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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	10/15/2015
Attachments	Notice of Filing Saran.pdf(200679 bytes) Dale Saran.pdf(5100654 bytes) Exhibit 1 - 3.pdf(1301424 bytes) Exhibit 4.pdf(4598514 bytes) Exhibit 5 - 10.pdf(2960611 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 SARAN 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 Dale Saran, taken on August 4, 2015, and all exhibits thereto.

Respectfully submitted,

HYBRID ATHLETICS, LLC

October 15, 2015

/s/ Michael J. Kosma
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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing OPPOSER’S NOTICE OF FILING SARAN 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 August 4, 2015, of Dale Saran 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

October 15, 2015
Date

/s/ Joan M. Burnett
Joan M. Burnett

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August 4, 2015

10:51 a.m.

DEPOSITION of DALE SARAN, taken by the Opposer, held at the offices of Whitmyer IP Group, 600 Summer Street, Stamford, Connecticut, before Angela M. Shaw-Crockett, a Licensed Shorthand Reporter, Registered Merit Reporter and Notary Public of the States of New York, New Jersey and Connecticut.

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ALSO PRESENT: Ron Wilson, Hylete, LLC

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(All exhibits marked during the deposition were retained by Angela Shaw-Crockett, The Court Reporter.)

1 D A L E S A R A N,

2 called as a witness, having first been
3 duly sworn, was examined and testified as
4 follows:

5 MR. KOSMA: I'd like to start by
6 identifying everyone in the room.

7 MR. BEGAKIS: John Begakis, attorney for
8 Hylete, LLC.

9 MR. WILSON: Ron Wilson with Hylete.

10 EXAMINATION BY

11 MR. KOSMA:

12 Q. Mr. Saran, could you state your name for
13 the record?

14 A. Dale Saran. And that's S-A-R-A-N, like
15 Saran Wrap, but no relation.

16 Q. And where do you live?

17 A. Oceanside, California, right now.

18 Q. Mr. Saran, my name is Michael Kosma. I am
19 an attorney for Whitmyer IP Group and I represent
20 Hybrid Athletics in a matter -- an opposition matter
21 before the TTAB for the logo of the Hylete H versus
22 the Hybrid H.

23 This is a deposition in which I ask you
24 questions. You must answer them truthfully.

25 Although no judge is present, this is a formal legal

1 proceeding just like testifying in court. You are
2 under the same legal obligation to tell the truth,
3 the whole truth, and nothing but the truth.

4 If you do not understand any of my
5 questions, please feel free to say so and I will
6 repeat or rephrase it.

7 Before the deposition can be used in court
8 you will have the opportunity to read over it and
9 correct any mistakes.

10 Do you understand?

11 A. I do.

12 MR. KOSMA: Mark this Exhibit 1.

13 (Hybrid Athletics Exhibit 1 was received
14 and marked for identification, as of this date.)

15 BY MR. KOSMA:

16 Q. Mr. Saran, do you recognize this document?

17 A. I believe so.

18 Q. What is this?

19 A. The deposition notice that I received from
20 you, I think via e-mail last week sometime, I
21 believe.

22 Q. Is this why you're here today?

23 A. It is.

24 Q. Thank you.

25 Mr. Saran, what's your current job?

1 A. I'm the general counsel for CrossFit, Inc.

2 Q. And how long have you worked there?

3 A. Depends on how you define "worked." I
4 started doing legal work for them in 2008, but I was
5 in private practice at that time and they sort of
6 were a client. And it quickly morphed into me
7 essentially being their lawyer. I really didn't --
8 we shook on that in January of '09, and I'm
9 embarrassed to admit, as an attorney, I still don't
10 have an employment agreement with CrossFit, Inc.

11 So Greg's handshake was good enough for me
12 and it has been since. I don't think I officially
13 became an employee until a while after that, but I
14 was de facto CrossFit's general counsel from --
15 starting in 2009.

16 Q. You mentioned Greg. Who is Greg?

17 A. Greg Glassman, the CEO and founder of
18 CrossFit, Inc., and of CrossFit.

19 Q. Going back, what did you do after high
20 school?

21 MR. BEGAKIS: Objection, calls for
22 narrative.

23 BY MR. KOSMA:

24 Q. You can --

25 A. Can I answer?

1 Q. Yeah.

2 Where did you go to college?

3 A. High school -- I went to three high
4 schools in four years, oddly enough. But graduated
5 from Westerly High School not too far from here.
6 And then went to -- I had an NROTC, a Naval ROTC
7 scholarship, so I went to Boston University on a
8 Navy ROTC scholarship.

9 Q. What year was that?

10 A. 1987. 1987. Quickly saw the light when I
11 met my first Marine officer and changed my option
12 and became a Marine option. Ultimately, I got
13 commissioned in 1991 as a second lieutenant in the
14 Marine Corps.

15 Q. What was your major at BU?

16 A. Aerospace engineering for two years until
17 I discovered or figured out that I really didn't
18 want to work that hard. And so I switched to -- I
19 graduated. I got a bachelor's of art in English.
20 Thankfully the English department took all my
21 engineering credits or I'd have been in big trouble.

22 Q. And what did you do for employment after
23 college?

24 MR. BEGAKIS: Objection, relevance.

25 A. I was a Marine officer and I finished

1 basic school, which every Marine officer goes to.
2 It's 26 weeks of infantry training. I then went to
3 flight school and then eventually became an attack
4 helicopter pilot in the Marine Corps.

5 BY MR. KOSMA:

6 Q. How many years were you in the Marine
7 Corps?

8 A. Active and reserve, I left in 2013, so
9 22 years, but I had what's called broken time. I
10 had some other time where I did some other things in
11 there.

12 But I -- while I was a pilot, I got picked
13 up for something called the Funded Law Program in
14 '96, on the board in '96, and then Marine Corps sent
15 me to law school. I graduated from there and then
16 went to Naval Justice School and then became a judge
17 advocate and was up until 2013 when I left.

18 Q. What law school did you go to?

19 A. University of Maine, in Portland.

20 Q. What was your rank when you left the
21 military?

22 MR. BEGAKIS: Objection, relevance.

23 A. I was a major.

24 BY MR. KOSMA:

25 Q. And what year did you join the Marines?

1 MR. BEGAKIS: Objection, relevance.

2 A. Technically, I enlisted -- in 1987, I
3 signed that enlistment document, but I was
4 midshipman. I was an officer under training. So
5 really I did 27 years or 26, but those four don't
6 count for anything, but they counted in my life.

7 Q. What year did you graduate the University
8 of Maine?

9 A. '99. And took the bar and then I was
10 barred in Maine in '99.

11 Q. And where did you work after you became
12 barred in Maine?

13 A. Well, I -- first orders I got were to
14 Okinawa, Japan, where I was assigned as a trial
15 defense counsel for the Western Pacific region. And
16 so I was a defense attorney there for a year.

17 And then I -- because of some problems
18 with one of my daughters, we had to come back to the
19 States, and so we wound up at Quantico where I was
20 the chief prosecutor for a couple of more years. I
21 forget. And then I got out. It was just after
22 9/11.

23 I did the -- I did a year of independent
24 duty, and then I left the Marine Corps and did some
25 other work, and then eventually I came back to the

1 Marine Corps.

2 Q. And did you practice law after you left
3 the Marine Corps?

4 A. Yes.

5 Q. In what capacity?

6 A. Private practice. I did a number of
7 different things. I did some investment advising.
8 I had my Series 65, in Massachusetts. I did some
9 estate planning work. I did a bunch of things. I
10 got kind of dragged back into the Marine Corps just
11 after I got back from Afghanistan in 2006.

12 Q. And you were an attorney for the Marine
13 Corps again in 2006?

14 A. Yes. In fact, I was an instructor at the
15 that Naval Justice School. I was on the staff
16 there. And I taught trial advocacy and military
17 justice. And I was also -- simultaneously, I was
18 assigned there but I was brought back to defend two
19 different Marines, part of larger cases, the
20 Hamdania -- the murder trials. I was defending a
21 Marine in each of those cases.

22 Q. Was all your work for the Marine Corps
23 trial work?

24 A. No. Eventually, you know, like anything
25 else, you do something long enough and you get

1 promoted enough and then you just tell other people
2 how to do what you used to do. So I was the
3 regional defense counsel for the Western Pacific for
4 a while.

5 And then I was the regional defense
6 counsel for the East Coast. And that consisted of
7 things like -- I did trainings for like all the
8 judge advocates who were defending the Guantanamo
9 Bay detainees. Our job was to train them. It was
10 kind of an interservice thing. So we had a lot of
11 weird jobs while I was -- but training a lot.

12 And -- but I would also take cases. When
13 you get to a certain rank, senior officers rate --
14 they're not going to get a brand-new defense
15 counsel, for example. And so I would still handle
16 cases for senior officers and things of that nature.

17 Q. And how did you start working for
18 CrossFit?

19 MR. BEGAKIS: Objection, calls for
20 narrative.

21 A. I was -- the short answer is I met Greg
22 Glassman after I competed at the 2007 CrossFit
23 games, the first annual CrossFit games, and he asked
24 me, when the games were over, if I was interested
25 in -- if I would be his guest at the first

1 seminar -- Level 1 seminar they were going to do at
2 SQT, which is SEAL Qualification Training, in
3 Coronado.

4 And so I went as his guest, and
5 participated as a student in that Level 1 with all
6 the BUD/S graduates from that class. I don't
7 remember what class it was.

8 And so I got my Level 1, and then
9 eventually there was -- he was -- CrossFit was
10 running a Level 1 on Quantico Marine Corps base
11 where I had been the chief prosecutor not that many
12 years prior. And so he asked me to be on staff for
13 that, to come as one of the instructors for that
14 Level 1. So I did that and that was the beginning
15 of the relationship.

16 BY MR. KOSMA:

17 Q. So you were a CrossFit athlete before
18 getting employed for CrossFit?

19 A. Yeah.

20 MR. BEGAKIS: Objection, leading the
21 witness.

22 A. I competed in both the 2007 games, the
23 2008 games, and I tried to get there in the 2009
24 what we then called sectionals.

25 And every year ever since, I put in my

1 sweat equity, pay my 20 bucks, and compete just like
2 everybody else.

3 BY MR. KOSMA:

4 Q. Did you place in the CrossFit games?

5 MR. BEGAKIS: Objection, relevance.

6 A. First year, I tied for 12th, I think, with
7 Russ Greene, who also now works for us,
8 coincidentally. And then, the second year, I think
9 out of whatever the field was, 300, I think I was
10 like 43rd or -5th or something like that. Then,
11 after that, real athletes started showing up.

12 BY MR. KOSMA:

13 Q. What year did you meet Greg Glassman?

14 A. Online, we had discussion, e-mails as far
15 back as 2005, but I didn't meet him in person until
16 2007.

17 Q. When you say "online," what do you mean?

18 A. CrossFit's website was largely a blog. It
19 may have been one of the earliest blogs, although I
20 don't think people think of it that way,
21 crossfit.com. But essentially it was a -- a workout
22 would be posted and then there was a little link to
23 click and it would say post time to comments, post
24 thoughts to comments, post rounds completed,
25 whatever.

1 And I was a pretty regular poster there,
2 because I was in Afghanistan. You've got nothing
3 else to do when you're not on missions.

4 So it became a kind of place where you
5 could have these online dialogues, almost like the
6 early Internet habit, those Usenet message boards,
7 news groups. It was kind of like that. You would
8 leave your times and maybe a comment, and if you
9 checked later in the day, people might respond,
10 people might -- you would have ongoing discussions
11 there.

12 And since every rest day was a day where
13 it was not a workout, some kind of thought-provoking
14 article or poetry or something would be posted. And
15 I was a pretty active participant in those
16 discussions. And it would include back-and-forths
17 with the people who are now my colleagues, guys like
18 Brian Mulvaney, M-U-L-V-A-N-E-Y, Greg Glassman, and
19 others, who were the early adopters of the
20 methodology.

21 So I guess I've known him -- I knew him, I
22 thought, through his online persona as far as back
23 as 2005 and '6.

24 Q. What year did you meet him personally?

25 A. 2007.

1 Q. You mentioned you were at the first
2 Level 1 --

3 MR. BEGAKIS: Objection, leading the
4 witness.

5 BY MR. KOSMA:

6 Q. -- certificate course. Or what do they
7 call it?

8 A. It's a Level 1 seminar. It's now called
9 the Level 1 certificate course. We used to just
10 call them Level 1 seminars.

11 And, no, it was not the first one. They
12 had been doing Level 1s well before me. But it was
13 the first one that was held at SEAL Qualification
14 Training aboard Coronado. So it was the first SQT
15 gig, as we like to call it, that we had done.

16 Q. You mentioned before you became general
17 counsel at CrossFit in 2009?

18 A. That's about right.

19 Q. And have you held any other titles at
20 CrossFit?

21 A. I was -- before I was general counsel, I
22 owned an affiliate. So I guess licensee was also
23 one of my titles, and not a title. I was a
24 licensee. I was an affiliate owner. One of maybe
25 the first, I don't know, 300.

1 When it looked like I was going to
2 become -- I was going to have CrossFit as a client,
3 I voluntarily folded up my gym, gave the website to
4 a later affiliate that came along. They wanted the
5 name and so I gave it to them. But, yeah, I had a
6 gym for about nine months, in 2008. So I was one of
7 CrossFit's gym owners.

8 Q. What was the name of that gym?

9 A. CrossFit Veritas, V-E-R-I-T-A-S.

10 Q. And where was that located?

11 A. Rhode Island. It was in a place called
12 Battleground Training Center in East Greenwich,
13 Rhode Island. And that's Greenwich, but it's
14 pronounced, by Rhode Island, as Greenwich. But it's
15 G-R-E-E-N-W-I-C-H.

16 And I was the only one for a while until
17 CrossFit Providence came along.

18 Q. In your own words, would you describe what
19 CrossFit is?

20 MR. BEGAKIS: Objection, calls for
21 speculation.

22 A. Constantly varied functional movements
23 executed at high intensities is what -- that's
24 the -- that's the easy definition, the quick one
25 that you'll get at the Level 1. But it's a brand of

1 fitness services.

2 BY MR. KOSMA:

3 Q. Does CrossFit own gyms?

4 A. No -- well, no, not the way you probably
5 mean that question. We don't have any corporate
6 gyms meaning CrossFit, Inc., does not run gyms. Our
7 affiliates are licensees.

8 And the only corporate gym we have is the
9 one that's at our offices where people, employees
10 work out. That's not -- it's not really a gym. It
11 has no -- doesn't have a name. It's not a licensee.

12 So, no, we don't own any gyms. We have no
13 corporately owned stores or any of the kind.

14 Q. Can you describe what a licensee is?

15 MR. BEGAKIS: Objection, calls for
16 narrative.

17 A. Sure. Generally or specifically of
18 CrossFit?

19 BY MR. KOSMA:

20 Q. For CrossFit.

21 A. For CrossFit, our licensees are the
22 affiliate gyms we have. And so they are -- there's
23 a certain process that they have to go through to
24 become licensees, which includes going through the
25 Level 1 certificate course, which is ANSI-accredited

1 and has a test at the end you have to pass. And
2 then -- and you have to sign a trainer license
3 agreement, so you become a licensee there as a
4 trainer. And that includes how you can or can't use
5 the CrossFit trademark.

6 And then, after you've been trainer, you
7 can apply to become an affiliate. And that would be
8 to open one of our licensed gyms. And we have to
9 submit an essay, and we have a proprietary screening
10 mechanism as to how we figure out who we're going to
11 let in and let out.

12 And then if we agree to be in business
13 with you, then there's a sort of list of -- a
14 checklist of things you have to complete, you know,
15 including insurance and an address and a website and
16 got to pick a name and all these other things that
17 have to be done.

18 And then, ultimately, you'll sign the
19 license agreement, pay your fee, and then become a
20 licensee of CrossFit, Inc.

21 Then the only other licensees we have are
22 those who we license using them for like the annual
23 CrossFit games, sponsors and other people like that
24 associated with the games, including Reebok. Those
25 are really our three sort of categories of

1 licensees.

2 Q. You said "sponsors." They license the
3 trademark?

4 MR. BEGAKIS: Objection, leading the
5 witness.

6 A. We have sponsors for the games and they
7 license use of the CrossFit name in conjunction with
8 the games generally. And then we have the deal with
9 Reebok where they license -- it's a much more
10 comprehensive ten-year deal and that's -- they're
11 kind of their own category almost. But we do have a
12 few other arrangements with some other companies.

13 BY MR. KOSMA:

14 Q. Approximately how many gyms are licensees
15 right now?

16 MR. BEGAKIS: Objection, calls for
17 speculation.

18 A. 12,400, and as of -- I think I heard
19 12,473 last week. But, on average, a new CrossFit
20 licensee opens every 2 hours and 24 minutes
21 throughout the day. And so it's ten a day every
22 day. And that's, right now, where we're at. So if
23 it was 12,473 last week, it's 2 hours 24 minutes
24 times however many hours it's been and, you know,
25 we're probably at twelve six or something now.

1 BY MR. KOSMA:

2 Q. Do you know how many of those gyms are in
3 the United States?

4 A. Just over 7,000, 7,100 roughly.

5 Q. Do you know approximately how many people
6 participate in CrossFit?

7 MR. BEGAKIS: Objection, calls for
8 speculation?

9 A. It's interesting. We've had some
10 discussions with econometrics and professors and
11 some actuaries, and I also sit on the board of
12 directors for the CrossFit Risk Retention Group.
13 It's -- it was one of the early tasks I had. I
14 actually set that whole thing up, with -- not by
15 myself. With a lot of other people. It was a labor
16 of love for quite some time for me.

17 And so we've got 2,100, 2,200 now,
18 probably, U.S. affiliates and -- but we also have --
19 as part of being their insurer, we have all the
20 data, at least that's self-reported, regarding
21 membership and a lot of other things about our
22 affiliates.

23 And so you can take that -- recently we've
24 had some people pull that data, and I've played
25 around with the numbers. There's a bunch of other

1 different ways to come at it, but -- to try and
2 determine what the CrossFit ecosystem looks like.
3 And there's other ways, but -- you know, unique
4 website views and things like that.

5 4 million is the number we tossed around
6 worldwide, but it could be more. We try to be
7 conservative in our estimates. It's just that it --
8 not that it really even matters, but that's just
9 what -- that's the number that kind of feels right
10 to us, given all the ways we have of looking at it.

11 Q. You just mentioned 2,100 affiliates. Is
12 that CrossFit gyms or is that risk retention?

13 A. Those are CrossFit affiliates who are also
14 members of the CrossFit Risk Retention Group. And
15 that includes being -- under the Federal Risk
16 Retention Act, they're member owners.

17 So they all own a capital ^{stake} ~~state~~ in that X3
18 insurance -- it's not an insurance company
19 technically. It's a risk retention group. But
20 they're all owners and policyholders, and we've got
21 almost 2,200. And we've got -- it's been around for
22 almost six years now, and so we've got a fair bit of
23 data and trend lines to go with it.

24 Q. You mentioned the CrossFit games before.
25 Could you describe what the CrossFit games are?

1 MR. BEGAKIS: Objection, calls for
2 narrative.

3 A. The annual competition held by CrossFit to
4 determine the fittest man and fittest woman on the
5 planet. And we've got some subcategories of that.

6 And our fittest affiliate, the affiliate
7 cub. And that's our sort of internal community
8 competition to see who -- what affiliate has the
9 fittest folks.

10 BY MR. KOSMA:

11 Q. And approximately how many people
12 participate in the CrossFit games?

13 A. 273,000 signed up this past year,
14 2-7-3-0-0-0.

15 Q. Do you know approximately how many of
16 those are from the United States?

17 A. Ew, that, I don't know. But that's
18 around -- that is around the world. And I think the
19 numbers I saw is something like people signed up
20 from over 120 countries. And it's -- so far as
21 we're aware, it's the largest participatorial
22 sporting event in the world.

23 There was some marathon that had beat us
24 out last year when we had two hundred and -- I
25 forget -- 223,000 last year, I think. And somebody

1 beat us out, some big giant something, participatory
2 thing. But I think we swamped them this year.

3 Q. So that was the record for participation
4 or --

5 A. Yeah, that is the single largest
6 participatorial sporting event, where that many
7 people sign up and participate, do at least one of
8 the five open workouts, submit a score, have it
9 judged either at an affiliate or by video online,
10 and throw their hat into the ring to say, hey, I
11 want to see where I stack up against everybody else
12 who's willing to do the same and do these workouts
13 and see where I stack up.

14 Q. When did the CrossFit games start?

15 A. July -- oh, I can't -- is it 25, -6, and
16 -7 maybe of 2007. Might have been 24 through 26. I
17 can't remember, but it was summer. It was late July
18 of 2007. That was the first games.

19 Q. And how often are they held?

20 A. They're held annually. And it's a -- now
21 it's become a qualifying process that there's
22 basically a season that begins in February and then
23 runs all the way through the end of July. And that
24 includes the five weeks of the open workouts that go
25 from basically late February all the way through

1 March. It's our March madness.

2 And then the regionals begin in May. And
3 those are a series of events in person held among
4 the people who finish at the top of that five-week
5 competition. They now go to an in-person three-day
6 competition at sites around the world, different
7 regions.

8 And then those people, the top three or
9 four from each of these regions then go -- the top
10 40 men and women and teams from around the world
11 show up to Carson, California, at the StubHub Center
12 and do what we did just a week ago last -- it's a
13 week from this past weekend.

14 Q. How many people attended as spectators for
15 the games?

16 MR. BEGAKIS: Objection, calls for
17 speculation.

18 A. Every year that I've been there, we break
19 the attendance record, so I don't know what it was
20 this year yet. I haven't heard back. But we
21 crushed that place. I know -- I know last year that
22 stadium, on one day, had 23,000 people in it. I
23 don't know what it did this weekend total. But it's
24 the crowdest I can remember it. And I've been to
25 every one.

1 BY MR. KOSMA:

2 Q. You've attended every CrossFit games?

3 A. Yes.

4 Q. Besides the physical -- strike that.

5 What else happens at the CrossFit games?

6 Are there also promotions or --

7 MR. BEGAKIS: Objection, leading the
8 witness.

9 A. So, like any other sporting event, you
10 know, the way you defray the cost is through
11 mutually beneficial agreements with companies who
12 want to come and exhibit their wares and sell them
13 there at the games.

14 And so we, throughout the game season, now
15 it's gotten to the point there's enough of a
16 television audience that we sell advertising space
17 on the open announcements. So each week of the
18 open, on a given night, like it's either a Wednesday
19 or a Thursday, we'll have a live-streamed television
20 event full-on production competition between two or
21 four or some group of athletes. And we will do a
22 live event where the director of the games, Dave
23 Castro, will announce the event. And they'll have
24 this competition. A good number of eyeballs watch
25 it and so we can sell ad space there.

1 Then you move forward to the regionals and
2 we have --

3 BY MR. KOSMA:

4 Q. You mentioned exhibitors.

5 A. Yeah, we have booths.

6 It's gotten -- the regionals now dwarf
7 what the games itself was even in 2010. Like going
8 to a CrossFit -- I went to the Southern California
9 regional. I also hit a lot of the regionals. I've
10 been to tons in Europe, all over the place. The
11 CrossFit games regionals are now bigger than the
12 original CrossFit games were for the first four
13 years.

14 So to go to the Southern California
15 regional, which is now held at Del Mar Fairgrounds,
16 the number of booths and exhibitors and people
17 selling things and just the economy that's grown up
18 around that, for someone who started at Dave
19 Castro's parents' ranch in Aromas, it's a bit --
20 it's stunning sometimes to take a look at it.

21 But there's an entire economy that goes
22 around that, which includes live broadcasts. We're
23 doing a full-on sporting -- live sports event.

24 We've got announcers. We've got volunteers.

25 It's -- it's a terrible use of the word, but it's

1 nuts. It's a little crazy.

2 But each of those regionals has an economy
3 that surrounds it. And we sell the space for
4 those -- there's prime space for vendors and
5 exhibitors, and we have sort of title sponsors.
6 Reebok got some right to some space and Rogue
7 provides all the equipment.

8 Rogue equipment manufacturing, they've got
9 some prime real estate there as well. And then it
10 just trickles down from there. I mean, Rogue's at,
11 a rough estimate -- I don't know anything, but
12 that's a 200- to \$300 million company now, as a
13 guess.

14 And Reebok is obviously a
15 multibillion-dollar company, and so it's not --
16 we're not in Kansas anymore.

17 Q. You mentioned the CrossFit economy. Do
18 you have any --

19 MR. BEGAKIS: Objection, leading the
20 witness.

21 BY MR. KOSMA:

22 Q. -- idea how big that is?

23 A. We have estimates. And my boss has a
24 great line about whether we're wrong or right about
25 the estimates. It's a multibillion-dollar economy.

1 That's for sure. I know that for sure.

2 Now, if we're wrong -- if I said it was a
3 \$2 billion economy and it was really a \$1 billion
4 economy, I'd only be wrong for 15 to 18 months,
5 because our entire ecosystem doubles roughly every
6 18 months. So if I'm overstating it, it won't be
7 for long. It just continues to grow.

8 But I would guess it's a -- I've heard 3-,
9 \$4 billion economy. And I've seen things in Forbes
10 and other people have taken stabs at it. Who knows?

11 Q. How are you involved in the CrossFit games
12 as a general counsel?

13 A. You know, not as much as I used to be.
14 But, I mean, I wrote the drug-testing program, or at
15 least the first version of it. And it's undergone a
16 lot of revision since then. And I have some inputs
17 there occasionally. I usually get an annual kind of
18 review of that when we do our washdown.

19 And then some of the exhibitor -- I get
20 involved with some of that. That's generally run by
21 Steve Weiss, who handles a lot of that, in fact,
22 handles that specifically. But originally that was
23 me and Eric Black, and so I'm fairly -- before Steve
24 came along, I was doing all of that, so I'm -- but
25 that was in the early days of it.

1 But I have my hands in a lot of what goes
2 on at the games at a lot of different levels.
3 Things come up with our broadcast partner, with
4 ESPN. For example, I might have to interface
5 with -- you know, we got a problem with the YouTube
6 feed and we've had different kinds of things come
7 up. So it's just anything and everything.

8 Q. Are you involved in the negotiation of
9 contracts with ESPN?

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

12 A. Some of it, yes.

13 But involved, it depends on how you mean
14 it. But ultimately, look, my job is to provide
15 legal advice to CrossFit's CEO and founder and sole
16 shareholder. So I suppose I'm involved in some
17 sense in just about everything that goes on, except
18 the stuff I miss.

19 But I might be involved -- I might not be
20 talking to my counterparts in ESPN. Then again, I
21 might. It just depends. I mean, I know who they
22 are. They know who I am. If I don't -- if there's
23 not a reason to talk to them, I don't. But
24 occasionally there is and we do.

25

1 BY MR. KOSMA:

2 Q. As a CrossFit licensee, what does that
3 provide for a gym?

4 MR. BEGAKIS: Objection, calls for a
5 narrative.

6 A. It gives you the right to use the name in
7 your business.

8 BY MR. KOSMA:

9 Q. The name?

10 A. The name CrossFit. So it gives you the
11 right to use the trademark.

12 There are some limitations on it. I'm
13 happy to give either or both sides a copy of our
14 most recent license agreement, and you could see
15 what they are. But it's a fairly exhaustive list
16 about the sort of dos and some of the don'ts.

17 But, for the most part, it allows them to
18 use their -- use the CrossFit name on their gym in
19 advertising for the gym, what we call promotions.
20 And that's a fairly limited sphere of things. It's
21 largely T-shirts. And then if you want to put your
22 name on some coffee mugs for your members, we're
23 cool with that, other kinds of promotional items.

24 Where that line is always reminds me of
25 that line from the movie Fletch about, you know,

1 "That's where we get into a gray area." And his
2 editor says "How gray?" And he says, "Charcoal."

3 And we get into some -- we have some
4 things where we have to yank some affiliates up
5 short because they think they're going to start
6 running a coffee mug business rather than a CrossFit
7 gym because the coffee mug sales are doing so well.
8 So every once in a while -- that's an example.

9 That's just a fictitious example. But we
10 have those kinds of issues where people take the
11 license agreement and think that's an opportunity to
12 print money. But we're pretty insistent that the
13 gyms are there to be centers of training excellence
14 not -- and that means making people better, not
15 selling tchotchke.

16 Sorry. I don't know how to spell that. I
17 just know the word.

18 BY MR. KOSMA:

19 Q. How important is the CrossFit trademark?

20 MR. BEGAKIS: Objection, calls for
21 speculation.

22 A. It is everything. We -- ultimately, we
23 have but one source of income and that is the
24 goodwill that's associated with our mark. Greg's
25 invention, discovery -- invention of what fitness is

1 and how to improve it is not amenable to
2 intellectual property. So it's more like a recipe
3 than a patent.

4 And so we explored that -- Greg had before
5 I came on board and I explored it later with some
6 big law firms like Wilson Sonsini Goodrich &
7 Rosati -- and I'll get you those spellings, sorry --
8 out of San Francisco. They do a lot of Silicon
9 Valley IP, big West Coast IP law firm. And they
10 were pretty adamant that there was no patent there
11 and there was really nothing protectable other than
12 the trademark.

13 And so the trademark for CrossFit is -- I
14 mean, it is our life's blood.

15 BY MR. KOSMA:

16 Q. Do you regularly enforce the CrossFit
17 trademark?

18 A. Yes, I regularly enforce the CrossFit
19 trademark. We've -- when I started three years ago
20 we put up an online IP theft form, we called it.
21 And it's still there, iptheft.crossfit.com. And
22 since then, we've had over 15,000 submissions to it
23 in three years. So we're averaging 5,000
24 submissions a year. And if you break that down,
25 it's 400 a month. And it's 400 a month, every

1 month, rain or shine.

2 And I've been doing that -- even before
3 that existed, the IP theft box used to be my e-mail
4 in-box. And ultimately I had to -- we had to create
5 that form. We had some other early iterations of
6 that.

7 But, I mean, look, I don't know if anybody
8 has read the paper, but I don't exactly have a great
9 wrap about how I enforce CrossFit's trademark. I
10 know -- I know -- I can't remember the guy at --
11 Burt Helm at Inc. magazine seems to think I'm a bit
12 of a zealot in protecting CrossFit's trademark.

13 So, yes, I've used over 80 outside counsel
14 around the world in addition to all the stuff we do
15 ourselves.

16 Q. Why is it important to protect CrossFit's
17 trademark?

18 A. Because it is the -- it's how people
19 identify our good services in the marketplace. I
20 don't want to get into a trademark lecture. But, I
21 mean, that's how we put bread on the table and how
22 we pay our employees and how the affiliates bring
23 members in and that's it.

24 Q. How does an affiliate make money?

25 MR. BEGAKIS: Objection, calls for

1 speculation.

2 A. Well, when I was an affiliate, what I did
3 was I advertised that I was a CrossFit gym and then
4 you get clients who come in. I had, oddly enough --
5 or maybe not oddly enough, I had lawyers principally
6 from Providence. Couple of guys started training
7 with me at a law firm in downtown Providence.
8 And -- but I was working out of a boxing gym, so I
9 also had a bunch of boxers, and then one of my
10 Brazilian jujitsu students. I mean, you just had
11 your friends.

12 It's one of those things that, yeah,
13 people just kind of walk in off the street or they
14 hear about you or they come in through your website
15 or they hear it from a friend who's doing it and
16 you're the closest box. And they come in and then
17 you charge them either a monthly rate or -- I did
18 ~~private~~ ^{privates} That's how I starting teaching, was
19 doing -- I was charging folks \$75 an hour to train
20 them, to give them private one-on-ones of CrossFit.

21 BY MR. KOSMA:

22 Q. Are there other ways that affiliates make
23 money?

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

1 A. Sure. You can print up some T-shirts, but
2 those are always -- should be and are ancillary
3 kinds of things.

4 But I know -- you know, there are some
5 gyms -- as CrossFit has grown in popularity, I know
6 CrossFit NorCal, I think, sold something like
7 \$10 million in T-shirt sales or something last year.
8 17 million. I heard some absurd number. So there
9 are CrossFit boxes whose brands have become so
10 strong, either through their athletes or
11 endorsements or other relationships with other
12 companies, that they're now their own kind of
13 sub-brands, interestingly enough.

14 Trying to think. There's a few
15 affiliates, Ben Bergeron at CrossFit New England.
16 There's a few other people. I think Jason Khalipa
17 at NorCal does do some business seminars to kind of
18 help out other affiliates who are trying to find
19 their way in the business of running a CrossFit box.

20 Perfectly honest, I'm not a big fan of
21 those things, but if it helps the affiliates and
22 they believe the money that they're paying to the
23 other affiliate owners is worth it for that business
24 advise, that's -- I'm cool with freely consented-to
25 transactions among consenting adults. So that's

1 another way.

2 But we do draw the line in those ancillary
3 businesses that they should not be marketed using
4 the CrossFit trademark. So there's a lot of other
5 things that affiliates can do to make money, but not
6 within the realm of doing it under the license of
7 CrossFit umbrella.

8 BY MR. KOSMA:

9 Q. You mentioned Rogue -- was it Rogue
10 Athletics?

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

13 A. Rogue Fitness.

14 BY MR. KOSMA:

15 Q. What is that company?

16 A. Rogue started out as an affiliate as well.
17 Rogue was -- Bill Henniger was an early affiliate in
18 Columbus, Ohio. And Bill had been an engineer at
19 General Motors, design engineer, and specifically he
20 worked with steel.

21 And I can remember when Bill posted the
22 designs for one of his early pull-up rigs on the
23 CrossFit message board, just to show people what
24 he'd done. And several people asked if -- I think I
25 recall this, but several people asked if he would

1 make them one of those. And they'd pay him. And
2 they'd come pick it up and all that.

3 And, poof, Rogue Fitness was born. And it
4 very quickly -- it became big. It's a fascinating
5 story in and of itself.

6 Somebody else had the -- said -- an
7 equipment manufacturer said that no one is going
8 to -- told Greg Glassman no one is going to pay --
9 no one is going to spend the money to build
10 equipment for CrossFit affiliates -- or no one is
11 going to get rich selling equipment to CrossFit
12 affiliates. I think that was his exact quote.

13 And now the lie to that is that Bill
14 Henniger and Caity, his lovely wife, are very
15 well-to-do people running a multimillion-dollar
16 business and they just bought a city block in
17 Columbus, Ohio.

18 Q. Do you have any other examples of other
19 brands that have grown up like CrossFit and Rogue?

20 A. Tons of them. I've had the distinct
21 pleasure of being a part of watching an entire
22 economy grow. And it's been -- it's been a learning
23 experience like nothing I could possibly explain to
24 anyone.

25 But there are tons of them. I mean, your

1 clients is one example among many. Rob Orlando's
2 Hybrid Athletics. There's just tons of them.

3 I've had the distinct privilege of being
4 around to watch a lot of them launch and see --
5 Beyond the Whiteboard. I just got an e-mail or a
6 message last night falling asleep from Moe Naqvi,
7 M-O-E, N-A-Q-V-I. And he, along with the Kinnick
8 brothers, K-I-N-N-I-C-K, founded Beyond the
9 Whiteboard, and that's a phenomenally successful
10 online logging system for CrossFit workouts.

11 It's the logging tool for CrossFit
12 workouts as far as I'm concerned. There are others,
13 but the first and the largest database belongs to
14 Beyond the Whiteboard. And I watched them grow. I
15 know them. They're friends. They're like family.

16 So I could go on all day long about the
17 companies I've watched grow up that are doing quite
18 well.

19 Q. Do you know how large the economy is
20 around CrossFit, including these other brands such
21 as Rogue Fitness and Hybrid Athletics?

22 MR. BEGAKIS: Objection, calls for
23 speculation.

24 A. When I was talking before about a
25 \$4 billion economy, I was including those companies

1 in that ecosystem. But I wasn't, for example,
2 counting their revenues outside of our world. So,
3 for example, Reebok, a multibillion-dollar
4 company -- I don't know what they are, but 4- or
5 5 billion, whatever they are -- I don't include that
6 in toto.

7 What I'm including is what I know of our
8 sales of CrossFit-branded Reebok gear. I know that
9 number. I include that in our ecosystem. And so
10 when we take things like that -- and then I look
11 at -- I include in that 4 billion the other
12 companies that exist sort of exclusively within that
13 CrossFit ecosystem. And so that would include
14 companies like Hybrid Athletics. That would include
15 Rogue Fitness.

16 I mean, I know roughly what they are.
17 They might be making some -- they're making money on
18 other than CrossFit -- or excuse me -- other than
19 athletic equipment, training equipment, but it would
20 still squarely fit within the CrossFit ecosystem.
21 The people buying that gear overwhelmingly are
22 CrossFitters, for example.

23 So I think 4 billion is a conservative
24 estimate. I've seen other valuations that are
25 higher.

1 BY MR. KOSMA:

2 Q. How do you know Rob Orlando?

3 A. Rob and I go back to two thousand and --
4 2008 maybe. Could be 2009. Could be 2008. I'm not
5 sure. '8 or '9. But six, maybe seven years.

6 I met Rob, and I'm not even sure where we
7 first met. We might have met competing against each
8 other. We might have met just from being in the
9 New England area. I'm not sure, but I've known him
10 a while.

11 Q. So you've known him since 2008?

12 A. Yeah, I'd say about 2008. Late 2008,
13 maybe. I'm not sure. It could be early 2009.

14 MR. KOSMA: Mark this as Exhibit 2 into
15 evidence.

16 (Hybrid Athletics Exhibit 2 was received
17 and marked for identification, as of this date.)

18 BY MR. KOSMA:

19 Q. Mr. Saran, do you recognize this document?

20 A. I do.

21 Q. What is this?

22 A. It's the -- Rob's Hybrid Athletics logo.

23 Q. Do you know when you first saw the Hybrid
24 Athletics H?

25 A. I couldn't point you to a date. I

1 couldn't tell you, oh, Tuesday the -- not -- that
2 would be a pretty cool trick. But, no, I don't
3 know.

4 Q. Do you know approximately --

5 MR. BEGAKIS: Objection, leading the
6 witness.

7 BY MR. KOSMA:

8 Q. -- when you first saw the Hybrid Athletics
9 H?

10 A. I knew the Hybrid Athletics H probably
11 virtually simultaneously with when I knew Rob.

12 He had a gym. He came to CrossFit. He's
13 a CrossFit affiliate. And he's -- I could look at
14 when he first came on. That would probably answer
15 the question. But Hybrid Athletics was the name of
16 his company, his gym that he had. And then he
17 became a CrossFit affiliate.

18 And Rob is one of our subject matter
19 experts, so Rob is a licensee of CrossFit, Inc., a
20 direct licensee. That is he's part -- he is one of
21 the people who's part of our training staff. He
22 travels the world putting on CrossFit Strongman
23 seminars, and he's been doing that for a while. So
24 Rob's been -- I've known him for -- not just in
25 passing.

1 But I knew of Hybrid Athletics
2 simultaneously with knowing Rob. I knew that was
3 his gym.

4 Q. What is a subject matter expert?

5 A. Somebody that we -- in all but one case
6 anyway, somebody that we had sought out for their
7 expertise in a particular area to provide kind of --
8 there are people usually who had been in other
9 fields like endurance training, like Dr. Romanov,
10 R-O-M-A-N-O-V, Severin Romanov, S-E-V-E-R-I-N,
11 famous of the Pose method of running.

12 He, for example, came to us and became
13 interested in CrossFit. We were interested in him.
14 And he became our subject matter expert for what
15 became CrossFit Running and then ultimately became
16 CrossFit Endurance, under Brian MacKenzie.

17 Rob was like one of those people. As Mike
18 Burgener, B-U-R-G-E-N-E-R, who was a national-level
19 Olympic weightlifting coach for the women's Olympic
20 weightlifting, and his son Casey was one of the
21 final cuts for the U.S. Olympic team in Beijing as a
22 Olympic weightlifter. So Coach Burgener was
23 CrossFit Olympic weightlifting until the USOC sent
24 us a cease-and-desist for the use of Olympic. So
25 it's CrossFit Weightlifting now.

1 So we have people like that. And Rob is
2 the expert -- Rob was a competitive strongman
3 athlete, well known, well regarded in the strongman
4 community, and he became our subject matter expert
5 on strongman and lifting strange stuff and feats of
6 strength. And he's been doing that. Last I checked
7 anyway, he seemed to be doing pretty well.

8 Q. How well known is Rob Orlando?

9 MR. BEGAKIS: Objection, calls for
10 speculation.

11 A. More broadly or in the CrossFit community?

12 BY MR. KOSMA:

13 Q. In the CrossFit community.

14 A. In the CrossFit community, he's -- anybody
15 who's been around a little while would know Rob
16 Orlando. He's a well-regarded, well-known person.
17 He's a fixture in the community.

18 It's not uncommon for me to drop in on
19 gyms and find Rob's stones with the logo -- he's got
20 these molds that you can buy the molds or you can
21 just buy the individual stones.

22 Like the gym that I was grappling in
23 yesterday in Connecticut is a jujitsu school, but
24 right attached to it is also a CrossFit gym. It's
25 called CrossFit Thin Blue Line. And that's run by a

1 bunch of Connecticut cops, as an example. They have
2 all the stones and the molds. So yesterday I was
3 stepping over that, on some stones.

4 Q. You said "stepping over that." Please
5 describe.

6 A. I was pointing to the Exhibit 2 with the
7 Hybrid H. So there are stones -- on all of his
8 molds, you have that. So you can go to a lot of
9 CrossFit gyms, drop in, and there's a decent chance
10 that they might have some stones. And I just think
11 of them as Rob's, because that's what's on there.
12 He's got a 150-pound stone that he came up with for
13 teaching people to lift odd objects, not just with a
14 weight bar.

15 And so, yeah, I'd say he's -- yeah, the
16 dude's stones are rolling around a lot of CrossFit
17 gyms around the world.

18 And his own -- he was a competitive games
19 athlete. I think one year he placed in the top ten.
20 He's been on -- people know Rob Orlando. Guy's got
21 fans, and he shows up places, and people want to get
22 selfies with him.

23 Q. How well known is the Hybrid Athletics H?

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

1 A. As I said, I can only tell you that
2 particularly in this area, particularly in
3 New England, Connecticut, I would venture a guess
4 that there are very few CrossFit affiliates --
5 that's not a guess. I would bet a paycheck that
6 there are very few CrossFit affiliates in the
7 New England area and up and down the East Coast that
8 don't know who Rob Orlando is.

9 Fact of the matter is, if somebody said
10 they didn't know who Rob Orlando is and they were in
11 the CrossFit community, I'd wonder if they'd been in
12 prison or on a deserted island.

13 MR. KOSMA: Take a ten-minute break.

14 (At 11:45 a.m. a recess was taken.)

15 (At 12:00 p.m. the deposition resumes.)

16 MR. KOSMA: Mark this.

17 (Hybrid Athletics Exhibit 3 was received
18 and marked for identification, as of this date.)

19 BY MR. KOSMA:

20 Q. Mr. Saran, I've just handed you what's
21 been marked as Exhibit 3 and put into evidence.

22 Do you recognize this picture?

23 A. I do.

24 Q. What is it?

25 A. Looks to me like the wall of Rob Orlando's

1 gym of Hybrid Athletics.

2 Q. And across the bottom, what are those?

3 A. Those are the molds I was talking about
4 earlier that Rob created to make Atlas Stones that
5 are used in strongman competitions. They're a
6 fairly regular sighting at strongman competitions.
7 And Rob has his own molds and those are the ones.

8 Q. What is a strongman competition?

9 MR. BEGAKIS: Objection, calls for
10 speculation.

11 A. If you've -- it used to be -- it used to
12 be pretty popular. I don't know if it is so much
13 anymore, but I always used to watch it if I was up
14 late. But ESPN2 used to run the World's Strongest
15 Man -- the MET-RX, I think it was, M-E-T-R-X.
16 They're a supplement brand and they used to sponsor
17 and run the World's Strongest Man competitions.

18 And so I used to love watching those
19 things. And we had some -- we had some ins to that
20 community when I came to CrossFit in the early days
21 of it. You go on the CrossFit message boards and
22 find some really high-level strongmen who started
23 adapting some of what CrossFit was -- what Greg was
24 disseminating.

25 In terms of training, I know Phil Pfister,

1 who I think won it, I think had a tragic death, if I
2 remember correctly. But he was known to do some
3 CrossFit training, and his workout partner used to
4 be on our message boards. And so we had some ties
5 to that community.

6 One of things that the strongman
7 competitions involve, it's largely feats of
8 strength. And they've got some really interesting
9 things. They lift cars. They pull aircraft. I've
10 seen them pull -- one of the typical ones is a
11 firetruck pull that goes slightly uphill, so there's
12 a harness. And these guys, who are enormous --
13 they're huge men -- they'll get into a harness and
14 then pull this truck and they do it for time and
15 they pull it like a hundred yards or a hundred
16 feet -- yeah, probably a hundred feet -- up a hill.

17 And they have some well-known events that
18 show up fairly consistently, and among them is the
19 Atlas Stones. And yoke carries are another big one,
20 but the Atlas Stones are the ones that are almost
21 kind of -- you know you're watching a strongman
22 competition if you see Atlas Stones come up.
23 Because it's a very, very different thing to lift a
24 barbell than it is to try and lift a keg or an Atlas
25 Stone.

1 BY MR. KOSMA:

2 Q. How is a strongman involved in CrossFit?

3 MR. BEGAKIS: Objection, calls for
4 narrative.

5 A. Well, we have a subject matter expert
6 seminar that goes on. And I don't know how many
7 seminars Rob is up to now, how many he's doing a
8 month. But I think he might even have more than one
9 team traveling. But these seminars go and they
10 teach people some of the nuances of using CrossFit
11 training but importing some of the things that you
12 would typically see in strongman competitions into
13 the CrossFit methodology.

14 And I'm thinking of things like yoke
15 carries. ^{Sled}~~Sledge~~ pushes now have become almost a DPS
16 staple at a lot of CrossFit gyms. They love the
17 Prowlers. It's the name of a sled. And those have
18 become wildly popular. I think you can almost put
19 that on Rob. I think you could probably give him
20 that credit for bringing Prowlers and yokes into
21 CrossFit community in a big way. People like it.
22 It's neat. It's different, Atlas Stones for sure.

23 And so Rob teaches a seminar that shows
24 people how to use these implements safely and how to
25 lift something extraordinarily heavy that you can't

1 get your hands around, the way you would just reach
2 down and put it around a nice 22-millimeter
3 diameter, or whatever it is, barbell. It's a
4 different thing. And so Rob's the expert in that
5 field. He was a well-known and well-regarded
6 strongman competitor before he came to CrossFit.

7 BY MR. KOSMA:

8 Q. What's the importance of the subject
9 matter certifications?

10 A. They're certificate courses, not just a
11 technical term from ANSI. They're not
12 certifications. But they're certificate courses.
13 But they're a great -- they're like -- and I think
14 Greg has got a great analogy for them. It's like if
15 CrossFit is meat and potatoes, the subject matter
16 experts -- and I don't mean this as an insult in any
17 way, but they're spices. And it's just -- you could
18 eat -- you could survive on just meat and
19 vegetables, nuts and seeds, some fruit, little
20 starch, no sugar for the rest of your life, but,
21 boy, food is a lot better with spice.

22 So trying some of these new sports, which
23 was one of the mantras at that -- it's on the back
24 of my card, was that -- I'm quoting from that, "What
25 is World Class Fitness in a 100 Words?" It's on the

1 back of my business card. One of the things on
2 there is regularly learn and play new sports. And
3 so strongman is a great kind of complimentary thing
4 to delve into. And so it's not necessarily
5 essential, but -- and, yet, it somehow is.

6 Q. And who takes these certificate courses?

7 A. Members of the -- overwhelmingly I would
8 say members of the CrossFit community. We post it
9 on our website. So if somebody is going to find
10 where they're going to sign up for a CrossFit
11 Strongman seminar, that's going to be through
12 crossfit.com. That registration is all run through
13 us. All the back end, all the admin is run by us as
14 part of our agreement with Rob and the rest of the
15 subject matter experts.

16 Q. You mentioned ANSI before. Could you
17 explain what that is?

18 A. The American National Standards Institute.
19 So they're a -- they're an accreditation body. And
20 there are a number of them in the fitness community.
21 ANSI is not in the fitness community. Never has
22 been. They're a technical accreditation company and
23 they're one of the few that is internationally
24 recognized as well.

25 And so when we were seeking out

1 accreditation, we tried to find the one that we
2 thought had the most rigorous requirements and
3 that -- for us, what we do, at least the way we view
4 what we do with fitness, is a technology. In fact,
5 it's the technology of human performance, is what we
6 call it. That's what CrossFit is. And so we get
7 accredited by ANSI.

8 And I know for a while they featured us on
9 their website. I think they were quite proud of the
10 fact that we -- they were our accrediting body. And
11 we were proud of the fact that they accredited us.
12 So our entire seminar and training program goes
13 through an annual audit and had to go through an
14 entire accreditation process that -- the application
15 for it has got to be 600 pages. And they look at
16 everything and really do some pretty -- you learn a
17 lot. Do some interesting things. Do some very
18 interesting things.

19 Q. Do gym owners take these certificate
20 courses?

21 MR. BEGAKIS: Objection, calls for
22 speculation.

23 A. Yes. Lots of them. The gym I was at
24 yesterday, they -- I know they've all been through
25 Rob's CrossFit Strongman seminar for a fact, all of

1 the -- all the owners have.

2 BY MR. KOSMA:

3 Q. Do they promote that fact, that they took
4 these certificate courses?

5 A. Yes. In fact, we have an online database.
6 Crossfit.com does. And on that database, you can
7 look up any Level 1 trainer. And what you have --
8 what you'll get is a visual representation of their
9 qualifications. So you'll see that -- somebody, you
10 know, you want to look up, are they a Level 1
11 trainer, you have questions.

12 Say you're the general public and you want
13 to know is this guy a legit trainer. He's holding
14 himself out as one. You can go search that
15 database. When you pull them up, depending on how
16 you search, you will also get these sort of
17 identifiers of like the other things that they have,
18 so -- and that's a -- a means of building
19 credibility, I think, for trainers.

20 I think a lot of -- much like continuing
21 legal education, which some jurisdictions require,
22 some don't, but it makes you -- I think it makes the
23 consuming public feel like the person that you're
24 training with is steeped in their craft by their --
25 and I'm not -- it's kind of an appeal to authority.

1 It's got a bit of a logical fallacy built in.

2 But I think what people get from that is
3 if you're going to these things, you may or may not
4 be the best, but you're clearly showing that you're
5 willing to spend your own money and resources to go
6 get this additional education. So I think it says a
7 lot about a trainer.

8 And, look, Rob's training business seems
9 to be doing okay. He's still with us and has been
10 for years. I call that a success.

11 Q. Before you mentioned that there's
12 exhibitors at different CrossFit events.

13 A. That's correct.

14 Q. And how do you become an exhibitor at a
15 CrossFit event?

16 A. Essentially you apply, and Steve and one
17 of my other attorneys, Erica Rozetti, and one of my
18 paralegals, Rini Van Every, R-I-N-I, there's an
19 entire process by which people apply and become
20 exhibitors. And it's -- principally, it's small
21 businesses. And we try to keep the prices down
22 specifically for that reason, because they are small
23 businesses.

24 But they apply, and then they'll pay the
25 fee for the footprint that they're going to get.

1 And we have to work around. I mean, there's really
2 a geometry to how this all works too. You've got a
3 certain amount of floor space, volume area that you
4 can fill up at these different venues. And so
5 there's a process in working that out, what's the
6 premium space. There's different costs associated
7 with that.

8 Steve and Erica and Rini work that process
9 to a pretty darn good effect. And then they vet it
10 through us as well to make sure that -- for example,
11 we don't want somebody who we've got -- say, we've
12 got a vendor who's simultaneously we've got an IP
13 theft complaint about them that we're in litigation
14 with and then they're over here trying to become a
15 vendor and they're going to show up at our event.
16 That would be a problem. So we have a vetting
17 process where we kind of do that as well.

18 But, anyway, there's this process by which
19 you can apply and become a vendor at the -- these
20 different events.

21 Q. How important is it to being a vendor at
22 different CrossFit events?

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

25 A. At every event, at -- for every CrossFit

1 games, every regionals that I've ever been to, I
2 have -- I always, without fail, always walk around
3 at every event and talk to the vendors, different
4 vendors, new ones, old ones, old friends, and talk
5 to them about how they're doing, how business is
6 going. I'll ask it of the check-out girl even at
7 the Reebok store when I go in there. I'll usually
8 buy a T-shirt or something, or take my kids in
9 there. And so I've made a habit of doing that for
10 well on eight years now, at all the associate
11 events.

12 I know, in many cases, for a lot of the
13 smaller vendors, I've been told many times that
14 that's their single biggest day. For a lot of these
15 companies, that's -- these are not huge
16 manufacturers. It's not all Reeboks. It's not all
17 Rogue. But a lot of these are companies that start
18 out really, really small. Life AsRx T-shirt
19 company, I remember when they were an affiliate and
20 now they're a multimillion-dollar T-shirt company.
21 There's a lot of them like that.

22 And for a small business, when you're
23 trying to grow and you're growing within this
24 ecosystem, that's what they're targeting, is
25 CrossFitters. There are no other events that are as

1 big as the CrossFit games or the regionals. There
2 is nothing else that comes close.

3 So I don't know that it makes the majority
4 of their sales. I think probably all of them, as
5 every company does, have some online web store. But
6 I know that vendors do quite well, that it's a big
7 day for them. There are -- especially now with the
8 number of people that roll through the CrossFit
9 games, it's significant.

10 I should add I know that because it's a
11 big one for us as well. It's not just -- I'm not
12 talking about other people. It's a big one for
13 CrossFit, Inc., in the sense that CrossFit-branded
14 gear at the CrossFit games, that's -- Reebok makes
15 significant plans to ensure that there is enough
16 product. And that's their term, which I hate. But
17 all of the Reebok/CrossFit-branded gear -- in 2010,
18 we ran out. They ran out of shoes at the games. I
19 was there for that.

20 When they sold the Froning Compete shoe at
21 this year's -- 2014, they had a limited run at the
22 Boston open event, this year's 15.1, I think it was
23 at -- it was in Boston. It was at the CrossFit One
24 at Reebok in Canton. And they had these Froning
25 Compete shoes, this new shoe that they had released

1 just for that. And I know they sold them all out
2 because I'm one of the few people who got a pair. I
3 just happened to be there and bought them. But they
4 sold out quickly. Quickly.

5 BY MR. KOSMA:

6 Q. And who is Froning?

7 A. Rich Froning is four-time CrossFit games
8 fittest man on earth and I think has a very, very
9 strong claim to being the fittest man in history.
10 This year, he went team, and then his team won. So,
11 yeah, that dude is fit. And there's no one fitter
12 on planet Earth as far as I'm concerned.

13 (Hybrid Athletics Exhibit 4 was received
14 and marked for identification, as of this date.)

15 BY MR. KOSMA:

16 Q. Mr. Saran, I'm going to hand you what's
17 been marked as Exhibit 4 into evidence.

18 Mr. Saran, do you recognize this document?

19 A. Yes, it looks to be -- well, yeah, I do.
20 It's a copy of -- a photocopy of a -- the cover of
21 Muscle & Fitness, and then the article that was
22 associated with it. I remember this very well.

23 Q. Does Muscle & Fitness at all -- strike
24 that.

25 Is Muscle & Fitness at all related to

1 CrossFit?

2 MR. BEGAKIS: Objection, leading the
3 witness.

4 A. That's an interesting question. Related,
5 I don't know. But there -- Muscle & Fitness is a --
6 that's an old school -- that magazine has been
7 around for a long time.

8 In fact, Greg Glassman, our CEO, has
9 talked about how Muscle & Fitness was -- when he was
10 a kid, this is Joe Weider's original sort of
11 magazine. And for a long time, in the '60s, I mean,
12 this was the magazine for the early days of fitness
13 and strength training and all of that. Muscle &
14 Fitness was all there was, hugely influential.

15 They're owned by American Media now.
16 We've actually had meetings with their editorial
17 staff and some sit-downs with them a few years back.
18 And it's -- I don't know that they're quite --
19 "related" is a tough term, but, you know, it's a
20 fitness magazine. It's in that space.

21 BY MR. KOSMA:

22 Q. Does CrossFit have any agreements with
23 Muscle & Fitness?

24 A. We had kind of a handshake agreement. And
25 part of that is sort of it started here, I think,

1 with this on the front cover "King of CrossFit, Rob
2 Orlando," back in July of '11. Rob kind of -- and I
3 can't remember how -- kind of broke into Muscle &
4 Fitness, probably from his popularity as an athlete.

5 Muscle & Fitness, they've run covers of
6 Rich Froning. They've -- increasingly, CrossFit
7 sells stuff. I mean, if -- you know, which is why I
8 have a job. People try and use the term, the
9 trademark as much as they can. It helps
10 click-throughs on articles and it helps sell
11 magazines, you know. It's why people want to be
12 associated it with.

13 But, yeah, Rob was one of the first people
14 to really break into Muscle & Fitness. And I think
15 there was some conversations eventually. I know he
16 wrote a column for them. And he might still be
17 writing a column for them. And it was sort of
18 partly Rob and partly his association with CrossFit
19 and his status as an athlete. Rob was a high-level
20 athlete.

21 Q. Do you remember this article when it came
22 out?

23 A. I do. I remember it specifically, because
24 Rob had called me up. He was concerned about being
25 called "The King of CrossFit," sensitive to how that

1 might be perceived by us, and he wanted to make sure
2 that -- you know, that we understood that he didn't
3 have anything to do with that. He's a good guy,
4 humble guy. He was concerned that it'd be perceived
5 wrong. But it wasn't. We get it.

6 Q. Do you remember how this article was
7 perceived in the community?

8 MR. BEGAKIS: Objection, leading the
9 witness.

10 A. Like anything else. CrossFit was an
11 underground movement for a long time and it kind of
12 was counterculture. And in many ways, it still is.

13 Appearing on the cover of Muscle & Fitness
14 was -- that was -- it was something we all -- I
15 think internally it was received well, but it also
16 had -- we had an air of, wow, this is weird.
17 Because for years leading up to something like this,
18 in 2011, CrossFit had been shunned by a lot of the
19 bodybuilding community, which is really what Muscle
20 & Fitness is really geared towards.

21 If you flip through the magazine, it's a
22 shame, but they are so balled into their
23 advertisers, and that's because of their readership,
24 and -- which is entirely the demographic for
25 supplement companies. And so, you know, we thought

1 it was funny, because we had been so
2 anti-supplement, anti-bodybuilding, and were hated
3 by the bodybuilding community, quite frankly. Still
4 are to a certain extent. And to show up there sort
5 of mainstream was both, wow, look, we've arrived, as
6 well as, you know, isn't that ironic, of all places
7 that you see.

8 And we were hopeful to -- I think this is
9 what led to the meeting we had with their editor in
10 chief -- I think his name might be in here, in fact.
11 Sean something. Yeah, Sean Hyson, group training
12 director. He was on their editorial staff. We met
13 with him and some of his other folks. I think now
14 he's the editor in chief.

15 But we had some meetings, and a lot came
16 out of this, Rob sort of writing a column for them
17 and we built some relationships with that. Which
18 has changed their direction, I think. There's a big
19 shift in how workouts are perceived and what fitness
20 is perceived as.

21 BY MR. KOSMA:

22 Q. You mentioned that Muscle & Fitness is
23 more mainstream. What does that mean?

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

1 A. Muscle & Fitness has been around for 60
2 years or so. Maybe 50, something like that. It's a
3 venerable magazine in the fitness space. And
4 it's -- I think, when American Media -- my
5 recollection is that when American Media bought
6 Weider's series of magazines -- and there are a
7 bunch of them, like Shape. There's a whole mess of
8 them under that umbrella. Men's Health. They own a
9 bunch of -- Oxygen. All of these magazines.

10 I think, at one time, it was one of the
11 largest media purchases. It was something like a
12 billion-dollar buy for this Weider's brand,
13 essentially, is my recollection. Somebody can look
14 that up and Google it. But it was not an
15 insignificant thing.

16 They might have a 20 million -- I don't
17 know if they have 20 million subscribers or
18 whatever, but they're -- it's a big number. They've
19 got quite an audience. So, yeah, it's mainstream by
20 any normal person's definition of it. They've got a
21 pretty big audience, at a time, by the way, when
22 magazines are getting slaughtered.

23 (Hybrid Athletics Exhibits 5 and 6 were
24 received and marked for identification, as of this
25 date.)

1 BY MR. KOSMA:

2 Q. Mr. Saran, I'm handing you what's been
3 marked as Exhibits 5 and 6 into evidence.

4 A. Yes.

5 MR. BEGAKIS: May we see a copy?

6 BY MR. KOSMA:

7 Q. Mr. Saran, do you recognize Exhibits 5 and
8 6?

9 A. I do.

10 Q. And what are they?

11 A. The Exhibit 5 is one of Rob's Hybrid
12 Athletics T-shirts. It's the front and the back.
13 And it's his well-known and one of my favorite
14 "Revolutionizing Old School" motto, catch phrase.
15 I've always liked that. And the other are his
16 shorts with the Hybrid logo on it.

17 Q. You've seen these shirts and shorts
18 before?

19 A. Sure. I own two of these. And the
20 shorts, I don't -- I don't think I own a pair. But,
21 you know, people sometimes send me stuff. I might.
22 It wouldn't surprise me if it's somewhere I had some
23 of these in a closet. But I've seen Rob wearing
24 them, so, yes, I've seen them.

25 Q. Where have you seen these before?

1 A. Well, like I said, I own two of the
2 T-shirts. I've got one in gray and one in red. In
3 fact, I need a new red one because I splashed bacon
4 grease on it cooking.

5 And then the shorts that I've seen Rob
6 around wearing them -- in fact, I remember when he
7 got them. He was real proud. He showed them to me.

8 Q. And where did you -- have you seen these
9 being sold anywhere?

10 A. I think at Rob's booth at a regional
11 somewhere, but I couldn't tell you where for sure.

12 Q. Do you know when the first time you saw
13 Rob's clothing brand-ware?

14 A. No, I couldn't give you the date.
15 Couldn't give you the date. Blurs together for me.

16 Q. Where have you seen Mr. Orlando wear his
17 T-shirt?

18 MR. BEGAKIS: Objection, asked and
19 answered.

20 A. At events. And so -- typically where I
21 run into Rob would either be at like -- we used to
22 do some affiliate events in Montana. So I might
23 have seen them there or at -- if we -- we have our
24 annual subject matter expert meeting. He might have
25 been wearing them there. Or I've seen him when I'm

1 back here in Connecticut. Occasionally, we'll go
2 get something to eat. Could have been that time.
3 And then for sure at regionals.

4 If I would pick anywhere where I would
5 have likely seen them, he probably would have been
6 wearing them and he would have been selling them at
7 any of the various regionals that I've seen him at,
8 particularly the Northeast regionals here at Reebok
9 CrossFit One there in Canton. If put to the -- if I
10 were forced to confess, that would be the place I
11 would guess.

12 MR. KOSMA: Let's do lunch now. It's
13 12:30.

14 (At 12:29 p.m. a recess was taken.)

15 (At 1:48 p.m. the deposition resumes.)

16 (Hybrid Athletics Exhibits 7 and 8 were
17 received and marked for identification, as of this
18 date.)

19 BY MR. KOSMA:

20 Q. Mr. Saran, I've handed you Exhibits 7 and
21 8 that have been put in evidence.

22 Looking at Exhibit 7, do you know what
23 that is?

24 A. I do.

25 Q. What is that?

1 A. That is the logo for Hylete.

2 Q. And Exhibit 8?

3 A. Same. Looks like -- looks like a -- it
4 looks like what would be filed in the PTO. And this
5 looks like the printout of a test, just because of
6 the way they do the mark. But it's the same thing.
7 It's a mark.

8 Q. And when did you first see the Hylete H?

9 A. I can't tell you the exact date, but I can
10 tell you where I was. And it was at the regionals
11 in -- I think it was 2013. So it was the CrossFit
12 games, the regional, then in Canton, Mass, just down
13 the road here a piece off of I-90 at Reebok One for
14 the Northeast regionals. That's the first time I
15 saw it.

16 Q. And what was your impression when you saw
17 the Hylete H?

18 MR. BEGAKIS: Objection, calls for
19 speculation.

20 A. I thought it was Rob Orlando's new partner
21 in -- see, when I saw it, I was walking down a row
22 of booths and vendors, like I often do just to kind
23 of check out what's out there and see some old
24 friends. And I just see how people are doing, just
25 go look at the vendors, talk to them, like I

1 referenced earlier.

2 And so I was walking down. And I can
3 remember there was a row of exhibitors, and I was
4 walking down the middle of the row, and there were
5 booths on the left and on the right. And I got near
6 the end of the row, and I saw -- I can't remember if
7 I saw Hylete's booth, which was big, comparatively
8 speaking, for it's -- in terms of footprint, it was
9 much larger than the normal sort of booth space. It
10 was like what would normally be like four squares of
11 space maybe. And next to it was Rob's Hybrid
12 Athletics.

13 So I saw them, and I immediately said to
14 Rob, oh, hey, congratulations, looks like you got a
15 new -- I guess that's your new apparel line. And so
16 that was my initial impression, and that was what I
17 thought when I looked at it. I thought it was Rob's
18 new apparel line. And I think I told him that right
19 on the spot.

20 BY MR. KOSMA:

21 Q. What did Mr. Orlando said to you?

22 A. He had a look on his face, told me that
23 that was not a good question. He told me that's not
24 mine, I've got nothing to do with them. And I was
25 looking at the logo, and I said, "That's your logo."

1 Then I kind of kept looking at it and looking at it.
2 And then sort of looking at his and looking at next
3 to it, and it was like you could start to see the
4 difference.

5 But, you know, it was obviously a sore
6 subject for him, and so I, you know, was like that's
7 really weird. And how did that get there.

8 And was a little dismayed that we had
9 allowed that to happen in the sense that somebody
10 had allowed not just the company with what looked to
11 be like an identical logo to park itself right next
12 to Rob's, but that we hadn't picked up -- that we
13 hadn't picked up that they were -- we didn't know
14 that they had -- I guess had been working together
15 and had some -- had been involved in some
16 negotiations and then fell apart or whatever and
17 then there they were with the thing at the Northeast
18 regionals. And I think it was '13.

19 Q. And what did you do after that?

20 MR. BEGAKIS: Calls for narrative,
21 objection.

22 A. I -- you know, I immediately, I think,
23 right on the spot -- and I'm fairly certain that my
24 cell phone records would have the exact time of the
25 call. I don't know if they keep two years ago, but

1 I called Steve Weiss, and I said -- I was like how
2 did this happen, how did these guys get here, when I
3 found out that they were, in fact, not associated
4 with Hybrid Athletics. And so, yeah, I immediately
5 got on the phone with Steve. I remember that.

6 BY MR. KOSMA:

7 Q. Who is Steve Weiss?

8 A. Steve Weiss handles all of the contracts
9 surrounding sponsors and people -- vendor booths at
10 the -- both the regionals and at the CrossFit games.

11 Q. And what did Mr. Weiss do?

12 A. Ultimately, I think at my instruction,
13 we -- after the regionals were over, we gave Hylete
14 whatever its fee had been and told them they weren't
15 going to be welcome at our events anymore.

16 Q. And that was because of the --

17 MR. BEGAKIS: Objection, leading the
18 witness.

19 BY MR. KOSMA:

20 Q. And why was that?

21 A. Because it looked to me like I had a
22 company, a bigger company that had preyed upon
23 somebody who'd been part of our community for quite
24 some time, was a stand-up guy, had been both an
25 athlete, was a coach and a CrossFit affiliate, also

1 had his own business that he was growing and was
2 doing well, he was one of our subject matter
3 experts.

4 You know, Rob Orlando was very much like
5 family at CrossFit. And what I saw was somebody had
6 stolen his logo and slapped it on some apparel and
7 looked to me like a -- that's my job, is to look at
8 brands and I'm a trademark lawyer. So looked to me
9 like -- I couldn't -- I was shocked. I couldn't
10 believe how obvious the ripoff was. Quite frankly,
11 I was surprised.

12 MR. KOSMA: Mark this as Exhibit 9.

13 (Hybrid Athletics Exhibit 9 was received
14 and marked for identification, as of this date.)

15 BY MR. KOSMA:

16 Q. Mr. Saran, I've handed you Exhibit 9,
17 which has been put into evidence.

18 Do you recognize this document?

19 A. I do.

20 Q. What is this?

21 A. This was a letter -- well, this is the
22 attachment that came via e-mail. So I received an
23 e-mail from Mr. Tsircou, Kyriacos Tsircou. And it's
24 K-Y-R-I-A-C-O-S, and then last name, T-S-I-R-C-O-U.
25 And it was -- it was a letter that came as an

1 attachment on behalf of Hylete, LLC, and by its
2 counsel, about -- addressing why -- making a claim
3 that Hybrid Athletics had attempted to interfere
4 with the business relationship with CrossFit. And
5 so I remember getting it.

6 (Hybrid Athletics Exhibit 10 was received
7 and marked for identification, as of this date.)

8 BY MR. KOSMA:

9 Q. Mr. Saran, I'm going to hand you what's
10 been marked as Exhibit 10 into evidence.

11 Do you recognize this document?

12 A. Yes, I do.

13 Q. What is this?

14 A. That's my e-mail response to Mr. Tsircou,
15 dated June 23, 2013.

16 Q. On the bottom of the page, you have
17 another e-mail.

18 Is this in response to his initial e-mail?

19 A. Yes. So -- right. If you look down --
20 right. This is the thread. So if you look at the
21 original -- look at the bottom of Exhibit 10, you'll
22 see one line, which is sort of the metadata of
23 June 12, 2013, Kyri Tsircou wrote. And then it has
24 his original e-mail, and it references -- it says,
25 "Please review the attached letter."

1 The attached letter would be Exhibit 9,
2 came as the attachment. So I got it by e-mail,
3 opened it up, and then I responded a little less
4 than two weeks later. Looks like 11 days later.
5 And that's the e-mail above it. So my response sits
6 above it on Exhibit 10.

7 Q. When you were at the 2013 regionals, was
8 there any other confusion that was given to you?

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

11 A. You know, I don't remember if it was
12 there. It might have been. But it was -- like I
13 said, part of the reason I walk around is -- one of
14 the other things I do is I look for this -- I look
15 for this exact thing.

16 I frequently go around -- and we used to
17 have a joke about it among my attorneys, which was
18 that we go walk the vendors and just look for
19 trademark infringement. We try to be nice about it,
20 but I just make a note. I'm not going to sending
21 cease-and-desists or starting an intellectual
22 discussion with vendors at the CrossFit games. But
23 in the early days, people were not terribly
24 respectful of the mark. And that's okay. Maybe
25 they just didn't know.

1 So part of my job was to go around, on
2 behalf of CrossFit's mark. So this was the first
3 time that I'd ever seen something like this of
4 someone else's mark that was within our community.
5 That's not entirely true. I'd seen other -- I was
6 aware of other kinds of expropriations of some
7 intellectual property like Rogue and a few others,
8 but not much. But this was sort of the most -- I
9 don't know -- for me, the most blatant, overt --
10 "overt" is probably the best word. It was right
11 there at a booth right in front of all of us.

12 And so at the time, I think I mentioned it
13 to a few other people. I might have talked to some
14 other folks there. And I think I talked to at least
15 a couple of people who said, oh, I thought it was
16 Rob's too.

17 I think, within the community, the Hybrid
18 H had been around for a while. Rob was -- that was
19 a well-known and rather distinct logo. Didn't look
20 anything like anything else that anybody else had.
21 And so it was -- it stood alone within our community
22 just by virtue of how different it was than really
23 anything else.

24 And so to see that, you're reaction is,
25 oh, look, it's Rob's apparel guys, they stylized it

1 a little bit, but they do that for apparel. We'd
2 seen some of that with Reebok, so we thought -- with
3 CrossFit. And so I thought, oh, look, they're going
4 to do a little stylized thing of his logo. Then
5 found out, nope, that's not me.

6 BY MR. KOSMA:

7 Q. You said you walk around. How many brands
8 do you think you're familiar with in the CrossFit
9 community?

10 MR. BEGAKIS: Objection, calls for
11 speculation.

12 A. How many, number? It's one of those
13 things that if I tried to make a list, I probably
14 can only come up with 50 or 75. But if you showed
15 me a list and it had 500, I feel confident that I
16 would know or be aware of 80, 90 percent or more. I
17 mean, I've been around this from the beginning.

18 BY MR. KOSMA:

19 Q. Do you know of any other brands that use
20 the H as a trademark?

21 MR. BEGAKIS: Objection, calls for
22 speculation.

23 A. The only one I was aware of certainly at
24 this time when this, you know, all happened, there
25 was -- Hybrid Athletics had that stylized H and then

1 that was it. There was nobody else who had anything
2 similar to Hybrid's logo.

3 BY MR. KOSMA:

4 Q. How many regionals do you go to each year?

5 A. It varies. But typically at least a
6 couple. And some years, it's -- I think one year we
7 did -- we hit a mess of them. I don't know. Six.
8 I forget. It was a lot of travel. But we were back
9 and forth, different countries and charter planes
10 and all of that.

11 But I hit a fair amount. I'll always
12 see -- wherever I am, I'll see my local one. And I
13 typically come to the Northeast one because it's
14 sort of home for me, since I'm from here. And I
15 have -- it's a good opportunity -- it's a good
16 excuse to get together with the Reebok folks,
17 because the regionals still, at least up until this
18 past year, were being run at Reebok One. We've
19 outgrown that now.

20 But I'd say two a year is usually my
21 average, but sometimes three or four or more,
22 depends on what the boss wants to do that year.

23 Q. That's every year since 2007?

24 A. That's every year that the games have had
25 regionals.

1 And before that, I went to the Northeast
2 sectionals. And so I've been to a really good --
3 there are very few people who could say -- the only
4 person I could think of is either Coach Glassman or
5 Dave Castro and maybe one or two other people from
6 staff. Maybe some of the Reebok folks could claim
7 that they've been to more.

8 MR. KOSMA: Can I take a quick five-minute
9 break?

10 MR. BEGAKIS: Sure.

11 (At 2:03 p.m. a recess was taken.)

12 (At 2:18 p.m. the deposition resumes.)

13 BY MR. KOSMA:

14 Q. Mr. Saran, looking at Exhibit 2 --

15 A. Okay. Got it. Yes.

16 Q. -- how well known is the Hybrid H?

17 A. Within the CrossFit community, I think I
18 could best speak to it. And that's -- I could
19 probably -- the best way I'd put it is this, if I
20 were trying to quantify it, would be in a relative
21 fashion. So if CrossFit sits at the apex of the
22 pyramid of brands and marks that float around the
23 CrossFit community, I would say that, you know,
24 Hybrid, it's a venerable mark. It's, you know,
25 associated with Rob and has been for a while going

1 way back. I think it would be a top ten. I'd put
2 it in the top ten of marks and brands. I'd go
3 CrossFit, probably Reebok, and a few other big
4 companies. But it's been around for a while. It's
5 got a status to it.

6 Q. Is that true in 2011?

7 MR. BEGAKIS: Objection, calls for
8 speculation.

9 A. I think in 2011, it would probably have --
10 I would have put it even higher. In other words, as
11 the ecosystem has grown, there's been far more
12 opportunities for other brands to come into that --
13 into the CrossFit business space and grow like, you
14 know, when Reebok first came in, for example.

15 But I think because of -- you know, Rob
16 was an early -- he was an early part of the
17 community, and Hybrid Athletics was as well. In
18 2011, it probably would have ranked even higher,
19 just relative to the brands that were around in
20 extant at the time.

21 But even now, I'd still -- I'd say it's a
22 top ten. I can almost rank order them in my mind.
23 And that's not necessarily by revenue either. It
24 would just be by my sense of the time that they've
25 been around, the exposure that it's had at events as

1 well as on our website.

2 I mean, Rob's had articles written about
3 him, not in -- within our own community as well as
4 what's on Exhibit 4, the Muscle & Fitness article.

5 Yeah, it's a venerable brand within this
6 community. Which is a bit odd to say, since the
7 community is so relatively young. But, yeah, he was
8 around from the beginning.

9 MR. KOSMA: Thank you. I have no further
10 questions.

11 MR. BEGAKIS: I just have a few questions
12 for you, Mr. Saran.

13 EXAMINATION BY

14 MR. BEGAKIS:

15 Q. You mentioned that you've been to quite a
16 few CrossFit events.

17 Would that be a safe statement to make?

18 A. Yes, of the total number of CrossFit
19 events, I've attended a big chunk of them.

20 Q. So you've seen a lot of CrossFit athletes
21 come through the events?

22 A. Yes.

23 Q. Wearing a lot of different brands,
24 correct?

25 A. Not at the games. Not since that deal

1 with Reebok. We kind of limited the -- at the games
2 at least. But on athletes, yes. Regionals was
3 always -- we made a conscious decision to allow
4 regionals to let the athletes there -- we kind of
5 carved that out of the Reebok deal, in fact, to be
6 perfectly honest.

7 So, yeah, we left that open for affiliates
8 and others to have sponsors. It was a way to help
9 athletes defray the cost of participation. So,
10 yeah, I've seen a lot of them.

11 Q. And you've mentioned that you are a
12 CrossFit athlete yourself, correct?

13 A. That might be stretching the term to its
14 limits, but sure I'll take that.

15 Q. You've been to quite a few CrossFit gyms?

16 A. Yes, lots, all over the world.

17 Q. And in those gyms, you've seen CrossFit
18 athletes wearing all different kinds of brands,
19 correct?

20 A. Sure. Yeah. There's a lot of different
21 brands, but not that many.

22 Q. Have you seen any athletes, whether at a
23 regional event, any event at all, wearing Under
24 Armour?

25 A. I can't think of a specific instance, but

1 Under Armour was a sponsor back in -- they were a
2 sponsor to the games in 2008 or '9, maybe both. So,
3 sure, they would have had to have been out.

4 Q. In your time working out at CrossFit gyms,
5 have you seen CrossFit athletes of any level wearing
6 Under Armour?

7 A. I can't think of any offhand, but I would
8 think yes. I would think I would have to have,
9 sure.

10 Q. Have you seen any CrossFit athletes at any
11 of the events wearing Hurley?

12 A. On the floor competing or do you mean just
13 like people walking around with Hurley shirts on?

14 Q. Let's start with on the floor competing.

15 A. No, I can't ever recall seeing a Hurley
16 shirt out on the floor. But, you know, in the early
17 days, it's possible that somebody might have had
18 some Hurley board shorts. You know, they tend to be
19 in the surf community, but we've got some folks who
20 wear that stuff.

21 Q. In any of the CrossFit gyms that you've
22 worked out personally, have you seen anybody wearing
23 Hurley clothing?

24 A. Nothing comes to mind. But I would think
25 that I would have to have. It's prevalent enough

1 that if I see somebody in Hurley, it doesn't -- plus
2 we have a relationship with them. We've got friends
3 there.

4 Q. Thank you.

5 Just for clarification, I'd direct you
6 back to Exhibit 6.

7 A. Got it. Yes.

8 Q. You mentioned that you saw the Hybrid
9 Athletics logo on these shorts, correct?

10 A. Yes.

11 Q. But these are not Hybrid Athletics shorts,
12 correct?

13 A. I assume that this is some kind of joint
14 project between JACO and Hybrid Athletics. So I
15 don't -- I doubt that Rob has his own manufacturing
16 plant of people making shorts. I would assume that
17 he's in some kind of partnership with these guys.

18 Q. You also mentioned, early on in the
19 deposition, that you've seen Atlas Stones at
20 CrossFit gyms before.

21 A. Yes, all over the world.

22 Q. And that Hybrid Athletics makes those
23 Atlas Stones?

24 A. They're not the only ones, but they would
25 have been the first. I'll occasionally see some

1 ones that are unbranded. Somebody will say, well --
2 they'll look at Rob's molds or maybe they'll have
3 gone to a strongman thing. And I've talked to
4 people and they go, well, I didn't want to pay for
5 the mold, so I just made this myself. That's also
6 the nature of the community.

7 Q. Have you seen any other branded molds?

8 A. No. The only ones I would know of would
9 be Hybrid's. I've never seen any others.

10 Q. Do you know of any other companies that
11 are making --

12 A. Not off the top of my head.

13 Q. -- molds?

14 A. I don't know if Rogue is. They might.
15 But I don't know. That seems to be -- you know, Rob
16 has kind of had that. That's been his thing for a
17 while. But there might be some more out there.
18 Wouldn't surprise me if they are, but nothing jumps
19 to mind. I'm not aware of any.

20 Q. I'd like to get to Rob being a subject
21 matter expert. Can you explain that a little bit
22 more to me?

23 A. Sure. You want to know what the -- how he
24 came to be a subject matter expert?

25 Q. No. Strike that.

1 What is Rob's role as a subject matter
2 expert?

3 A. So he puts on seminars under the CrossFit
4 brand. And we've got roughly a dozen or so subject
5 matter experts. So there's, for example -- I'll
6 give you the list as I know it.

7 There's CrossFit Striking. That's run by
8 a guy named George Ryan, who's a local guy, in fact,
9 Massachusetts. And he's also a LAPD SWAT officer
10 and well regarded. He was a well-regarded fighter,
11 actually, and I happen to know that personally. We
12 fought in the same circuit, oddly enough. We found
13 out talking to each years later, but -- so George
14 Ryan does CrossFit Striking. He's well known in
15 that arena.

16 We've got CrossFit Defense by Tony Blauer,
17 who also has his own separate brand, SPEAR. And
18 Tony is a world-renown combating expert. He's
19 trained some of the -- every special operating crew
20 you can think of. UN security folks, Tony's there.

21 So we have these people like that. And
22 Rob for strongmen. John Welbourn does CrossFit
23 Football.

24 Q. Okay. That's good. It gives us an idea
25 of who these other subject matter experts are.

1 Are they all -- you said that Rob was part
2 of the training staff. Are all these subject matter
3 experts part of the training staff?

4 A. They fall under the training department.
5 So they -- in our -- as loosely -- as loose as our
6 hierarchy is, the subject matter experts fall
7 directly under Dave Castro and Nicole Carroll in the
8 training department.

9 Now, they might be contractors or we
10 might -- they may even be employees now. We might
11 have brought them on as employees.

12 Q. Is Rob an employee?

13 A. I think they might still be contractors.
14 That just might be what it is.

15 Q. But Rob is paid to be a subject matter
16 expert?

17 A. We split -- we split the take, so --

18 Q. So he's compensated?

19 A. Right. So we do all the back end in terms
20 of the sign-ups through the CrossFit website, and
21 then we take a percentage to cover the admin
22 expenses. And everything else is his.

23 Q. Rob is on staff with CrossFit corporate?

24 A. More or less. I mean, he's --

25 Q. Thank you.

1 You said that Rob is part of the CrossFit
2 family?

3 A. Sure.

4 Q. And that you've known Rob for a while?

5 A. Six years at least.

6 Q. Did you ever talk to Rob -- strike that.

7 When you saw the Hylete athletics booth
8 and you went through the process of determining
9 whether Hylete would be able to come back, at any
10 point did you talk to Rob or did Rob ask you to
11 remove the Hylete booth?

12 A. He never asked me to remove them. But we
13 had extensive discussion. I said to him, is that
14 yours or congratulation on your new apparel partner.
15 And he said --

16 Q. You had extensive discussions about it,
17 though?

18 A. At the time, and when I found out that it
19 wasn't his logo, I mean, that --

20 Q. Do you know of anybody else in CrossFit
21 corporate who talked with Rob about having the
22 Hylete booth removed?

23 A. No, nobody -- he never brought up having
24 the booth removed. Never. That was my decision and
25 my decision alone. Well, I shouldn't say that. I

1 think I told Greg. But he, you know, in legal
2 matters like that --

3 Q. So it was your decision to have the booth
4 removed?

5 A. Yes.

6 Q. Let me -- if I could direct you to
7 exhibit --

8 A. Not removed. They weren't removed.

9 Q. Or told not to come back?

10 A. Just we weren't going to --

11 Q. If I could direct you to Exhibit 10.

12 A. Yes.

13 Q. So you made the decision legally to have
14 the booth removed, correct -- or have the booth
15 not --

16 A. We weren't going to -- we weren't going to
17 be in business with someone. We're careful about
18 choosing our business partners. We're not going to
19 do business with someone who's ripping off one of
20 our subject matter expert's logos.

21 Q. And you said that you're a trademark
22 attorney, correct?

23 A. I am.

24 Q. Directing you to Exhibit 10, can you read
25 the second sentence of the fourth paragraph?

1 A. "We are not interested."

2 Q. The second sentence, "We hold."

3 A. "We hold ourselves to a different standard
4 than simply 'what can be legally gotten away with.'"
5 And "what can be legally gotten away with" is in
6 quotation marks.

7 Q. Okay.

8 A. And I was referencing --

9 Q. That's fair. We know what the e-mail was
10 in regards to.

11 A. Yeah, it's referencing the letter that was
12 sent to me by Tsircou.

13 Q. Regarding having the Hylete booth not come
14 back?

15 A. No. No, I was referencing his -- the
16 implication and the gist of his letter, which was
17 that --

18 Q. Okay.

19 A. -- that Mr. -- it's black letter law that
20 trademark rights are by first use, not necessarily
21 registration.

22 Q. Okay.

23 A. And the entire letter is --

24 Q. And this letter -- and a simple yes or no
25 is fine.

1 This letter is surrounding the
2 circumstances that led to Hylete's booth not being
3 allowed to come back; is that correct?

4 A. No, that's not correct.

5 Q. The letter is not surrounding those
6 circumstances?

7 A. That's -- no, that's not just what it's
8 about.

9 Q. Well, is the letter surrounding those
10 circumstances? That's a simple yes-or-no question.

11 A. No. No, that's not what it's about.
12 That's not what I took out of it.

13 Q. Okay. And you did say that you're a
14 trademark attorney, correct?

15 A. Right. Yes. I'm specifically referring
16 to the bottom sentence of the first page of that --

17 Q. It's okay. I think we've got the question
18 answered.

19 A. Actually, you didn't even let me finish
20 speaking.

21 Q. You mentioned that Rob's thing was being a
22 CrossFit Strongman; is that correct?

23 A. His thing? What do you mean by "thing"?

24 Q. Well, you hired him on to be a subject
25 matter expert, correct?

1 A. No, we didn't hire him. We allowed him,
2 we licensed him to use the name CrossFit in
3 conjunction with CrossFit Strongman.

4 Q. So he was a subject matter expert in
5 CrossFit Strongman, correct?

6 A. Yes.

7 Q. And you also mentioned earlier in your
8 deposition that strongman competitions are not as
9 popular as they used to be; is that correct?

10 A. I don't know. I'm not sure about that.
11 They don't -- I don't see them as much on ESPN, but
12 I don't know that that's a good metric of their
13 popularity, because I've also seen, specifically
14 Rob, holding strongman competitions. And so I don't
15 know if we've -- I don't know if we've grown that
16 community.

17 Q. Well -- but you mentioned earlier in your
18 deposition that it seems to be the strongman
19 competitions are not as popular anymore.

20 A. I think I said I don't know if they're as
21 popular as they used to be. I don't see them on
22 ESPN anymore. But I'm not entirely certain.

23 Q. You also said that you've seen a lot of
24 businesses, small businesses grow through the
25 CrossFit economy; is that true?

1 A. Very true.

2 Q. And you find joy in seeing these companies
3 grow within the CrossFit economy; is that true?

4 A. It makes me happy that people are able to
5 secure a living for themselves and their families,
6 send their kids to college within the -- within this
7 sphere that surrounds both the games and just
8 CrossFit gyms generally.

9 Q. But when you mentioned Rob's -- or when
10 Rob's training business was discussed, you said that
11 Rob's training business seems to be doing okay; is
12 that correct?

13 A. Yes. And I said --

14 MR. BEGAKIS: No further questions.

15 EXAMINATION BY

16 MR. KOSMA:

17 Q. Mr. Saran, do you want to finish that
18 thought?

19 A. I was just going to say that yes. And I
20 think was careful to say I thought it was doing
21 okay. And I used that word for a reason, which is I
22 know -- I talk to the subject matter experts every
23 year when we have our annual meeting, and I know
24 seminars across the board, I think last year, were
25 maybe not quite the growth that I think some of them

1 were hoping for. And so I don't know what to
2 attribute that to, but -- so when I say "okay," I
3 mean, it's about as far as I'm willing to go.

4 There were -- people expressed concerns
5 about just how they were doing, and one of the
6 issues was -- that they brought up, which is why I
7 was there, is poaching of their respective brands.
8 I mean, I hear that from -- I get the trademark
9 complaints from the subject matter experts, from the
10 SME staff.

11 So Mike Burgener has got a problem because
12 somebody is doing something that looks like it's
13 a -- in fact, I think it was out of China. In fact,
14 there's a lifter there doing similar style Olympic
15 weightlifting seminars within our space and at
16 affiliates, and he's like, hey. And they look like
17 they were playing off of his brand.

18 So that comes up with the SMEs. That's an
19 issue of discussion and it's -- we consider it part
20 of our -- part of the deal for them is -- these are
21 small-business owners, and so we kind of step in to
22 help police those things in many cases for them.

23 Q. One more question: Can you explain
24 yourself on the sentence you were discussing that
25 said "what can legally be gotten away with"? I

1 believe you didn't finish what you were saying.

2 A. Yeah, I was --

3 MR. BEGAKIS: Objection, leading the
4 witness.

5 A. What this was in reference to was not --
6 it was an explanation of exactly why we would not be
7 doing business with Hylete. And it's a very
8 straightforward proposition. In Mr. Tsircou's
9 letter, his assertion is essentially -- the legal
10 crux of it is at the bottom of page 1 and it says
11 that -- essentially that Hybrid Athletics had filed
12 for a trademark registration and then the
13 application had been abandoned.

14 And he provided me, as proof of this,
15 that -- the federal registration of Hybrid had
16 abandoned and he had the notice of abandonment from
17 the United States Patent and Trademark Office, PTO.

18 And so the essence of his claim comes down
19 to this, that the trademark application as
20 identified below was abandoned in full because a
21 response to the office action mailed on May 16 was
22 not received within the six-month response period.
23 So there was a lapse for a technical violation or
24 failure to file something.

25 And Mr. Tsircou was asserting that he had

1 rushed in, in that lapse of time and nah, nah, nah,
2 nah, nah, we've now got a federal registration and
3 so we've got these rights. And so then he asserts
4 Hybrid Athletics is now attempting to assert rights
5 that it failed to secure.

6 It just -- it couldn't be more wrong on
7 the issue of trademark law. You couldn't possibly
8 be more wrong. McCarthy is spinning in his grave
9 like a Cornish game hen. That's so wrong. I'm
10 shocked that an attorney would write that statement
11 with a straight face.

12 I mean, in the United States, it's not
13 federal registration that grants rights. It's first
14 use. That's always been the case. That's been the
15 case since 1500. And so the idea that, hey, we want
16 to do business with you, look, Rob forgot to secure
17 his trademark registration, we went out and got it
18 because he failed to file a piece of paper and think
19 that that's the standard to which we're going to
20 hold ourselves.

21 So when I say, "We hold ourselves to a
22 different standard than simply 'what can be legally
23 gotten away with,'" what I am saying is that this is
24 dirtbaggery. This is dishonorable, I think illegal,
25 I know immoral, and I'm certain unethical. That's

1 not what we want to be associated with. Yeah,
2 that's what -- that's what that's about.

3 MR. KOSMA: I have no further questions.
4 Reserve to read and sign. Regular
5 delivery is fine.

6 MR. BEGAKIS: Could I have a request form.
7 We'll request a copy. Regular delivery.

8 MR. KOSMA: Waive the sealing of the
9 evidence?

10 MR. BEGAKIS: Yeah, that's fine.

11 MR. KOSMA: And then we'll do the same
12 thing for everybody.

13

14 (Time noted: 2:40 p.m.)

15

16



17

DALE SARAN

18 Subscribed and sworn to

19 before me this 15th day

20 of September 2015.

21



22

23

24

25

1 CERTIFICATE

2 STATE OF CONNECTICUT

3

4 I, ANGELA M. SHAW-CROCKETT, Notary Public, duly
5 commissioned and qualified in and for the States of
6 New York, New Jersey and Connecticut, before whom the
7 foregoing deposition was taken, do hereby certify that the
8 witness whose testimony appears in the foregoing deposition
9 was duly sworn by me; that the testimony of said witness
10 was taken by me to the best of my ability and
11 thereafter reduced to typewriting under my direction;
12 that I am neither counsel for, related to, nor
13 employed by any of the parties for the action in
14 which this deposition was taken, and further that I
15 am not a relative or employee of any attorney or
16 counsel employed by the parties thereto, nor
17 financially or otherwise interested in the outcome of
18 the action.

19

20 IN WITNESS THEREOF, I have hereunto set my
21 hand this 14th day of August, 2015.

22

23

Angela M. Shaw-Crockett

24

Angela M. Shaw-Crockett, Notary Public

25

1 NAME OF CASE: Hybrid Athletics LLC v. Hylete, LLC

2 DATE OF DEPOSITION: August 4, 2015

3 NAME OF WITNESS: Dale Saran

4 Codes:

- 5 1. To clarify the record.
 6 2. To conform to the facts.
 7 3. To correct transcription errors.

8 Page 22 Line 17 Reason 3
 9 From state to stake

10 Page 35 Line 18 Reason 3
 11 From private to privates

12 Page 49 Line 15 Reason 3
 13 From sledge to sled

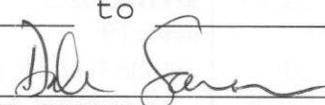
14 Page _____ Line _____ Reason _____
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24 
 25 DALE SARAN

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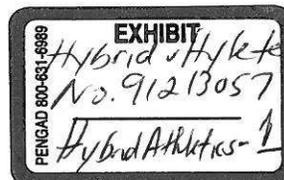
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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 Dale Saran, CrossFit, Inc., 1250 Connecticut Avenue, N.W., Suite 200, Washington, D.C. 20036 to be held at the offices of Whitmyer IP Group, LLC, 600 Summer Street, Stamford, CT 06901, on August 4, 2015, commencing at 10:30 a.m. The deposition will be taken before a notary public or other officer duly authorized to administer oaths, and will be recorded by stenographic. 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 30, 2015

/s/ Michael J. Kosma
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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 TRIAL DEPOSITION was served by first class mail, postage prepaid on the Correspondent for the Applicant as follows:

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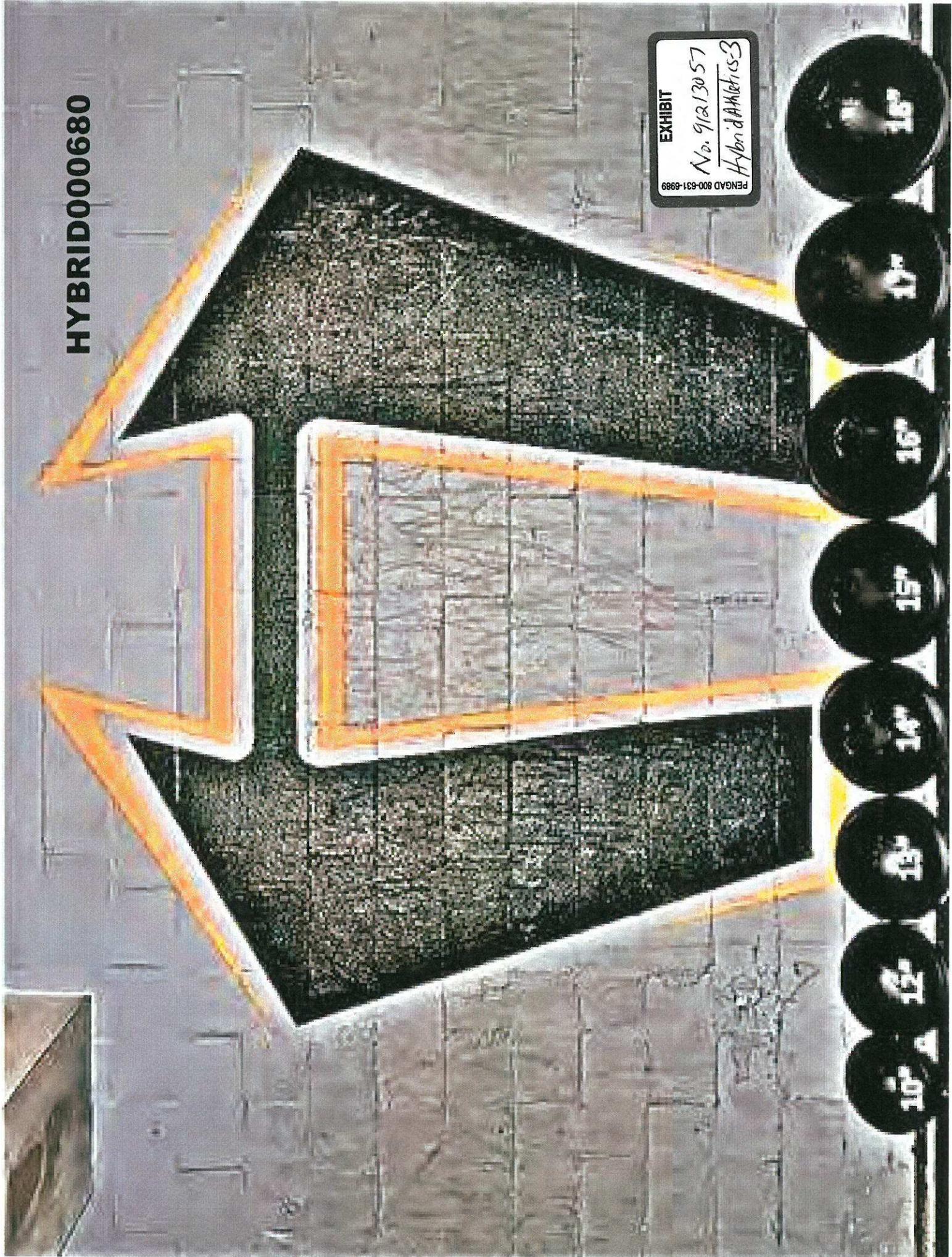
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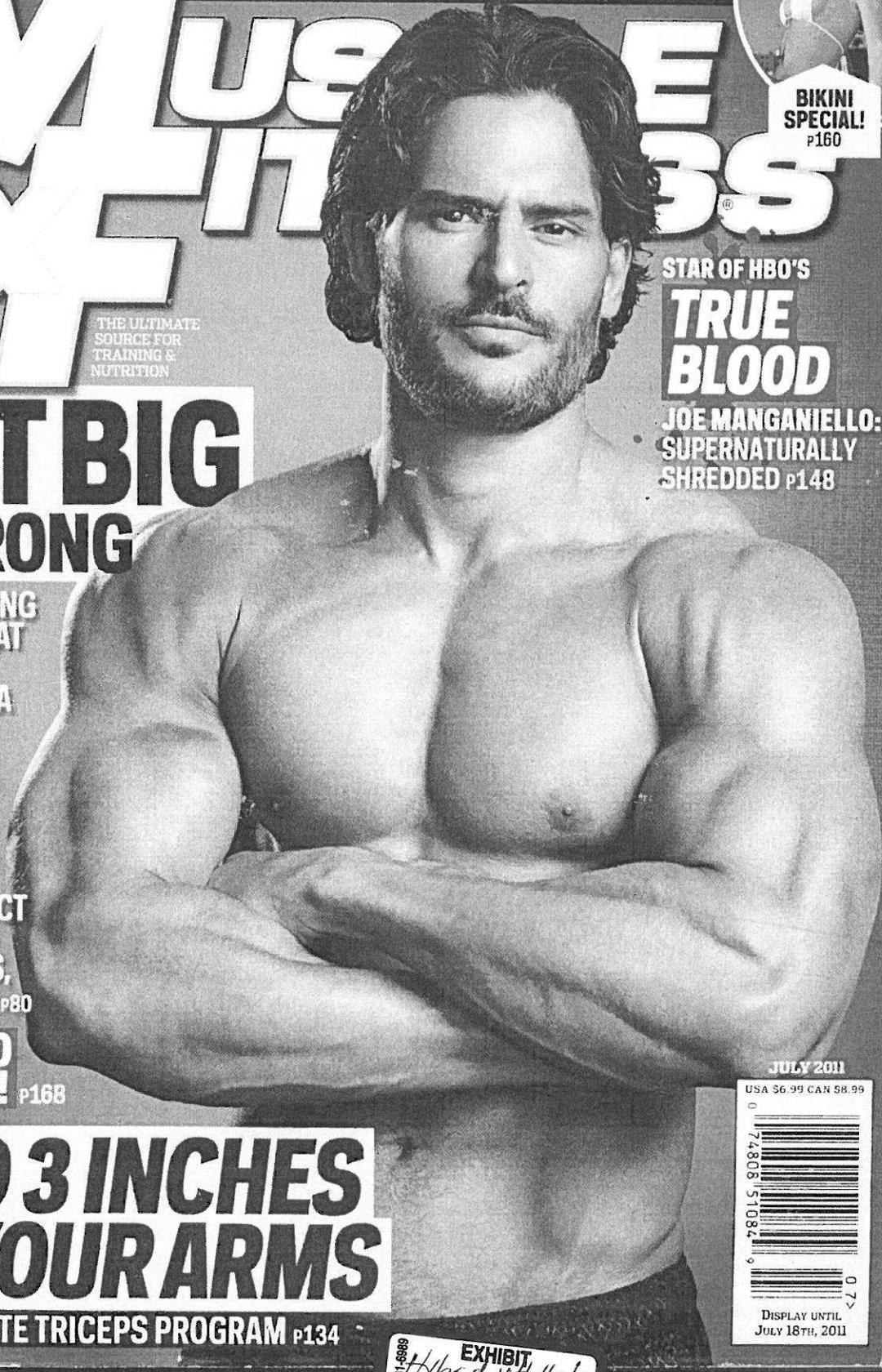
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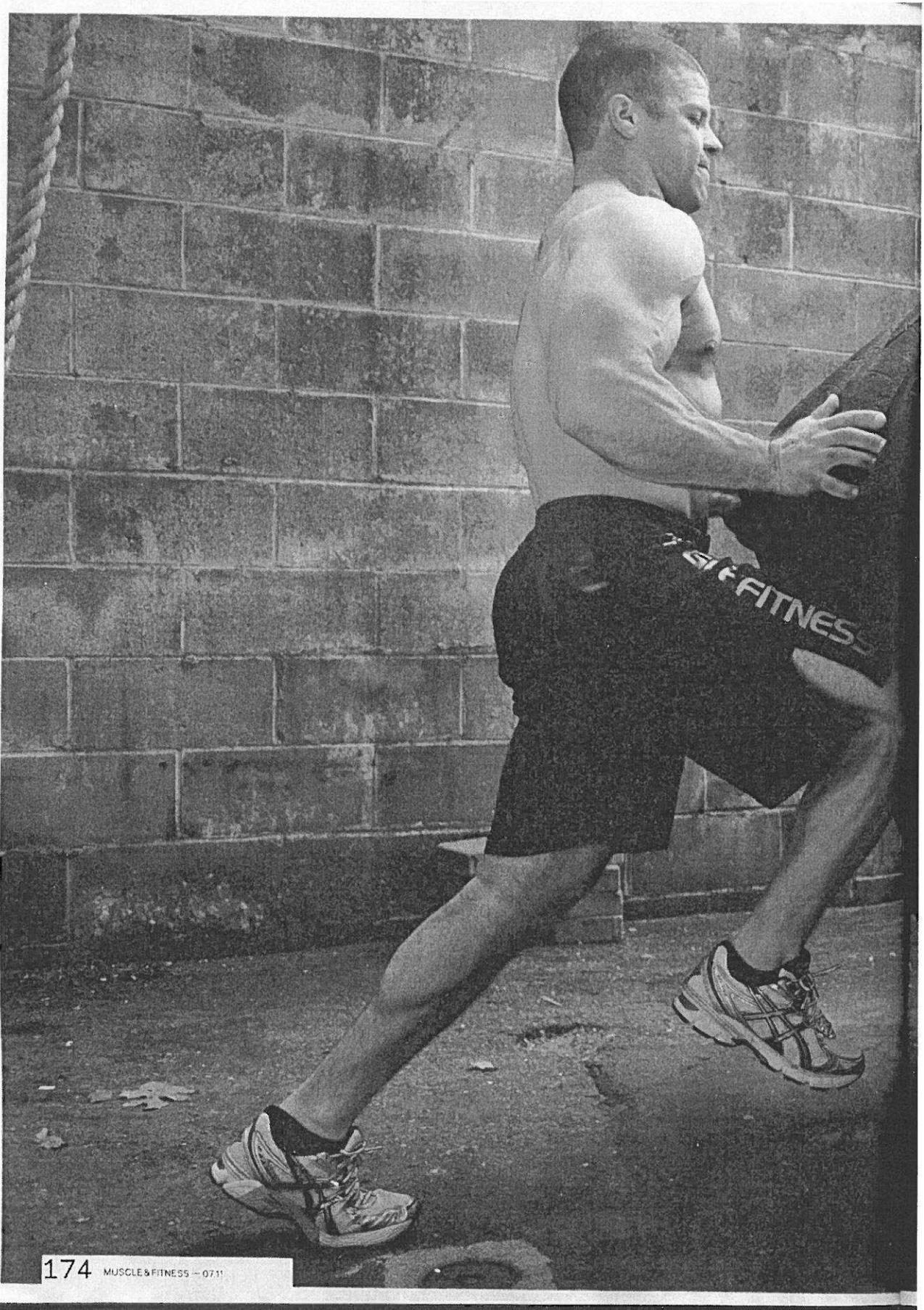
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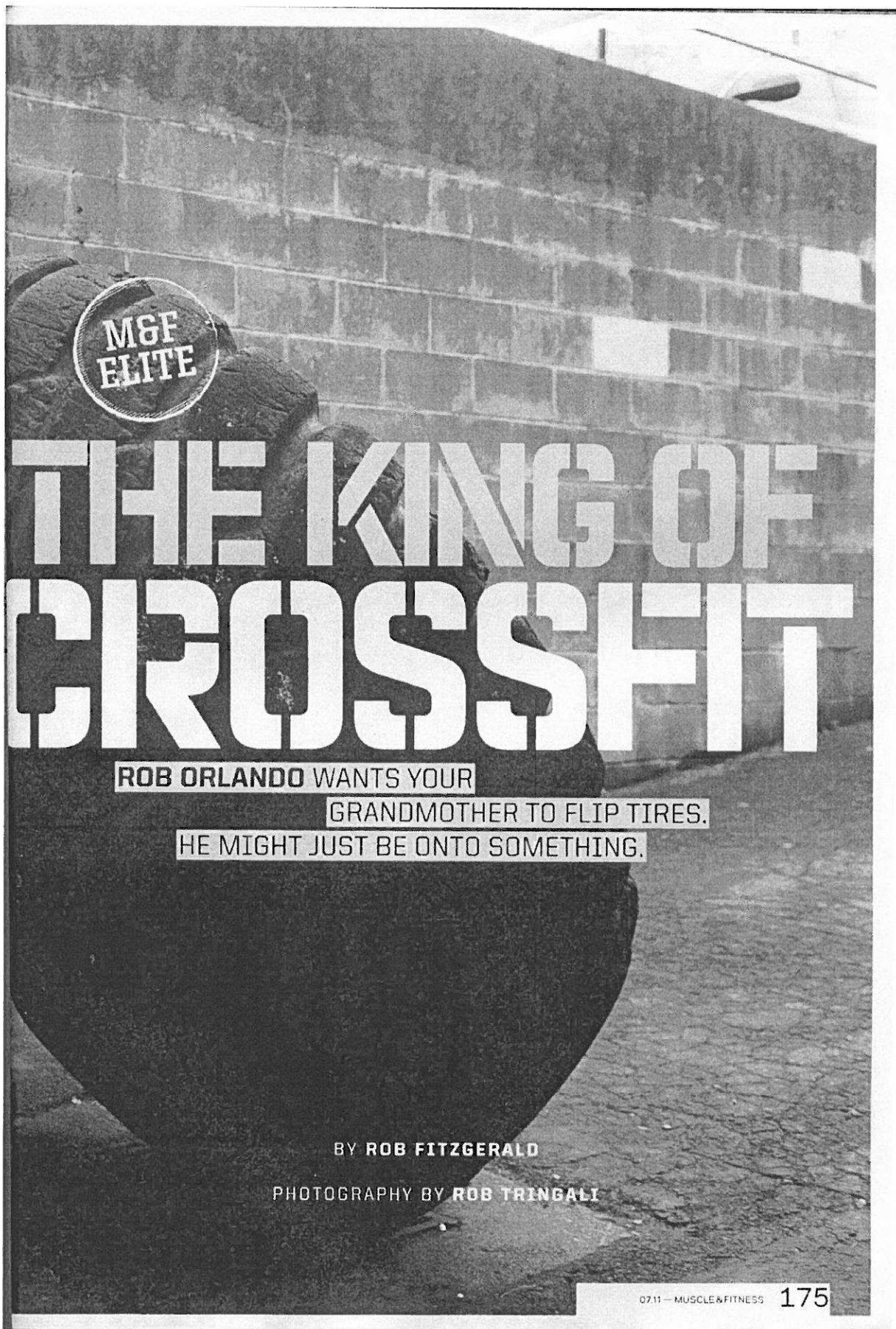
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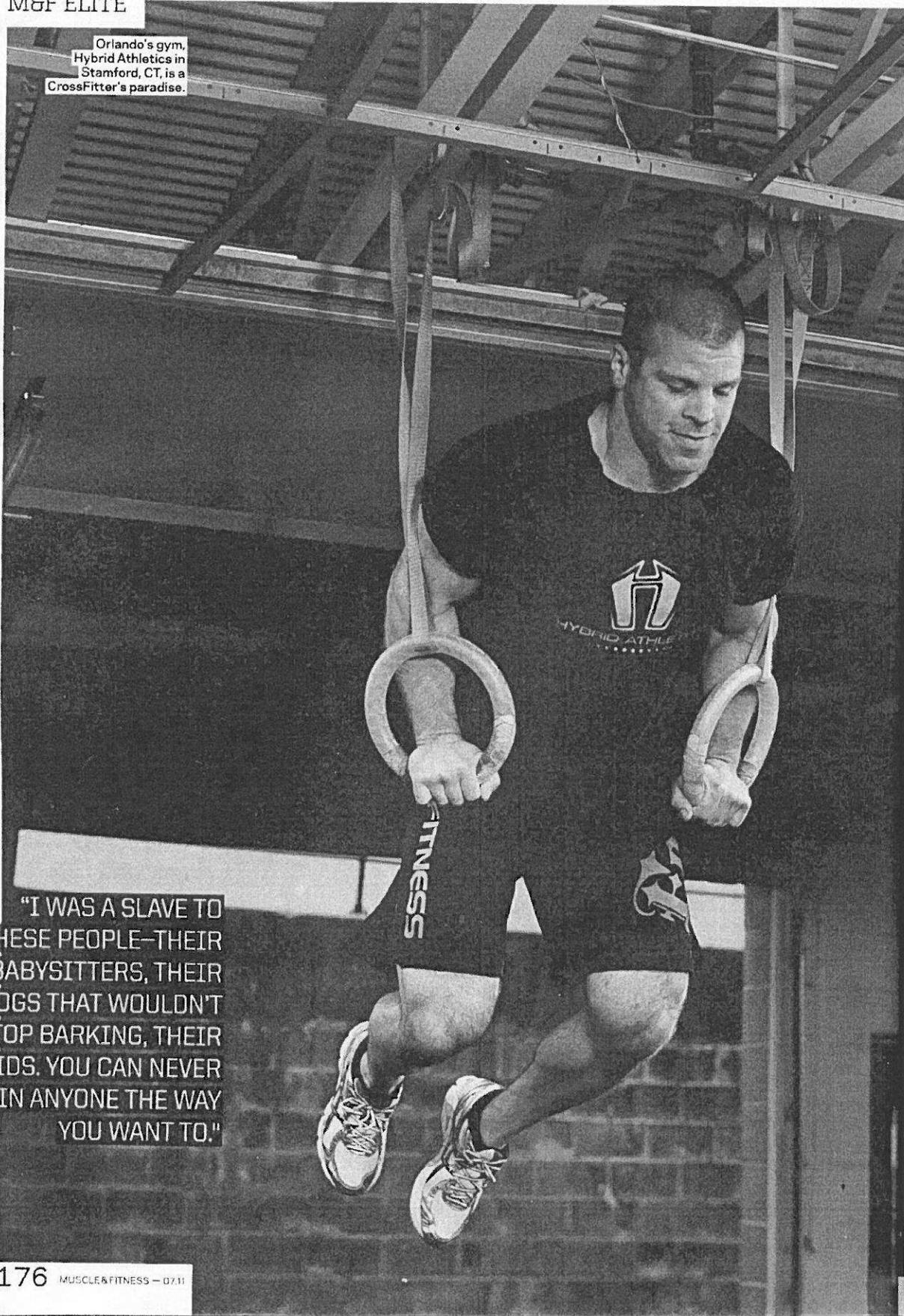
THE KING OF CROSSFIT

ROB ORLANDO WANTS YOUR
GRANDMOTHER TO FLIP TIRES.
HE MIGHT JUST BE ONTO SOMETHING.

BY ROB FITZGERALD
PHOTOGRAPHY BY ROB TRINGALI

M&F ELITE

Orlando's gym,
Hybrid Athletics in
Stamford, CT, is a
CrossFitter's paradise.



"I WAS A SLAVE TO
THESE PEOPLE—THEIR
BABYSITTERS, THEIR
DOGS THAT WOULDN'T
STOP BARKING, THEIR
KIDS. YOU CAN NEVER
TRAIN ANYONE THE WAY
YOU WANT TO."

Rob Orlando weighed less than 150 pounds when he graduated from high school. He played some football and worked himself to the bone in the gym, but recruiters aren't lining up for scrawny 5'8" kids from Connecticut, regardless of how hard they compete or how much they love the game. For Orlando, it just wasn't happening. A lifelong love affair with training, however, was already well underway.

What college scouts never saw was what Orlando forged on the stone masonry and concrete crews where he labored throughout junior high and high school: his work ethic, tenacity, and willingness to take risks, both professionally and with massive weights over his head.

"I worked with this 80-year-old Italian stone mason who said cement mixers made you lazy," he says. "So every day, I was mixing cement in a wheelbarrow with a hoe as fast as he could lay brick, and I was loading it up and down scaffolding. I think that made me a little different from most teenagers."

KEEP PRESSING

The gym was a constant through high school and his college years at the University of Connecticut—where Orlando majored in exercise science—but there was always a plan, or so it seemed. An alternate track. An intention—one undefined for more than a decade—to do something more with what he loved, as opposed to simply remaining on some predetermined road to something he didn't want to do.

He kept getting stronger, adding weight at the rate of ten pounds a year. He kept working his ass off, never missing a workout, putting heavier and heavier weights over his head, to the point where he'd become a specialist in the field. He didn't know what the hell he wanted to do with his life, but he trained throughout college and the years that followed—including a short-lived suit-and-tie stint in medical sales—as though he wouldn't amount to anything if he didn't.

The personal trainer route came next, and Orlando quickly realized it wasn't what he'd envisioned. "I had an

in-home training company in Stamford, where I was traveling from house to house training people," he says. "I did that for five years, and I had the realization that at some point, I was going to take on a client who was younger than me, somebody who'd eclipsed what I was earning and who could afford my rate, and I didn't like that. I was a slave to these people—their babysitters, their dogs that wouldn't stop barking, their kids. You can never train anyone the way you want to."

INTERNET LEGEND

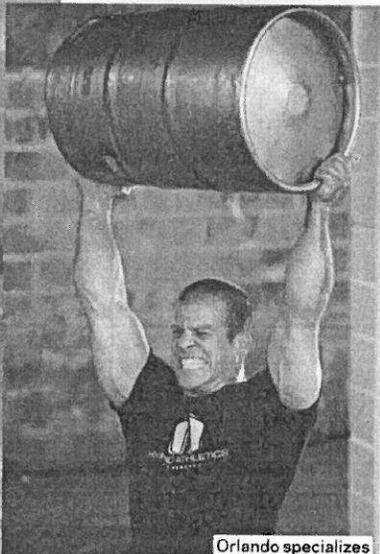
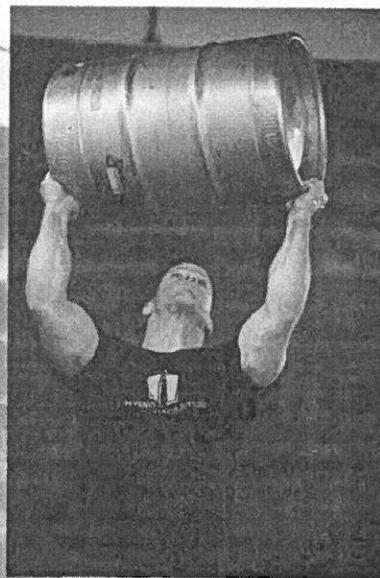
If you quit mixing cement in your wheelbarrow, you don't get paid. Quit carrying the yoke in a strongman competition, and maybe you won't pass out, fall flat on your face, and get scraped off the field like Orlando did in 2006. Take the easy way out, however, and you don't end up on YouTube cranking out reps of overhead presses with the fabled Inch Dumbbell—a thick-handled monstrosity most guys can't even budge off the ground, much less press overhead with a broken nose and fractured eye socket.

The Inch Dumbbell went up, and so did everything else Orlando wrapped his hands around: 365-pound axle cleans, massive log presses. North American weight class strongman records fell left and right whenever he competed. With all of it, every size-and logic-defying feat of strength was catalogued for posterity on YouTube, the videos taking on a life of their own on myriad fitness message boards and forums across the Internet.

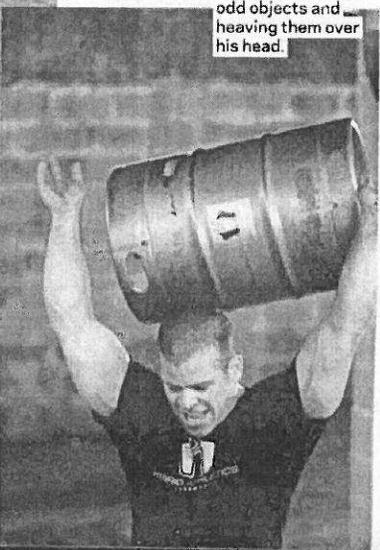
"I was going back to the soccer moms I was training," Orlando says, "and what I was doing in these contests had absolutely no relevance to them. I was training with Derek Poundstone and working out under the same axle for the same sets, and I didn't have anyone to share it with, so YouTube became my outlet. That was the only place I had any acceptance or notice."

HYBRID DREAMS

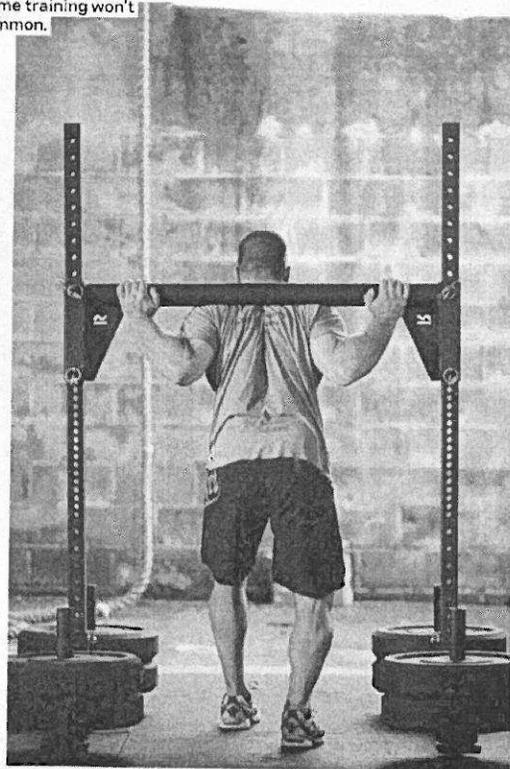
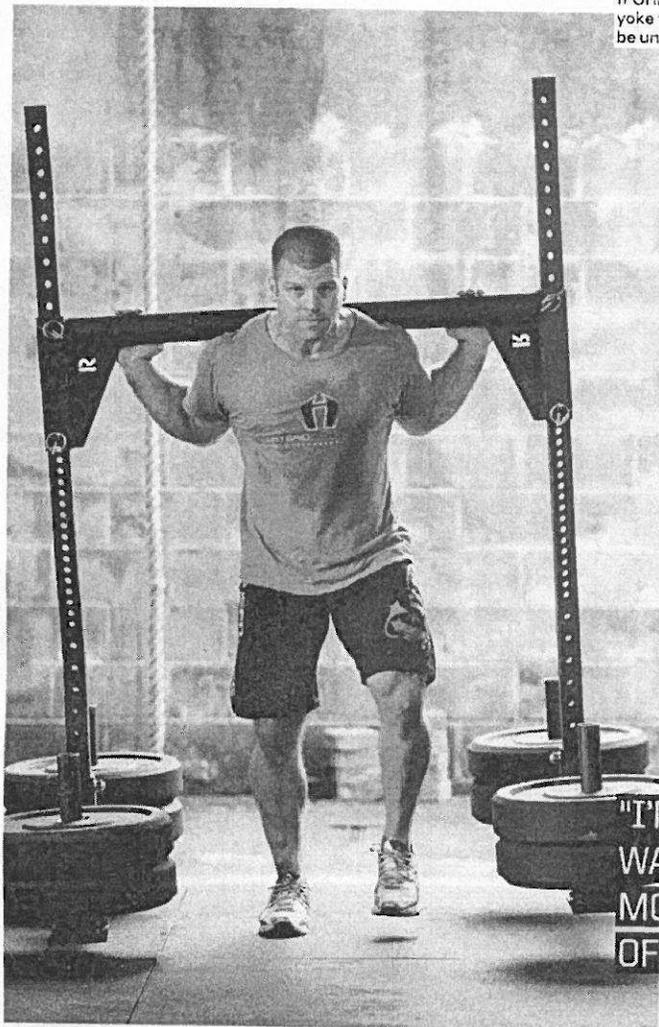
The problem with notice was that Orlando didn't know he'd been noticed by anyone, until a fortuitous breakfast with a client who didn't feel like training one particular morning. Frustrated



Orlando specializes in taking so-called odd objects and heaving them over his head.



If Orlando gets his way, yoke frame training won't be uncommon.



"I'M TRYING TO INTRODUCE A NEW WAY OF TRAINING—STRONGMAN MOVEMENTS—TO THIS HUGE GROUP OF PEOPLE."

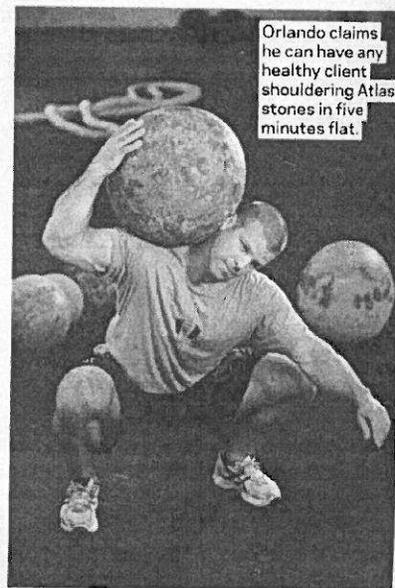
with his in-home training business and the limitations it represented to his still unformed—yet still pervasive—life plan, he vented to his client, a wealthy investment specialist.

"The guy says to me, 'You complain about every gym you've ever trained in. If you think you can do it better, what's stopping you?' I told him fifty grand was what was stopping me, so the guy writes me a check for fifty grand, and my jaw hits the floor. It was time to go find some space and make it happen."

Hybrid Athletics, his combination CrossFit/strongman gym in a decidedly un-Connecticut section of Stamford, is Orlando's dream come into focus. It's where he trained to finish a surprising 22nd in his first CrossFit Games in 2009, despite being stereotyped as a

one-dimensional strength specialist who eschewed endurance events. It's where he transformed himself into a favorite for the 2011 Games and where he trains everyone from stockbrokers to grandmothers. Most important, it's where he says he's going to change the way the world works out.

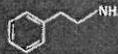
"We affiliated with CrossFit back at the end of 2008, and it's the best thing I've ever done," he says. "I know people love to knock CrossFit, but CrossFitters are so open to trying new stuff. They're the polar opposite of what so many other fitness communities are like in that sense. I'm trying to introduce a new way of training—strongman movements—to this huge group of people. It's a community that can influence and change the landscape of the fitness culture."



Orlando claims he can have any healthy client shouldering Atlas stones in five minutes flat.

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A perfect hybrid: Orlando works with CrossFit, combining heavy lifts and traditional cardio.

"I'M TRYING TO STRIKE A BALANCE WITH ALL THE DIFFERENT THINGS I'M DOING, AND SHARE WHAT I LOVE."



STRONGMAN STARTER KIT

At Hybrid Athletics, Rob Orlando's specialty is turning on moderately fit Average Joes to the benefits of serious strongman training. If you can bench and squat your body weight for reps and deadlift 275 pounds, try this simple strongman medley Orlando uses with his beginner clients. Complete four rounds of this circuit as fast as you can.

EXERCISE	REPS
400-pound tire flip	4
125-pound (per hand) farmer's carry	75 FEET
140-pound Atlas stone to the shoulder	4

If you're ready for one of Orlando's legendary CrossFit workouts, see if you can beat the 18:09 mark he set with the program below.

EXERCISE	REPS
800 meter run	1
315-pound back squat	10
800 meter run	1
225-pound front squat	10
800 meter run	1
135-pound overhead squat	10

MOVEMENTS FOR THE MASSES

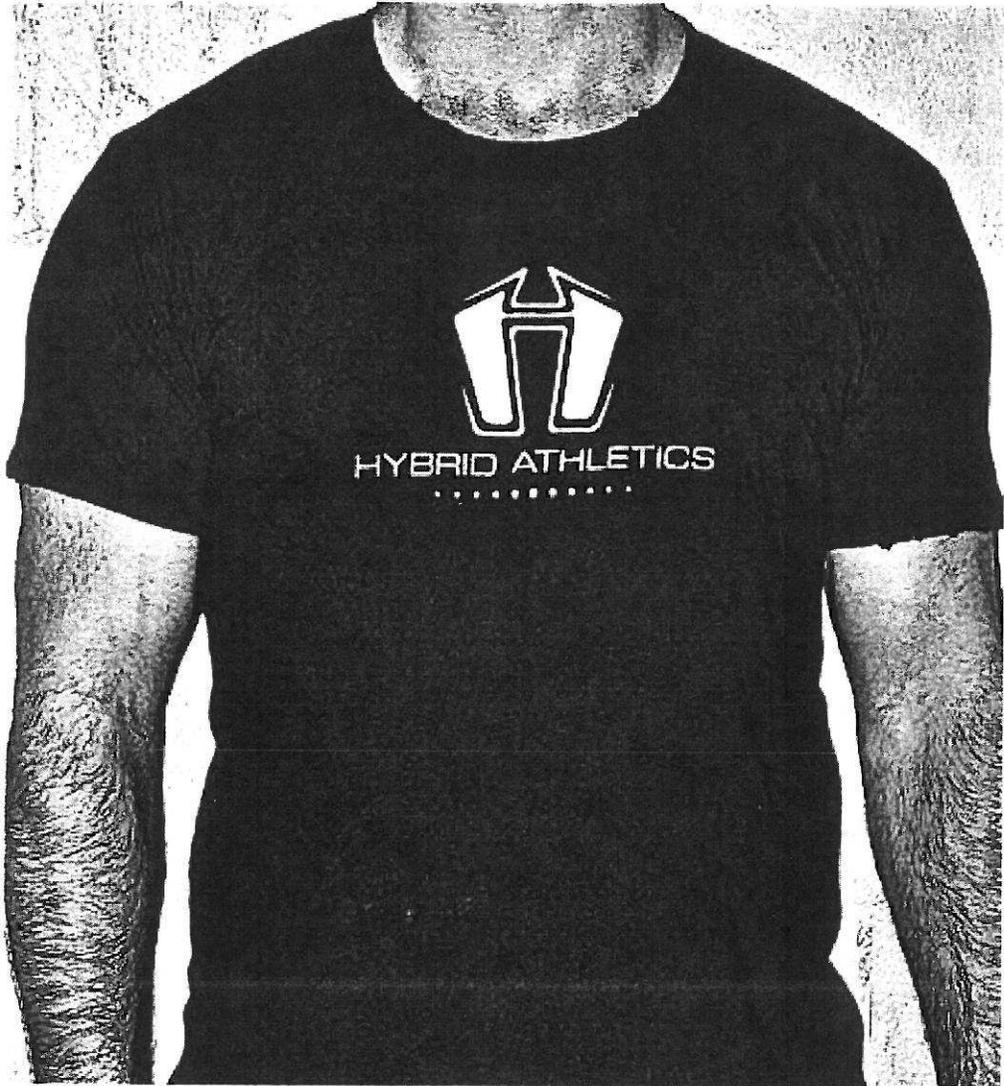
Orlando says strongman training is for everyone, and he means *everyone*. The key is scalability. Having a point of entry so everyone can be included in a greater community setting, with nobody shut out. "People want to use stones and logs and all the other great strongman stuff, but they can't because all the other conventional equipment out there is too heavy for them to start using, even without any weight on it." After seeing this limiting factor time and time again with clients, Orlando partnered with a metal fabricator, designing his own Hybrid Athletics equipment line that features "strongman products for the masses."

"We've got a 61-year-old woman who comes in here," he says, "and I started her off with a 30-pound stone on her shoulder, just to break down her fear. Five minutes later, she was up to a 60-pound stone. Is that not strongman? We're opening up a toy chest to people who would otherwise be denied."

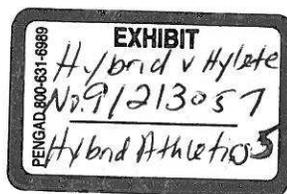
It's a movement within a movement.

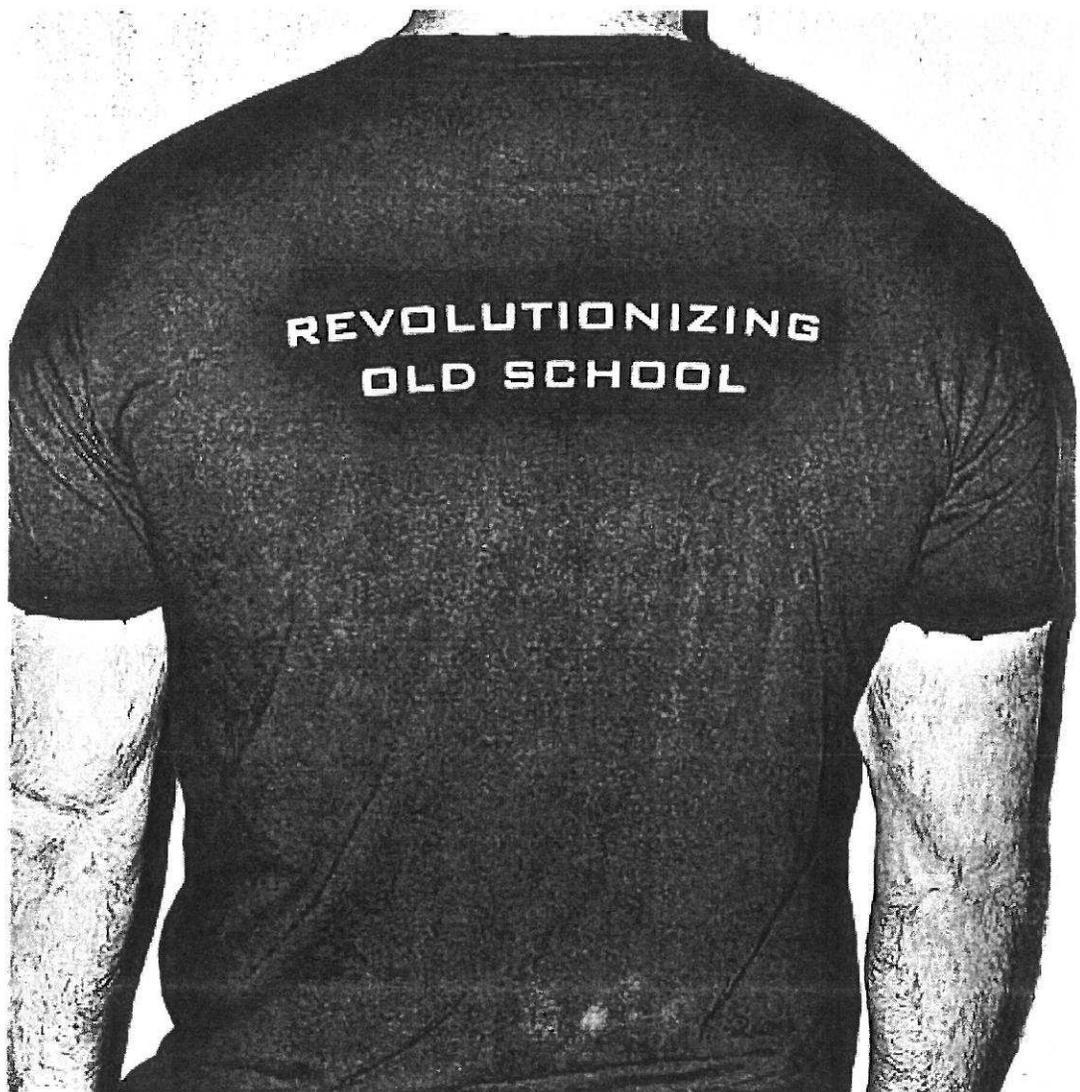
Love it or hate it, CrossFit boasts a massive international community, so when you make waves within its ever-expanding world—and Orlando certainly does—you're influencing the industry as a whole. That's his destiny, the one he knew he was headed for, yet couldn't quite put his finger on, all those years ago with his wheelbarrow, his hoe, and his 97-pound bags of cement. For Orlando, weights keep going up, only this time, he's shouldering the burden of changing the way we train. His new tattoo showing the word *Balance* across his rib cage—only three weeks old at the time of the photo shoot for this article—is telling.

"For me, everything is about balance. I'm trying to find it on so many different levels—as a father, a husband, a business owner, an athlete, an entrepreneur, an engineer, and a creative guy. I'm trying to strike a balance with all the different things I'm doing, and share what I love—teaching strongman and getting everyone involved—is exactly where I've always wanted to be." **M&F**



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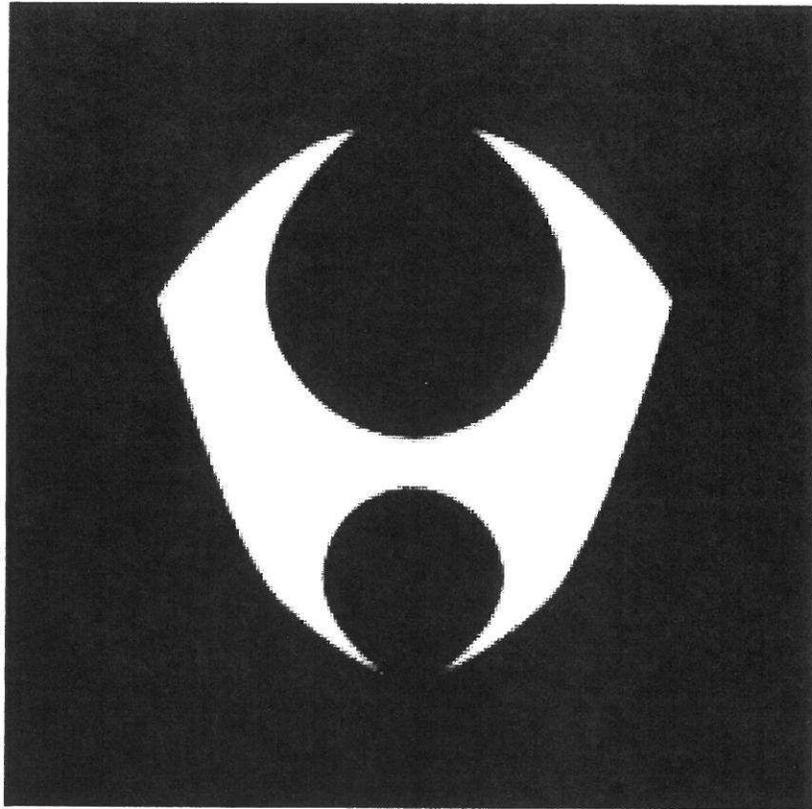


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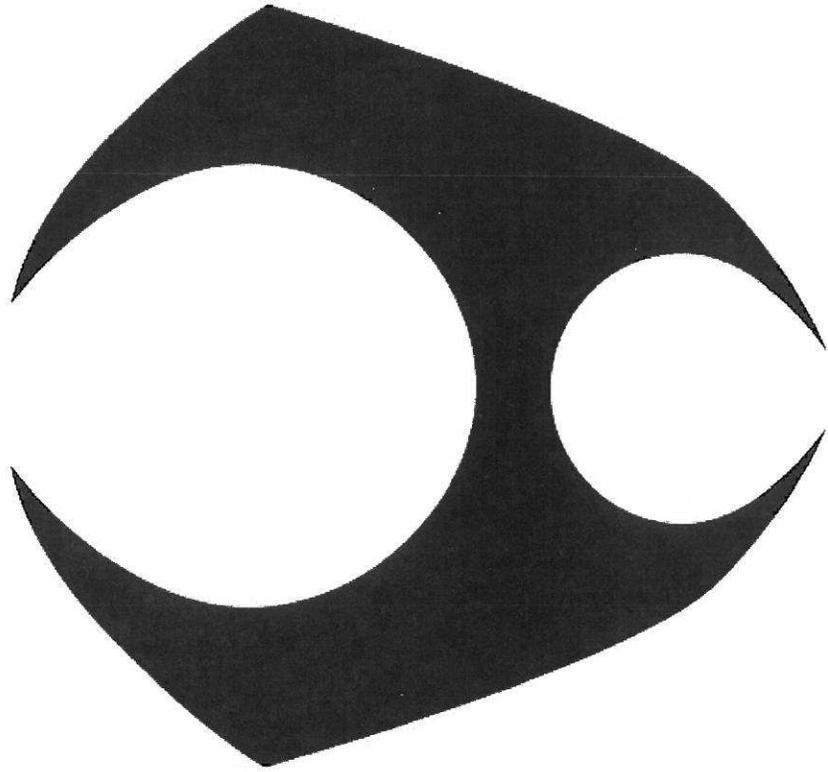
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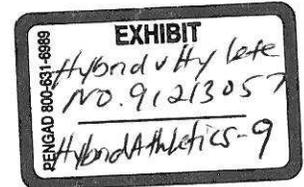
CONFIDENTIAL INFORMATION - DO NOT COPY -- DO NOT DISTRIBUTE

June 12, 2013

File Number: HYL-00190

VIA E-MAIL: dale@crossfit.com

Dale Saran, Esq.
CrossFit, Inc.
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

Re: Hybrid Athletics adv. Hylete LLC

Dear Mr. Saran:

We represent Hylete LLC in intellectual property matters. Hylete is the avid supporter of the CrossFit community and is scheduled to exhibit at the upcoming CrossFit games, pursuant to a signed exhibitor's agreement with CrossFit.

Hylete was recently contacted by Mr. Steve Weiss of CrossFit that a company identified as Hybrid Athletics is attempting to interfere with our business relationship, through allegations of trademark infringement. In light of these allegations, CrossFit has offered to terminate the signed exhibitor's agreement with Hylete.

Hylete strongly values its relationship with CrossFit and desires to keep the regionals and finals booths, as set forth in the exhibitor agreement. As such, I have been asked to investigate this matter. As discussed below, I find these allegations to be without merit.

I first note that it is unclear what, if any, trademarks rights are secured by Hybrid Athletics. We have conducted a review of trademark filings with the U.S. Patent and Trademark Office (USPTO) filed by Hybrid Athletics. Based on our review, we found that Hybrid Athletics has failed to secure any federal registration for any trademarks.

More particularly, Hybrid Athletics filed for trademark registration under TM Serial No. 85/095,039. The USPTO refused registration of the Hybrid Athletics logo. The application has been abandoned since December 19, 2011. *See*, attached.

Moreover, Hybrid Athletics has failed contact Hylete at all, let alone, identify any trademark rights it possesses or substantiate any claims of infringement.

Rather, Hybrid Athletics is now attempting to assert rights that it failed to secure through federal registration. In short, Hybrid Athletics is asking your company to enforce rights it failed to secure through the USPTO.

515 S. Flower Street, 36th Floor TEL 323.660.9916
Los Angeles, CA 90071 FAX 323.660.9917

WWW.TSIRCOULAW.COM EMAIL kyrie@tsircoulaw.com

HYLETE001-0032

In contrast to Hybrid Athletics dubious trademark claims, Hylete has successfully secured substantial rights through federal registration of its HYLETE mark, U.S. Reg. No. 4,318,646 (I.C. 025, for athletic apparel...). Hylete's logo has also been approved for registration by the USPTO (U.S. TM App. No. 85/837,045).

U.S. Reg. No./ U.S. TM App. No.	Mark	USPTO Status (Int'l Class, Goods)
4,318,646	HYLETE	Registered (IC 25, Athletic apparel, namely, shirts, pants...)
85/837,045		Approved for Registration (IC 25, Athletic apparel, namely, shirts, pants...)

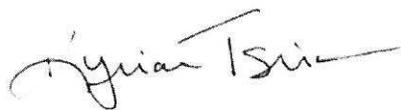
I further note that Hylete has invested substantial time and resources in preparation for the upcoming CrossFit games, in reliance upon the signed exhibitor's agreement, as such would suffer substantial harm if it were not allowed to exhibit.

Hylete intends to communicate directly with Hybrid Athletics on this matter, requiring that they cease interfering with Hylete's valued business relations in this manner. See, e.g., *Grooms v. Legge*, 2009 WL 962067 (S.D. Cal. Apr. 8, 2009) (Tortious interference with business relationship found where defendant's conduct inhibited plaintiff from participating in a trade show.)

We are hopeful that will alleviate any concerns CrossFit might have on this matter. Accordingly, Hylete respectfully requests that CrossFit honors the signed exhibitor's agreement with Hylete.

Hylete looks forward to a long and mutually beneficial relationship with CrossFit. Please do not hesitate to contact me if you have any questions.

Sincerely,



Kyriacos Tsircou

Attachment:

U.S. TM Serial No. 85/095,039 to Hybrid Athletics LLC – Abandoned as of Dec. 19, 2011

Filed Mark(s):



(Original)



(As amended)

Status Summary:

Word Mark	H
Goods and Services	(ABANDONED) IC 041. US 100 101 107. G & S: Shirts, athletic equipment, athletic training, and athletic programming. FIRST USE: 20080801. FIRST USE IN COMMERCE: 20100330
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	85095039
Filing Date	July 28, 2010
Current Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) ROBERT ORLANDO DBA HYBRID ATHLETICS, LLC LIMITED LIABILITY COMPANY CONNECTICUT 7 HYDE STREET, LOWER LEVEL STAMFORD CONNECTICUT 06907
Description of Mark	The color(s) pantone 123c, black, and grey is/are claimed as a feature of the mark. The letter "H" is grey with pantone 123c outlining it. The letter "H" is on top of a black background.
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD
Abandonment Date	November 17, 2011

<http://tess2.uspto.gov/bin/showfield?f=doc&state=4806:rgr7e5.2.1>

	NOTICE OF ABANDONMENT MAILING DATE: Dec 19, 2011
<p>The trademark application identified below was abandoned in full because a response to the Office Action mailed on May 15, 2011 was not received within the 6-month response period.</p> <p>If the delay in filing a response was unintentional, you may file a petition to revive the application with a fee. If the abandonment of this application was due to USPTO error, you may file a request for reinstatement. Please note that a petition to revive or request for reinstatement must be received within two months from the mailing date of this notice.</p> <p>For additional information, go to http://www.uspto.gov/eeas/petinfo.html. If you are unable to get the information you need from the website, call the Trademark Assistance Center at 1-800-786-9199.</p>	
SERIAL NUMBER	85095039
MARK	H
OWNER	ROBERT ORLANDO

From: Dale Saran <dale@crossfit.com>
Sent: Sunday, June 23, 2013 1:13 PM
To: Kyri Tsircou <kyri@tsircoulaw.com>
Cc: Steve Weiss <steve@crossfit.com>; Marshall Brenner <Marshall@crossfit.com>; Justin Berg <justinb@crossfitgames.com>; Justin Berg <jbergh@crossfit.com>
Subject: Re: Hybrid Athletics adv. Hylete

Mr. Tsircou:

I am in receipt of your letter. You have made some assertions in the form of legal conclusions in your letter that I feel compelled to correct. First, Hybrid Athletics, in the form of its creator and owner, Mr. Rob Orlando, did not "attempt to interfere" with anyone's relationship. He answered questions posed by a number of people, including me to some friends, regarding his "new business partner" after I saw your client's booth conspicuously located next to Mr. Orlando's at the NorthEast Regional event at Reebok's Canton Campus while I was attending. I mistook it for Mr. Orlando's and made inquiries that led me to discover that your company was NOT associated with Mr. Orlando's. In other words, mark me down for example number 1 of consumer confusion.

Second, those inquiries led to the decisions that Mr. Weiss made on behalf of CrossFit, Inc.

Third, you should understand that CrossFit, Inc. and "Hylete" are not going to have a "long and mutually beneficial relationship." CrossFit, Inc. does not need, nor desire, whatever minor benefit might accrue from having Hylete as an exhibitor, namely the sponsor fee, which I believe has already been returned to your client, along with the fee for the Regionals - for which Hylete had already received the benefit by exhibiting at that event.

We are not interested in doing business with Hylete, irrespective of assertions about who has what federal registration. We hold ourselves to a different standard than simply "what can be legally gotten away with." You may contact Mr. Orlando if you so choose, but it won't change anything.

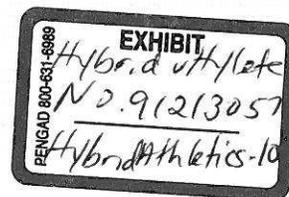
I have cc'd the relevant parties on this email, including Mr. Weiss, Marshall Brenner - our Chief Litigation Counsel, and Justin Bergh, who is the Managing Director for the CrossFit Games.

Regards,

Dale Saran

Dale Saran
General Counsel
CrossFit, Inc.
401-464-1190 (cell)
831-263-5223 (fax)

 Fid
Def
2.p
ng



On Wed, Jun 12, 2013 at 8:12 PM, Kyri Tsircou <kyri@tsircoulaw.com> wrote:

Mr. Saran,

We represent Hylete LLC, an exhibitor at CrossFit games. Please review the attached letter. I look forward to hearing from you on this matter.

Best regards,

Kyri Tsircou

TSIRCOU

315 S. Flower Street, 36th Floor
Los Angeles, CA 90071

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INTELLECTUAL
PROPERTY LAW

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EMAIL kyri@tsircoulaw.com

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