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

Proceeding	91213057
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HYBRID ATHLETICS, LLC,
Opposer,

vs.

HYLETE, INC.

Applicant.

OPPOSITION NO. 91213057
APPLICATION SERIAL NO.
85/837,045

TRIAL DEPOSITION OF MATT PAULSON

October 28, 2015

9:02 a.m.

568 Stevens Avenue
Solana Beach, California

REPORTED BY:

Renée C. Roberts

CSR No. 6910

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ALSO PRESENT:

RON WILSON II

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Matt Paulson
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MATT PAULSON

Hybrid Athletics, LLC vs. Hylete, Inc.

Wednesday, October 28, 2015

Renée C. Roberts, CSR No. 6910

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Solana Beach, California;

Wednesday, October 28, 2015; 9:02 a.m.

MATT PAULSON,

having been first duly sworn,

was examined and testified as follows:

MR. BEGAKIS: I will start by having everybody in the room identify themselves and ending with the witness.

MR. WILSON: Ron Wilson, CEO of Hylete.

MR. KOSMA: Michael Kosma representing Hybrid Athletics, from the Whitmyer IP Group.

MS. MUNN: Sarah Munn from CrossFit, Inc.

MR. BEGAKIS: Are you an attorney for CrossFit?

MS. MUNN: Yes.

THE WITNESS: Matt Paulson, co-founder and CIO for Hylete.

MR. BEGAKIS: So before we get started, I'll put on record that, given my client's affiliation with certain strategic partners, it considers itself a competitor of CrossFit, and thus objects to the attendance of a CrossFit attorney in this proceeding. But we will allow it to continue.

EXAMINATION

1
2 BY MR. BEGAKIS:

3 Q. Okay. Good morning, Mr. Paulson.

4 A. Good morning.

5 Q. I'm John Begakis, attorney from Tsircou
6 Intellectual Property Law, counsel for Hylete, Inc. This
7 is a deposition in which I will ask you questions and you
8 must answer them truthfully.

9 Although no judge is present, this is a formal
10 legal proceeding, just like testifying in court, and
11 you're under the same legal obligation to tell the truth,
12 the whole truth and nothing but the truth.

13 If you don't understand any of questions, please
14 feel free to say so, and I'll repeat or rephrase them.

15 Before the deposition can be used in court, you
16 will have the opportunity to read over and correct any
17 mistakes.

18 Do you understand this?

19 A. Yes.

20 MR. BEGAKIS: Unfortunately, opposing counsel
21 and CrossFit will have to share documents.

22 All Right. Mr. Paulson, I'm handing you what's
23 been marked into evidence as Exhibit 1.

24 (Exhibit 1 marked)

25 ///

1 BY MR. BEGAKIS:

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. What is this document?

5 A. That's the document calling me to be deposed and
6 share my testimony.

7 Q. Is that why you're here today?

8 A. Yes.

9 Q. Mr. Paulson, where do you live?

10 A. I currently live in Pleasant Grove, Utah.

11 Q. And what is your current job title at Hylete?

12 A. My title is chief integration officer.

13 Q. What is your education level, starting with high
14 school?

15 A. Starting with high school. Well, completed high
16 school. I then completed my undergrad in business at
17 Brigham Young University in 2003. And proceeded on to
18 get my MBA degree at San Diego State. Completed that in
19 2011.

20 Q. Do you have an interest in fitness?

21 A. Absolutely. My entire life.

22 Q. And what have you done in the fitness realm?

23 A. Early on, growing up, it was all sports-related.
24 Everything from elite sports, growing up, into settling
25 into my passion early on, which was volleyball, both

1 indoor and beach volleyball, which I played on several
2 club teams in Utah, as well as Utah Valley State College,
3 before transferring over to BYU.

4 Unfortunately, I didn't have enough height to
5 play at BYU, and that's when my volleyball career
6 stopped. And then just continued on into just general
7 fitness.

8 Started into -- you know, I got bored really
9 quick with traditional fitness, and I was an early
10 adopter of P90X. We go back to when Tony Horton made it
11 popular on TV back in 2001 or '2, or sometime in the
12 early 2000s. And since then, I continued, you know,
13 training in a variety of disciplines, you know, whether
14 it's mixed martial arts, CrossFit now. Participated in a
15 variety of obstacle course races, triathlons, et cetera.

16 Q. What's your work experience prior to starting at
17 Hylete?

18 A. So upon graduating from BYU, that was when I
19 started my first company. It was called Xtreme Sponge,
20 out of Saint George, Utah. And we were a direct
21 competitor to Procter & Gamble, with their Mr. Clean
22 line. They introduced a product to the market called the
23 Mr. Clean Magic Eraser, which, you know, was produced by
24 a company named BASF, in Germany, of which we went and
25 secured a contract with BASF to purchase that product

1 from them also, and to do all of the generic product for
2 the majority of the major retailers out there. So
3 everything from the Target Eraser, Walgreens Eraser,
4 Albertson's Super Value, et cetera. The list could go
5 on.

6 We built that company from, you know, the ground
7 up. And after about four to five years, you know, we had
8 reached around the 5 million in sales mark with that
9 product, and my day-to-day operations became somewhat
10 monotonous. And I woke up one morning and realized that
11 being my own boss didn't compensate for not liking what I
12 did. And I decided right then that, you know, I needed
13 to spend the rest of my life being passionate about what
14 I was doing.

15 So I narrowed it down to the sports field, and
16 even more drilled down to sports apparel. And so I
17 decided to pick up my family, move to San Diego and get
18 my Master's degree at San Diego State University. And,
19 you know, then at that time I -- you know, we had two
20 days off every week from classroom studies, and I made it
21 my goal that every Friday, I was going to meet with a
22 local young sports apparel company, to schedule
23 informational interviews with them, to learn about the
24 business model and slowly try to, you know, integrate
25 myself into a young, growing business, to get some

1 experience in the sports apparel world.

2 My second meeting happened to be with Ron Wilson
3 at JACO Clothing. Ron was the founder of JACO. And I
4 had scheduled an informational interview with him, and
5 after about an hour-and-a-half interview with him, I was
6 so impressed with, not only him and his background and
7 the company he had built at JACO, I was impressed with
8 the companies that were surrounding them. You know, from
9 a larger holding company called Gathering Storm, that,
10 you know, I decided to throw caution to the wind and ask
11 him right there on the spot if I could, you know, work
12 for him. You know, that I had two days off from
13 classroom studies during my Master's degree to
14 contribute. And --

15 Q. And what did he say?

16 A. He said yes, fortunately. You know, which
17 started, you know, I would say a long-term relationship,
18 you know, at that point.

19 And so for the balance of my Master's degree, I
20 was what you would call basically an intern,
21 jack-of-all-trades, doing everything from assisting in
22 sales, assisting on the marketing side, assisting on
23 event planning and coordinating and logistics, up until
24 the point of where, you know, I had finished my core
25 classroom work, and I came on originally as the marketing

1 manager for JACO.

2 Q. Roughly what years were you an intern at JACO?

3 A. It was January of 2010, was when I first stepped
4 into Ron's office.

5 Q. When did you become full time?

6 A. About a year later, January of 2011.

7 Q. And you mentioned this company, Gathering Storm.

8 A. Yeah.

9 Q. Can you describe the relationship between
10 Gathering Storm and JACO?

11 A. Yeah, sure. Ron created -- he founded JACO,
12 creator of JACO and, you know, with many fast growing
13 companies, he partnered with Gathering Storm. Gathering
14 Storm made a significant financial investment in JACO.
15 And so Gathering Storm was, you know, basically our
16 majority shareholder and parent company, which they had
17 several other companies and licenses under their brand,
18 such as the TaylorMade golf license. They had the U.S.
19 distribution rights to Skins Compression line, which, you
20 know, originally was a CrossFit fan favorite. And that's
21 how we actually ended up getting introduced into the
22 CrossFit world, was through Skins and our relationship
23 being under the same roof as Skins.

24 They had Arena Swimwear, Schutt Football, you
25 know --

1 Q. And when you started full time at JACO, what was
2 your job title?

3 A. Marketing manager. That was my first title.
4 And then I worked into director of sales shortly
5 thereafter.

6 Q. What was your role as marketing manager?

7 A. Marketing manager, I worked a lot on the PR
8 side, you know, gaining some -- you know, putting JACO in
9 different locations, working with a lot of strategic
10 partners at the time, and maintaining those relationships
11 as well.

12 So, you know, those partnerships ranged from,
13 you know, people who were influential in their sphere,
14 whether they were trainers, trainer of trainers, writers
15 or contributors for different magazines, different key
16 Web sites in the industry as well.

17 Q. And how did your role evolve when you became a
18 director of sales?

19 A. You know, I maintained the relationships of all
20 the strategic partnerships, but then I assumed the role
21 of sales and growing the company through international
22 distributors, as well as domestic partners, and
23 continuing to work with the strategic partners that I had
24 built up relationships with.

25 Q. When did you first meet Rob Orlando?

1 A. Face-to-face, I met Rob Orlando at the Arnold
2 Classic, now known as the Arnold Sports Festival, back in
3 2012.

4 And, you know, I think it's important to note,
5 you know, before meeting Rob, you know, there was a shift
6 in the company as well. Gathering Storm ended up going
7 bankrupt. And they went bankrupt around August of the
8 year before, 2011. And at the time, a guy named Glenn
9 Robinson, he came in and was able to secure the assets to
10 JACO, and started a new company called JACO Athletics,
11 bringing Ron and four or five other team members, you
12 know, on to work under the new entity of JACO Athletics
13 with Glenn.

14 Q. So both you and Ron Wilson were under the new
15 JACO?

16 A. Yeah. Ron was, you know, a partner, you know,
17 with Glenn, for all intents and purposes. I came on
18 within my same role of director of sales.

19 Q. And in this new company, you began working with
20 Rob Orlando?

21 A. Yeah. Sometime in that last half of 2011 was
22 when we were -- was when I was introduced to Rob Orlando.
23 And so we, you know, had several phone conversations, you
24 know, e-mails, prior to meeting face-to-face.

25 Q. What was the context of your relationship with

1 Rob Orlando at that time?

2 A. It was, you know -- just like as I mentioned
3 before, one of my primary roles was working with all
4 strategic partners. And Rob, we were looking at Rob in
5 bringing him on as a strategic partner and/or sponsored
6 athlete, you know, in some form or fashion.

7 Rob, you know, fit -- you know, fit the bill and
8 was just like several of our other strategic partners, in
9 that he was the trainer of other trainers, you know, we
10 had numerous of those. He was a contributor for several
11 magazines, just like several of our other strategic
12 partners. So Rob, you know, fit the mold.

13 MR. KOSMA: John, just before we get into the
14 new documents, you know, I really want to stress that
15 TTAB's order specifically says Hylete cannot submit at
16 trial or rely on as evidence at trial any information or
17 documents that were the subject of Hybrid's discovery
18 request, but which were not served on opposer prior to
19 filing of opposer's motions for sanctions.

20 This is the first time we had this document.
21 Document Request Number 19 says "All documents that
22 Hylete will or may offer as exhibits at trial." We
23 requested those. We asked for them in discovery. We
24 never got them.

25 Hybrid Athletics is going to seek full relief

1 under the TTAB statutes. You're wasting my time. You
2 are --

3 MR. WILSON: We're not wasting your time. You
4 can't ask a broad question like that, everything we might
5 produce, because we don't know what the case represents.
6 You asked specific questions at the beginning of your
7 interrogatories, which we did answer and supplied, with
8 the exception of confidential information, which we will
9 not rely upon in this proceeding. However, you cannot
10 ask a wide-ranging net of everything we might produce,
11 because we did not know where the case was going, based
12 upon your depositions.

13 Now that we have seen your testimony from your
14 witnesses, we are now in a position to present documents
15 that do not fall under those original specific
16 interrogatory questions that do fall under the TTAB
17 ruling. So we will proceed.

18 MR. KOSMA: Mr. Wilson, I'm not going to stop
19 you from proceeding.

20 MR. BEGAKIS: Your objection is received and
21 we're going to proceed and submit our documents and our
22 evidence.

23 MR. KOSMA: Okay. I'm just going to say it's
24 highly irregular for a non-attorney that is just looking
25 into it or sitting in a deposition to argue.

1 MR. WILSON: I have 25 years of experience in
2 this.

3 MR. KOSMA: Mr. Wilson, I don't want to get in
4 an argument with you. I just want to put my objection on
5 the record.

6 MR. BEGAKIS: You've put your objection on the
7 record. Your objection's received. We're going to
8 proceed submitting evidence that we believe was not the
9 subject of requests, both interrogatories and document
10 requests.

11 MR. KOSMA: I'm going to say there's 26
12 requests. We had a full discovery period for you to take
13 depositions of my witnesses. You could have took
14 discovery depositions and you could have took trial
15 depositions. No discovery depositions were requested of
16 me or my clients. We produced all the documents. You
17 know, we have done everything. The rules are in place to
18 make these procedures go smoothly.

19 MR. WILSON: And run up a lot of money, which is
20 what you're trying to do. Let's proceed. You've made
21 your objections.

22 MR. BEGAKIS: Your objection's received. We're
23 going to proceed as planned, submitting documents that
24 were not the subject of document requests or
25 interrogatories.

1 Anyway, Mr. Paulson, you've been handed what's
2 been submitted into evidence as Exhibit 2.

3 (Exhibit 2 marked)

4 BY MR. BEGAKIS:

5 Q. Do you recognize this document?

6 A. Yes.

7 Q. What is this document?

8 A. This is an initial term sheet that I put
9 together for Rob Orlando when we were negotiating our
10 relationship with bringing him on as a strategic partner.

11 Q. And so this was, like you mentioned, a strategic
12 partnership --

13 A. Uh-huh.

14 Q. -- that JACO had with particular athletes;
15 correct?

16 A. Yes. Correct.

17 MR. KOSMA: I'll object to this document and
18 this line of questioning as irrelevant.

19 BY MR. BEGAKIS:

20 Q. Can you explain to me the key details of this
21 term sheet?

22 A. Yeah. The key details, you know, of the term
23 sheet, were really to benefit Rob, you know. At the time
24 when Glenn Robinson had just acquired the company, you
25 know, we were under tight budgets as well. So we had to

1 be creative in the lines of our relationship, with the
2 strategic partners. And at the time, we also --
3 especially me, in my role, I always wanted to make it
4 very -- as attractive and as lucrative as possible for my
5 partner, knowing that from a marketing perspective we
6 would get the most out of it.

7 And so the term of this agreement was a year
8 term for 2012. It was \$1,500 cash per quarter, as well
9 as \$1,500 in product per quarter. And how that product
10 was allocated was not based off of some retail figure.
11 So it wasn't \$1,500 retail per quarter. It was \$1,500 of
12 product at our cost, our product cost.

13 Q. And to be clear, for the record, what was the
14 main product that JACO sold?

15 A. Shorts. Shorts. That was our key product. And
16 that was the product that Rob wanted. Rob sold a ton of
17 T-shirts. But we, you know -- JACO, we had a very unique
18 short that Ron Wilson designed and has patents on. And
19 he wanted that short with -- screen printed with his logo
20 on it.

21 Q. So Rob received \$1,500 worth of JACO shorts at
22 cost?

23 A. Yes.

24 Q. And JACO did all the legwork in putting his logo
25 on those shorts as well?

1 A. Yes. JACO did all the legwork in screen
2 printing the logo.

3 MR. KOSMA: Objection. Leading.

4 THE REPORTER: Wait, when he's objecting. I
5 didn't get your answer because you're talking over.

6 MR. KOSMA: I need a little bit of pause, to get
7 a couple of objections in. I don't want to interrupt
8 your talking and I don't want to interrupt your
9 questions. If I can get a little pause here and there,
10 just to let me put my objection on the record. That's
11 all.

12 I object to the question as leading.

13 MR. BEGAKIS: If you have an objection that you
14 don't -- I'm not going to have the witness pause before
15 he answers a question. So if you have an objection that
16 you failed to make before he starts answering, make your
17 objection at the end of the question.

18 MR. KOSMA: Let me get my objections in. I need
19 a little bit of a pause.

20 MR. BEGAKIS: Well, then talk over.

21 MR. KOSMA: I don't want to talk over.

22 THE REPORTER: I can't report two people
23 speaking at the same time.

24 MR. KOSMA: She's trying to transcribe this.
25 Usually people allow a little bit of a pause. It's just

1 normal procedure, John.

2 MR. BEGAKIS: Yeah. It's normal procedure,
3 exactly.

4 MR. KOSMA: You have to have a pause between
5 question and answer, or at some point. It's just normal.

6 MR. BEGAKIS: Yeah. It's normal to make your
7 objection quickly in between question and answer. Make
8 your objection when you want. If you're talking over,
9 then we'll have to repeat and go over this, question by
10 question.

11 THE WITNESS: Yes. JACO -- JACO produced a
12 short, and we used our screen printers to screen print
13 the Hybrid Athletics logo on the leg, to give Rob extra
14 brand name.

15 BY MR. BEGAKIS:

16 Q. How much, at the time, did these JACO shorts go
17 retail?

18 A. They retailed for \$60.

19 Q. So doing the rough math, how much was
20 Mr. Orlando making, receiving \$1,500 worth of shorts at
21 cost?

22 MR. KOSMA: I'll object to this line of
23 questioning as irrelevant. Mr. Orlando's terms with JACO
24 or the money he made at JACO is irrelevant to this whole
25 proceeding.

1 MR. BEGAKIS: See, it's not that hard to make an
2 objection before he answers.

3 THE WITNESS: Approximately \$6,000 per quarter
4 was what he would have been able to sell them for at
5 retail.

6 BY MR. BEGAKIS:

7 Q. And if he wanted more shorts above and beyond
8 the 1500, what was the arrangement that JACO had with
9 him?

10 A. He did purchase it at cost, plus 10 percent.

11 Q. So --

12 A. The product cost, plus the embellishment cost of
13 screen printing his logo, plus a 10 percent on top of
14 that.

15 Q. So again doing the rough math, how much would he
16 be making?

17 A. That one, he'd probably still be making around 4
18 grand, if he got the same amount of product. So if he
19 bought, yes, \$1,500 worth of product, he turned it into 4
20 grand. So it was very lucrative for him.

21 Q. Yeah.

22 A. It was very lucrative for him.

23 MR. KOSMA: I'm going to object as hearsay.
24 This whole line of questioning is again irrelevant. Lack
25 of personal knowledge on what Mr. Orlando's -- what

1 lucrative was. And speculation.

2 THE WITNESS: I will say that Rob Orlando had
3 these listed on his Web site for sale that -- anywhere
4 between 55 to \$60. And that's my personal knowledge of
5 it. And I handled a lot of these orders for Rob. Again,
6 my personal knowledge of it that, you know, he was
7 receiving this product and knowing what he was selling
8 them for and his urgency in receiving product. He was
9 making good money for it.

10 BY MR. BEGAKIS:

11 Q. Could you tell us a little bit about this
12 urgency in receiving product that you mentioned?

13 A. Yeah. Sure. So he had a couple of ties --
14 well, of course, as we all know, Rob Orlando was a
15 trainer. He was also a trainer of trainers. He was, you
16 know, providing CrossFit Strongman certifications, as
17 well as doing his own Strongman seminars. And he would
18 do a lot of these seminars. And in my knowledge with Rob
19 and what he told me, you know, the shorts would sell like
20 crazy at these seminars. You know, that's -- and so he
21 would sell out, and he would have other seminars coming
22 up that he would express urgency in, "Hey, I sold out of
23 my shorts. I really need you to make more shorts for me.
24 And I need them by such-and-such a date."

25 You know, there was one time in particular

1 where, you know, he had sold out prior to going on a
2 European seminar tour. And he really needed his shorts
3 delivered to him prior to that European seminar tour, in
4 early 2012.

5 MR. BEGAKIS: Mr. Paulson, I'm handing you
6 what's been marked into evidence as Exhibit 3.

7 (Exhibit 3 marked)

8 BY MR. BEGAKIS:

9 Q. Do you recognize this document?

10 A. Yes.

11 Q. What is this document?

12 A. This is Rob Orlando's testimony from his
13 deposition.

14 Q. I'd like to direct you to Line 15.

15 A. Okay.

16 Q. Could you read from there to Line 8 of the
17 following page.

18 A. Yeah.

19 MR. KOSMA: I'd like to point out this document
20 was marked "Highly Confidential" under the protective
21 order. The fact that Mr. Paulson has even reviewed this
22 is a violation of the protective order in this case. And
23 I'm just shocked that a highly confidential document was
24 shown to someone other than an attorney.

25 You can proceed. But violating the protective

1 order is just -- it's shocking.

2 MR. BEGAKIS: Your objection's noted.

3 BY MR. BEGAKIS:

4 Q. Can you please read it.

5 A. Yes.

6 "Paulson was my main point of contact at JACO.
7 He was the person that I would reach out to for ordering.
8 Jen Knoll was actually another woman that I spoke with
9 frequently to place orders for the JACO shorts.

10 "At the time the CrossFit community was
11 absolutely littered with T-shirts and T-shirt companies.
12 It was like a frenzy to get involved. There was almost
13 nobody creating a really cool, durable short, and JACO
14 just, I can't even remember how I got introduced to JACO,
15 but they came to me and said that -- I'm trying to think
16 of how I got introduced to them. However that happened,
17 JACO and Hybrid Athletics partnered and they did a run
18 for us of their shorts where they put our logo on their
19 shorts.

20 "We sold those shorts all over the world, and we
21 could not keep them on our shelves."

22 Q. Thank you, Mr. Paulson.

23 MR. WILSON: I would like to note I wasn't party
24 to this protective order and I sat in on depositions as
25 such.

1 MR. BEGAKIS: They'll make their objections.

2 MR. WILSON: Okay.

3 MR. BEGAKIS: And they can bring whatever motion
4 they want.

5 BY MR. BEGAKIS:

6 Q. Did the ambassador agreement get finalized
7 during your time at JACO?

8 A. No, it didn't.

9 Q. Why was that?

10 A. When I met Rob Orlando at the Arnold Fitness
11 Classic, again that was the first time that I met with
12 him face-to-face. At this point, the term sheet had been
13 shared with him. He initially agreed to this term sheet,
14 and the official agreement was being drafted between
15 Glenn Robinson, the then owner of JACO Athletics, and
16 Rob's Wear. Between that agreement going back and forth
17 between the two of them, there were a few things that Rob
18 didn't like, and I honestly can't remember exactly what
19 those were. But I understood, you know, that he had some
20 issues with that initial agreement. And I took Rob's
21 side on it. And Rob and I had a great relationship
22 through my tenure at JACO, and I talked him off the
23 ledge.

24 You know, I said Rob, "Let's get this
25 agreement" -- and we were sitting in the hallway at the

1 Arnold Expo site. And I said, "Rob, you and I have a
2 great relationship." I said, "Let's get this contract
3 signed. Let's get the agreement done, and you won't have
4 to work with Glenn anymore." You know, "You'll be
5 working with me. You'll be interfacing directly with me,
6 just like you have since the beginning." You know,
7 "Let's just get the formality done," you know, "and move
8 forward with this."

9 Q. What did he say?

10 A. He -- he was trying to rely on his lawyer, you
11 know, looking out for his best interest. And he says it
12 was his intention to get the deal done. He wanted to
13 continue to work with me. He wanted to continue to get
14 the Hybrid -- get the JACO shorts with the Hybrid logo
15 screened on them. And, you know, he said that hopefully
16 he would be able to figure something out with Glenn's
17 lawyer and get a deal done.

18 Q. To your knowledge, did Ron Wilson know of Rob
19 Orlando during your time at JACO?

20 A. He knew of him. He didn't know him, nor had any
21 communications with him.

22 Q. To your knowledge, did Ron Wilson ever see Rob
23 Orlando's Hybrid Athletics logo during your time at JACO?

24 A. To my knowledge, no.

25 MR. KOSMA: I'm going to object to that as

1 irrelevant, immaterial, hearsay, and lack of personal
2 knowledge, what Mr. Wilson knows or has seen.

3 BY MR. BEGAKIS:

4 Q. What caused you to leave JACO?

5 A. When Glenn Robinson bought the company out of
6 bankruptcy, for the first three or four months, you know,
7 the team was generally excited about the new partnership.
8 Glenn had said all the right things. We were starting
9 fresh. We moved into a new office in Encinitas. We were
10 working -- you know, JACO was, at the time --

11 MR. WILSON: Hold on a second.

12 THE WITNESS: JACO, at the time, was -- you
13 know, was primarily a MMA, a mixed martial arts brand,
14 working a lot with professional fighters. That was their
15 primary business.

16 And Glenn also owned a management company with a
17 lot of marquis names. And that we had easy access to.

18 And so in the beginning, we were all very
19 excited about the relationship. However, Glenn turned
20 out to be, in my opinion, a bad investment. He started
21 to play the team members against one another. Whereas,
22 he should have been partners -- where he's partners with
23 Ron, Glenn would call me up, trying to pit me against
24 Ron, you know, in several issues.

25 He wasn't fulfilling -- he had a -- he had a --

1 it started to become apparent to me, in early 2012, that
2 Glenn was either very slow on keeping his agreements or
3 would push him off as long as possible, until his hand
4 was forced. There were inventory --

5 BY MR. BEGAKIS:

6 Q. His agreements with employees?

7 A. Yeah. They had a hard time getting commissions
8 out of them, you know, at one point. And, you know, how
9 far, you know, I kept -- kept up, you know, hope for
10 quite awhile, you know, because of my faith in Ron and
11 his partnership with Glenn, that things would end up
12 turning around. Right. Because Ron always did the right
13 thing, no matter what.

14 And so I stayed on. But I continued to get
15 disenfranchised with Glenn and also Karen, his marketing
16 manager, on his primary businesses, you know, that he
17 had.

18 And I started to lose my passion for the brand.
19 And so it wasn't until about a week or two after
20 returning from the Arnold Classic, when I was chatting
21 with Ron on the phone and catching up, because again, I
22 was living in Salt Lake City at the time, and he and I
23 would have almost daily conversations on the phone to
24 discuss the affairs of the business. And I had such a
25 great relationship with Ron, you know, to the point that,

1 you know, when I traveled out here to San Diego, I would
2 stay at his house. So I trusted him completely.

3 And I told him point-blank, I said, you know,
4 "I'm starting to lose my passion for the brand for JACO.
5 I'm going to give you a" -- "roughly a four-month notice,
6 as opposed to a traditional, you know, two-week notice."
7 And so I told him, I said, "I don't want to leave you
8 high and dry. You've gone to bat for me several times.
9 I love the team that we've built and put together. I
10 don't want to leave them out to dry either. So I want to
11 give you a four or five-month notice before I quit, so
12 that I can help find my replacement. Train them." You
13 know, "Get them integrated into the" -- "into the brand,"
14 and not leave Ron and the team high and dry.

15 Q. And what did Ron say?

16 A. He paused for a moment and thought about it.
17 And he said, "I understand where you're coming from. I
18 get it." You know, "I appreciate," you know, "you being
19 willing to stick around and help out, and hopefully," you
20 know, "we have four or five months to try to turn this
21 around and get you back passionate about the brand
22 again."

23 You know, so he -- at that time, I was on my way
24 out and I told him, I said, "I don't know what I'll do
25 for sure when I'm done." But based off of my

1 entrepreneurial background, I told him I'd figure
2 something out and probably start a new company, you know,
3 after I left JACO.

4 Q. When did you leave JACO?

5 A. I ended up leaving JACO much earlier than
6 anticipated. Roughly three weeks later, after that
7 conversation, around -- I think it was on March 16th, Ron
8 was actually wrongfully terminated from JACO. And so
9 once he left JACO, I -- you know, my major tie was gone
10 also. And so I left -- I put in my notice roughly two
11 weeks later. And three to four weeks later, sometime
12 early April of 2012, was when I was officially done with
13 JACO.

14 MR. KOSMA: I'm going to object really quickly,
15 as the answer had hearsay and the answer was immaterial.

16 BY MR. BEGAKIS:

17 Q. When you left JACO, what did you do next?

18 A. When I left JACO, I partnered up with Ron, to
19 start Hylete. It was, you know -- again, it was never --
20 never our intention to start Hylete in March of 2012.
21 Circumstances, you know, forced our hand, you know. Two
22 days after -- after Ron was terminated, you know, true to
23 Ron's form, you know, he picked himself up and said, you
24 know, "I'm going to get back to work." You know, he
25 didn't wallow, you know, in sadness over JACO for too

1 long.

2 And so he knew of my intentions already to leave
3 and to start something new. And so he immediately talked
4 to me and asked if I'd be interested in doing this with
5 him. And so, you know, we each have our unique skill
6 sets. Obviously Ron had all of the product and design
7 background that one could ask for. You know, in fact,
8 for me, I felt lucky, you know, to be honest. There was
9 no way, with me in my background and skill set, that I
10 would be able to start a fitness apparel company, which
11 was my passion; right? By myself. Because I didn't have
12 that product design background. Nor those relationships.

13 And so Ron was able to leverage his
14 relationships with factories and our supply chain, and of
15 course his experience with designing apparel and unique
16 apparel, apparel that he's received multiple patents for.
17 And he was able to, you know, crank out that next version
18 of our popular JACO short.

19 And then for me, and on my side, I made the
20 first substantial monetary investment in Hylete.

21 Q. What was that investment?

22 A. 50,000. And not only that, from my experience
23 at JACO, I brought with me the ability to leverage our
24 relationships of all of our strategic partners, you know,
25 of which, you know, I had built up numerous relationships

1 with strategic partners. You know, numbering in the 50
2 to 75 range or more.

3 Q. Did you reach out to these strategic partners
4 when you were at Hylete?

5 A. The day after I quit JACO, I started to reach
6 out to all of my strategic partnerships.

7 Q. Was Rob Orlando one of them?

8 A. Absolutely. He was one of -- one of about 50
9 that I reached out to. Not to demean Rob in any way, but
10 he was just another number to us. He was just one more
11 person that we could bring on and -- to leverage our
12 relationship for a marketing effect and build the brand
13 as quickly as possible.

14 You know, many people ask us, you know, how we
15 were able to grow so fast. And, you know, on my side, on
16 that marketing and the sales side, Hylete was able to
17 grow so quickly because we were able to leverage this
18 numerous number of strategic partnerships out there.
19 Whether they were magazine-based or trainer-based,
20 et cetera, guys just like Rob -- guys just like Rob, who
21 have their own -- who have developed their own training
22 tools, who are out there teaching other trainers and
23 certifying other people. So it was through the broad
24 network that I had developed at JACO that their
25 relationship was with me and they trusted me enough to

1 say, yeah, absolutely. I will come over to you.

2 And when I left JACO, since I knew that Rob
3 hadn't, at that point, signed an agreement, an official
4 agreement with JACO, I reached out to them. And to offer
5 him something similar.

6 MR. BEGAKIS: I'm handing you what's being
7 marked into evidence as Exhibit 4.

8 THE WITNESS: Yeah.

9 (Exhibit 4 marked)

10 BY MR. BEGAKIS:

11 Q. Do you recognize this document?

12 A. Yes, I do.

13 Q. What is this document?

14 A. This is what we call our Hylete Team Captain
15 Commission Program.

16 Q. Continue.

17 A. So as a very young start-up at the time. I
18 mean, we put in 50 grand. That's all we had. You know,
19 and we knew we needed to turn that into revenue as
20 quickly as possible. The vast majority of that 50 grand
21 went into product development, product purchasing and
22 inventory. And so we couldn't afford to do any kind of
23 cash-out-of-pocket deals with any one of our strategic
24 partners. And so we developed a -- what we called here
25 our Team Captain Commission Program, which was a revenue

1 sharing program.

2 Q. So these were the financial terms that you
3 offered to all of the potential strategic partners?

4 A. Correct. Yep. Correct.

5 Q. Could you tell me, from looking at this
6 document, what some of those key numbers were?

7 A. Yeah. Sure. So for the everyday athlete, is
8 what we call it, the referred athlete account, so it
9 would be anybody purchasing on hylete.com at full retail
10 price, the strategic partner would receive 20 percent of
11 that sale. So if the sale was \$100 retail, they received
12 \$20 in cash for that sale. And we used unique discount
13 codes at the time. So if somebody entered in "Josh
14 Henkin 25," we would know that that customer came to us
15 by way of Josh Henkin, and we would then pay Josh
16 20 percent of that purchase or of that sale.

17 And so it was a way to still give back, give
18 some kind of monetary compensation to all of our
19 strategic partners, without having to do anything up
20 front. Some kind of a fixed cost, you know, that would,
21 you know, affect overhead and our ability to launch the
22 brand.

23 Q. Were these the financial terms that you offered
24 to Mr. Orlando?

25 A. Yes.

1 MR. KOSMA: I'm going to object to this document
2 as -- and this line of questioning as irrelevant and
3 immaterial to the proceeding.

4 BY MR. BEGAKIS:

5 Q. When you were trying to leverage these strategic
6 partners that you mentioned, Rob Orlando being one of
7 them, how did you reach out to Rob?

8 A. Via e-mail, phone or text. That was how I dealt
9 with every one of my strategic partners. And I worked
10 according to what they preferred, typically.

11 Q. And did you present any of these strategic
12 partners with sort of a document as a pitch?

13 A. Yes. Yes. We put together an initial -- for
14 lack of a better term, an initial brand book or brand
15 presentation, if you will.

16 Q. For every single one?

17 A. For every single one of them, yeah. Every
18 single one of them, we wanted them to buy into what we
19 were doing. We knew that if they were going to be a
20 legitimate marketing partner, a legitimate brand
21 ambassador, that they would also have to buy into our
22 marketing strategy, our branding, our creed "train,
23 compete, live." Everything that they were doing, they
24 had to buy into that and believe in it if they were going
25 to be a legitimate brand ambassador.

1 And so we not only, you know, shared the
2 compensation program, that commission program with them,
3 but we also shared with them brand presentation. In many
4 instances, we did the same thing that we offered to JACO,
5 where we would supply to them our apparel, so Hylete
6 apparel, with their logo screen printed on it.

7 MR. BEGAKIS: Mr. Paulson, I'm handing you
8 what's been marked into evidence as Exhibit 5.

9 (Exhibit 5 marked)

10 BY MR. BEGAKIS:

11 Q. Do you recognize this document?

12 A. Yes, I do.

13 Q. What is this document?

14 A. This is mockup, a tech pack, if you will, that
15 we did for Josh Henkin.

16 Q. Who is Josh Henkin?

17 A. Josh Henkin was a strategic partner relationship
18 that I had at JACO, that I then -- I brought him over to
19 Hylete as well.

20 So this shirt says, "Dynamic Variable Resistance
21 Training." DVRT is his brand. But he also owns Ultimate
22 Sandbag Fitness. So he created a functional sandbag with
23 multiple handles around it, to use in a functional
24 fitness setting. And so Josh was a perfect ambassador
25 for us.

1 At JACO, we were preaching the concept of hybrid
2 training for years. And in our definition, hybrid
3 training, you know, was that -- encompassed anything that
4 was, you know, nonconventional or unconventional or
5 nontraditional training. And we recognized it as an
6 emerging trend.

7 As I mentioned earlier, P90X came onboard, which
8 was, you know, kind of on the beginning side of that
9 hybrid training, doing something, you know, different
10 than just traditional fitness. And MMA, mixed martial
11 arts, was also exploding in the early 2000s, and even now
12 it's still growing.

13 People were coming out with the Ultimate Sandbag
14 tools. They were coming out with TRX. TRX was a big
15 tool at the time. People were opting into using these
16 kinds of tools for their training, as opposed to going to
17 a traditional fitness club.

18 You know, in that same time, CrossFit became
19 big. Obstacle course racing became big. All of these
20 areas that were nontraditional in nature became extremely
21 popular.

22 And so we would look for strategic partners that
23 had something to offer in a different market. We had
24 partners with TRX in the beginning of Hylete. We worked
25 with Josh Henkin and his Ultimate Sandbag as well. And

1 the other great things about guys like Josh and Rob is,
2 even included in that same category, they had their own
3 unique skill set that was different than everybody else,
4 you know, Rob's being Strongman and his Atlas stone
5 molds, things like that. They also were typically
6 contributors for a variety of magazines.

7 So Josh Henkin here, the same thing, he's been
8 featured in articles for the majority of the main
9 magazines and Web sites out there.

10 Q. So he was a good candidate for a strategic
11 partner?

12 A. Absolutely. In fact, he was -- one of our first
13 shirts that we printed as a company for somebody else,
14 was Josh. I believe he was second.

15 MR. BEGAKIS: Mr. Paulson, I'm handing you
16 what's been entered into evidence as Exhibit 6.

17 (Exhibit 6 marked)

18 THE WITNESS: Yes.

19 BY MR. BEGAKIS:

20 Q. Do you recognize this document?

21 A. Yes, absolutely. This is the T-shirt that we
22 did for Chad Waterbury. Chad Waterbury was another
23 relationship that I had at JACO previously, that once I
24 shared with him our vision for, he completely bought into
25 that vision. And said, "I want onboard. And I want to

1 work with you guys."

2 Chad, again the same as the other ones -- I'm
3 repeating myself here -- but Chad contributed articles to
4 a variety of key magazines. He was a trainer of
5 trainers, providing certifications everywhere, and his
6 specialty was body weight calisthenics and rings. So he
7 had -- was an amazing gymnast ring athlete. So he was
8 doing seminars called Rings of Power at the time, that he
9 wanted these shirts for.

10 MR. KOSMA: I'm going to object to this as
11 irrelevant. Same objection. Irrelevant.

12 MR. BEGAKIS: Mr. Paulson, I'm handing you
13 what's being marked into evidence as Exhibit 7.

14 (Exhibit 7 marked)

15 BY MR. BEGAKIS:

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. What is this document?

19 A. This is another partner of ours that I brought
20 with me from JACO. This is Nick Tuminello. Nick
21 Tuminello, who now owns Performance University, which is
22 his own brand. He used to be a trainer for the Baltimore
23 Ravens, before moving to Florida and focusing 100 percent
24 on his training brand. And Nick Tuminello, again a
25 trainer of trainers, public speaker, speaks in all the

1 different personal training conferences that are out
2 there, IHRSA, IDEA, et cetera, and he wanted the same
3 thing.

4 We presented to him our brand presentation.
5 Again, just like everybody else, presented to him the
6 Team Captain Commission Program. And he bought into our
7 vision, bought into what we were doing, and quickly
8 wanted all of his gear made through us.

9 You know, he knew that, you know, we made
10 quality gear, from his past experiences with us. And he
11 didn't want to go anywhere else.

12 Q. Did you send Mr. Orlando a tech pack similar to
13 these?

14 A. Yes, I did.

15 Q. And what was Mr. Orlando's response to
16 receiving --

17 A. He sent me a text like two days after.

18 Q. What did the text say?

19 A. I tried calling him and walking him through the
20 brand presentation and through the mockup.

21 Please tell me if you can't hear me.

22 MR. KOSMA: Do you want to take a 10-minute
23 break right now?

24 MR. BEGAKIS: Sure.

25 MR. KOSMA: We might as well.

1 (Recess)

2 BY MR. BEGAKIS:

3 Q. So you sent one of these tech packs to
4 Mr. Orlando?

5 A. Yes.

6 Q. And what was Mr. Orlando's response to you
7 sending him a tech pack?

8 A. In the -- I sent him off an e-mail with the
9 brand presentation, the Team Captain Commission Program,
10 as well as his own individual tech pack requesting some
11 time to speak with him as well, you know, that afternoon,
12 to walk him through the presentation and tech pack, get
13 some initial thoughts and answer any questions. Just,
14 again, standard procedure for my other strategic
15 relationships.

16 And he failed to, you know, return my e-mail.
17 And about two or three days later, he sent me a text
18 saying something to the effect of, you know, "Matt," you
19 know, "the logos look eerily similar to one another," or
20 something to that effect. And, you know, he said
21 something about, you know, copying his font, I believe.
22 I really can't remember the exact wording of that text.

23 And, you know, I wrote back to him, I said, you
24 know, "We used a standard font called Euro style." You
25 know, "What did you use for yours?" And I said, "Well,

1 I'd love to hop on the phone and talk with you about it.
2 Believe me, we're not trying to copy you in any way,
3 shape or form." You know, "This is just what it is."

4 Q. Uh-huh.

5 A. And after I sent that text, it was radio silent.
6 He didn't respond back to me after that. Didn't want to
7 jump on the phone call. Didn't want to schedule a call.
8 Complete radio silence.

9 Q. When was the next time you spoke with
10 Mr. Orlando?

11 A. The next time -- well, the next time I heard
12 from him was in March of 2013, when he sent me an e-mail.

13 Q. How did you -- he sent you an e-mail?

14 A. Yep. So out of the blue, he sent me an e-mail.

15 MR. BEGAKIS: Mr. Paulson, I'm handing you
16 what's being marked into evidence as Exhibit 8.

17 (Exhibit 8 marked)

18 BY MR. BEGAKIS:

19 Q. Do you recognize this document?

20 A. Yes.

21 Q. What is this document?

22 A. This is the e-mail that Rob sent me.

23 Q. What's it dated?

24 A. Monday, March 11th, 2013.

25 Q. Can you please read Mr. Orlando's initial e-mail

1 to you.

2 A. Yes.

3 "Matt -- Thought you might like to see this.
4 His email is one of a hundred I've gotten...and literally
5 thousands of people have asked if you guys are an off
6 shoot of Hybrid Athletics."

7 Q. What is he referring to in this e-mail?

8 A. He copied and pasted what looks to be a Facebook
9 post of somebody posting on Rob's personal wall. And it
10 reads, "You should investigate HYLETE...unless they r a
11 branch of Hybrid they chicken hawked your logo...heads
12 up."

13 Q. Mr. Paulson, have you, since this e-mail,
14 received any of these, quote, hundreds of e-mails that
15 Mr. Orlando has received?

16 MR. KOSMA: Objection. Leading.

17 THE WITNESS: No.

18 BY MR. BEGAKIS:

19 Q. Mr. Paulson, can you then go to your response.

20 A. Uh-huh.

21 Q. And read the initial line in the first main
22 paragraph.

23 A. Yeah. "Hey Rob, Hope you're doing well!

24 "With any new logo, people associate that logo
25 with something they have already seen or are familiar

1 with until that new logo takes a life of its own. Our
2 logo is no different. I won't lie, in the beginning we
3 had a few people say it looks like your logo. We also
4 had people tell us it looks like our old JACO logo. If
5 you look at our Facebook page, you'll see many people
6 comment that it reminds them of Under Armour. In fact,
7 the Under Armour comment has been received the most
8 because that is the brand more people are familiar with.
9 The list could continue with the number of logos that we
10 are compared to - Honda, Hurley, Hyperlite, Spyder,
11 et cetera. If you put all these logos in a line, you
12 could pick out similarities and dissimilarities; however,
13 they are all individually distinctive."

14 Do you want me to keep going with that?

15 Q. No. That's fine. Thank you, Mr. Paulson.

16 When was the next time you spoke to Mr. Orlando?

17 A. Again, I mean, just before that, you know, I
18 offered again to try to resolve this for him, try to
19 clear the air with Rob. You know, I genuinely liked Rob,
20 you know, through our relationship together, and offered
21 again, "Let's communicate. Let's hop on the phone.
22 Let's discuss this. Let's not just send text messages or
23 e-mails or things like that. And definitely don't just
24 send a text or an e-mail and then become radio silent."

25 Q. And what was his response?

1 A. I wanted to communicate. He never responded.

2 Q. Not to any of your overtures?

3 A. No.

4 Q. So --

5 A. So then the next time that I see Rob was roughly
6 two months later or so.

7 Q. Where was this?

8 A. In May of 2013, at the CrossFit Regionals, in
9 Boston, the Northeast Regionals.

10 Q. Could you describe what these regionals are that
11 CrossFit holds?

12 A. Sure. So CrossFit, they -- every year, they
13 have their CrossFit Open, which gives every individual
14 the chance to compete at the same level. They all
15 receive the same workouts. They log their workouts.
16 They have a coach verify their scores. And the -- only
17 the top percentage -- you know, I think it's changed now.
18 I believe, at the time, it was somewhere in the ballpark
19 of the top 50 individuals, male and female, and the top
20 30 teams, if I recall correctly. It then advanced to the
21 CrossFit Regionals, which are all over the U.S., and then
22 all over the world, rather, really.

23 And then from there, you know, the then top
24 three in each category move on to the main CrossFit Games
25 in July.

1 Q. So when you referred to the 2013 Boston
2 Regionals, that was the regional event?

3 A. That was a Crossfit Regional event where they
4 bought in the 50 top men and women and the top 30 teams
5 to compete.

6 Q. Was Hylete at this event?

7 A. Yes.

8 Q. In what capacity was Hylete at this event?

9 A. We had a vendor spot at this event.

10 MR. BEGAKIS: Mr. Paulson, I'm handing you
11 what's been marked into evidence as Exhibit 9.

12 (Exhibit 9 marked)

13 BY MR. BEGAKIS:

14 Q. Do you recognize this document?

15 A. Yes. It is an e-mail received from Jason
16 Ackerman from CrossFit -- or from Albany CrossFit, which
17 he was the -- that year anyway, he was the Northeast
18 regional director. So he was my -- he was our point of
19 contact to receive all of our vendor information, our
20 shipping information to ship our product into, our
21 vendor -- our actual vendor location in the Vendor
22 Village, where all of the vendors were. We didn't get to
23 choose where we were at. We were assigned a certain
24 spot, you know, in the field there.

25 And so Jason sent this e-mail to us, or to all

1 of the vendors, letting them know how to coordinate
2 shipping, how to coordinate all of the event logistics.

3 Q. For the Boston Regional?

4 A. For the Boston Regional.

5 MR. KOSMA: I'm going to object really quickly.
6 Standing objection. Obviously the document is brand new.
7 We've never seen it before. I'm going to object to this
8 all as irrelevant and immaterial, also hearsay.

9 Mr. Paulson's answered.

10 THE WITNESS: This is all personal knowledge.
11 This is all personal e-mails that I shared with Jason
12 Ackerman. And I wanted it to be known, as well, that
13 after this -- and we'll get into this a little bit, after
14 this, Dale Saran, CrossFit's lead counsel, you know, sent
15 me an e-mail saying that we were conspicuously placed
16 next to Rob Orlando's booth. And I wanted it to be known
17 that we had no decision in that matter whatsoever.

18 BY MR. BEGAKIS:

19 Q. Who made the decision as to where to place
20 booths?

21 A. CrossFit.

22 Q. And -- strike that.

23 To your knowledge, was -- strike that.

24 A. So if you can see in this e-mail here, Jason
25 sent me an attachment called a "Vendor Layout."

1 Q. So there's an attachment to this e-mail?

2 A. Yep.

3 MR. BEGAKIS: Mr. Paulson, I'm handing you
4 what's been marked into evidence as Exhibit 10.

5 (Exhibit 10 marked)

6 BY MR. BEGAKIS:

7 Q. Do you recognize this document?

8 A. Yes. This is the attachment from the e-mail
9 Jason Ackerman sent me --

10 Q. What is it?

11 A. -- of the vendor layout, with all of the -- a
12 list of all of the vendors and a list of the plot number
13 or where each booth or each vendor was assigned.

14 Q. So all of the vendors for the Boston Regionals
15 are listed on this attachment?

16 A. Correct.

17 I'm sorry. You know, it was correct at the
18 time. When we -- as you can see, the brands or the
19 vendors here are all listed alphabetically, in order.

20 Q. Is Hybrid Athletics listed on this?

21 A. No. Hybrid Athletics is not found on this
22 vendor layout. And as you can see, all of the plot
23 numbers are also assigned alphabetically, and the only
24 ones that aren't assigned alphabetically, it appears that
25 they have been given premium placement. Whether they

1 purchased a larger booth, et cetera, they were the only
2 ones that weren't assigned alphabetically.

3 So as you can see on this vendor layout, it goes
4 Hylete, Spot 14. We had a 10-by-10 booth. And we were
5 right next to JUNK Brand, Booth Number 15.

6 Now, when we arrived, you know, out there at the
7 Reebok headquarters, where the event was taking place, we
8 began setting up and we were setting up next to JUNK
9 Brand. JUNK Brand, the owner there, Beau, Beau Barrett,
10 he -- we became friends at the 2012 CrossFit Games and
11 developed a relationship. And we were chatting, you
12 know, while we were setting up. And in the process of
13 setting up, Rob Orlando shows up with his tent and his
14 Hybrid Athletics gear.

15 Q. You did not know he was going to be there prior
16 to this?

17 A. No.

18 MR. KOSMA: I'm going to object to this line of
19 testimony as irrelevant.

20 THE WITNESS: No, I didn't know he was going to
21 be there. In fact, what I thought was even more odd, was
22 that CrossFit and the director there, whoever was in
23 charge of the vendor area, at the time, he actually made
24 JUNK Brand move down a spot, because JUNK Brand paid a
25 premium for a corner spot, and sandwiched Rob Orlando in

1 between us and JUNK Brand. And it also falls in line
2 with their vendor layout of assigning brands a booth spot
3 based on the alphabet. So Hylete, Hybrid Athletics, and
4 then JUNK Brand.

5 MR. KOSMA: I'm also going to object to the
6 answer, that it contains hearsay. And also irrelevant.

7 BY MR. BEGAKIS:

8 Q. Did you do anything to your booth when CrossFit
9 wedged Hybrid Athletics' booth in between?

10 A. Yes. I left up a tent wall in between my booth
11 and Rob Orlando's booth, which is something that we don't
12 normally do. You know, we like to create an open event
13 environment. And we don't put up walls in our booth.
14 And because I knew Rob was sensitive to the logos, based
15 off of the text messages that he had sent me and based
16 off of his e-mail, you know, out of respect to him, and
17 also to show him, you know, that we wanted to create and
18 establish separation between the brands, I kept up the
19 tent wall.

20 You know, I easily could have left the tent wall
21 down and -- and give the impression that we were somehow
22 together, if I wanted to. But that was the furthest
23 thing from my mind. I didn't want to be associated with
24 Rob at the time. And I wanted to create that separation
25 then.

1 MR. BEGAKIS: Mr. Paulson, I'm handing you
2 what's being marked into evidence as Exhibit 11.

3 (Exhibit 11 marked)

4 BY MR. BEGAKIS:

5 Q. Do you recognize this document?

6 A. Yes. This is our contract with CrossFit
7 headquarters for all of our booths for all of the
8 CrossFit Regionals and the CrossFit Games for 2013.

9 Q. So this was an agreement that you signed related
10 to your booth at the Boston Regionals?

11 A. It was related to the Boston Regionals and all
12 of the other -- well, the majority of all of the other
13 U.S. Regionals.

14 Q. Can you identify, at the top of this agreement,
15 the dimensions of the booth that you were allowed at the
16 Boston Regionals?

17 MR. KOSMA: I'm going to object.

18 THE WITNESS: Yes, we were allowed a 10-by-10
19 booth at the Regionals.

20 MR. KOSMA: I'm going to object to the document
21 again, and the line of questioning relating to the
22 document, as irrelevant.

23 BY MR. BEGAKIS:

24 Q. So you received a 10-by-10 booth?

25 A. Correct.

1 Q. The same --

2 A. I received nothing larger than a 10-by-10 booth.
3 Rob Orlando had a 10. The majority of all of the other
4 vendors had a 10-by-10 booth there.

5 MR. BEGAKIS: Mr. Paulson, I'm handing you
6 what's been marked into evidence as Exhibit 12.

7 (Exhibit 12 marked)

8 BY MR. BEGAKIS:

9 Q. Do you recognize this?

10 A. Let's see. Yes.

11 Q. What is this document?

12 A. This is part of the deposition.

13 Q. Can you read for me line -- are you familiar
14 with whose deposition this is?

15 A. No.

16 MR. KOSMA: I'm going to object to this
17 document. It's a partial document. Doesn't have the
18 name of the deponent or anything on it.

19 THE WITNESS: This is Dale Saran's deposition.

20 BY MR. BEGAKIS:

21 Q. Who you mentioned previously as the attorney for
22 CrossFit?

23 A. Yeah. He was the one who sent me an e-mail
24 directly saying that we were conspicuously placed, you
25 know, by Rob Orlando, suggesting that there was something

1 that we had to do with our placement at the Boston
2 Regional.

3 Q. Can you read Lines 2 through 12 for me, please.

4 A. Yes.

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

15 Q. Mr. Paulson, is there any truth to this
16 statement?

17 A. Not at all.

18 MR. KOSMA: I'll object again as hearsay and
19 irrelevant.

20 THE WITNESS: I also -- in case I hadn't said, I
21 wanted him to know that I personally attended this event.

22 BY MR. BEGAKIS:

23 Q. You did.

24 A. It was not another team member or anybody else.
25 It was me personally attending this event and being

1 there. So I have firsthand knowledge of what I'm telling
2 you.

3 Q. And in attending this event, did anybody come up
4 to you and express confusion between the Hylete logo and
5 the Hybrid Athletics logo?

6 A. No.

7 MR. KOSMA: Objection. Leading.

8 BY MR. BEGAKIS:

9 Q. So not a single customer or person at this
10 event?

11 A. No, not a single one at this event.

12 MR. BEGAKIS: Mr. Paulson, I'm handing you
13 what's being marked into evidence as Exhibit 13.

14 (Exhibit 13 marked)

15 BY MR. BEGAKIS:

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. What is this document?

19 A. It has two logos on them, the Hylete logo and
20 the Hybrid Athletics logo.

21 Q. In your opinion, do these two logos look
22 similar?

23 MR. KOSMA: Objection. Leading.

24 THE WITNESS: These two logos do not look alike.

25 ///

1 BY MR. BEGAKIS:

2 Q. Why do they not look alike?

3 A. The Hylete logo is more round and solid. It has
4 two circles, basically in the middle, you know, top and
5 bottom separated by a round bar, that almost gives --
6 it's definitely more round, almost like an infinity look,
7 if you connected the two circles, solid, with, you know,
8 points towards the ends. The peaks and valleys are
9 definitely a lot different. The Hylete logo has the
10 larger circle on top, with a smaller circle on the
11 bottom.

12 The Hybrid Athletics logo has more of a faded
13 look to it, with an outline around it. Definitely more
14 blocky in nature and more square in nature. The top part
15 is much smaller and more of a triangular shape, whereas
16 the bottom part of the Hybrid Athletics logo is taller,
17 and again, more of a triangle shape, as opposed to the
18 Hylete's circular shape.

19 Q. Mr. Paulson, including the Boston Regionals, how
20 many events would you say you've attended in your
21 employment?

22 MR. KOSMA: I want to object to the last answer
23 as irrelevant.

24 MR. WILSON: Great.

25 THE WITNESS: How many events have I attended?

1 MR. BEGAKIS: Yes. Sorry. I was trying to get
2 over counsel's objection of relevancy as to the logos
3 which are the subject of this trademark opposition.

4 BY MR. BEGAKIS:

5 Q. Anyway, let me reask the question. Including
6 the Boston Regionals, how many events would you say you
7 have attended with Hylete?

8 A. 80 to a hundred, maybe more.

9 Q. And did any --

10 A. Yeah. 30 to 40 a year, so yeah, probably over a
11 hundred.

12 Q. In any of these events -- at any of these
13 events, did anybody express confusion between the Hylete
14 logo and the Hybrid Athletics logo?

15 MR. KOSMA: Objection. Leading.

16 THE WITNESS: No. Nobody expressed confusion
17 between the two logos. We had people ask, based off of
18 our shorts -- when we would demo the shorts and sell the
19 shorts to them, we had people ask if somehow we were
20 associated with Rob. But it was intended to be based
21 more around the shorts and the actual name, not the logo.

22 BY MR. BEGAKIS:

23 Q. And when you're referring to these shorts,
24 you're talking about the JACO shorts?

25 A. Yeah, the JACO shorts that were then upgraded by

1 Ron to the Hylete, you know, 1.0 short.

2 Q. Would you say that those two shorts were
3 similar?

4 A. Yeah, there are definitely some similarities.
5 You know, Ron designed them. He designed both of them,
6 so of course there's going to be similarities. He has
7 patents on both of them. So there's going to be
8 similarities there. We used the same factories, the same
9 manufacturer. We -- the fabric was the same. Ron
10 changed the design on the pockets and changed the waist
11 system, which he now holds a patent on as well. But, in
12 essence, you know, to an untrained eye, if somebody's
13 looking at the fabric, the fabric was the same.

14 Q. Were the colors potentially the same?

15 A. Yeah. We offered a black short. JACO offered
16 white and a black, you know, short at the time. But the
17 base color was black.

18 Q. At any of the events you attended with Hylete,
19 did anybody express confusion between the names Hylete
20 and Hybrid Athletics?

21 MR. KOSMA: Objection. Leading.

22 THE WITNESS: They didn't express confusion.
23 They -- again, they merely asked, no more than 5 to 10
24 times throughout the hundreds of events that I've been
25 to, if we were somehow associated with Rob.

1 BY MR. BEGAKIS:

2 Q. Thank you, Mr. Paulson.

3 A. And on each answer, the answer was always
4 "absolutely not." And the customer would still say, you
5 know, they still -- "Oh, okay. Yeah, I still love your
6 shorts and would still buy them."

7 MR. KOSMA: Objection. Irrelevant.

8 MR. BEGAKIS: Counsel's interpretation of
9 relevance is a bit peculiar to me.

10 Mr. Paulson, I'm handing you what is being
11 marked into evidence as Exhibit 14.

12 (Exhibit 14 marked)

13 BY MR. BEGAKIS:

14 Q. Do you recognize this document?

15 A. Yes, I do.

16 Q. What is this document?

17 A. This is a document that I received from Drew
18 Manning and what -- throughout the course of these -- of
19 this case, I reached out individually to several of my
20 strategic partners and relationships and connections
21 throughout the fitness community at large, letting them
22 know, you know, what we were facing. And asking them
23 that question. "Do you believe that there's logo
24 confusion? Are you confused when you see these logos?"

25 Q. And this document was --

1 A. And so these -- these -- the series of documents
2 that we'll show are all from my personal relationships,
3 and they all stemmed from a personal -- either phone
4 conversation or physical conversation, in-person
5 conversation, with these individuals.

6 And I had asked them, as well, if I could follow
7 up our conversation with an e-mail, so I would have it in
8 writing, what they would say.

9 Q. And is this document one of those e-mails?

10 A. Yes.

11 MR. KOSMA: I'm going to object really quickly
12 to the document, the line of questioning. I mean, we
13 requested, under at least Document Request Number 14,
14 "All docs concerning surveys Hylete has conducted or
15 plans conducted concerning Opposer and his trademark or
16 the Hybrid mark."

17 We requested these during discovery. We're now
18 in the trial phase. I'm seeing these for the first time
19 and never had a chance to question anyone who these
20 surveys were given to, or had a chance to observe them.

21 I'm objecting to this whole line of questioning.

22 MR. BEGAKIS: Objection noted.

23 MR. KOSMA: Thank you.

24 THE WITNESS: Could I continue?

25 MR. BEGAKIS: Absolutely.

1 THE WITNESS: Okay. So the first one that we're
2 talking about is Drew Manning.

3 BY MR. BEGAKIS:

4 Q. Who is Drew Manning?

5 A. Drew Manning is a -- he's a -- now he's a brand
6 ambassador for Hylete. He is part of our affiliate
7 program or our revenue share program, basically.

8 Q. Is he otherwise associated with Hylete?

9 A. No.

10 So Drew Manning, he started off as a personal
11 trainer, training numerous amounts of people who were
12 overweight. And throughout the course of his training,
13 you know, the individuals who were overweight would
14 constantly tell Drew, "Drew, it's easy for you. It's
15 easy for you to look this good. You already look this
16 good. It's easy for you to maintain it. You don't know
17 what it's like to be overweight or fat or to feel guilty,
18 battling addictions," et cetera.

19 And so Drew -- without any knowledge of the fame
20 that would follow, Drew decided that he would embark on a
21 yearlong journey where the first six months he would gain
22 70 pounds. And then the last six months, he would lose
23 those 70 pounds. So he could experience what his clients
24 go through. And also show them that it was possible to
25 stay disciplined and to lose that weight.

1 And so through the course of his yearlong
2 journey, he jumped on the attention and jumped on the
3 radar of numerous talk shows. He appeared on Oprah, Late
4 Night TV with Leno, I believe at the time. Anyway, it's
5 all on his site. But he then became -- he then published
6 his own book, became a public speaker, traveled around
7 the nation giving motivational speakings. He also has
8 his own TV show on A&E, coming out in January of 2016,
9 where he's taking individuals through a similar journey.
10 And so he's definitely -- considering his background and
11 everywhere he's traveled and done fitness, I consider him
12 an expert in the fitness field.

13 Q. Is he well-known --

14 A. I wanted to reach out to him.

15 Q. Is he well-known in the fitness field?

16 A. In his sphere, absolutely. He's got over
17 400,000 people who follow him on Facebook alone. He's
18 also an avid CrossFitter now. He has one foot in
19 CrossFit and one foot in traditional fitness, and so I
20 felt he was a great individual to reach out to and say,
21 "Hey, Drew, what are your thoughts on this?"

22 Q. When you sent him this e-mail, did you include
23 the Hylete and Hybrid Athletics logo?

24 A. Yes, I included -- that was an attachment.

25 MR. KOSMA: I'm going to object really quickly.

1 There's no e-mail here. There's a lack of foundation.
2 It's hearsay and irrelevant to this line of questioning.

3 THE WITNESS: It's my personal knowledge and my
4 personal communication with Drew. I asked him in my
5 e-mail, I asked him personally on the phone, and I
6 followed up with the e-mail.

7 BY MR. BEGAKIS:

8 Q. Can you --

9 A. I asked that question, "1) Do you do know Rob
10 Orlando?" Drew answered, "NO. I'VE ONLY HEARD ABOUT
11 HIM."

12 Question Number 2, I asked, "Do you know Hybrid
13 Athletics?" Drew answered, "I'VE BRIEFLY HEARD ABOUT IT
14 BUT DON'T KNOW WHAT IT IS."

15 I then asked, "Do you believe the logos are
16 confusingly similar?" Drew answered, "NOT AT ALL. THEY
17 LOOK COMPLETELY DIFFERENT TO ME."

18 MR. KOSMA: Objection. Hearsay.

19 BY MR. BEGAKIS:

20 Q. Was Mr. Manning compensated for answering these
21 questions?

22 A. No.

23 MR. BEGAKIS: Mr. Paulson, I'm handing you what
24 is being marked into evidence as Exhibit 15.

25 THE WITNESS: Uh-huh.

1 (Exhibit 15 marked)

2 BY MR. BEGAKIS:

3 Q. Do you recognize this document?

4 MR. KOSMA: I'm going to have the same
5 objection. Are there a bunch of these?

6 MR. BEGAKIS: We're going to go through a
7 couple. You can make a standing objection. You can also
8 make an objection along the way. Whatever you would like
9 to do.

10 MR. KOSMA: John, I don't understand your
11 sarcasm. I'm just trying to represent my client here.

12 I'm going to object to these surveys, obviously
13 under the TTAB sanction order.

14 Also, I'm going to object that these documents
15 lack authentication, hearsay, irrelevant, immaterial.

16 And I'll keep that standing objection going on
17 through the line of questioning, through all these
18 documents.

19 MR. WILSON: Okay.

20 MR. BEGAKIS: That's it?

21 MR. KOSMA: I'm just making my objection. The
22 sarcasm is not appreciated.

23 MR. BEGAKIS: I want to know when you're done
24 talking, so I can let the witness talk.

25 ///

1 BY MR. BEGAKIS:

2 Q. Anyway, Mr. Paulson --

3 A. Yes.

4 Q. -- can you explain to me what this document is?

5 A. Sure. I had a similar phone conversation with
6 Mike Fantigrassi. He is the director of professional
7 services for NASM.

8 Q. What is NASM?

9 A. NASM is the National Academy of Sports Medicine.
10 They're one of the larger providers of personal training
11 certifications in the country. And Mike, his role is
12 over education. He is over all education that they put
13 out for all of their trainers, over all of their master
14 instructors, and over all of their workshops that they
15 put on.

16 And so again, I wanted to reach out to the
17 fitness community at large to see what they thought.

18 Q. What is Mr. Fantigrassi's affiliation with
19 Hylete, if any?

20 A. None, really. Our affiliation is more with
21 NASM, the National Academy of Sports Medicine. They
22 reached out to us about a year-and-a-half ago to produce
23 all of their apparel for all of their trainers. And so
24 we have an apparel agreement with them where we screen
25 print the NASM logo on all of our performance gear and

1 provide it to them and sell it through our -- or sell it
2 to their trainers.

3 Q. When you e-mailed Mr. Fantigrassi, did you
4 include both the Hylete logo and the Hybrid Athletics
5 logo?

6 A. Yes, I did.

7 Q. Could you please read your questions posed to
8 him and his responses.

9 A. Sure. I asked Mike, "Do you know Rob Orlando?"
10 He answered, "No."

11 I asked Mike, "Do you know Hybrid Athletics?"
12 Mike Fantigrassi answered, "No."

13 I asked Mike, "Do you believe the logos are
14 confusingly similar?" Mike then answered, "No."

15 Q. Was Mr. Fantigrassi compensated for providing
16 those responses?

17 A. No.

18 MR. BEGAKIS: Mr. Paulson, I'm handing you
19 what's being marked into evidence as Exhibit 16.

20 (Exhibit 16 marked)

21 BY MR. BEGAKIS:

22 Q. Do you recognize this document?

23 A. Yes, I do.

24 Q. What is this document?

25 A. So this is the answers that BJ Gaddour provides.

1 BJ Gaddour, he is now the fitness director for Men's
2 Health. You pull up the Men's Health Facebook page and
3 you'll see him plastered all over, doing training videos,
4 technique videos, educational videos for the Men's Health
5 crowd. So he is the fitness director for them.

6 Q. Does Mr. Gaddour have any affiliation with
7 Hylete?

8 A. None. In fact, as fitness director, he can't
9 have any direct affiliation with any brand, for that
10 matter.

11 Q. Is Mr. Gaddour well-known in the fitness
12 community?

13 A. Yes.

14 Q. When you sent this e-mail to Mr. Gaddour, did
15 you include both the Hylete logo and the Hybrid Athletics
16 logo?

17 A. Yes.

18 MR. KOSMA: Objection. Assumes evidence not in
19 the record. There's no e-mail.

20 MR. BEGAKIS: Okay. Make your objection.

21 BY MR. BEGAKIS:

22 Q. Can you please read Mr. Gaddour's -- your
23 questions posed to Mr. Gaddour and Mr. Gaddour's
24 responses.

25 A. Yes. I asked BJ, "Do you know Rob Orlando?" BJ

1 answered, "Never heard of him."

2 I asked BJ, "Do you know Hybrid Athletics?" BJ
3 then answered, "Nope."

4 My third question I asked BJ is, "Do you believe
5 the logos are confusingly similar?" BJ then answered, "I
6 think it looks more like the under armour than hylete
7 logo. The shape and font style are significantly
8 different, in my honest opinion."

9 MR. BEGAKIS: Mr. Paulson, I'm handing you
10 what's being marked into evidence as Exhibit 17.

11 (Exhibit 17 marked)

12 BY MR. BEGAKIS:

13 Q. Do you recognize this document?

14 A. Yes.

15 Q. What is this document?

16 A. These are answers that Andy McDermott provided
17 me in both a phone conversation and an e-mail
18 conversation.

19 Q. Who is Mr. McDermott?

20 A. Andy McDermott, he is a longstanding
21 relationship that I've had since the JACO days. I was
22 introduced to him through an organization called
23 FitFluential. Andy's background is a professional soccer
24 player, at one point. When he retired from professional
25 soccer, he then became a Phoenix SWAT team member and

1 Phoenix PD. And at that time, he was, on the side,
2 starting to build his fitness brand for himself. And so
3 he started to contribute to several magazines, write
4 several articles as well. And he then decided to retire
5 from the Phoenix SWAT, moved to Hollywood, where he is
6 pursuing an acting career. And he's now, you know, being
7 featured in national ad campaigns, you know, in several
8 TV dramas out there. He continues to contribute to
9 leading publications and, you know, has a growing fitness
10 following.

11 Q. What is Mr. McDermott's affiliation with Hylete,
12 if any?

13 A. Andy is part of our affiliate program. So again
14 not a -- you know, he only earns revenue through a code
15 or through a link.

16 Q. When you say "a link," what do you mean by that?

17 A. Just a custom link, where he can send his
18 followers to buy Hylete goods. Of which he is part of
19 our revenue sharing program that I mentioned to you
20 earlier. He didn't receive any compensation for talking
21 to me on the phone and providing me these answers.

22 And --

23 Q. When you sent this e-mail to Mr. McDermott, did
24 you include the Hylete and the Hybrid Athletics logos?

25 A. Yes.

1 MR. KOSMA: I'm going to object again. Assuming
2 evidence not in the record.

3 BY MR. BEGAKIS:

4 Q. Could you please read for the record the
5 questions you posed and the answers Mr. McDermott
6 provided.

7 A. Yeah. So I asked Andy, "Do you know Rob
8 Orlando?" Andy answered, "No." Which I thought it was
9 odd as well, because they appear on the same magazine
10 together as contributors, and Andy still didn't know who
11 he was.

12 Q. Uh-huh.

13 A. And I then asked Andy, "Do you know Hybrid
14 Athletics?" Andy answered, "No."

15 I then asked Andy, "Please review the attached
16 logos. Do you believe they are confusingly similar?"
17 Andy again answered, "No."

18 Q. And again, to make the record perfectly clear,
19 Mr. McDermott was not compensated for providing these
20 answers; correct?

21 A. Correct.

22 Q. Were any of these individuals provided
23 compensation for providing answers to these questions?

24 A. No.

25 MR. KOSMA: I just want to state one more thing

1 to make the record clear. John, you keep saying
2 "e-mail." Exhibits 14 through 17, they're not -- they
3 don't appear to be e-mails at all. Are these notes from
4 phone calls or are they e-mails? I want to understand
5 what they are.

6 MR. BEGAKIS: They are document representations
7 of the images that were sent and the questions and
8 responses that were provided.

9 MR. KOSMA: Are they e-mails or phone calls?

10 MR. BEGAKIS: E-mails. Responses from e-mails.

11 MR. WILSON: I'll provide them all in my
12 testimony.

13 MR. BEGAKIS: Or when we take a break.

14 MR. WILSON: No, I'll do it on mine. I'll print
15 them.

16 BY MR. BEGAKIS:

17 Q. Mr. Paulson, just one more exhibit for you here.

18 A. Okay.

19 MR. BEGAKIS: Mr. Paulson, I'm handing you
20 what's being marked into evidence as Exhibit 18.

21 (Exhibit 18 marked)

22 BY MR. BEGAKIS:

23 Q. Do you recognize this document?

24 A. Yes.

25 Q. What is this document?

1 A. It's four distinctly different logos on the
2 document.

3 Q. Can you recite for the record what four logos on
4 are on this document?

5 A. Sure. Hylete. Under Armour. Hybrid Athletics.
6 And Hurley.

7 Q. You have attended a lot of CrossFit events;
8 correct?

9 A. Correct.

10 Q. You've been to a lot of gyms?

11 A. Correct.

12 Q. Seen a lot of athletes in your time?

13 A. Correct.

14 Q. Have any athletes you've seen worn Under Armour?

15 A. Yes, absolutely.

16 Q. And displayed the Under Armour logo?

17 A. Absolutely.

18 Q. Have any athletes you've seen worn Hurley?

19 A. Yes, absolutely. In the CrossFit space, not as
20 frequently as Under Armour. However, yes, I have seen
21 them wear Hurley.

22 Q. And wear clothes that display the Hurley logo?

23 A. Yes. Correct.

24 MR. BEGAKIS: We'll take a 5-minute break.

25 MR. KOSMA: Sure.

1 (Recess)

2 BY MR. BEGAKIS:

3 Q. Mr. Paulson, just one more question. Directing
4 you back to Exhibits 14 through 17.

5 A. Let me take a look at those.

6 Q. When did you obtain the contents of these
7 documents?

8 A. Roughly last week of September, first part of
9 October. So within the last 30 or so days.

10 MR. BEGAKIS: Thank you. No further questions.

11

12 EXAMINATION

13 BY MR. KOSMA:

14 Q. Mr. Paulson, I'm going to have a few questions.
15 This is previously marked as Orlando Exhibit 29.
16 Mr. Paulson, are these the JACO shorts with the Hybrid
17 Athletics logo on it?

18 A. They appear to be that way, yes. I can't tell.
19 Oh, yeah, there we go. Yeah. So yes. Both pictures are
20 of the JACO short, with the Hybrid Athletics screen
21 printed on it.

22 Q. Let me go to Orlando Exhibit Number 31. Have
23 you seen this exhibit before?

24 A. Yeah. Not the exhibit. But I've seen this text
25 before. Yeah, this is the text that I was referring to

1 earlier on in my testimony. This is the text.

2 Q. This is from Rob Orlando?

3 A. Yeah. This is the text that he sent over to me.

4 Q. Okay. Very good. Thank you.

5 I'm going to go with what's been previously
6 marked as Orlando 32.

7 Mr. Paulson, would you take a second to review
8 this document.

9 A. There's two separate. Did you mean to give
10 me --

11 Q. Just keep them both. That's okay.

12 A. Are you referring to the thicker one?

13 Q. Right now, it's Orlando, Rob Orlando Exhibit 32.

14 A. Okay.

15 Q. Yep. And we'll move on to the other one in a
16 second.

17 A. Okay.

18 Q. If you would take a second to review this
19 exhibit, please.

20 A. Okay. It's so long. Okay.

21 Q. Is this an e-mail that you guys sent Rob Orlando
22 on April 23rd, 2012?

23 A. I'm sorry, say that first part again.

24 Q. Is this an e-mail that you sent --

25 A. Yes.

1 Q. -- Mr. Orlando on April 23, 2012?

2 A. Yeah. This is the same general e-mail that I
3 sent out to all of the strategic partnerships that I was
4 referring in my earlier testimony. So all the tech packs
5 that are part of these exhibits that I submitted, as well
6 as the marketing partners and strategic partners. All
7 received the same e-mail that covered the brand
8 direction, the brand presentation, mockups, with their
9 logos on it. Including details surrounding the revenue
10 sharing program.

11 Q. Okay. And these packets that you sent to
12 potential clients, have these changed over the years
13 since Hylete has been in business?

14 A. No. They have a general format. Just the
15 logo -- logos specifically change, of course, and whoever
16 we're working with at the time. As well as the specific
17 product, of course, as well changes based off of what the
18 client or the customer requests from us. But it's the
19 general format that we've used for years, which is very
20 commonplace in the apparel industry.

21 Q. Okay. We'll move on to the other exhibit that
22 was handed out. This is Rob Orlando 34.

23 My question is: Is this an e-mail that you sent
24 to Mr. Orlando on April 27th, 2012?

25 A. Yeah.

1 Q. Mr. Paulson, have you seen these documents
2 before today?

3 A. Yeah. Well, these are all personal e-mails
4 between Rob and I. So in that nature, yes.

5 Q. Now, when you reviewed Mr. Orlando's deposition,
6 were there any other inaccuracies that you believed --

7 A. I didn't review his entire deposition.

8 Q. You didn't?

9 A. No, I didn't. Ron was there personally, you
10 know, at his deposition. And he recalls a lot of the
11 things that was said in that deposition. So I only
12 received that two paragraphs.

13 Q. That was all you received?

14 A. (Nods head).

15 Q. Could we go back to what was marked as Exhibit 8
16 to your deposition, please.

17 A. Yeah.

18 Q. The first paragraph, you say, "If you look at
19 our Facebook page, you'll see many people comment that it
20 reminds them of Under Armour." Have you produced any of
21 those documents in this proceeding?

22 A. No, I haven't.

23 Q. And then you go on to say, "The list could
24 continue with the number of logos that we are compared to
25 - Honda, Hurley, Hyperlite, Spyder, et cetera." Have you

1 produced any documents where people have said that they
2 were --

3 MR. BEGAKIS: Objection to the extent that
4 Mr. Paulson has no obligation individually to produce
5 anything outside of Hylete's production.

6 BY MR. KOSMA:

7 Q. Has Hylete produced any documents that shows a
8 comparison with their logo and Honda, Hurley, Hyperlite
9 or Spyder?

10 MR. BEGAKIS: Objection to the extent that
11 Mr. Paulson may not have knowledge of what Hylete is
12 producing.

13 THE WITNESS: The -- in answer to your question,
14 on our Facebook page, we received comparisons to Under
15 Armour. All of the other brands in question, they're all
16 personal conversations that I have had at events.

17 As I mentioned earlier, I've been to over a
18 hundred events, you know, with Hylete, and have had
19 interactions with thousands of individuals at these
20 events. And as I discussed in this e-mail, you know,
21 especially since we're a new brand, everybody, you
22 know -- I'll read it from my e-mail. "With any new logo,
23 people associate that logo with something they have
24 already seen or are familiar with until that new logo
25 takes a life of its own."

1 And so in the course of doing all of these
2 events -- which not all of them were CrossFit events. We
3 attended many non-CrossFit events, such as the Arnold
4 Fitness Classic -- they might have a small CrossFit
5 component of 2- to 3,000 people. But by and large,
6 they've got 200- to 250,000 people walking through that
7 Convention Center.

8 Other events, such as the L.A. Fit Expo, the
9 Europa Fitness shows, people from all walks of life take
10 a look at our logo, and upon first seeing it, they have
11 that tendency to associate it with something that looks
12 familiar to them.

13 And so in person, you know, I -- the list
14 could -- I could go on from this list. You know,
15 everybody has different opinions. I've heard Batman,
16 that we look like Batman. I've heard from military guys
17 that it reminds them of a stealth fighter, from those
18 guys. You know, I've had Hercules. It reminds them of a
19 Hercules logo that they've seen. So anybody that when
20 they're introduced to it for the first time, they
21 immediately say, "Oh, that reminds me of," such-and-such.

22 So all of these are all personal things that I
23 have heard. And they're all based off of what somebody's
24 familiar with in their sphere.

25 MR. KOSMA: I'm going to object to the last

1 portion of that answer as nonresponsive.

2 No further questions.

3 MR. BEGAKIS: We'll take a 5-minute break to see
4 if we have any rebuttal questions just quickly.

5 (Recess)

6

7

FURTHER EXAMINATION

8 BY MR. BEGAKIS:

9 Q. I just have a couple of quick rebuttal
10 questions.

11 Mr. Paulson, directing you back to what has been
12 previously marked into evidence as Exhibit Orlando 31.
13 Can you read Mr. Orlando's text and your response, just
14 on the second page.

15 A. Yes. "Hey Matt -- I spent some time looking at
16 the Hylete logo and I must say that it looks eerily
17 similar to the Hybrid Athletics image. The font on the
18 text is identical. Also, Hybrid Athletics is the long
19 version of your brand name. This is odd, no?"

20 I replied, "Hey, Rob..just now seeing
21 this..Hylete is a condensed 'Hybrid Athlete' that we have
22 been saying at JACO for a long time. However, I can see
23 your concern."

24 Q. That's fine.

25 A. Okay.

1 Q. And I will now direct you back to what's been
2 previously marked as Exhibit Orlando 34. Can you read
3 this e-mail in full for me, please.

4 A. Yes. "Hey Rob, Hope you're doing well! I
5 attached some more mock-ups for you. Please review and
6 let me know what you think. If you are concerned about
7 the font, we can remove the font and just put the icon
8 similar to the women's tank attached.

9 "I also sent a sample of the tri-blend
10 performance fabric" --

11 THE REPORTER: Slow down a bit when you read,
12 please.

13 THE WITNESS: Sorry. This part has no
14 relevance.

15 BY MR. BEGAKIS:

16 Q. In this e-mail, when you refer to removing the
17 text, why did you say that?

18 A. I said that for two reasons. The first reason
19 being, referring to the text message, the previous
20 exhibit, that's where Rob was most concerned at the time.
21 He was concerned that the fonts were the same.

22 Q. The Hylete --

23 A. The Hylete font and the Hybrid Athletics font.

24 And he was also concerned that Hylete was a
25 condensed form of Hybrid Athletics. Whereas, hybrid

1 athletics is a general term that is used in many Facebook
2 pages, many gyms, many people talking about a hybrid
3 athlete. And he was most -- he said he was most
4 concerned with that, not the actual icon.

5 Q. So in this e-mail, you offered to remove the
6 names?

7 A. Yep, I offered to remove the name and the font,
8 you know, leaving the icon there. Which, of course, in
9 this case, we're talking about icons. We're not talking
10 about names or anything else. And at the time, the icon
11 he was okay with.

12 MR. BEGAKIS: Thank you. No further questions.

13 MR. KOSMA: I just have one.

14
15 FURTHER EXAMINATION

16 BY MR. KOSMA:

17 Q. When you talked to -- Mr. Paulson, when you're
18 talking about removing the brands, you're talking about
19 the co-branded merchandise, not removing Hylete from the
20 merchandise?

21 A. Just on any potential Hybrid Athletics
22 merchandise that we would screen print his logo on our
23 gear.

24 MR. BEGAKIS: Why was that again?

25 THE WITNESS: I'm sorry?

1 MR. BEGAKIS: Why was it that you were going to
2 remove the font?

3 THE WITNESS: Because he was concerned about the
4 font.

5 MR. BEGAKIS: No further questions.

6 (Off the record)

7 MR. BEGAKIS: So we'll stipulate to have the
8 depositions sent to us for signatures.

9 MR. KOSMA: That's fine.

10 MR. BEGAKIS: And all future depositions that
11 are going to be conducted.

12 THE REPORTER: Do you need to purchase a copy?

13 MR. KOSMA: No, thanks.

14 (The deposition concluded at 11:27 a.m.)

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Matt Paulson
October 28, 2015

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DECLARATION UNDER PENALTY OF PERJURY

I, Matt Paulson, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on October 28, 2015; that I have made such corrections as appear noted on the Deposition Errata Page, attached hereto, signed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this 30 day of November, 2015
at Solana Beach, California.

DocuSigned by:
Matt Paulson
32DA9DACB2984FB...

Matt Paulson

Matt Paulson
October 28, 2015

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DEPOSITION ERRATA SHEET

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Matt Paulson

Dated

1 STATE OF CALIFORNIA)
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I, Renée C. Roberts, a Certified Shorthand Reporter, do hereby certify:

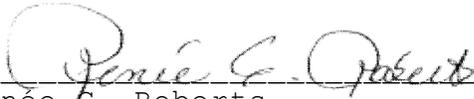
That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

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

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

In witness whereof, I have hereunto subscribed my name.

Dated: November 2, 2015


Renée C. Roberts
CSR No. 6910



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