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

U.S. Trademark Registration Nos.: 2,554,110 and 2,554,111
Trademarks: EXP and EXP COATED

[redacted]

04-09-2004
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

GIBSON GUITAR CORP. 309 Plus Park Blvd. Nashville, Tennessee 37217 Petitioner, v. J. D'ADDARIO & CO., INC. 595 Smith Street Farmingdale, New York 11735 Registrant.	Cancellation Nos. 92041175 and 92041688 (Consolidated)

SUBMISSION OF EXECUTED AND NOTARIZED
DEPOSITION OF JAMES D'ADDARIO DATED MARCH 4, 2004

Supplemental to the Notice of Reliance by Registrant filed on March 17, 2004, submitted herewith is an executed and corrected copy of the Deposition Testimony of James D'Addario dated March 4, 2004, listed as Item No. 18 in Registrant's Notice of Reliance. It is respectfully requested that the corrections to page 1 through page 63, line 13 and page 90, line 23 through page 99 of the corrected Deposition Testimony of James D'Addario be entered and substituted for the uncorrected and unsigned Deposition Testimony submitted with Registrant's Notice of Reliance filed on March 17, 2004.

If there is any fee associated with this submission, please charge Deposit Account No. 502335. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

Dated: April 9, 2004

Gerald T. Bodner

Gerald T. Bodner
Bodner & O'Rourke, LLP
425 Broadhollow Road, Suite 108
Melville, New York 11747
Telephone: 631-249-7500
Facsimile: 631-249-4508
Attorneys for Registrant
J. D'Addario & Co., Inc.

CERTIFICATE OF SERVICE

MARK:	EXP and EXP COATED
REGISTRATION NO.:	2,554,110 and 2,554,111
CANCELLATION NO.:	92041175 and 92041688 (Consolidated)
NAME OF PARTY SERVING PAPERS:	Gerald T. Bodner on behalf of Registrant, J. D'Addario & Co., Inc.
TYPE OF PAPERS:	SUBMISSION OF EXECUTED AND NOTARIZED DEPOSITION OF JAMES D'ADDARIO DATED MARCH 4, 2004

I, Gerald T. Bodner, an attorney, hereby certify that the above-identified document is being forwarded to: Edward D. Lanquist, Jr., Esq., WADDEY & PATTERSON, 414 Union Street, Suite 2020, Nations Bank Plaza, Nashville, Tennessee 37219 on April 9, 2004, via Express Mail, Post Office to Addressee, Express Mail No. ER 410976825 US.

Gerald T. Bodner
Person Signing Certificate

Gerald T. Bodner
Signature

April 9, 2004
Date of Signature

CERTIFICATE OF EXPRESS MAIL

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Gerald T. Bodner
Person Signing Certificate

Gerald T. Bodner
Signature

April 9, 2004
Date of Signature

C_O_N_F_I_D_E_N_T_I_A_L

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

GIBSON GUITAR CORP.
309 Plus Park Blvd.
Nashville, Tennessee
37217

Petitioner,

Cancellation Nos. 92041175 and 92041688

-against-

J. D'ADDARIO & CO., INC.
595 Smith Street
Farmingdale, New York
11735

Registrant.

----------x

March 4, 2004
9:50 a.m.

Deposition of JAMES D'ADDARIO, taken by Registrant, pursuant to Notice, held at the offices of J. D'Addario & Co., Inc., 595 Smith Street, Farmingdale, New York, before Robert E. Levy, a Certified Shorthand Reporter and Notary Public within and for the State of New York.

Appearances:

WADDEY & PATTERSON, P.C.
Attorneys for Petitioner
Bank of America Plaza
414 Union Street - Suite 2020
Nashville, Tennessee 37219

By: EDWARD D. LANQUIST, JR., ESQ.,
of Counsel

BODNER & O'ROURKE, LLP
Attorneys for Registrant
425 Broadhollow Road - Suite 108
Melville, New York 11747

By: GERALD T. BODNER, ESQ.,
of Counsel

oOo

A. Actually I started working while I was in college. I was -- my dad owned a family business, Darco Music Strings, family business. And I was helping him out part time. At that time, he was not really successful marketing a brand of strings. He was more of a private label manufacturer and C.F. Martin & Company was one of our largest customers and they needed a sales representative for the New York metropolitan area and they hired me while I was in college to be their sales rep, so from about 1968, '69, through 1973, I held that position in various capacities.

I was always the New York sales rep, as I began to work more, I got more and more responsibilities with Darco and Martin. What happened in 1969 is my dad sold the Darco company to C.F. Martin with a stock transfer type deal and we worked for the Martin company for five years and I held various capacities there. I created an in-plant printing operation and advertising department. That was then used by the whole corporation.

So I managed that while I was

JAMES D'ADDARIO, residing at 45 Clock Tower Lane, Old Westbury, New York, 11568, having been first duly sworn by the Notary Public (Robert E. Levy), was examined and testified as follows:

EXAMINATION BY
MR. BODNER:

Q. Can you state your full name and address for the record?

A. James D'Addario, 45 Clock Tower Lane, Old Westbury, New York.

Q. Can you describe your education starting with high school?

A. I went to West Hempstead High school, graduated, attended Nassau Community College for two years, transferred to Hofstra, completed my bachelor of arts in music. With a minor in music education.

Q. When was that?

A. 1970. Graduated in 1970.

Q. Can you describe your employment after college to your present employment? And also the years --

still being their sale rep for the dealers and I also was appointed advertising coordinator for the entire organization, and then I had the domestic distributor nationwide responsibilit of calling on those customers as well, so I ha like four hats that they had me wearing. Up until I was about 22 years old. And decide leave the company.

In 1973 I left the company and started this company, J. D'Addario Comp my wife, and originally this company wa started as a printing graphics and advert company, and I basically was able to ac the assets of the printing operation that created for Darco and Martin by excha stock that I had earned and started do of their printing as a third-party vend expanded by getting other customers industries on Long Island to have us advertising and graphics and printi we ended up with about four or fiv in a small place in Lynbrook, abo square feet just for about a year a

In 1974 my brother Joh

Appearances:

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Attorneys for Petitioner
Bank of America Plaza
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Nashville, Tennessee 37219

By: EDWARD D. LANQUIST, JR., ESQ.,
of Counsel

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A. Actually I started working while I was in college. I was -- my dad owned a family business, Darco Music Strings, family business. And I was helping him out part time. At that time, he was not really successful marketing a brand of strings. He was more of a private label manufacturer and C.F. Martin & Company was one of our largest customers and they needed a sales representative for the New York metropolitan area and they hired me while I was in college to be their sales rep, so from about 1968, '69, through 1973, I held that position in various capacities.

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D'Addario

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In 1973 I left the company and started this company, J. D'Addario Company with my wife, and originally this company was started as a printing graphics and advertising company, and I basically was able to acquire the assets of the printing operation that I created for Darco and Martin by exchanging some stock that I had earned and started doing all of their printing as a third-party vendor and expanded by getting other customers in other industries on Long Island to have us do their advertising and graphics and printing work, so we ended up with about four or five employees in a small place in Lynbrook, about 2,000 square feet just for about a year and a half.

In 1974 my brother John and my

DAddario

father decided to leave Martin and we all three decided to manufacture strings again. I felt that they had an employment contract for five years so they could not leave until the five years was up. I did not have an employment contract so I left early and started the printing company.

I was a little bored with the printing. I liked it, I loved it. I was successful at it. We had financial success in a year and a half, paid off our debts that -- small debts that we incurred to start the company and, but missed the music business because I'm a musician, and from when I was 13 years old, my dad was taking me to the NAMM shows.

My family is a fourth generation in this country manufacturing strings. My grandfather came here in 1905 and our family has been making strings in Italy since 1680 and I was anxious to go back into the business, but this time, concentrate on marketing a brand, our own brand.

My grandfather and father never

D'Addario

used the name D'Addario on a string as a brand name so we registered our family name as a brand name and we began in August 1974 producing strings as D'Addario, and from that little humble 2,000-square-foot building, in 1974, we now have 700 employees and 190,000 feet on this street in three buildings, distribution company in Canada, various other satellite operations in California, Chicago, Japan, Australia, and it's grown into an international business where we sell our product in 106 countries.

Q. What is your title now?

A. I'm president and chief executive officer.

Q. When did you become president and CEO?

A. I took the title CEO in 1997 when my brother John decided to retire.

Q. Okay. And before that what was your title?

A. I was a co-vice president with my brother, and for most of, I don't remember the dates, most of the time we just worked as

D'Addario

equals. We weren't title-driven guys so he assumed, for legal reasons to sign documents and so on, he assumed the title of president. And, but it was really a peer to peer thing. We never overlapped on our responsibilities. We always described our partnership as he handled today and I handled tomorrow, so I was the guy who always planned the future working on new technologies for strings and working on new marketing for strings and he was working on keeping the business running.

So in '97, at 55 years old, he was tired, he was working since he was 17 years old and he decided that he wanted to slow down and he has phased himself out of active daily participation in the business. He still has his office here, he comes in when he's in town, about 10 percent of the time, and he is involved in several different organizations and our philanthropic efforts with the D'Addario Foundation for the Performing Arts. He handles a few things but minor, so I'm really the president running the operation now.

Q. Okay. Does your corporation have

D'Addario

a mission statement?

A. Yes.

MR. BODNER: I would like to mark this as Exhibit BT.

(Whereupon, mission statement marked Registrant's Exhibit BT for identification, as of this date.)

Q. Mr. D'Addario, I would like you to take a look at this document marked Exhibit BT and can you tell me what that is, please?

A. This is a copy of a vision mission and core principles document that unfortunately we probably spent way too many hours creating. You asked about what it is. I don't know if you want me to read the entire thing.

Q. I wanted to know if you do have a corporate mission and what your purpose is?

A. Our mission as a business is to be the player's choice of music accessories by offering the highest quality innovative products together with unparalleled customer service driven by a dedicated and creative team. We are committed to helping our

D'Addario

customers in the music industry thrive.

Q. Okay. And this mission statement, this is what you use through your business dealings and in running your corporation?

A. That's correct. In fact, I pull it out all the time whenever any employee or anybody brings a deal to me that has anything to do with distributing or manufacturing instruments. We are in the accessory business.

Q. How many products do you sell?

A. Over 4,000 stock keeping units, SKU's.

Q. Could you name some of those products, generically?

A. The core business is strings for guitars and other fretted instruments, but we also make strings for the bowed family, violin, viola, cello, bass. We manufacture drum heads, those are the replacement heads that go on, or original equipment heads, that go on drums.

We also manufacture a broad line of accessory products like guitar straps, saxophone straps, instrument cables, microphone

DAddario

cables, all kinds of audio cables, tools for musicians to use to change strings, cut strings, peg ~~wires~~ winders, care products for guitars, humidifiers, humidity sensors, polish, polishing cloths. All those kinds of accessories that musicians would purchase.

Q. Does your company make guitars?

A. No.

Q. Does your company make any musical instruments?

A. None whatsoever.

Q. So --

A. And never has.

Q. So you just make accessories for musical instruments, is that correct?

A. That's correct.

Q. Is it your belief that J. D'Addario & Company has acquired a reputation in the musical industry for high quality products?

A. Definitely. Our reputation is, I think, one of the best in the business for providing a quality accessory product beginning with strings and now branching into other

D'Addario

products that we have added since 1995.

Q. So what is your belief based on?

A. Well, obviously the success of the company, the sales volume, the recognition in the trade press, the recognition from the customers. I mean we get scores of letters every week complimenting our service or products, that kind of thing.

MR. BODNER: I would like to mark as Exhibit BU a number of correspondences grouped together.

(Whereupon, correspondence marked Registrant's Exhibit BU for identification, as of this date.)

MR. LANQUIST: I want to object to Exhibit BU on the grounds that they are hearsay.

MR. BODNER: I would like to show this to the witness.

(Handing).

Q. Mr. D'Addario, would you like to take a look at some of those?

A. Yes.

Q. Do you recognize some of that

D'Addario

correspondence?

A. Yes, typical letters from recent days. Actually most of them do come pretty recent. About compliments from either musicians, consumers, customers. Typical correspondence that we get weekly.

Q. Is there someone that retains this correspondence?

A. Yes, we have a full-time employee in marketing that is called a consumer relations rep who answers daily every single thing that comes in.

Q. Who is that person?

A. Matt Sweeney.

Q. For this deposition did Mr. Sweeney or did somebody else gather this information for you?

A. I believe Mr. Sweeney did, yes.

Q. Do you recognize any of these letters in here?

A. I just saw them yesterday when I asked for them. I recognize them as the letters he gave me.

Q. Okay. That's fine. Are these

D'Addario

letters and correspondence, I note there are also e-mails too.

A. Uh-huh.

Q. Are they complimentary of both the company, J. D'Addario as a whole and also regarding EXP strings?

A. Yes.

Q. Do you ever ask for any consumer feedback on the products that you sell?

A. Yes. From time to time we run surveys, market studies, send out questionnaires.

Q. Okay.

A. Sometimes in a formal way, sometimes in an informal way.

Q. Well, what would these market surveys consist of?

A. It might consist of sending out several samples of prototype product with a questionnaire asking people to comment on it or, you know, test it, give us some feedback.

Q. Okay.

A. Sometimes we actually put a questionnaire in a product we are marketing to

DAddario

get feedback on a new package design or a new product. ~~That way~~ To see what people think about it. We have done that from time to time as well.

Q. Do you have an Internet site?

A. Yes.

Q. Do you have like a bulletin board, something where you ask for customer evaluation or comments?

A. Well, we have a bulletin board on each of our branded sites. We have a separate subsite for each brand that we sell and there is a bulletin board where people can discuss whatever they want to discuss. We don't tell them what to discuss or ask them. It's there for their use as a community.

But in that, in the context of those websites you will find lots of comments and compliments and questions and things about strings so you get lots of feedback about our products from those bulletin boards, and they are reviewed daily.

Q. Does that also include EXP strings?

D'Addario

A. Absolutely.

Q. Okay. Do you get any input from distributors or retailers?

A. We are always in touch with our customers. We have eight people on the telephones talking to retailers daily. We have four on the road visiting retailers. We have four people on the road visiting distributors worldwide so we get lots of feedback through that network. We also obviously get correspondence from our customers, B to B customers as just opposed to these consumers like you see here.

Q. The consumers you see in Exhibit BU?

A. Yes.

Q. Okay. Do you consider J. D'Addario & Company to be an innovative company?

A. Yes. Absolutely. I think that that's what we built the business on as being in the forefront of technology for accessories.

Q. Okay. Do you come out with new products?

D'Addario

A. Continually. Maybe too many my marketing people say.

Q. Does the company hold any patents?

A. Yes. We have quite a few patents concentrated in the recent years, it's been, you know, kind of very active. We have I believe more than 25 U.S. patents and maybe 30 some odd total U.S. and international.

Q. Okay, and these are on your musical accessories?

A. Yes. On all the products we make. Depends on what the claims in the innovation might be.

Q. Okay. Do you consider J. D'Addario & Company to be well known in the musical industry?

A. Well, we are the largest manufacturer of strings in the world and second largest manufacturer of drum heads. We have the largest market share of strings worldwide, so it would be very safe to assume that we are well known. Judging from the fact that just guitar sets alone we sell more than 12 million

D'Addario

a year. A lot of times printing the name D'Addario on the package, somebody must know about us.

Q. That includes the EXP strings?

A. Yes.

Q. And is the company particularly known as an accessory company?

A. Yes.

Q. Do you believe the company is well known to consumers?

A. Sure.

Q. And to retailers?

A. Uh-huh.

Q. And to distributors?

A. Yes.

Q. Do you put the name J. D'Addario & Company on each of your products that have the mark EXP or EXP COATED?

A. Yes.

Q. So when someone sees the mark EXP or the mark EXP COATED on the products, they also see the company name?

A. Yes.

Q. Do you consider Gibson or

D'Addario

Epiphone to be a competitor of J. D'Addario & Company?

A. Not of any significance, no. Their market share is infinitesimal in strings and accessories.

Q. Do you know if Epiphone makes any strings?

A. I don't think they do. Our research shows that they don't have a brand for strings. They don't use their brand on strings.

Q. What about Gibson?

A. Gibson does make some strings and market them but their market share is very small. Maybe 1 percent.

Q. When you sell strings to a consumer, how are they typically sold, as a set of six strings?

A. Vast majority of guitar players buy a set of strings and change the set. Violin players might buy one string.

Q. This who include EXP strings?

A. Absolutely, right.

Q. How much does a set of EXP

D'Addario

strings typically sell for at the consumer level?

A. Depending on the model, $9.99 to $14.99.

Q. Do you have any idea what a Gibson guitar would cost to a consumer?

A. Hundreds of dollars, 500, a thousand dollars, I don't know. Gibson guitar is a high-priced guitar so the average price might be close to a thousand, I guess. 800. I'm not sure. But --

Q. You are saying around there at that level?

A. Yes. In the hundreds.

Q. What about an Epiphone guitar?

A. It's known as a lower priced line of similar design as Gibson's, so whatever the comparable instrument in the Gibson line, it might be cheaper in the Epiphone line because it is imported.

Q. Okay. Are you using the marks EXP and EXP COATED on your products?

A. Yes. On musical instrument strings.

D'Addario

MR. BODNER: I would like to mark as Exhibit BV, document production numbers D 000040 through D 000071.

MR. LANQUIST: I have D 10 through --

MR. BODNER: That's because I probably gave you the wrong one. Here you go.

(Handing)

(Whereupon, EXP registration file bearing production numbers D 000040 through D 000071 marked Registrant's Exhibit BV for identification, as of this date.)

MR. BODNER: I'll state for the record this was a document that was produced to Mr. Lanquist and it is the file history of the EXP COATED -- no, EXP, the EXP registration, and I am going to show it to Mr. D'Addario and have him take a look at it.

(Handing)

MR. LANQUIST: To clarify, it is a copy of the EXP registration file.

D'Addario

MR. BODNER: Prosecution filed before the Patent and Trademark Office.

THE WITNESS: Right.

Q. Okay, Mr. D'Addario, can you please turn to document number 48, the last two digits are 48. So it is D 000048.

A. Right.

Q. Do you recognize that document?

A. Yes.

Q. Is that the registration for your mark EXP?

A. Yes.

Q. And the registration number is 2,554,110, is that correct?

A. Yes. That's correct.

Q. I would like you to take a look, Mr. D'Addario, at document numbers D 000067 and 68, which is the next page.

A. Uh-huh.

Q. I believe this is the application for filing the trademark application for registration of the mark EXP. Is that correct?

A. Yes, it is.

Q. On page 68, is that your -- do

D'Addario

you recognize that to be your signature on that page?

A. Yes, it is.

Q. I would like you to take a look at 56, number 56, and the full number is D 000056. As part of the file history, I believe that's a specimen of a box of D'Addario strings that was submitted.

A. Uh-huh.

Q. Do you recognize that?

A. Yes.

Q. Okay. And do you verify that that is a specimen of a box that the –

A. It is a photocopy of EXP guitar string packaging.

Q. Okay. Now I would like you to turn to number 54 and the full number is D 000054. And with that is the next page too which is D 000055. Now, I believe this is what is called an allegation of use, and on page 55, do you recognize the signature that's on that page?

A. Yes.

Q. And who is that –

D'Addario

A. Michael Russo, chief operating officer, J. D'Addario & Company.

Q. Do you recognize that signature to be his signature?

A. Yes.

Q. If you go to page 54, towards the bottom of that page, under the heading "Use Information," I believe it says, "First use anywhere date" and after that it has "01/22/2001."

A. That's correct.

Q. And below that it has first use in commerce date as 01/22/2001. Is it your contention that your first use in commerce and first use anywhere for your EXP strings is January 22, 2001?

A. Yes.

MR. BODNER: Now, I would like to mark as an exhibit, document numbers, production numbers I should say, D 000010 through D 000039 as BW.

(Whereupon, file history for mark EXP COATED bearing production numbers D 000010 through D 000039 marked

D'Addario

Registrant's Exhibit BW for identification, as of this date.)

Q. Mr. D'Addario, I would like you to take a look at this document. Again I'll state for the record that this is the file history for the mark EXP COATED, the registered mark EXP COATED, that was from the Patent and Trademark Office records.

Please turn to number 17, which is D 000017. Do you recognize that document to be the registration for your mark EXP COATED?

A. Yes.

Q. Can you go towards the end of this package of documents to number 35 and 36, and the full numbers would be D 000035 and D 000036. Do you recognize this to be an application for filing your trademark before the Patent and Trademark Office for the mark EXP COATED?

A. Yes, it is.

Q. And on page 36, do you recognize that signature to be yours?

A. Yes, it is.

Q. I would like you to turn to page

D'Addario

22 and page 23, and the full numbers would be D 000022 and D 000023.

A. Yes.

Q. This has a heading "Allegation of Use." And on page 23 there is a signature there. Do you recognize that signature?

A. Yes. Mike Russo's signature. Chief operating officer.

Q. And you know that that is Mr. Russo's signature?

A. Uh-huh.

Q. Okay. I would like you to turn to page 22, and under the heading "Use Information," it has an entry that says "First use anywhere date" and it is 01/22/2001. Does that stand for January 22, 2001?

A. Yes.

Q. And is that your first use of the mark EXP COATED anywhere?

A. Yes.

Q. Okay. Right below that it says "First use in commerce date" and it is 01/22/2001?

A. Uh-huh.

D'Addario

Q. Does that mean that your first use in interstate commerce for the mark EXP COATED is January 22, 2001?

A. Yes.

Q. What products do you use EXP and EXP COATED on?

A. Acoustic guitar, electric guitar and mandolin strings and classic guitar also. So guitar and mandolin strings.

Q. It is guitar strings and mandolin strings?

A. It is only on strings.

Q. Okay. So EXP and EXP COATED are not used on any other product other than guitar strings -- I'm sorry, other than musical instrument strings?

A. Correct.

Q. Are EXP and EXP COATED displayed on your products?

A. Yes.

Q. Do you know where on the products the marks are displayed?

A. They are on the packaging.

Q. Are you still using EXP and EXP

D'Addario

COATED on your products?

A. Absolutely.

Q. In what countries are your guitar strings using EXP & EXP COATED sold?

A. They are sold worldwide. We have extensive distribution in 106 countries. In 2003, 55 percent of our product was exported, so that would be about 45 percent of the sales to be in America, 55 percent in the other 106 countries.

Q. Okay, are they sold nationwide in the United States?

A. Absolutely, yes.

Q. How many retailers are your EXP and EXP COATED strings sold in?

A. I would only be able to estimate that because we sell our products to retailers directly and we also sell to distributors who sell to retailers, so we don't know how many retailers those other distributors are selling to but we estimate that we are probably in five to 6,000 storefronts across the country.

Q. Okay.

A. And we deal directly with 4500 of

D'Addario

those.

Q. What about in Canada?

A. About 800.

Q. Okay. How many distributors do you have?

A. In America?

Q. Yes.

A. Seven.

Q. And this includes for distributing EXP and EXP COATED strings?

A. Yes, among our other products as well, sure.

Q. All right.

MR. BODNER: I'm going to mark as Exhibit BX, a one-page document entitled "2003 EXP Sales."

(Whereupon, document entitled "2003 EXP Sales" marked Registrant's Exhibit BX for identification, as of this date.)

MR. BODNER: For the record, this whole deposition should be marked confidential until we have a chance to go through it and do otherwise.

D'Addario

Q. Do you recognize this document Exhibit BX?

A. Yes.

Q. Who generated that document?

A. John D'Addario III.

Q. Did you ask him to generate that document?

A. Yes, I did.

Q. This document is used to refresh your recollection as far as the sales of EXP strings in the United States and abroad, and I was wondering if you could tell us what those sales are, the sales figures?

A. All right, this is just for sets of EXP musical instrument strings, which is the primary vehicle for selling the strings. We do sell some individually but that is a very small portion. I just asked for a summary of the set sales. Last year, 201,905 sets were sold in the U.S.A. and 104,626 sets were sold to the export market, the 123,467 domestic dollar sales was 1.2 million and export sales was $562,00 for a total of about $1.78 million.

Q. Do you market the marks EXP and

D'Addario

EXP COATED in connection with your products?

A. Market them?

Q. Do you market products bearing the marks EXP and EXP COATED?

A. Yes, musical instrument strings.

Q. Okay. How do you market them, the various ways which you would?

A. We do a lot of print advertising, we do web advertising on our websites in other portals where we participate. We do extensive sales on the road and training. We have clinicians go into stores and do string-changing clinics. We also have an extensive artist relations program where we have a total of seven people, some part-timers but seven people in our organization that just handle artists.

Q. When you say artists, you mean guitar --

A. Musician.

Q. Famous guitarist?

A. Guitarists, drummers, whoever might be using our product, and we supply them with free merchandise. We never pay anybody

D'Addario

for an endorsement in terms of the EXP strings, I believe we have over 400 endorsees using EXP strings.

Q. In what countries do you advertise, generally?

A. Generally --

Q. The number of countries?

A. It would be an estimate, but outside of the U.S.A., we either directly advertise or support an advertising program in cooperation with a distributor in the major markets, probably I would say in 25 major markets.

Q. Okay. That includes EXP and EXP COATED strings?

A. Yes. We also have OEM customers buy EXP strings for their higher priced instruments and we use those people to help us market the product as well. Their recommendation that they use the product; like an endorsement.

Q. Okay, and you said there were famous guitarists or artists that endorse the product?

D'Addario

A. Yes.

MR. BODNER: I would like to mark as Exhibit BY, a multipage document.

THE WITNESS: Confidential too.

MR. BODNER: Right. All of this is confidential.

(Whereupon, artist relations database marked Registrant's Exhibit BY for identification, as of this date.)

MR. BODNER: I would like to show it to the witness.

A. Yes.

Q. At the top of Exhibit BY, on the -- actually on every page, it has the heading "Artist Roster EXP Usage."

A. Uh-huh.

Q. Mr. D'Addario, have you ever seen this document before?

A. Yes.

Q. Can you explain what this document is?

A. This is a printout of our artist relations database that I asked our artist relations manager, Grace Newman, to prepare for

D'Addario

me to see how many of our endorsees have been using or have switched to our EXP COATED product as opposed to our regular uncoated strings, and she gave me this report which has over 400 artists on it and which strings they actually use. Which model.

Q. Are there any artists that you would like to point out on here that are particularly well known?

A. Yes, there are quite a few. Obviously there are names that you wouldn't know but there are some very big names on this list. People like Al Demeola, Arlo Guthrie, Ben Harper, Stephen Stills, David Crosby, Bruce Springsteen, Carlos Santana, just to mention a few. The Jay Hawks, popular band today. John Mayer, Lou Reed, Robin Ford, Peter Frampton, Randy Travis. There are some big names.

Q. In what magazines and catalogues do you advertise products bearing the marks EXP and EXP COATED?

A. Magazines that I know we have advertised in, in trade magazines would be Music and Sound Retailer, Music Trades, Musical

D'Addario

Merchandise Review, Music, Inc. Consumer magazines like Guitar Player, Guitar One, Acoustic Guitar, Guitar World. Just to mention a few. I mean I don't have the list in front of me. It is probably another 20 or so. You know, worldwide.

Q. Does your company attend trade shows where products bearing the mark EXP and EXP COATED are displayed or advertised?

A. Yes. We do quite a few shows.

Q. Could you name approximately how many shows you do a year?

A. Shows that would pertain to EXP because we do some that are educational that -- a band or orchestra. Shows that are particularly guitar-oriented or that overlap?

Q. Anywhere where you have EXP or EXP COATED?

A. I would say about 25 a year.

Q. Can you name some of the larger shows?

A. The bigger ones are the main trade shows, which is NAMM.

Q. Where is that done?

D'Addario

A. There are two of those. There is one in Anaheim, California in January. That's the biggest show. And then in July, there is another one that has historically been in Nashville but it is the last year it is in Nashville, it is moving. And the Frankfurt fair in March or April. Those are the big international fairs where we meet our to-be customers.

Then we do bluegrass shows, guitar trading shows. We do quite a few shows where we either partner with a retailer and give them display materials and strings to sell on consignment or we actually send our people there and meet with the consumers.

Q. What do you mean by a bluegrass show?

A. Like International Music, IBMA is in Louisville, Kentucky. We do Telluride. We just came back from Folk Alliance in California. Those types of shows where it is a combination of performances, there might be clinics, you know. There is like Dallas guitar show in the Cotton Bowl, vintage guitar shows,

D'Addario

that kind of thing.

Q. Okay.

MR. BODNER: I would like to mark as Exhibit BZ a one-page document that has the heading "2003 Marketing Expenses Specific to EXP Strings."

(Whereupon, document headed "2003 Marketing Expenses Specific to EXP Strings" marked Registrant's Exhibit BZ for identification, as of this date.)

MR. BODNER: I would like Mr. D'Addario to take a look at that.

A. Uh-huh.

Q. Maybe this refreshes your recollection, but my question is, how much do you spend on marketing in the United States for EXP products?

A. Yes, this seems to be a summarized budget from 2003 in round numbers for the marketing of the EXP product.

Q. Before you go on, let me just ask you, who prepared this?

A. I believe Jennifer Verdi prepared this.

D'Addario

Q. Did you ask her to do this?
A. Yes, I did.
Q. My question is did you ask her to do this?
A. Yes.
Q. Now the grand total is 337,000. Do you believe that to be correct?
A. Yes.
Q. Does the company place any displays for the EXP and EXP COATED strings in any retail stores?
A. Yes.
Q. Okay. Do those displays actually show EXP and EXP COATED?
A. Some do, yes.
Q. Does your company sponsor any concerts?
A. We participate in the sponsorship of concerts like cooperatively. We don't usually sponsor our own events. We will be co-sponsors with others companies.
Q. Do you know if EXP strings are advertised at these concerts?
A. Sometimes, yes.

DAddario

Q. Would you know if your company ever received any correspondence or telephone calls from consumers or distributors or retailers evidencing any confusion between your EXP and EXP COATED strings and Gibson's guitars?
A. I know of no correspondence to my knowledge that anybody has ever been confused about our product with any guitar. Including Gibson's.
Q. Or confusion between your use of EXP and EXP COATED strings and Gibson or Epiphone's use of EXP or EX?
A. Right. True.
Q. How would you know this?
A. I am very active in reading and scanning important consumer and B to B correspondence. My people are trained that if there is any kind of an issue, whether it is a quality issue or a marketing issue like this would be something that I'm sure would be brought to my attention immediately.
Q. So to your knowledge, no one in your company and you, of course, have ever

D'Addario

received any correspondence or telephone calls about Gibson or Epiphone using EXP, EXP COATED or EX as marks in connection with their products being confused thinking that they belong to D'Addario?
A. I know of no issues where people were confused with our strings or a guitar, or Gibson's guitar or Epiphone's guitar.
Q. What about -- so no distributor has ever told you or indicated that there was some confusion?
A. No.
Q. What about a retailer, any retailers?
A. No.
Q. When did you first learn that Gibson is claiming trademark rights in EXP?
A. I don't recall the date. It was --
Q. Doesn't have to be a date. Generally.
A. We heard from the Patent and Trademark Office that there was I guess some kind of claim.

D'Addario

Q. Was that the petition to cancel?
A. Petition to cancel our registrations, right.
Q. Have you ever seen Gibson or Epiphone use EXP or EXP COATED in connection with the sale or advertising of their products?
A. I have not.
Q. Have you ever seen Epiphone use EXP or EXP COATED in connection with the sale or advertising of their products?
A. No, I have not.
Q. Have you ever seen either Epiphone or Gibson use EX in connection with the sale or advertising of their products?
A. I have not.
Q. Do you actively police the marks of your company?
A. Yes.
Q. Does this include EXP and EXP COATED?
A. Yes.
Q. How do you do this?
A. Well, first of all we are very fastidious about keeping -- registering our

DAddario

brands and keeping the brand name registrations current and renewed and so forth. We use your firm to do that. And we have gone as far as to have clinics here where you've come in and lectured all of my marketing people about how to mark their products in the marketing strategies so that the brand names and the trade names are utilized properly and legally protected.

And then we also obviously scan -- all marketing people, brand managers, marketing people are responsible for scanning through publications and so on to see if -- and the websites, to see if there is anything that we need to take action on.

Q. And also when you go to trade shows or others in your company go to trade shows, do they also look for people using EXP and EXP COATED?

A. Sure, and they will report to us, we will get reports after the trade shows, we get complete reports of what's gone on and, you know, we will find out about trademark issues, you know, like we have had instances of

D'Addario

actually blatant counterfeit strings, things like that, where people just are counterfeiting a product in Bulgaria or China.

Q. And you take action against those counterfeiters?

A. To the best of our ability we take action, yes. When we can find them.

Q. Can you describe the kind of purchaser that buys your EXP and EXP COATED strings?

A. I would identify the EXP customer as a more sophisticated string user, the middle to high-end user, somebody who has a very high quality instrument, you know, a Martin or a Taylor guitar, something that he spent upward of a thousand to $3,000 for and someone who knows the difference and wants a good-sounding string and the convenience of that string lasting longer and having that tone a longer time. It is a more sophisticated user.

Q. Are the strings, are these just ordinary guitar strings or are they a higher end type of string?

A. We like to think that none of our

D'Addario

strings are ordinary. We put a great deal of care and effort making all of our strings to be of high quality. These have the feature of being, of using a wrapping wire that has been coated with a microscopic, urethane coating, which prevents that material from corroding from perspiration or atmospheric conditions, and thus, the string lasts three to five times longer.

Q. Also is there something particular about the core wire that these are wrapped on?

A. Yes, we use a hexagonally shaped wrap wire so -- core wire, so that each turn of the wrap wire is digging into the edges of the core wire, makes a better bond.

Q. Okay. Are your EXP and EXP COATED strings more expensive than typical strings?

A. Generally speaking they are, if compared to the comparable string that we make uncoated, they were about double the price on the street.

Q. So when you filed your trademark

D'Addario

applications for the marks EXP and EXP COATED, did you have any knowledge of Gibson using either EXP or EX?

A. No, we did not.

Q. To your knowledge, does the word "coated" have any relevance in the guitar industry?

A. Not to my knowledge, not to what I know about guitars and their manufacture, no.

Q. So would you consider Gibson's mark EXP famous in the musical industry?

A. Hardly.

Q. And what about the mark EX?

A. Don't know. Don't know it.

MR. BODNER: I would like to mark as Exhibit CA, looks like about a five-page document entitled "J. D'Addario & Company's Answer to Gibson's Petition to Cancel."

(Whereupon, document entitled "J. D'Addario & Company's Answer to Gibson's Petition to Cancel" marked Registrant's Exhibit CA for identification, as of this date.)

D'Addario

Q. Mr. D'Addario, I would like you to take a look at Exhibit CA.

A. Yes.

Q. Have you ever seen this document before?

A. Yes, I have.

Q. Do you recognize this to be the answer to Gibson's petition to cancel your mark EXP?

A. Yes.

MR. BODNER: Now I would like to mark as Exhibit CB, a five-page document that has the heading "J. D'Addario & Company's Answer to Gibson's Petition to Cancel." It also has the notation "EXP COATED" on it.

(Whereupon, document headed "J. D'Addario & Company's Answer to Gibson's Petition to Cancel" marked Registrant's Exhibit CB for identification, as of this date.)

Q. I would like you to take a look at that document.

A. Uh-huh.

D'Addario

Q. Do you recognize that document?

A. Yes.

Q. Is that J. D'Addario & Company's answer to Gibson's petition to cancel your mark EXP COATED?

A. Yes.

MR. LANQUIST: I just want to object to Exhibit CA and CB as being hearsay.

MR. BODNER: Just to correct the record, Exhibit CA, and I'll show it to the witness again.

Q. Is this J. D'Addario & Company's answer to Gibson's petition to cancel the mark EXP?

A. Yes, it is.

Q. And Exhibit CB, is that D'Addario & Company's answer to Gibson's petition to cancel the mark EXP COATED?

A. Yes, it is.

MR. BODNER: I would like to mark as Exhibit CC, a document, production numbers D 000072 through D 000076.

(Whereupon, press releases

D'Addario

bearing production numbers D 000072 through D 000076 marked Registrant's Exhibit CC for identification, as of this date.)

Q. Mr. D'Addario, can you please take a look at Exhibit CC.

A. Yes.

Q. Can you tell me what this is?

A. These are press releases for the introduction or the continual marketing of our EXP line of coated music strings.

MR. BODNER: I would like to mark as Exhibit CD document production numbers D 000077 through D 000097.

(Whereupon, advertising materials for EXP string product bearing production numbers D 000077 through D 000097 marked Registrant's Exhibit CD for identification, as of this date.)

Q. Mr. D'Addario, I would like you to take a look at these documents --

A. Uh-huh.

Q. – in Exhibit CD. When you get a chance, can you just tell me what these

D'Addario

documents are?

A. These are advertising materials for our EXP string product. That's both trade and consumer and also some trade show promotional pieces and so on.

Q. I would like you to turn to number 85, that's D 000085.

A. Yes.

Q. And can you tell me what that document shows?

A. This is a list of EXP artists of significance that use the product.

MR. BODNER: I would like to mark as Exhibit CE, document production number D 000098 through D 000100.

(Whereupon, pages from 2001 and 2002 fretted instrument string catalogue bearing production numbers D 000098 through D 000100 marked Registrant's Exhibit CE for identification, as of this date.)

MR. BODNER: I would like the witness to take a look at Exhibit CE.

A. This is photocopies of pages from

D'Addario

our 2001 and 2002 fretted instrument string catalogue. These pages pertain to the EXP models of strings that we market.

MR. BODNER: I would like to mark as Exhibit CF, document production numbers D 000101 through 000106.

(Whereupon, poster bearing production numbers D 000101 through D 000106 marked Registrant's Exhibit CF for identification, as of this date.)

MR. BODNER: I would like Mr. D'Addario to take a look at Exhibit CF and, when he has a chance, just tell me what it is.

A. This is a Dave Matthews poster for EXP strings but cut into pages. That's what this is. So it is a xerox -- photocopy of it.

Q. All right. Hold on one second. There are actually two groups of documents in this exhibit. One is ending with 101 through 10, it is hard to see, probably 103, the other is 104 through 106. So are you saying that these are two posters?

D'Addario

A. Yes, I believe we used this graphic on some display panels as well.

Q. Okay.

A. At trade shows.

MR. BODNER: I would like to mark as Exhibit CG, document production numbers D 000107 through D 000110.

(Whereupon, EXP product pages from 2002-2003 fretted instruments string catalogue bearing production numbers D 000107 through D 000110 marked Registrant's Exhibit CG for identification, as of this date.)

MR. BODNER: I would like Mr. D'Addario to take a look at Exhibit CG and when he is free, just tell me what it is.

A. This is a xerox copy of the EXP product pages from our 2002-2003 fretted instruments string catalogue.

MR. BODNER: Okay, I would like to mark as Exhibit CH, document production numbers D 000111 through 000166.

D'Addario

(Whereupon, 2002 and 2003 D'Addario string player's calendar bearing production numbers D 000111 through D 000166 marked Registrant's Exhibit CH for identification, as of this date.)

Q. Mr. D'Addario, can you please take a look at that packet that I've referred to as Exhibit CH.

A. This is a photocopy of our 2002 D'Addario string player's calendar. Inside this, there are many of our endorsees' photographs, and where applicable, inserted photos of the string packages that they use.

Q. Okay. Can you also take a look at --

A. And 2003, right. Right after 2002 is 2003. There are two calendars here.

Q. Is the 2003 calendar starting at D 000139?

A. Yes.

Q. Both are advertisements for EXP and EXP COATED strings?

A. Yes, they are for all our strings

D'Addario

and EXP and EXP COATED are featured in there.

MR. BODNER: I would like to mark as Exhibit CI, document production numbers D 000167 through D 000172.

(Whereupon, domestic dealer direct price sheet bearing production numbers D 000167 through D 000172 marked Registrant's Exhibit CI for identification, as of this date.)

Q. I would like you to take a look at Exhibit CI and please tell me what this is?

A. This is a domestic dealer direct price sheet, dealer meaning retailer. That's a storefront, a store. And this document describes the minimum advertising price, the MAP price policy for several of our products which include D'Addario EXP COATED strings.

MR. BODNER: I would like to mark as Exhibit CJ, document production numbers D 000173 through D 000182.

(Whereupon, press releases bearing production numbers D 000173 through D 000182 marked Defendant's Exhibit CJ for identification, as of

D'Adlario

this date.)

Q. Mr. D'Adlario, can you please take a look at Exhibit CJ and describe what that is?

A. These are a series of press releases that all discuss EXP strings. These would be sent to magazines and distributors.

MR. BODNER: I would like to mark as Exhibit CK, document production numbers D 000183 through 000193.

(Whereupon, confidential export price list bearing production numbers D 000183 through D 000193 marked Defendant's Exhibit CK for identification, as of this date.)

Q. Mr. D'Adlario, can you please take a look at Exhibit CK.

A. It's a confidential price list for our string products which includes EXP. This is an export price list.

MR. BODNER: I would like to mark as Exhibit CL, document production numbers D 000194 through 000208.

(Whereupon, marketing program

DAddario

bearing production numbers D 000194 through D 000208 marked Defendant's Exhibit CL for identification, as of this date.)

Q. Mr. D'Addario, can you please take a look at Exhibit CL and describe what that is?

A. This is a marketing program for D'Addario EXP strings to be sold to what we call OEM, original equipment manufacturers. It's a co-op program where if they buy our EXP product, we cooperatively use them in our consumer and trade marketing programs, so it is a co-marketing, cooperative marketing program.

MR. LANQUIST: I want to object to Exhibit CL because it's been redacted.

MR. BODNER: I would like to mark as Exhibit CM document production numbers D 000209 through 000212.

(Whereupon, fractional page advertisements bearing production numbers D 000209 through D 000212 marked Defendant's Exhibit CM for

D'Addario

identification, as of this date.)

Q. Mr. D'Addario, I would like you to take a look at Exhibit CM and tell me what that is?

A. These are photocopies of fractional page advertisements for our EXP strings in cooperation with OEM brands of guitars that utilize our strings as original equipment.

MR. BODNER: I would like to mark as Exhibit CN, document production numbers D 000213 through 000222.

(Whereupon, sales bulletins bearing production numbers D 000213 through D 1000222 marked Defendant's Exhibit CN for identification, as of this date.)

Q. Mr. D'Addario, can you take a look at Exhibit CN and just tell us what that is?

A. These are sales bulletins that are used internally and for our salespeople to notify them when products are being released and also to our distributors.

D'Addario

Q. Okay. Do these sales bulletins relate to EXP?

A. They are all EXP-related, yes.

MR. BODNER: I would like to mark as Exhibit CO, document production numbers D 000223 through D 000243.

(Whereupon, advertisements bearing production numbers D 000223 through D 000243 marked Defendant's Exhibit CO for identification, as of this date.)

Q. Mr. D'Addario, can you please take a look at Exhibit CO and describe what that is?

A. These are advertisements for EXP strings. Copies of them.

MR. BODNER: I would like to mark as Exhibit CP, document production numbers D 000247 through 000248.

(Whereupon, sales bulletin bearing production numbers D 000247 through D 000248 marked Defendant's Exhibit CP for identification, as of this date.)

D'Addario

Q. Mr. D'Addario, can you please take a look at Exhibit CP and tell us what this is?

A. These look like sales bulletin for EXP 8020 bronze acoustic guitar strings.

MR. BODNER: I would like to mark as Exhibit CQ, document production numbers D 000249 through 000261.

(Whereupon, retail price list bearing production numbers D 000249 through D 000261 marked Defendant's Exhibit CQ for identification, as of this date.)

Q. Mr. D'Addario, I would like you to take a look at Exhibit CQ and tell us what this is?

A. Copy of a retail price list which includes EXP COATED string products.

MR. BODNER: I would like to mark as Exhibit CR, document production numbers D 000262 through 000287.

(Whereupon, factory direct dealer catalogue bearing production numbers D 000262 through D 000287 marked

D'Addario

Defendant's Exhibit CR for identification, as of this date.)

Q. Mr. D'Addario, please take a look at Exhibit CR and let us know what that is.

A. This is a copy of our factory direct dealer catalogue. This is something you produce twice a year. This is the 2003 winter version, and it includes our EXP string products.

MR. BODNER: I would like to mark as Exhibit CS, document production numbers D 000288 through 000301.

(Whereupon, 2003 distributor net price list bearing production numbers D 000288 through D 000301 marked Defendant's Exhibit CS for identification, as of this date.)

Q. Mr. D'Addario, please take a look at Exhibit CS and tell us what this is.

A. This is a copy of our 2003 distributor net price list for domestic distributors.

Q. I would like for you to take a look again as Exhibit BV, and in particular,

D'Addario

document number 000056. Now, earlier, this document was identified as the file history for the trademark application for the mark EXP. Do you recognize what is on document number 56?

A. That's a photocopy of one of our string packages for EXP strings.

Q. And I would also like you to take a look at Exhibit BW again, and in particular, the page having document production number D 000024. Again, earlier, this was identified as the file history for the trademark application for registration of the mark EXP COATED. Can you identify what is on document number 24?

A. Photocopy of one of our string packages for EXP strings.

MR. BODNER: All right. I think we should take a little break.

MR. LANQUIST: Okay.

(Recess taken)

MR. BODNER: I'm going to mark as Exhibit CT a number of documents from the Internet.

(Whereupon, search responses on

DAddario

Internet for EXP marked Defendant's Exhibit CT for identification, as of this date.)

Q. I would like to show that to you, Mr. D'Addario, and please take a look at it.

A. Yes, these are search responses on the Internet for EXP, the use of EXP on guitars, and it illustrates that there are some people selling instruments from the Peavey company, the Legend Guitar Company, the Ed Roman Company, ESP company and -- so those companies have guitar models that they designate as ESP but they do not have any -- it's EXP. ESP makes an EXP guitar, a little confusing, a mouthful.

Q. Now when did you do this search?

A. Well, we have done these searches, we do them all the time. This particular one I did in preparation for today and asked my secretary to print them out and make copies of them, which was the delay.

Q. Okay. There is a date at the bottom right-hand corner.

A. Right.

D'Addario

Q. Seems to be mostly on all the pages?

A. Yes.

Q. What is that date?

A. 3-- March 4, 2004. Today.

Q. Okay. Do you know a company called Peavey?

A. Uh-huh.

Q. How do you spell that Peavey, P-e-a-v-e-y, for the record?

A. Yes.

Q. Do you know if they make an EXP guitar?

A. Yes, they do, they make several models.

Q. Did you ever hear of a company called ESP?

A. Yes.

Q. Where have you heard of them?

A. They were a guitar manufacturer, importer. Been around a while.

MR. BODNER: I don't think I have any further questions. Just one more housekeeping thing.

D'Addario

MR. LANQUIST: I want just to object to Exhibit CT as hearsay.

MR. BODNER: Okay, I really have no further questions. I'm just going to give you a notice of testimony deposition of Dave Berryman. This is for our trial testimony and we have it scheduled for March 15, but if that is not convenient, just let me know.

(Handing)

MR. LANQUIST: Okay.

EXAMINATION BY MR. LANQUIST:

Q. Mr. D'Addario, my name is Ed Lanquist. Let's start with Exhibit CT, the last exhibit that we talked about.

A. Yes.

Q. How many EXP guitars has Peavey sold?

A. I have no idea.

Q. When did they start selling the EXP guitar?

A. Not sure.

Q. It's been in the last year,

D'Addario

hasn't it?

A. I'm not sure.

Q. Are you aware Gibson actually sent a cease and desist letter to Peavey Guitar?

A. I am.

Q. Now, you said on direct examination that you are aware from time to time of people using or selling counterfeit EXP strings, is that correct?

A. No, I said counterfeit strings.

Q. Do they sell counterfeit EXP strings?

A. I have not seen that yet.

Q. Do D'Addario have any other registered trademarks for their strings?

A. Yes.

Q. And have any of these competitors used the D'Addario trademark on their counterfeit strings?

A. Yes.

Q. Okay. And so does that preclude D'Addario from protecting its registered mark?

A. I'm not sure I understand the

D'Addario

question.

Q. Well, you said there have been counterfeiters from time to time that have used D'Addario registered trademarks on their strings, correct?

A. Uh-huh, yes.

Q. What I'm saying is, does that mean that D'Addario's registered trademark is no longer protectable if it is being used on a counterfeit product?

MR. BODNER: I think that is a legal question. I don't think Mr. D'Addario can answer that question.

MR. LANQUIST: Is he refusing to answer?

MR. BODNER: I didn't say that. If he doesn't feel comfortable answering a legal question he should not be asked that question.

A. I would say I don't know the answer to that question.

Q. If someone were to come in saying, gosh, Mr. D'Addario, you developed a lot of goodwill with the mark but because there

1 D'Addario
2 are one or two counterfeiters out there that
3 have copied your mark and are using it on
4 counterfeit strings and therefore you cannot
5 protect that mark anymore, that is kind of
6 unfair, isn't it?
7 A. Well, I would think so.
8 Q. Now, you said that you know that
9 Gibson sent Peavey a cease and desist letter?
10 A. That's correct.
11 Q. How did you find out that
12 information?
13 A. Hartley Peavey.
14 Q. What did Mr. Peavey say?
15 A. That he received a letter from
16 Gibson.
17 Q. And?
18 A. Didn't tell me exactly what was
19 in the letter. It was regarding EXP trademark.
20 Q. Did he say how he was going to
21 react?
22 A. No.
23 Q. Let's go on to Legend Guitar
24 Company. This is dated January 23, 2003. Do
25 you see where I am?

1 DAddario
2 A. No.
3 Q. That's actually the second pack
4 of stapled information. Do you know if Legend
5 Guitar EXP is still on sale?
6 A. No, I do not.
7 Q. Do you know how many they sold?
8 A. I have no knowledge of their
9 sales.
10 Q. Are you aware of, are you
11 familiar with Harmony Central?
12 A. Yes.
13 Q. And Harmony Central is a
14 retailer?
15 A. No, they're a portal.
16 Q. What happens in their portal?
17 A. People rate products and
18 manufacturers send press releases in, consumers
19 rate the products.
20 Q. So just because it is on Harmony
21 Central, doesn't mean it is currently on sale?
22 A. I have no idea.
23 Q. For example people rate used
24 guitars on Harmony Central as well?
25 A. I don't know.

1 D'Addario
2 Q. Look at Ed Roman. Do you know
3 how many guitars Mr. Roman has sold?
4 A. No, I do not.
5 Q. Do you know how many EXP guitars
6 he has sold?
7 A. No, I do not.
8 Q. Do you know if any of these EXP
9 guitars shown on his website are actually for
10 sale?
11 A. No, I do not.
12 Q. EXP, I think that takes up the
13 remaining packets that are in CT. Do you know
14 if ESP is selling its EXP guitar?
15 A. Are you aware whether ESP is
16 still selling its EXP guitar?
17 A. No.
18 Q. In fact haven't they stopped
19 using the EXP guitar because Gibson sent them a
20 cease and desist letter?
21 MR. BODNER: He doesn't know
22 that.
23 MR. LANQUIST: He can answer,
24 Counsel. I did not make any objections
25 to your leading questions on direct. I

1 D'Addario
2 expect a little bit of courtesy on the
3 cross.
4 MR. BODNER: That's fine. You
5 have to understand that you made many
6 objections on my cross to David
7 Berryman.
8 Q. Mr. D'Addario, do you know how
9 many EXP guitars ESP sold?
10 A. No.
11 Q. Now, what does EXP mean?
12 Let me ask it a different way.
13 EXP means extended play, correct?
14 MR. BODNER: Objection. This was
15 not discussed during direct. And so
16 you are taking up questions that, on
17 cross, are not proper.
18 MR. LANQUIST: Actually you asked
19 him about whether EXP had any meaning
20 in the guitar industry. I'm inquiring.
21 MR. BODNER: I asked coated. Not
22 EXP COATED.
23 MR. LANQUIST: Are you
24 instructing him not to answer?
25 MR. BODNER: Just lodged an

D'Addario

objection.

Q. Okay, what -- isn't it true that EXP means extended play?

A. In relationship to what?

Q. Well, in relationship to your advertising.

A. To our product?

Q. Yes.

A. EXP is a brand name that we came up with for our extended play strings.

Q. Okay. And isn't it true that in your press releases and advertising you say that EXP means extended play?

A. That is a headline in one of the ads.

Q. Isn't it also throughout your press releases as well?

A. Uh-huh, it is an extended play product, yes.

Q. But your press release says EXP means extended play, correct?

A. Yes.

Q. Now, coated. Isn't it true that one thing that distinguishes your strings from

D'Addario

others is the fact that they have a specific coating on them, correct?

A. That's correct.

Q. So these strings are coated strings, correct?

A. Uh-huh.

Q. You need to say yes --

A. Yes.

Q. You say you were a Martin sales rep, is that correct?

A. That's correct.

Q. When you were a sales rep and/or working with Martin, Martin sold guitars, correct?

A. Absolutely right.

Q. And Martin also sold strings?

A. That's correct.

Q. Okay. Do other guitar manufacturers also sell guitars and strings?

A. Yes, they do.

Q. In fact Gibson sells guitars and strings, is that correct?

A. That's correct.

Q. Now, you sell to -- you sell OEM

D'Addario

products, correct?

A. Yes.

Q. So many companies put your strings on their guitars, correct?

A. Yes.

Q. Now let me get you to take a look at Exhibit BV, which is the compilation of e-mails and laudatory statements for EXP strings.

A. BV is it?

Q. Yes.

A. Okay. Got it.

Q. Do you know how many of these people play Gibson guitars?

A. No, I have no idea.

Q. Do you know how many of these people play Epiphone guitars?

A. No, I do not.

Q. Do you have any opinion as to the market share for guitars for Gibson and Epiphone guitars?

A. No, I'm not in the guitar business.

Q. Is Gibson Guitar Corp. a large

D'Addario

guitar manufacturer?

A. Yes.

Q. And do your guitars, guitar strings get placed on Gibson guitars?

A. Yes.

Q. Okay. Not as original equipment, I might add.

Q. They get placed after-market?

A. Correct, yes.

Q. And in fact, some of your artists that represent EXP strings are actually playing Gibson instruments, is that correct?

A. I don't know of any off the top of my head but I would make that assumption.

Q. Okay. You sell mandolin strings as well, correct?

A. Yes.

Q. And in fact you sell EXP mandolin strings, correct?

A. Yes, we do.

Q. And Gibson sells and manufacturers mandolins, is that correct?

A. Yes, they do.

Q. In fact Gibson is one of the

D'Addario

leaders in mandolins, is that correct?
A. I'm not sure.
Q. You said on direct that you had a sizable market share of the guitar string industry, is that correct?
A. Yes.
Q. I think you said, I can't remember what number you used, what number did you use, rough?
A. Be specific about the question. Is it guitar strings, music strings, acoustic, electric guitar strings?
Q. Just let's go with guitar strings.
A. I would say we probably have about, between 20 and 25 percent market share.
Q. Do you know whether Peter Frampton is a Gibson artist?
A. No, I don't.
Q. Okay, do you know whether -- well, we can keep going. Do you know whether Martina McBride is a Gibson artist?
A. No, I don't.
Q. Do you know whether Ricky Skaggs

DAddario

is a Gibson artist?
A. I do not. What do you mean by Gibson artist?
Q. Does Ricky Skaggs play Gibson musical instruments?
A. Maybe. I don't know.
Q. Now, on direct you stated that you advertise EXP strings in various magazines, correct?
A. Yes.
Q. One of those is MMR magazine?
A. Yes.
Q. And isn't it true that Gibson also advertises in MMR magazine?
A. Yes.
Q. Isn't it true that Gibson advertises in Guitar Player magazine?
A. Yes.
Q. Isn't it true that Gibson advertises in Guitar One Magazine?
A. Yes.
Q. Isn't it true that Gibson markets its products in Guitar World magazine?
A. Yes.

D'Addario

Q. Now you said that you went to various trade shows and you mentioned the NAMM show and the Frankfurt show, is that correct?
A. Yes.
Q. Isn't it true that Gibson shows its products at the NAMM shows?
A. Yes.
Q. And isn't it true that Gibson shows its products at the Frankfurt show?
A. Yes.
Q. Now you also said that you sponsor or promote EXP products at business to consumer shows, B to C shows such as guitar shows, things like that, is that correct?
A. Yes.
Q. And at these shows there will be guitars from Gibson, isn't that correct?
A. Yes.
Q. And in fact there will be Explorer guitars from Gibson as well, isn't that correct?
MR. BODNER: If you know.
A. Don't know.
Q. Do you know the Explorer guitar?

D'Addario

A. Yes.
Q. Do you know when the Explorer guitar originated?
A. No.
Q. Have you ever heard of the 57 Korina guitar?
A. No.
Q. You said that you promote EXP strings at concerts, is that correct?
A. Yes.
Q. Isn't it also a common occurrence that at these concerts, they have guitar sponsors, the concerts?
A. Yes.
Q. You stated on direct that you believe that the consumers of your strings are sophisticated consumers, is that correct?
A. I said that the users of EXP strings are sophisticated users.
Q. Okay. I think you stated on direct that EXP strings cost about ten dollars at MSRP?
A. Yes.
Q. Okay. How much do your lower end

D'Addario

guitar strings cost?
A. About half that.
Q. So we are still talking about a purchase of less than $15, is that correct?
A. Yes.
Q. Now, how often -- how long do your EXP guitar strings last?
A. It is different for different players.
Q. How often does a standard electric guitar player change his or her strings?
MR. BODNER: Objection. There is no definition of what standard is.
MR. LANQUIST: Okay.
A. It's different for every player. Not a question you can answer.
Q. Okay. Do many guitar players change their strings multiple times in one year?
A. Yes.
Q. And as a result, do these people place your strings to replace the OEM strings on their guitars?

D'Addario

A. Yes.
Q. Now, you also sell your strings to retailers, correct?
A. Yes.
Q. Would these retailers also sell guitars?
A. Yes.
Q. Would these retailers also sell Gibson guitars?
A. Yes.
Q. Would these retailers also sell Gibson Explorer guitars?
A. Don't know.
Q. Let me ask you to take a look at Exhibit CC, please.
A. Okay.
Q. Specifically, D 000074.
A. Uh-huh.
Q. You need to say yes for his benefit --
A. Yes, I'm sorry.
Q. Is this a press release that was issued by D'Addario?
A. Yes.

D'Addario

Q. In the second paragraph, it says, "To backtrack a little, the 'EXP' stands for extended play." Do you see that?
A. Yes.
Q. So it is correct that in its press releases, D'Addario has used "EXP" to mean extended play?
A. Yes.
Q. Let's go on to Exhibit CD.
A. Okay.
Q. Specifically, D 84.
A. Okay.
Q. Upper left corner, is that an ES guitar?
A. Bill Frisell's picture?
Q. Yes.
A. I have no idea.
Q. Let's look at Exhibit CE.
A. Okay.
Q. Specifically D 100.
A. Yes.
Q. And the drawing in the upper right corner shows that the exterior winding wrap is coated, is that correct?

D'Addario

A. Yes, it is.
Q. Let's go to Exhibit CH, which is the calendar. Start with 116.
A. Yes.
Q. Isn't that a Gibson ES shown --
A. 116?
Q. Yes.
A. Don't know.
Q. Let's go back to 146.
A. Yes.
Q. Isn't that a Les Paul?
A. Yes, it is.
Q. Les Paul is manufactured by Gibson?
A. Uh-huh. Yes, it is.
Q. And that is Ann McCue, correct?
A. Yes, it is.
Q. Exhibit -- I'm sorry, page 160, still on Exhibit CH.
A. Yes.
Q. What kind of guitar is that?
A. It's a Gibson Les Paul, I believe.
Q. Page 162, which is two pages

D'Addario

later. Do you know what kind of guitar that is?

A. No, I'm not sure exactly what model it is.

Q. Does it look like an ES?

A. It does.

Q. Is ES manufactured by Gibson?

A. Yes.

Q. Let's go on to CJ.

A. Yes.

Q. Specifically page 174.

A. Okay.

Q. Another press release, correct?

A. Correct.

Q. And in the second paragraph again it states that EXP stands for extended play, is that correct?

A. Yes.

Q. Let's take a look at Exhibit CK.

A. Yes.

Q. I notice that you are using EXP as an item designation as well, is that correct?

A. That's correct.

D'Addario

Q. And why do you use EXP as an item designation as well as a trademark?

A. To distinguish them from our regular strings.

Q. And how do consumers or distributors use an item name?

A. Item number or name?

Q. Number.

A. Well, all our computer systems use an item number field and that's the designation for that product.

Q. So when people call up they say, I want some EXP 15's?

A. That's correct.

Q. Let's go to Exhibit CL. Page 206. Center of the page.

A. Uh-huh.

Q. Down at the bottom. Is that a Gibson Les Paul?

A. Yes, it is.

Q. Let's go to Exhibit CO.

A. Okay.

Q. Specifically page 225.

A. Okay.

D'Addario

Q. Do you know what kind of mandolin that is?

A. It appears to be a Gibson. I can't read the head stock.

Q. Exhibit --

A. I'm not sure.

Q. Page 231?

A. Yes.

Q. Exhibit CO.

A. Uh-huh. Yes.

Q. What does that head stock look like to you?

A. It's kind of blurry.

Q. Does it look like a dove wing peg head?

A. Could be.

Q. Does Gibson sell dove wing peg heads?

A. Yes.

Q. Exhibit CR, page 268, please. Bottom of the page.

A. Uh-huh. Yes.

Q. Is that a Gibson ES?

A. I'm not sure. You keep asking me

D'Addario

those questions. I am not a guitar manufacturer so that could be a copy of one, it could be a similarly designed guitar. I can't answer that. It's too --

Q. Okay, page 278.

A. Okay.

Q. Right middle shows Doyle Lawson.

A. Obviously a Gibson instrument.

Q. Gibson mandolin?

A. Correct.

Q. As a matter of fact it is the Gibson mandolin?

A. It is a Gibson mandolin. I don't know what that -- I see what you mean. It says the Gibson on it. Right.

Q. Page 283.

A. Yes.

Q. Again picture of Doyle Lawson?

A. Yes.

Q. It's the Gibson mandolin?

A. Yes, it is.

Q. Are you aware of anyone referring to the Gibson Explorer guitar as an EXP?

A. No.

DAddario

Q. Does Gibson sell guitar strings?
A. Yes, they do.
Q. In your OEM program, do you take any steps to require manufacturers to specifically tell consumers that the EXP strings that may be on their guitar originate from D'Addario?
A. Yes.
Q. How do you do that?
A. We have a marketing program that if they are part of it they get a little bit better price. If they promote our strings for us.
Q. Right, but do you require the manufacturers to label the products as having D'Addario EXP strings?
A. To be part of the OEM/EXP program, they have to indicate that the guitar is strung with D'Addario EXP COATED strings.
Q. But they don't have to?
A. To get the special price they do, yes.
Q. But if they don't want the special price?

D'Addario

A. They don't have to.
Q. Okay. Let me hand you what we will mark as Exhibit 15.
(Whereupon, trade ad for D'Addario EXP COATED strings marked Petitioner's Exhibit 15 for identification, as of this date.)
Q. Can you identify Exhibit 15?
A. This appears to be a trade ad or press release, I'm not sure, for D'Addario EXP COATED strings.
Q. And did this originate from D'Addario?
A. Yes, it did.
Q. In the upper left does it say "EXP means extended play"?
MR. BODNER: Objection.
THE WITNESS: Does that mean not to answer it?
MR. BODNER: You can answer it.
A. Yes, it does say that.
Q. Let me hand you what we will mark as Exhibit 16.
(Whereupon, document from website

DAddario

marked Petitioner's Exhibit 16 for identification, as of this date.)
Q. Can you identify this document?
A. It's from our website.
Q. Is this website maintained by or for D'Addario or at D'Addario's instruction?
A. Yes.
Q. About a little bit under halfway down in the middle column does it say "EXP means extended play"?
A. Yes.
MR. BODNER: Objection. This is beyond the direct examination of this witness.
Q. Does D'Addario markets strings with the EXP mark as opposed to its packaging? In other words, you testified on direct that D'Addario marks its packaging with EXP, correct?
A. Uh-huh.
Q. You need to say yes for his benefit.
A. Yes. Sorry.
Q. Does EXP -- I'm sorry, does

D'Addario

D'Addario place "EXP" on the strings themselves?
A. It's not possible to do that. The strings are too small.
Q. Does D'Addario place "D'Addario" on its strings?
A. No.
Q. Now, you testified on direct that in addition to mandolin strings and electric guitar strings, that D'Addario also manufactures bass strings?
A. Yes.
Q. Does Gibson sell basses?
A. Yes.
Q. You testified that D'Addario sells strings for acoustic guitars, correct?
A. Yes.
Q. And does Gibson sell acoustic guitars?
A. Yes.
Q. Do D'Addario EXP strings end up on Gibson Explorer guitars?
MR. BODNER: If you know.
A. I don't know the answer to that.

1 D'Addario
2 Q. Well, from time to time you said
3 that you review your, what do you want to call
4 them, chat rooms or --
5 A. Bulletin boards.
6 Q. And in fact don't you have some
7 instances where -- first of all, don't you have
8 a bulletin board devoted to EXP strings?
9 A. No.
10 Q. Is that not one of the topics
11 that people can post under EXP strings?
12 A. Yes, they can.
13 Q. Isn't it common on your website
14 for people also to list the guitars that they
15 own?
16 A. Yes. Yes.
17 Q. And isn't it true that some of
18 them actually list that they have Gibson --
19 Gibson Explorers?
20 A. I haven't seen that. It could be
21 true.
22 MR. LANQUIST: That's all I have.
23 MR. BODNER: I just want to go on
24 redirect briefly.
25 EXAMINATION (Continued)

1 DAddario
2 BY MR. BODNER:
3 Q. We had talked earlier on direct
4 about your policing the market. With respect
5 to counterfeit strings, is it the policy of the
6 company to aggressively protect the trademarks
7 of J. D'Addario & Company and go after any
8 counterfeit manufacturer using trademarks that
9 would be confusingly similar to J. D'Addario's
10 trademarks?
11 A. Absolutely. We are very serious
12 about protecting our intellectual property.
13 Q. Would you do that also if there
14 was a counterfeit EXP or EXP COATED string?
15 A. Without question.
16 Q. In some of your advertisements
17 that Mr. Lanquist was asking you on cross
18 about, you identified some of the guitars as,
19 well? You identified as being Gibson guitars
20 and others you were not sure. Is it the shape
21 of the guitar or -- strike that.
22 Do other companies make guitars
23 that are similar in shape to Gibson?
24 A. Yes, they do. I might add that,
25 you know, there were many pictures of Gibson

1 D'Addario
2 guitars in our use -- our users use Gibson
3 guitars. I haven't seen one Gibson Explorer
4 guitar in that series of pictures. I haven't
5 seen one in all of this stuff here.
6 Q. On all of the guitars that you
7 were asked to review again, or even more so on
8 all of the advertisements, have you ever seen
9 EXP being used in those advertisements on a
10 Gibson guitar?
11 A. I'm not sure I understand the
12 question. Could you rephrase it?
13 Q. All right. The guitars that you
14 identified as possibly being a Gibson guitar,
15 were you looking at the shape to identify it or
16 were you looking at EXP on that guitar to
17 identify it as a Gibson guitar?
18 A. Either the shape or the Gibson
19 logo on the head stock. On the peg head.
20 Q. But you did not see "EXP"
21 anywhere on the guitar?
22 A. No.
23 Q. You testified that, on
24 cross-examination, that Gibson also attends the
25 NAMM show and some of the other shows, is that

1 DAddario
2 correct?
3 A. Yes, it is.
4 Q. How often have you seen at any of
5 these shows Gibson using EXP or EXP COATED or
6 EX on any of their guitars?
7 A. I have not.
8 Q. Has anyone reported to you that
9 they have seen Gibson using EX or EXP or EXP
10 COATED on any of their guitars?
11 A. No.
12 Q. In the magazines that you
13 advertise in, you stated on cross-examination
14 that Gibson also advertises in those same
15 magazines. In those magazines, have you ever
16 seen Gibson use EXP or EX in any of their
17 advertisements?
18 A. No.
19 Q. At the shows that, and I don't
20 mean trade shows, at the concerts that you
21 co-sponsor, if Gibson were at any of these
22 shows, have you ever seen Gibson use EX or EXP
23 in connection with any of their guitars?
24 A. No.
25 MR. BODNER: I have no further

D'Addario
questions.
MR. LANQUIST: Mr. D'Addario, thank you.
THE WITNESS: Sure, thank you.
(Time noted: 12:39 p.m.)

Subscribed and sworn to before me
this 7th day of April, 2004.

Gerald T. Barlow

Registration No. 02B04937733
Commission Expires on June 20, 2006

CERTIFICATE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, ROBERT E. LEVY, a Certified 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 13th day of March, 2004.

ROBERT E. LEVY, C.S.R.

March 4, 2004

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