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

Proceeding	91213057
Party	Plaintiff Hybrid Athletics, LLC
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Date	09/11/2015
Attachments	Notice of Filing.pdf(200409 bytes) Ian Jentgen.pdf(372973 bytes) Exhibits 1 - 7.pdf(5763988 bytes)

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

HYBRID ATHLETICS, LLC,	:	
	:	
Opposer,	:	Opposition No. 91213057
	:	
v.	:	
	:	
HYLETE LLC,	:	
	:	
Applicant.	:	

OPPOSER’S NOTICE OF FILING JENTGEN TRIAL TESTIMONY

PLEASE TAKE NOTICE THAT pursuant to Trademark Rule 2.123(h) and 2.125(c),
Opposer files herewith the following:

- 1) A true copy of the transcript of the testimony deposition of Ian Jentgen, taken on July 29, 2015, and all exhibits thereto.

Respectfully submitted,

HYBRID ATHLETICS, LLC

September 11, 2015

/s/ Michael J. Kosma
Michael J. Kosma
Christina L. Winsor
Whitmyer IP Group LLC
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ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing OPPOSER'S NOTICE OF FILING JENTGEN TRIAL TESTIMONY was served by first class mail, postage prepaid on the Correspondent for the Applicant at the below address. This is to further certify that a true copy of the testimony deposition, taken on July 29, 2015, of Ian Jentgen and all exhibits thereto were served upon Correspondent for the Applicant via FedEx overnight delivery on August 20, 2015.

Kyriacos Tsircou
Tsircou Law, P.C.
515 S. Flower Street, Floor 36
Los Angeles, CA 90071-2221

September 11, 2015
Date

/s/ Joan M. Burnett
Joan M. Burnett

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

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HYBRID ATHLETICS, LLC,

Opposer,

Opposition No. 91213057

-against-

HYLETE LLC,

Applicant.

- - - - -x

DEPOSITION OF

IAN JENTGEN

Stamford, Connecticut

July 29, 2015

Reported By: Joe Danyo V

Job No. 14599

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DEPOSITION of IAN JENTGEN, taken by Opposer,
pursuant to Notice, held at the offices of
Whitmyer IP Group, LLC, 600 Summer Street,
Stamford, Connecticut 06901 on July 29, 2015, at
1:59 P.M., before Joseph Danyo V, a Shorthand
Reporter and Notary Public for the State of New
York.

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APPEARANCES:

WHITMYER IP GROUP

Attorneys for Opposer

600 Summer Street

Stamford, Connecticut 06901

BY: MICHAEL J. KOSMA, ESQ.

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-and-

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TSIRCOU INTELLECTUAL PROPERTY LAW

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515 South Flower Street, 36th Floor

Los Angeles, California 90071

BY: JOHN M. BEGAKIS, ESQ.

Also Present:

JOAN M. BURNETT, Litigation Paralegal

Whitmyer IP Group

* * *

1 I. Jentgen

2 I A N J E N T G E N,

3 the Witness herein, having first been duly
4 sworn by the Notary Public, was examined and
5 testified as follows:

6 EXAMINATION BY

7 MR. KOSMA:

8 Q. Good morning Mr. Jentgen.

9 A. Good morning.

10 Q. First, I would like to identify
11 everyone in the room.

12 Can you please give me your name.

13 A. Ian Jentgen.

14 Q. And, Mr. Jentgen, what's your
15 address?

16 A. 970 Hope Street, apartment 1-B.

17 Q. And how old are you?

18 A. 25.

19 Q. And what's your date and place of
20 birth?

21 A. 5/24/1990, Columbus, Ohio.

22 MR. KOSMA: And here we have?

23 MR. BEGAKIS: John Begakis, counsel
24 for Hylete LLC.

25 Q. Mr. Jentgen, my name is Michael

1 I. Jentgen

2 Kosma. I'm an attorney for the Whitmyer IP
3 Group, and I represent Hybrid Athletics in this
4 matter.

5 So this is your deposition, a trial
6 deposition, in which I'll ask you questions, and
7 you should answer them truthfully. Although no
8 judge is present, this is a formal legal
9 proceeding just like testifying in court. You're
10 under the same legal obligations to tell the
11 truth, the whole truth and nothing but the truth.
12 If you do not understand any of my questions,
13 please feel free to say so, and I will repeat or
14 rephrase them.

15 Prior to us submitting the
16 deposition, you will have the opportunity to read
17 it over and correct any mistakes.

18 Do you understand this.

19 A. Yes.

20 (Whereupon, Hybrid Exhibit 1,
21 Opposer's Notice of Trial Deposition was
22 hereby received in evidence, as of this
23 date.)

24 Q. I would like to introduce into
25 evidence Exhibit 1, a notice of trial deposition.

1 I. Jentgen

2 Mr. Jentgen, can you please review
3 that document.

4 (Witness reviews the document.)

5 Q. Have you seen that before?

6 A. Yes.

7 Q. And what is that?

8 A. This is a deposition notice that you
9 had sent me prior to.

10 Q. Is that why you're here testifying
11 today?

12 A. Yes.

13 Q. Mr. Jentgen, what's your current job?

14 A. So currently I work at Hybrid
15 Athletics. I'm the head trainer and basically
16 general manager as well in terms of managing our
17 sales as it relates to stone walls and apparel
18 and then the gym's general day-to-day functioning
19 as well.

20 So also managing our staff and
21 coaches who help in both the specific gym and
22 then help with duties as it relates to the
23 apparel and stone walls.

24 Q. And when did you start working at
25 Hybrid?

1 I. Jentgen

2 A. So I began, I came to Hybrid first in
3 2012, started working at Hybrid 2013, began
4 shadowing more or less as an intern and came on
5 full time, essentially, in May of 2013. So I
6 have been on full time ever since.

7 Q. You said you came there first in
8 2012?

9 A. Yes.

10 Q. And what was your capacity there
11 then?

12 A. So I graduated school, and I was
13 actually living in New Jersey, but commuting to
14 Connecticut for a job.

15 I was aware of Hybrid Athletics at
16 the time, but I would potentially only just drop
17 in for when I could, based on the commute it's
18 like an hour and-a-half.

19 So, when I was there, I came in, was
20 just working out as a normal member, although I
21 coached CrossFit previously while I was in school
22 in Newport, Rhode Island, so I still had that
23 interest in coaching, and then, when I moved to
24 Connecticut full time, I was a member initially
25 and then started getting roped into shadowing and

1 I. Jentgen

2 then coaching thereafter. I had a relationship
3 with Rob and Tim Burke at the time.

4 They brought me in and said, hey, we
5 really think you could help us at least in a
6 part-time capacity. And then Victoria at the
7 time she was the one that really pushed me. Hey,
8 you can make this a full-time gig, and she kind
9 of pushed me in that direction.

10 Q. Rob Orlando, is that the owner?

11 A. Yes, Rob. Rob Orlando.

12 Q. And who is Victoria?

13 A. Victoria was the -- she was our lead
14 female coach on staff, so she was there full
15 time. Tim was there full time. So was Kate
16 Burke at the time. Yes.

17 Q. And they were all coaches?

18 A. Yes, all coaches, so I developed good
19 relationships with them, and they had kind of
20 brought me into the fold in terms of things at
21 Hybrid.

22 Q. And prior to working at Hybrid
23 Athletics, where were you working?

24 A. I was at Colangelo Synergy Marketing,
25 so it's a marketing --

1 I. Jentgen

2 Q. Can you spell that, please.

3 A. C-O-L-A-N-G-E-L-O.

4 Q. Okay.

5 A. So it's located in Darien, primarily
6 a promotional agency. I worked on Don Julio
7 Tequila primarily and through agency records, so
8 our business was all-encompassing there, but I
9 was an account manager.

10 So basically the liaison between the
11 brand managers and brand directors from Diageo
12 and then our creative teams, so I helped
13 facilitate that process on a day-to-day basis.

14 Q. As an account manager, what were your
15 duties?

16 A. So we would get briefed. I worked
17 closely on Don Julio, so we would manage their
18 Facebook page. We managed Bailey's Facebook
19 page, but for Don Julio we would be briefed on,
20 okay, they're relaunching a bottle, so the 1942
21 with a whole new redesign. We would have to do a
22 photo shoot, magazine print ad, out of home
23 larger-scale advertisements. We were shooting a
24 couple sizzle videos, so it was through-the-line
25 marketing, so pretty all-encompassing.

1 I. Jentgen

2 Q. Through-the-line marketing?

3 A. Yes. So through-the-line, which
4 means above the line would be like a commercial.
5 Below-the-line would be like in-store or at a bar
6 on-premise marketing, so like the take-ones and
7 those types of things that you would see as just
8 paper materials.

9 So for Don Julio, the brand that I
10 was working on, we were through-the-line, so we
11 were doing both as the agency record.

12 Q. You also mentioned Bailey's. What
13 did you do at Bailey's?

14 A. So Bailey's is another Diageo brand,
15 so we were managing their Facebook page. So we
16 were doing a lot more, Bailey's and Godiva, the
17 liquor business, so we were managing the posting
18 of their content, so a lot of drink recipes,
19 photo shoots, things of that nature as it relates
20 to engaging a consumer online and through their
21 social channels.

22 Q. So was your job focused on social
23 media or --

24 MR. BEGAKIS: Objection. Narrative.

25 Q. It's okay.

1 I. Jentgen

2 A. Okay. So it wouldn't be social media
3 per se. We were actually a promotional agency,
4 so a lot of the stuff related to seeing like the
5 case cards when you walk into a liquor store. So
6 that I guess was our specialty, although I did, I
7 was involved with the social media very much so
8 individually.

9 Q. What's a case card?

10 A. A case card would be if you have like
11 a case of liquor. It's the card or poster that
12 stands up on top of the case. So it's a good
13 piece of real estate, and it's basically the case
14 card gets creative in terms of this is the image
15 that is then used and repurposed to fit anything
16 else in terms of the marketing space on premise.

17 So that's like the key visual that
18 you would use, and then you would use that case
19 card image to blow out to fit a shelf talker or a
20 large format poster or whatever it may be.

21 Q. Who would design those?

22 MR. BEGAKIS: Objection. Relevance.

23 A. We have a creative team, so I would
24 assist in that process.

25 Q. And what would go on a case card?

1 I. Jentgen

2 MR. BEGAKIS: Objection. Relevance.

3 A. So it would be a bottle shot, logos
4 primarily, communication in terms of whether it's
5 for Don Julio. We had a line at the time, "Know
6 Your Tequila," so you were working with
7 copywriters. So trademark terms in that sense
8 and logos and then bottle shots as well and drink
9 shots. It would depend on the individual case
10 card, but generally those elements.

11 Q. And in the social media realm what
12 was your specific task?

13 A. So I would work to organize a content
14 calendar, so we would look out a month at a time.
15 All right, here are the important dates that are
16 going on. How can we integrate Bailey's or
17 Godiva cocktails into the month and feature this
18 recipe or what is an image that if it's Mother's
19 Day coming up, we know that for our target
20 consumer that's an important date. How can we
21 celebrate Mother's Day with a Bailey's or Godiva
22 spin on things.

23 So things like that. So assisting
24 the creative team in the creation of those images
25 as well as the copy support with the copywriters

1 I. Jentgen

2 as well.

3 Q. When you say images, what do you
4 mean?

5 A. Images that you would post to
6 Facebook. So pictures, a lot of them sometimes
7 they would be generated through Photoshop and
8 Illustrator using owned assets. Sometimes we
9 would be shooting them.

10 We actually had a bar on premise at
11 our office, so we would do a lot of inhouse photo
12 shoots and things like that. So we were
13 generating those images that we were posting on
14 Facebook, the pictures that would accompany our
15 messaging for whatever the date was, whether it
16 was in relation to a cocktail or a current event
17 of something of that nature that was going on.

18 So the thing with social we always
19 try to be current with what's going on. So we
20 had the content calendar, that was that rough
21 framework, but we would deviate from that if
22 there was something that came up, like, if the
23 U.S. Women's World Cup won the World Cup, then we
24 would celebrate that with a Bailey's spin on
25 things.

1 I. Jentgen

2 Q. And did you have any input on the
3 content?

4 A. Yes. So it was as an account manager
5 it's basically your duty to take in the brand
6 manager, you were briefed by the brand teams, the
7 brand manager or the brand director, depending on
8 which account it was, and then relay that
9 information to the creative team and kind of
10 funnel their creative process. Okay.

11 This, usually they would present, a
12 creative team would present us with three
13 possible outcomes, and then we would kind of
14 funnel the direction based off of what we had
15 previously been given from the brand team.

16 So working closely in tandem with
17 that line of communication coming from the brand
18 and then what our creative directors thought we
19 should be doing for the brand as well.

20 We were making agency recommendations
21 in terms of, okay, these are the images that we
22 should be posting. This is the copy that should
23 be supporting it. This is what's on brand for us
24 at the current time, and that's what I was
25 helping facilitating.

1 I. Jentgen

2 Q. Was there an important aspect to
3 these images?

4 MR. BEGAKIS: Objection. Calls for a
5 narrative.

6 A. Yes, there was a really important
7 aspect, we were always trying to resonate with
8 our target audience. So whether it's a
9 lifestyle-type of image as it relates to the
10 cocktails, pulling in different types of imagery
11 to kind of put that target or our target audience
12 in kind of the perspective that they would like
13 to enjoy a Godiva or Bailey's cocktail. So
14 that's where we were at with that.

15 Q. And how long were you at --

16 A. Colangelo?

17 Q. Colangelo.

18 A. A year and a day actually.

19 Q. A year and a day?

20 A. Yes. The going away party was on a
21 year anniversary.

22 Q. And did you work full time during
23 that year?

24 A. Yes, I was full time at Colangelo.

25 Q. Did you work with them at all after

1 I. Jentgen

2 that?

3 A. I did. I continued on as a
4 consultant. So I took a promotion probably
5 prematurely from my perspective, looking back on
6 it, but everything worked out.

7 So, when I continued on as a
8 consultant, it was more in line with my truer
9 liking in marketing. It was more in a digital
10 strategy world as opposed to day-to-day account
11 management.

12 So that was what I continued on with,
13 and from that time I focused more of my efforts
14 on not Diageo brands but Church & Dwight brands,
15 so it was more CPG consumer-based products, so
16 OxyClean, Arm & Hammer baking soda, but then also
17 I was working on some tobacco brands as well.

18 Q. And did you have a title as a
19 consultant?

20 A. No. I kept my e-mail, but didn't
21 have a title. No.

22 Q. You mentioned CPG brands. What are
23 those?

24 MR. BEGAKIS: Objection. Relevance.

25 A. So consumer products, basically the

1 I. Jentgen
2 Church & Dwight portfolio of brands was all very
3 whatever kind of products you would find in a
4 large format retail grocery store, things like
5 that. So dish soaps, laundry detergents,
6 cleaners, things of that nature.

7 Q. And you mentioned you also worked
8 with tobacco products?

9 A. Yes. At the time, it was, gosh, it's
10 escaping me now. It wasn't Skol. It was cigars.
11 The name is escaping me. I remember the account,
12 but that was more category management, and it was
13 in terms of, when a consumer walks into a store
14 where does their eye look at. Like format stores
15 like a 7-Eleven where should they be positioning
16 their products and things like that, that's what
17 we were doing. That was a business that was just
18 coming on.

19 It was actually Commonwealth was the
20 overarching brand for the tobacco products, but
21 then they had some brands within that
22 specifically, but my role was more
23 strategy-based, so it wasn't necessarily specific
24 to one tobacco brand within the portfolio.

25 Q. Was there another brand you

1 I. Jentgen

2 mentioned? You had CPG, tobacco. Was there a
3 third one you mentioned?

4 MR. BEGAKIS: Objection. Leading the
5 witness.

6 A. When I was a consultant?

7 Q. Yes. You mentioned CPG and tobacco.
8 Were there any others?

9 A. Well, I worked on Diageo, so spirits.

10 Q. I mean as a consultant?

11 A. As a consultant?

12 Q. Yes.

13 A. No. Those would have been the
14 brands.

15 Q. You mentioned it was mostly digital
16 media?

17 A. Yes. So the Church & Dwight business
18 we owned mostly the digital space in terms of
19 digital banner ads. We would do website
20 redesigns. We would do newsletters. So it would
21 vary again from brand to brand. Basically,
22 agencies and the way they work with brands
23 typically you would own a little sliver of the
24 pie based on what your specialty is.

25 So for Church & Dwight it was the

1 I. Jentgen

2 digital side of things, and Facebook for the
3 Church & Dwight brands as well. So Arm & Hammer
4 was the main brand that I was like an admin on,
5 so I was able to monitor, post and control from
6 that perspective as well.

7 Q. What is a banner ad?

8 A. A banner ad would be an ad, if you're
9 on Google or if you're on a website, it's the ad
10 that you would see that would pop up in either
11 the most common places when they are right under
12 the navigation bar or on the right-hand rail.

13 A lot of times they are controlled by
14 Google AdWords, and are taking into account your
15 cookie history in terms of what ads they're
16 serving. So, if you have an interest in
17 something like baseball, you're going to be
18 served ads for baseball bats and baseball gloves
19 and things of that nature.

20 Q. And what banner ads were you in
21 charge of?

22 A. So at that point I was working on
23 this was more so when I was actually working on
24 Church & Dwight specifically, but it was Arm &
25 Hammer, and we did the baking soda banner ads,

1 I. Jentgen
2 and then there was some of the cat litter and all
3 under that stuff, and that's probably what kind
4 of got me out of the agency.

5 I was, like, I don't want to be doing
6 this anymore. It was a lot cooler working on
7 booze than it was working on kitty litter.

8 Q. On Facebook what kind of
9 advertisement would be on Facebook?

10 MR. BEGAKIS: Objection, relevance.

11 A. So we would advertise products. We
12 would advertise promotions like it was hard to
13 kind of get our target or our followers into
14 motion and get them passionate about something
15 like a CPG product, but we'd do giveaways.

16 I remember one of the larger
17 promotions that we ran, it involved setting up a
18 tab. It was for the cat litter product, but you
19 could upload a picture of your cat, and it would
20 do this mime dance, and things like that, and you
21 could share it with your friends.

22 So not my proudest work, but it was
23 kind of funny. A friend of mine was actually the
24 voiceover. He did the whole rap for the music
25 video, but that kind of thing, but we would boost

1 I. Jentgen
2 those posts so it could reach more people outside
3 of just our following. So I was involved in the
4 digital side of things right when Facebook
5 changed their algorithm. So it really impacted
6 brands in terms of who they could reach with
7 their post.

8 So they introduced paid-for
9 advertising and a bunch of different levels as it
10 relates to advertising on Facebook, and so we
11 were paying for advertisements, paying for
12 click-throughs, paying for more views by just
13 boosting the posts. We were developing and
14 implementing several different strategies as it
15 relates to advertising on Facebook.

16 Q. When you say changed their algorithm,
17 what does that mean?

18 A. So Facebook used to have a purely
19 native or organic algorithm, so, if you followed
20 somebody, you would see the post. That was the
21 most recent, but then they specifically, as it
22 relates to brands, there was a pivot to where
23 your post was only seen by a fraction of your
24 followers when they introduced paid-for
25 advertising, and they did that to encourage

1 I. Jentgen
2 paid-for advertising so they could increase their
3 earnings.

4 So there was a large transition in
5 terms of brand presence on Facebook, the amount
6 that brands were allocating to dollars on
7 Facebook, and all of the resources being put into
8 Facebook at that time.

9 Q. When you say boosting a Facebook
10 advertisement, what do you mean?

11 A. So it's, when you boost, that's the
12 term that I guess is given to the most generic
13 way to advertise or increase the viewership of a
14 post.

15 Facebook gives you the option, if
16 you're a brand, to boost a post, it's a dropdown
17 menu, you can implement with your credit card
18 information as long as it's uploaded or you're
19 going to put the credit card information it will
20 give you different targets in terms of the dollar
21 amounts. And then the potential reach based off
22 of those target amounts. So boosting that post
23 let's say, for example, for \$25, that would
24 extend your reach from 4,000 to 16,000 potential
25 viewers, for example.

1 I. Jentgen

2 If not, if you're not boosting that
3 post at the time that Facebook had introduced
4 advertising and now your organic reach is
5 dependent upon how the post is engaged with by
6 your followers. So they're going to serve the
7 post to a few people. If it's a scroll through
8 and then we like their comments on it, it's going
9 to be seen by less people.

10 So you can still potentially reach
11 people as a brand through organic posting or as
12 an athlete, but it's much harder than it used to
13 be.

14 Q. You said targets during boosting.
15 What do you mean by targets? Are there different
16 types of targets?

17 A. Well, that's where on Facebook you
18 can get really granular in terms of who you're
19 targeting with your advertisements. You can
20 select a number of different variables as it
21 relates to demographics, age, income, location,
22 you name it, so, interests. So those campaigns
23 can become very specialized to what you're
24 posting and who you want to reach.

25 Q. You mentioned doing banner ads for

1 I. Jentgen
2 Arm & Hammer and the cat litter. You said there
3 were key words. Can you go into that a little
4 bit more.

5 MR. BEGAKIS: Objection. Leading the
6 witness.

7 A. Key words as in Google AdWords,
8 basically. And so the way Google AdWords
9 advertising works on Google, you can basically
10 select a word as it relates to who you want to
11 target.

12 So, for example, I always go back to
13 the baseball example. If I want to target people
14 who are in the baseball realm, baseball might not
15 be a good word because it's searched oftentimes
16 within Google.

17 So it's going to be a higher bid rate
18 to advertise on that word, but if you get a
19 little bit more granular --

20 Q. I'm sorry. When you say bid, these
21 ad words you bid?

22 A. So you select, right, so Google's,
23 the way Google's advertising works, it's more,
24 there is more fluctuation in terms of the dollars
25 spent. And the way an ad is served is based on,

1 I. Jentgen

2 again, the relevance of that keyword. So
3 "baseball" is going to be a hot word because it's
4 searched oftentimes as it relates to professional
5 sports and as it relates to amateur sports.

6 A word that deals with baseball,
7 maybe you say "doubleplay" or something of that
8 nature, which doesn't have as much significance,
9 that bid price is going to be less. So, if
10 you're able to find certain keywords that speak
11 more to your demographic or your target consumer,
12 you're able to reduce your overall spend based on
13 your selection.

14 So we were -- we didn't control the
15 buying too much of that space. That was another
16 agency who did that, but we made recommendations,
17 and we created the actual ads, which were served
18 by the Google AdWords campaigns.

19 Q. So you would recommend the ad --

20 A. Yes, so the media buyers were in
21 control of that, but we, like I would work, we
22 would have all agency status, so for Church &
23 Dwight you would be in conversation with all the
24 other agency partners, and we would be in charge
25 or in contact with our media buy agency. Okay.

1 I. Jentgen

2 The creative for this cat litter ad,
3 whatever it does, it would be animated and it
4 would communicate X, Y and Z. It might speak
5 more to this ad word, so we would make
6 recommendations as it correlates to the ad words
7 that they would be potentially bidding on. So
8 they were our close partners in terms of that
9 business.

10 Q. And are ad words used on Facebook as
11 well?

12 A. It works a little differently.
13 Facebook typically, the keywords are interests
14 that you can select in terms of serving an ad or
15 boosting a post. You can I think the limit is
16 between one and eight you can select, so you can
17 target users on Facebook. You have interests X,
18 Y and Z.

19 So those words you're able to type
20 them in and select them. But again, it's the
21 same kind of theme where, if you say people who
22 are interested in baseball, that's not really
23 going to narrow your focus. It's going to keep
24 you open to a lot of people, and potentially not
25 your best specific customer, but, if you get a

1 I. Jentgen

2 little bit more granular with it, you're going to
3 potentially lower your overall reach or your
4 potential reach, but you're going to get more in
5 touch with the consumer who you're looking for.

6 Q. Where did you go to college?

7 A. Salve Regina University in Newport,
8 Rhode Island.

9 Q. And what was your major?

10 A. I majored in financial management,
11 but I had an interest in marketing, and I played
12 soccer at school. And two captains before me,
13 one of them who was a captain when I was a
14 freshman and then another who was a captain when
15 I was a junior also both worked for Colangelo, my
16 hiring manager, and so she hired all of us.

17 So that's kind of how I ended up in
18 the Darien-Stamford area, not knowing much about
19 it at all actually. I wasn't aware of Stamford
20 until I moved here.

21 Q. And when did you first become aware
22 of Hybrid Athletics?

23 A. I first became aware or I was
24 introduced to CrossFit in about, I went to school
25 in 2009, the 2009 to 2010 area, probably 2010

1 I. Jentgen
2 with the football coaches actually beginning to
3 CrossFit, and I was always in the gym following a
4 regular strength and conditioning program, but he
5 introduced us to CrossFit.

6 I saw what he was doing in the work
7 outside. It was definitely different than what
8 his football players were doing and what
9 everybody else in the gym was doing, and he saw
10 me there all the time, so he threw a couple
11 workouts at me, even though I was a soccer
12 player.

13 I tried a couple of them. They were
14 really difficult, and I kind of tabled it until I
15 was completely done with soccer, but still was
16 interested, still would try some workouts, and
17 that's when I became aware of Hybrid Athletics
18 and Rob Orlando at the time 2010, 2011, 2012
19 especially. He was a games competitor, and he
20 was producing workouts that were pretty
21 considerably, they were always on CrossFit
22 headquarters page.

23 So it was "The workout of the day."
24 They were sending out his workouts, and, when I
25 first got into CrossFit, those were the workouts

1 I. Jentgen

2 I was following. It was just the main thing.

3 There was a buddy Mark DeMaio and I
4 who first got into CrossFit, and we were working
5 together, and we started following those
6 workouts. So that's how I found out about Hybrid
7 Athletics.

8 Q. You said main page. What do you
9 mean?

10 A. So CrossFit main page is just
11 crossfit.com, so they'll call it the main site,
12 main page. It's the website. It's got a really
13 simple design. I think it's been around since
14 the early 2000s.

15 And there is a workout posted there
16 every night at around 8 o'clock, never at 8
17 o'clock but it will deviate here and there, so
18 it's always like refreshing your phone to see
19 when it's going to be posted, but I was following
20 it closely with a friend of mine, Mark, because
21 our business capstone course, we actually worked
22 with a group of local investors, and we started a
23 CrossFit gym.

24 So I could have graduated probably
25 early, but it was my last credit that was

1 I. Jentgen

2 remaining in my senior year, which was business
3 capstone. So I was basically working on the
4 business plan for that CrossFit gym, and then
5 coaching at the gym full time essentially there.

6 Q. What was the name of that gym?

7 A. Force Newport CrossFit. So we were
8 in a space that was really small, not much bigger
9 than this conference room initially in a garage
10 space with higher ceilings thankfully, but, since
11 then, the membership has grown, and they moved it
12 to their second and third location 5,000 square
13 feet, and it's doing really well. So I always
14 wanted to go back and visit.

15 Q. And what year was that?

16 A. That was in 2012. So in the spring
17 of 2012 is when I literally had one class that
18 didn't meet that business capstone course, and I
19 worked at Patagonia on Bains, just a retail job
20 for the outdoor apparel brand.

21 Q. And when did you first see Rob
22 Orlando on the main page?

23 A. On the main page, it would have been
24 2011, I believe I was seeing some of his videos,
25 and then it was like anything else in social

1 I. Jentgen

2 media, Instagram, YouTube, once you see, the
3 videos are published on YouTube, and they would
4 call out Rob. And then you could see other
5 videos with Rob, so I would just get stuck. We
6 would watch one video, and then we'd see another
7 video and then another video, so we came to know
8 Rob through the videos on YouTube.

9 Q. What was in those videos?

10 A. So it would be workouts, and Rob's
11 were always eye-catching, because they just
12 distinguished themselves from the other workouts.

13 Typically, other people were just
14 doing CrossFit workouts, but he put his own spin
15 on it. He always went heavier. They were always
16 done in Hybrid Athletics' gym, and they were
17 under this monkey bar structure, and you could
18 see all the odd objects going around, and there
19 was a pegboard and the Hybrid Athletics H on the
20 pegboard, so this like dungeonesque kind of realm
21 and he was just working out, doing these workouts
22 heavier than anybody else was, so, as a soccer
23 player who I needed to kind of get stronger to be
24 successful in the sport or just have fun in the
25 sport, that was kind of like, okay, I have got to

1 I. Jentgen
2 follow what he's doing, so that's how I came to
3 know Rob.

4 (Whereupon, Hybrid Exhibit 2,
5 document bearing Hybrid Athletics H logo
6 was hereby received in evidence, as of
7 this date.)

8 Q. Mr. Jentgen, I'm going to hand you
9 what's been marked as Exhibit 2 put in evidence.
10 Do you know what that is?

11 A. Yes. That's the Hybrid Athletics H.

12 Q. And is that the H that you mention in
13 the videos?

14 A. Yes, so it's located two places
15 pretty prominently in the gym, one being on the
16 right wall, which is the addition that we've had.

17 I think that went in around 2011, but
18 it's also on the pegboard, and it's under that
19 pegboard because, when the gym was only one side,
20 that's where Rob filmed all his YouTube videos.
21 He was in front of the pegboard. He would edit
22 them, or I know there were other athletes working
23 with him or somebody from CrossFit media.

24 They were always positioned, so he
25 was in front of the pegboard and the monkey bars,

1 I. Jentgen

2 and the Hybrid Athletics H is on the wood and the
3 pegboard.

4 It was created, the back story was it
5 was -- the pegboard was, an older member built
6 the pegboard with the H, and it was kind of like
7 one of his tradeoffs for like an entry point to a
8 membership for like a couple of months or
9 something like that.

10 Q. And how popular were these videos?

11 A. Popular. I mean like to the extent
12 that they are being shared there are thousands,
13 hundreds of thousands of views. People are
14 referencing them all the time.

15 Even to this day, have you seen Rob,
16 this video, if I'm standing with Rob, and we can
17 be at a CrossFit event or a non-CrossFit event,
18 and they're like, oh, my God, Rob, I saw this
19 video where you did 300-pound breaks.

20 Or just because what he was doing
21 with CrossFit was so specific and unique to him
22 in that he was taking everything heavier, and
23 with a strong spin on things. And everybody else
24 was just kind of doing classic CrossFit, so very
25 prevalent. And he also did a good job in terms

1 I. Jentgen
2 of having the CrossFit media team, they have done
3 a really good job of producing the videos and
4 then him himself at the time I mean I think he
5 did a good job. He had a camera that was halfway
6 decent, so the quality was okay compared to the
7 other videos that you would watch would be
8 pixilated and a mess, so his were halfway decent.

9 Q. When did you first meet Mr. Orlando?

10 A. I first met him in 2012 in the
11 winter. And then he was, I remember I met him
12 initially a couple of times. And then I think he
13 was actually going on a month tour to, going on a
14 month tour to Australia at the time for the
15 seminar business, and then, when he came back, we
16 continued the relationship and dialog. That kind
17 of transpired with me coming on part-time and
18 then full-time into 2013. He came back really
19 tan, and we were all in the freezing cold, so,
20 yes.

21 Q. How well known is the Hybrid
22 Athletics brand?

23 MR. BEGAKIS: Objection. Calls for
24 speculation.

25 A. Well known to the point where, if I'm

1 I. Jentgen

2 wearing a tee shirt, it's recognized in a
3 CrossFit gym, outside a CrossFit gym. I always
4 joke with our members. It's like wear your
5 Hybrid tee shirt with the Hybrid H, and you're
6 never going to have to pay a drop-in fee because
7 people are going to resonate that H with Rob, and
8 they're going to be like you work out with Rob?
9 Come work out with us for free.

10 Q. What do you mean by a drop-in fee?

11 A. So typically, when you're visiting
12 CrossFit gyms, CrossFitters are, you can say they
13 are really, there is not really many casual
14 CrossFitters.

15 So, as CrossFitters travel they are
16 oftentimes looking to drop into a gym that's
17 nearby, and that's one of the questions I get
18 asked all the time: Hey, in Chicago where can I
19 drop in? In Columbus, where can I drop in? In
20 L.A., where can I drop in?

21 So a drop-in fee relates to you
22 paying generally \$20 or \$25, if you're in New
23 York City; \$35 to drop into a class just for the
24 day.

25 So a lot of gyms they are privately

1 I. Jentgen
2 owned, and sometimes the procedures aren't set in
3 stone as would be a larger gym or bigger
4 corporation in terms of the fitness space.

5 So a lot of times, if you're wearing
6 a Hybrid shirt, they're like, oh, you work out
7 with Rob? We know Rob, or we've seen all his
8 videos. You can work out for free and teach us
9 how to lift heavy things. So that's so cool.

10 I mean we have members who traveled
11 as recently as two weeks ago. They were going to
12 Spain, and they come back, Rob, they were, like:
13 They wanted us to stay and they kept asking us to
14 come back and treated us so well just by wearing
15 the shirt.

16 Q. Do you travel a lot?

17 A. Yes, a decent amount. This quarter
18 has been a little slow for me, but Q1 in 2015 was
19 really busy.

20 Q. Since you started at Hybrid
21 Athletics, do you travel a lot for work?

22 A. Yes. Travel for the seminars. So we
23 run the CrossFit/Strongman seminar business. And
24 so with that we're traveling all throughout the
25 world, and we kind of control the schedule as it

1 I. Jentgen
2 relates to CrossFit instructors receiving their
3 specialty certification as Strongman.

4 So for me most of that relates to
5 travel. I mean I was in Florida, Alabama,
6 Georgia. I'm all up and down the East Coast,
7 Toronto. You name it, so...

8 Q. How many gyms have you been to in the
9 United States, CrossFit gyms have you been to in
10 the United States?

11 A. That's a good question. I don't have
12 a tee shirt for every one, but around 100 I would
13 say, upward of 100 or maybe 200. Yes, I like it,
14 it's good.

15 So the business will bring me into a
16 bunch of gyms, but whenever I'm traveling just
17 from a professional coaching perspective a lot of
18 CrossFit is the same knowledge in terms of how,
19 what you're doing on a day-to-day basis.

20 But certain cues and how it's
21 conveying things, there's oftentimes from a
22 professional standpoint, things that I can pick
23 up on and are valuable for me. So I try to make
24 an effort, if I'm in a new gym, to see how
25 they're operating, how they're coaching their

1 I. Jentgen
2 coaches, how their class runs. So, for example,
3 like this week I'm going to Nantucket. I'm going
4 to drop into a gym and see how things are running
5 up there.

6 Q. You mentioned running seminars. What
7 are these seminars?

8 A. So it's the CrossFit/Strongman
9 certification course, and it's a course that
10 basically breaks down the Strongman movements and
11 how they can relate to CrossFit and how you would
12 implement these movements within CrossFit-style
13 workouts, how you would implement just
14 Strongman-specific training.

15 So we kind of try to mesh together
16 the two training philosophies of, okay, here is
17 CrossFit. Here is Strongman. Here is how they
18 can dovetail together. And then also, if
19 Strongman's something you're seeking, and then,
20 if you wanted to kind of periodize your training,
21 focus on that, we offer that up as well, but we
22 break down the movements throughout the day.

23 It's a one-day course, and it's a
24 good course for coaches and gym owners who are
25 looking to add value to their gyms. There's

1 I. Jentgen

2 10,000 CrossFit affiliates. So at this point
3 they are very prevalent, and it's how you can
4 differentiate yourself within the market, and
5 offering specialty-type courses like a Strongman
6 course or a Strongman program or having those
7 kind of certifications that are viewable by the
8 public, and it's a resumé builder more or less,
9 because there's not too many barriers to entry in
10 terms of opening up a CrossFit gym, but, if you
11 can add those qualifications like "I'm
12 CrossFit/Strongman certified CrossFit" or "I'm
13 CrossFit/Rogue certified," it becomes important
14 for the veteran CrossFitters who are looking for
15 a new gym.

16 Q. And what kind of equipment is used in
17 Strongman?

18 A. So I can give you the rundown. We
19 use at the seminar we do tires first, stones,
20 kegs, log, yolk, farmer's handles. So it's a
21 good mix of the tires, the rubber, the stones are
22 made of concrete, and then there is a bunch of
23 metal gear as well that is used as it relates to
24 the kegs, the logs, the stones, excuse me, kegs,
25 logs and farmer's handles and yolks.

1 I. Jentgen

2 Q. And what is a stone?

3 A. A stone is an Atlas Stone. We talk
4 about this oftentimes at the seminars. People's
5 first impression of Strongman has been their
6 first and only introduction oftentimes is what
7 they've seen on ESPN2 runways and ESPN2 after
8 hours, and it's the world strongest man
9 competition, so it's a big round Atlas Stone that
10 oftentimes weighs 300, 400, 500 pounds.

11 And we talk about it as that in some
12 ways alienates the general population because it
13 would be like saying if all you need in football
14 was the NFL, but people actually are playing
15 football at six-years-old and all different kinds
16 of levels.

17 So people in some ways have this
18 polarizing perspective as it relates to Strongman
19 because they've only seen it practiced at the
20 highest level.

21 So that's one of the barriers or
22 topics of discussion we are constantly bringing
23 up and addressing because it's not just for
24 people at the top of the sport. It more pertains
25 to movement, and it can be applied to anybody.

1 I. Jentgen

2 Q. And is there a certain brand to the
3 stones?

4 A. Yes. Hybrid Athletics. So we make
5 the stone molds out of a plastic covering, and
6 you zip-tie them together. You fill them with
7 concrete, and then you let them basically sit,
8 and then you can rip away the plastic. And then
9 you have the molds that you can use. And the
10 molds are used, we talk about the stones all the
11 time.

12 There is what you've seen on TV in
13 terms of typically they are loaded to a platform.
14 So they're picked up from the ground, placed on
15 something that can be as high as this table if
16 it's a heavy stone, or a little bit lighter stone
17 on a platform that's much taller, but people are
18 using the stone to do other exercises with them,
19 to squat with them on their shoulder, to do
20 lunges with them. We try to use them as much as
21 we can. They are a great implement for coaches,
22 and they are an odd object that just has a lot of
23 value in training.

24 Q. And do you sell the Hybrid Athletics
25 --

1 I. Jentgen

2 A. Yes. So we sell them on our website,
3 and then we also, so HybridAthleticsapparel.com
4 and then orders for Rogue Fitness are also filled
5 within -- I'm oftentimes shipping out orders or
6 supplemental orders to Rogue Fitness, so that's
7 basically a large marketplace for fitness
8 products. I guess you could call it almost the
9 Amazon for all things as it relates to strength
10 and conditioning.

11 They started off as kind of really
12 focused on CrossFit, but now they have grown to a
13 huge distributor of fitness products and a huge
14 American brand. I mean it's funny. They were a
15 baseball throwaway from my house, and they only
16 had a couple employees and now they have upwards
17 of 500.

18 I mean it's huge warehouses, and they
19 are outfitting like NFL teams and college teams
20 with all their gear, and they've built an
21 enormous strength and conditioning facility, so
22 they have really grown.

23 Q. Does Rogue sell Hybrid Athletic stone
24 molds?

25 A. Yes, they sell, as it pertains to

1 I. Jentgen

2 Hybrid Athletic stones, and then they sell --
3 Rob's got an athlete tee shirt on there as well.

4 Q. In traveling to other gyms, do you
5 see the Hybrid Athletic stone molds a lot?

6 A. Yes. Again, with the growth of
7 CrossFit, there has been, it's like anything
8 else, that classic style of CrossFit was
9 intriguing and interesting at first, but, if
10 you've been doing CrossFit for a year or two,
11 you're looking for that next endeavor. And from
12 a business owner's perspective, again, you're
13 looking to see at how can we differentiate
14 ourselves.

15 A lot of gyms are falling back on the
16 implementation of Strongman movements, and it's
17 becoming more and more prevalent as it relates to
18 the CrossFit Games, which is kind of it's a great
19 marketing platform for CrossFit. It's
20 broadcasted on ESPN. And the prevalence of the
21 Strongman movements has become more and more
22 apparent in more recent years.

23 So stones as a result are becoming
24 more and more apparent. They are being used in
25 competition more often. So, if they're being

1 I. Jentgen

2 used in competition, the gyms want to have them.
3 The members want to have them, because CrossFit
4 creates this environment where you can toe the
5 line in a certain sense of, okay, here is what
6 the professionals are doing on TV. And I can do
7 that almost to the same extent or more so than
8 you could in an NFL setting, if you were using
9 that as the parallel so...

10 Q. And do each of the stone molds have
11 the Hybrid Athletics H on them?

12 A. Yes. So it's a prominent H that's
13 engraved, basically, the way the plastic molds
14 are cut. There is an indent for the H and then
15 an indent for the size of stone. You can set the
16 stones from 35 pounds all the way up to
17 300 pounds. So every size in between has the
18 Hybrid H very prominent. And then underneath it
19 is the weight of the stone, so you can tell how
20 much the stone is, because that's a question that
21 would be asked all the time, if not...

22 Q. Do you know how many gyms in the U.S.
23 you've sold stone molds to?

24 MR. BEGAKIS: Objection. Calls for
25 speculation.

1 I. Jentgen

2 A. I don't know the exact number. I
3 know we've had conversations with Rogue, and
4 we've shipped stone molds to every zip code in
5 the United States. Yes. Or to just about every
6 zip code.

7 Q. You mentioned your roles at Hybrid
8 Athletics before. You said you're currently the
9 head coach?

10 A. Head coach. Yes.

11 Q. And you said you're a general
12 operations employee?

13 A. Right.

14 Q. So you're in charge of scheduling?

15 A. So scheduling, yes. So I manage in
16 terms of our schedule as it relates to the
17 coaches and the staff, how we're allocating hours
18 in terms of cleaning the gym to fulfilling orders
19 for our website to managing, one of our coaches
20 is really digital-savvy. He works full-time for
21 a news station. So how do we implement him and
22 get the most out of him when he can come in and
23 shoot videos and things like that, setting up the
24 private training that goes on, coming up with new
25 tee shirts -- I deal directly with our screen

1 I. Jentgen

2 printers.

3 So, for example, I have got to go
4 back and send out an e-mail today because we're
5 out of size large in three colors for our classic
6 Hybrid tee shirts, so I've got a few outstanding
7 orders, too, so that's on my agenda.

8 Q. When you say fulfillment of orders,
9 what does that entail?

10 A. So fulfillment of orders we're
11 actually, so we operate on Bigcommerce,
12 e-commerce system, so it ties back into our
13 website orders received by e-mail. And our
14 coaches are well versed on how to fulfill that
15 order.

16 So it prints out basically what --
17 the customer's billing address, shipping address
18 that they're going to put that on the envelope
19 and then the content of that order. So from our
20 website we're selling the metal gear that was all
21 prototyped by Rob, available on Rogue Fitness.
22 It will ship from them, but then the stone molds
23 and the apparel will ship from us.

24 So fulfillment in that sense will
25 happen either by myself or one of our coaches on

1 I. Jentgen

2 a day-to-day basis.

3 Q. What kind of apparel do you sell?

4 A. We sell tee shirts, hoodies, hats.
5 We've done socks. We've done shorts. We've
6 pretty much done it all in terms of the apparel
7 line, and members in the community are always
8 asking for more.

9 So, yes, it's a full-fledged apparel
10 line. Tee shirts are the main thing in CrossFit,
11 though, when people are visiting gyms. I mean we
12 used to have tee shirts up everywhere. People
13 are always looking for tee shirts. It's kind of
14 like typically we include oftentimes, like, if
15 it's a good relationship, they come in. They
16 visit. We'll sell a tee shirt to them for \$20,
17 and that will cover their drop-in fee.

18 (Whereupon, a short recess was
19 taken.)

20 [The requested portion of the record
21 was read back by the reporter.]

22 A. Yes. Hats. I mean it would be
23 winter hats like in the winter/ball caps in the
24 summer, that kind of thing.

25 MR. KOSMA: Okay. So I'll put into

1 I. Jentgen

2 evidence what has been marked as Exhibit 3
3 and Exhibit 4.

4 (Whereupon, Hybrid Exhibit 3, copy of
5 a photo of Hybrid Athletics tee shirt was
6 hereby received in evidence, as of this
7 date.)

8 (Whereupon, Hybrid Exhibit 4, copy of
9 a photo of Hybrid Athletics shorts was
10 hereby received in evidence, as of this
11 date.)

12 Q. What are these?

13 A. So this is our label it our
14 Revolutionizing Old School tee shirt. We produce
15 it in a number of colors, but most oftentimes
16 kind of like our staples are blue, red and gray,
17 and it's the standard Hybrid shirt that's most
18 recognizable, I would say, and then the shorts on
19 the right are our Hybrid Athletics shorts.

20 When I came on staff, they were the
21 shorts that were basically, our coaching uniform,
22 and then all of our members were wearing them as
23 well. They were JACO-branded. So we ordered
24 them through JACO, and they used to fly off the
25 shelves. I mean I remember. Then JACO stopped

1 I. Jentgen
2 producing them, and I would have to say, sorry,
3 JACO stopped producing them, and so we're looking
4 at other options for shorts. So those are two of
5 the main items. The one on the left, too, well,
6 actually both of them that would be.

7 So it's a coach's uniform. For
8 perspective, if you came to Hybrid Athletics,
9 you're going to see him wearing this shirt. We
10 have a couple other styles that you can wear, but
11 we ask our coaches to wear Hybrid Athletics
12 shirts while they're working, but then everybody
13 got shorts too when they were working.

14 So for our seminars you would be
15 wearing these shorts with this shirt in red,
16 typically, and then as a lead instructor you
17 would, like, if I was going out with a team from
18 Toronto and I wanted to change up the shirt color
19 we could that day, but these were the shorts that
20 we would wear, and then this is the shirt that we
21 would wear.

22 Q. When was the first time you saw the
23 Hybrid Athletics shirt?

24 A. The first time I saw the shirt was
25 probably on Rob in one of the videos I believe.

1 I. Jentgen

2 So that was back when I was in college.

3 Q. What year was that?

4 A. That would have been 2010 to '11,
5 somewhere in there. Yes.

6 Q. And you called this what type of
7 shirt was it?

8 A. So on the back it says,
9 "Revolutionizing Old School," but it's our staple
10 shirt.

11 Q. Is that your ---

12 A. Oh, sorry. I didn't even see it.
13 Yes. That's the shirt, and I guess we would give
14 it that name just to differentiate, but it's our
15 most common shirt and our best seller.

16 Q. What other shirts do you have?

17 A. We've had a number of shirts that
18 have come out seasonally. Like most recently we
19 did a shirt that was the Hybrid Athletics with
20 just the H on the front, so no Hybrid Athletics
21 beneath it, but we put like basically the
22 American flag as what would be the shaded-in area
23 of the H, and those did really well around the
24 4th of July time.

25 Initially, we launched it as this was

1 I. Jentgen
2 the first we were going to just do it as a
3 fundraiser initiative, and we did that.

4 We were helping a member whose sister
5 was running like a 10th marathon, and donations
6 were going to leukemia research, I believe, so
7 that went to that, but then we continued to
8 produce the shirt and are now selling it online,
9 so yes.

10 I forgot what the original question
11 was.

12 Q. I was just asking what different
13 types of shirts do you--

14 A. Oh, so that was one of the recent
15 shirts, but then we have shirts like one of our
16 shirts we have sayings on them, so with different
17 designs. We've produced lots of shirts
18 throughout the years.

19 One of them had a Greg Glassman quote
20 on the back. It's got the Hybrid H on the front
21 by itself. It says, "Regardless of the Question,
22 the Answer is the Squat" on the back. That's one
23 that's done well.

24 We have some retro designs that we
25 produced more recently. So we have a new screen

1 I. Jentgen

2 printer now, but, when Rob first opened up in
3 2008, he had some like original shirts that we
4 refabricated and sold those as well.

5 The "Go Heavy" shirt was one of our
6 best ones with just "Go Heavy" text on the front
7 that says, "Go Heavy or Go After Yourself." That
8 one really took off and was selling like I mean,
9 when that shirt dropped that was before Facebook
10 changed their algorithm.

11 I mean that shirt dropped on Facebook
12 and Instagram, and then HQ Rob was out shooting a
13 series of videos at headquarters, and it posted
14 him on the main site, so basically we hit it from
15 all angles.

16 So they posted that video of him. It
17 was a shorter program, the workout. I remember
18 the workout, like, I remember it like it was
19 yesterday. And so they posted that video of him
20 in the shirt. And the orders just went nuts like
21 between that Rob put it up on Facebook and then
22 Instagram, and it went crazy, and it was at that
23 point we were running back and forth to the Post
24 Office.

25 Like enough. Like we just put our

1 I. Jentgen

2 credit card on file. Like we no longer had to
3 stand in line. It made my job a lot easier,
4 because I was just able, because we had like
5 hundreds of orders that were coming in from
6 Europe and everywhere. And they were just like
7 we can't just have you stand in the regular line
8 like everybody else. Like you have to drop these
9 off, and we're going to deal with these on our
10 own time, like allocate people to deal with them.

11 So that was a crazy time for us, and
12 so other shirts sometimes the designs are more
13 graphic-related. Sometimes they are sayings and
14 inspirational, but we're producing all different
15 kinds of shirts.

16 Like I said, the shirts and tee shirt
17 business is big in CrossFit, whether it's at
18 events or people traveling. They will see Rob in
19 the videos. They will see us -- Logan on the
20 Strongman like he's always wearing the shirt, all
21 the Strongman staff, so not only Rob, but
22 everybody who is a part of the Strongman staff
23 and kind of who's had interaction with Rob,
24 they're wearing the shirts as well.

25 So a lot of prominent CrossFit

1 I. Jentgen
2 athletes who Rob as a games athlete had good
3 relationships with, they will be seen in the
4 shirts. So all of those kinds of situations and
5 circumstances lead to people within the community
6 seeing the shirt and then wanting to buy the
7 shirt. So we're shipping out to Europe, Korea,
8 Israel. I mean it's everywhere.

9 Q. And do all the shirts have the Hybrid
10 H design on it?

11 A. All of them do somewhere. So it will
12 vary in terms of, like, on the same shirts it
13 will be either like one of the things when I came
14 from the marketing background when I was at Don
15 Julio, you had like a brand book, so it's
16 basically brand standards.

17 Things like you wouldn't want with
18 Don Julio and the same thing with Hybrid
19 Athletics, you wouldn't want your logo to be in a
20 color you didn't want it to be. And you wouldn't
21 want your logo to be overlapped by another image
22 or in some way tarnished or hurt or anything that
23 doesn't kind of reflect you as a brand in your
24 image that you're looking to project.

25 So with a tee shirt design, if it's

1 I. Jentgen

2 not on the chest, it's either going to be on the
3 sleeve pretty prominent or right on the collar or
4 on the back. So we're really important about
5 we're looking to keep that consistent. So we
6 could identify with our consumer and just develop
7 that brand recognition. So when you saw a Hybrid
8 tee shirt and it's the Go Heavy or Go After
9 Yourself, it was right on the collar or on the
10 back. The same thing with the Glassman shirt.
11 It's going to be right here. So it's like on the
12 chest. So, if it's not centered, it's on the
13 front, it would be here. Like we would never put
14 one down here or here or like on the side. It
15 would be here, on the sleeve or on the back.

16 Q. So --

17 A. Those are like brand standards.

18 Q. What would you say the brand
19 standards for Hybrid Athletics are?

20 A. So it kind of just embodies all the
21 things like CrossFit, the Strongman look. The
22 image that always resonates with me, if you visit
23 Hybrid Athletics, you walk down the driveway, and
24 there is all the tires lined up. You kind of
25 make a left in, and then if you look to the

1 I. Jentgen

2 right, you look over and you can just see the big
3 H's in their place. The light shines down on the
4 H, and then you can see all the stones lined up.

5 So it's kind of just embodying all of
6 those elements. Like the concrete and the stone
7 like it's just kind of we're projecting an image
8 of okay, this is a place that it's a gym, and
9 it's meant for like hard work and for where work
10 gets done. It's not really like a fluffy
11 Equinox.

12 Like I always tell our members like
13 don't expect me to come around and serve you
14 cucumber water. Like this is our image that
15 we're projecting. It's like steel, stone, and
16 like this is why we're working out where we do,
17 and we're looking to get work done here. It's
18 not going to have like the amenities that make it
19 fluffy, and like we're going to dance around the
20 subject.

21 So that those ideas and concepts are
22 something that are important to us and something
23 that we're always trying to project through our
24 brand. So that's why you won't see, I don't know
25 but like you won't see crazy fluffy flowers all

1 I. Jentgen
2 over a shirt or something like that because
3 that's completely off of brand.

4 Q. You mentioned placement of the Hybrid
5 H on tee shirts. What are the locations for
6 brand standards for that?

7 MR. BEGAKIS: Objection. Leading the
8 witness.

9 A. So, if we, the location for brand
10 standards it's either going to be on this
11 traditional shirt which is right in the middle --

12 Q. Middle on the --

13 A. -- middle on the front or basically
14 right on the back like right under the collar, if
15 it was a collared shirt right there.

16 Q. Visible from the outside?

17 A. Visible from the outside, yes, but on
18 some of them it's also visible on the inside too.
19 So it just depends on the shirt or on the sleeve,
20 and we'll put it on usually the right sleeve. So
21 it's either in the center on the heart, left
22 sleeve, the back, and, as far as I know, that's
23 the only place we've ever put the H.

24 Q. And that's for every Hybrid Athletics
25 tee shirt?

1 I. Jentgen

2 A. Yes. So you're going to see an H in
3 one of those places. In the center, at the
4 heart, on the back or here. But you're not going
5 to see it under the arm or somewhere crazy or
6 like blocked off. Like the H is, it's going to
7 be prominent so.

8 Q. Did you help with those brand
9 management standards?

10 A. Yes. So it was just kind of like
11 when I came on my relationship with Rob it was
12 just like I worked in a marketing agency, so that
13 was kind of what I had been doing and it was
14 something that, like I said, I enjoyed it when I
15 was working on booze and when it was something
16 that kind of I had an appeal or liking to, but,
17 when it was kitty litter, I wasn't interested in
18 it.

19 So back into fitness and back into
20 Hybrid Athletics, it was something I was
21 interested in. So in the upfront I helped him.
22 I kind of identify, and hone in on those brand
23 standards but also manage his athlete Facebook
24 page, which when I came on, it was 16,000, and
25 then up until we stopped really using Facebook as

1 I. Jentgen
2 a primary vehicle because of the algorithm
3 change, it grew, it doubled, so it was over
4 30,000 in terms of likes on his athlete Facebook
5 page.

6 So using those skills from marketing
7 we used to run contests that did really well in
8 terms of we were looking to extend his reach
9 because he was just a figure that won. He had a
10 good --

11 Q. When you say won?

12 A. Well, I was saying "won" as in the
13 term, but I mean he won CrossFit regional events
14 and he's gone to the games. So, in terms of the
15 Northeast, he was like the CrossFit figure, but
16 then he also had really good relationships out on
17 the West Coast because of the CrossFit/Strongman
18 involvement.

19 So he was very much at the forefront
20 in terms of CrossFit, in terms of CrossFit and
21 strength. I mean you can watch videos. There
22 was one put out last year about the games
23 CrossFit media put out. And they're interviewing
24 Rich Froenig asking him about a certain specific
25 CrossFit event, if it was a newer CrossFit event,

1 I. Jentgen
2 because anybody who finished it at Rich Froenig's
3 first games, like the only person that could have
4 finished it was Rob.

5 So you have the champ, who is a four
6 times champ, he's calling out Rob in the video,
7 and he'll always even be the most prominent
8 figure within CrossFit the most prominent
9 athlete, the four times game winner, and he's
10 recognizing that he wouldn't have finished that
11 strength event, but Rob would have at that time.
12 So he was definitely very well known from a
13 strength perspective.

14 So I came in, and we would run these
15 competitions where it would be a short event, and
16 what you could do is through Facebook we would
17 film where I would do a workout, or he would do
18 one. Like one of them was how many reps with 225
19 you could go from shoulder to overhead. And we
20 would ask people to upload video entries, and, if
21 you won, you'll get a tee shirt.

22 So we would do those, and that
23 challenge would get shared, and it would get
24 comments, and it would get likes, and it really
25 helped build his reach, which helped the apparel

1 I. Jentgen

2 business, but it also helped build his reach for
3 when we had on our agenda that we wanted to
4 advertise this seminar coming up and we wanted to
5 fill it out in terms of people coming in. It
6 helped us that way as well.

7 So we would run these tee shirt
8 giveaways, and they were very successful, because
9 Facebook it was all organic. So this was going
10 to be flush out in front of everybody, and this
11 was something they wanted to see.

12 If we tried to run this campaign now
13 just based on the algorithm, we wouldn't reach
14 anybody unless we were paying to reach people.
15 So at the time we were doing it, back to my
16 marketing background, we were doing it with a
17 calendar involved, so it was a Wednesday. We
18 were always posting the workouts and then we were
19 picking the winners by Friday and the shirts
20 would ship out by probably Monday, once we heard
21 back from them. And we were doing that on a
22 weekly consistent basis.

23 So with that in mind we were really
24 engaging our fans, Rob's fans, and the Hybrid
25 Athletics brand and kind of harnessing that

1 I. Jentgen

2 image, and it was all things that were endearing
3 to the brand.

4 So lifting heavyweights, like the
5 workouts, would always have his same spin on it,
6 the same spin on CrossFit that I came to know
7 when I was watching his videos as a college
8 student.

9 Q. And, in all those videos, was the
10 Hybrid H visible?

11 A. Yes. The Hybrid H it's visible in
12 our gym, and you can think about it's visible on
13 the apparel that he's wearing. It's very
14 prominent in the two places in our gym like the
15 wall.

16 If you're looking at either wall, if
17 you walk into the gym, it's there. If you look
18 at the left where you check in, we have this bar
19 setup, and there's an H there. Previously, we
20 used to just have our tee shirts lined up all the
21 way across the top.

22 So basically, if you look at any
23 wall, there's a Hybrid H. Also, on the equipment
24 it's on all the stones which line up all the
25 wall. It's on a lot of the metal gear too. We

1 I. Jentgen
2 have stickers on the yolks that have the Hybrid H
3 on it, so that's part of the equipment. Those
4 also serve as a squat stand, so those are being
5 used in a lot of those videos.

6 The Hybrid H is also laser-etched in
7 our log prototypes which were then fabricated by
8 Rogue. So in the Hybrid name if you look on,
9 Rogue Fitness, which again they are doing a crazy
10 amount of number of sales. It's like the Hybrid
11 farmer's handles, I believe. So that name is
12 consistent on all the equipment and through the
13 gym and in the videos as a result.

14 Q. You mentioned earlier you went to I
15 think you said between 100 and 200 CrossFit gyms;
16 is that correct?

17 A. Yes. Somewhere in there. I don't
18 have a track record of every gym that I've been
19 to, but somewhere in there.

20 I've been CrossFitting since 2010-11
21 and just been traveling a lot because my family
22 is in Ohio. I'm out here. So I'm flying back
23 and forth. I wouldn't always go to the same gym
24 at home. I would be bouncing around, trying to
25 get new experience.

1 I. Jentgen

2 I had a girlfriend who was in
3 Massachusetts, so I was visiting her
4 consistently, family in Florida. I mean I was
5 bouncing around all the time. So with that and
6 trying to get a workout in, I would see myself in
7 a lot of gyms and then also for the seminar
8 business I was traveling a lot for that, too.

9 Q. In your travels to these CrossFit
10 gyms, do you see the Hybrid H often?

11 A. Yes. So I mean we see it oftentimes
12 when I go to a seminar, people know, okay, Hybrid
13 Athletics is running this seminar, so they are
14 wearing our tee shirts. They're wearing Rob's
15 Athlete tee shirt. They're wearing our Hybrid
16 Athletics, this shirt is the most common.

17 Q. Which shirt is that?

18 A. This is --

19 Q. Exhibit 3?

20 A. Yes, the revolution, yes, Exhibit 3,
21 so they are wearing this shirt. They are wearing
22 these shorts. I mean I would be hard-pressed to
23 find any seminar that I've been to that there's
24 not a considerable percentage of people wearing
25 our gear already before we get there.

1 I. Jentgen

2 So people know that we're coming and
3 they expect us to be there. They know it's run
4 by Hybrid Athletics. And then the gyms that we
5 have relationships with, too, that were hosting
6 the seminars, usually if somebody has attended
7 our seminar.

8 So they have kind of bought into our
9 way of training, the Hybrid kind of methodology.
10 So the H is going to be prominent there in terms
11 of it's on their stone molds, in terms of their
12 coaches are wearing the apparel. That kind of
13 thing.

14 Q. And outside when you visited, when
15 you visited a gym outside personally not the
16 seminar, do you still see the Hybrid H often?

17 A. Yes.

18 MR. BEGAKIS: Objection. Leading the
19 witness.

20 A. Yes, so I still see it, and I've seen
21 it. It's funny, because either I'll ask if they
22 have, I know our member base, and so if it's
23 somebody, I was like, okay, what's your
24 relationship there? Sometimes they don't have a
25 relationship. They have just seen Rob on TV.

1 I. Jentgen

2 Other times they will -- I've had members, and
3 then I'll wear a tee shirt, and they'll be, like,
4 okay, do you go to Hybrid Athletics or you're
5 just wearing the shirt. And I'm, like, I
6 actually coach at Hybrid Athletics. And so
7 that's a good conversation starter.

8 It's always kind of funny to blend in
9 sometimes. If I don't wear a Hybrid Athletics
10 and then I tell people that I coach there, like,
11 oh, my God, you coach at Hybrid Athletics. Like
12 I'm wearing the shirt, and, oh, you work out with
13 Rob? It's kind of like if it's something that I
14 can wear in the airport, I've started
15 conversations off of that just by wearing the
16 Hybrid Athletics shirt, so I'm not even in a
17 CrossFit gym. Oh, you're into Hybrid Athletics?
18 That kind of thing.

19 Q. How often do you think you get
20 approached because you're wearing the Hybrid H?

21 MR. BEGAKIS: Objection. Calls for
22 speculation.

23 A. In my travels or in Stamford--

24 Q. Outside of Stamford.

25 A. Outside of Stamford, pretty

1 I. Jentgen
2 regularly. I mean it's not something that I
3 would say is atypical. I mean it's, I don't know
4 if there is a pattern to it, but even in what we
5 can say like our tee shirt recognition like we've
6 done events, so I think this is, it correlates
7 really literally into how it's recognized.

8 We've done events, we'll go to the
9 regional event for the Northeast, and we'll go to
10 the regional event for the mid-Atlantic. So in
11 the Northeast you'd think this is where we are.
12 This is where we would have potentially more
13 brand recognition just because this is where our
14 headquarters are. This is where Rob's from. And
15 then mid-Atlantic in a different region where
16 there's no Hybrid athletes, there have never been
17 Hybrid Athletics athletes that are competing
18 there from our gym, but we do the same amount in
19 tee shirt sales, because our name still holds
20 true and people still know it.

21 We'll be working a booth in the
22 mid-Atlantic. I remember that George Mason
23 University, and we were there and people were
24 walking around wearing our shirts. And they'll
25 come up and they talk to us and whether it's

1 I. Jentgen
2 people that took my seminar or whatever it may be
3 is going on.

4 Q. You mentioned that you stopped using
5 Facebook or --

6 A. Yes.

7 Q. You mentioned you stopped using
8 Facebook because the algorithm changed. Is that
9 for what pages?

10 MR. BEGAKIS: Objection, leading the
11 witness.

12 A. So we stopped using Facebook for
13 Hybrid Athletics primarily as it relates to, for
14 a long time we stopped using it for anything just
15 because we're not reaching the people who like
16 our page.

17 Q. And why aren't you reaching the
18 people?

19 A. Because the algorithm changed, so it
20 used to be organic, and we would reach, if you
21 were logged in at Facebook at the time when we
22 posted, you would see it.

23 Now it's not like that, and so we're
24 not reaching our members with the posts that
25 we're doing. So it's kind of not worth the same

1 I. Jentgen

2 amount of time, and Instagram has become more
3 prevalent because of that, because the algorithm
4 is, although Instagram kind of hurts you too,
5 because it's only, it's based on the number of
6 people you're following and it's only organic if
7 you're following 3,000 people and people are
8 uploading content, and it's only 15-second
9 videos, you're going to get lost in all the
10 traffic there, so.

11 Q. So, if you wanted more followers on
12 Facebook, how would you do that?

13 A. If we wanted more followers on
14 Facebook, we could pursue advertising. There is
15 a number of different ways in which you can
16 increase your following on Facebook, and you can
17 do so by it depends what your goals are.

18 You can increase it, so I can make a
19 post. If my goal of this post, let's say it's a
20 workout post. Is it my goal for this post to
21 reach more people and to have more people view
22 it? That's one avenue. Or I could have the goal
23 be that I want more people to like our page.
24 That's another goal. Or I could have people want
25 to buy something from our store. That's a third

1 I. Jentgen

2 goal. And I could have a fourth goal being I
3 want them to sign up for a seminar or membership
4 at our gym.

5 So all of those different goals have
6 a specific campaign that can be set up with
7 targeting demographics as it relates to each one.

8 Q. So in your experience as a brand
9 manager, how would you get more likes on the
10 Facebook page?

11 MR. BEGAKIS: Objection. Calls for
12 speculation.

13 A. The way to get the most likes, if we
14 were only considering likes, it would be to
15 launch a campaign that was like-specific, so you
16 can work with the Facebook consultant where you
17 set it up you want to get more likes on your page
18 and promote your Facebook page. You can set up a
19 campaign as such.

20 Q. And what --

21 A. You would have to allocate dollars
22 towards it, so you would pay Facebook based on
23 the length of the campaign, based on your target
24 and hopes in terms of how many likes you would
25 get.

1 I. Jentgen

2 You would pay Facebook for the ad to
3 be served, and you can serve the ad in a number
4 of ways. You can have it served only to desktop
5 users, only to mobile users. You could have it
6 served on the right-hand rail where sponsored
7 posts only pop up, or you could have it served as
8 a post within the feed, which is then curated in
9 with posts that are organic or not paid
10 advertisements as well.

11 Q. So, since the algorithm change, what
12 have you noticed with the likes on Rob's page,
13 Rob's Facebook page?

14 MR. BEGAKIS: Objection. Calls for
15 speculation.

16 A. His athletes page or the Hybrid
17 Athletics page? There are two separate pages.

18 Q. Since the algorithm change, what have
19 you noticed with the likes on both pages?

20 A. On both pages, stagnant.

21 MR. BEGAKIS: Objection, compound.

22 A. So the likes with the Facebook page,
23 as it relates to Hybrid Athletics, we haven't
24 grown much, and Rob's page he's not posted on
25 there nearly ever. So I think he's, I haven't

1 I. Jentgen
2 even checked the numbers recently. He's right
3 around 30,000, which is the same place we left it
4 in about 2013. So he's just not sharing content
5 there, because nobody is seeing it.

6 Q. And why isn't anybody seeing it?

7 A. The algorithm changed and because
8 he's not paying for promotion. We've dabbled in
9 paying for promotion, but in terms of our spend
10 and what we were getting out of it, we've been
11 able to explore other avenues.

12 So Instagram has kind of filled the
13 void, but not to the same extent that we had with
14 the success with Facebook, and just with the
15 campaigns that we've run in the past to support
16 tee shirt sales we've done that in the past, they
17 have basically covered their costs. So it hasn't
18 been a wildly successful endeavor on our end.

19 Q. In marketing the Hybrid Athletics H,
20 what types of advertising or promotion do you do?

21 A. So most of what we're doing is
22 organic promotion. So, basically, through our
23 network of coaches and Rob's friends like it
24 would be through the tee shirts them posting
25 workout videos, things of that nature, but we

1 I. Jentgen

2 have paid for advertising on Facebook in the
3 past, too, but more recently, so like with the
4 Hybrid Athletics, I mentioned it earlier, the
5 shirt as it relates to the 4th of July with the
6 American theme, we're posting that on Instagram,
7 Instagram being our primary vehicle to get the
8 word out for marketing purposes.

9 However, we do also have a newsletter
10 and have used that. We have two separate
11 databases, one database being gym members
12 specific to the Hybrid Athletics location and
13 then another database being specific to followers
14 of Hybrid Athletics, and then also our customer
15 base.

16 So we've used those databases to
17 leverage our new products and get the word out
18 there about new products and new promotions and
19 things that are happening in the gym. But a big
20 thing, too, is just being out in the community
21 and attending events, promotional events like the
22 regional events in competitions and things like
23 that.

24 Q. You mentioned the latest Hybrid
25 Athletics shirt with the flag on it. How well

1 I. Jentgen

2 did that sell?

3 A. We sold out of the first run, and we
4 just got our second run a couple of days ago.
5 And I'm in the process of uploading it right now,
6 because I needed to have images sent over to me
7 from the screen printer.

8 So our second run is about to hit our
9 website within the next couple hours or couple of
10 days as soon as I have the bandwidth to get to
11 it.

12 Q. And where are the consumers who are
13 purchasing these?

14 MR. BEGAKIS: Objection. Calls for
15 speculation.

16 A. We have consumers all over, but for
17 the first one it was members at our gym or people
18 seeing the gym, so we sent a couple to like
19 Texas. But those went out really quickly, so we
20 haven't even launched it on our website, so it's
21 kind of like a presale thing, so.

22 Q. And, in your experience in fulfilling
23 orders, where do Hybrid Athletics customers --
24 where are they located?

25 MR. BEGAKIS: Objection. Calls for

1 I. Jentgen

2 speculation.

3 A. They're located everywhere really.

4 Like I said, the data from Rogue shows us that
5 we're shipping to every state and every zip code.

6 I see orders come in from places. Sometimes
7 you'll see the correlation.

8 You're like, okay, we just saw a
9 bunch of orders come in from Dallas, Texas.
10 That's because we did a seminar there a week ago,
11 but then we'll get an order from Montana, and
12 we've never been to Montana.

13 So it's very much how does that come
14 to be, it's because of Rob and Hybrid Athletics
15 and the brand that we've built and our presence
16 on YouTube, YouTube videos, and people following.
17 I mean you could watch a day full of Rob Orlando
18 YouTube videos, and our members always joke about
19 it.

20 Like there's a kid like I'm at work
21 one day, and I'd see one video and I click
22 through to five others, and I've just wasted two
23 hours at work.

24 I mean Rob's always outfitted in
25 Hybrid Athletics tee shirts. I mean he's always

1 I. Jentgen
2 wearing those, and oftentimes, if you look at it
3 from an educational standpoint, too, if it's him
4 working out, he's almost always wearing a Hybrid
5 Athletics shirt.

6 If it's from an educational
7 standpoint, it's usually footage from our
8 seminar, which this would be the attire that all
9 the coaching staff would be wearing.

10 Q. And that's Exhibit 3 and Exhibit 4?

11 A. Yes. Exhibit 3 and Exhibit 4, so I
12 mean, and this is also the same attire that if
13 you looked at Rob's column in Muscle and Fitness
14 he's wearing for all the photo shoots, he's
15 wearing Exhibit 3 and Exhibit 4. He might in
16 some of the columns in the more recent version
17 he's been wearing a different shirt, but the same
18 standards hold true in terms of the logos, the
19 placements and the province of Hybrid and
20 Hybrid's mention in Muscle and Fitness and things
21 of that nature.

22 Q. What is Muscle and Fitness?

23 A. It's a magazine, a very prominent
24 magazine. You can find it anywhere. I usually
25 pick up a copy in an airport or when I'm

1 I. Jentgen

2 traveling, and then we get issues shipped to our
3 gym.

4 Q. And Rob's in this magazine?

5 A. Yes.

6 MR. BEGAKIS: Objection. Leading the
7 witness.

8 A. Rob has a column, a monthly column,
9 so it's usually a workout, and again it's because
10 when you have a column people want to know what
11 his workouts were, and that's been on CrossFit
12 that I talked about.

13 Q. How often does this column run?

14 A. It's in every issue, so I believe
15 it's published monthly. Yes. It was the
16 CrossFit Corner for a while, so it was, it
17 pertained to CrossFit. It directly correlated to
18 CrossFit. It's the Hybrid Athletics Corner now.
19 It has taken over more of a Hybrid
20 Athletics-specific overarching title.

21 Q. Would you say Hybrid Athletics is
22 just a CrossFit gym?

23 A. No.

24 MR. BEGAKIS: Objection, calls for
25 speculation.

1 I. Jentgen

2 A. No. We're not a CrossFit gym. We're
3 a gym that offers CrossFit as GPP and implements
4 a lot of CrossFit teachings and we're a CrossFit
5 affiliate, but we're very much sought after by
6 people who were in Strongman, but we have our own
7 identity.

8 If you look at these exhibits and all
9 the exhibits that are Hybrid Athletics, there is
10 no word "CrossFit" on there, and that's atypical
11 from a CrossFit gym standpoint. Everywhere else
12 CrossFit is kind of the most prominent thing that
13 you'll see. And CrossFit is usually letterface
14 type, so there is that recognition from a
15 consumer standpoint. Okay, here it's a CrossFit
16 gym, but in our signage and in our branding we're
17 Hybrid Athletics, but we offer CrossFit as part
18 of the training that goes on in the gym.

19 Q. So who buys your apparel?

20 MR. BEGAKIS: Objection. Calls for
21 speculation.

22 A. We have fans of Rob. I mean it could
23 be any number of we have members who buy our
24 apparel. We have fans of Rob who buy our
25 apparel. We have people who are interested in

1 I. Jentgen

2 the strength-based aspects of CrossFit. We have
3 casual CrossFitters who buy our apparel. We have
4 people who buy our apparel and don't know who Rob
5 is, and just see the shirts on other people and
6 are like that's a cool CrossFit shirt.

7 And for somebody new in CrossFit it's
8 kind of like, okay, I've got to kind of, if you
9 go into a CrossFit gym setting, it's different
10 than a regular gym setting. The brands are
11 different. It's become a little bit more
12 commercialized with the introduction of Reebok,
13 but before people were wearing niche brands, so
14 people were looking to wear it. Like how do I
15 kind of assimilate into this environment by
16 wearing CrossFit tee shirts, so people were just
17 buying the shirts, so they can kind of feel a
18 part of the group.

19 So we have people who attend our
20 seminars that are buying the apparel, people who
21 are fans of CrossFit/Strongman buying our
22 apparel. It's a large or wide demographic in
23 terms of our consumer. Men and women. You name
24 it.

25 Q. Is social media important in Hybrid

1 I. Jentgen

2 Athletics' business?

3 A. Yes. So through our accounts, our
4 own accounts and our coaches' accounts, social
5 media is really important in the reach, and
6 Instagram is important.

7 I run the Hybrid Athletics Instagram
8 page, and we're continuing to try to separate
9 ourselves in terms of what we're doing and making
10 sure we're in a premium space projecting that
11 image, and all of the brand plans that I
12 mentioned.

13 Logan is one of our coaches and is
14 posting promotional things for Hybrid Athletics.
15 So, from a standpoint of who is contributing to
16 our feed, it's supposed to be cohesive.

17 Like more recently I posted a workout
18 of the day video clip, and it's well edited. It
19 always opens with the same frame. Hybrid
20 Athletics on the front, and then it gives the
21 details to our workout and then it shows clips
22 from the video, and that's consistent throughout.

23 And especially for me, and maybe I'm
24 being more in tune with it, because that's my
25 background in marketing, but it's very important

1 I. Jentgen
2 for us, because it's essentially free promotion
3 and advertising. And so it's important to us,
4 because if we weren't, I think by taking into
5 consideration, okay, how can we make this better,
6 it results in that many more people engaging with
7 it and sharing and reposting it.

8 So oftentimes these videos, if I do a
9 good job in terms of shooting them and Brett does
10 a good job, our members are going to re-post them
11 and share them with their members, and that's in
12 terms of growing the affiliate model as it
13 relates to the gym.

14 It's the best way is word of mouth,
15 and not somebody who is going to offer up a huge
16 discount for our service. We want somebody to
17 recommend another friend to come into our gym and
18 speak about the service. So, from a social media
19 standpoint, it's really important.

20 Q. Do you know where your Instagram
21 followers are located?

22 A. Where they are located? It's global.
23 So, because I could say our Instagram followers
24 basically I'm sure 90, 80 to 90 percent of the
25 members just based on what I'm able to see who

1 I. Jentgen

2 are members following us on Instagram because
3 they are commenting. They are liking the videos.

4 And they mention the videos that we
5 put out there, but they are going to be global,
6 because Hybrid Athletics, our assets and our
7 videos and our calendar, it's being promoted by
8 gyms in Argentina when we're visiting Argentina.
9 It's being promoted by gyms in the UK when we're
10 visiting the UK. Logan is out on the West Coast
11 and he's highlighting Hybrid Athletics gear and
12 adding us on Instagram. So people are going to
13 click through and follow us. So its Hybrid
14 CrossFit headquarters has posted pictures of Rob.
15 So their reach is incredible, so those people are
16 going to be following us, and they are not
17 limited by any geographical or really any kind of
18 demographic.

19 Q. Do you know the estimate of the sales
20 for Hybrid Athletics?

21 MR. BEGAKIS: Objection. Calls for
22 speculation.

23 A. For?

24 Q. Do you know how much sales Hybrid
25 Athletics has made in apparel?

1 I. Jentgen

2 A. This year?

3 Q. Yes.

4 A. No. I wouldn't know those numbers to
5 date. Rob has it closer to him.

6 Q. Okay. You mentioned attending
7 CrossFit events. What does that entail?

8 MR. BEGAKIS: Objection. Narrative.

9 A. CrossFit events are going to entail,
10 most recently it's been the regional events. So
11 it's how you qualify for the games, so it's a
12 two- or three-day event where the best athletes
13 in the region are competing. We're also
14 attending other local competitions. So I'm going
15 out and competing or we'll have a booth at a
16 local competition, things of that nature.

17 Rob and I went to open announcements
18 at Reebok. Like Rob and I will travel. So the
19 open announcement is the first step into
20 qualifying for the games.

21 Q. What year was that?

22 A. Last year, so 2015. So Matt Frazier
23 and Rich Froenig they announced the first. So
24 the first workout of every year kind of kicks off
25 the game season, so it's the one that everybody

1 I. Jentgen

2 can play in.

3 So there is, I mean I think there was
4 over a quarter million registrants in this year's
5 CrossFit Open, and so that announcement was made
6 at Reebok headquarters this year. This is a
7 large kind of production in terms of they had
8 brought in bleacher seating, and they brought in
9 a few vendors. There was food, cocktails, beer,
10 wine, and it was an event that we were at as
11 well. So those kinds of events.

12 Q. And you mentioned selling apparel at
13 events. What events have you sold apparel at?

14 A. The most recent one would have been
15 regionals in May, I believe, in terms of events.
16 So we were selling, we were part of Vendor
17 Village and right next to the other apparel
18 companies as it relates to CrossFit, so they had
19 it at the XL Center in Hartford. We were in the
20 big kind of expo center area attached to that
21 arena.

22 Q. And what years have you sold at?

23 A. Personally?

24 Q. Yes.

25 A. I've sold 2013, '14 and '15 and at

1 I. Jentgen

2 several different regionals. So not just the
3 Northeast but the mid-Atlantic and others, and
4 then we always have a booth, as not every
5 regional do we have a booth, but if there is we
6 have one reserved, so when we choose to take one.

7 So, for example, at the south
8 regional this year in Texas, Rob Pfeiffer, who is
9 our coach in Arizona, he ran the Hybrid Athletics
10 booth there. Logan and Rob was there at the tail
11 end, ran the CrossFit/Strongman booth at the
12 CrossFit Games. They also put on the
13 CrossFit/Strongman experience, so it's I mean the
14 CrossFit Games sold out the Home Depot Center in
15 the tennis court, so I don't know the exact
16 number of people that were there, but there was
17 an experience where they got to demonstrate
18 special Strongman movements, and Logan led that
19 wearing Hybrid Athletics gear.

20 Q. So 2013 was your first year selling?

21 A. Yes.

22 Q. And what regional events did Hybrid
23 Athletics have in 2013?

24 A. I was at the Northeast in 2013, and I
25 don't believe I went to mid-Atlantic that year,

1 I. Jentgen

2 but I was at just at the Northeast that year,
3 which was outdoors at the Reebok headquarters.

4 (Whereupon, Hybrid Exhibit 5,
5 document Bates stamped HYBRID000680 was
6 hereby received in evidence, as of this
7 date.)

8 Q. I'm going to pass you what's been
9 marked as Exhibit 5 into evidence.

10 What is this exhibit?

11 A. So this is the wall at our gym. It's
12 the wall that's on the addition, so the other
13 side of this sits the pegboard with the H on the
14 wood, and that's kind of like the iconic place
15 where all those workouts were shot with that H.

16 This is the other more prominent H
17 that's larger and was put in place on the
18 addition. And then beneath the H that you can
19 see, that's like the big kind of if you look over
20 and you pan over to the right, this is what
21 you're looking at. These are our stone molds.
22 And this graphic I think we've had different
23 renditions of this, but this was also how we were
24 promoting the molds on our website and things of
25 that nature.

1 I. Jentgen

2 Q. You called the pegboard or the H on
3 the pegboard iconic; what do you mean?

4 MR. BEGAKIS: Objection. Leading the
5 witness.

6 A. So the pegboard is iconic, because
7 for me it's what really resonates with
8 individuals who know Hybrid Athletics and who
9 know Rob and who have known what Hybrid is about.

10 So, when a member or not, or somebody
11 who is traveling, and they come in to visit, they
12 always are looking over at the H and that kind of
13 iconic place where, oh, wow, this is where Rob
14 filmed the 300-pound Grace video, which has over
15 a quarter million views on YouTube. This is
16 where he filmed the other video that has over a
17 quarter million views on YouTube.

18 And it was always that space where
19 it's like, okay, here is where he was, and he was
20 really animated in some of the videos. I mean
21 there have been some of the times where I've been
22 with Rob, and it will be like "I remember Sam
23 Dancer." So he's another well-known athlete.

24 Q. I'm sorry. His name is Sam Dancer?

25 A. Sam Dancer. Yes.

1 I. Jentgen

2 So we were at a regional event with
3 Rob, and we were going to work out after, and Sam
4 Dancer, he's a well-known CrossFit athlete with a
5 good social reach and a good athlete in his own
6 right.

7 And he's like you really inspired me
8 with that 300-pound Grace video, and where he got
9 mad at one point and kicked a water bottle, but
10 it was like you could just see the passion and
11 like that sort of passion lifting the
12 heavyweights in that iconic kind of spot in the
13 gym, and it's what resonates with individuals,
14 and it's what resonates with people when they
15 visit the gym.

16 They're like, hey, Ian, can I get a
17 picture with you next to the H or the same thing,
18 me and Rob, can we get a picture next to the H.
19 It's where we also shoot -- we're hosting
20 seminars since I've been there at least on
21 usually a biannual basis we're hosting seminars
22 that are in our gym, and oftentimes those are the
23 ones that are the most well-attended, because
24 people want to visit Hybrid Athletics.

25 We have people fly in from

1 I. Jentgen

2 California. We've had people fly in from all
3 over to come visit Hybrid Athletics and see the
4 H's and like where Rob worked out, see where we
5 have kind of developed Hybrid Athletics and the
6 training that supports Hybrid, and it's where
7 we're taking the pictures at the end. For all
8 the seminars, they're in front of the H's.

9 If you look through my Facebook feed
10 or Instagram feed, all my pictures and videos
11 they have the Hybrid H's in the background and
12 all the seminar pictures have the Hybrid H's in
13 the background.

14 Q. So the H on Exhibit 5 and the
15 pegboard H are the two main H's?

16 A. Yes. So the pegboard H predated this
17 H. The pegboard H is on, if you're looking, if
18 you walk in the door to the left of this H, but a
19 decent amount of videos are shot in both of them,
20 but I mean the video that Rob first filmed where
21 he did the workout of 5-4-3-2-1 dead lifts/
22 thrusters, the dead lifts were at 500 pounds and
23 the thrusters were at 250 pounds. It was in
24 front of that H, and people like that workout.
25 It was kind of like unheard of. So people began

1 I. Jentgen

2 to associate the H with the heavy lifting and the
3 Strongman and Rob.

4 (Whereupon, Hybrid Exhibit 6, copy of
5 photo of the Hylete H was hereby received
6 in evidence, as of this date.)

7 (Whereupon, Hybrid Exhibit 7, copy of
8 photo of the Hylete H was hereby received
9 in evidence, as of this date.)

10 Q. I'm going to hand you what's been
11 marked as Exhibit 6, and put this into evidence.
12 Can you please review this exhibit and tell me
13 what it is.

14 (Witness reviews the document.)

15 A. That would be the Hylete H and
16 Hylete's logo.

17 Q. And I'm going to hand you what's been
18 marked and put into evidence as Exhibit 7.

19 What is that?

20 MR. BEGAKIS: Objection. Asked and
21 answered.

22 A. The Hylete logo as well.

23 Q. So Exhibits 6 and 7 are the Hylete
24 logo?

25 A. Yes.

1 I. Jentgen

2 Q. When was the first time you saw the
3 Hylete H?

4 A. The first time I actually saw it
5 where it caught my eye, and I identified like
6 what's going on, and this logo where it was
7 something that I would remember, I'm not sure if
8 I saw it in passing, but the first time was
9 actually at the 2013 regionals. Their booth was
10 adjacent to ours, so right next to us.

11 Q. 2013?

12 A. 2013, yes, so that was the year after
13 I graduated school, so, when I initially started
14 to come on full time right after I came on full
15 time or right around that time, because the
16 regionals are always in May 2013.

17 Their booth was right next to ours,
18 and at the time I was like, Rob, what's going on
19 here? It's like exactly us. Like are you
20 involved with them, and that was when I was
21 debriefed on the whole situation that was.

22 Q. So what was your initial impression
23 when you saw the Hylete H?

24 A. I was confused. I thought he would
25 have had some relationship with them, especially

1 I. Jentgen
2 because of their proximity. I mean it's like it
3 was like oddly enough we see a Hylete, their H,
4 and it's right next to our apparel, and we saw
5 people who were confused throughout the weekend
6 as to what was going on.

7 MR. BEGAKIS: Objection. Calls for
8 speculation.

9 A. I was also confused as to like the
10 JACO shorts were like the same kind of style as
11 our shorts, and they were right there, and it was
12 a newer short for the time.

13 I mean CrossFit with the emergence of
14 CrossFit and the style that I spoke about
15 earlier, it's different than a larger-scale gym.
16 People were searching for alternatives to Nike,
17 Reebok and the bigger companies, so this
18 fight-style short was very unique and the fact
19 that they were so similar, it was like a red
20 flag. What's going on here?

21 So that was my initial interaction
22 with the logo. It was the first time that I
23 actually remembered seeing it.

24 Q. And --

25 A. And seeing it. Yes.

1 I. Jentgen

2 Q. What has been your experience with
3 the Hylete H -- strike that.

4 When you first saw the Hylete H at
5 regionals, what were the customers' impressions
6 of it?

7 MR. BEGAKIS: Objection. Calls for
8 speculation.

9 A. The initial -- can you repeat the
10 question or --

11 Q. At the CrossFit regionals when you
12 first saw the Hylete H, what were the customers'
13 reaction to the Hylete H?

14 A. People were confused. I mean I was
15 standing next to Rob, and people would come up to
16 us wearing Hylete shorts and show the logo and
17 say, look, I'm supporting you. Like we're
18 wearing the same shorts. And we had to tell them
19 those aren't our shorts, and that company is not
20 affiliated with us.

21 So there was a definite
22 misunderstanding. I mean I experienced it
23 firsthand. I thought it either had to be some
24 kind of involvement. It's not just the H. It's
25 not just one company with an H and another

1 I. Jentgen
2 company with an H and the apparel industry and
3 even more specifically targeting CrossFitters at
4 a CrossFit event. The way that the H tapers.
5 It's the way that the H was positioned very much
6 like so on our shorts.

7 So it's all of those elements. It's
8 not just like the contours of the logo are so
9 similar that there was definite confusion.
10 People didn't understand. And that's why I,
11 probably not until it was flat in front of my
12 face while we were next to the H or the Hylete H,
13 did I even recognize that it was something
14 different.

15 I'm sure being around CrossFit for
16 two years, I'm not sure how long even Hylete was
17 making apparel, but I don't know that I would
18 have noticed anything different like it wouldn't
19 have even stuck out to me because they were so
20 similar.

21 Q. And how often does that type of
22 reaction happen that you just described?

23 MR. BEGAKIS: Objection. Calls for
24 speculation.

25 A. All the time. There is definite

1 I. Jentgen

2 confusion, whether it's a visitor to our gym, a
3 member of our gym, anybody who comes in. If the
4 topic is ever brought up, very few people know
5 that they are distinctly different companies and
6 not affiliated with one another. Yes.

7 Q. Have you experienced any confusion in
8 the social media?

9 A. Yes. So to the point that so I
10 manage the Hybrid Athletics social media page, so
11 I'm going to be notified in terms of Instagram
12 when we are tagged in a photo and when something
13 is hashtagged. So tagged being at Hybrid
14 Athletics, and hashtagged meaning the hashtag
15 like the number sign Hybrid Athletics, and there
16 is individuals out there who are adding us, and
17 then hashtagging Train Hylete when the only thing
18 that is pictured is a Hybrid Athletics stone
19 mold, so there is definite confusion there, and
20 they're tagging Train Hylete on a Hybrid
21 Athletics stone mold.

22 Q. How do you know it's a Hybrid
23 Athletics stone mold?

24 A. Because stone, the actual stone, so I
25 can see the branding, the Hybrid Athletics H.

1 I. Jentgen

2 Q. It's on the stone?

3 A. Yes, and Hylete doesn't make stone
4 molds, so I know it's Hybrid Athletics.

5 And then to the point where we've had
6 coaches. There is a coach -- I'll bring up Logan
7 again -- one of Logan's assistant coaches.

8 She was I mean in some of her
9 Instagram posts she didn't know the difference
10 even and she hadn't been on-boarded, and she
11 hadn't met Rob personally. She hadn't heard the
12 whole story, but, if you look through her social
13 media, her Instagram feed, you can see, I'm
14 coaching the Hybrid Athletics Strongman seminar
15 at Hybrid Athletics at Train Hylete.

16 And so there is definite confusion.
17 She's tagging both of them. There's nothing
18 Hylete present in a lot of these images, and it
19 has happened vice-versa, too. I'll see Hybrid
20 Athletics tag an image, but it's a Hylete just
21 shorts or it's an athlete wearing Hylete's
22 apparel, and they think it's Hybrid Athletics, so
23 they're adding us on social media.

24 Q. How often is this happening?

25 MR. BEGAKIS: Objection. Calls for

1 I. Jentgen

2 speculation.

3 A. It's happening pretty frequently. I
4 don't know if there is a-- if I can pinpoint like
5 a specific number on it. It depends on how often
6 I'm signing into the account. So sometimes I'll
7 see it on a weekly basis, a biweekly basis,
8 sometimes I'll see it three times. It depends.
9 Like there is traffic in terms of social media
10 around the games where people are always posting
11 about CrossFit, we're going to see more of the
12 confusion or if it's around the regionals time.

13 Now things are kind of settling.
14 People are posting a little bit less, so I'm
15 going to see less of it. So that's kind of very
16 indicative of what this seems like in the
17 CrossFit scope.

18 Q. Do you believe that Hybrid has been
19 harmed by Hylete's presence in the fitness
20 market?

21 MR. BEGAKIS: Objection. Calls for
22 speculation.

23 A. Yes, on a number of levels. One, I
24 mean I think that that confusion has led to
25 people purchasing products from Hylete as opposed

1 I. Jentgen

2 to Hybrid Athletics.

3 If you looked at our shorts, like if
4 you looked at the metrics and analytics on our
5 website before we switched over from Blue
6 Commerce to Bigcommerce Hybrid Athletics shorts
7 were one of the things that were most oftentimes
8 searched. JACO was oftentimes unable to fulfill
9 our orders and keep those in stock. I think we
10 were, even me personally, I would sign in. I was
11 being targeted by Hylete, so I don't know through
12 what interests, presumably CrossFit, and it could
13 even be actually they targeted me, because I
14 liked Hybrid Athletics' page. I don't know, but
15 I'm seeing their ads constantly. I just say turn
16 off their ad. And I would see that constantly.

17 Q. You said their ad. Who?

18 A. So I would see a sponsored post by
19 Hylete on my Facebook page. So on my Facebook
20 feed, I would see a sponsored ad by Hylete on my
21 Facebook page.

22 So there is detrimental effect from
23 the confusion, but then, if you take that a step
24 further, Hylete has oftentimes all of their ads
25 are heavily discounting the products, so buy two

1 I. Jentgen

2 shorts for \$99 or buy some kind of promotion
3 where it's striking the price far beyond which we
4 would ever strike any kind of apparel or any kind
5 of service.

6 We're a premium service provider in
7 terms of Hybrid Athletics. We're not offering
8 discounts, but Hylete is constantly offering
9 promotions: Buy this, get this for free, a
10 couple of these free things, get this for free.

11 So it's been detrimental from the
12 brand standards that we've tried to establish and
13 establishing ourselves as a premiere fitness
14 brand and identity within the space, because of
15 the confusion, and then associating that
16 confusion with them and their promotion and
17 efforts.

18 And they also are I mean they are
19 aggressive in their promotional efforts in terms
20 of they have aligned themselves with a lot of
21 athletes over the course.

22 I mean from my perspective they don't
23 choose to decipher who they're associating their
24 name with. They're just trying to get it out
25 there. They're spending a lot in terms of their

1 I. Jentgen

2 Facebook dollars, because I've seen the ad
3 constantly when I was signing in.

4 So they were all about exposure and
5 not really caring in terms of uploading the
6 brand, so that was also detrimental to our brand.

7 Q. Where have you seen Hylete
8 advertising?

9 A. Facebook primarily. I think I've
10 seen it, I can't say for sure if I've seen it on
11 Google AdWords. I want to say that I have. So,
12 when I visited like Sportscenter, if I've seen it
13 on the right-hand rail, but Facebook for sure. I
14 used to see it all the time until I turned off
15 the notifications. I said I didn't want to be
16 served ads from this company anymore just because
17 I was being targeted by them.

18 Q. Was there anything that struck you
19 about the ad?

20 MR. BEGAKIS: Objection. Calls for
21 speculation.

22 A. Oftentimes it's the shorts that they
23 are very similar to our shorts. The other things
24 that are striking about it is again it's a brand
25 that's not just another fitness brand. It's a

1 I. Jentgen

2 very niche in the sense that it's appealing to
3 the functional fitness community and CrossFit
4 community.

5 So for that reason it's going to
6 stand out, and it's going to stand out too
7 because of conversations of friends that I had
8 and people who didn't have clarity on the
9 situation.

10 Q. When you say you'd see the shorts, is
11 the Hylete H on the shorts?

12 A. Yes, and the Hylete H it was small
13 like the Hybrid H was in the same place of the
14 short most oftentimes, and the material was the
15 same. Their most popular version was a black
16 version that I would see most oftentimes. So it
17 was very similar to the short that we were
18 wearing, and we were the ones that were getting
19 airtime on CrossFit headquarters, our coaching
20 staff and Rob and because of his affiliation with
21 CrossFit/Strongman seminars and owning that
22 business and then also his prevalence as a games
23 athlete. They didn't have anybody. There's no
24 athlete of that quality who is repping their
25 brand or that kind of reach especially within the

1 I. Jentgen

2 CrossFit space or CrossFit Games athlete.

3 Q. In your opinion, has the introduction
4 of the Hylete H affected Hybrid's sales?

5 MR. BEGAKIS: Objection. Calls for
6 speculation.

7 A. Yes. On a lot of levels, like I
8 mentioned, the Hylete H in the contours of the
9 actual logo mirrors ours to the extent that there
10 is confusion. And with that confusion and the
11 issues that we experienced with JACO, I remember
12 when we were producing the shorts and the
13 headaches that they had in terms of they were in
14 financial trouble in sourcing shorts, so there
15 were oftentimes the popular short sizes were 32
16 and 34, and we couldn't keep them in stock. So
17 we would be waiting for months. And I think by
18 serving up ads that were targeted at me, who
19 worked at Hybrid Athletics like an employee, so
20 pointing at all of my interests, we're definitely
21 negatively affected by that.

22 So somebody who is targeting our
23 consumer and targeting somebody of my interests
24 because of the confusion with the logo. And I've
25 had conversations where at regional events people

1 I. Jentgen
2 would be wearing the shorts and they would come
3 to me and say, hey, look, Ian, I'm wearing your
4 shorts. They are not our shorts.

5 So that conversation has been had
6 several times. And the thing is, too, is it
7 happens in places like that instance that sticks
8 out to me it was a coach who actually coached in
9 Milford, so he's close to Rob. He's close to the
10 vicinity. He's not far from Connecticut. He was
11 actually the husband of a former colleague of
12 mine that I worked with at Colangelo, and he had
13 the impression that he was just asking about how,
14 he was interested in opening up his own gym, and
15 he was interested in how in terms of like Hybrid
16 Athletics and revenue, and he thought that all of
17 the sales from Hylete apparel was coming to us,
18 and I said that's not happening.

19 Q. Who is that?

20 A. This was, it was Stacy Infantof's
21 husband. So Mr. Infantof.

22 Q. And he thought that Rob had some kind
23 of financial stake in Hylete?

24 A. Yes. He pointed to the shorts and he
25 was like you guys are getting a piece of this,

1 I. Jentgen

2 and I'm like no, we're not.

3 Q. What did he point at?

4 A. To the Hylete H on the shorts, and we
5 were sitting, it was after regionals. He was a
6 volunteer at the event, and it was after
7 regionals they have a social where it's basically
8 like they feed the Paleo Power Meals, it provides
9 food and beer and wine for all the volunteers.

10 Q. You mentioned having trouble keeping
11 or JACO having trouble keeping the shorts in
12 stock. Could you elaborate on this?

13 MR. BEGAKIS: Objection. Leading the
14 witness.

15 A. Yes. So we would --

16 Q. Well, let me start. What year did
17 you start selling the JACO shorts with the Hybrid
18 H?

19 A. I don't know. We were selling them
20 from when I was there, so I'm not sure what
21 predated me.

22 Q. So when you started in May?

23 A. When I started in May they were
24 handed to me, these are your shorts to wear. And
25 so then we were selling them at the time, but I

1 I. Jentgen

2 remember even still I could only take, I was a 34
3 waist. I got the last pair of 34, and then had
4 to wait until the next shipment got in, I mean as
5 a coach.

6 Q. And how long was fulfilling an issue?

7 A. It was an issue. Sometimes it would
8 take two weeks. Sometimes it would take a month,
9 and it was pretty bad, and it was kind of always
10 an issue. They made a really good short that our
11 consumer liked, but it was a chicken-and-egg
12 thing in terms of should we be looking at
13 alternative options just because we couldn't keep
14 up with demand.

15 Specifically at that time, like I
16 said, Rob was doing extensive travel for the
17 Strongman seminars, and our international gigs
18 were really prominent, and good gear and the way
19 the exchange rates worked, and we just sold a lot
20 of apparel.

21 I used to pack suitcases up, and they
22 would be sold in Australia and in the UK at the
23 seminars in socials that we would have. And so
24 they would clear out all of our shorts, because
25 it was just harder for people in Spain, Italy,

1 I. Jentgen

2 Greece, Australia to get quality workout apparel,
3 so they were willing to pay a premium even for
4 our shorts and our shirts.

5 So with those types of events and
6 with that type of travel schedule, it would
7 result in us being backordered on the shorts and
8 even shirts for an extended period of time.

9 We got rid of the first screen
10 printer that was there because it couldn't handle
11 the volume that we were doing at the time. So we
12 had to switch to Matt the shirt guy.

13 So the schedule that Rob had with the
14 seminars and the events and then, too, how often
15 we'd be featured and other coaches and athletes
16 are being featured on major streams of YouTube
17 and other social channels impacted our sales.

18 So especially for the 32's and 34's
19 they would be out of stock for a while, and then
20 we would source them, and oftentimes you can't
21 tell because the picture is black and white, but
22 we would have to go back and forth.

23 It would have been our preference for
24 this to always for JACO branding to always be
25 gray, but to fulfill orders we went to yellow

1 I. Jentgen

2 sometimes. We went to blue sometimes, and we
3 were willing to even go to other colors just so
4 we weren't out of the shorts for an extended
5 period of time.

6 Q. Did JACO ever indicate why they were
7 backordered on shorts?

8 A. From my understanding, I think it was
9 just sourcing issues. I think they had a lot of
10 issues going on. I think they had financial
11 troubles as well. So I think it could be coupled
12 into a lot of issues on their side.

13 (Whereupon, a short recess was
14 taken.)

15 BY MR. KOSMA:

16 Q. Mr. Jentgen, you mentioned that you
17 have access to the analytics for Hybrid
18 Athletics' website?

19 A. Yes, so we were able to see Blue
20 Commerce. Like we have a search bar, and you can
21 see what's the trending words that are searched
22 in terms of our website.

23 Q. And what was the most searched term?

24 A. So most recently and whenever I've
25 checked it it has always been the Go Heavy shirt

1 I. Jentgen
2 was kind of the first thing just because that was
3 like the really buzz kind of item that we had
4 within the shorts for a secondary in terms of
5 searched, and then third would be the stone molds
6 in terms of the terminology. And I'm not sure
7 what that is today, but that's what it's always
8 been since I've been on board.

9 Q. When you mentioned shorts, you're
10 talking about the shorts that are in Exhibit 4?

11 A. Yes, these ones here. Exhibit 4.

12 Q. You mentioned that people they like
13 these shorts. What was said to you about the
14 shorts that made people like them?

15 MR. BEGAKIS: Objection. Calls for
16 speculation.

17 A. People have said that they like them,
18 the fight style. So I think it plays into there
19 was people working out in a gym setting, and then
20 CrossFit came on to the scene, and with that
21 there was like a style change. Some people were
22 wearing board shorts. These were more of a fight
23 style short.

24 Q. What is a fight style short?

25 A. So as it relates to more of the

1 I. Jentgen
2 MMA-inspired short, so that was kind of where
3 these were borne out of I think in terms of
4 fabrication, and people liked they had a Velcro
5 and drawstring attachment for the waist. There
6 was the side pocket, the fact that they broke at
7 the seam here, so they kind of accommodated --

8 Q. Broke at the seam where?

9 A. So on the side of the short on the
10 seam, it just accommodates for movement a little
11 bit more, and then the material is good. We were
12 again doing a lot of things flipping tires with
13 stones. You're lapping them oftentimes, so
14 you're sitting with a stone which has jagged
15 edges, and, depending on how many times it's
16 dropped, it could be pretty, the surface could be
17 uneven or not smooth, but the shorts withstood
18 the wear.

19 So you were able to wear the shorts.
20 They wouldn't rip like a mesh short would or
21 things of that nature, so they're good to work
22 out in, and then they last too.

23 That's the other thing. I mean I
24 have mine from 2013, and I'm still wearing them
25 now, and they look about the same and wear about

1 I. Jentgen

2 the same, so.

3 Q. And how would those shorts compare to
4 the Hylete shorts?

5 A. The material is essentially the same.
6 The color in terms of the material is the same I
7 think. If you look at them, the cut is similar,
8 the athletic cut, so just above the knee, not too
9 baggy, not too short, a little bit more
10 formfitting, but I think the real direct
11 correlation is in that material. I think it's
12 got to be the same blend.

13 I haven't looked at a tag to analyze
14 what percentage is nylon and what percentage is
15 anything else, but I have to think that they are
16 the same. It appears to be the same. It has the
17 same shine. So the black shorts are very
18 similar.

19 Q. What about the logo placement?

20 A. The logo placement is the same. So
21 with it on that, the left kind of thigh region at
22 the lower end, and then the drawstring as well
23 was always colored, and it matched the H. So
24 this is another, it's kind of unique to the
25 shorts, but the drawstring for the JACO shorts

1 I. Jentgen

2 and the Hybrid Athletics shorts, which are one
3 and the same, and the drawstring for the Hylete
4 shorts, they always matched, so the drawstring
5 matched the logo color. And so like, if you're
6 wearing them, oftentimes you would see the
7 string.

8 And I don't own a pair of Hylete
9 shorts, but those are kind of the things just
10 from my perspective of seeing somebody wearing
11 them that would be the same.

12 I haven't seen the inside to know how
13 much similar they are, but just the material you
14 can tell it looks the same, and it has that same
15 break at the seam and the pockets the same too I
16 believe.

17 MR. KOSMA: I have no further
18 questions. I'd just like to see if you
19 want to stipulate again to not make the
20 officer seal the evidence.

21 MR. BEGAKIS: Yes, I'll stipulate.

22 I have a few questions.

23 EXAMINATION BY

24 MR. BEGAKIS:

25 Q. All right. Mr. Jentgen, yes, I just

1 I. Jentgen
2 have a couple of questions. It shouldn't take
3 more than a few minutes here. You've been a good
4 witness. I'm going to ask you a couple of
5 questions, and a yes or no answer should suffice
6 for the most part.

7 So I'll start with you mentioned the
8 stone molds that Hybrid Athletics makes and
9 brands. Are you aware of other companies that
10 are making stone molds and branding them?

11 A. I think this is more than a yes or
12 no. There is one other company that I'm aware of
13 that makes stone molds, but I don't believe they
14 are branded, and it's not the same system. So
15 it's more labor-intensive, and it's called Slater
16 Stone Molds, and I believe the only way that you
17 can see their logo on it, it's not within an
18 indentation. I think, if you have a sticker like
19 a sticker spray paint, that's the only way that
20 I've seen their logo.

21 Q. Okay.

22 A. But it doesn't work in the same way
23 that we have the plastic encasing and then
24 there's an indent within the stone. There's
25 nothing of that nature.

1 I. Jentgen

2 Q. But there is other companies making
3 stone molds in general, correct? Or there is one
4 other company.

5 A. That's the one that I'm aware of.

6 Q. Okay.

7 A. But in my time I haven't come across.
8 What I come across in gyms, it's the Hybrid
9 Athletics ones are the ones that you see.

10 Q. Okay. You mentioned these American
11 flag Hybrid Athletics shirts.

12 A. Yes.

13 Q. And you sold out of your first run.
14 This is not a yes or no question, but
15 simply how many shirts were in this first run
16 approximately?

17 A. I want to say ten to 15 per size.

18 Q. Okay, and how many sizes?

19 A. We'd run small, medium and large
20 ourselves for both men and women, so there was a
21 tee shirt and a tank.

22 Q. Okay. So a tee shirt and a tank?

23 A. Specifically, yes, and I can just
24 reference like we typically order ten of each
25 size because that's where the thresholds are in

1 I. Jentgen

2 terms of a price break.

3 Q. Okay. So you're looking at small,
4 medium, large, XL of four different sizes of two
5 different types?

6 A. Yes, so 80.

7 Q. Of ten shirts?

8 A. So 80.

9 Q. Okay. About 80 shirts?

10 A. Yes, I believe so.

11 Q. Okay.

12 A. And then we just placed our
13 supplemental order. I have to go through and
14 count it soon.

15 Q. You said earlier in the deposition
16 that you were selling out of a lot of your
17 products. I'm assuming the shirts -- and you
18 didn't have to wait in line at the Post Office
19 anymore, and you said it was a crazy time. When
20 was that exactly? Specifically, when were orders
21 of that magnitude?

22 A. The date? I can give you the time.

23 Q. Approximate month or year?

24 A. So it would have been it was with the
25 launch of the Go Heavy shirt, so I believe 2014,

1 I. Jentgen

2 and I'd have to look back, but it coincides with
3 when Rob was featured on a workout on the
4 CrossFit main site with the Go Heavy shirt, and
5 then there were some Instagram and Facebook
6 posts.

7 Q. Beginning, middle, end of 2014?

8 A. I think the beginning.

9 Q. The beginning?

10 A. Yes. It might be 2013. I don't know
11 the date off the top of my head. It coincided
12 with all these events.

13 Q. So it could be late 2013. It could
14 be early 2014. Somewhere around there is what
15 you're saying?

16 A. Somewhere around there, yes.

17 Q. Okay. You said that you've been to
18 approximately --

19 A. Between 100 and 200 gyms.

20 Q. Gyms?

21 A. Yes.

22 Q. For work, correct?

23 A. For work and for I mean it's kind of
24 like a --

25 Q. So, with regard to your personal

1 I. Jentgen

2 ventures, not ventures, but when you go -- let me
3 rephrase the question.

4 How many, approximately how many gyms
5 have you dropped into personally outside of work
6 attending a gym?

7 A. Keeping in mind like me attending a
8 gym personally wouldn't -- I sometimes see it as
9 being involved with work. I'd seek it out as a
10 way to better, like I want to see this coach or
11 --

12 Q. Let's keep it simple. If you're not
13 on the clock, let's say like when you visit your
14 parents or your girlfriend, approximately how
15 many gyms on your personal time?

16 A. So then I would say it might be 75 to
17 25 work to personal or 50/50. I mean that's a
18 hard question.

19 Q. So it could be anywhere from 15 to 20
20 gyms to 50 gyms is what you're saying?

21 A. In terms of personal?

22 Q. Yes.

23 A. No, it would be around 50. Yes, 50
24 give or take. Or 50 to 100. I would say it's
25 probably anywhere from about 60-40, swing it

1 I. Jentgen
2 either way. So it's hard for me to say. Because
3 then you can say I'm not on the clock the night
4 before a social event at a seminar, but we go to
5 a different gym.

6 Q. Understandable. So assuming you've
7 attended or gone to 50 gyms on your own time.
8 Approximately how many of those gyms recognized
9 your shirt and allowed you to do things like
10 waive the drop-in fee?

11 A. I mean I can't remember the last time
12 I paid a drop-in fee just because--

13 Q. How many gyms have you dropped into
14 on your personal time this past year?

15 A. In 2015 only?

16 Q. Yes, we'll start and work back.

17 A. So maybe 15.

18 Q. Okay. So you have --

19 A. So like around New York City, around
20 here, yes. I mean like drop in and taking part
21 in a class or drop in to work out with somebody
22 else that I'm just friends with, it's vague. I
23 mean I'm around fitness space all the time, so
24 what constitutes a drop in.

25 Q. It's understandable.

1 I. Jentgen

2 A. I rarely would take an actual
3 CrossFit class, but I'll go visit CrossFit
4 Norwalk down the street and I'll train with my
5 buddy while I'm there. The same could be said
6 with everybody that owns CrossFit gyms. I'm
7 there. I'll go to CrossFit Stamford. So I'm
8 making rounds through the gyms, and I guess that
9 would be on personal time, but it's not really a
10 drop in.

11 Q. Well, let me ask you this. The 50
12 gyms that you dropped into on either personal
13 time or a blend of personal and work, how many of
14 them have been in the tri-state area? More than
15 80 percent?

16 A. In 2015, most of them.

17 Q. Most of them. More than 80 percent?

18 A. Maybe not more than 80 percent but
19 around 75.

20 Q. Around 75 percent?

21 A. Yes, 75 to 80, because then I'm
22 traveling like in Q1, I traveled a lot and then
23 also traveling home to Ohio, that's personal time
24 when I was dropping into gyms there.

25 Q. And in 2014 would you say 75 percent

1 I. Jentgen
2 of the gyms that you're going to where people are
3 noticing the Hybrid Athletics brand, would you
4 say those are in the tri-state area? 75 percent
5 of those?

6 A. I think it gets closer back to 50/50,
7 because that counts as a whole year and just Q2
8 for me is kind of still on the travel side. I
9 haven't gone home recently.

10 Q. Okay.

11 A. So the last time I was home was
12 Easter.

13 Q. Would it be fair to say that at least
14 at half if not more than half of the gyms that
15 you attend where people recognize the Hybrid logo
16 and brand, they are the tri-state area CrossFit
17 gyms?

18 A. I don't think it revolves around the
19 location, to be honest.

20 Q. Well, I'm not -- let me rephrase the
21 question then.

22 Of the gyms you've attended
23 personally -- retract that -- of all the gyms
24 you've attended, what is the percentage of those
25 gyms that are in the tri-state area?

1 I. Jentgen

2 A. In 2015?

3 Q. Yes.

4 A. We --

5 MR. KOSMA: Confusing. You said all
6 gyms, and he's saying 2015.

7 A. But we already said 75 percent
8 probably in 2015 tri-state.

9 Q. Okay. All right. I'll move on from
10 that.

11 A. It's like for me I understand the
12 question, but like there is a lot of times where
13 it's like it's not really a drop in or a formal
14 drop in, but I'm going there because there is a
15 clinic or there's like an athlete camp.

16 I'm going there or I'm visiting
17 because I have a friend there and they want to
18 work out with me or I'm at home and I've
19 developed relationships there.

20 Q. Understood. Okay.

21 You mentioned that you tried to do
22 Facebook ads, and it wasn't wildly successful?

23 A. Yes.

24 Q. And this was because you just
25 couldn't sell enough shirts to make a profit?

1 I. Jentgen

2 A. To make a profit to cover the ad
3 sales. We did it a few times.

4 Q. Did you take a loss?

5 A. I don't think we took a loss. No.

6 Q. You broke even?

7 A. Yes. We were breaking even or doing
8 barely better than even.

9 Q. Okay.

10 A. But not to the --

11 Q. Okay. That's good. Okay.

12 You said you believe that the
13 confusion between the two, between the Hybrid
14 Athletics brand and the Hylete brand has been
15 detrimental to the Hybrid brand?

16 A. Yes.

17 Q. And you believe that the recent
18 decline in sales of the Hybrid Athletics brand
19 are because of this confusion?

20 A. Yes.

21 Q. Is it possible that the decline in
22 sales is because Hylete is paying for sponsored
23 ads and Hybrid isn't? Is it possible?

24 A. I think that adds to the confusion by
25 targeting people who have recognition --

1 I. Jentgen

2 Q. It's a simple yes or no question. Is
3 it possible that the client's sales of Hybrid
4 brand products --

5 A. No. I think it boosts Hybrid's
6 brand.

7 Q. So your position is that Hybrid's
8 decline in sales of recent has nothing to do with
9 Hylete's sponsored ads and your lack of sponsored
10 ads?

11 A. I think -- I thought I said that it
12 does, because it's detrimental, so they're
13 advertising Hylete's name out there.

14 Q. Okay. So you acknowledge that it's
15 possible that Hybrid Athletics' decline in sales
16 is a result of their lack of paying for sponsored
17 advertising and Hylete at the same time paying
18 for the same?

19 MR. KOSMA: Objection. You're
20 misquoting his testimony.

21 Q. Okay. I'll back up.

22 A. Yes. I got kind of confused there.

23 Q. Okay. I'll back up.

24 You said you believe that confusion
25 between the two brands had been detrimental to

1 I. Jentgen

2 the Hybrid Athletics brand, correct?

3 A. Confusion is detrimental, yes.

4 Detrimental in possible sales, because there is
5 confusion. Is that fair to say?

6 Q. Yes. So is it possible that the
7 decline in sales is not a result of confusion,
8 but a result of Hylete paying for sponsored
9 advertising and Hybrid Athletics not? It's a
10 simple yes or no question. Is it possible?

11 A. Possible.

12 Q. Is it possible that the decline in
13 sales of Hybrid Athletics' products is because of
14 Hylete's aggressive discount pricing as you
15 mentioned? Is it possible?

16 A. That Hybrid's having a decline? I
17 guess that's where I'm misunderstanding. It's
18 more the confusion as opposed to those are just
19 mechanisms for me that are like aiding in the
20 sales of Hylete.

21 So I don't really understand. We're
22 talking about possibilities, but for me those are
23 just ways that --

24 Q. Okay. And is it possible that the
25 decline in sales of the Hybrid brand is because

1 I. Jentgen
2 orders couldn't be fulfilled quickly enough,
3 which you said was pretty bad?

4 MR. KOSMA: Objection. Misstates the
5 testimony.

6 MR. BEGAKIS: He stated in the
7 record, and we can go back to that that at
8 the height of sales of Hybrid products
9 that orders weren't being fulfilled
10 quickly enough, and it was getting pretty
11 bad.

12 A. That only, I think in my original
13 comments, that only pertained to the JACO shorts
14 and not the shirts. The shirts were easily
15 addressed by changing the screen printer, but the
16 shorts it was more relevant.

17 Q. So, with respect to the shorts, it's
18 possible that the decline in sales of shorts is
19 because you couldn't fill orders fast enough?

20 A. There is a potential that we had
21 orders when people went to our site and they
22 didn't check out, because we were out of them,
23 yes.

24 Q. All right. I just have one other
25 question.

1 I. Jentgen

2 You were asked where the stone molds
3 were sold, and you said just about every zip code
4 or every zip code. Which one is it?

5 A. I believe it was just about every zip
6 code.

7 Q. So it's --

8 A. I think every zip code or just about
9 every zip code.

10 Q. You think every zip code? Well, it's
11 one or the other. It's just about every zip code
12 or every zip code?

13 A. I haven't seen the analytics, but I
14 think it's just about every zip code, and I know
15 every state.

16 MR. BEGAKIS: Okay. No more
17 questions.

18 THE WITNESS: Thank you.

19 MR. KOSMA: No questions.

20 MR. BEGAKIS: Read and sign?

21 MR. KOSMA: Yes.

22 (Time noted: 4:33 p.m.)

23

24

25

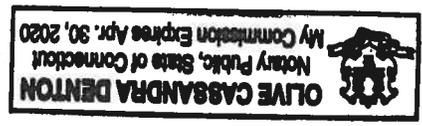
1 *Connecticut*
2 STATE OF ~~NEW YORK~~.)
3 *Stanford*
4 COUNTY OF *Fairfield*

5
6
7 I, IAN JENTGEN, the witness herein, having
8 read the foregoing testimony of the pages of this
9 deposition, do hereby certify it to be a true and
10 correct transcript, subject to corrections, if
11 any, shown on the attached page.

12
13 *[Signature]*
14 _____
15 IAN JENTGEN



16
17
18 Sworn and Subscribed
19 this 4 day of Sept., 2015.



20 *[Signature]*
21 _____
22 Notary Public

1

2 ----- I N D E X -----

3 WITNESS EXAMINATION BY PAGE

4 IAN JENTGEN Mr. Kosma 3

5 Mr. Begakis 110

6 ----- INFORMATION REQUESTS -----

7 DIRECTIONS: (None)

8 RULINGS: (None)

9 TO BE FURNISHED: (None)

10 REQUESTS: (None)

11 ----- EXHIBITS -----

12 HYBRID IN EV.

13 Exhibit 1, Opposer's Notice of Trial 4

14 Deposition

15 Exhibit 2, document bearing Hybrid 31

16 Athletics H logo

17 Exhibit 3, copy of a photo of Hybrid 47

18 Athletics tee shirt

19 Exhibit 4, copy of a photo of Hybrid 47

20 Athletics shorts

21 Exhibit 5, document Bates stamped 85

22 HYBRID000680

23 Exhibit 6, copy of photo of Hylete H 89

24 Exhibit 7, copy of photo of Hylete H 89

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, JOSEPH DANYO V, a Shorthand Reporter
and Notary Public within and for the State of New
York, do hereby certify:

That IAN JENTGEN, the witness
whose deposition is hereinbefore set forth, was
sworn and that such deposition is a true record
of the testimony given by such witness.

I further certify that I am not related to
any of the parties to this action by blood or
marriage; and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 9th day of August, 2015.

Joseph Danyo V.

JOSEPH DANYO V

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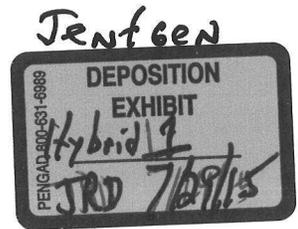
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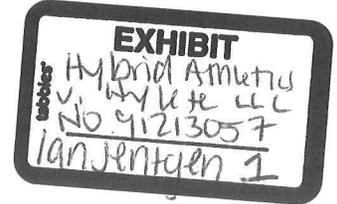
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Hybrid
v.
Hylete
No. 91213057



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

HYBRID ATHLETICS, LLC,	:	
	:	
Opposer,	:	Opposition No. 91213057
	:	
v.	:	
	:	
HYLETE LLC,	:	
	:	
Applicant.	:	



OPPOSER'S NOTICE OF TRIAL DEPOSITION

PLEASE TAKE NOTICE THAT pursuant to Trademark Rule 2.123 and Federal Rule of Civil Procedure 30, Opposer Hybrid Athletics, LLC. ("Opposer"), by its attorneys, will take the trial deposition by oral examination of Ian Jentgen, Hybrid Athletics, LLC, 7 Hyde Street, Stamford, CT 06907, to be held at the offices of Whitmyer IP Group, LLC, 600 Summer Street, Stamford, CT 06901, on July 29, 2015, commencing at 2:00 p.m. The deposition will be taken before a notary public or other officer duly authorized to administer oaths, and will be recorded by stenographic and/or video graphic means. The deposition will continue from day to day until completed.

All counsel of record are invited to attend the deposition and examine the deponent in accordance with applicable rules.

HYBRID ATHLETICS, LLC

July 21, 2015

/s/ Michael J. Kosma

Wesley W. Whitmyer, Jr.

Michael J. Kosma

Whitmyer IP Group LLC

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Stamford, CT 06901

Tel. (203) 703-0800

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Email: litigation@whipgroup.com

mkosma@whipgroup.com

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing OPPOSER'S NOTICE OF TRIAL DEPOSITION was served by electronic mail and first class mail, postage prepaid on the Correspondent for the Applicant as follows:

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Tsircou Law, P.C.
515 S. Flower Street, Floor 36
Los Angeles, CA 90071-2221
kyri@tsircoulaw.com

July 21, 2015
Date

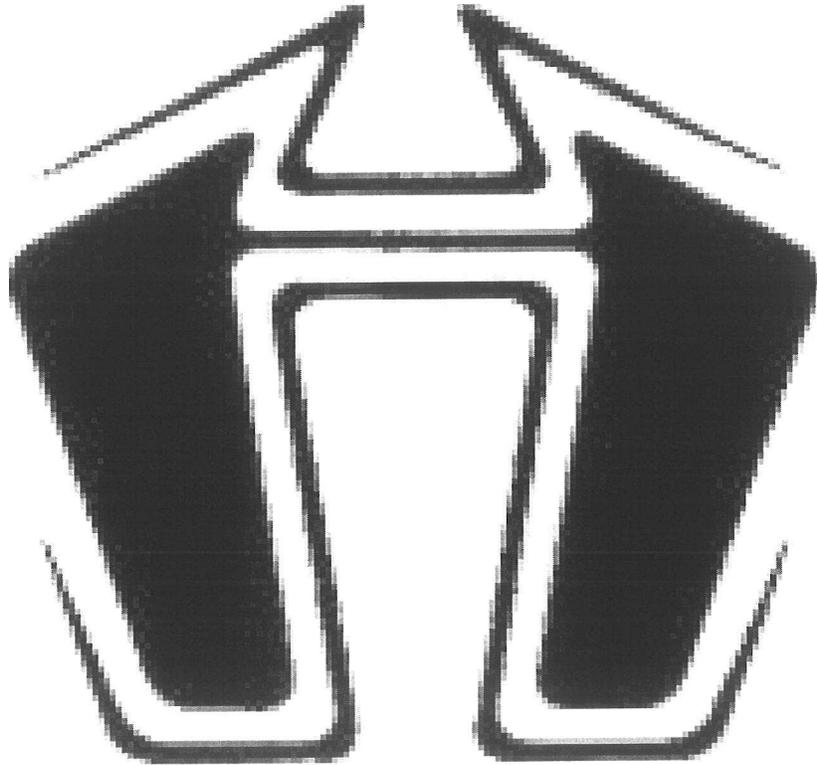
/s/ Joan M. Burnett
Joan M. Burnett

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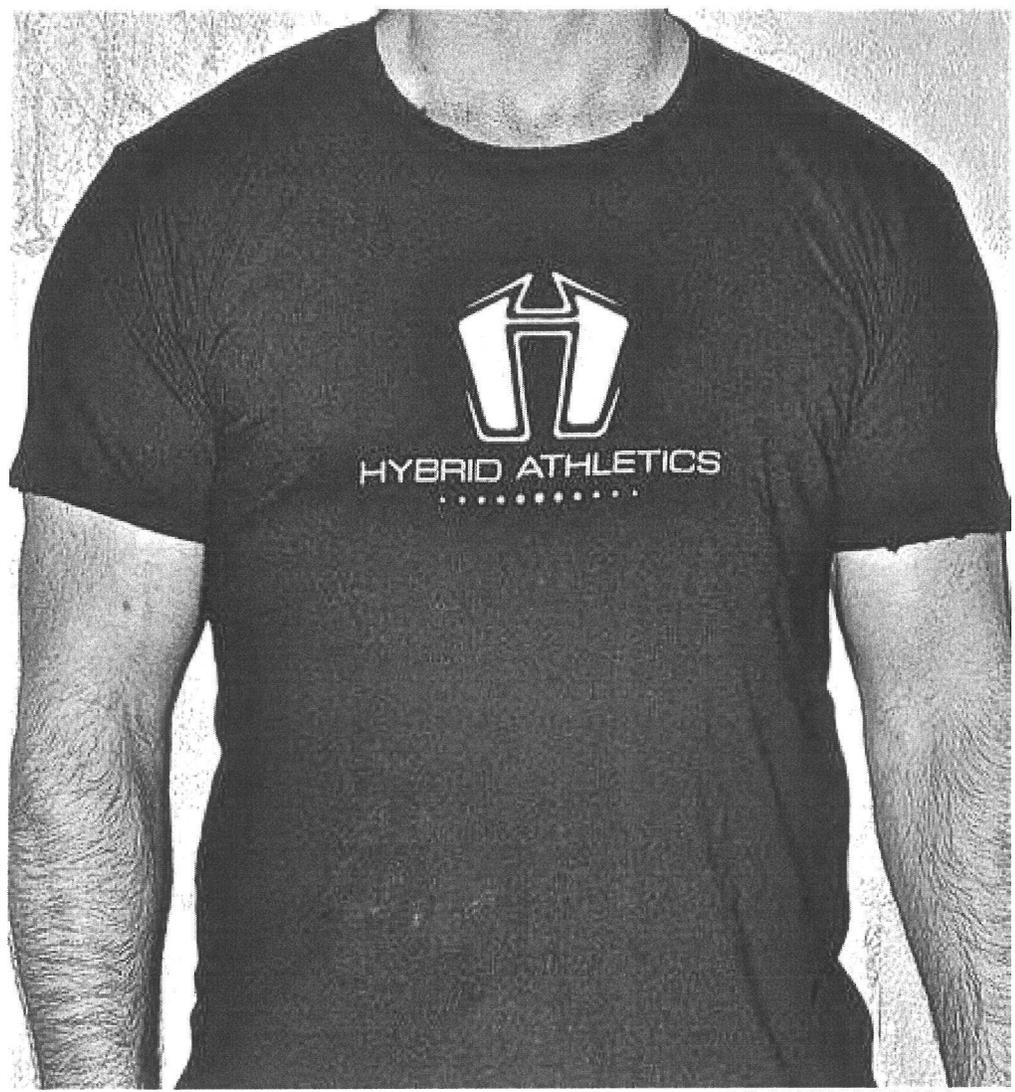
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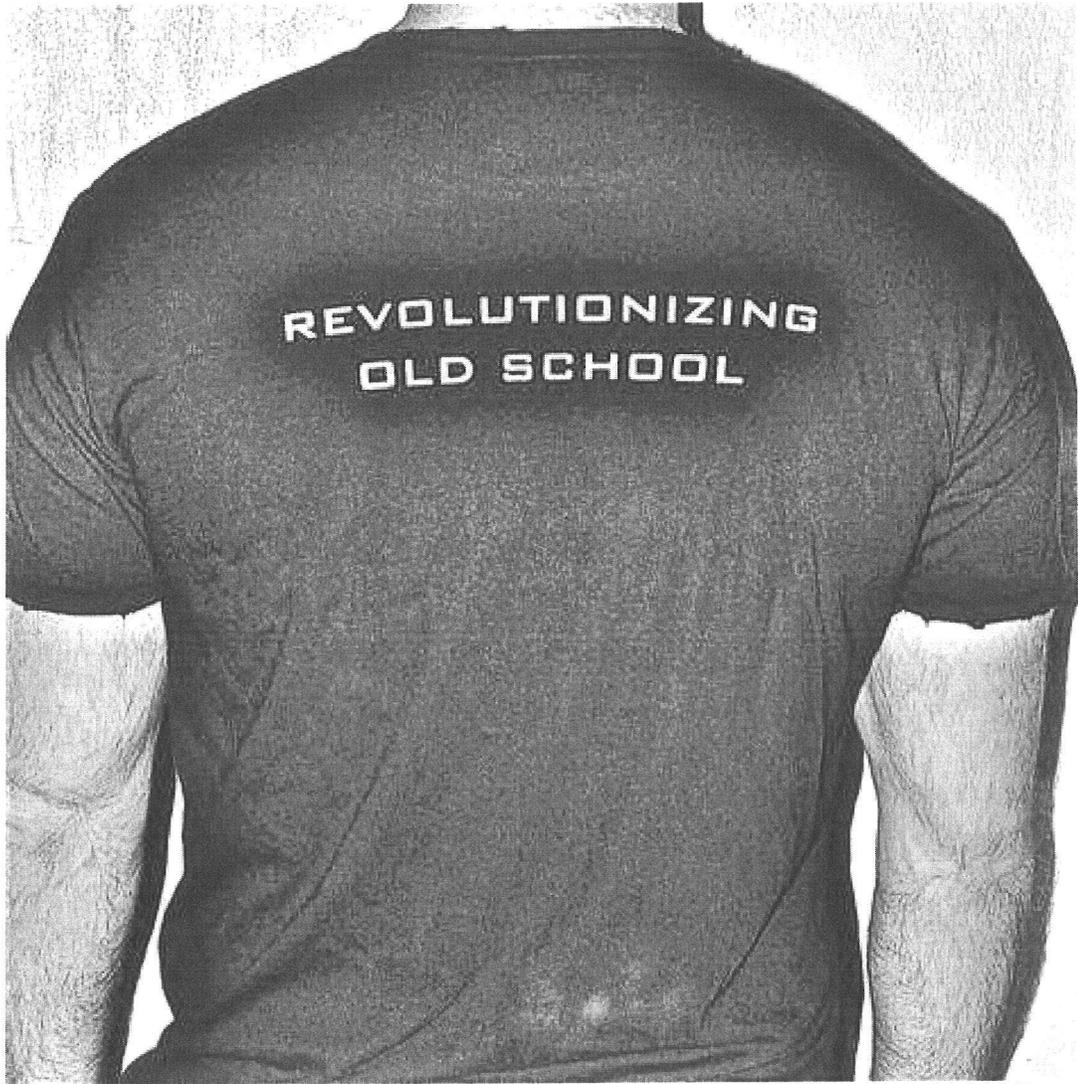
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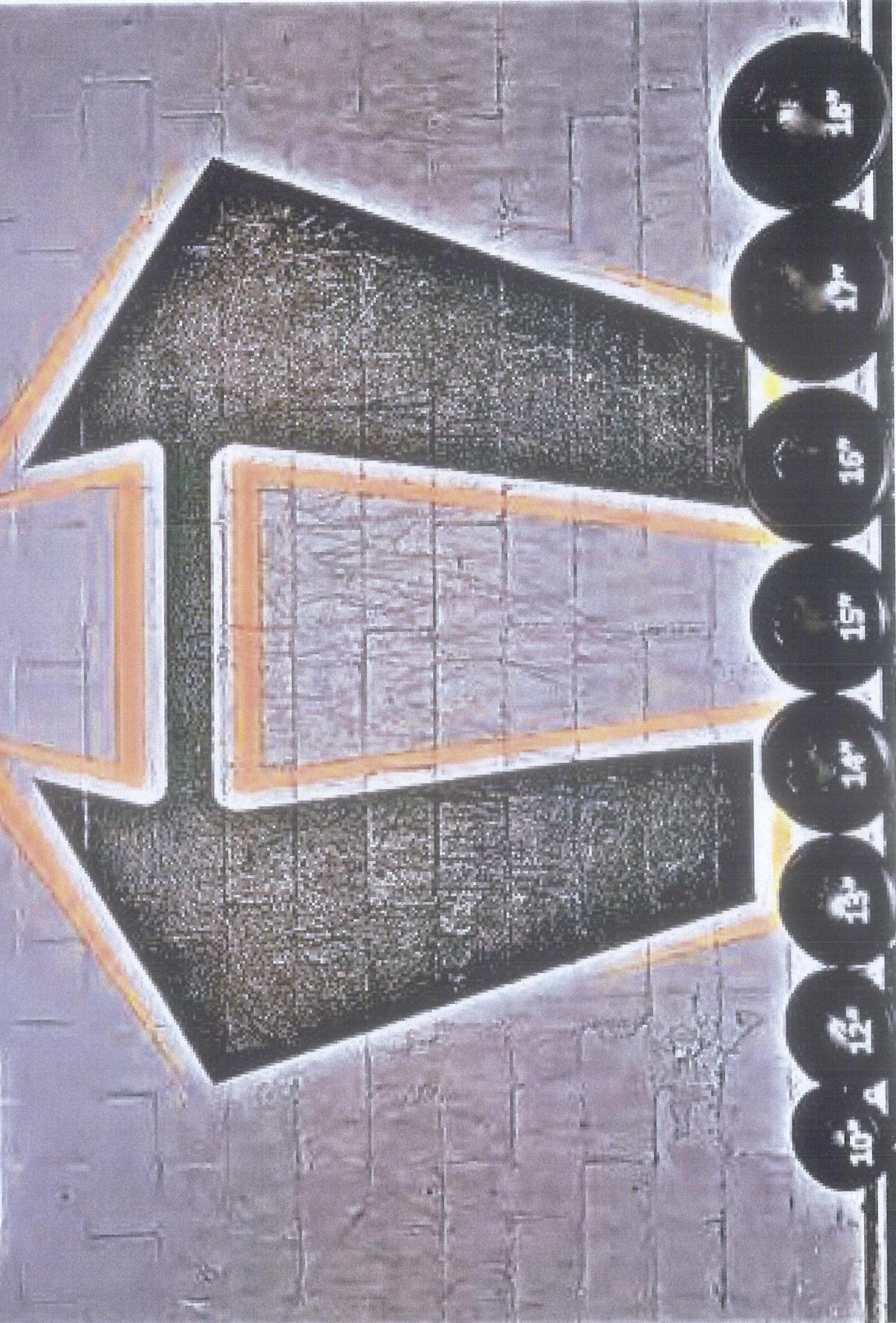
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Jan. 1st 2015

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- 10"
- 11"
- 12"
- 13"
- 14"
- 15"
- 16"
- 17"
- 18"



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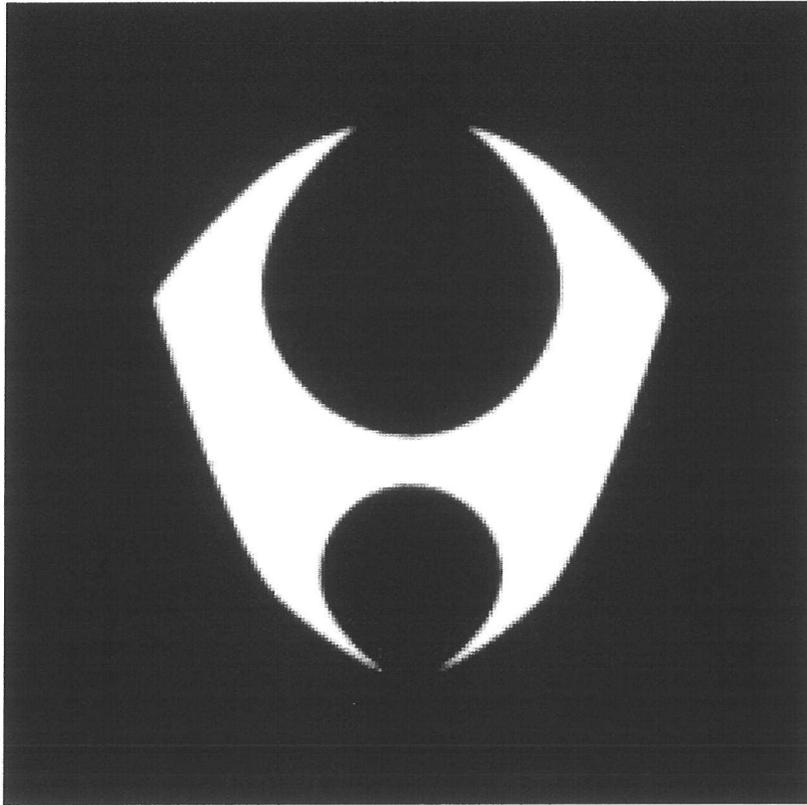
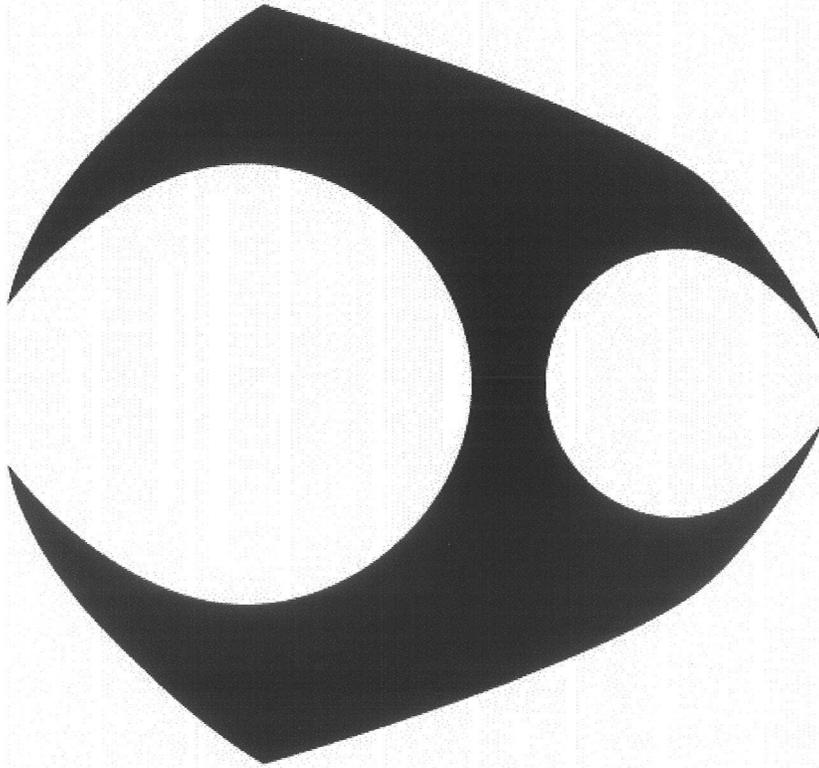
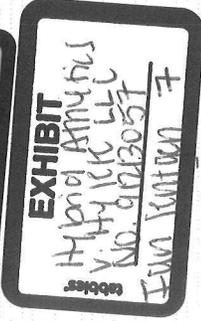
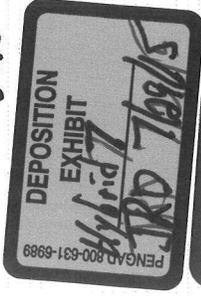


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