19 A. Yes. I got to say yes or no, right?

20 Q. You do.

21 A. It helps her out a lot, right?

22 Q. It does.

23 So that's the mark that's the subject of this

24 application. You see down under "Applicant

25 Information", it says "Owner of Mark, Incentive

http://www.secdatabase.com

1 Marketing, Inc., DBA Gator Shop"?

2 A. Yes.

3 Q. Then if you turn over several pages, it's the
4 fourth page of Exhibit 4, at the top it says "Signature
5 Information"?

6 A. Yes.

7 Q. And it's got slash "Joe Fincher" slash next
8 to signature. Do you see that?

9 A. Yes.

10 Q. Is that you?

11 A. That's me.

12 Q. All right. It says date signed, November 23,
13 2011.

14 A. Okay.

15 Q. Does that refresh your recollection a little
16 bit about whether you saw this document at some point?

17 A. Well, if I signed it, it said sign here, I
18 signed there. Does that mean I read the whole document,
19 no, I did not read the whole document. But I did. If
20 it says that I signed it there, I signed it there.

21 Q. Okay. If you'll turn to the next page, which
22 is the fifth page of Exhibit 4, there's another copy of
23 the application.

24 MR. HANSON: Let me just interject, if I may.
25 There's actually two documents here. You have

<http://www.secdatabase.com>

1 them tied together. This page, the beginning,
2 the first couple of pages is actually a separate
3 document from the remaining.

4 This, you did see, because this is what was
5 signed. The first part of the document was
6 actually never signed. It's just a
7 representation of the application.

8 BY MR. HENN:

9 Q. Well, let's turn to the part that you did see
10 then, which is page 5 of Exhibit 4. Does this look
11 familiar?

12 A. Honestly, my short-term memory is not that
13 great. No, to be honest with you, it doesn't look
14 familiar to me.

15 Q. If you look under, on the first -- well,
16 we're on the fifth page of Exhibit 4, about midway down,
17 it says in bold, "For specific filing basis information
18 for each item, you must view the display within the
19 input table." Do you see that?

20 A. Yes.

21 Q. It's not terribly important, but what is
22 under that, it lists the services for which you are
23 seeking to register the mark, Gator Shop. And as
24 they're listed here, it says, "International Class 35,
25 online retail store services featuring a wide of variety

<http://www.secdatabase.com>

1 of consumer goods of others. And then retail shops
2 featuring clothing, sports team clothing and a wide
3 range of consumer goods of others." Do you see that?

4 A. Yes.

5 Q. When it says "sports team clothing" there, is
6 the sports team that you sell products about the
7 University of Florida's teams?

8 A. We have other teams. Like we have sold the
9 Dolphins, we have sold the Raiders, we have sold White
10 Sox, we have sold other sports teams.

11 Q. In terms of the sales of the Gator Shop, is
12 it fair to say that the vast majority are University of
13 Florida?

14 A. The vast majority is the University of
15 Florida.

16 Q. Underneath that section, there's another
17 little paragraph, it says, "International Class 35, the
18 mark was first used by the applicant or the applicant's
19 related company or licensee predecessor in interest at
20 least as early as March 1, 1984, and first using
21 commerce at least as early as March 1, 1984, and is now
22 in use in such commerce." Do you see that?

23 A. Yes.

24 Q. Okay. In 1984, did the Gator Shop have any
25 online retail presence?

<http://www.secdatabase.com>

1 A. I don't think so.

2 Q. And --

3 A. Was the online available in 1984?

4 Q. I don't think so.

5 A. Okay.

6 Q. Maybe Al Gore was working on it.

7 A. Yeah, there you go.

8 Q. And in terms of the non online retail shop,
9 I'm correct that as we sit here today in 2013 there's no
10 brick and mortar retail shop under Gator Shop, correct?

11 A. Correct.

12 Q. Then if you'll turn over to the next page,
13 which is the sixth page of Exhibit 4, there's a long
14 legal sounding declaration. And then there's another
15 line where it says "Signature, Joe Fincher". That's
16 you, right?

17 A. Yes.

18 Q. And then if you'll turn to the last page of
19 Exhibit 4, can you identify that for us?

20 A. Yeah, it looks like my website page or a page
21 off of my website.

22 Q. And it's got a date up at the top of November
23 23, 2011. Do you see that up here?

24 A. Yes.

25 Q. So that's what the website looked like in

<http://www.yeslaw.com/help>

1 November of 2011. Fair?

2 A. I'm taking your word for it.

3 Q. Okay. Just with regard to this page for a
4 moment, at the top where it says, the very top next to
5 the date, it says, "Gator Shop dash University of
6 Florida Gators Apparel". Do you see that?

7 A. Yes. Gator merchandise, footwear.

8 Q. And is that accurate in terms of what the
9 Gator Shop offers or offered when you filed the
10 application?

11 A. Yes.

12 Q. And then just to describe this, in the upper
13 left you've got your Gator Shop logo; is that correct?

14 A. Correct.

15 Q. And that's in blue and orange, right?

16 A. Yes.

17 Q. Then in the middle of the page, there's some
18 examples of the apparel and products that you're
19 offering, correct?

20 A. Yes.

21 Q. And at least with regard to what's on this
22 page, all of those products are University of Florida
23 related, correct?

24 A. Yes.

25 Q. And Tim Tebow --

<http://www.secdatabase.com>

1 A. Well, Tim Tebow isn't University of Florida
2 related now.

3 Q. But he was when he played. He played at the
4 University of Florida, correct?

5 A. Yes. But he wasn't in 2011. So Tim would
6 not -- would be an exclusion to that in 2011. The rest
7 of it looks like it's -- honestly, I didn't bring my
8 cheaters this morning, so most of the rest of it is,
9 yeah, University of Florida logoed merchandise.

10 Q. And then down in the lower right-hand corner,
11 you've got the 2011 Gator's schedule. Is that the
12 University of Florida football schedule for that year?

13 A. I would assume so. But I don't -- you know,
14 might be a wrong print on there, but it looks like it is
15 the University of Florida football schedule.

16 Q. Up in the upper right-hand section, there's a
17 link to the Facebook page for the Gator Shop. See where
18 it says, "Gator Shop on Facebook", and it's got a "Like"
19 button?

20 MR. HANSON: Do you want to use mine?

21 THE WITNESS: Oh, okay.

22 BY MR. HENN:

23 Q. Do you see that?

24 THE WITNESS: Thanks.

25 MR. HANSON: They're not much, but a little

<http://www.secdatabase.com>

1 better.

2 THE WITNESS: Yeah, that's a little better.

3 Yes.

4 BY MR. HENN:

5 Q. Who manages the Gator Shop's Facebook page?

6 A. I think my daughter, Amy, started that.

7 Might have been Joi, but I think it was Amy.

8 MR. HENN: All right. You can put the

9 Exhibit 4 aside.

10 THE WITNESS: We've got to get some more

11 coffee.

12 MR. HENN: We can go off the record for a

13 second.

14 (A brief recess taken.)

15 (Thereupon, Exhibit 5 was marked for

16 identification.)

17 BY MR. HENN:

18 Q. All right. I have put in front of you what's

19 been marked Exhibit 5, which is a page, the home page

20 for your website that I printed on April 3rd of 2013.

21 Have you seen Exhibit 5 before, at least?

22 A. I think I have.

23 Q. The homepage of the website.

24 A. Again, if I had a 45 to my head and I had to

25 say that definitely I have looked at that, then I

http://www.secdatabase.com

1 couldn't do that. But I'm sure, as I leaf through the
2 website, without focusing in on that website and saying
3 something about a specific item on that website, I
4 wouldn't remember every page.

5 Q. This one also has the header at the very top
6 where it says, "Gator Shop dash University of Florida
7 Gator's Apparel, Gator Merchandise". Do you see that?

8 A. I do.

9 Q. Is that still an accurate assessment of what
10 is offered for sale on the Gator Shop website?

11 A. Yes.

12 Q. This also has in the center some product for
13 sale. This doesn't have the Tim Tebow DVD, would you
14 agree with me that everything that's depicted here is
15 the University of Florida related merchandise?

16 A. Yes.

17 Q. And again, down the lower right, we've got a
18 copy of last season's football schedule for the
19 University of Florida Gators. Do you see that?

20 A. Yes.

21 Q. In terms of the Facebook page, it looks like
22 your number of likes has increased since you filed the
23 application in 2011. You went from 368 likes up to 500?

24 A. Great.

25 Q. Is your daughter still managing the Facebook

<http://www.secdatabase.com>

1 page or is there someone else who does it now?
2 A. You know, I'm not sure anybody is, to be
3 honest with you. I really don't know. She hasn't said
4 anything to me about going in and changing anything,
5 doing anything. This is the first I've seen of that,
6 okay. In actuality, I would assume that she would have
7 called me up and said, Dad, guess what, we have 500 now
8 instead of 368, but she hasn't done that. So
9 truthfully, I can't tell you that anybody's messing with
10 it.

11 MR. HENN: All right. I'm going to show you
12 what's been marked as Exhibit 6.

13 (Thereupon, Exhibit 6 was marked for
14 identification.)

15 BY MR. HENN:

16 Q. This is printouts from your website that are
17 a little bit more complete. It starts with the home
18 page, but then continues on to show a bunch of other
19 pages.

20 A. Uh-huh.

21 Q. If you will turn to the second page of
22 Exhibit 6.

23 A. I might point out something here, like those
24 shoes.

25 Q. Yes.

<http://www.secdatabase.com>

1 A. They're not licensed.

2 Q. That's a good example of something that's not
3 licensed?

4 A. They do not have the University of Florida
5 logo on it anywhere, does not say anything about the
6 University of Florida, but we sell them. But I'm not
7 sure that "Stay Victorious My Friend" T-shirt has
8 anything to do with the University of Florida without
9 seeing the whole gambit of the shirt there. Those are
10 samples of items that are not university related
11 merchandise that do sell.

12 Q. Well, they're not licensed by the university,
13 correct?

14 A. Right.

15 Q. You would agree with me that the only
16 possible reason someone would buy blue and orange deck
17 shoes, though, is that they're a fan of Florida?

18 A. Have you ever heard of San Jose State
19 University or Syracuse or Palm Beach High School Gators?
20 They are actually called the Gators, they are royal blue
21 and orange, not navy and orange. And believe it or
22 not --

23 (Telephone interruption.)

24 THE WITNESS: I cut that thing off. I don't
25 understand that.

http://www.secdatabase.com

1 Some people will buy, like Auburn, who is
2 navy and orange, will buy those shoes because
3 they can't get the navy and orange. They buy
4 what they can get. If that shoe was navy and
5 orange instead of blue and orange, I could still
6 sell it at the store, and the Florida people
7 would still be buying it.

8 BY MR. HENN:

9 Q. And the reason you offer it in the Gator Shop
10 is primarily because you're selling products to
11 University of Florida fans?

12 A. Right.

13 Q. All right.

14 A. And hopefully somebody from New York that
15 walks in and wants something out of there will buy it.
16 I sell it to make money, that's what I'm selling it for.

17 Q. Let me have you to turn to the second page of
18 Exhibit 6.

19 A. Okay.

20 Q. There's a page here that says about the Gator
21 Shop. And it's signed by Joi Michelle, Internet
22 Division. Do you see that?

23 A. I do.

24 Q. Who is Joi Michelle?

25 A. That's my youngest daughter.

<http://www.secdatabase.com>

1 Q. And the address for the internet division is
2 different from the main company address at the top
3 there. Is that -- is that where her office is or her
4 home is?

5 A. That's not her home. And I don't know what
6 that address is.

7 Q. All right. In the second paragraph of this
8 letter, it says "All orders placed through your Gator
9 club receive a 15 percent discount." Do you see that?

10 A. Yes.

11 Q. What's a Gator club?

12 A. A Club that holds meetings throughout the
13 year and discusses University of Florida activities.

14 Q. The second sentence there says, "In addition,
15 all members of the alumni association who have their
16 alumni number can receive the same discount." Do you
17 see that?

18 A. Yes.

19 Q. That's the University of Florida Alumni
20 Association?

21 A. Yes.

22 Q. In the third paragraph, she says, "We would
23 like to help you out in any way we can. Feel free to
24 call us any time." And gives the phone number. Then
25 the third sentence says, "We also send out a free season

<http://www.secdatabase.com>

1 catalog which goes out in July. To be put on our
2 mailing list and receive our catalog, please call our
3 800 number and we would be more than happy to sign you
4 up." Do you see that?

5 A. I do.

6 Q. Is that true? I mean, is there still a
7 catalog that goes out in July?

8 A. No. So this is obviously very old.

9 Q. Well, it's got the 2012 football schedule in
10 the beginning.

11 A. This -- this letter right here would be very
12 old, because we haven't done a catalog in a long time.

13 Q. Okay. Is it true that you still offer a 15
14 percent discount to members of the University of Florida
15 Gator clubs?

16 A. Yes.

17 Q. And do you still offer a 15 percent discount
18 to alumni of the University of Florida?

19 A. Yes. But actually, as I sit here and think
20 about it, I think it's gone down to 10 percent. But I'm
21 not positive. It still may be 15, but maybe 10.

22 Q. But there is a discount for alumni?

23 A. There is a discount, but I can't tell you the
24 exact figure of it.

25 Q. All right. You can put Exhibit 6 aside.

<http://www.secdatabase.com>

1 Is it fair to say that most of your online
2 customers find you online by using a search engine like
3 Google?

4 A. I don't know. I can't answer that.

5 Q. But you have engaged a company to assist in
6 getting you near the top of search engine lists,
7 correct?

8 A. Yes.

9 Q. And you pay that company a percentage of the
10 sales that come through that, correct?

11 A. I do.

12 Q. Other than spending money on that, which we
13 call search engine optimization, or SEO, do you do any
14 other advertising or marketing of the website?

15 A. Well, our bags, all of our bags have Gator
16 Shop dot com on them. When we had the brick and mortar
17 store, I don't -- we don't take any ads in publications
18 or anything like that that specifically put a big page
19 of the Gator Shop dot com.

20 When we advertise merchandise like this, if
21 we would put this ad right here in Gator Bait, for
22 instance, it would have the Gator logo and it would have
23 the Gator Shop dot com. So inadvertently there would be
24 other means of advertisement of the logo. But
25 specifically just to advertise Gator Shop dot com, I

<http://www.secdatabase.com>

1 mean, we don't have a billboard out on the interstate in
2 Tampa, or anywhere in the state for that matter, that
3 says Gator Shop dot com. But I can't think of anything
4 else that would specifically be advertising Gator Shop
5 dot com.

6 MR. HENN: All right. I'm going to show you
7 what's been marked Exhibit 7.

8 (Thereupon, Exhibit 7 was marked for
9 identification.)

10 BY MR. HENN:

11 Q. Exhibit 7 is a printout from Google where I
12 did a search for Gator Shop.

13 A. Okay.

14 Q. Up at the top there, and then these are the
15 results that showed up on April 3, 2013.

16 Do you see Exhibit 7 there?

17 A. Yes.

18 Q. All right. Now, the top two lists, it
19 doesn't really show up in color the way it should when I
20 printed this. But the top two there are the paid ads,
21 usually in a little yellow, and you see Gator Zone and
22 Gator dot Fanatics dot com. Do you see those?

23 A. I do. You just typed in Gator Shop, right?

24 Q. I did, up at the top.

25 A. Good. Can I keep this?

1 Q. Of course.

2 A. Thank you.

3 Q. So that Gator Zone at the top, was that the
4 issue, the one you were raising earlier?

5 A. Yes.

6 Q. And then the one below that, do you know
7 Gator dot Fanatics dot com?

8 A. I would assume it's them also. But I don't
9 know.

10 Q. But you don't know. And then under that, we
11 have the organic lists, the non paid advertising. And
12 the first one there is your shop, right, Gator Shop
13 right there?

14 A. Right.

15 Q. And again, it says, "Gator Shop dash
16 University of Florida Gators apparel"?

17 A. Right.

18 Q. Do you see that? Do you see that as the
19 title of your listing?

20 A. Yes, I do.

21 Q. And then underneath your domain name, it says
22 "Buy University of Florida Gators apparel". Do you see
23 that?

24 A. Yes.

25 Q. Do you know who's responsible for the content

<http://www.secdatabase.com>

1 there?

2 A. I would assume that it is the company that we
3 pay the fee to. I'm not positive about that. But I
4 would assume it is.

5 Q. Okay. And then underneath you, in the
6 organic listing there, you see Shop dot Gator Zone dot
7 com?

8 A. Yes.

9 MR. HENN: I'm going to hand you what's been
10 marked Exhibit 8.

11 (Thereupon, Exhibit 8 was marked for
12 identification.)

13 BY MR. HENN:

14 Q. I went ahead and clicked on the Gator Zone
15 site there.

16 A. Okay.

17 Q. Which is the official store of Florida
18 Athletics. Are you familiar with this website?

19 A. No. I don't look at the rest of them, to be
20 honest with you.

21 Q. Okay. You can set that aside.

22 With regard to your retail store, when you
23 had a brick and mortar store, is it true that a lot of
24 your customers were University of Florida students?

25 A. I would say that that is not true as far as

<http://www.secdatabase.com>

1 the vast majority goes. You would think because we're
2 across the street from the University of Florida and we
3 have the foot traffic that we have every day, and back
4 in the '80s and probably part of the '90s that might
5 have been true, but now there's probably more alumni
6 business than there is University of Florida student
7 business.

8 Q. Got it.

9 A. I actually have kids that are graduating,
10 that are in there buying a T-shirt or whatever, and they
11 get ready to write the check, and they go, what is the
12 name of this place anyway? They have been there four
13 years and they don't even know where they're at, in four
14 years. And I'm like amazing, totally amazing.

15 Q. So the majority of your customers in the
16 retail store are alumni, is that fair, at the University
17 of Florida?

18 A. I would say yes, now.

19 Q. It's fair to say, even beyond the majority,
20 almost all of the people shopping there are fans of the
21 University of Florida?

22 A. Almost all of them, yes.

23 Q. I assume you also have some students and
24 parents of students and those sorts of people shopping
25 there as well, correct?

<http://www.secdatabase.com>

1 A. Yes.

2 Q. Do you have information about who the
3 customers are who shop at the online store, do you know
4 whether those are similarly alumni fans?

5 A. They come from all over the United States.

6 And actually, I have -- we do ship out of the country.

7 So they actually do come from all over the world, so to
8 speak. We have shipped to Japan, we have shipped to the
9 Middle East, especially when the Gulf War was going on,
10 different things to different places.

11 Q. Generally speaking, though, they're buying
12 University of Florida licensed merchandise and they
13 appear to be fans?

14 A. They appear to be fans.

15 Q. Now, at times, I know you're not doing it
16 presently, at times did you do direct mail marketing to
17 students of the university?

18 A. To the students, no, I don't think. I did
19 direct mail to the alumni, but I'm not -- we didn't
20 stuff mailboxes. We discussed with the university at
21 one time, and they told us no, we couldn't stuff
22 mailboxes, things of that nature. But our target market
23 was the alumni.

24 Q. Got it.

25 A. Actually, our target was about a 35-year-old

<http://www.secdatabase.com>

1 person. Whatever went under 35 and over 35, they came
2 in the mix. But our target market was the yuppies, so
3 to speak.

4 Q. People who could afford it?

5 A. Exactly.

6 MR. HENN: Let me show you Exhibit 9.

7 (Thereupon, Exhibit 9 was marked for
8 identification.)

9 BY MR. HENN:

10 Q. This was a letter from the Gator Shop, it
11 begins "Dear Student".

12 A. Yes.

13 Q. And it says, "We at Gator Shop would like to
14 welcome you to the University of Florida." Do you see
15 that?

16 A. I do.

17 Q. Do you know whether this was ever used?

18 A. Don't. Don't know who did it.

19 Q. Okay.

20 A. I would assume that I can tell you for a fact
21 it wasn't my wife. I would assume it was one of my
22 daughters, but I don't know. It's the first time I have
23 ever seen it.

24 Q. All right. That longer second paragraph
25 let's call it, where it begins, "We believe the Gator

<http://www.courtreport.com>

1 Shop is going to be your best source for Gator
2 merchandise while you're at the university." Do you see
3 that?

4 A. Uh-huh.

5 Q. Yes?

6 A. Yes, I do.

7 Q. It says, "We carry an extensive line of Gator
8 sportswear." By Gator sportswear, is that a reference
9 to the University of Florida?

10 A. Yes.

11 Q. Next paragraph, excuse me, it says, "From
12 infant to adult, double extra large sizes, incorporating
13 numerous University of Florida logos." Do you see that?

14 A. Yes, I do.

15 Q. And that's true generally in terms of your
16 merchandise?

17 A. Yes.

18 Q. At the very end of that paragraph, it says,
19 "In other words, if it's orange and blue and says
20 Gators, we carry it."

21 A. I see that.

22 Q. I know it's a little advertising puffery, but
23 is that generally true?

24 A. Yeah, that's generally true.

25 Q. All right. This also references the fact, in

<http://www.courtreport.com>

1 the next paragraph, that the Gator Shop is directly
2 across from the university. Do you see that?

3 A. Yes, I do.

4 Q. And it offers students a 25 percent discount.

5 We talked earlier about discounts for alumni and Gator
6 club. Do you also offer discounts for students?

7 A. I don't know about that. But it says it
8 here. And I don't know whether this letter ever went
9 out to anybody. I don't know, so ...

10 Q. Do you recall a time in the history of the
11 Gator Shop in which you offered a discount to students
12 of the university?

13 A. I recall a time when we talked to the
14 university about stuffing mailboxes over there with a
15 bumper sticker. And if they brought in the back of the
16 bumper sticker, then they got, which would be -- and
17 actually, it was going out to, now that I think about
18 it, going out to the freshman. We would get the list of
19 the incoming students that had been approved for the
20 University of Florida so we could introduce to them who
21 we were and where we were, trying to figure out how we
22 could get around having somebody stand in the store
23 after four years and say where am I, what is this place.

24 So we never got to target that because they
25 said no, we couldn't send it out to the parents of the

1 students, and they couldn't bring it in for a discount.
2 So I don't know that it ever got off the ground. It was
3 an idea that probably never took legs and never got to
4 walk. It was just in the conception stage.

5 Q. Setting aside this letter in particular or
6 the bumper sticker idea you were talking about, do you
7 recall ever there being a time in which you offered a
8 discount to students if they showed their ID, for
9 example, at the store?

10 A. In 30 years, we probably did. But I -- a
11 specific incident, no, I can't recall that.

12 Q. All right.

13 A. I mean, we had a sign out front that listed
14 specials of discounts for the students walking by. If
15 that's included in what you're talking about, then yeah,
16 we did that. I don't know -- I don't know what you're
17 looking for there, but ...

18 MR. HENN: Well, let me show you what's been
19 marked Exhibit 10.

20 (Thereupon, Exhibit 10 was marked for
21 identification.)

22 BY MR. HENN:

23 Q. This is another letter that was provided to
24 us. This is signed Joe Fincher and it's "Dear Club
25 President". Is this an example of a communication to

http://www.pacer.net/hp

1 one of those Gator clubs?

2 A. Yes, this would go to one of the Gator clubs.

3 And we definitely did do this.

4 Q. Is this something that went by email?

5 A. No.

6 Q. Okay. How was it --

7 A. We passed them out. And we had the mailing
8 addresses, the clubs are listed on the website, and we
9 had the mailing addresses to the presidents. So we
10 would say mail to the acting president at the time of
11 the Gator club in Dallas, LA, San Francisco, wherever.
12 And we had several of them take us up on it.

13 Q. With regard to emails, have you ever done any
14 email advertising?

15 A. If we had a specific shirt that we were
16 running on sale or a specific deal. And this, I
17 understand is the term, I don't know this 100 percent
18 correct, because I'm not nursing that, we did a blast, I
19 think is what they call it, to whoever had signed up to
20 be on our email for things like that. So yes, we have
21 done that.

22 Q. Who was responsible for putting those emails
23 together and sending out the blast?

24 A. I think it was either Amy or Kim.

25 Q. One of your daughters?

<http://www.secdatabase.com>

1 A. Yeah.

2 Q. I think you said this, but just to clarify.

3 You -- the email list that you blasted with those ads
4 was an email list that was compiled from customers who
5 had given you their email address?

6 A. Right. We had a thing up on the counter,
7 said if you want to be on our email blast, sign here.

8 Q. Did you ever buy any email lists?

9 A. No.

10 Q. Did you ever go through the student
11 directories and pull email lists?

12 A. No.

13 Q. Okay.

14 A. My daughter, Kim, hated doing it. She
15 just -- because people blasted her. She didn't mind
16 doing it every three months or something like that, but
17 she didn't want to do it every month or every other
18 week. She just said, I don't like that, I'm not doing
19 that. So we didn't do a lot of it, to be honest with
20 you.

21 Q. I noticed that the website currently, and
22 advertising throughout your history, has included your
23 800 number. Currently, if somebody calls the 800
24 number, who answers the phone?

25 A. I don't think the 800 number goes to an

1 answering device now. I think it goes to -- actually, I
2 don't know, to be honest with you. I don't think
3 anybody's answering the 800 number right now. As a
4 matter of fact, I think I was talking to Kim the other
5 day, we may have dropped the 800 number now. I don't
6 know. I would have to check that out to be able to give
7 you the correct answer there.

8 Q. When there was someone answering the 800
9 number --

10 A. That would be Kim.

11 Q. And did she work off of any kind of script or
12 was it just she answered the phone and dealt with it?

13 A. She answered the phone and dealt with it.

14 Q. Did ya'll ever record those for quality
15 assurance?

16 A. You're talking about the Gator Shop here.
17 This isn't JC Penneys. Yeah, we recorded it for quality
18 assurance. No.

19 Q. I was going to say, jokes don't come through
20 on the record.

21 MR. HANSON: I was going to say, let the
22 record show.

23 THE WITNESS: Amen.

24 BY MR. HENN:

25 Q. Just to clarify, you did not record the

<http://www.secdatabase.com>

1 calls, correct?

2 A. No.

3 Q. What about emails, your advertising includes
4 an email address that customers can send you messages
5 on. Where do those go?

6 A. I assume they come into a bank on the net.
7 And Kim retrieves those and answers those questions.
8 That would be my assumption.

9 Q. Do you know if she keeps copies of any of
10 those emails?

11 A. I do not know, no.

12 Q. In connection with this case, or in
13 responding, for example, to our request for documents,
14 did you ask Kim to send you any of those emails?

15 A. No.

16 Q. Did you ask her to make sure she didn't
17 delete any of them or anything like that?

18 A. No. I hadn't said a thing to her about it.

19 Q. Are there any, again in the nature of a
20 script for the emails, sort of form things that if, you
21 know, if you get 30 emails that all say I want to return
22 my shirt, is there a form paragraph that goes back to
23 people about certain subjects?

24 A. I'm not -- I don't understand what you're
25 asking there.

1 Q. Well, for example, a common email might be, I
2 bought the wrong size, how do I get my money back, or
3 how do I get the right size? And I'm wondering if over
4 time Kim has developed standard responses to certain
5 types of questions.

6 A. No. She handled it. We didn't have a lot of
7 returns, number one. So, you know, if we were doing \$5
8 million a year and we had that coming in ten, 15, 20,
9 100 times a week, I'm sure we would have probably tried
10 to find an easier way to handle that. But if you have a
11 return once a month or a couple a month, I mean, you
12 handle them individually.

13 But basically they tell you, okay, I bought
14 an extra large and it doesn't fit, I either need a
15 double extra large, I need a large. So you put the
16 large or double extra large back in the bag and send it
17 back to them and everybody's happy. So I don't know of
18 any canned response that we ever had whatsoever. Again,
19 it's just not JC Penneys, okay.

20 Q. With regard to returns, did you require
21 customers to come in with a receipt or did you sort of
22 trust that they bought it from you?

23 A. This is the brick and mortar?

24 Q. Brick and mortar.

25 A. They had to have a receipt, yes.

<http://www.secdatabase.com>

1 Q. Do you recall situations in which people
2 tried to return licensed UF merchandise and they didn't
3 have a receipt or you were pretty sure they didn't buy
4 it from you?

5 A. I have had people come in. I'll give you a
6 good for instance. A lady told me she just bought it at
7 the stadium store. Because they didn't have a 6X, she
8 comes over to my store, looks and sees that I have a 6X
9 and wants to trade it with me, her 6 for my 6X. I said
10 I can't do that. Well, it's the same thing, and you're
11 both University of Florida. I said, I'm not the
12 University of Florida, okay. And let me ask you a
13 question. If you bought a lawnmower at Home Depot,
14 would you try to take it back to Lowe's? No, of course
15 not. I said, well, why are you trying to do it now?
16 So ...

17 Q. Did situations like that, not necessarily a
18 trade, but somebody returning something they bought at
19 another university store happen from time to time?

20 A. Well, see, I wasn't involved in that on a
21 daily basis, so I can't. It would be a hypothetical
22 situation. I don't have the answer for that. I have
23 had interactions where people have tried to swap off
24 merchandise because they had something and they needed a
25 different size in it. That's the best I can tell you.

<http://www.secdatabase.com>

1 I had somebody go buy it at a discount at
2 Sports Authority, because really, Sports Authority is
3 the only store that I know of that Nike will let sell
4 Gator merchandise at a discount. If the rest of us do
5 it, we get slapped. So if they want to go buy it there,
6 tear the tags off of it, which I'm assuming the world is
7 full of people like that, they would try to do that with
8 us. They try to do that with Gators Plus or Gator
9 Fever, whatever, I don't know how many, if any at all.
10 You may have had that somewhere along the line, I don't
11 know.

12 Q. Other than the one woman you remember with
13 the 6X, are there other instances you remember?

14 A. No. That was just one that stood out in my
15 mind, because I couldn't believe she was doing it.

16 Q. You mentioned, we talked about advertising
17 briefly. And you mentioned at one point you advertised
18 in Gator Bait. What is Gator Bait?

19 A. I think they call it something else now. In
20 the beginning it was a magazine that previewed what was
21 going on in the sports at the time. Basically football
22 was the big issue throughout the course of the football
23 season. But then they would make a play on basketball
24 and baseball and track, golf, tennis, all of it. Kept
25 up with sports. And mailed it out to subscription,

1 individuals that wanted to keep up with the latest and
2 the greatest on what was happening with University of
3 Florida athletes, programs, sports programs.

4 Q. Do you recall other magazines that you
5 advertised the Gator Shop name in?

6 A. Magazines. Magazines. I'm sure there are
7 some, but no.

8 Q. I'll give you a couple of examples here.

9 A. Okay. Today magazine, yes.

10 MR. HENN: So this is Exhibit 11.

11 (Thereupon, Exhibit 11 was marked for
12 identification.)

13 BY MR. HENN:

14 Q. Which is the University of Florida Today
15 magazine for the alumni association. You advertised in
16 that from time to time?

17 A. Yes.

18 Q. Was that a regular ad that you ran every time
19 the magazine came out?

20 A. I do not know that.

21 Q. All right.

22 A. I would have to ask Amy or Kim or Joi. I
23 don't know who would be placing that ad.

24 Q. There are a couple of examples in this
25 Exhibit 11. One, they're both relatively old. One's

<http://www.courtreporterhelp.com>

1 from March of 2001 and one's from the summer of 2002.

2 Do you know during what time period you
3 advertised in the alumni association magazine?

4 A. Is Today an alumni association? I thought
5 that was a guy that did that on his own. It is. It
6 says that, yeah. I thought this was -- I can't remember
7 that guy's name. I thought that was his magazine,
8 though.

9 Q. Well, for example, look at the second page of
10 Exhibit 11, which is the back page of that March 2001
11 issue. And you've got at the bottom, you've got your ad
12 covering most of the page. And at the bottom, you've
13 got the return address, University of Florida,
14 University of Florida Alumni Association. Do you see
15 that?

16 A. Yes.

17 Q. Does that refresh your recollection as to
18 whether the magazine was the alumni association
19 magazine?

20 A. It appears to be so, yeah.

21 Q. And that is an ad for your Gator Shop on the
22 top there?

23 A. Yes, it is.

24 Q. And if you turn over a couple more pages,
25 there's another issue of Today. And again, you've got

<http://www.secdatabase.com>

1 the back cover ad there. At the top, it has the return
2 address for the University of Florida?

3 A. Yes.

4 Q. And then your ad is at the bottom?

5 A. Yes.

6 Q. Now, it says it's got www.gatorshop.com on
7 this ad. But then it says, "Check out
8 www.formergators.com".

9 A. Right.

10 Q. Is that affiliated with Gator Shop?

11 A. I don't know what Amy was doing with that. I
12 know that she had done some stuff with that early on.
13 Because as I said, I have two son-in-laws that played
14 for the national championship team. So that particular
15 team we have very close ties with, all 22 of those
16 players. And some of them, as you know, live in
17 Gainesville, a lot of them are in the store from time to
18 time.

19 So that would be the former Gators that she's
20 talking about that you can see, Donnie Young and Wyley
21 Ritch, that's the two son-in-laws. So that's what she's
22 doing with that, I would assume. So in other words, if
23 you want to know something from them, email us and we'll
24 email you back. I don't know whether it went anywhere,
25 I don't know if we ever got a question that they emailed

1 back. I don't know anything about that, to be honest
2 with you.

3 Q. Okay. And to confirm, Donny Young and Wyley
4 Ritch played football at the University of Florida and
5 are your son-in-laws?

6 A. Correct.

7 Q. Sons-in-law I think is the way you say that.

8 A. I'll take your word for it.

9 Q. Did they ever work in the store, the Gator
10 Shop store?

11 A. Yes.

12 Q. Are they involved at all today?

13 A. No. They only worked on football Saturdays.
14 Because that's when the people are there, that's when
15 they want to talk to them, be around them, ask
16 questions.

17 Q. Sign autographs, that kind of thing?

18 A. Sign autographs, yes. And they attracted
19 other players, like Lawrence Wright, Shane Matthews,
20 James Bates, lots of them.

21 Q. Who adopted the slogan, "Where Champions
22 Shop"?

23 A. I did.

24 Q. When did you do that?

25 A. When we won the championship and those two

<http://www.yeslaw.com/help>

1 guys became my son-in-laws, and everybody that
2 associated with them comes to the shop at the store when
3 they wanted something Gator.

4 Q. Remind me again when that was?

5 A. I don't know. After '96, because that's
6 after the championship. I don't know when I came up
7 with it.

8 Q. All right. You can put that one aside.

9 In addition to the alumni association
10 magazine and Gator Bait, can you think of any other
11 magazines you advertised in?

12 A. Well, if you call Gator Greenbacks a
13 magazine. It's a coupon book. I don't see that as a
14 magazine. I don't know. Again, my short-term memory is
15 not as good as it should be.

16 Q. Gator Greenbacks, it's a collection of
17 coupons for local businesses around the university?

18 A. Uh-huh. Right. In Gainesville. It's not
19 actually around the university. It's in the city of
20 Gainesville. I don't -- I think he's got people from
21 Ocala too. I don't think he's really just Gainesville,
22 I think he's the surrounding area, to be honest with
23 you.

24 Q. What about newspaper advertising, did you
25 ever do that?

1 A. We did that a long time ago, both in the
2 Alligator and the Sun, and realized that the return on
3 that was pretty nil, so ...

4 Q. And what is the Sun?

5 A. The Gainesville Sun.

6 Q. The local paper here?

7 A. Local paper.

8 Q. And what's the Alligator?

9 A. The University of Florida student paper that
10 they put out.

11 Q. Did you ever advertise on television?

12 A. Yes.

13 Q. During what time period?

14 A. The first advertisement on TV was 1997.

15 Because we did the football, we did national
16 championship football with Coach Spurrier. And he
17 signed them all. And we did a big program on the
18 Weather Channel, that crawled across the bottom
19 (indicating). As far as doing a big advertisement on
20 the screen, no. As far as putting the blurb at the
21 bottom of the weather crawl there, we did that.

22 Q. After '97, did you do it again?

23 A. It seems like we might have done it '206 and
24 '208. We did the same ball program with Coach Meyer.
25 So I would think we did, but can't say 100 percent we

1 did '06 and '08.

2 Q. Did you ever advertise on the radio?

3 A. Yes.

4 Q. During the games?

5 A. During a game, well --

6 Q. Or around the game.

7 A. They're a lot more expensive for those spots.

8 So I would tend to say no there. We tried to keep it
9 low key and didn't spend a ton of money. We actually
10 tried to swap merchandise that they could give away in
11 their program giveaways for advertising time. So I
12 would doubt that it would be right before or right after
13 or during the game.

14 Q. Do you know what stations you advertised
15 with?

16 A. Star would be one of them. I don't know what
17 the locator for that is. What's the country station?
18 It has Louis Stokes as the -- I don't know.

19 Q. Did you advertise on the stations where the
20 Florida sports are broadcast?

21 A. Okay. What station is that and I'll tell
22 you. You're going to have to jog my memory.

23 Q. You're asking someone from Atlanta.

24 A. Oh, you're a Bulldog fan.

25 Q. Let's not talk about that.

<http://www.secdatabase.com>

1 MR. HANSON: It's all downhill from here.

2 THE WITNESS: We're going to have to boycott
3 this.

4 BY MR. HENN:

5 Q. Was there an effort, though, to advertise on
6 the radio with the same radio station that was
7 broadcasting the games?

8 A. Well, okay. Shane Matthews had a program.
9 Shane is a very good personal friend of mine. I don't
10 know whether you know Shane or not. He played ten years
11 in the NFL. He was Steve Spurrier's fair haired
12 quarterback. And we advertised on that program, but it
13 was not before or after the game, it was a talk thing
14 that he was doing throughout the week. He may have done
15 it on Monday, Wednesday, Friday, Tuesday, Thursday, I
16 don't know.

17 But because we knew him, we did advertise
18 with him. And he and Brady Ackerman, which is a sports
19 announcer for -- and James Bates, had a program that
20 they ran. Where former football players would sit down
21 and they would interview them. And then there was an
22 in-house program with Chris Doering and Shane and James
23 Bates that they did on TV.

24 And the only advertising we did there was
25 once in a while they would mention the name Gator Shop.

1 We didn't pay them for it. You know, it was not a big
2 ad for the Gator Shop on the screen, it was just once in
3 a while they would say, if they got to messing with a
4 football or had on their Gator shoes, whatever, you can
5 get these at the Gator Shop, that type thing.

6 So there's a lot of avenues of advertising
7 out there, that I would have sit down and it would
8 probably take me a while to come up with everything.

9 Q. We have talked a little bit about the
10 Facebook page. Do you have a Gator Shop presence on
11 Twitter?

12 A. I don't think so. Don't know that for a
13 fact, but I don't think so.

14 MR. HENN: Let me show you what's been marked
15 Exhibit 12.

16 (Thereupon, Exhibit 12 was marked for
17 identification.)

18 BY MR. HENN:

19 Q. Can you just tell me what that is?

20 A. Looks like some kind of special program that
21 we were running to get more people to shop in the store.

22 Q. Do you know where this ran?

23 A. No, I don't.

24 Q. Okay. Do you recognize the University of
25 Florida's Gator logo there on the top and along the

<http://www.secdatabase.com>

1 side?

2 A. Okay. Are you pointing at Albert here?

3 Q. Yeah, the six times he's across the top and
4 the six times he's along the side.

5 A. Yeah. I understand that Albert is on there,
6 yes.

7 Q. In the gray shaded part above where you put
8 your name and phone number, it says, "Officially
9 licensed UF products. Portion of all purchases of UF
10 merchandise goes to the University of Florida Athletic
11 Club." Do you see that?

12 A. Correct.

13 Q. And then at the bottom, there's phone numbers
14 underneath the Gator Shop. You've got the 904 local
15 number, and then you've got your toll free number, but
16 instead of the numbers, you've got the letters. So it's
17 800-365-UofF. Do you see that?

18 A. Yes.

19 Q. I understand at some point you agreed with
20 the university to stop using U of F as letters for the
21 name; is that correct?

22 A. Correct.

23 Q. But the numbers never changed, it's the same
24 800 number the whole time?

25 A. Correct. And that ironically came out that

<http://www.secdatabase.com>

1 way. Somebody realized that that did spell out U of F.
2 We didn't ask for the specific 800 number, they gave it
3 to us when we called and got an 800 number. Somebody
4 one day said, you know what, that spells U of F. I
5 said, okay, let's -- it's easier to remember that way so
6 let's do that. The school didn't like that so we
7 stopped using it.

8 MR. HENN: All right. You can set that
9 aside.

10 Let me show you what's been marked as Exhibit
11 13.

12 (Thereupon, Exhibit 13 was marked for
13 identification.)

14 BY MR. HENN:

15 Q. These look like mini football schedules --

16 A. They are. Magnets.

17 Q. -- with an ad at the bottom. I'm sorry?

18 A. Magnets, refrigerator magnets that we sell.

19 Q. Oh, you sell these?

20 A. Well, okay, giveaway. If you buy, whatever
21 you buy, you're entitled to have one.

22 Q. Do you know during, I mean, these are from
23 '06, '07, '09 and '08?

24 A. Yeah, '09.

25 Q. Does this continue today, do you still offer

<http://www.yeslaw.com/help>

1 this with purchases?

2 A. I think the guy that was doing these went out
3 of business last year, so I don't know that we had them
4 for last year. Because it's very hard to get a good
5 price on them so that you can actually give them away.
6 So I'm not sure we had them last year.

7 Q. Did it begin before 2006?

8 A. That's a good question. I don't know. I
9 don't know when we started it.

10 Q. We mentioned the phone number, and then
11 eventually it stopped. Do you recall when the time
12 period during which you used U of F as your phone number
13 designation?

14 A. That piece of paper we gave you right there
15 (indicating).

16 Q. Yes.

17 A. Should answer that question for you.

18 Q. Well, that indicates it ended in 2000. But
19 my question is when it began.

20 A. Don't know.

21 MR. HENN: Let me mark one more. This is
22 Exhibit 14.

23 (Thereupon, Exhibit 14 was marked for
24 identification.)

25 BY MR. HENN:

1 Q. Which is another example of something that
2 includes the toll free number with the letters U of F --

3 A. Uh-huh.

4 Q. -- instead of the number.

5 Do you know what this comes from, is this
6 from a catalog?

7 A. It looks like the catalog for a couple of
8 jackets that we had there.

9 Q. So for a time on the back of the catalog it
10 would have listed your phone number using the letters
11 instead of the phone number?

12 A. Yes.

13 Q. Okay. You can set that aside.

14 A. I was trying to get some indication of the
15 year off of that.

16 Q. Were you able to?

17 A. No. I thought I remembered, but I can't. I
18 can't remember when that jacket was.

19 MR. HENN: I'm going to show you what's been
20 marked Exhibit 15.

21 (Thereupon, Exhibit 15 was marked for
22 identification.)

23 BY MR. HENN:

24 Q. This is a collection -- I put them together
25 to save time -- a collection of some catalogs from the

<http://www.pylelaw.com/help>

1 2000s.

2 A. Okay.

3 Q. There's an '05, and then I think there's

4 another one in here. Yeah, '01 and maybe 2000 and 2002.

5 There's several in this stack.

6 Is that what these are, these are

7 representative examples of the catalogs that you

8 distributed during the time you were doing that?

9 A. It appears to be so, yes.

10 Q. You no longer distribute a catalog. Do you

11 recall when you began distributing a catalog?

12 A. The exact date, no. I really don't.

13 Q. Was it being distributed before you came back

14 in '97?

15 A. I -- I don't remember. I did the first ones

16 myself.

17 Q. In terms of layout?

18 A. Everything, yeah. Believe it or not, with a

19 company out of Tallahassee. But I don't yell that too

20 loud.

21 Q. On Exhibit 15, right there on the front page,

22 it looks like somebody's taken the catalog and sort of

23 spread it open, so on the left side you've got the back

24 of the catalog, and the right, you've got the cover of

25 the catalog. Am I looking at that right?

<http://www.pacer.com/help>

1 A. It looks like it, yes.

2 Q. And on the front there, that's a picture of
3 University with your store in the background?

4 A. Parade day at homecoming, yes.

5 Q. That's the University of Florida band in the
6 foreground?

7 A. Yes.

8 Q. And then on the back of the catalog, it says
9 at the top, "New Coach, New Season, New Products." Do
10 you see that?

11 A. Yes.

12 Q. Do you know what the reference to new coach
13 was in '05?

14 A. That would have to be Zook, I'm pretty sure.

15 Q. Ron Zook?

16 A. Yeah.

17 Q. He was one of the University of Florida
18 coaches?

19 A. Yes.

20 Q. And then it says, "Check out our website for
21 great specials from gamedays to holidays." Gamedays,
22 that's a reference to University of Florida gamedays,
23 right?

24 A. Yes.

25 Q. And then down there, "Shop has what you need

<http://www.secdatabase.com>

1 for the ultimate Gator fan." That's University of

2 Florida Gator fans, right?

3 A. Yes.

4 Q. If you flip over to the 2001 catalog, which

5 is, I don't know, seven or eight pages in. Up in the

6 upper right-hand corner there, is that a poster?

7 A. Yes.

8 Q. Okay. So those are football, University of

9 Florida football players at the top, and then the

10 reference to "The Swamp" is where they play football?

11 A. Correct.

12 Q. And this is the cover of the catalog,

13 correct?

14 A. Correct. See that guy on the bottom left?

15 Q. Yes.

16 A. That's Albert. That was Albert. That was

17 the current Albert. That's my daughter, Amy, on the top

18 left. And those guys on the bottom are the head of the

19 Gator club in Fort Lauderdale.

20 Q. If you turn over three more pages, you get to

21 the 2000 catalog cover.

22 A. Uh-huh. It was really dirty, wasn't it. I

23 should have cleaned it better than that.

24 Q. That looks like 2006. Go one more page over.

25 A. Okay. 2000.

1 Q. 2000?

2 A. That's Shane Matthews and Chris Doering at
3 the top there.

4 Q. And who are they? They are football players
5 for the university?

6 A. Yes.

7 Q. Up there in the upper left where it has your
8 logo, your orange and blue Gator Shop logo, above in the
9 left, it says, "Florida T-shirts, Florida sweatshirts
10 and other Florida imprints for children and adults." Do
11 you see that?

12 A. Yes.

13 Q. When you're using "Florida" there, you're
14 referencing the University of Florida?

15 A. Yes.

16 Q. Okay. You can put Exhibit 15 aside.

17 In terms of the catalog distribution, mailing
18 list for that, how was that compiled?

19 A. We -- we. I sent off for the tag agency's
20 listing for everybody who bought a University of Florida
21 tag. And I think there were over a hundred thousand of
22 them or whatever. Again, we pared that down to an age
23 range. And that was our first mailing list, because we
24 felt like if they were going to pay the money to have a
25 University of Florida tag, then they might buy some

<http://www.secdatabase.com>

1 merchandise.

2 Q. And when you say "tag", you mean the license
3 plate on the back of a car?

4 A. License plate on the back of a car. Yeah,
5 personalized license plate with the University of
6 Florida logo on it.

7 Q. And that's where you started with the mailing
8 list. Did you add to that list?

9 A. We had one on the counter that said if you
10 want to be on our mailing list, sign here. So yeah, we
11 started adding to the list. And we had the Gator Bait,
12 we would have that on there that said if you want to be
13 on our mailing list, clip this out and send it in. So
14 we started building a mailing list.

15 Q. After the initial purchase of the list of
16 people who had bought University of Florida license
17 plates, did you go back a few years later and get an
18 updated list from the tag officer?

19 A. I don't think we ever requested another one.
20 They were quite costly, actually. So ...

21 Q. Do you remember when you did that the first
22 time?

23 A. No, I sure don't.

24 Q. Did you ever get lists of alumni addresses
25 from the alumni association?

<http://www.secdatabase.com>

1 A. No. We never asked them for them. The guy
2 that was running the alumni association, I knew him
3 through some other people, friends of mine. He became a
4 friend of mine. We tried to work closely with them, and
5 did actually work closely with them. But, you know,
6 we -- we just gave them a discount so they could build
7 membership.

8 Because the people could get the membership
9 back by spending money at the Gator Shop. So they
10 really weren't paying for a membership. They got all
11 the benefits of the membership without actually having
12 to pay for it because they got the money back through
13 the discounts and merchandise they were going to buy
14 anyway. So it helped them build their membership.

15 MR. HENN: I'm going to show you what's been
16 marked Exhibit 16.

17 (Thereupon, Exhibit 16 was marked for
18 identification.)

19 BY MR. HENN:

20 Q. Which I note on the cover is marked as
21 "Commercially Sensitive." So we'll probably do this
22 part of the transcript under the protective order in the
23 case.

24 For the record, can you identify what Exhibit
25 16 contains?

http://www.secdatabase.com

1 A. It looks like monthly sales for the Gator

2 Shop.

3 Q. And it looks like the monthly sales from
4 January 2010 through the end of 2011. Is that fair?

5 A. Yes, sir.

6 Q. Have there been sales since the end of 2011?

7 A. Yeah. We had January and February of 2012
8 before we sold the store, or sold the lease. We didn't
9 sell the store, we sold the lease out.

10 Q. Since you closed the brick and mortar store
11 in 2012, again, I know it's going to be an estimate
12 because it's from your memory, but what have your total
13 sales been?

14 A. I haven't got a clue.

15 Q. Are we talking less than 10,000?

16 A. No, they would be more than 10,000.

17 Q. Did they continue to be in the range
18 reflected here, which is through --

19 A. No.

20 Q. All right. Can you give me an estimate of
21 monthly sales since March of 2012?

22 A. No. But naturally the football season would
23 be the biggest time. We were doing over \$3,000, around
24 \$3,000 per football Saturday with the tent. So that
25 would be over 30,000, 40,000. Could be 60, 70,000,

http://www.secdatabase.com

1 could be 100,000. I don't know. I have no earthly
2 idea.

3 Q. How about through the website, any sense of
4 the website sales?

5 A. No. I don't know these. I had them get them
6 off QuickBooks. We had to go back and research it for
7 these figures, so ...

8 Q. Do you track sales in QuickBooks separately,
9 whether it comes in through the website or it sold in
10 the tent or it sold in the brick and mortar store?

11 A. I don't know because I don't keep the books.
12 My wife does that. She's the secretary treasurer and
13 I'm the president, vice president, so ...

14 Q. Do you know what, in these -- each of these
15 includes sales dash taxable and sales dash exempt. Do
16 you know which -- what falls into which category?

17 A. I would say the exempt sales are out of state
18 sales from the website, because we don't charge them tax
19 if we ship it to Georgia or California or whatever. So
20 that's what I would say that is.

21 Q. That's what I assumed as well. But taxable
22 sales wouldn't necessarily just be brick and mortar
23 because it could also be somebody in Florida ordering
24 off the website?

25 A. Right.

1 Q. Okay. Do you know if since March of 2012 you
2 continue to use the QuickBooks system?

3 A. Since March of 2012, yes.

4 Q. All right. So it would be possible to run a
5 report that would tell us what the sales have been since
6 then?

7 A. I'm assuming it would be, yeah.

8 Q. Okay. We talked about --

9 A. You know what, in actuality, let me think
10 about this for a second. The sales that were generated
11 for the tent, we actually ran that through Gator Shops,
12 the charge sales ran through there. Because we
13 maintained the charge sales, a charge account because
14 you've got to have a place for it to dump into through
15 Gators Plus. So it's not going to show what the charge
16 is versus the cash or the checks. Checks are half a
17 percent, 1 percent. But the cash, it's not going to
18 show the total.

19 Q. Because all the credit card sales would --

20 A. Have to go through there, yeah.

21 Q. -- go through Gators Plus?

22 A. Right.

23 Q. Okay. We talked about the advertising and
24 marketing examples. In terms of -- and I'm sure it
25 fluctuated over time, but in terms of the most you ever

<http://www.yeslaw.com/help>

1 spent in a year on advertising, do you have any sense of
2 that?

3 A. It would be 2006, 2008 and 1997.

4 Q. An amount?

5 A. No amount. Those would be the years, because
6 those were the years we won the championship. Those
7 were the years we were advertising on a monthly basis in
8 Gator Bait magazine and spending money on the Weather
9 Channel TV crawl thing. Those are more expensive, so
10 those would be the years we spent the most amount of
11 money advertising. I don't know how much it would be,
12 but that's it.

13 Q. Are you currently spending any money on
14 advertising?

15 A. Not that I know of.

16 Q. We talked about the instance in which someone
17 had bought something at the university store and tried
18 to swap it out at your store to get a different size.

19 Were there other conversations, maybe not
20 involving product swaps or returns, but in which
21 customers asked you if you were affiliated with the
22 university or part of the university or the same as the
23 bookstore or something like that?

24 A. Not -- not affiliated with the university. I
25 have had customers ask me if the university was

<http://www.secdatabase.com>

1 affiliated with me. Because they were using the name
2 the Gator Sports Shop, which was very close to our name.
3 And the university told me when they started using the
4 name, they had tried to get the name once before, the
5 Gator Shop, for the guy that started the Gator Shop,
6 before I bought it. Harold Silverman was the attorney
7 and he handled that case.

8 When they decided they couldn't get the name,
9 they informed them that they were going to take a name
10 as close to the Gator Shop as they could get. So they
11 started off with the Gator Giftshop, which turned out to
12 be a bust for them because people thought it was just a
13 gift place instead of Gator sports merchandise.

14 So then I don't know how long it went, but
15 they decided, okay, we're going to change it to Gator
16 Sports Shop. I have had numerous people call up and say
17 I want to return item number, it wasn't what I thought
18 it was. I'm like what item number, 227, or whatever.
19 And we kept the University of Florida's catalog, because
20 when we didn't have the merchandise, we would
21 immediately look in the University of Florida, and it
22 would normally be one of their items. And they would
23 go, but you're the Gator Shop, right? Yes, we are.
24 Well, then why is the University of Florida using the
25 name the Gator Shop? And I said, well, it's the Gator

<http://www.secdatabase.com>

1 Sports Shop, it's not the Gator.
2 So they were creating a confusion between our
3 name and their name. We had the name long before they
4 ever started doing this, decided that's what they wanted
5 to do. I don't know why. They hadn't done it with
6 Gators Plus or Gator Fever or Gator Merchandise, Gator
7 Stuff, Gator, I mean, there's a lot of stores out there
8 that go by Gator something. Why they chose us, I don't
9 know. But you know, that's just the way it is.

10 They continued to create the confusion over
11 the years. So the people called us, asking why they
12 were doing it. Now, I guess you would have to ask them
13 if they got it on the other side from us, but I doubt it
14 very seriously, because we have been the Gator Shop a
15 lot longer than they have been the Gator Shop, Gator
16 Sports Shop. They're not the Gator Shop, they're the
17 Gator Sports Shop. But we have been that 20, 30, 40
18 years longer than they were the Gator Sports Shop.

19 Q. When was the last time you had one of these
20 calls in with the wrong part number or item number?

21 A. It would have been 2011 when we had the full
22 year of merchandise sales going out through the
23 catalog -- I mean the dot com online website.

24 Q. How often would it happen?

25 A. I don't know.

<http://www.secdatabase.com>

1 Q. More than once a month?

2 A. More than once a month, I don't know if the
3 average was that. Probably not. But it could have
4 been. I don't know. I really don't know. I just know
5 that we got -- see, I'm the one fielding them. I don't
6 know how many they were fielding between Amy, Kim and
7 Joi, and Dawn. I really don't know.

8 Q. In preparing your answers to the discovery
9 requests in the case, did you talk to your daughters or
10 your wife about calls they have received expressing
11 confusion between the University of Florida's --

12 A. No.

13 Q. -- retail store and your store?

14 A. I did it all on my own. I hadn't brought
15 them into the situation at all.

16 Q. Other than the instances you reference with
17 regard to people trying to return products from the
18 University of Florida store to your store with the wrong
19 item number, are there other instances in which
20 consumers seem to be confused between your store and the
21 University of Florida store?

22 A. I guess I don't understand that question.
23 They know the University of Florida is across the street
24 so they're not confused about that. If they're going to
25 go to the University of Florida, they're going over

http://www.secdatabase.com

1 there. If they're coming to the Gator Shop, they're
2 coming over to our place. I don't know what you mean by
3 that.

4 Q. Okay. Well, you mentioned people were trying
5 to return merchandise they purchased from the University
6 of Florida Gators Sports Shop to your store. And you
7 knew they came from the University of Florida store
8 because they had their item number.

9 A. Right.

10 Q. I'm curious if there are any other instances
11 other than those in which you experienced consumers who
12 were confused as to whether you were affiliated with
13 them or vice versa?

14 A. You mean like calling on the phone?

15 Q. Calling on the phone, coming in the store and
16 saying something.

17 A. Coming in the store, they wouldn't be
18 confused, because they're over there, we're over here.

19 Q. Okay. What about on the phone?

20 A. The phone conversations were strictly to
21 return merchandise that they thought they were buying
22 from the Gator Shop but ended up buying from the Gator
23 Sports Shop. So that's all I can remember.

24 Q. All right. You mentioned that there was a
25 website called the Gator Zone, which we looked at a

<http://www.secdatabase.com>

1 picture of earlier, selling University of Florida
2 related merchandise.
3 Are you aware of other online stores selling
4 University of Florida merchandise that use "Gator" in
5 the name?

6 A. Gators Plus, yes. Gator Fever. I think that
7 the lady, we weren't using it, but I think the lady that
8 bought the store from me down in Orlando, which is
9 Gator, Seminole, Knight Fever, I think she has a website
10 now. There are other stores that have Gator in the name
11 that are on the website.

12 Like I know there's one in Leesburg. I don't
13 know what the name of the store is. I know there's one
14 in Tampa. And I know there's others around the state
15 that do the same thing, but I don't know what their
16 names are. But they have Gator in the name of the
17 website. So ...

18 Q. I know you're a partner in Gators Plus and
19 you used to own Gator, Seminole, Knight Fever, so I'm
20 going to set them aside for a moment.

21 You mentioned one that you didn't own that's
22 using Gator to sell University of Florida merchandise,
23 and that was Gator Fever?

24 A. Correct.

25 Q. Tell me about them, where are they based?

1 A. They're out at the mall here, and Butler

2 Plaza.

3 Q. And they're online you say?

4 A. To my knowledge, they were. I don't know if
5 they are today. But they were online. I assume they
6 are.

7 Q. How long have they been around?

8 A. Oh, at least ten years. I don't know when
9 they first originally started. At least ten years.

10 Q. You said there's a store in Leesburg?

11 A. Yeah.

12 Q. You don't know the name of that, though?

13 A. Huh-uh.

14 Q. No?

15 A. No, sir.

16 Q. And you said there's a store in Tampa you
17 think uses the Gator name online, but you don't know the
18 name of that one either?

19 A. I do not. I know the store's there. I know
20 where it is. I could drive you to it, but I don't know
21 what the name of it is.

22 Q. Any others you can think of that sell
23 University of Florida related products that use Gator in
24 the name that you don't own?

25 A. There's stores all over the state. There's

1 stores in Jacksonville, St. Augustine, Daytona, Orlando,
2 besides Gator, Seminole, Fever.

3 Q. I'm just curious of any of the names that you
4 actually know the names of.

5 A. I don't actually know the names. I could
6 look them up, but so can you, so. There's a lot of them
7 out there. There was Gator Stuff in Orlando, but he
8 went bankrupt. That was 15 years ago, ten or 15 years
9 ago. But that's an example of what I'm talking about.
10 There's one, Proud Gator, I don't know where that one's
11 located. It's called Proud Gator. Just trying to think
12 of names.

13 Q. Where is -- you don't know where Proud Gator
14 is?

15 A. No. There's one in Lakeland. Don't remember
16 what the name of it is. But it has Gator in the name.
17 Gator Patch, which is in Melrose. Yeah, Melrose. If I
18 sat here for an hour, I might come up with a few more.
19 But in the concern, expediency of time here, I'll
20 acquiesce and say I can't remember any more right now.

21 Q. Okay. As you know, this case arises out of
22 your effort to register your shop as a trademark. It
23 doesn't involve ultimately whether or not you use the
24 Gator Shop trademark in commerce.

25 A. Right.

<http://www.courtreporterhelp.com>

1 Q. Why are you seeking to register the mark?

2 A. Money.

3 Q. And what do you mean by "money"?

4 A. Well, I had a case with Wal-Mart. And the
5 arbitrator told me that if I had a national trademark
6 that I would have definitely gotten three times what I
7 got in the settlement. Which I cannot disclose. I am
8 in the process of the lawsuit with Gator Zone dot com.
9 And I would like to know that I'm going to get three
10 times the amount of money that I will probably end up
11 with out of that case.

12 So it's my name, it's not anybody else's
13 name, and I want to protect it. As you would if it was
14 your name. I paid a lot of money for it and I have
15 developed it over the years and have taken good care of
16 it. We have had several people, like Sports Authority
17 use the name, but when they were presented with the fact
18 that I had a registered trademark for it, every one of
19 them but Wal-Mart took it down. Same thing's happening
20 with Gator Zone dot com right now, they will not take it
21 off of their website. So they're going to pay for that,
22 just as Wal-Mart did.

23 Q. And when you say you showed them a registered
24 trademark, you're talking about your State of Florida
25 registration?

1 A. Correct. That's where I am and that's where
2 they are.

3 Q. You've never had a physical location outside
4 of the state of Florida, have you?

5 A. No.

6 MR. HENN: All right. Let's go off the
7 record.

8 (A brief recess taken.)

9 MR. HENN: We can go back on the record. I
10 don't have any further questions, so thank you
11 for your time today.

12 I'm not sure if you have any.

13 MR. HANSON: No.

14 (Thereupon, the right to read and sign the
15 deposition was explained to the witness and the witness
16 requested to review the transcript.)

17 (Whereupon, the deposition was concluded at
18 11:09 o'clock a.m.)

19

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<http://www.secdatabase.com>

1 CERTIFICATE OF OATH

2

3

4 STATE OF FLORIDA)

5 COUNTY OF ALACHUA)

6

7

8 I, the undersigned authority, certify that JOE
9 N. FINCHER personally appeared before me and was duly
10 sworn.

11 WITNESS my hand and official seal this 24th
12 day of April, 2013.

13

14

15

16

Debora M. Holloway

17

Court Reporter, Notary Public

18

19

20 Personally Known: _____

21 OR Produced Identification: X

22 Type of Identification Produced: Driver's License

23

24

25

1 CERTIFICATE

2

3 STATE OF FLORIDA)

4) SS

5 COUNTY OF ALACHUA)

6

7 I, DEBORA M. HOLLOWAY, a Court Reporter,

8 certify that I was authorized to and did

9 stenographically report the deposition of JOE N.

10 FINCHER; that a review of the transcript was requested;

11 and that the transcript is a true and complete record of

12 my stenographic notes.

13 I FURTHER CERTIFY that I am not a relative or

14 employee of any of the parties, nor relative or employee

15 of such attorney or counsel, or financially interested

16 in the foregoing action.

17 WITNESS MY HAND AND SEAL this 24th day of

18 April, 2013 in the City of Gainesville, County of

19 Alachua, State of Florida.

20

21

22 _____
Debora M. Holloway

23 Court Reporter

24

25

1 ERRATA SHEET

2 DO NOT WRITE ON TRANSCRIPT - ENTER CORRECTIONS HERE.

3

4 IN RE: UNIVERSITY ATHLETIC ASSOC. V. INCENTIVE MKTG.

5 DEPOSITION TAKEN: APRIL 11, 2013

6 WITNESS: JOE N. FINCHER 30(b)(6)

7 PAGE LINE NOTES

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25 _____

1 Under penalties of perjury, I declare that I have
2 read the foregoing document and that the facts stated
3 therein are true.

4 _____

5 DATE JOE N. FINCHER

6

7

8

9 Sworn to and Subscribed before me

10 _____, Notary Public.

11 This _____ day of _____, 20____.

12 My Commission Expires:

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Joe N. Fincher on 04/11/2013

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