

ESTTA Tracking number: **ESTTA729709**

Filing date: **02/26/2016**

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

Proceeding	91213057
Party	Plaintiff Hybrid Athletics, LLC
Correspondence Address	MICHAEL J KOSMA WHITMYER IP GROUP LLC 600 SUMMER STREET STAMFORD, CT 06901 UNITED STATES mkosma@whipgroup.com, litigation@whipgroup.com
Submission	Testimony For Plaintiff
Filer's Name	Michael J. Kosma
Filer's e-mail	mkosma@whipgroup.com, litigation@whipgroup.com
Signature	/Michael J. Kosma/
Date	02/26/2016
Attachments	~ Not of Filing REDACTED Orlando.pdf(202055 bytes ) ~ Not Cover Pt. 1.pdf(99717 bytes ) Deposition Transcript - REDACTED.pdf(376043 bytes ) Exhibit 1.pdf(952445 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 ORLANDO TRIAL TESTIMONY**

**REDACTED VERSION**

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 REDACTED transcript of the testimony deposition of Robert Orlando, taken on September 3, 2015, and all exhibits thereto.

Respectfully submitted,

HYBRID ATHLETICS, LLC

February 26, 2016

/s/ Michael J. Kosma  
Michael J. Kosma  
Christina L. Winsor  
Whitmyer IP Group LLC  
600 Summer Street  
Stamford, CT 06901  
Tel. (203) 703-0800  
Facsimile (203) 703-0801  
Email: [litigation@whipgroup.com](mailto:litigation@whipgroup.com)  
[mkosma@whipgroup.com](mailto:mkosma@whipgroup.com)

ATTORNEYS FOR OPPOSER

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing OPPOSER’S NOTICE OF FILING MARTINEZ TRIAL TESTIMONY - REDACTED VERSION, the REDACTED Deposition Transcript and REDACTED confidential exhibits, were 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 unredacted testimony deposition, taken on September 3, 2015, of Robert Orlando and all exhibits thereto were served upon Correspondent for the Applicant via FedEx overnight delivery on Septemer 24, 2015.

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

February 26, 2016  
Date

/s/ Joan M. Burnett  
Joan M. Burnett

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 ORLANDO TRIAL TESTIMONY**

**REDACTED VERSION - PART 1 CONTENTS:**

**Notice of Deposition  
Exhibit 1**

Respectfully submitted,

HYBRID ATHLETICS, LLC

February 26, 2016

/s/ Michael J. Kosma

Michael J. Kosma  
Christina L. Winsor  
Whitmyer IP Group LLC  
600 Summer Street  
Stamford, CT 06901  
Tel. (203) 703-0800  
Facsimile (203) 703-0801  
Email: [litigation@whipgroup.com](mailto:litigation@whipgroup.com)  
mkosma@whipgroup.com

*ATTORNEYS FOR OPPOSER*

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

-----  
HYBRID ATHLETICS, LLC,

Opposer,

-against-

HYLETE LLC,

Opposition  
No.  
91213057

Applicant.  
-----

HIGHLY CONFIDENTIAL

DEPOSITION OF ROBERT ORLANDO

September 3, 2015

Reported by:

Joseph Danyo V

Job No. 14811

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

September 3, 2015  
10:00 a.m.

Deposition of ROBERT ORLANDO, taken by Opposer,  
pursuant to Notice, held at the offices of  
Whitmyer IP Group, 600 Summer Street, Stamford,  
Connecticut, before Joseph Danyo V, a Shorthand  
Reporter and Notary Public within and for the  
State of New York.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S :

WHITMYER IP GROUP  
Attorneys for Opposer  
600 Summer Street  
Stamford, Connecticut 06901

By: MICHAEL J. KOSMA, ESQ.  
mkosma@whpgroup.com

TSIRCOU INTELLECTUAL PROPERTY LAW  
Attorneys for Applicant  
515 South Flower Street  
36th Floor  
Los Angeles, California 90021

By: JOHN M. BEGAKIS, ESQ.  
johnbegakis@tsircoulaw.com

Also Present:

RON WILSON (Hylete, L.L.C.)  
(Afternoon Session)

~oOo~

1 Orlando - Highly Confidential

2 R O B E R T O R L A N D O, having been first  
3 duly sworn by Joseph Danyo V, a Notary Public, was  
4 examined and testified as follows:

5 MR. KOSMA: I'll start by identifying  
6 everyone in the room.

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

9 MR. KOSMA: And Rob?

10 THE WITNESS: Rob Orlando, owner of  
11 Hybrid Athletics, LLC.

12 EXAMINATION BY MR. KOSMA:

13 Q. Good morning, Mr. Orlando. Mr.  
14 Orlando, this is a deposition which I will ask  
15 you questions and you must answer them  
16 truthfully. Although no judge is present, this  
17 is a formal legal proceeding, just like  
18 testifying in court, and you are under the same  
19 legal obligation to tell the truth, the whole  
20 truth and nothing but the truth.

21 If you don't understand any of my  
22 questions, please feel free to say so and I will  
23 repeat or rephrase them. Before the deposition  
24 can be used in court, you will have the  
25 opportunity to read over it and correct any

1 Orlando - Highly Confidential

2 mistakes. Do you understand this?

3 A. Yes.

4 MR. KOSMA: Mark this as Exhibit 1.

5 (Exhibit 1, Notice of deposition, was  
6 received in evidence, as of this date.)

7 Q. Mr. Orlando, you've been handed  
8 what's been marked as Exhibit 1. Do you  
9 recognize this document?

10 A. Yes.

11 Q. And what is this document?

12 A. This is my notice of deposition.

13 Q. Okay. And this is why you're here  
14 today?

15 A. Yes.

16 Q. Okay. Thank you.

17 (Exhibit 2, Declaration, was received  
18 in evidence, as of this date.)

19 Q. Mr. Orlando, I'm going to hand you  
20 what's been marked as Exhibit 2. Do you  
21 recognize this document?

22 A. Yes.

23 Q. What is this document?

24 A. It's my declaration.

25 Q. And have you read over this

1 Orlando - Highly Confidential

2 declaration?

3 A. Yes.

4 Q. Is everything in this declaration  
5 true and accurate?

6 A. It is.

7 Q. Can you turn to page 10, the last  
8 page.

9 A. Yes.

10 Q. Is that your signature?

11 A. It is.

12 Q. And everything is true and accurate  
13 as of March 2nd, 2015?

14 A. Yes.

15 Q. Okay. Thank you. Mr. Orlando, how  
16 old are you?

17 A. 40.

18 Q. And where do you live?

19 A. Monroe, Connecticut.

20 Q. What is your current job?

21 A. I own Hybrid Athletics. We are a  
22 CrossFit affiliate. I've got a couple of  
23 different jobs. I teach CrossFit Strong Man  
24 seminars, and I earn royalties on equipment and  
25 merchandise, and I write for Muscle & Fitness, so

1 Orlando - Highly Confidential

2 a bunch of jobs.

3 Q. So you own Hybrid Athletics?

4 A. Yes.

5 Q. You teach CrossFit Strong Man

6 seminars?

7 A. Yes.

8 MR. BEGAKIS: Objection. Leading the

9 witness.

10 Q. You earn royalties through --

11 A. I earn royalties through equipment

12 sales.

13 Q. Okay. And you're a writer?

14 A. I write for Muscle & Fitness

15 Magazine, yes.

16 Q. What is your educational background?

17 MR. BEGAKIS: Objection. Calls for

18 narrative.

19 A. I got a bachelor's in science, in

20 exercise science from University of Connecticut,

21 graduated in 1997.

22 Q. And where did go to high school

23 before that?

24 A. Masuk High School in Monroe,

25 Connecticut.

1 Orlando - Highly Confidential

2 Q. After college where did you work?

3 A. I worked for almost a year just  
4 outside Boston at a medical sales company. I  
5 think I was employed there for ten months. The  
6 name of the company was RNA Medical. I knew  
7 almost immediately that that wasn't going to  
8 work, an office job wasn't going to work, so I  
9 ended up -- my wife and I were getting married  
10 right after she graduated college in '98.

11 Q. Okay. '98?

12 A. Yes. So she had a friend that was  
13 living in New York City, and this friend had a --  
14 the friend of a friend had a personal training  
15 business, a private facility called Definitions,  
16 and she set me up with the owner of that company,  
17 Gary Steinhardt, and I went, met with him and  
18 immediately started personal training in New York  
19 City. That would probably be in, let's see, we  
20 were married in July. August of '98.

21 Q. Were you still living in Boston?

22 A. No. We moved to Stamford at that  
23 time, on Hope Street.

24 Q. How long did you work for  
25 Definitions?

1 Orlando - Highly Confidential

2 A. About a year.

3 Q. What made you leave Definitions?

4 A. The commute to the city. At the time  
5 the pay structure at Definitions, clients were  
6 paying over a hundred dollars per session and my  
7 take was about \$16 from that. So with the  
8 commute -- even if I had a stacked day of five,  
9 six, seven clients in a day, it was almost  
10 impossible for me to net any income.

11 It was great experience, and I  
12 learned how to -- Gary was great and the staff of  
13 trainers was fantastic, so I learned how to be a  
14 personal trainer. And the timing was just right  
15 because we lived at 960 Hope Street, and right at  
16 the time New York Sports Club was opening just a  
17 few hundred yards away. I walked in off the  
18 street one day and I got hired almost the same  
19 day by New York Sports Club.

20 Q. And when was this?

21 A. That would have been August '08,  
22 forward a year, maybe June or July of '09. No.  
23 I'm sorry, not '09. God, that's another decade.  
24 '99.

25 Q. So 1999 you started working at New

1 Orlando - Highly Confidential

2 York Sports Club?

3 A. Yes. That sounds about right.

4 Q. Okay. What were your duties there?

5 A. I started out as just a regular  
6 personal trainer where you had a certain amount  
7 of floor hours that you had to do, and then you  
8 had personal training sessions, and I was --  
9 because the gym was brand new, and personal  
10 training wasn't really a thing at that time with  
11 New York Sports Club, and the parent company,  
12 Town Sports Incorporated, we were doing these  
13 things called PFI, personal fitness assessment or  
14 something like that, I forget what the name of it  
15 was, but we had to do an assessment with each  
16 person, and then we had I think two or three of  
17 those, and then they had the option of purchasing  
18 three more sessions for a hundred dollars, and  
19 we'd be doing those sessions.

20 So I was just doing essentially  
21 almost free work for the first six sessions with  
22 any client, but I built up a huge book of  
23 business really quickly, so I had -- I was doing  
24 personal training with them and then working on  
25 the floor, wiping down equipment, doing the

1                   Orlando - Highly Confidential  
2           regular stuff that happens in a gym every day.  
3           But over time, within the first year or so, I  
4           climbed up from being a floor trainer to being  
5           what they call a master trainer.

6                   Master trainer only works -- there's  
7           no set schedule, so you're essentially operating  
8           your own business inside their walls, so I  
9           managed my own schedule. I came and went as I  
10          pleased. If I wanted to work five other jobs, I  
11          could do that, but I was a master trainer for New  
12          York Sports Club.

13                  Q.    And how long were you a master  
14          trainer for?

15                  A.    Four years.

16                  Q.    What was the pay structure as a  
17          master trainer?

18                  A.    I was the highest paid personal  
19          trainer in the entire company because of my  
20          education, and I think I was making \$31 on a  
21          hundred dollar session.

22                  Q.    How long were you at New York Sports  
23          Club for?

24                  A.    Five years, I think. Yes.

25                  Q.    When did you leave New York Sports

1 Orlando - Highly Confidential

2 Club?

3 A. '03. Yes, it would be '03 or '04.

4 Q. What made you leave New York Sports  
5 Club?

6 MR. BEGAKIS: Objection. Calls for  
7 narrative.

8 A. The company took a backwards snapshot  
9 of like six pay cycles or something like that and  
10 they set an average -- they found your average  
11 comp, because your comp actually changed based on  
12 what the purchase cost of that session was, so  
13 you made a percentage of whatever the session  
14 cost. So let's say it was 30 percent, somebody  
15 bought a hundred dollar session, you got \$30. If  
16 somebody bought an \$80 session, because they  
17 bought a bunch of them, so you made 30 percent of  
18 80.

19 So what the company did is they took  
20 a snapshot back of what your average was over the  
21 last six pay cycles, and they said, look, this is  
22 what you're averaging over the last six pay  
23 cycles. We're going to take that and add  
24 5 dollars to it or something like that, so it was  
25 \$36.

1 Orlando - Highly Confidential

2 The next day, they bumped up all of  
3 the personal training prices significantly, so if  
4 they had just kept the percentages, I would have  
5 been making even more money. I found that I just  
6 couldn't deal with that anymore, and I looked  
7 around and thought, my clients are coming to the  
8 gym for me, they're not coming here because New  
9 York Sports Club is something special, so I  
10 decided to leave New York Sports Club and take --  
11 I invited as many of my personal training clients  
12 as I could get that wanted to train out of their  
13 houses.

14 Q. What year was that again?

15 A. '03.

16 Q. Okay.

17 A. Yes.

18 Q. And so what did you do after that?

19 You started your own business?

20 A. Started up Hybrid Athletics. No,  
21 sorry. Not Hybrid Athletics. At first it was  
22 Intelligent Personal Fitness, LLC.

23 Q. Okay.

24 A. That was the personal training  
25 business.

1 Orlando - Highly Confidential

2 Q. Intelligent Personal Fitness?

3 A. Yes.

4 Q. How long did you run Intelligent  
5 Personal Fitness for?

6 A. Almost five years, yes.

7 Q. And how was business?

8 A. Business was good. I mean I had a  
9 loyal, steady group of people. It was all word  
10 of mouth, I never did any advertising, so I would  
11 go from house to house. I had some clients that  
12 wanted to be trained in a gym, so those clients  
13 would pay for their membership and my membership  
14 to a gym, and then they would pay -- usually the  
15 gyms had a cover cost. If I wanted to do  
16 personal training there, I wasn't related to the  
17 gym at all, so I had to pay them a daily fee. My  
18 client would pay that, and then they would pay  
19 me, so business was good.

20 Q. You did that until what year?

21 MR. BEGAKIS: Objection. Leading the  
22 witness.

23 A. I did that until early 2008.

24 Q. Did you close Intelligent Personal  
25 Fitness?

1 Orlando - Highly Confidential

2 MR. BEGAKIS: Objection. Leading the  
3 witness.

4 A. I think -- I don't know how the LLC  
5 dissolved, but it just -- I stopped functioning  
6 it. What happened was I was getting to the point  
7 where at 35 years old -- is that right? No. 32  
8 or something years old, I started to get clients  
9 that were just slightly older than me, and the  
10 thought entered my mind that at some point soon  
11 I'm going to be a 45-year-old personal trainer  
12 who's driving from house to house training  
13 somebody who's younger than me who could afford  
14 my rate, and to me it was a jumping off point.

15 I remember having many discussions  
16 with my wife where it's like, do I get all in or  
17 do I abandon this thing? Because I just don't  
18 want to be a traveling personal trainer at  
19 45 years old.

20 Q. So what did you do after Intelligent  
21 Personal Fitness?

22 MR. BEGAKIS: Objection. Calls for  
23 narrative.

24 A. I was at breakfast one morning with  
25 one of my private clients, and we were supposed

1 Orlando - Highly Confidential

2 to be working out but he didn't feel like working  
3 out, and he was one of the guys that I used to  
4 train him in a gym. I trained him at his house  
5 sometimes, but I also trained him at a gym in  
6 Westport. And over breakfast one morning he  
7 said, you know, we've been to countless gyms  
8 together. We've been training together for  
9 however long. You've got ideas on how to -- you  
10 complain about every gym that we've ever been in.  
11 You complain about how they're managed. You  
12 complain about just where the water fountain is.  
13 Just every detail. You have your own ideas.  
14 What's stopping you from doing this on your own,  
15 and I blurted out [REDACTED], and --

16 Q. Was that a number you had already  
17 come up with?

18 A. No. It was just --

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

21 A. That wasn't a number I came up with.  
22 That was just -- it was just a knee-jerk  
23 response.

24 Q. Okay.

25 A. I had never even considered opening a

1 Orlando - Highly Confidential  
2 gym because I didn't have the cash to. But he's  
3 a guy with extraordinary means and super  
4 generous, and he wrote a check and he bankrolled  
5 getting the gym off the ground. He wrote me a  
6 check and says, go find some space, and I took  
7 his check. I put it in my bag and I drove home.

8 Q. He handed you a check at breakfast  
9 that day?

10 A. He handed me a check at breakfast  
11 that day, and he said just go find some space.  
12 And I kept the check in my bag for about a week  
13 and when I saw him again I said I haven't cashed  
14 it yet because this whole thing kind of scares  
15 me. I said what are the terms? He's like, look,  
16 whatever terms we put together on some kind of  
17 return of investment, it's not going to move the  
18 needle for me. Right, like let's say your  
19 business doubles, triples, you end up with all  
20 these personal training clients, there's not  
21 going to be enough, even if it was 10, 15 percent  
22 return, it's not going to do anything for me, so  
23 just consider this a gift, he goes, but in the  
24 event that you open up 20 gyms and there's a lot  
25 of zeros attached, he's like, I just hope that

1 Orlando - Highly Confidential

2 you're going to do the right thing.

3 So he was really a -- played a  
4 pivotal role in my career. So I took that and I  
5 started driving around Stamford and looking for  
6 lease signs. I talked to a couple of different  
7 real estate agents, and they showed me some  
8 crappy properties in Norwalk, and I just happened  
9 to be driving down Hope Street and I saw a for  
10 lease sign. I called the guy.

11 The landlord showed up a couple of  
12 minutes later, let me into the building, and  
13 that's at 7 Hyde Street, where we are still, so  
14 7 Hyde Street. He lets me in, took a look around  
15 the place, and it kind of fit the bill. I was  
16 familiar with that area because it's right next  
17 to New York Sports Club. I lived at 960 and 1140  
18 Hope Street, so I knew that area really well, and  
19 it just felt like the right thing to do, so I  
20 jumped in.

21 We renovated the space, bought some  
22 equipment, and at first we had no classes. We  
23 weren't a CrossFit gym, we were just a gym. I  
24 just --

25 Q. What kind of gym were you?

1 Orlando - Highly Confidential

2 MR. BEGAKIS: Objection. Leading the  
3 witness.

4 A. We were a personal training facility,  
5 so -- and it was just me, so all I did was bring  
6 all of my in home clients. I just brought them  
7 to the gym, and they were the ones that -- they  
8 were the original members that -- they weren't  
9 there taking classes, they were just there  
10 getting personal training by me.

11 Q. And what was the name of the gym at  
12 the time?

13 A. Hybrid Athletics.

14 Q. How did you come up with the name  
15 Hybrid Athletics?

16 MR. BEGAKIS: Objection. Calls for  
17 narrative.

18 A. I don't know actually. I think right  
19 around the time that this guy had given me money,  
20 I went and took my CrossFit level 1 certification  
21 in Utah, and somebody had a Hybrid -- somebody  
22 was wearing something that said Hybrid on it, and  
23 I just liked it and I came home and I told the  
24 guy who had given me the money, I think I'm going  
25 to call the gym Hybrid Athletics, and he said it

1 Orlando - Highly Confidential  
2 was stupid. He didn't like it. We got into a  
3 big debate. We still debate about it today. But  
4 the name to me always made sense. And over time,  
5 even at that first like six to nine months, as I  
6 was diving deeper into CrossFit, I was realizing  
7 that my background as a strength athlete and my  
8 ability to do CrossFit was that, making, creating  
9 that Hybrid athlete.

10 Q. You spoke that you're an athlete.  
11 Now prior to 2008 were you competing as an  
12 athlete?

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

15 A. I was competing as a Strong Man  
16 competitor, yes.

17 Q. And in what year did you start  
18 competing as a Strong Man competitor?

19 A. I think in 2005 was my first  
20 competition.

21 Q. Do you know what competition that  
22 was?

23 A. Yes. That was the -- God, what was  
24 the name of it? April she ran it, but I can't  
25 remember the name of it, but it was in New Haven,

1 Orlando - Highly Confidential  
2 Connecticut. I competed as a novice, and in the  
3 novice class I won I think almost every event,  
4 and I won the contest and I set a North American  
5 record.

6 Q. What was that record?

7 A. Axle clean and press max reps in  
8 event.

9 Q. Do you know what the record is?

10 A. 20 reps.

11 Q. And what was it?

12 A. 200 or something pounds.

13 Q. Does that record still hold up today?

14 A. I don't know.

15 MR. BEGAKIS: Objection. Relevance.

16 A. They don't do a great job of keeping  
17 up the records, so I don't know.

18 Q. So after your first time competing as  
19 a Strong Man, do you know when your next event  
20 was?

21 A. It was probably six months later, if  
22 I had to take a guess.

23 Q. How many Strong Man events did you  
24 compete in?

25 A. A bunch. At least ten, and I would

1 Orlando - Highly Confidential  
2 compete every three to four months. I would find  
3 one that kind of fit with where I could travel,  
4 events that I liked and just made sense in my  
5 training.

6 Q. Did you make money as a Strong Man  
7 athlete?

8 A. No. Nobody makes money as a Strong  
9 Man, unless you're a pro, and really even then  
10 that's not that much.

11 Q. How long did you compete as a Strong  
12 Man?

13 A. I did my last one in 2010.

14 Q. Do you know what that event was?

15 A. Viking Fest. It was in New York.

16 Q. Was that the first time you competed  
17 in Viking Fest?

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

20 A. Yes.

21 Q. And did you place?

22 A. I took first.

23 Q. So you mentioned you took your  
24 level 1 in Utah?

25 A. Yes.

1 Orlando - Highly Confidential

2 Q. Level 1 CrossFit certification?

3 A. That's correct.

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

6 Q. What made you take your level 1  
7 CrossFit certification?

8 A. I had one personal training client  
9 that was -- he turned me on -- and this is going  
10 on even further probably into 2006 and '7 -- he  
11 turned me on to CrossFit.com, and we would talk  
12 about the workouts, because at the time every  
13 workout that I was doing was heavy, short, it was  
14 all built around being a strength athlete, and he  
15 came to me with this workout that was called  
16 Murph, and it's a mile run, a hundred pull-ups,  
17 200 pushups, 300 squats and then another mile  
18 run, and I just thought that's ludicrous. But he  
19 ended up -- I tuned into the website and I would  
20 cherry-pick the workouts that kind of fit me as  
21 an athlete, and I would do the workouts, but I  
22 would make fun of the rest of the workouts.

23 I went -- I saw a video of Greg  
24 Amundson and Annie Sakamoto. They're two  
25 CrossFit originals. They have been around

1 Orlando - Highly Confidential  
2 literally since the inception. I saw a video of  
3 them doing Fran, and that was my gateway into the  
4 community. I remember seeing it --

5 Q. What is Fran?

6 A. Fran is a workout where it's 21, 15,  
7 nine thrusters and pullups with relatively modest  
8 weights, 95 pounds for men and 65 for women, and  
9 I watched this workout, and I was sitting at my  
10 wife's living room eating ice cream, and I'm  
11 watching this and thinking why are these guys  
12 moving so fast? It didn't make any sense to me.  
13 And I thought it's only 95 pounds, how hard can  
14 that be?

15 The next night in my basement I  
16 refused to do it with 95 pounds, so I tried it  
17 with 135 pounds, and I competed it and I laid on  
18 the floor for several hours afterwards in a heap,  
19 and I thought there's -- this was so light and  
20 the reps gain was manageable, I should have been  
21 able to do this much faster. To me, it was like  
22 a light bulb going off, and I thought, I need to  
23 change the way I'm doing some things, so that was  
24 my introduction into the CrossFit world. And I  
25 decided, let me go take this level 1 and see what

1 Orlando - Highly Confidential

2 it's all about.

3 Q. What year did you take the level 1?

4 A. That had to be early '08.

5 Q. Was that before you opened Hybrid

6 Athletics?

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

9 A. I can't remember exactly, but yes, it  
10 must have been, because I came back and I saw  
11 that -- yes, it had to have been.

12 Q. So getting back to Hybrid Athletics,  
13 do you know when you opened your doors, what  
14 date?

15 A. Maybe May of '08.

16 Q. And you opened up as Hybrid  
17 Athletics?

18 A. Yes.

19 Q. Did you have a logo then?

20 A. One of our members had a cousin who  
21 was an artist. I still never -- I never met the  
22 guy, but my member said to her cousin like, hey,  
23 can you draft something up? And I remember the  
24 back and forth was like, well, what is Hybrid  
25 Athletics? And we kind of explained it, that

1 Orlando - Highly Confidential  
2 it's going to be functional fitness and some  
3 Strong Man stuff, because that was my flavor at  
4 the time, and this person drew it, sent it back.  
5 This was the very first rendition. We never  
6 changed it, so it's been the exact same logo  
7 since the first drawing.

8 (Exhibit 3, Mockup of sign, was  
9 received in evidence, as of this date.)

10 MR. KOSMA: I'm going to mark the  
11 depo as trade secret, commercially  
12 sensitive and highly confidential for now.

13 Q. I hand you what's been marked as  
14 Exhibit 3. Do you recognize this exhibit?

15 A. Yes. This is a mockup of what our  
16 sign would look like.

17 Q. Where was the sign?

18 A. This sign would be placed on the  
19 outside of our building on three locations.

20 Q. So here I see you just highlighted  
21 what looks like a file name. Then there's a  
22 date.

23 A. Yes.

24 Q. What is that?

25 MR. BEGAKIS: Objection. Leading the

1 Orlando - Highly Confidential

2 witness.

3 A. That's June 9th, 2008.

4 Q. Is that the date of this mockup?

5 A. I would assume so.

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

8 Q. Do you remember when this sign was  
9 placed on your building?

10 A. Not much longer after June 9th.

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

13 A. It had to be within a couple of  
14 weeks. Whenever the sign was done, my landlord  
15 put it on the building.

16 Q. Is that the same sign still there  
17 today?

18 A. It is.

19 (Exhibit 4, Hybrid H logo, was  
20 received in evidence, as of this date.)

21 Q. Mr. Orlando, I've handed you what's  
22 been marked as Exhibit 4. What is this?

23 A. That's our Hybrid H logo.

24 Q. This is the same H logo that's in  
25 front of your building?

1 Orlando - Highly Confidential

2 A. It is.

3 Q. Do you use the H in conjunction with  
4 anything else?

5 A. Yes. Everything. All apparel, stone  
6 molds. It's our brand identity. It's in so  
7 many, I mean almost all videos, and there's just  
8 hundreds and hundreds of videos that have  
9 millions and millions of views, and that H is a  
10 part of all of it.

11 Q. You just mentioned apparel, so when  
12 did you start selling apparel?

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

15 A. Very soon after -- Signs of Success,  
16 the company that made our signs that are on the  
17 outside of our building, I reached out to them  
18 and they printed up some gray T-shirts for us, so  
19 my guess would be August of '08.

20 (Exhibit 5, Invoice from Signs of  
21 Success, was received in evidence, as of  
22 this date.)

23 Q. Mr. Orlando, I'm going to hand you  
24 what's been marked as Exhibit 5. Do you  
25 recognize this document?

1 Orlando - Highly Confidential

2 A. Yes. This is an invoice from Signs  
3 of Success. These are the guys that printed our  
4 signs and the first couple of runs of our  
5 apparel.

6 Q. And --

7 A. I mean I know that I was wearing  
8 Hybrid, the gray Hybrid T-shirts. I was wearing  
9 those in the late summer, fall of 2008, but I  
10 think we started selling them, if we look back,  
11 records like just from invoices, December of '08.  
12 Something like that.

13 Q. So at least as early as December of  
14 2008 you were selling apparel?

15 MR. BEGAKIS: Objection. Leading the  
16 witness.

17 A. Yes.

18 Q. But you were wearing apparel with the  
19 Hybrid H before December?

20 A. Yes.

21 Q. So in 2008 were you a CrossFit gym?

22 MR. BEGAKIS: Objection. Calls for  
23 narrative.

24 A. '08.

25 Q. When you started the gym did it start

1 Orlando - Highly Confidential

2 as a CrossFit gym?

3 A. No. We weren't a CrossFit affiliate  
4 right off the bat. We were Hybrid Athletics  
5 through I think -- just Hybrid Athletics. Not  
6 affiliated with CrossFit in any way all through  
7 2008. At the very end of 2008 I did a workout  
8 called -- it was a workout that I had thought up,  
9 which was heavy dead lifts and thrusters, five,  
10 four, three, two, one, and I shot the video from  
11 my desktop computer, my Mac, and I videotaped it  
12 right up against the walls in our gym, and I  
13 e-mailed media at CrossFit.com, and I said, hey,  
14 I've got this video, is this something you guys  
15 might want to put up?

16 And Tony Budding was the head of  
17 media. He reached back and said yes, this is  
18 great, we'll go ahead and put this up, and if you  
19 have more content, go ahead and send it our way.  
20 Like we'd love to put that stuff up. And from  
21 what I understand, I was the first person in the  
22 space to actually send in content for them to air  
23 on CrossFit.com. Like I don't think that they  
24 were doing any of that.

25 And so I started sending in material

1 Orlando - Highly Confidential  
2 pretty frequently where I would video -- I had  
3 tons of content, but I would videotape content.  
4 I would edit it myself, send it to them. They  
5 would air it on CrossFit.com, and we gained  
6 traction very quickly in the community because I  
7 was doing things a little bit differently.

8 Q. Where were you filming these videos?

9 A. At Hybrid Athletics.

10 Q. You said it was against one of the  
11 walls in your gym?

12 A. Yes. We had a pegboard in the back  
13 of the gym that one of our members built for us,  
14 and the logo was stamped right on it.

15 Q. And what logo, the Hybrid --

16 A. The Hybrid H.

17 Q. Hybrid H. So you were filming  
18 videos --

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

21 A. I would film videos directly from my  
22 desktop computer, yes.

23 Q. So you were sending videos to  
24 CrossFit.com. What was the reaction to these  
25 videos?

1 Orlando - Highly Confidential

2 MR. BEGAKIS: Objection. Calls for  
3 narrative and speculation.

4 A. The reaction was great, because  
5 CrossFit.com would put them on the website  
6 itself, and then at the time, before other social  
7 media outlets like Facebook, Twitter, Instagram,  
8 before those were really big, CrossFit.com was  
9 the place for people to commune. So they would  
10 up a video, and there would be hundreds of  
11 comments on whatever video they had put up.

12 MR. KOSMA: Let's take a quick break.

13 (Recess taken)

14 (Record read)

15 BY MR. KOSMA:

16 A. So I was sending them content. They  
17 would air it on CrossFit.com, and people would  
18 comment on it. And it was some positive, some  
19 negative, but it was just a place where people  
20 voiced their opinion.

21 Q. How often were you sending content to  
22 CrossFit.com?

23 A. Constantly, yes. So I was sending  
24 them, I don't know, something every second, third  
25 day maybe. I was sending them video, and they

1 Orlando - Highly Confidential  
2 would pick and choose which ones they would air.  
3 The only caveat was that I had to give them the  
4 right of first refusal, so I would send them  
5 content and I would have to sit on it and not air  
6 it anywhere else.

7 I couldn't put it on my YouTube  
8 channel or any of my YouTube channels until they  
9 had said all right, we're going to use that or  
10 we're going to pass on it. So they would put the  
11 videos up, people would comment on it, and it  
12 just -- it allowed us to kind of access to the  
13 community, but over time I got a phone call maybe  
14 half -- maybe early '09, like the first quarter,  
15 second quarter of '09, I got a phone call from  
16 Lisa Lugo, she worked for CrossFit headquarters,  
17 and she asked me, hey, we just realized that  
18 you've been sending in your content and we've  
19 been airing it, and we absolutely love it,  
20 because the reaction is so good, but we just  
21 realized that you're not an affiliate. What's  
22 going on?

23 And I said, well, I just don't want  
24 you guys telling me how to run my business. We  
25 had a very honest, candid conversation. I was

1 Orlando - Highly Confidential  
2 like I don't want you guys telling me how to run  
3 my business. I want -- I'm a sole operator.  
4 They said, well, we don't tell you anything, you  
5 can do whatever you want in your business.

6 So it was at that point that I  
7 decided to become an affiliate and be part of the  
8 CrossFit community officially, but nothing  
9 changed on our end.

10 From my perspective, nothing changed  
11 at all. The only thing that changed was that now  
12 we had license to use the word "CrossFit" in our  
13 advertising, which we don't do, so we now had  
14 access to the term "CrossFit." If we wanted to  
15 print something, if we wanted to print shirts, we  
16 could use that term and that logo.

17 Q. You mentioned before that you had,  
18 what was the workout you did, the heavy workout  
19 that changed your --

20 MR. BEGAKIS: Objection. Relevance.

21 Q. You were working out?

22 A. Oh, Heavy Fran.

23 Q. Heavy Fran. Did that changed your  
24 methods going into Hybrid Athletics training?

25 MR. BEGAKIS: Objection. Calls for

1 Orlando - Highly Confidential

2 narrative.

3 A. No, it didn't change my -- I knew  
4 that from my personal training experience and  
5 from my experience as just having more than a  
6 decade of fitness experience from college moving  
7 forward, I knew that there was value in the  
8 movements of a Strong Man. The flipping tires is  
9 applicable to everybody.

10 The problem that I found was that my  
11 members, my clients at the time before I had a  
12 gym and when I was going from house to house,  
13 they weren't going to keep tires at the gym.  
14 They weren't going to keep atlas stones -- I'm  
15 sorry, at their houses. They weren't going to  
16 keep this equipment there, so even though I was  
17 using it on an almost daily basis, it was  
18 impossible for me to get my clients to use it  
19 because I couldn't bring it with me.

20 So opening up the gym, the first  
21 thing we did was bring in all of my Strong Man  
22 equipment, and then we started to blur it with  
23 CrossFit.

24 As I got into the CrossFit  
25 methodology, to me it was like how do we blur

1 Orlando - Highly Confidential  
2 these two worlds, because there's value in both.  
3 And there's actually an interesting conversation  
4 that I had with Greg Glassman at my level 1.

5 Q. And who is Greg Glassman?

6 A. Greg Glassman is the founder of  
7 CrossFit. So I was fortunate enough to be one of  
8 those guys that got in early enough where he was  
9 actually at my level 1 and did portions of the  
10 lectures. During one of the breakouts I pulled  
11 him aside and I said, look, I'm a competitive  
12 Strong Man guy and I'm doing well at it, but to  
13 me there seems to be a perfect dovetail or a  
14 relationship somewhere in here between CrossFit  
15 and Strong Man, because we're really trying to do  
16 the same thing, we're just doing it with  
17 different equipment. And I said how do we blur  
18 those things together? And he says, I have no  
19 idea, you figure it out, and when you figure it  
20 out, you come back and let us know.

21 So for me, Hybrid Athletics was  
22 always an experiment on how to marry those two  
23 things, and that became our focus, which was how  
24 do we blur these two worlds.

25 Q. So what is the fundamental difference

1 Orlando - Highly Confidential

2 between CrossFit and Strong Man?

3 MR. BEGAKIS: Objection. Leading the  
4 witness, and calls for narrative.

5 A. CrossFit's mantra is large load, long  
6 distance quickly, functional movements executed  
7 in high intensity. There's that. But that was  
8 kind of limited to -- up until recently, that was  
9 limited to equipment that you would find in most  
10 gyms, so barbells, dumbbells, bumper -- not  
11 really bumper plates, but it was limited to that  
12 type of equipment.

13 What I figured out was that most of  
14 the Strong Man equipment that I was exposed to  
15 early was too heavy or too cumbersome or just too  
16 much for most people to try their first time, so  
17 we needed to make it scalable so that there was  
18 an entry level to it.

19 Q. What type of Strong Man equipment are  
20 you talking about?

21 A. So yokes, farmer's handles, axles,  
22 logs. It's just the metal equipment that it's  
23 kind of typical Strong Man stuff.

24 Q. Can you explain like what is a  
25 farmer's handle?

1 Orlando - Highly Confidential

2 A. A farmer's handle is just a 5 foot  
3 long handle. It's a 2-inch thick tube that has  
4 an elevated handle off of it. It's just a welded  
5 piece of pipe really, and then you plate load it  
6 with as much weight as you want to carry, so you  
7 would -- it's just a carrying implement. You  
8 pick it up like a suitcase.

9 Q. Okay.

10 A. So what I found is that while  
11 CrossFit was great at making regular exercise  
12 with regular equipment that you find in a gym  
13 accessible and infinitely scalable, there was  
14 nothing like that for Strong Man, so the first  
15 yolk that I purchased from somebody cost me over  
16 a thousand dollars.

17 Q. And what's a yoke?

18 A. A yoke is a big frame that you plate  
19 load, so it's a straight bar across, two bars  
20 that come down, and then you load the bottoms of  
21 it, so you carry it like a big frame, you carry  
22 it on your shoulders.

23 Q. On your shoulders, okay.

24 A. So the first yoke that I bought empty  
25 by itself weighed 440 pounds, and to me,

1 Orlando - Highly Confidential  
2 that's -- it's too heavy for an entry level  
3 person to get in. You have to be strong to even  
4 get introduced to the sport.

5 So really quickly after I opened up  
6 Hybrid Athletics, I was charged in my own mind of  
7 trying to create infinitely scalable equipment  
8 that everybody could use, so we created a  
9 prototype for the log, for the farmer's handles,  
10 for the yoke, for the axles, where you made this  
11 equipment light enough so that everybody could  
12 touch it.

13 Q. Can you explain what a log is?

14 A. A log is a 10-inch -- it's multiple  
15 diameters, but the one that we make, Rogue makes  
16 two of them for us, is a 10-inch diameter tube  
17 that's 5 feet long that has metal plate loaded  
18 bars on the ends, and you reach inside the log  
19 with grip handles and clean it and press it.

20 Q. So you were making all this Strong  
21 Man equipment scalable?

22 A. Yes. I was prototyping it. So we  
23 made our first yoke. I just sketched it, and I  
24 gave it to a metal fabricator local to me. It  
25 took him an awful long time to get it back to us,

1 Orlando - Highly Confidential  
2 but when he finally did, as soon as I saw it, I  
3 thought, wow, we've botched that. We've got to  
4 shorten this. We've got to lower this. We need  
5 J hooks here. So I think we ended up doing five  
6 or six editions of that first yoke.

7 The farmers handles and the axles, we  
8 got those on the first try. Those are simple.  
9 The log we actually nailed on the first try as  
10 well. But the yoke is the piece of equipment  
11 that we added function to it. Nobody was making  
12 a yoke that had more than one function, which is  
13 just to carry it. We made it so that it was  
14 light enough for everybody. It had J hooks so  
15 that you could use it as a bench press. It's a  
16 squat rack. You can attach all these different  
17 attachments to it.

18 We put skids on it so that you can  
19 push it and pull it like a sled. So that one  
20 piece of equipment is now a really versatile  
21 piece of equipment in anybody's -- like it's the  
22 one racked piece of equipment I have in my  
23 garage.

24 Q. So is this equipment now incorporated  
25 in your CrossFit workouts?

1 Orlando - Highly Confidential

2 MR. BEGAKIS: Objection. Calls for  
3 narrative.

4 A. Yes.

5 Q. And how did you incorporate these  
6 Strong Man movements into CrossFit?

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

9 A. One of the things that we talk about  
10 to our members and to the people that attend our  
11 seminars is that if you go to a regular CrossFit  
12 gym where they don't have any Strong Man  
13 equipment, you might have access to a hundred  
14 toys to play with.

15 At Hybrid Athletics, we just have  
16 like ten more. We have kegs. We have sandbags.  
17 We have pieces of equipment that they are more  
18 indicative of real life, but we don't really --  
19 we don't get hung up on the fact that it's a  
20 different kind of piece of equipment. We don't  
21 get hung up on the fact that we have to do  
22 something different with it.

23 We take CrossFit programing, so a  
24 classic 21, 15, 9 rep scheme, that's a classic  
25 CrossFit rep scheme, and we just apply that to a

1 Orlando - Highly Confidential

2 Strong Man movement as opposed to a traditional  
3 barbell movement.

4 Q. Have you competed in CrossFit?

5 A. Yes.

6 Q. When did you first compete in  
7 CrossFit?

8 A. The 2009 regionals in Albany.

9 Q. Can you explain what a regional is?

10 A. Yes. The CrossFit games is kind of  
11 like the Super Bowl of our sport, and that  
12 started in 2007 in Aromas, California, and at the  
13 time it was really, really small in 2007. It was  
14 just a few people showed up.

15 2008 was a much larger event. I  
16 think there were 300 competitors, but there was  
17 no regional event. There was no invitational.  
18 It was just show up and compete. Everybody was  
19 welcome.

20 In 2009 the field had grown to the  
21 point where they decided we need to thin the herd  
22 before we get to California, so we did a --  
23 CrossFit held a regional event at a bunch of  
24 different regions around the world, and you had  
25 to qualify in the top five or so from your region

1 Orlando - Highly Confidential

2 to get to the games.

3 (Exhibit 6, Website screenshot from  
4 2009 CrossFit games, was received in  
5 evidence, as of this date.)

6 Q. So, Mr. Orlando, I've handed you  
7 what's been marked as Exhibit 6.

8 A. Yes.

9 Q. Can you explain what this is?

10 A. This is the website screenshot from  
11 the 2009 CrossFit games. It looks like this is  
12 my athlete profile.

13 Q. And if you turn to -- well, now,  
14 there's a picture of you here. Do you recognize  
15 that picture?

16 A. Yes. That was me during the thruster  
17 workout in Albany at the regionals. It would  
18 have been probably in May of '09.

19 Q. What is that logo on your shirt?

20 A. That's the Hybrid logo. That's the  
21 one that started the whole thing. That's the  
22 first ones that we ordered from Signs of Success.

23 Q. Did you wear the Hybrid H the whole  
24 time you were competing in 2009?

25 MR. BEGAKIS: Objection. Leading the

1 Orlando - Highly Confidential

2 witness.

3 A. Always.

4 Q. So you wore the Hybrid H at  
5 regionals?

6 A. Yes.

7 Q. And how did you place in 2009 at the  
8 regionals?

9 A. I finished fifth.

10 Q. And --

11 A. Top five went to the games.

12 Q. So 2009, where were the games held in  
13 2009?

14 A. In Aromas, California. It was at  
15 Dave Castro's ranch, where he grew up.

16 Q. And how many people competed at the  
17 games in 2009?

18 A. I think there were 75 men's  
19 individuals.

20 Q. And so in 2009 you competed in the  
21 CrossFit games, and how did you place?

22 A. 22nd in the world.

23 Q. And you competed wearing the Hybrid H  
24 the whole time?

25 MR. BEGAKIS: Objection. Leading the

1 Orlando - Highly Confidential

2 witness.

3 A. Yes.

4 Q. So 2009 is the first time you  
5 competed as a CrossFit athlete?

6 A. Correct.

7 Q. Did you compete in 2010?

8 A. I did.

9 Q. And were there regionals in 2010 as  
10 well?

11 A. Yes. There was regionals 2010 were  
12 in Canton, Massachusetts, because CrossFit had  
13 just signed a deal with their partner brand,  
14 Reebok, so the regional for the Northeast was  
15 held at the Reebok headquarters.

16 (Exhibit 7, Article bearing numbers  
17 Hybrid 483 through 488, was received in  
18 evidence, as of this date.)

19 Q. Mr. Orlando, I've handed you what's  
20 been marked as Exhibit 7. At the bottom  
21 here there's marked Hybrid 483 to 488. If you  
22 can turn to page 486. Do you recognize this  
23 article?

24 A. Yes. This is the event recap from  
25 the Northeast regional. I'm sorry, the 2010

1 Orlando - Highly Confidential  
2 regionals were also in Albany. They didn't move  
3 to Canton until '11. Sorry. But, yes, this is  
4 the event recap from the '10 regionals in Albany.

5 Q. How did you place in 2010 at the  
6 regionals?

7 A. I won it.

8 Q. And how big was regionals in 2010?

9 MR. BEGAKIS: Objection. Relevance.

10 A. CrossFit -- as far as I know,  
11 CrossFit is doubling in size. Even now, it's  
12 doubling in size every 18 months or so.

13 MR. BEGAKIS: Objection.

14 Speculation.

15 A. The regional event in 2010 was  
16 significantly larger than the games in 2009.

17 Q. And in 2010 -- well, I see a picture  
18 on the article right here.

19 A. Yes.

20 Q. If you turn to the first page of this  
21 document.

22 A. Yes.

23 Q. Is that you competing at the 2010  
24 regionals?

25 A. That is.

1 Orlando - Highly Confidential

2 Q. What's the logo on your shirt there?

3 A. It's the Hybrid H. Same shirt.

4 Q. Did you wear that shirt competing all  
5 throughout the games?

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

8 A. Yes, sir. This picture in particular  
9 was -- I still get -- I mean now this is five  
10 years plus later, and I still get people in the  
11 CrossFit community that will come up to me and  
12 say, hey, I was there, or hey, I saw the video,  
13 and this was --

14 Q. What was happening in this picture?

15 A. So one of the events --

16 MR. BEGAKIS: Objection. Calls for  
17 narrative.

18 A. One of the events was you had seven  
19 minutes to do -- seven minutes on the clock, and  
20 within that seven minutes you had an unlimited  
21 number of attempts to do three clean and jerks  
22 with as heavy a weight as possible, but your  
23 three reps had to be done within 40 seconds, so  
24 there were two clocks running.

25 The best -- right before this, I was

1 Orlando - Highly Confidential  
2 in the last group to go, and there are a bunch of  
3 other competitors competing at the time with  
4 crowds around. I knew that -- I think 275 was  
5 the winning number, so I hit 275 or 285, whatever  
6 that was for three, and I knew that I had won the  
7 event, but I still had enough time on the clock  
8 that I loaded up the bar to 300, because that was  
9 my MO, so I loaded the bar to 300 and I did 300  
10 for three in 40 seconds.

11 And that video and that -- just this  
12 moment is still one of the most -- it's one of  
13 the things that people talk about the most. I  
14 mean I'm reading a comment here from BK, number  
15 18, "Rob, that 300-pound lift was the moment of  
16 the games. Spine chilling to watch live." And I  
17 get -- that's one of those things that people  
18 even today, they talk about.

19 Q. So at Hybrid Athletics what goods and  
20 services do you offer?

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

23 A. We are a functional fitness gym.  
24 We're a CrossFit affiliate, so we offer that as a  
25 service. We do personal training there. We run

1 Orlando - Highly Confidential  
2 classes there. We sell apparel of every possible  
3 kinds of shirts, hoodies, hats and socks. We've  
4 put our logo on coffee mugs, on, name it, so a  
5 whole array of products.

6 We sell Hybrid stone molds. The  
7 stone molds, they're -- we've been selling those  
8 now -- I forget when, but we started doing those,  
9 but it's probably four years now, and we've been  
10 selling those all over the world. That's just  
11 one of the things we do at Hybrid.

12 Q. When did you start selling apparel?

13 A. The tail end of '08 when we got our  
14 first order in from Signs of Success. We started  
15 selling them to our members.

16 (Exhibit 8, Images of Hybrid  
17 Athletics apparel from online store, was  
18 received in evidence, as of this date.)

19 (Recess taken)

20 BY MR. KOSMA:

21 Q. Mr. Orlando, I've handed you what's  
22 been marked as Exhibit 8. Do you recognize this  
23 document?

24 A. I do.

25 Q. What is this?

1 Orlando - Highly Confidential

2 A. These are images of Hybrid Athletics  
3 apparel. These are taken from our online store.

4 Q. Do you know what year this was?

5 A. Maybe '10 or '11. '10.

6 Q. This is the type of apparel that you  
7 sell through your online store, you said?

8 A. Yes.

9 Q. And where else do you sell apparel?

10 A. I mean CrossFit is great at having  
11 competitions, so there's competitions all over  
12 the place from the local regional ones, just  
13 throw-downs, and then there's big competitions  
14 like the regionals and like the games. So we've  
15 sold apparel at any number of like charity  
16 events, games, regionals.

17 We've had vendor booths set up at  
18 those where it's really formal, and then we've  
19 had others where it's just a table, and then you  
20 lay down some goods, so we've sold -- and then we  
21 do it online, and we do it in-house. We have a  
22 decent amount of inventory that we keep at Hybrid  
23 Athletics, and we get a lot of foot traffic from  
24 people who want to visit our gym.

25 Our gym is actually a destination for

1 Orlando - Highly Confidential  
2 people in the CrossFit community, so they will  
3 come to our gym specifically to hang out with us,  
4 do a workout, grab some T-shirts and -- so we get  
5 international people who are coming and so we  
6 sell apparel from all of those angles.

7 Q. So in 2009 where were you selling  
8 apparel?

9 A. '9 would be mostly out of our gym.  
10 Some online. At the 2010 regionals we set up a  
11 booth with lots of apparel. We actually did a  
12 big run of inventory. That was the first time  
13 that we sold things to a bigger market. That was  
14 at the CrossFit regionals in Albany.

15 We actually did very, very well there  
16 because my videos had -- there was enough  
17 attention in the videos that people identified  
18 with the brand and with me, and our table and our  
19 booth was pretty busy throughout the weekend.

20 Q. And that was in 2010?

21 A. 2010 at the regionals, correct.

22 Q. Did you sell at any other events in  
23 2010?

24 MR. BEGAKIS: Objection. Leading the  
25 witness.

1 Orlando - Highly Confidential

2 A. I assume that there -- I can't  
3 remember specifics, but we did not sell at the  
4 games that year, but we did sell at the regionals  
5 and at the games in 2011.

6 Q. What years did you compete at the  
7 CrossFit games?

8 A. 2009, '10 and '11. That's why this  
9 is blurry for me, because I was competing, but I  
10 was also trying to run and grow the brand. So in  
11 '10, we didn't have -- we didn't bring anything  
12 out to California to sell because I didn't have  
13 anybody that would staff the booth. And in 2011  
14 I had the staff, and I actually worked with a  
15 printer in California to print [REDACTED] shirts and  
16 deliver them to the Home Depot Center, and we had  
17 staff that was there to run the booth while I was  
18 competing.

19 Q. And that was in?

20 A. 2011.

21 Q. How were the sales at the games in  
22 2011?

23 A. Good. I mean it's hard to keep track  
24 of exactly what the sales numbers were [REDACTED]  
[REDACTED], and we didn't keep --

1 Orlando - Highly Confidential  
2 you're slinging shirts, you're not really keeping  
3 track of what's moving. And we had [REDACTED] units,  
4 so -- but we did very well. It was a good  
5 weekend for us.

6 Usually those events are -- for most  
7 of the vendors those events are really, really  
8 successful. In the CrossFit community, apparel  
9 and really T-shirts in general, it's just -- it's  
10 a big, big business.

11 Q. How important is apparel to your  
12 business?

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

15 A. It represents, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

22 [REDACTED] I knew that we would be discussing  
23 this, so I know that I took a snapshot of '11,  
24 '12, '13 and '14 mold sales and apparel sales.

24 Q. Okay. So --

25 MR. BEGAKIS: Are we bringing this

1 Orlando - Highly Confidential

2 into evidence? What's --

3 Q. What is this?

4 A. So this is -- I talked to my  
5 accountant and I asked him for a breakdown of  
6 what the revenue looked like for --

7 MR. BEGAKIS: Objection.

8 Speculation.

9 A. -- what the revenue records showed  
10 for molds, stone molds in 2011, '12, '13 and '14,  
11 and what he gave me was [REDACTED]

[REDACTED]

[REDACTED]. When we  
14 look at apparel sales, not just T-shirts --

15 MR. BEGAKIS: Objection.

16 Speculation.

17 A. We look at apparel sales in 2011, [REDACTED]

[REDACTED]

[REDACTED]

20 Q. And these are numbers that you got  
21 from your accountant, you said?

22 A. Correct.

23 Q. How long has your accountant been in  
24 business with you?

25 A. Seven years, I think. Almost since I

1 Orlando - Highly Confidential

2 started the gym.

3 MR. BEGAKIS: I'll also object.

4 Lacks foundation.

5 Q. Mr. Orlando, could you turn to page 3  
6 of your declaration, paragraph 17, what does that  
7 say?

8 A. "[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]"

12 Q. And that's the Hybrid H?

13 A. Correct.

14 Q. And those shirts were sold where?

15 A. At all the events that I listed, so  
16 that would be at the regionals events, the games,  
17 charities, throw-downs at Hybrid Athletics,  
18 online. Anyplace that you could possibly sell a  
19 shirt.

20 Q. And all those T-shirts you sold have  
21 the Hybrid H trademark on them?

22 A. Always, yes.

23 Q. Mr. Orlando, have you ever been  
24 sponsored?

25 A. Yes. Several companies have

1 Orlando - Highly Confidential  
2 sponsored me throughout my time within the  
3 CrossFit communities, so we have Rogue Fitness,  
4 Progenics and JACO.

5 Q. And what is Rogue Fitness?

6 A. Rogue Fitness started out making one  
7 product, just -- I think it was gymnastics rings.  
8 They were making those products for the CrossFit  
9 community. Bill Henniger started expanding their  
10 product line and started building boxes. They  
11 were the equipment supplier for the CrossFit  
12 Games in 2008, I think it started, or at least  
13 that's when I was aware of them. But they have  
14 built a massive business. Every time I go to  
15 Columbus, Ohio to see Bill or any of the guys at  
16 Rogue, it just seems they have doubled in size.

17 MR. BEGAKIS: Objection.  
18 Speculation.

19 A. I know that their warehouse space,  
20 it's absolutely massive. But their product line  
21 has also expanded. So Rogue Fitness is the most  
22 recognizable equipment supplier for anybody in  
23 the CrossFit space, and now they're expanding  
24 outside of the CrossFit space where they're  
25 outfitting Globo gyms, they're outfitting

1 Orlando - Highly Confidential

2 military facilities, and they're outfitting  
3 colleges with equipment.

4 Q. And as a sponsor, what does Rogue  
5 Fitness do?

6 MR. BEGAKIS: Objection. Calls for  
7 narrative.

8 A. Rogue paid a -- they would pay your  
9 way to competitions. They would pay for your  
10 hotels. If you won events, they would give you  
11 cash incentives to win individual events within a  
12 contest. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

19 Q. From Rogue?

20 A. Yes. And then they also, they sell,  
21 for years now, they have been selling a Rob  
22 Orlando shirt, [REDACTED]

[REDACTED]  
[REDACTED]

25 Q. And does that shirt have the Hybrid H

1 Orlando - Highly Confidential

2 logo?

3 A. Yes.

4 Q. What other equipment do they sell for  
5 you?

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

8 A. And they also sell the stone molds.  
9 The stone molds, it's a little bit different of a  
10 product because with the metal equipment, I knew  
11 nothing about metal fabrication, and these guys  
12 had distribution down pat, so I didn't want to  
13 get in the way of that.

14 These guys -- [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] That was perfect  
18 for me. It's a perfect scenario because I don't  
19 ever have to touch the metal equipment.

20 With the stone molds, it's a little  
21 bit different because I was the one that  
22 prototyped it all, and I knew that I could get it  
23 done in Connecticut with the guy who had built  
24 our prototypes for us. So I kept control over  
25 the stone molds, so I fabricate those. I sell

1 Orlando - Highly Confidential

2 them to Rogue as a wholesaler, and then they  
3 retail them out.

4 Q. When did you start developing the  
5 stone molds?

6 MR. KOSMA: Let's mark this as  
7 Exhibit 9.

8 (Exhibit 9, Request for proposal  
9 dated April 25th, 2010, was received in  
10 evidence, as of this date.)

11 Q. Mr. Orlando, I've handed you what's  
12 been marked as Exhibit 9. What is this document?

13 A. April 25th, 2010. It's a request for  
14 a proposal, and what we were looking for was a  
15 fabricator who would be able to make stone molds  
16 for Hybrid Athletics, so we had put together --  
17 my brother is an engineer by trade, and he works  
18 in the construction field on these big projects,  
19 and it was his recommendation that we put  
20 together a formal presentation of what we're  
21 asking for along with dates, project schedule,  
22 product requirements, drawings.

23 He did the original drawings for us  
24 based on my feedback and my request, and then we  
25 put a list of bidders on the back of who we'd be

1 Orlando - Highly Confidential

2 sending this out to.

3 Q. What made you develop a stone mold?

4 A. For years, I told you I started  
5 Strong Man back in 2005, and from 2005 to into  
6 2010 I was making atlas stone molds either for  
7 myself or for other people. And there was a  
8 company out there called Slater's Hardware, and  
9 Slater's had a set of stone molds themselves, but  
10 they weren't engineered as well as they could.  
11 They had to be held together with two -- with  
12 duct tape. That duct tape often failed when you  
13 were filling it with concrete, and I just thought  
14 there was a better way to do this.

15 So I sketched this. I showed it to  
16 my brother. He put it down on a real drawing,  
17 and then because of his construction background,  
18 he estimated the different sizes that we would  
19 need to make different weights, and we came up  
20 with eight sizes. I came up with eight sizes  
21 that I thought, this is a wide enough spread that  
22 it covers everybody from entry level to the  
23 strongest guys out there, and we had one  
24 prototype built, and we'd never changed anything  
25 with the design, not even from the very first

1 Orlando - Highly Confidential  
2 prototype. The only modification was to change  
3 the size of the filling hole. Everything else is  
4 exact.

5 Q. And how many sizes of stone molds do  
6 you sell?

7 A. Now, 13, plus a funnel, and all of  
8 them are branded with the Hybrid H.

9 Q. So this request for proposal is  
10 marked April 25th, 2010?

11 A. Yes.

12 Q. When did you start selling the stone  
13 molds?

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

16 A. It would probably be a couple of  
17 months after that, because we sent that out and  
18 we were in contact with a company in New Milford,  
19 Connecticut called Conlet Plastics, and they had  
20 the technology that we were looking for which was  
21 called thermoforming. So we reached out to them.  
22 We showed him the prototype. His name is Bob  
23 Conlet. Bob Colletti. Sorry.

24 So we reached out to Bob and asked  
25 him if he could fabricate a prototype for us, and

1 Orlando - Highly Confidential

2 it just worked out perfectly that he's only a  
3 half an hour away.

4 (Exhibit 10, Prototype and invoice of  
5 18-inch stone mold dated June 7th, 2010,  
6 was received in evidence, as of this  
7 date.)

8 Q. Mr. Orlando, I've handed you what's  
9 been marked as Exhibit 10. Do you recognize this  
10 document?

11 A. I do. This is the prototype and  
12 invoice that we got from Conlet. It's dated  
13 June 7th, 2010, and this is for the prototype of  
14 the 18-inch stone mold.

15 Q. And page 2, what's this?

16 A. This is a second invoice dated  
17 July 28th, 2010 for the 16-inch, 14-inch, 13, 12,  
18 and 10-inch stone molds. And the same day it  
19 just continues on the next page with the 15 and  
20 the 17-inch stone molds.

21 Q. So there's a little under two months  
22 between these invoices. Why is that?

23 MR. BEGAKIS: Objection. Leading the  
24 witness.

25 A. There were two things going on. One,

1 Orlando - Highly Confidential

2 we had to -- I poured a bunch of stones inside  
3 this 18-inch prototype to make sure that it would  
4 hold up over time, so we had to do some QA. Once  
5 we figured out that the plastic will last, that  
6 you can clean it, that it will serve more than  
7 just one use, and we knew that the quality was  
8 there, I had to organize the cash to go ahead and  
9 put this together, because for each one of these  
10 different sizes, [REDACTED]

[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

16 Q. Where do you sell your stone molds?

17 A. Online, competitions. Most of it is  
18 online, and a huge chunk of it is to Rogue as a  
19 wholesale.

20 (Exhibit 11, e-mail from Blake at  
21 Rogue Fitness, was received in evidence,  
22 as of this date.)

23 (Exhibit 12, Breakdown of sizes of  
24 stone molds, was received in evidence, as  
25 of this date.)

1 Orlando - Highly Confidential

2 Q. Mr. Orlando, I've handed you what's  
3 been marked as Exhibits 11 and 12 into evidence.  
4 Can you explain what Exhibit 11 is, please?

5 A. Yes. It looks like an e-mail from  
6 the guys at Rogue Fitness, a guy named Blake who  
7 responded to my request. I probably reached out  
8 to Bill Henniger, the owner of Rogue Fitness,  
9 asking him if they have records of where they had  
10 sent stone molds, so it looks like Blake  
11 responded with, "The first date of sale for a  
12 Hybrid stone mold in the Rogue Fitness system is  
13 November 18th, 2010."

14 And then he attached a breakdown of  
15 the Hybrid mold sales by SKU over that time as  
16 well with a list of [REDACTED]  
17 [REDACTED], and I just said "Thank you for the  
18 information."

19 Q. And looking at Exhibit 12, can you  
20 tell me what Exhibit 12 is?

21 A. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1 Orlando - Highly Confidential

2  .

3 Q. And then if we turn to the final  
4 page.

5 A. Yes. The next page -- the next many  
6 pages, it's just every zip code that they have  
7 sent these to based from their sales online.

8 (Exhibit 13, Printout of screenshot  
9 from Wayback Machine, was received in  
10 evidence, as of this date.)

11 Q. Mr. Orlando, I've handed you what's  
12 been marked as Exhibit 13. Can you tell me what  
13 this document is?

14 A. This looks like a printout of a  
15 screenshot from the Wayback Machine, and it looks  
16 like what the Rogue Fitness website looked like  
17 on December 6th of 2011, and it's the Hybrid  
18 stone molds for sale on their website.

19 Q. And looking at the third page of the  
20 document marked Hybrid 998.

21 A. Yes.

22 Q. Is that a picture of how those stone  
23 molds look?

24 A. Yes. Exactly.

25 Q. And does every stone mold have that

1 Orlando - Highly Confidential

2 Hybrid H in it?

3 A. Yes. All of them.

4 Q. Every size?

5 A. Every size. Now we actually engrave  
6 it with the weight and the diameter as well. I  
7 had it retooled, but they always had the H.

8 (Exhibits 14 and 15, Images of Hybrid  
9 stone molds, were received in evidence, as  
10 of this date.)

11 Q. Mr. Orlando, I've handed you what's  
12 been marked Exhibits 14 and 15. Do you recognize  
13 these exhibits?

14 A. I do. These are the Hybrid stone  
15 molds in front of one of the walls at Hybrid  
16 Athletics with our logo on it.

17 Q. Where is this image from?

18 A. Where was this image taken?

19 Q. Yes.

20 MR. BEGAKIS: Objection. Leading the  
21 witness.

22 A. The image was taken from inside  
23 Hybrid Athletics. The big Hybrid H is on one of  
24 the back walls, and we lined up the stone molds  
25 right in front of them.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Orlando - Highly Confidential

Q. And Exhibit 15, where was this image taken?

A. Same exact spot.

(Lunch recess: 12:00 p.m.)

1 Orlando - Highly Confidential

2 Afternoon Session

3 1:10 p.m.

4 R O B E R T O R L A N D O, having been  
5 previously duly sworn, was examined and testified  
6 further as follows:

7 MR. KOSMA: Ron, since you're in the  
8 room, I'm going to ask you to identify  
9 yourself for the record.

10 MR. WILSON: Ron Wilson, CEO of  
11 Hylete.

12 EXAMINATION (Continued)

13 BY MR. KOSMA:

14 Q. Mr. Orlando, how does Hybrid market  
15 itself?

16 MR. BEGAKIS: Objection. Calls for  
17 narrative.

18 A. Hybrid Athletics, we shoot videos  
19 through social media, YouTube channels, Facebook,  
20 Twitter, Instagram. We've been featured on  
21 CrossFit.com an awful lot. We've been featured  
22 in CrossFit Journal. It opened up relationships  
23 into print magazines like Muscle & Fitness. So  
24 we've kind of attacked it from all different  
25 angles, but a lot of it starts with the video

1 Orlando - Highly Confidential  
2 content that was produced at Hybrid in the early  
3 days.

4 (Exhibit 16, Document reflecting  
5 commercial airing at 2010 CrossFit games,  
6 was received in evidence, as of this  
7 date.)

8 Q. Mr. Orlando, pass you what's marked  
9 Exhibit 16, and do you recognize this?

10 A. Yes. One of my -- they weren't a  
11 sponsor, and they didn't pay me any money, [REDACTED]  
12 [REDACTED] was High Temp, and  
13 High Temp shot a commercial that aired at the  
14 2010 CrossFit games, so this commercial that they  
15 put together was shot at Hybrid Athletics, and  
16 like I said, it aired for the first time in the  
17 stadium at the games.

18 Q. Where did it air at the games?

19 A. On the Jumbotron.

20 Q. How many times?

21 A. That I couldn't say. They must have  
22 paid for X number of showings.

23 MR. BEGAKIS: Objection.

24 Speculation.

25 A. But I don't -- I know it showed once,

1 Orlando - Highly Confidential

2 because I saw it once.

3 Q. Where is this posted right now?

4 A. This is on CrossFit's YouTube  
5 channel.

6 Q. When was this uploaded?

7 A. It looks like uploaded October 6th of  
8 2010.

9 Q. Did you get any feedback after this  
10 video aired?

11 MR. BEGAKIS: Objection. Leading the  
12 witness.

13 A. Yes. The feedback from -- there are  
14 comments all over this video, and even now, if  
15 you look at the video, there are still comments  
16 being put in there, so it got a decent amount of  
17 traction.

18 (Exhibit 17, Video from Strong Man  
19 Competition, was received in evidence, as  
20 of this date.)

21 Q. Mr. Orlando, I've passed you what's  
22 been marked as Exhibit 17. Do you recognize  
23 this?

24 A. Yes. This is a video from the last  
25 Strong Man competition. I did the Viking Fest in

1 Orlando - Highly Confidential  
2 New York, and this is a screenshot of the image  
3 of the opening credit for the video. This is  
4 self-edited, but I did on almost all the videos  
5 that I ever put out, I either started with or  
6 ended with my logo, just like that, either  
7 zooming in or scrolling out of the screen.

8 Q. Where was this video published first?

9 A. This video I think -- I sent this one  
10 to CrossFit. If I look here, published  
11 March 18th, 2010, so this was aired on  
12 CrossFit.com I believe March 18th, 2010, and then  
13 it was uploaded to CrossFit's YouTube page on  
14 September 15th of 2011.

15 Q. What is this video of?

16 MR. BEGAKIS: Objection. Calls for  
17 narrative.

18 A. This video was an event by event  
19 recap of the competition itself, and I think it's  
20 just over seven minutes long, and it just  
21 highlights my competition in the contest itself,  
22 and it's got more than a quarter of a million  
23 views.

24 Q. Did you ever get any feedback from  
25 this video?

1 Orlando - Highly Confidential

2 MR. BEGAKIS: Objection. Leading the  
3 witness.

4 A. Yes. I mean like a lot of my videos,  
5 people identify with me, my brand.

6 MR. BEGAKIS: Objection.  
7 Speculation.

8 A. My brand of CrossFit, they identify  
9 with the logo and the branding, so I get comments  
10 on stuff like this all the time. People come  
11 meet me are like, hey, I saw that Viking Fest.  
12 Actually, the closing scene in this video, as I'm  
13 walking up to collect my trophy, the reason that  
14 I left this in was because the promotor of the  
15 contest, his last comment to me, which you could  
16 hear in the audio, was, what's the name of that  
17 CrossFit website? So this was great promotion  
18 for CrossFit within the Strong Man community.

19 Q. What would you say your most popular  
20 videos are?

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

23 A. I mean there are so many videos  
24 that -- usually the ones where I'm doing  
25 something really heavy, like those tend to get

1 Orlando - Highly Confidential  
2 the most traction, but CrossFit does a good job  
3 at putting them up on their YouTube page or their  
4 website. A lot of the videos, many videos have a  
5 quarter of a million views or more, and there's  
6 one in particular from Montana that has well over  
7 a million.

8 Q. What video is that?

9 A. It's the Rob Orlando, Rich Froning  
10 doing snatches in Montana, something like that,  
11 but our videos -- most of our videos have 40,  
12 50,000 views minimum.

13 (Exhibit 18, Screenshot from 300  
14 Pound Grace, was received in evidence, as  
15 of this date.)

16 Q. Mr. Orlando, I pass you what's been  
17 marked into evidence as Exhibit 18. Do you  
18 recognize this?

19 A. Yes. This is a screenshot from 300  
20 Pound Grace, which is a CrossFit workout. 30  
21 clean and jerks for time. In 2010 at the  
22 regionals, I mentioned earlier that one of the  
23 events was to do three clean and jerks at the  
24 heaviest possible weight within 40 seconds. I  
25 did three reps at 300 pounds, and I had the idea

1 Orlando - Highly Confidential  
2 that I wanted to try 30 clean and jerks for time  
3 and just see if I could finish it. And it took  
4 me several years to -- it took me over two years  
5 actually to get to the point where I thought I  
6 might be able to do it.

7 I videotaped it, sent it to CrossFit.  
8 Jordan Gravatt is one of the CrossFit media film  
9 producers. He edited this, and this aired on  
10 CrossFit.com.

11 Q. Is that the wall you were talking  
12 about earlier, the peg wall?

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

15 A. That's the pegboard wall at Hybrid  
16 Athletics, yes.

17 Q. What's featured on that wall?

18 MR. BEGAKIS: Objection. Calls for  
19 narrative.

20 A. The Hybrid trademark H. This is one  
21 of the most popular videos by a long shot. Maybe  
22 not in terms of views because --

23 MR. BEGAKIS: Objection.

24 Non-responsive.

25 A. It's 172,000 views, but this video in

1 Orlando - Highly Confidential  
2 particular, people recognize it and come to me  
3 and say that video is -- it's the most insane  
4 thing that I've ever seen or it's the reason that  
5 I got into CrossFit or --

6 MR. BEGAKIS: Objection.  
7 Speculation.

8 A. People identify with this video.

9 Q. So people have told you that before?

10 A. Many, many, yes. Because Grace is  
11 usually done with 135 --

12 MR. BEGAKIS: Objection.  
13 Non-responsive.

14 A. Grace is usually done with  
15 135 pounds, so to do it with 300 pounds was --  
16 nobody was doing that yet.

17 (Exhibit 19, Screenshot of video, was  
18 received in evidence, as of this date.)

19 Q. Mr. Orlando, I've passed you what's  
20 been marked as Exhibit 19. Do you recognize  
21 this?

22 A. Yes. This is a screenshot of another  
23 video that CrossFit aired for me. It's me doing  
24 Fran, which is another one of CrossFit's staple  
25 workouts, with one hand.

1 Orlando - Highly Confidential

2 Q. What shirt are you wearing in this  
3 video?

4 A. The Hybrid Athletics trademark H  
5 revolutionizing old school. It's on a light  
6 gray.

7 Q. Where was this video originally  
8 published?

9 MR. BEGAKIS: Objection. Leading the  
10 witness.

11 A. Let's see. This would have been  
12 originally published on CrossFit.com and then  
13 uploaded to their CrossFit YouTube page on  
14 September 30th, 2011. This is again like right  
15 up there with the 300-pound Grace. This is --

16 MR. BEGAKIS: Objection.  
17 Non-responsive.

18 A. People refer to this all the time.

19 Q. When you say refer to it, what do  
20 they say to you?

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

23 A. They will come up to me at different  
24 events and say, you know, that one handed Fran  
25 was just the most ridiculous thing I've ever

1 Orlando - Highly Confidential

2 seen, and it just helped -- it helped build my  
3 own personal following and it helped build the  
4 brand.

5 (Exhibit 20, Screenshot from video,  
6 was received in evidence, as of this  
7 date.)

8 Q. Mr. Orlando, I've passed you what's  
9 been marked as Exhibit 20. Do you recognize  
10 this?

11 A. Yes. This is a screenshot from  
12 another video that aired on CrossFit.com, and  
13 it's now uploaded to their CrossFit YouTube page.

14 Q. What was this video of?

15 A. The bear complex is a CrossFit  
16 workout where you do seven reps of a barbell  
17 complex, and for somebody to do it at 200 pounds  
18 is just a good feat of strength. So I videotaped  
19 that, sent it to CrossFit, and they aired that on  
20 CrossFit.com. It looks like it was published to  
21 them April 18th, 2010, and then uploaded to their  
22 CrossFit page September 14th, 2011.

23 Q. When you say published, what do you  
24 mean by that?

25 A. So it was originally aired, like I

1 Orlando - Highly Confidential

2 said earlier, I had to give CrossFit the right of  
3 first refusal on a lot of the videos, so I would  
4 send them the footage and let them sit on it, and  
5 then they would send me a message back saying,  
6 hey, we're going to go ahead and put that up, or  
7 no, we're not. If they decided that they weren't  
8 going to use it for whatever reason, then I was  
9 able to post it up on my own channels, but I gave  
10 them the right of first refusal.

11 Q. Where would they post it?

12 A. CrossFit.com.

13 Q. Okay. And then when would it go on  
14 the YouTube channel?

15 A. Whenever they uploaded it. That's up  
16 to them.

17 (Exhibit 21, Scene from regionals in  
18 2010 in Albany, was received in evidence,  
19 as of this date.)

20 Q. Mr. Orlando, I've passed you what's  
21 been marked as Exhibit 21. Do you recognize  
22 this?

23 A. Yes. This is a scene from the  
24 regionals in 2010 in Albany, and the event was a  
25 three rep max clean and jerk in seven minutes on

1 Orlando - Highly Confidential  
2 a bigger clock and 40 seconds to do your set of  
3 three.

4 Q. This is the one you were talking  
5 about earlier with the --

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

8 A. Yes.

9 Q. If you go back and look at Exhibit 7,  
10 please.

11 A. Yes.

12 Q. Is this the video of the workout you  
13 did on this article?

14 A. Yes. That's where this picture is  
15 taken from. For people who are around a  
16 CrossFit --

17 MR. BEGAKIS: Objection.

18 Non-responsive.

19 A. -- event, this picture, this workout,  
20 this video that aired on CrossFit.com, this was a  
21 highlight reel, and I've heard that thousands of  
22 times from people all over the world.

23 Q. So this video was pretty important to  
24 your brand?

25 A. Very.

1 Orlando - Highly Confidential

2 MR. BEGAKIS: Objection. Leading the  
3 witness.

4 A. The video itself was just -- I mean  
5 there were tons of videos of me doing different  
6 things at the time, but of all the regionals all  
7 over the world, I think I beat everybody in the  
8 world by a pretty substantial margin on that  
9 individual workout.

10 (Exhibit 22, Image of back wall at  
11 Hybrid Athletics, was received in  
12 evidence, as of this date.)

13 Q. Mr. Orlando, I've passed you what's  
14 been marked as Exhibit 22. Do you recognize  
15 this?

16 A. Yes. That's the back wall at Hybrid  
17 Athletics. The workout was heavy bench and heavy  
18 lunge. CrossFit headquarters had sent out a  
19 media team to videotape some Israeli military  
20 people that were coming out to Hybrid. They  
21 spent a week with us to learn how we do CrossFit,  
22 and at the end of a three-day weekend when these  
23 guys were -- there were I think nine that came  
24 over, and CrossFit was there to cover the final  
25 day.

1 Orlando - Highly Confidential

2 The nine guys had left the gym and it  
3 was just me and CrossFit media, and he says, you  
4 know, hey, while I'm here, you want to do a  
5 workout, so I thought up this workout, and this  
6 is just another one of the ones that CrossFit put  
7 up on CrossFit.com, and then eventually onto  
8 their YouTube channel.

9 (Exhibit 23, Video series, was  
10 received in evidence, as of this date.)

11 Q. Mr. Orlando, I've passed you what  
12 I've marked as Exhibit 23. Do you recognize  
13 this?

14 A. Yes. This is another video series  
15 actually. There's road trip in -- I'm trying to  
16 think of when that road trip actually happened,  
17 because I don't know when this was uploaded.  
18 This was after the 2010 games. We did a road  
19 trip from San Diego up to San Francisco, and it  
20 was me, Dave Castro, Sevan Matossian, who works  
21 with CrossFit media, and we were in a van and we  
22 dropped into half -- probably a dozen boxes from  
23 San Diego to San Francisco.

24 Along the way, we picked up David  
25 Millar and Bill Grundler, two other CrossFitters.

1 Orlando - Highly Confidential

2 Dave Lifson was also with us. So a group of  
3 CrossFitters, top level guys that were dropping  
4 into boxes all along the California coast, and  
5 this is just a documented road trip that was  
6 featured in the CrossFit journal. Pieces of it,  
7 little snippets of it were featured on  
8 CrossFit.com, and then again it was eventually  
9 loaded to their YouTube page.

10 Q. And what shirt are you wearing in  
11 this video?

12 A. This is one of the Hybrid Athletics  
13 trademark shirts.

14 Q. Did you wear that shirt the whole  
15 road trip?

16 MR. BEGAKIS: Objection. Leading the  
17 witness.

18 A. Yes. In every video. I don't know  
19 if it's every video, but in most videos, these  
20 segments, I was always wearing a Hybrid shirt.

21 Q. How important are these videos to  
22 your brand?

23 MR. BEGAKIS: Objection. Leading the  
24 witness.

25 A. The videos are a portal into the

1 Orlando - Highly Confidential  
2 community, and if you're doing something unique  
3 and you -- I was just -- I was in a position  
4 where I had my own spin on CrossFit. It was  
5 usually heavier than what everybody else was  
6 doing, and that got noticed, so my brand was  
7 built on these videos.

8 The Rob Orlando and the Hybrid  
9 Athletics brand, those two things are kind of  
10 meshed together, and they have got their own  
11 flavor within the CrossFit community, and they  
12 were built on these videos. And if you go back  
13 even further, before I got into CrossFit and  
14 before Hybrid Athletics, I was uploading all of  
15 my Strong Man stuff to a YouTube page so that I  
16 had a small following relative to -- the Strong  
17 Man community was large, but I had a decent sized  
18 following of people who were just paying  
19 attention to my Strong Man stuff. So the videos  
20 are the portal to the community.

21 (Exhibit 24, Cover of July 2011 issue  
22 of Muscle & Fitness Magazine, was received  
23 in evidence, as of this date.)

24 Q. Mr. Orlando, I've passed you what's  
25 been marked as Exhibit 24.

1 Orlando - Highly Confidential

2 A. Yes.

3 Q. Can you tell me what this is?

4 A. This is the cover of the July 2011  
5 issue of Muscle & Fitness Magazine.

6 Q. And what is this?

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

9 A. In the top left corner you can see  
10 the King of CrossFit, Rob Orlando, page 174.  
11 This was a feature article that Muscle & Fitness  
12 did on me and the sport of CrossFit. I was  
13 approached by Bob Ihlenfeldt.

14 Q. And who is Bob Ihlenfeldt?

15 A. He's one of the writers for Muscle &  
16 Fitness. He contacted me, I think it was by  
17 e-mail, and he says, hey, I'm from Muscle &  
18 Fitness and I'd like to talk with you about  
19 possibly doing a feature story on you.

20 We set up a phone interview, and he  
21 said, look, I've been following your videos, your  
22 YouTube videos from when you were Strong Man, and  
23 now I've seen you kind of morph into this  
24 CrossFit athlete, but you're doing everything  
25 different. You're doing everything heavy. I

1 Orlando - Highly Confidential  
2 like your brand. I like the logo. I like your  
3 style. I like how you're doing things heavy, and  
4 I think that you could be -- you could help  
5 Muscle & Fitness transition out of a bodybuilder  
6 culture into a more functional fitness culture.

7 So we did a two-hour phone interview,  
8 followed by a photo shoot at Hybrid Athletics.  
9 And then they published it in the July 2011  
10 issue. And for CrossFit it was a huge win. I've  
11 talked to a lot of the CrossFit employees at the  
12 higher levels, and they said that this was the  
13 first time they ever had general recognition,  
14 public recognition on a much broader scale.

15 They were an underground movement.  
16 It was a counterculture, and this was the first  
17 time they were kind of invited into the  
18 mainstream, so it was -- I was a link between  
19 those two worlds of the bodybuilding muscular  
20 fitness culture, which was really a magazine that  
21 was stuck in the --

22 MR. BEGAKIS: Objection.  
23 Speculation.

24 A. -- '70s and '80s of bodybuilding  
25 culture, and they were trying and they still are

1 Orlando - Highly Confidential  
2 trying to get into a more functional fitness  
3 role.

4 Q. Now if we look at these articles  
5 marked Hybrid 51 through 59, if you look at page  
6 56, what exercise are you doing in this picture?

7 A. I'm doing a keg clean and press.

8 Q. And what's in the keg?

9 MR. BEGAKIS: Objection. Relevance.

10 A. Inside the keg is sand or water.

11 Q. Do you mark all your kegs with your  
12 Hybrid H?

13 A. Our kegs at Hybrid, yes. We printed  
14 off 2,000 stickers and we pack our orders with  
15 some of those stickers, if people want to put  
16 them on their gear, they can. But yes, we mark  
17 all of our kegs with those. We mark our yokes.  
18 We mark anything that --

19 MR. BEGAKIS: Objection.

20 Non-responsive.

21 A. Anything that it will stick to, we  
22 can put that logo on.

23 Q. Looking at the next page, Hybrid 57,  
24 and what piece of equipment is that in that  
25 picture?

1 Orlando - Highly Confidential

2 A. That is the road yoke.

3 Q. Is that the same yoke you were  
4 talking about earlier?

5 A. That is the same yoke, yes. So  
6 again, we made this. The first yoke that I  
7 bought was 440 pounds empty, and what we did was  
8 make it modular so that you could ship it. It's  
9 all bolted together. It has skids on it, so you  
10 could push and pull it. It's got J hooks on it,  
11 so you can use it as a rack system. And we  
12 lightened it down to where it's 170 pounds empty  
13 heavy, so you can make it as heavy as you want,  
14 but we made it a versatile piece of equipment  
15 that everybody can use, so we added scalability  
16 to it.

17 Q. And in the bottom right, what piece  
18 of equipment are you using there?

19 A. That's one of our atlas stones.

20 Q. If you look at Hybrid page 59, what  
21 piece of equipment are you using in the left-hand  
22 picture?

23 A. That is one of our prototype logs.  
24 We had our logo laser etched into a straight flat  
25 piece of rolled -- not rolled. It was a flat

1 Orlando - Highly Confidential  
2 piece of 10-inch steel, and then they rolled it  
3 on a bend press, and then they stitch welded it.  
4 But that's our logo actually laser cut into a  
5 piece of metal.

6 Q. Do you still work for Muscle &  
7 Fitness?

8 A. Right now, up until a few months ago,  
9 yes. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

16 I love the exposure, and there's one  
17 person in that company who I have had very candid  
18 discussions with, some of them. Some of the  
19 times it was pretty hostile. [REDACTED]

[REDACTED] just as of a couple of weeks  
21 ago, and now I'll probably -- I reached back out  
22 to Sean Perry, who's the editor in chief, and  
23 Matt Tuttle, those two guys have said, look, when  
24 you want to start writing again, we're happy to  
25 put a column in here for you, and we can tailor

1 Orlando - Highly Confidential

2 it to whatever you want it to be. But I wrote  
3 for them for well over a year. It was probably  
4 closer to two and a half years.

5 (Exhibits 25 and 26, Magazine covers,  
6 were received in evidence, as of this  
7 date.)

8 Q. Mr. Orlando, looking at Exhibit 25,  
9 do you recognize this?

10 A. Yes. This is the cover of the -- I'm  
11 trying to find which issue it is. September 2011  
12 issue.

13 Q. And if you turn to the third page.

14 A. Yes. That's our atlas stone on my  
15 shoulder, and it's a quick 300-word training  
16 article.

17 Q. How often did you do these articles?

18 A. I did them once a month, so I would  
19 submit one or they would send me a list of like  
20 here are the next three months. I would write  
21 the article, send them back, and then they would  
22 be published one at a time.

23 Q. And looking at Exhibit 26.

24 A. This is March of 2012.

25 Q. Third page.

1 Orlando - Highly Confidential

2 A. Same thing. We started up a new kind  
3 of column after the first few that we wrote that  
4 were just like, hey, pick a workout and let's  
5 describe what it is and how it works. They  
6 decided to actually dedicate a slice of the  
7 magazine and call it CrossFit Corner. And they  
8 needed approval from CrossFit to use the word and  
9 the logo and to be involved in the magazine, and  
10 I think that the article that -- the feature  
11 article on me spurred on conversations between --

12 MR. BEGAKIS: Objection.

13 Speculation.

14 A. -- CrossFit and Muscle & Fitness, and  
15 I know that there were conversations in there.  
16 I've spoken to Dale Saran, and he said that that  
17 article opened up dialogue, and Muscle & Fitness  
18 editor in chief came to CrossFit and talked to  
19 Greg Glassman about can we use the logo? Can we  
20 create this CrossFit Corner? And I believe this  
21 is the first article that I wrote in that column.

22 Q. Has writing for Muscle & Fitness  
23 helped your brand?

24 MR. BEGAKIS: Objection. Leading the  
25 witness, and calls for speculation.

1 Orlando - Highly Confidential

2 A. Yes. I mean I think they do 380 or  
3 so thousand print copies of their magazine --

4 MR. BEGAKIS: Objection.  
5 Speculation.

6 A. -- monthly, and I know that they have  
7 got 6 or 7 million views on --

8 MR. BEGAKIS: Objection.  
9 Speculation.

10 A. -- on the Internet.

11 Q. Do you get any feedback from people  
12 that talk to you about your articles?

13 A. Yes. In fact, I would say that at  
14 least once a month somebody in all of my travels,  
15 and where I go all over the world, people will  
16 say, hey, I was in the airport and I picked up  
17 Muscle & Fitness and I saw your article, and you  
18 got me to join a CrossFit gym. So there has  
19 been -- I get that a lot.

20 Q. How popular are these articles?

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

23 A. It's been great. It's been great for  
24 the gym because there are so many eyeballs for  
25 our brand. It's been fantastic. We have our

1 Orlando - Highly Confidential

2 logo and our shirt gets recognized, so it's been  
3 fantastic for our brand and for me personally,  
4 it's just been awesome.

5 Q. You mentioned earlier that you're a  
6 CrossFit seminar subject matter teacher?

7 A. Subject matter expert, yes.

8 Q. What subject matter is that?

9 A. Strong Man.

10 Q. What do you do as a subject matter  
11 expert?

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

14 A. CrossFit has their level 1  
15 certification, and that level 1 certification is  
16 the entry point for most people who want to dive  
17 a little bit deeper into CrossFit once they have  
18 been doing it for a while. So they will pay a  
19 thousand dollars for a two-day seminar where it's  
20 basically a baptism into CrossFit. And then HT  
21 was smart and they brought in a handful of  
22 specialists who are going to teach some of the  
23 disciplines within the CrossFit world, so Olympic  
24 lifting, self-defense, kettle bells. And I'm one  
25 of those arms, which is the Strong Man arm, so I

1 Orlando - Highly Confidential  
2 have been put in charge of going out and teaching  
3 the CrossFit community how to use these awkward  
4 objects and how to implement it into their  
5 existing CrossFit programing. So I spread the  
6 CrossFit gospel and I blur that with Strong Man,  
7 and I do that all over the world.

8 Last year I did 43 seminars. I flew  
9 more than [REDACTED] miles, so I'm in every corner  
10 of the world, and at every one of those gigs, the  
11 Hybrid Athletics' logo, and really apparel sales,  
12 mold sales, we always see a spike in apparel  
13 sales and mold sales following those gigs, but  
14 it's not unusual for us to show up at any given  
15 seminar, and if you walk in and there's 20 people  
16 there and three of them have your shirt on  
17 already, so our seminars have been -- it's been a  
18 great business for us.

19 Q. When did you start doing seminars?

20 A. In 2011, I believe right after the  
21 road trip up to California. So the road trip was  
22 an interesting event. We had the whole  
23 documentary series where we moved up to  
24 San Francisco, and when we got there we actually  
25 did -- I looked at it like an audition for Dave

1 Orlando - Highly Confidential  
2 Castro. We went to San Francisco CrossFit, which  
3 is Kelly Starrett's place. It's a well known --  
4 in terms of CrossFit, it's a destination, for  
5 sure.

6 So we were on a big stage with the  
7 CrossFit media team watching cameras rolling, and  
8 Castro was in the audience, and I was standing in  
9 front of a group of I think 20 or so, 25  
10 attendees that we were auditioning for CrossFit  
11 to see if our content was important enough to  
12 show everybody.

13 Q. So you mentioned you sell apparel at  
14 your seminars?

15 MR. BEGAKIS: Objection. Leading the  
16 witness.

17 A. Yes.

18 Q. How often do you sell apparel at  
19 seminars?

20 A. From the first seminar through --

21 Q. 2013?

22 A. Yes.

23 MR. BEGAKIS: Objection. Leading the  
24 witness.

25 A. Through 2013. We sold it at all of

1 Orlando - Highly Confidential

2 our seminars.

3 Q. What would you sell at your seminars?

4 A. T-shirts, tank tops, sweatshirts and  
5 shorts.

6 Q. Did those all have the Hybrid logo on  
7 them?

8 A. Obviously, yes.

9 Q. In your advertisement where do you  
10 display the Hybrid H?

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

13 A. Advertising. In our videos, which is  
14 really our major form of advertising that like  
15 the videos that we post or the images that we  
16 post to social media and to our website,  
17 everything has the trademark H in it, and we post  
18 that stuff to all social media, Facebook,  
19 Twitter, Instagram. Hybrid Athletics has a  
20 handle for each one of those. We blast it all  
21 over my personal page as well.

22 Q. Through your website where have you  
23 sold your apparel?

24 A. I don't know how to answer that other  
25 than everywhere, like I'd have to go back through

1 Orlando - Highly Confidential  
2 our records, and I don't even know that we can  
3 figure that out.

4 MR. BEGAKIS: Objection.  
5 Speculation.

6 A. We sell apparel all over the world.

7 MR. BEGAKIS: Objection.  
8 Speculation.

9 MR. KOSMA: All right. I'm going to  
10 start introducing some highly confidential  
11 documents.

12 (Exhibit 27, Roster from first  
13 official CrossFit seminar dated  
14 September 24th, 2011, was received in  
15 evidence, as of this date.)

16 Q. Mr. Orlando, I've handed you what's  
17 been marked as Exhibit 27. Do you recognize  
18 this?

19 A. Yes. This is, it looks like a roster  
20 from our very first official CrossFit seminar  
21 where people received diplomas, certificates,  
22 that's dated September 24th, 2011, from a course  
23 that we ran at Hybrid Athletics.

24 Q. What is this complete document?

25 A. This is a list from that date through

1 Orlando - Highly Confidential  
2 whatever the last entry is, January 25th, 2014,  
3 in Switzerland. This is a roster of everybody  
4 who has attended our seminar.

5 Q. Have you sold apparel at each of  
6 these seminars?

7 A. [REDACTED]

8 Q. And what kind of apparel?

9 A. T-shirts, socks, sweatshirts, hats.  
10 We sell stone molds if it's on our home turf. We  
11 ship them if people want to order them at the  
12 event. We send them wherever they need to go.  
13 But all of our apparel, anything that we can pack  
14 and bring with us, we sell.

15 Q. And as part of these seminars, do you  
16 use --

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

19 Q. As part of these seminars, do you use  
20 your Hybrid stones?

21 A. Yes. That's one of the six movements  
22 that we cover.

23 Q. Okay. So each one of these gyms has  
24 a Hybrid stone mold in them?

25 MR. BEGAKIS: Objection. Leading the

1 Orlando - Highly Confidential

2 witness.

3 A. Every single one of them, and every  
4 single person on this roster has used our stones  
5 in the seminar. We have a mandatory equipment  
6 list that they have.

7 Q. What is the mandatory equipment list?

8 A. They have to have tires, all at  
9 specified weights, but they have to have tires,  
10 atlas stones, kegs, yokes, farmer's handles and  
11 logs. And based on the number of attendees, they  
12 have to have two of these or three of those.  
13 There's a requirement that we put together. But  
14 they have to have a certain amount of gear before  
15 we put them on the roster.

16 MR. KOSMA: Off the record.

17 (Discussion off the record)

18 (Recess taken)

19 (Exhibit 28, e-mail from Mr. Orlando,  
20 was received in evidence, as of this  
21 date.)

22 BY MR. KOSMA:

23 Q. Mr. Orlando, I've passed you what's  
24 been marked as Exhibit 28. Please review this  
25 document. And what is this document?

1 Orlando - Highly Confidential

2 A. This looks like an e-mail from me to  
3 our screen printer, Matt D'Mazio. I had asked  
4 him for some logos. Let's see here. It's a  
5 response from Matt Paulson, who was doing our  
6 shorts, who was making the Hybrid Athletics/JACO  
7 shorts for us. Let's see, yes. It looks like he  
8 was sending me, what is this? February 2012. So  
9 we were in a printing arrangement with JACO, and  
10 JACO, they had been providing us with shorts, and  
11 then my screen printer was putting our logo on  
12 the shorts.

13 (Exhibit 29, Image of shorts, was  
14 received in evidence, as of this date.)

15 A. Paulson was my main point of contact  
16 at JACO. He was the person that I would reach  
17 out to for ordering. Jen Knoll was actually  
18 another woman that I spoke with frequently to  
19 place orders for the JACO shorts.

20 At the time the CrossFit community  
21 was absolutely littered with T-shirts and T-shirt  
22 companies. It was like a frenzy to get involved.  
23 There was almost nobody creating a really cool,  
24 durable short, and JACO just, I can't even  
25 remember how I got introduced to JACO, but they

1 Orlando - Highly Confidential  
2 came to me and said that -- I'm trying to think  
3 of how I got introduced to them. However that  
4 happened, JACO and Hybrid Athletics partnered,  
5 and they did a run for us of their shorts where  
6 they put our logo on their shorts.

7 We sold those shorts all over the  
8 world, and we could not keep them on our shelves.  
9 It was one of those things that -- it was a  
10 unique product. It had a drawstring. It has a  
11 fight short. It had pocket. It was a four-way  
12 stretch. The material was durable. I still have  
13 many of those shorts and they don't look like  
14 they have aged a day. So that product was  
15 absolutely so strong for us, and we got to a  
16 point where I would take those on a trip to  
17 Australia and I would open my suitcase and they  
18 were gone as I emptied the suitcase like just  
19 people pulled them out of the bag. And no matter  
20 what they cost, they wanted those shorts, and it  
21 was a huge mover for us for a long, long time.

22 Q. And are these the shorts you're  
23 talking about?

24 A. These are the exact shorts, yes.

25 Q. Exhibit 29?

1 Orlando - Highly Confidential

2 A. It had a pocket. It had a slit up  
3 the sides, four-way stretch material, super  
4 durable, material that I think was unique. These  
5 weren't in the CrossFit community at the time.  
6 And Rogue had their fight shorts, slightly  
7 different style. No pockets. A little bit more  
8 rigid waistband. These were completely unique.

9 Q. Who was your main contact at JACO?

10 A. It was Matt Paulson and Jen Knoll.

11 Q. How would you work with Matt Paulson?

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

14 A. Well, with Jen, she used to handle  
15 our orders. In the beginning it was Matt Paulson  
16 that used to handle the orders. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21 So they were my main points of  
22 contact at JACO. I spoke with Glen Robinson, who  
23 was the CEO. I talked to him a couple of times  
24 very, very briefly. So almost all my dialogue  
25 with the JACO guys was with Matt or Jen.

1 Orlando - Highly Confidential

2 (Exhibit 30, Messages, was received  
3 in evidence, as of this date.)

4 Q. Mr. Orlando, I've passed you what's  
5 been marked as Exhibit 30. Can you tell me what  
6 this exhibit is, please?

7 A. Yes. Let me read it really quickly.

8 Yes. So this is a message back and  
9 forth with one of our screen printers that was  
10 making some co-branded materials. So I was  
11 grabbing logos from Matt Paulson. He was  
12 providing me with vector files that Jessie  
13 needed. Jessie was the printer. So this is just  
14 dialogue between everybody coordinating so that  
15 we could make sure that we got all the right  
16 logos and the right vector files to put on  
17 apparel that we were selling around the world.

18 Q. And vector files are the logo?

19 A. Vector files of the Hybrid Athletics  
20 logo.

21 Q. The Hybrid Athletics logo?

22 A. Yes.

23 Q. Why did Matthew Paulson have those  
24 logos?

25 A. Because he had the logos, because the

1 Orlando - Highly Confidential

2 first run of the JACO shorts that we produced  
3 they actually printed for us, so I had to take  
4 the vector file, get it to Matt. I must have not  
5 had it because I had to ask Matt for it back to  
6 give it to a printer to use it again. But over  
7 the course of the years we had 15 different  
8 printers, and one guy would hold onto the logo,  
9 and then I'd have to get it from somebody else,  
10 and then this guy would want it in a different  
11 format. This guy would want it in something  
12 else. So I ended up having to be the conduit  
13 that would kind of organize all that stuff from  
14 one printer to another, from one brand to  
15 another.

16 Q. Do you know when you started working  
17 with JACO?

18 A. I'm trying to think. 2010 would be  
19 my guess. It was after the '9 games.  
20 Probably -- yes, somewhere around 2010.

21 Q. Okay.

22 A. And we had a good, a great working  
23 relationship for at least a year and a half, the  
24 only trouble was that they couldn't keep up with  
25 the demand on our shorts, so we would place an

1 Orlando - Highly Confidential  
2 order. Those shorts would hit our shelves and  
3 they were gone, so we'd end up having to place  
4 supplemental orders, and they were bringing them  
5 in from overseas, and it was virtually impossible  
6 for us to keep up with the demand.

7 We finally got to a point where we  
8 were just -- the first order or two JACO actually  
9 did the printing for us, and so they printed our  
10 logo with their logo on the shorts, and they  
11 arrived at our gym that way.

12 Over time, what we realized is that  
13 it would speed up the process if they just sent  
14 us the blanks with the JACO logo on it, and I had  
15 my screen printer slap our logo on them and get  
16 them out the door.

17 Q. Do you still work with JACO?

18 A. I do not.

19 Q. And why not?

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

22 A. Because we were making a lot of our  
23 own T-shirts, and I didn't need to buy their  
24 blanks for the T-shirts, so we were doing enough  
25 business that I was able to buy in bulk, bring

1 Orlando - Highly Confidential  
2 the prices way down. It didn't make sense to be  
3 buying the JACO blank when I could just buy a  
4 Next Level blank, which is essentially the same  
5 thing, or an American Apparel blank, which is the  
6 same thing.

7 So I started buying them in bulk,  
8 blanks, and having my printer do all the work.  
9 But I split off from JACO, I would say at the  
10 Arnold in 2012, at the Arnold Classic in 2012.

11 Q. And what is the Arnold Classic?

12 A. The Arnold Classic, biggest fitness  
13 expo in the world, I think, where more than a  
14 million people show up in Columbus, Ohio.

15 Q. Is that a CrossFit event?

16 A. No. It's a bodybuilding, power  
17 lifting, arm wrestling, like it's a fitness expo.  
18 So I met Matt Paulson face to face for the first  
19 time at that event. That they always have it in  
20 March, so it was March of 2012, and Matt had in a  
21 series of text messages and/or e-mails going back  
22 and forth with me and said, hey, look, I really  
23 want to connect with you at the Arnold. Let's  
24 make sure that we touch base.

25 And leading up to that, there was

1 Orlando - Highly Confidential  
2 some friction there because he was my point of  
3 contact at the company trying to get the shorts,  
4 and I couldn't get the damn shorts, so I would be  
5 pinging him every other day saying where are  
6 they? We can't keep 32's and 34's on the shelf.  
7 You've got to give me something.

8 So we met face to face at the Arnold  
9 and he pulls me off to the side and we squat down  
10 against one of the walls in the giant hallways  
11 there, and he says, look, we're in a state of  
12 transition right now. Me, Ron Wilson, there was  
13 a guy that I had never met, Ron Wilson, and Jen  
14 are going to leave JACO and we're going to start  
15 up our own apparel company, and we'd love for you  
16 to come with us. We'd love for you to be our  
17 ambassador.

18 And I'm an entrepreneur, and to me, I  
19 looked at that like this is cool. This is a cool  
20 startup. I like the concept. I asked him what  
21 the brand name would be, and he wasn't able to  
22 tell me that, but I said, yes. Look, if you want  
23 me to be an ambassador and come with you, [REDACTED]  
[REDACTED] if you guys are going to have  
25 products that are similar to those, that's cool,

1 Orlando - Highly Confidential

2 I'd be happy to work with you guys, [REDACTED]

3 [REDACTED] You guys are my  
4 points of contact. So I agreed to go ahead and  
5 partner up with these guys.

6 And then the last thing I said was  
7 send me mockups, send me a product line. What  
8 are you guys going to make? How are you guys  
9 going to fabricate it? Where is it going to be  
10 made? And if we're going to co-brand this stuff  
11 with Hybrid, and I didn't even know what it was  
12 at the time, but if we're going to co-brand this  
13 stuff, I'd like to see what this is going to look  
14 like.

15 So then we -- that was in March, so  
16 it probably would be two, three weeks go by, and  
17 I kept asking for mocks, and there were a couple  
18 of messages that went back and forth, and then he  
19 finally sent me a memo in a text message that  
20 said, hey, you will have the mockup shortly.  
21 We'll send everything over, and everything was on  
22 the up and up. I was excited to be part of a new  
23 launch.

24 (Exhibit 31, Screenshot of text  
25 message from Mr. Orlando to Matt Paulson

1 Orlando - Highly Confidential  
2 of April 9th, 2012, was received in  
3 evidence, as of this date.)

4 Q. Mr. Orlando, I've passed you what's  
5 been marked as Exhibit 31. Can you please tell  
6 me what this is?

7 A. This is a screenshot of the text  
8 message, this is on my phone, obviously, from me  
9 to Matt Paulson on April 9th, 2012, and I wrote  
10 "Great talking with you." This is, again, on the  
11 heels of the Arnold. "Great talking with you.  
12 Excited to be part of something new. What's the  
13 name of your brand?"

14 His response was, "It's great  
15 speaking to you too. Glad to have you on board.  
16 Later this week I'll give you a name and logo,  
17 and we'll walk through a brief presentation.  
18 Once you get back and settled, let me know and  
19 I'll send it to you."

20 "Look forward," the next message is  
21 April. Well, this is me to Matt. I'm not sure  
22 what the date here is, but it's in between these  
23 two. It says "Hey, Matt. I've spent some time  
24 looking at the Hylete logo." So obviously at  
25 this point he had sent me the e-mail with the

1 Orlando - Highly Confidential

2 mocks in it and with the co-branded and all the  
3 imagery in it.

4 So I send a message saying "I spent  
5 some time looking at the Hylete logo, and I must  
6 say that it looks eerily similar to the Hybrid  
7 Athletics image. The font on the text is  
8 identical. Also, Hybrid Athletics is a long  
9 version of your brand name. This is odd. No?"

10 So my knee-jerk reaction when looking  
11 at the logos on the same shirt was --

12 MR. BEGAKIS: Objection.  
13 Speculation.

14 A. -- complete shock that this logo,  
15 that logo looked exactly the same.

16 MR. BEGAKIS: Objection.  
17 Speculation.

18 A. They were put on a shirt, and when  
19 you're looking at the mocks that got sent over,  
20 you can see that my concern was immediate, and I  
21 sent a message to that effect. And then on  
22 April 24th, he responds back, "Hey, Rob. Just  
23 now seeing this. Hylete is the condensed Hybrid  
24 Athlete that we've been saying at JACO for a long  
25 time."

1 Orlando - Highly Confidential

2 Well, if they were saying that at  
3 JACO for a long time, was that because I was part  
4 of JACO for two years?

5 MR. BEGAKIS: Objection.

6 Speculation.

7 A. I was working with these guys for two  
8 years at JACO. Was that part of the vernacular?

9 MR. BEGAKIS: Objection.

10 Speculation.

11 A. Was it part of their vernacular the  
12 day before I started working there? A month  
13 before? So to me -- did I bring that to them?

14 MR. BEGAKIS: Objection.

15 Speculation.

16 A. "However, I can see your concern.  
17 The font we used is Euro style. Is that your  
18 font also? Let's discuss tomorrow. I assure you  
19 we are not trying to copy anything from you," and  
20 then it goes on.

21 I just went radio silent. At that  
22 point I couldn't believe that he was going to say  
23 that it was a coincidence or that it was  
24 anything -- that it was just chance. So May 1st  
25 he responds back, "Hey, Rob, how are you? Did

1 Orlando - Highly Confidential  
2 you get my sample material? I know you're busy  
3 getting ready for Australia, but I'd like to  
4 touch base. Do you have any time? Thanks,  
5 Matt."

6 And then it's just back and forth or  
7 then it's all one sided actually. May 15th he's  
8 asking me a question, and he wants me to go to  
9 shophylete.com to see how the new site is shaping  
10 up, but I had decided the minute, the second that  
11 I saw the logo that my relationship with these  
12 guys was over because they had clearly hijacked  
13 my logo.

14 MR. BEGAKIS: Objection.  
15 Speculation.

16 (Exhibit 32, e-mail of April 23rd,  
17 was received in evidence, as of this  
18 date.)

19 Q. Mr. Orlando, I've passed you what's  
20 been marked as Exhibit 32. Do you recognize this  
21 exhibit?

22 A. Yes. This is the e-mail on  
23 April 23rd from Matt to me where these are the  
24 mockups that I was referring to where he put the  
25 Hybrid Athletics logo and the Hylete logo on the

1 Orlando - Highly Confidential  
2 same shirts. Again, my knee-jerk reaction is  
3 like I just couldn't believe it. When I looked  
4 at the second page and I see the two logos side  
5 by side in the same font, in the same size, it is  
6 to me a clear and blatant ripoff.

7 MR. BEGAKIS: Objection.  
8 Speculation.

9 Q. Well, I mean can you please review  
10 the whole document?

11 A. Sure. There's also an Ambassador  
12 Elite commission program, and the commission  
13 program was structured so that if I referred  
14 people to their retail pricing, I'd get  
15 20 percent kickback commissions. It's just a  
16 bunch of projections.

17 And then if we go through it, it's  
18 got their logo and their brand statement, which  
19 is "Founded upon three intertwined principles of  
20 trained to push yourself both physically and  
21 mentally, compete so as to improve yourself as  
22 well as those around you, and live to be healthy  
23 in mind, body and soul. Their vision is to  
24 create innovative performance cross-training  
25 apparel that captures the spirit of a new breed

1 Orlando - Highly Confidential  
2 of Hybrid athlete. Their marketing mix  
3 positioning is what is the market opportunity and  
4 who is the core consumer persona that we desire  
5 to resonate with?"

6 Looking through each piece of this,  
7 their marketing opportunities says  
8 "Cross-training is an overarching training  
9 category that is comprised of CrossFit." The  
10 first thing they write, "Boot camps, Jiu-Jitsu,  
11 Muay Thai, TRX, P90x, yoga. This is the blend of  
12 physical and mental challenges that improve the  
13 endurance, flexibility, strength, performance and  
14 mindset of today's athlete."

15 And then they have projections of how  
16 many people are participating in this, but the  
17 first target that they are going after is  
18 CrossFit. It says it right there in their  
19 marketing opportunity. I think from my role in  
20 CrossFit, they were going to --

21 MR. BEGAKIS: Objection.

22 Speculation.

23 A. They are making -- looking back at  
24 their product catalogue, these are their mockups,  
25 they are making the exact same products that I

1 Orlando - Highly Confidential  
2 was producing, and pitching them to the exact  
3 same consumer.

4 Q. This was the e-mail that you received  
5 prior to texting with Mr. Paulson?

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

8 A. Yes.

9 (Exhibit 33, e-mail of Monday,  
10 April 23rd, 2012, was received in  
11 evidence, as of this date.)

12 A. In fact, when I look at this --

13 MR. BEGAKIS: Objection.  
14 Non-responsive.

15 A. When I look at this Hylete product,  
16 it's short compressions and T's, and I see the  
17 images and all that, great, but clearly, it's a  
18 guy with 275 so pounds on a bar and he's got a  
19 shirt with the Hylete logo in the center. If I  
20 glanced right past that, to me, that looks like  
21 99 percent of the pictures that we have gone  
22 through today with me with a barbell on my back  
23 and my logo on the shirt.

24 Q. What page are you looking at?

25 A. Page 4108.

1 Orlando - Highly Confidential

2 Q. What's the Bates stamp at the bottom?

3 A. It's Hybrid 004108.

4 MR. BEGAKIS: Of Exhibit what?

5 THE WITNESS: Of Exhibit 32.

6 MR. BEGAKIS: What page? What Bates  
7 number?

8 THE WITNESS: Hybrid 004108.

9 A. Again, when I look, if I glance at  
10 that image and they have taken the Hylete H and  
11 put it on the center chest right where the Hybrid  
12 Athletics logo goes, and every picture that I've  
13 ever had on millions and millions of videos and  
14 images that have been put out there for the  
15 entire CrossFit community, that looks just like  
16 the Hybrid Athletics H.

17 Q. Mr. Orlando, I pass you what's been  
18 marked Exhibit 33 into evidence. Can you please  
19 tell me what this is?

20 A. This is another e-mail. It looks  
21 like it's dated the same day, Monday, April 23rd,  
22 2012, and it's an extension of their catalogue  
23 that they are going to produce, so very similar.  
24 It's a group of T-shirts. It starts out with  
25 women's T-shirts, some burnout T-shirts, tank

1 Orlando - Highly Confidential  
2 tops, all with the Hylete H printed on, and this  
3 is, I don't see any that are color branded so  
4 far, but...

5 Q. Look back at Exhibit 32.

6 A. Yes.

7 Q. And let's look at Exhibit 32, Hybrid  
8 4097.

9 A. Yes.

10 Q. And 4098, these two pages.

11 A. Yes.

12 Q. What are these pages?

13 A. They look like my T-shirts. They  
14 have our logo on the front chest and their logo  
15 on the back, and to me, it almost looks like a  
16 mistake, like did we mess it up.

17 MR. BEGAKIS: Objection.

18 Speculation.

19 A. Did we mess up the word in the back?  
20 It's nothing more than a stylized ripoff.

21 Q. Thank you.

22 (Exhibit 34, e-mail from Matt Paulson  
23 dated April 27th, 2012, was received in  
24 evidence, as of this date.)

25 Q. Mr. Orlando, I've passed you what's

1 Orlando - Highly Confidential  
2 been marked as Exhibit 34. What is this exhibit?

3 A. This looks like an e-mail from Matt  
4 Paulson, April 27th, 2012. I'm going to read it  
5 quickly. Yes. So this is more mockups with  
6 co-branded tank tops and a men's co-branded tank  
7 top.

8 Q. Can you please read the fourth  
9 sentence in this e-mail to you.

10 A. Let's see. "If you are concerned  
11 about the font, we can remove the font and just  
12 put the icon similar to the women's tank  
13 attached." What he's referring to there is  
14 that --

15 MR. BEGAKIS: Objection.  
16 Speculation.

17 A. -- the Hylete --

18 THE WITNESS: No, this is not  
19 speculation, this is --

20 Q. Rob, just answer my question.

21 A. The Hylete font and the word "Hylete"  
22 and the Hybrid Athletics text underneath our logo  
23 is identical. It's not a little bit apart, they  
24 are identical. Hybrid Athletics and Hylete is  
25 written in the exact same text, and I wrote that

1 Orlando - Highly Confidential

2 in my response to him saying that the text font  
3 is identical, and he wrote back, "Is yours Euro  
4 style?"

5 So this is his response to me saying  
6 if you're concerned about the font, we can just  
7 eliminate the font. We'll just take the text  
8 out. We'll just put the logo in it.

9 Q. And what's attached to this document?

10 A. Attached to this document is a  
11 women's tank top and a men's tank top that have  
12 both been branded, but the Hylete, it looks like  
13 they -- yes, in both of these, in the women's  
14 they left off the word "Hylete," and the men's  
15 they left it. But you've got our logo front,  
16 center, chest, and they've got on the women's  
17 tank top on the bottom hip they've got the Hylete  
18 logo. And on the men's tank top between the  
19 shoulder blades they've got the Hylete logo and  
20 text.

21 Q. If we look on the third page, which  
22 is marked Hylete 001-0028, on the bottom right,  
23 is this the font you're talking about?

24 A. Yes. The font Hybrid Athletics and  
25 Hylete is identical. Of all the millions of

1 Orlando - Highly Confidential

2 fonts.

3 Q. What was the date of the e-mail on  
4 the Exhibit 34?

5 A. April 27th, I believe. 34? Yes,  
6 April 27th.

7 (Exhibit 35, e-mail dated May 11th,  
8 2012, was received in evidence, as of this  
9 date.)

10 Q. Can you please -- I pass you what's  
11 been marked as Exhibit 35. Mr. Orlando, what is  
12 this exhibit?

13 A. This would be about two weeks after  
14 the last e-mail where he sent me those mockups.  
15 It's dated May 11th, 2012, from Matt to me. "I  
16 think you might still be in Australia. Hope your  
17 trip is going well. I just want to give you a  
18 brief update. Go to shophylete for images of the  
19 website. This will give you an idea of the  
20 direction we're taking. There's still a lot to  
21 be done, but we want to have it ready within the  
22 next couple of weeks. Let me know when you're  
23 back in town so we can catch up."

24 At this point I was ignoring  
25 everything he said. I completely tuned out.

1 Orlando - Highly Confidential

2 (Exhibit 36, Message dated Tuesday,  
3 October 30th, 2012, was received in  
4 evidence, as of this date.)

5 Q. Mr. Orlando, I've passed you what's  
6 been marked as Exhibit 36 into evidence. Can you  
7 please tell me what this exhibit is?

8 A. At this point several months have  
9 gone by, and it's Tuesday, October 30th, 2012.  
10 It's a message from me to Matt. I hadn't  
11 responded to anything he sent after my text  
12 message to him on April 12th, 2012. I went radio  
13 silent.

14 It says "Hey, Rob. How are you? I  
15 sent you a text, but I'm not sure if you have the  
16 same phone number. I was contacted yesterday by  
17 a guy in Europe who has a magazine. He asked if  
18 I would introduce you two so he can contact you  
19 directly for something magazine related.  
20 Article, interview, not sure exactly. Would you  
21 mind if I introduced you two? Hope all is well."

22 So again, I was completely tuned out.  
23 I was radio silent. I wasn't interested in doing  
24 business with him.

25 (Exhibit 37, Document dated

1 Orlando - Highly Confidential  
2 March 11th, was received in evidence, as  
3 of this date.)

4 Q. Mr. Orlando, I've passed you what's  
5 been marked as Exhibit 37 into evidence. Can you  
6 please explain to me what this is after you  
7 review it?

8 A. Sure. On the bottom it's dated  
9 March 11th. Let's see, March 11th. I'm going to  
10 assume that this is 2013, so now this is a year  
11 after my conversation with him at the Arnold.  
12 Okay? And this is almost a year after I pointed  
13 out immediately in April that I thought the logos  
14 were far too similar to be a coincidence.

15 It says "Hey, Rob. Hope you're doing  
16 well. With any new logo, people associate that  
17 logo with something they have already seen or are  
18 familiar with until that new logo takes a life of  
19 its own. Our logo is no different, I won't lie,  
20 in the beginning we had a few people say it looks  
21 like your logo. It reminds them," let's see,  
22 "reminds them of Under Armour. In fact, the  
23 Under Armour comment" -- wait. No. Sorry. "It  
24 looks like your logo. We also have people tell  
25 us it looks like our old JACO logo. If you look

1 Orlando - Highly Confidential  
2 at our Facebook page, you'll see many people  
3 comment that it reminds them of Under Armour."

4 So this is Matt's attempt at an  
5 explanation.

6 MR. BEGAKIS: Objection.  
7 Speculation.

8 A. So he says right here, "In the  
9 beginning, I won't lie, we had a few people say  
10 it looks like your logo." You had me tell you  
11 that it looked like your logo. I sent it to you  
12 the minute that I saw it, and over the course of  
13 the next several months, as they started to  
14 release product, I would copy and paste any of  
15 these -- if people would hit me up on Facebook  
16 and on social media and they would tell me, hey,  
17 maybe you should take a look at these guys, they  
18 might have taken your logo.

19 If you look at the bottom, it says  
20 "If you haven't already, put our two H's next to  
21 each other. Is there a common H element? Sure.  
22 Other than that, it's completely different. Ours  
23 is round, yours square. The peaks and valleys  
24 totally different, et cetera. Again, I'm sorry  
25 if you feel like we knocked off your logo. It

1 Orlando - Highly Confidential  
2 couldn't be further from the truth. At this  
3 point I'm sure a relationship between Hylete and  
4 Hybrid Athletics is off the table. However, I  
5 hope we can remain friends."

6 And then I forwarded a screenshot of  
7 a person who I have no idea who they are from  
8 Lenexa, Kansas, this guys Jessie Clay sends me a  
9 message on Facebook saying "You should  
10 investigate Hylete. Unless they are a branch of  
11 Hybrid, they chicken hawked your logo. Heads  
12 up."

13 So I sent, I copied that on a  
14 screenshot, sent it to Matt and said "Thought you  
15 might like to see this. His e-mail is one of a  
16 hundred that I've gotten and literally thousands  
17 of people have asked if you guys are an offshoot  
18 of Hybrid Athletics."

19 Q. Why did you send this screenshot to  
20 Matt Paulson?

21 A. Because I wanted to show him that  
22 there was market confusion, that people  
23 consistently come up to me, even yesterday,  
24 people come up to me and say -- I was involved in  
25 a discussion yesterday. Here's an example.

1 Orlando - Highly Confidential  
2 We've got a guy who comes to my gym now. He's  
3 been there a dozen or so times. He's a  
4 weightlifter, just starting to dabble in  
5 CrossFit. He was brought in by one of our female  
6 coaches, so they're really good friends.

7 Guy comes into the gym for his tenth  
8 or twelfth visit, whatever it is, yesterday, and  
9 I walked in the door at 6:30 to teach the class,  
10 and I was -- Micalah, my leading female  
11 instructor, was like where were you all day? And  
12 I was like, oh, I was just at my attorney's  
13 dealing with that Hylete stuff, and he says,  
14 well, what's going on there? And I said, it's  
15 just some legal stuff, and he's like, that's your  
16 apparel, and I was like, no. They have nothing  
17 to do with me.

18 That is one example of thousands,  
19 thousands that happen to me, and every time it  
20 happens to me, it's like a kick in the gut,  
21 because now here's the situation that I end up  
22 in. I'm at the games. I'm at the regionals.  
23 I'm at a vendor booth. I'm walking through an  
24 airport and somebody walks up to me and says,  
25 hey, dude, I just picked up your new shirt, and

1 Orlando - Highly Confidential

2 they have got the Hylete shirt on, and I'm like,  
3 what do I do in that situation?

4 I know this person is trying to make  
5 a connection with me. I know that they're a fan.  
6 They're trying to say, hey, I'm supporting Hybrid  
7 Athletics. What do I do? Do I crush them on the  
8 spot and tell them no, those guys have nothing to  
9 do with me, they ripped off my logo, or do I just  
10 sit there and say, hey, thanks for the support,  
11 because now it puts me in a very strange  
12 position. So the angle that I've taken  
13 consistently is just --

14 MR. BEGAKIS: Objection.

15 Non-responsive.

16 A. -- quietly, quietly explain the  
17 situation in a way that it doesn't tear apart  
18 anybody's business. So I'll tell them, those  
19 guys aren't part of my business. I had a  
20 relationship with some of them when they split  
21 off from JACO, and they formed their own company,  
22 but that has nothing to do with me. But what  
23 I've seen over time is that it's not just  
24 one-offs like the Jessie Clay, this stuff happens  
25 every day. It happened yesterday.

1 Orlando - Highly Confidential

2 Q. And has Hylete affected your brand?

3 MR. BEGAKIS: Objection. Calls for  
4 speculation.

5 A. Absolutely. [REDACTED]

6 [REDACTED]

7 MR. KOSMA: Mark this highly  
8 confidential, please.

9 A. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 Again, that was right around the time where  
13 Hylete was really starting to push out into the  
14 market, but what I was seeing in 2014 was that  
15 the incidences of confusion of the number of  
16 people coming up to me, either on social media,  
17 through e-mail or at events, saying, hey, I think  
18 there's something going on with these Hylete  
19 guys, the number of circumstances that were  
20 coming up in front of me was increasing  
21 exponentially, so the bigger Hylete got and the  
22 more effort they put into their social media, the  
23 harder, the more frequent it became where  
24 somebody would come up to me and say, look at  
25 what I just bought, I'm supporting you guys, and

1 Orlando - Highly Confidential

2 I would have to stand there and tell them, they  
3 have nothing to do with me.

4 Q. How are your sales gone?

5 A. [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]

8 MR. BEGAKIS: Objection. Narrative.  
9 Non-responsive.

10 A. [REDACTED]  
[REDACTED]

12 MR. BEGAKIS: Objection.  
13 Speculation.

14 A. [REDACTED]  
[REDACTED]  
[REDACTED]

17 MR. BEGAKIS: Objection.  
18 Speculation.

19 A. -- [REDACTED]  
[REDACTED]  
[REDACTED]

22 MR. BEGAKIS: Objection.  
23 Speculation.

24 A. They can --

25 MR. KOSMA: You don't have to say it

1 Orlando - Highly Confidential  
2 after every word he says. You have your  
3 objection, he's not going to stop talking.

4 MR. BEGAKIS: I'm objecting when I --

5 MR. KOSMA: You're objecting to every  
6 word. You have your objection.

7 Q. So I'm sorry.

8 MR. BEGAKIS: Your client can  
9 continue.

10 ■ [REDACTED]

1 Orlando - Highly Confidential

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED] [REDACTED]  
5 [REDACTED] [REDACTED]  
6 [REDACTED]

7 (Exhibit 38, Message from Jessie Clay  
8 to Mr. Orlando, was received in evidence,  
9 as of this date.)

10 Q. Mr. Orlando, I've passed you what's  
11 been marked as Exhibit 38. Can you tell me what  
12 this is?

13 A. Yes. This is the message from Jessie  
14 Clay to me, "You should investigate Hylete.  
15 Unless they are a branch of Hybrid, they chicken  
16 hawked your logo. Heads up." And I wrote back  
17 to him, "I am well aware of those guys. Best way  
18 to fight this kind of thing is to boycott their  
19 product. Spread the word through your network.  
20 Thanks for watchdogging."

21 So like I said, this is one of  
22 thousands, thousands over the last couple of  
23 years.

24 Q. What do you mean by the best way to  
25 fight this thing?

1 Orlando - Highly Confidential

2 A. The best way to --

3 MR. BEGAKIS: Objection. Calls for  
4 opinion.

5 A. The best way to fight their brand  
6 becoming an emerging brand and taking over sales  
7 from me is to educate the consumer and let them  
8 know what's going on, because the consumer has  
9 been played. The consumer has been led to  
10 believe that Hylete is an extension of Hybrid  
11 Athletics. The logos are similar enough that  
12 it's direct and immediate confusion, and I see it  
13 on a daily basis.

14 MR. BEGAKIS: Objection.  
15 Speculation.

16 (Exhibit 39, e-mail dated July 28th,  
17 2013, was received in evidence, as of this  
18 date.)

19 Q. Mr. Orlando, I hand you what's been  
20 marked as Exhibit 39 into evidence. Can you  
21 please tell me what this exhibit is?

22 A. This is an e-mail from Yustay  
23 (phonetic). He's a CrossFitter in Hawaii. And  
24 he sent me an e-mail on July 28th, 2013, saying  
25 "Hi, Rob. Hope everything is going well. At the

1 Orlando - Highly Confidential  
2 games I see a lot of people wearing Hylete  
3 clothing and postings on Facebook. Does it have  
4 anything to do with Hybrid Athletics? The logo  
5 looks a lot like Hybrid, and the name is very  
6 similar so I'm just wondering. Lift heavy.  
7 Aloha, Yustay (phonetic)."

8 Again, one of tons.

9 Q. Did you talk to him about this  
10 e-mail?

11 A. I didn't spur this e-mail on, but I  
12 followed up with him, yes.

13 Q. What did he say when you talked to  
14 him?

15 A. He just said, hey, I'm walking around  
16 the games and there are people left, right and  
17 center wearing Hylete clothing, and he wanted to  
18 know if it was an extension of the Hybrid  
19 Athletics brand.

20 (Exhibit 40, Document from Mickey  
21 Carey, was received in evidence, as of  
22 this date.)

23 A. And just to go back --

24 MR. BEGAKIS: Objection.

25 Non-responsive.

1 Orlando - Highly Confidential

2 A. Just to go back, Yustay (phonetic) is  
3 not just a CrossFitter, he's one of these guys  
4 that's -- I believe he's part of the Risk  
5 Retention Group, which is CrossFit's insurance --

6 Q. Yustay (phonetic) works for CrossFit  
7 you think or --

8 A. He doesn't work for CrossFit.

9 Q. Okay.

10 A. But he's closer to CrossFit than the  
11 average consumer. So you can see on this message  
12 that he wrote it to me, but he also cc'd two  
13 people, Dale Seran, who was also deposed, and  
14 Tony Schmidt, who works at the RRG as well. So  
15 this is somebody who is more than a passive  
16 CrossFitter, this is somebody who's kind of  
17 involved in the brand and the different players,  
18 and this guy didn't know if Hylete was part of  
19 Hybrid Athletics.

20 Q. Exhibit 40, can you please tell me  
21 what this is?

22 A. Yes. This is from Mickey Carey. She  
23 owns Gardens CrossFit in Florida. I did a Hybrid  
24 Athletics CrossFit Strong Man tour up and down  
25 the Florida coastline, and one of our stops was

1 Orlando - Highly Confidential  
2 at Gardens CrossFit, and when I walked, in the  
3 head coach, the owner, Mickey Carey was tricked  
4 out head to toe in Hylete gear, and she made  
5 comment like, hey, something like I've got the  
6 new shorts, I've got the this, the that, and I  
7 was like, no, they have nothing to do with me.  
8 So I pulled her aside, and she's referencing that  
9 here, and she says your conversation was actually  
10 helpful in knowing the difference between logos  
11 and brands. It was very confusing at first. I  
12 completely thought they were one and the same.

13 So this is, again, one of thousands  
14 of instances where people in the community were  
15 openly confused.

16 (Exhibit 41, Snapshot of Facebook fan  
17 page of December 5th, 2013, was received  
18 in evidence, as of this date.)

19 Q. Mr. Orlando, you've been passed  
20 what's been marked as Exhibit 41 into evidence.  
21 Can you tell me what this is?

22 A. Sure. This is a snapshot of my  
23 Facebook fan page, December 5th, 2013. And a  
24 total stranger writes, to me, Drake Rodriguez,  
25 "How do you feel about Hylete Athletics basically

1 Orlando - Highly Confidential  
2 copying your logo and name?" And I think I wrote  
3 back to him, no, it's not on here, but...

4 Q. And what is this posting of?

5 A. This is a new thermal that we got, so  
6 it's ready for immediate shipment. We just got  
7 men's long sleeved thermals, medium, large, XL,  
8 and then a link to our site, our online store.  
9 So this is just apparel sales.

10 Q. Okay.

11 (Exhibit 42, e-mail from Syncere  
12 Martinez from CrossFit Harlem dated  
13 December 24th, 2013, was received in  
14 evidence, as of this date.)

15 Q. Mr. Orlando, you've been passed  
16 what's been marked as Exhibit 42 into evidence.  
17 Can you please tell me what this is?

18 A. Yes. This is an e-mail from Syncere  
19 Martinez from CrossFit Harlem dated  
20 December 24th, 2013. He writes to me, "Rob,  
21 something has to be done with Hylete. It's a  
22 blatant ripoff of Hybrid Athletics brand. I'm  
23 not sure what can be done, but the H and the term  
24 "Hybrid athlete" is something you have created in  
25 the CrossFit community. I'm not sure what can be

1 Orlando - Highly Confidential  
2 done, but the fact that they are flooding the  
3 community with their brand over yours is  
4 disrespectful in my opinion. I'm sure they  
5 didn't contact you or discuss anything with you,  
6 which makes the situation even worse.

7 "The CrossFit community has been in  
8 my corner and alerts me at any time anyone tries  
9 to copy an image of mine or catch phrases. I'm  
10 here to support you in the situation because I  
11 know what you've done for the CrossFit community  
12 and for me personally. This has to be addressed.  
13 Let me know how I can help."

14 This was unsolicited. Syn at one  
15 point was a good friend of mine.

16 MR. BEGAKIS: Objection.

17 Non-responsive.

18 A. A guy that I worked out with three  
19 days a week for a year and a half, and was there  
20 as CrossFit -- I'm sorry, as Hybrid Athletics was  
21 just starting to kind of take root within the  
22 CrossFit community. And we were contributing so  
23 much content, and the H was starting to kind of  
24 take on a life of its own and meaning.

25 He was there at those very early

1 Orlando - Highly Confidential  
2 days, and I think he took the Hylete thing  
3 personally. He just thought that it was clearly,  
4 in his words, a blatant ripoff.

5 MR. BEGAKIS: Objection.

6 Speculation.

7 Q. Just to clarify,  
8 conanrules1@gmail.com, that's your e-mail  
9 address, correct?

10 A. That's my e-mail address, correct.

11 Q. Okay. And did you ever discuss this  
12 e-mail with Syn after he sent it to you?

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

15 A. No. I don't think so, no. I don't  
16 remember ever having a conversation afterwards.

17 (Exhibit 43, Screenshot of Rob  
18 Orlando's fan page, was received in  
19 evidence, as of this date.)

20 Q. Mr. Orlando, I pass you what's been  
21 marked as Exhibit 43. Do you recognize this  
22 exhibit?

23 A. I'm going to look at it really quick.  
24 Yes. This is a screenshot of Rob Orlando's fan  
25 page.

1 Orlando - Highly Confidential

2 Q. Okay. And what is on this page?

3 A. Eric W. Lester writes "Is Hylete  
4 associated with Hybrid Athletics? Their name and  
5 logo is more than a little similar, but I can't  
6 find anything on their site to indicate it."

7 My response to him, this is all  
8 January 21st, I'm trying to see if there's a year  
9 on here. I don't see a year on here. I'm  
10 guessing it's probably '13.

11 MR. BEGAKIS: Objection.

12 Speculation.

13 A. But January 21st he writes that to  
14 me, and I wrote back, "Eric, absolutely not.  
15 They have nothing to do with Hybrid Athletics."  
16 And he responds back, "Thanks, Rob. So this is  
17 just more confusion."

18 (Recess taken)

19 (Exhibit 44, Message dated Wednesday,  
20 February 26, 2014, was received in  
21 evidence, as of this date.)

22 BY MR. KOSMA:

23 Q. Mr. Orlando, I've passed you what's  
24 been marked as Exhibit 44 into evidence. Can you  
25 please tell me what this document is?

1 Orlando - Highly Confidential

2 A. Yes. This is a message, it's an  
3 e-mail from Zach Even-Esh. He's a CrossFit coach  
4 from, I think he's in New Jersey, dated  
5 Wednesday, February 26, 2014. He says "Rob, hey  
6 bro. Hope you're great, my man. I chatted with  
7 a Hylete rep in Miami. I thought they were your  
8 apparel line. I know I saw you were working with  
9 them before. Just checking to see if this is  
10 legit. Don't hesitate to reach out."

11 So this is a guy in the CrossFit  
12 community, he's been featured on CrossFit.com,  
13 he's got a really healthy following on social  
14 media, and he was clearly confused about whether  
15 or not --

16 MR. BEGAKIS: Objection.  
17 Speculation.

18 A. -- whether or not we were doing  
19 business together, or if it was part of my  
20 company.

21 Q. Did you ever speak to him about this  
22 e-mail after you received it?

23 MR. BEGAKIS: Objection. Leading the  
24 witness.

25 A. I did not.

1 Orlando - Highly Confidential  
2 (Exhibit 45, e-mail from Matt Tuttle  
3 from Muscle & Fitness Magazine dated  
4 Wednesday, February 26h, 2014, was  
5 received in evidence, as of this date.)

6 Q. Mr. Orlando, I've passed you what's  
7 been marked as Exhibit 45. Do you recognize this  
8 document?

9 A. This is an e-mail from Matt Tuttle  
10 from Muscle & Fitness Magazine dated Wednesday,  
11 February 26th, 2014. The subject is logo  
12 question, and on it he says "Hey, Rob. I follow  
13 Zach Even-Esh on Instagram, and he posted this  
14 photo the other day saying he was training with  
15 guys from a company called Hylete." And then the  
16 next is, it looks like an Instagram photo of the  
17 Hylete logo with an American flag from Zach  
18 Even-Esh.

19 It says "Doing some work with at  
20 train Hylete hashtag understrengthcoach hashtag  
21 CrossFit." And on the back it says "I wanted to  
22 ask you if you had licensed out the original  
23 Hybrid Athletics logo or sold it, because this  
24 things looks almost identical. If not, I  
25 definitely thought you should know. Hope all is

1 Orlando - Highly Confidential  
2 well." And that is senior editor Muscle &  
3 Fitness Magazine. So this is a guy who I was  
4 submitting articles to, that he was my editor at  
5 Muscle & Fitness for over two years, and he  
6 thought that --

7 MR. BEGAKIS: Objection.  
8 Speculation.

9 A. Based on his sentence, he actually  
10 says he wasn't sure if I licensed out the logo or  
11 not.

12 (Exhibit 46, Document dated Thursday,  
13 November 6th, 2014, was received in  
14 evidence, as of this date.)

15 Q. Mr. Orlando, I've passed you what's  
16 been marked as Exhibit 46. Do you recognize this  
17 document?

18 A. Sure do. It's Daniel, he's one of  
19 the coaches at Reebok CrossFit Nuremberg. It's  
20 dated Thursday, November 6th, 2014, and it just  
21 says "Hey, Rob, did you know that a copy of your  
22 brand means that you succeed? Here it is,  
23 ww.hylete.com."

24 Q. Do you know Daniel at Reebok?

25 MR. BEGAKIS: Objection. Leading the

1 Orlando - Highly Confidential

2 witness.

3 A. I know Daniel. He's helped us with a  
4 couple of CrossFit Strong Man seminars. He's  
5 just an assistant on our seminar staff.

6 Q. You mentioned you sold apparel at the  
7 2013 CrossFit regionals, is that correct?

8 A. That's correct.

9 Q. Did Hylete sell apparel there?

10 A. Yes. I showed up --

11 MR. BEGAKIS: Objection. Narrative.

12 A. The regionals are Friday, Saturday,  
13 Sunday, and I showed up on Thursday afternoon in  
14 Canton, Massachusetts to set up our tent, and I  
15 found one of the directors that had the floor  
16 plan of where all the vendors were going to go,  
17 and he handed me a blueprint, and it said  
18 wherever my spot was, and I looked over, and set  
19 up right next to me was the Hylete tent. So of  
20 all the places that we could have been featured,  
21 we were side by side with Hylete.

22 So Hybrid Athletics set up the tent,  
23 and throughout the course of the weekend, Friday,  
24 Saturday, Sunday, we've gone through however many  
25 exhibits of confusion, and this is confusion that

1 Orlando - Highly Confidential  
2 was just sent to me. At that event in particular  
3 hundreds, if not a thousand people came up to me  
4 and said, is that your apparel? And is this the  
5 gym and the Strong Man stuff?

6 Q. And what do you mean? What were they  
7 pointing to when they said is that your apparel?

8 A. They were pointing to the Hylete  
9 tent. And they would say, is that your apparel  
10 line? And then Hybrid Athletics is the gym and  
11 the Strong Man equipment. And I said, no. But I  
12 was having a conversation. It's so frustrating  
13 for me because Friday and Saturday, it was  
14 non-stop all day long. People would come over,  
15 and we're trying to sell our shirts, and they're  
16 like, oh, but I just bought that shirt over  
17 there. It's like, no, that's not me. And so you  
18 could see dollars just being taken away.

19 MR. BEGAKIS: Objection.

20 Speculation.

21 A. So on Sunday I worked out with a  
22 couple of guys from CrossFit headquarters, and  
23 after our workout in the morning, I said, why  
24 don't you come by my tent today and just take a  
25 look at, just take a look, and I didn't say why,

1 Orlando - Highly Confidential

2 I just said I want you to see what's going on  
3 over at my tent. And I'm having a conversation  
4 with a couple of the guys from CrossFit, and as  
5 I'm having this conversation and kind of showing  
6 them the two tents side by side and giving them a  
7 little bit of the back story of how these guys,  
8 these were my points of contact at JACO, how they  
9 split away, they made their own company, that I  
10 immediately called attention to the fact that I  
11 thought the logos were similar, and that here  
12 they are right next to me selling apparel at the  
13 regionals.

14 While I'm having this conversation, a  
15 girl comes over to me and says, that's the  
16 apparel, and then that's your gym, right, in  
17 Stamford? And I mean the guy that I was speaking  
18 with, he said this is what's going on? I was  
19 like, all weekend. The whole weekend. In  
20 every -- not every conversation but in so many  
21 conversations. I had to constantly defend our  
22 position and explain our position.

23 Q. How has it been since then?

24 MR. BEGAKIS: Objection. Calls for a  
25 narrative and speculation.

1 Orlando - Highly Confidential

2 A. [REDACTED]

3 [REDACTED] [REDACTED]

4 Because people are, based on my experience of  
5 people coming up to me and showing me the logo  
6 and saying, look, I just bought your pair of  
7 shorts, it's not my pair of shorts, that logo is  
8 in exactly the same spot that I used to print  
9 ours. That is where we put our logo on our  
10 shirts. It looks a whole -- it looks a lot like,  
11 and I brought -- I said that in the very first  
12 text message to Matt on April 12th of 2012. My  
13 first comment to him was, I think this is too  
14 similar, and we could have had a conversation  
15 right there and then, but it was like, no,  
16 we're --

17 MR. BEGAKIS: Objection.

18 Non-responsive.

19 A. -- just going to keep going down this  
20 path.

21 (Exhibit 47, e-mail from Matt Paulson  
22 dated Wednesday, April 18th, 2012, was  
23 received in evidence, as of this date.)

24 Q. Can you tell me what this document is  
25 really quickly?

1 Orlando - Highly Confidential

2 A. It's an e-mail from Matt Paulson  
3 dated Wednesday, April 18th, 2012. It's  
4 April 18th, 2012, Matt writes to me, "Hey, Rob,  
5 how are you? What's your schedule like the next  
6 couple of days? I want to take you through a  
7 brief presentation on the brand and discuss in  
8 more detail the compensation plan."

9 Q. So this is before you initially got  
10 the April 24th e-mail?

11 A. Right. Correct. And then it's me  
12 responding back, "Hey, Matt, things are good.  
13 I'm open tonight or tomorrow afternoon, what  
14 works best for you?" So I was still engaged. I  
15 was excited to be part of a new venture because I  
16 was loyal to Matt and to Jen because they were my  
17 points of contact at JACO.

18 I applauded the fact that they were  
19 taking this entrepreneurial role and they were  
20 going to split off, and I wanted to be a part of  
21 that thing. And then based on messages that went  
22 back and forth, you can see my response when they  
23 sent me the logo and the name. I went radio  
24 silent after that.

25 (Exhibit 48, Snapshot of screen of

1 Orlando - Highly Confidential  
2 opening of video of Hybrid Athletics, was  
3 received in evidence, as of this date.)

4 Q. Mr. Orlando, I've passed you what's  
5 been marked as Exhibit 48. Can you please tell  
6 me what this document is?

7 A. This is a video of Hybrid Athletics,  
8 it's a snapshot of the screen at the opening of  
9 the video called How to Get Stronger. It's one  
10 of the videos that Jen Folio, she was one of our  
11 members, she shot this and then she edited my  
12 commentary over this video. So this is one of  
13 our YouTube videos.

14 (Exhibit 49, YouTube page of  
15 Progenics uploaded on April 22nd, 2011,  
16 was received in evidence, as of this  
17 date.)

18 Q. This is marked as Exhibit 49. Can  
19 you please tell me what this document is?

20 A. So Progenics was one of my sponsors,  
21 this is their YouTube page, and this is a  
22 CrossFit log workout of the day demonstrations,  
23 overhead squat, front squat and back squat. This  
24 aired -- uploaded on April 22nd, 2011, and  
25 Progenics put this on their YouTube page.

1 Orlando - Highly Confidential  
2 (Exhibit 50, Cross-Fit's YouTube  
3 page, was received in evidence, as of this  
4 date.)

5 Q. I hand you what's been marked as  
6 Exhibit 50. Can you please tell me what this  
7 document is?

8 A. This looks like a packet of  
9 CrossFit's YouTube page and all of the videos  
10 that I've been featured in that have aired on  
11 that channel, on CrossFit.com, and then on their  
12 YouTube page.

13 (Exhibit 51, Document reflecting  
14 Robert Orlando's YouTube channel, was  
15 received in evidence, as of this date.)

16 Q. I hand you what's been marked as  
17 Exhibit 51. Can you please tell me what this is?

18 A. This is my own personal YouTube  
19 channel, and these are, it looks like a  
20 collection of all the different videos that I've  
21 loaded up to my channel. And I've got multiple  
22 YouTube channels, but this one it looks like is  
23 the Robert Orlando one.

24 (Exhibit 52, Screenshot of videos  
25 uploaded to Rob Orlando's YouTube page,

1 Orlando - Highly Confidential

2 was received in evidence, as of this  
3 date.)

4 Q. I hand you what's been marked as  
5 Exhibit 52 into evidence. Can you please tell me  
6 what this document is?

7 A. This looks like a screenshot of all  
8 the different videos that have been uploaded to  
9 the Rob Orlando YouTube page.

10 (Exhibit 53, Hybrid Athletics'  
11 CrossFit Conan Facebook page, was received  
12 in evidence, as of this date.)

13 Q. I hand you what's been marked as  
14 Exhibit 53 in evidence. Can you please tell me  
15 what this is?

16 A. This is the Hybrid Athletics'  
17 CrossFit Conan Facebook page. That looks like  
18 all the content that's been loaded up to their --  
19 or some of it. Just the Hybrid Athletics  
20 CrossFit Conan Facebook page.

21 (Exhibit 54, Rob Orlando fan page on  
22 Facebook, was received in evidence, as of  
23 this date.)

24 Q. I hand you what's been marked as  
25 Exhibit 54. Can you please tell me what that is?

1 Orlando - Highly Confidential

2 A. This is the Rob Orlando fan page on  
3 Facebook. It looks like all the different --

4 Q. Can you turn to the last page,  
5 please.

6 A. Last page? Sure. Yes.

7 Q. What is your first post here?

8 A. This is first post is that  
9 April 28th, 2011 in Stamford, Connecticut.

10 Q. The last page, do you know?

11 MR. BEGAKIS: Objection. Leading the  
12 witness.

13 Q. Are you on the last page?

14 A. Yes.

15 Q. All the way at the bottom, what's the  
16 date of that post?

17 A. November 9th, 2011.

18 Q. What does it say there?

19 A. "I am converting to page under  
20 construction."

21 Q. And why were you converting your  
22 page?

23 A. I had hit the max regular page that  
24 you can have -- not a page, your profile on  
25 Facebook can only carry 5,000 people, and I had

1 Orlando - Highly Confidential

2 hit the limit, so I had more than a thousand  
3 people who had friend requested me that I  
4 couldn't accept, so I had to move to a fan page  
5 where it functions a little bit differently than  
6 a personal profile, but it's limitless in terms  
7 of how many people you can have on it. So I had  
8 to essentially shut down the personal page and  
9 start over. And these people had to -- this was  
10 a notification that I was converting it to a  
11 page.

12 (Exhibit 55, CrossFit Journal, was  
13 received in evidence, as of this date.)

14 Q. I hand you what's been marked as  
15 Exhibit 55. Do you recognize this document?

16 A. Yes. This is the CrossFit Journal,  
17 so this is journal.crossfit.com. For a long time  
18 in CrossFit, before other social media avenues  
19 opened up, this was a resource for people who  
20 wanted more than CrossFit.com offered, so the  
21 journal.crossfit.com supplied articles, teaching  
22 articles, teaching videos, just content that was  
23 a little bit deeper into CrossFit. And we've  
24 been featured in there loads and loads of times.  
25 So this is a chronicle of my journal entries.

1 Orlando - Highly Confidential

2 Q. Can you look at Hybrid 000473.

3 A. Yes.

4 Q. What is on this page?

5 A. This is the California road trip part  
6 6, 5, 4 and 3.

7 MR. BEGAKIS: What page are you  
8 looking at?

9 Q. And on the following page, 474?

10 MR. KOSMA: 473, 474.

11 MR. BEGAKIS: Okay.

12 A. And the following page is part 1 and  
13 part 2, along with the round table in Tahoe with  
14 Lipson CrossFit radio episode and Happy New Year.

15 Q. And if we go to the last page on  
16 Hybrid 000482, the article called "Queen Kong"?

17 A. Yes.

18 Q. Where it says "See Rob Orlando's King  
19 King Kong Kong story here," what was that story?

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

22 A. So there's a workout that a guy in  
23 CrossFit filmed, and he created the workout. It  
24 was called King Kong, and at that time it was a  
25 very, very heavy workout, and it took him -- I

1 Orlando - Highly Confidential

2 think to do three rounds of it, it took him eight  
3 or nine minutes. I saw that workout, and I  
4 thought I can do twice as many rounds in less  
5 time. So I ended up shooting a video, and that  
6 was, Double King Kong is just what it became  
7 known as, and it was one of those workouts that  
8 kind of resonated through the CrossFit community  
9 for a long, long time. People still reference  
10 it.

11 So Tamara, she took on that workout  
12 as well. At the time she was one of the very  
13 strong girls in CrossFit, so they referenced my  
14 King Kong video.

15 Q. And to the right there, what is the  
16 date of this article?

17 A. November 3rd, 2008.

18 Q. Is that accurate?

19 A. Yes.

20 Q. And if you go to the page 481 before  
21 that, what content of yours is featured on this  
22 page?

23 A. What content of mine, so this is the  
24 King Kong. This is the actual video where it's  
25 dated November 3rd, 2008. It says "Rob Orlando

1 Orlando - Highly Confidential  
2 is a CrossFitter with a Strong Man background.  
3 On October 15th, 2008 he saw the challenge put  
4 forth by CrossFit Alexandria and CrossFit.com  
5 video they titled 'King Kong.' The video shows  
6 Matt Okosky (phonetic) doing the workout  
7 consisting of three rounds of one dead lift, two  
8 muscle-ups, three squat rings and four  
9 handstands. The video ended with 'Anyone else  
10 care to try?'" And Rob responded, and it goes  
11 continue reading. So I read that and I thought,  
12 like I said, I can do six rounds to his three in  
13 less time.

14 Q. And then --

15 A. And just below that, it's King Kong  
16 times two video, so that's the video that goes  
17 with it, also dated November 3rd, 2008, where  
18 it's just a description of the video itself.

19 Q. And the article, "How to Lift Heavy  
20 Balls," what was that article about?

21 A. It says "Rob Orlando, owner of Hybrid  
22 Athletics in Stamford, will be competing in the  
23 2009 CrossFit Games, even those he's never done  
24 (inaudible) or Cindy." Those are two CrossFit  
25 staple workouts. "Rob's a Strong Man who began

1 Orlando - Highly Confidential  
2 CrossFitting only about a year ago. At 5-8, 196,  
3 he hates Murph and loves Double King Kong with  
4 one rep maxes 600-pound dead lift," so it just  
5 has some of my stats on here.

6 But how to lift heavy balls, this was  
7 just CrossFit media, Sevan Matossian and  
8 karyorrhaxis Peterson came to Hybrid, and they  
9 were local. They were in Philadelphia shooting  
10 Tonya Wagner. They saw some of my stats in the  
11 games website and they contacted me and said can  
12 we swing by your gym? We'd love to film some  
13 stuff.

14 Q. What year was this?

15 A. This was leading into the 2009 games,  
16 because I had just qualified for the games.

17 Q. And who contacted you?

18 A. Sevan Matossian.

19 Q. Okay.

20 A. So Sevan reached out to me and said,  
21 hey, we'd love to come up to your gym and do a  
22 quick workout with you and film one of your  
23 classes and just interview you. So they showed  
24 up and they filmed one of our morning classes. I  
25 think it was the 9:30 a.m. class.

1 Orlando - Highly Confidential

2 They filmed the class. Then I hung  
3 out with them afterwards. We did a little  
4 demonstration. This was the first time that they  
5 showed up to my gym, CrossFit media showed up to  
6 my gym.

7 (Exhibit 56, Screenshot of Hybrid  
8 Athletics on Fox News dated August 24th,  
9 2011, was received in evidence, as of this  
10 date.)

11 Q. Mr. Orlando, I hand you what's been  
12 marked Exhibit 56 in evidence. Do you recognize  
13 this?

14 A. Yes. This is a screenshot of our  
15 website, and it's a snapshot of Hybrid Athletics  
16 on Fox News local television and it's dated  
17 August 24th, 2011. We were asked -- I was  
18 asked --

19 MR. BEGAKIS: Objection. Narrative.

20 Q. Were you on Fox News?

21 A. I was.

22 Q. How did you get on fox news?

23 A. They contacted Jason Leydon from  
24 CrossFit Milford, and they contacted me and they  
25 said you guys are -- we were two of the early

1 Orlando - Highly Confidential  
2 affiliates in CrossFit, and we had been around.  
3 We had a decent amount of experience. They  
4 contacted us and said would you come in and do a  
5 quick segment and just talk about CrossFit and  
6 why it's growing? What do the numbers look like?  
7 What is it? Who is it for? So we did a  
8 three-minute or so segment on TV.

9 Q. Did you wear a Hybrid Athletics  
10 shirt?

11 A. Of course, yes.

12 (Exhibit 57, Screenshot of online  
13 store dated January 5th, 2012, was  
14 received in evidence, as of this date.)

15 Q. I'm going to hand you what's been  
16 marked as Exhibit 57. Mr. Orlando, do you  
17 recognize this exhibit?

18 A. This is our online store and the  
19 Wayback Machine dated January 25th, 2012.

20 Q. And if you look through the entire  
21 exhibit, can you please explain to me what this  
22 is?

23 A. This is every product that we sold in  
24 our store at the time, as it appeared on  
25 January 25th. The dates are different. This

1 Orlando - Highly Confidential

2 says December 4th, but this is every product that  
3 we had in our store, and how our store looked at  
4 the time, how our website looked at the time.

5 Q. Are these dates accurate as the store  
6 looked at that date?

7 A. Yes.

8 Q. Can you please flip through the  
9 entire document and just let me know if the dates  
10 are accurate from the website on these pages?  
11 You can say they're accurate or not at the end  
12 after looking at it.

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

15 A. They're accurate.

16 Q. Thank you very much. Mr. Orlando,  
17 besides the Hylete H, has anyone ever expressed  
18 confusion between your Hybrid H and any other  
19 logos?

20 A. Not once.

21 Q. Has anyone ever said your Hybrid logo  
22 looks like Under Armour?

23 MR. BEGAKIS: Objection. Leading the  
24 witness.

25 A. No.

1 Orlando - Highly Confidential

2 Q. Has anyone ever expressed that the  
3 Hybrid Athletics H --

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

6 A. No.

7 Q. Has anyone ever said the Hybrid  
8 Athletics H looks like the Hurley H?

9 MR. BEGAKIS: Objection. Leading the  
10 witness.

11 A. No.

12 MR. KOSMA: We're going to look  
13 through the financials real quick.

14 MR. BEGAKIS: Okay.

15 (Ron Wilson leaves the room)

16 (Exhibits 58 through 63, Transactions  
17 from Internet sales from website for 2008  
18 through 2014, were received in evidence,  
19 as of this date.)

20 Q. Mr. Orlando, you've been handed  
21 what's been marked Exhibits 58 to 63 into  
22 evidence. Can you please review these documents  
23 and tell me what they are?

24 A. These are the transactions from our  
25 Internet sales off of our website.

1 Orlando - Highly Confidential

2 Q. And --

3 A. [REDACTED]

4 [REDACTED]

5 Q. Okay. And so what companies do these  
6 financials come from, do you know?

7 A. These are the financials from the  
8 Hybrid Athletics online store.

9 Q. So when someone places an order, it's  
10 through this system?

11 A. Correct.

12 Q. And --

13 A. Through our website, yes.

14 Q. Do you know how much you sold in  
15 apparel for the last four years?

16 A. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 Q. And how are sales in 2015?

20 A. [REDACTED]

21 Q. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 MR. BEGAKIS: Objection.

1 Orlando - Highly Confidential

2 Speculation.

3 A. [REDACTED]

4 [REDACTED]  
5 Q. Thank you.

6 MR. KOSMA: I have no further  
7 questions.

8 EXAMINATION BY MR. BEGAKIS:

9 Q. Mr. Orlando, can I direct you back to  
10 Exhibit 12, if I may. I apologize to make you go  
11 through the entire stack.

12 MR. KOSMA: Which one was it?

13 MR. BEGAKIS: Exhibit 12, the one  
14 regarding the zip codes of stone molds  
15 sold.

16 Q. It's a simple question. Have you  
17 sold stone molds to every zip code in the United  
18 States?

19 A. Not every zip code, but I don't know  
20 that for certain.

21 Q. Have you sold T-shirts to every zip  
22 code in the United States?

23 A. Not every zip code, but I can't be  
24 sure.

25 Q. Okay. You said in your deposition

1 Orlando - Highly Confidential  
2 that your business sells a lot of different  
3 things, training services being one of them,  
4 correct?

5 A. Yes.

6 Q. Stone molds and other equipment is  
7 part of your business as well?

8 A. Yes.

9 Q. [REDACTED]

[REDACTED]

11 A. [REDACTED]

12 Q. Okay. And sales of apparel --

13 A. [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] So Hybrid Athletics, that brand,  
18 that was me traveling all over the world doing  
19 seminars.

20 Q. Okay.

21 A. [REDACTED]

[REDACTED]

23 Q. Okay. [REDACTED]

[REDACTED]

[REDACTED]

1 Orlando - Highly Confidential

2 A. [REDACTED] [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED]

4 Q. I'm the one asking the questions. I  
5 just need an answer. Do you have any employees  
6 that work full time on your apparel brand?

7 A. Full time?

8 Q. Yes.

9 A. Like W-2?

10 Q. Do you have any employees that work  
11 full time on your apparel brand?

12 A. Well, that's a complicated question,  
13 because is it full time by the standards of the  
14 IRS or is it full time as in somebody is  
15 dedicated to it 40 hours a week?

16 Q. It's a simple question. Do you have  
17 any employees that work full time on your apparel  
18 brand?

19 A. Yes. Ian Jentgen.

20 Q. Okay. Is Ian Jentgen also a trainer  
21 at your gym?

22 A. Yes.

23 Q. Okay. So then he doesn't work full  
24 time on your apparel brand?

25 A. He focuses on the apparel business an

1 Orlando - Highly Confidential

2 awful lot.

3 Q. Okay.

4 A. This is why I answered the question  
5 the way I did, because it's really hard to  
6 qualify, well, what is full time.

7 Q. It's a simple question. Is it an  
8 awful lot or is it full time?

9 A. It's an awful lot.

10 Q. Okay. Is it safe to say then that  
11 your apparel brand is second to your training and  
12 your seminars?

13 A. No, it's not safe to say that. The  
14 apparel, the brand and the logo are paramount to  
15 everything.

16 Q. Okay.

17 MR. BEGAKIS: Those are the only two  
18 questions I have that are confidential.

19 (Ron Wilson enters the room)

20 Q. Mr. Orlando, you've seen a lot of  
21 CrossFit athletes come through your gym, correct?

22 A. Yes.

23 Q. You've been to a lot of other  
24 CrossFit gyms and seen CrossFit athletes come  
25 through those gyms?

1 Orlando - Highly Confidential

2 A. Yes.

3 Q. You've been to a lot of competitions  
4 with CrossFit athletes?

5 A. Yes.

6 Q. Have you ever seen any one of those  
7 athletes wearing Under Armour?

8 A. Under Armour is not a huge brand in  
9 the CrossFit space, and I don't know that I've  
10 ever focused in on whether or not somebody is  
11 wearing Under Armour. I imagine I've seen it.

12 Q. Okay. Have you ever seen any  
13 CrossFit athletes wearing Hurley apparel?

14 A. Not that I can recall, no.

15 Q. Not at all?

16 A. Never. Not that I can recall, no.

17 Q. Okay. So you understand that you've  
18 taken an oath today?

19 MR. KOSMA: He's answered the  
20 question.

21 A. I answered the question.

22 Q. Okay. You said your videos are your  
23 primary advertising, is that true?

24 A. Videos through social media, yes,  
25 absolutely.



1 Orlando - Highly Confidential

2 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

7 Q. Okay. I just have one other  
8 question. Let me direct you back to Exhibits 38  
9 through 46. To make it easy, it's the exhibits  
10 that go over instances of confusion. So with  
11 regards to these, you've said on record a number  
12 of times that this is one of thousands of  
13 instances of confusion, correct?

14 A. Correct.

15 Q. That there are hundreds, if not  
16 thousands of instances?

17 A. Correct.

18 Q. That it happens every day?

19 A. It happens not every day, it happens  
20 quite frequently.

21 Q. So it doesn't happen every day?

22 A. It happens quite frequently.

23 Q. Okay. You said in the 2011 games  
24 that every conversation you had was regarding an  
25 instance of confusion, and then you said that so

1 Orlando - Highly Confidential

2 many of the conversations, so which one is it?

3 A. So many.

4 Q. Well, I just have one question. If  
5 there have been thousands of instances, then why  
6 have you only submitted as evidence eight?

7 A. Because I never thought that we were  
8 going to get to this point, that's why. I never  
9 thought that I was going to see my apparel brand  
10 literally go down the toilet built on somebody  
11 else's -- my logo built their brand, and I've  
12 been watching theirs go like this. They have  
13 been getting -- I'm watching their brand go from  
14 2013 at the regionals and every time somebody  
15 comes up to me --

16 Q. It was a simple question.

17 A. -- it's a kick in the chops. And I'm  
18 giving you an answer.

19 Q. It's a simple question.

20 A. I'm giving you an answer.

21 Q. So the answer is that you've only  
22 submitted eight instances of confusion even  
23 though you have said on record under oath that  
24 there have been thousands?

25 A. How many is too many or how many is

1 Orlando - Highly Confidential

2 too little?

3 Q. I'm not sure what you mean by that.

4 A. Well, how many --

5 Q. I'm the one asking the questions.

6 A. Would you prefer --

7 Q. You mentioned on the record --

8 A. Would you prefer I gave you a  
9 thousand examples of confusion or is eight not  
10 enough?

11 Q. I'm only seeing eight.

12 A. Okay. Good. Well, to me, eight is  
13 plenty.

14 Q. Eight is plenty, but it's not one of  
15 thousands.

16 MR. BEGAKIS: No further questions.

17 A. It happens all the time.

18 MR. BEGAKIS: No further questions.

19 EXAMINATION (Continued)

20 BY MR. KOSMA:

21 Q. Mr. Orlando, how many instances of  
22 confusion have you experienced during  
23 conversations?

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Orlando - Highly Confidential

A. Thousands. One yesterday.

Q. Would you say a majority of the instances of confusion are during conversations?

MR. BEGAKIS: Objection. Calls for speculation.

A. Yes.

MR. KOSMA: No further questions.

(Time noted: 3:57 p.m.)

---

ROBERT ORLANDO

Subscribed and sworn to  
before me this \_\_\_\_ day of \_\_\_\_\_, 2015.

---

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T I O N

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

That I reported the proceedings in the within entitled matter, and that the within transcript is a true record of such proceedings.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 17 day of September, 2015.



JOSEPH DANYO V

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

Witness	Page
ROBERT ORLANDO	4

E X H I B I T S

In Evidence	Page
Exhibit 1 Notice of deposition	5
Exhibit 2 Declaration	5
Exhibit 3 Mockup of sign	26
Exhibit 4 Hybrid H logo	27
Exhibit 5 Invoice from Signs of Success	28
Exhibit 6 Website screenshot from 2009 CrossFit games	43
Exhibit 7 Article bearing numbers Hybrid 483 through 488	45
Exhibit 8 Images of Hybrid Athletics apparel from online store	49
Exhibit 9 Request for proposal dated April 25th, 2010	59
Exhibit 10 Prototype and invoice of 18-inch stone mold dated June 7th, 2010	62
Exhibit 11 e-mail from Blake at Rogue Fitness	63
Exhibit 12 Breakdown of sizes of stone molds	63

1			
2	Exhibit 13	Printout of screenshot from Wayback Machine	65
3			
4	Exhibits 14 and 15	Images of Hybrid stone molds	66
5	Exhibit 16	Document reflecting commercial airing at 2010 CrossFit games	69
6			
7	Exhibit 17	Video from Strong Man Competition	70
8	Exhibit 18	Screenshot from 300 Pound Grace	73
9	Exhibit 19	Screenshot of video	75
10	Exhibit 20	Screenshot from video	77
11	Exhibit 21	Scene from regionals in 2010 in Albany	78
12			
13	Exhibit 22	Image of back wall at Hybrid Athletics	80
14	Exhibit 23	Video series	81
15	Exhibit 24	Cover of July 2011 issue of Muscle & Fitness Magazine	83
16			
17	Exhibits 25 and 26	Magazine covers	89
18	Exhibit 27	Roster from first official CrossFit seminar dated September 24th, 2011	96
19			
20	Exhibit 28	e-mail from Mr. Orlando	98
21	Exhibit 29	Image of shorts	99
22	Exhibit 30	Messages	102
23	Exhibit 31	Screenshot of text message from Mr. Orlando to Matt Paulson of April 9th, 2012	107
24			
25	Exhibit 32	e-mail of April 23rd	111

1			
2	Exhibit 33	e-mail of Monday, April 23rd, 2012	114
3			
4	Exhibit 34	e-mail from Matt Paulson dated April 27th, 2012	116
5	Exhibit 35	e-mail dated May 11th, 2012	119
6	Exhibit 36	Message dated Tuesday, October 30th, 2012	120
7			
8	Exhibit 37	Document dated March 11th	120
9	Exhibit 38	Message from Jessie Clay to Mr. Orlando	129
10	Exhibit 39	e-mail dated July 28th, 2013	130
11	Exhibit 40	Document from Mickey Carey	131
12	Exhibit 41	Snapshot of Facebook fan page of December 5th, 2013	133
13			
14	Exhibit 42	e-mail from Syncere Martinez from CrossFit Harlem dated December 24th, 2013	134
15			
16	Exhibit 43	Screenshot of Rob Orlando's fan page	136
17	Exhibit 44	Message dated Wednesday, February 26, 2014	137
18			
19	Exhibit 45	e-mail from Matt Tuttle from Muscle & Fitness Magazine dated Wednesday, February 26h, 2014	139
20			
21	Exhibit 46	Document dated Thursday, November 6th, 2014	140
22	Exhibit 47	e-mail from Matt Paulson dated Wednesday, April 18th, 2012	144
23			
24	Exhibit 48	Snapshot of screen of opening of video of Hybrid Athletics	145
25			

1			
2	Exhibit 49	YouTube page of Progenics uploaded on April 22nd, 2011	146
3			
4	Exhibit 50	Cross-Fit's YouTube page	147
5	Exhibit 51	Document reflecting Robert Orlando's YouTube channel	147
6	Exhibit 52	Screenshot of videos uploaded to Rob Orlando's YouTube page	147
7			
8	Exhibit 53	Hybrid Athletics' CrossFit Conan Facebook page	148
9	Exhibit 54	Rob Orlando fan page on Facebook	148
10			
11	Exhibit 55	CrossFit Journal	150
12	Exhibit 56	Screenshot of Hybrid Athletics on Fox News dated August 24th, 2011	155
13			
14	Exhibit 57	of online store dated January 5th, 2012	156
15	Exhibits 58	Transactions from Internet	158
16	through 63	sales from website for 2008 through 2014	

~oOo~





HYBRID ATHLETICS, LLC

August 28, 2015

/s/ Michael J. Kosma

Wesley W. Whitmyer, Jr.

Michael J. Kosma

Whitmyer IP Group LLC

600 Summer Street

Stamford, CT 06901

Tel. (203) 703-0800

Facsimile (203) 703-0801

Email: [litigation@whipgroup.com](mailto:litigation@whipgroup.com)

[mkosma@whipgroup.com](mailto:mkosma@whipgroup.com)

*ATTORNEYS FOR OPPOSER*

**CERTIFICATE OF SERVICE**

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

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

August 28, 2015  
Date

/s/ Joan M. Burnett  
Joan M. Burnett

