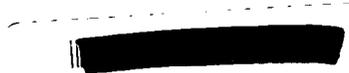


Hub

**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



04-09-2004

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #22

-----X
)
 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.)
)
 -----X

Cancellation Nos. 92041175
and 92041688 (Consolidated)

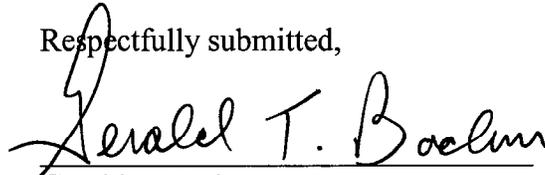
**SUBMISSION OF EXECUTED AND NOTARIZED
DEPOSITION OF JAMES D'ADDARIO DATED MARCH 4, 2004**

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
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

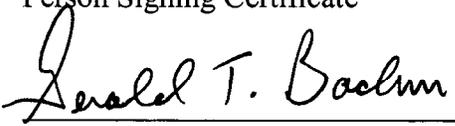
REGISTRATION NO.: 2,554,110 and 2,554,111

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

Signature

April 9, 2004
Date of Signature

CERTIFICATE OF EXPRESS MAIL

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: United States Patent and Trademark Office, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3514 on April 9, 2004, via Express Mail, Post Office to Addressee, Express Mail No. ER 360116980 US.

Gerald T. Bodner
Person Signing Certificate

Gerald T. Bodner
Signature

April 9, 2004
Date of Signature

CONFIDENTIAL

1

C O N F I D E N T I A L

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

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

1 JAMES D'ADDARIO, residing at 45
2 Clock Tower Lane, Old Westbury, New
3 York, 11568, having been
4 first duly sworn by the Notary Public
5 (Robert E. Levy), was examined and
6 testified as follows:
7

8 EXAMINATION BY
9 MR. BODNER:

10 Q. Can you state your full name and
11 address for the record?
12 A. James D'Addario, 45 Clock Tower
13 Lane, Old Westbury, New York.

14 Q. Can you describe your education
15 starting with high school?
16 A. I went to West Hempstead High
17 school, graduated, attended Nassau Community
18 College for two years, transferred to Hofstra,
19 completed my bachelor of arts in music. With a
20 minor in music education.

21 Q. When was that?
22 A. 1970. Graduated in 1970.

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

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

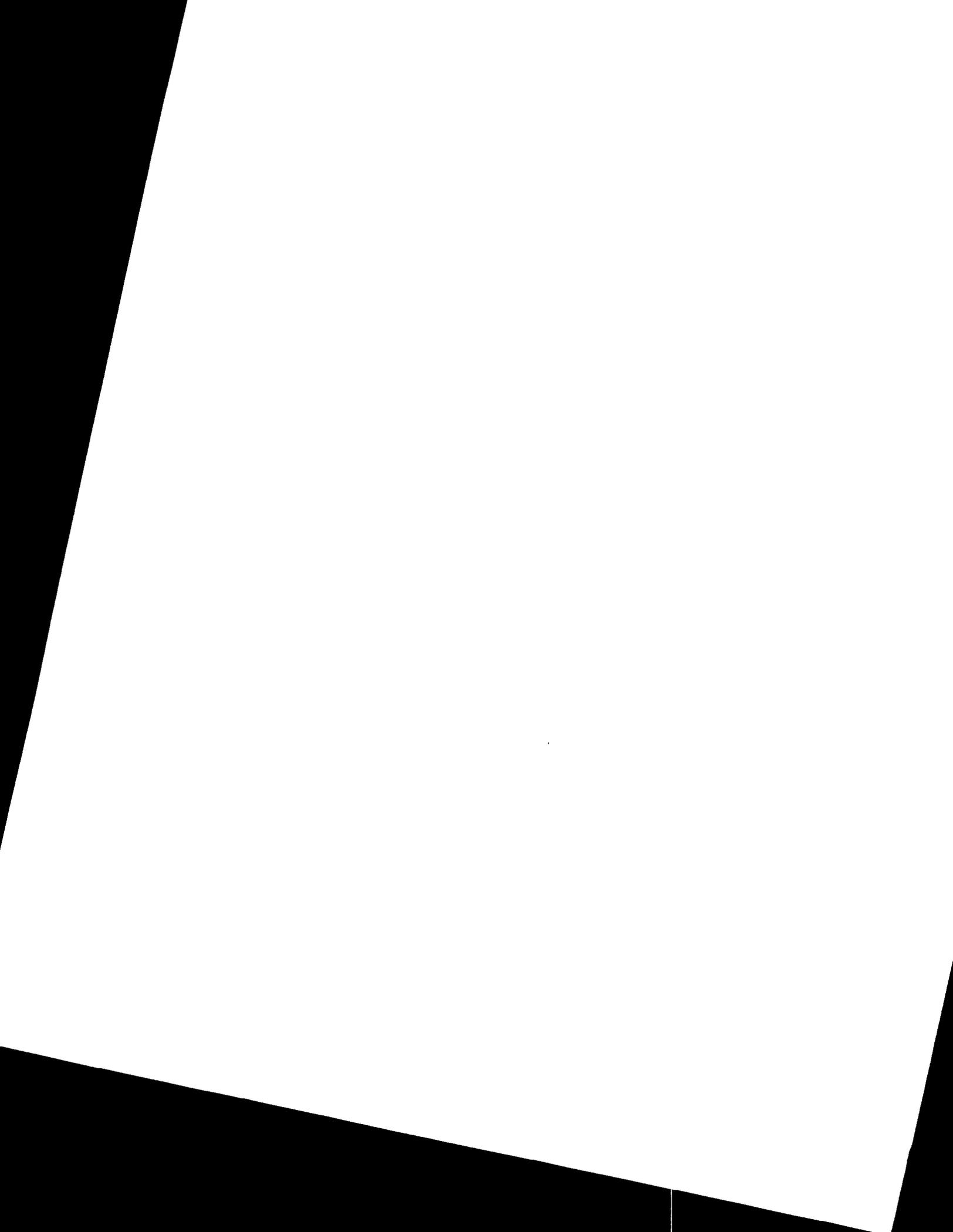
15 I was always the New York sales
16 rep, as I began to work more, I got more and
17 more responsibilities with Darco and Martin.
18 What happened in 1969 is my dad sold the Darco
19 company to C.F. Martin with a stock transfer
20 type deal and we worked for the Martin company
21 for five years and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

1 D'Addario
2 still being their sale rep for the dealers and
3 I also was appointed advertising coordinator
4 for the entire organization, and then I had the
5 domestic distributor nationwide responsibility
6 of calling on those customers as well, so I had
7 like four hats that they had me wearing. Up
8 until I was about 22 years old. And decided
9 leave the company.

10 In 1973 I left the company and
11 started this company, J. D'Addario Comp
12 my wife, and originally this company wa
13 started as a printing graphics and advert
14 company, and I basically was able to ac
15 the assets of the printing operation that
16 created for Darco and Martin by excha
17 stock that I had earned and started do
18 of their printing as a third-party vend
19 expanded by getting other customers
20 industries on Long Island to have us
21 advertising and graphics and printi
22 we ended up with about four or five
23 in a small place in Lynbrook, abo
24 square feet just for about a year a
25 In 1974 my brother Joh

VERITEXT/NEW YORK REPORTING COMPANY, I

212-267-6868



2	<p>Appearances:</p> <p>WADDEY & PATTERSON, P.C. Attorneys for Petitioner Bank of America Plaza 414 Union Street - Suite 2020 Nashville, Tennessee 37219</p> <p>By: EDWARD D. LANQUIST, JR., ESQ., of Counsel</p> <p>BODNER & O'ROURKE, LLP Attorneys for Registrant 425 Broadhollow Road - Suite 108 Melville, New York 11747</p> <p>By: GERALD T. BODNER, ESQ., of Counsel</p> <p style="text-align: center;">oOo</p>	4
3	<p>1 JAMES D'ADDARIO, residing at 45 2 Clock Tower Lane, Old Westbury, New 3 York, 11568, having been 4 first duly sworn by the Notary Public 5 (Robert E. Levy), was examined and 6 testified as follows: 7 8 EXAMINATION BY 9 MR. BODNER: 10 Q. Can you state your full name and 11 address for the record? 12 A. James D'Addario, 45 Clock Tower 13 Lane, Old Westbury, New York. 14 Q. Can you describe your education 15 starting with high school? 16 A. I went to West Hempstead High 17 school, graduated, attended Nassau Community 18 College for two years, transferred to Hofstra, 19 completed my bachelor of arts in music. With a 20 minor in music education. 21 Q. When was that? 22 A. 1970. Graduated in 1970. 23 Q. Can you describe your employment 24 after college to your present employment? And 25 also the years --</p>	5
	<p>1 D'Addario 2 A. Actually I started working while 3 I was in college. I was -- my dad owned a 4 family business, Darco Music Strings, family 5 business. And I was helping him out part time. 6 At that time, he was not really successful 7 marketing a brand of strings. He was more of a 8 private label manufacturer and C.F. Martin & 9 Company was one of our largest customers and 10 they needed a sales representative for the New 11 York metropolitan area and they hired me while 12 I was in college to be their sales rep, so from 13 about 1968, '69, through 1973, I held that 14 position in various capacities. 15 I was always the New York sales 16 rep, as I began to work more, I got more and 17 more responsibilities with Darco and Martin. 18 What happened in 1969 is my dad sold the Darco 19 company to C.F. Martin with a stock transfer 20 type deal and we worked for the Martin company 21 for five years and I held various capacities 22 there. I created an in-plant printing 23 operation and advertising department. That was 24 then used by the whole corporation. 25 So I managed that while I was</p>	

6

1 D'Addario
 2 father decided to leave Martin and we all three
 3 decided to manufacture strings again. I felt
 4 that they had an employment contract for five
 5 years so they could not leave until the five
 6 years was up. I did not have an employment
 7 contract so I left early and started the
 8 printing company.
 9 I was a little bored with the
 10 printing. I liked it, I loved it. I was
 11 successful at it. We had financial success in
 12 a year and a half, paid off our debts that --
 13 small debts that we incurred to start the
 14 company and, but missed the music business
 15 because I'm a musician, and from when I was 13
 16 years old, my dad was taking me to the NAMM
 17 shows.
 18 My family is a fourth generation
 19 in this country manufacturing strings. My
 20 grandfather came here in 1905 and our family
 21 has been making strings in Italy since 1680 and
 22 I was anxious to go back into the business, but
 23 this time, concentrate on marketing a brand,
 24 our own brand.
 25 My grandfather and father never

7

1 D'Addario
 2 used the name D'Addario on a string as a brand
 3 name so we registered our family name as a
 4 brand name and we began in August 1974
 5 producing strings as D'Addario, and from that
 6 little humble 2,000-square-foot building, in
 7 1974, we now have 700 employees and 190,000
 8 feet on this street in three buildings,
 9 distribution company in Canada, various other
 10 satellite operations in California, Chicago,
 11 Japan, Australia, and it's grown into an
 12 international business where we sell our
 13 product in 106 countries.
 14 Q. What is your title now?
 15 A. I'm president and chief executive
 16 officer.
 17 Q. When did you become president and
 18 CEO?
 19 A. I took the title CEO in 1997 when
 20 my brother John decided to retire.
 21 Q. Okay. And before that what was
 22 your title?
 23 A. I was a co-vice president with my
 24 brother, and for most of, I don't remember the
 25 dates, most of the time we just worked as

8

1 D'Addario
 2 equals. We weren't title-driven guys so he
 3 assumed, for legal reasons to sign documents
 4 and so on, he assumed the title of president.
 5 And, but it was really a peer to peer thing.
 6 We never overlapped on our responsibilities.
 7 We always described our partnership as he
 8 handled today and I handled tomorrow, so I was
 9 the guy who always planned the future working
 10 on new technologies for strings and working on
 11 new marketing for strings and he was working on
 12 keeping the business running.
 13 So in '97, at 55 years old, he
 14 was tired, he was working since he was 17 years
 15 old and he decided that he wanted to slow down
 16 and he has phased himself out of active daily
 17 participation in the business. He still has
 18 his office here, he comes in when he's in town,
 19 about 10 percent of the time, and he is
 20 involved in several different organizations and
 21 our philanthropic efforts with the D'Addario
 22 Foundation for the Performing Arts. He handles
 23 a few things but minor, so I'm really the
 24 president running the operation now.
 25 Q. Okay. Does your corporation have

9

1 D'Addario
 2 a mission statement?
 3 A. Yes.
 4 MR. BODNER: I would like to mark
 5 this as Exhibit BT.
 6 (Whereupon, mission statement
 7 marked Registrant's Exhibit BT for
 8 identification, as of this date.)
 9 Q. Mr. D'Addario, I would like you
 10 to take a look at this document marked Exhibit
 11 BT and can you tell me what that is, please?
 12 A. This is a copy of a vision
 13 mission and core principles document that
 14 unfortunately we probably spent way too many
 15 hours creating. You asked about what it is. I
 16 don't know if you want me to read the entire
 17 thing.
 18 Q. I wanted to know if you do have a
 19 corporate mission and what your purpose is?
 20 A. Our mission as a business is to
 21 be the player's choice of music accessories by
 22 offering the highest quality innovative
 23 products together with unparalleled customer
 24 service driven by a dedicated and creative
 25 team. We are committed to helping our

10

1 D'Addario

2 customers in the music industry thrive.

3 Q. Okay. And this mission

4 statement, this is what you use through your

5 business dealings and in running your

6 corporation?

7 A. That's correct. In fact, I pull

8 it out all the time whenever any employee or

9 anybody brings a deal to me that has anything

10 to do with distributing or manufacturing

11 instruments. We are in the accessory business.

12 Q. How many products do you sell?

13 A. Over 4,000 stock keeping units,

14 SKU's.

15 Q. Could you name some of those

16 products, generically?

17 A. The core business is strings for

18 guitars and other fretted instruments, but we

19 also make strings for the bowed family, violin,

20 viola, cello, bass. We manufacture drum heads,

21 those are the replacement heads that go on, or

22 original equipment heads, that go on drums.

23 We also manufacture a broad line

24 of accessory products like guitar straps,

25 saxophone straps, instrument cables, microphone

12

1 D'Addario

2 products that we have added since 1995.

3 Q. So what is your belief based on?

4 A. Well, obviously the success of

5 the company, the sales volume, the recognition

6 in the trade press, the recognition from the

7 customers. I mean we get scores of letters

8 every week complimenting our service or

9 products, that kind of thing.

10 MR. BODNER: I would like to mark

11 as Exhibit BU a number of

12 correspondences grouped together.

13 (Whereupon, correspondence marked

14 Registrant's Exhibit BU for

15 identification, as of this date.)

16 MR. LANQUIST: I want to object

17 to Exhibit BU on the grounds that they

18 are hearsay.

19 MR. BODNER: I would like to show

20 this to the witness.

21 (Handing).

22 Q. Mr. D'Addario, would you like to

23 take a look at some of those?

24 A. Yes.

25 Q. Do you recognize some of that

11

1 D'Addario *winders*

2 cables, all kinds of audio cables, tools for

3 musicians to use to change strings, cut

4 strings, peg wires, care products for guitars,

5 humidifiers, humidity sensors, polish,

6 polishing cloths. All those kinds of

7 accessories that musicians would purchase.

8 Q. Does your company make guitars?

9 A. No.

10 Q. Does your company make any

11 musical instruments?

12 A. None whatsoever.

13 Q. So --

14 A. And never has.

15 Q. So you just make accessories for

16 musical instruments, is that correct?

17 A. That's correct.

18 Q. Is it your belief that

19 J. D'Addario & Company has acquired a

20 reputation in the musical industry for high

21 quality products?

22 A. Definitely. Our reputation is, I

23 think, one of the best in the business for

24 providing a quality accessory product beginning

25 with strings and now branching into other

13

1 D'Addario

2 correspondence?

3 A. Yes, typical letters from recent

4 days. Actually most of them do come pretty

5 recent. About compliments from either

6 musicians, consumers, customers. Typical

7 correspondence that we get weekly.

8 Q. Is there someone that retains

9 this correspondence?

10 A. Yes, we have a full-time employee

11 in marketing that is called a consumer

12 relations rep who answers daily every single

13 thing that comes in.

14 Q. Who is that person?

15 A. Matt Sweeney.

16 Q. For this deposition did Mr.

17 Sweeney or did somebody else gather this

18 information for you?

19 A. I believe Mr. Sweeney did, yes.

20 Q. Do you recognize any of these

21 letters in here?

22 A. I just saw them yesterday when I

23 asked for them. I recognize them as the

24 letters he gave me.

25 Q. Okay. That's fine. Are these

14

1 D'Addario
2 letters and correspondence, I note there are
3 also e-mails too.
4 A. Uh-huh.
5 Q. Are they complimentary of both
6 the company, J. D'Addario as a whole and also
7 regarding EXP strings?
8 A. Yes.
9 Q. Do you ever ask for any consumer
10 feedback on the products that you sell?
11 A. Yes. From time to time we run
12 surveys, market studies, send out
13 questionnaires.
14 Q. Okay.
15 A. Sometimes in a formal way,
16 sometimes in an informal way.
17 Q. Well, what would these market
18 surveys consist of?
19 A. It might consist of sending out
20 several samples of prototype product with a
21 questionnaire asking people to comment on it
22 or, you know, test it, give us some feedback.
23 Q. Okay.
24 A. Sometimes we actually put a
25 questionnaire in a product we are marketing to

15

1 D'Addario
2 get feedback on a new package design or a new
3 product. ~~That way~~ to see what people think
4 about it. We have done that from time to time
5 as well.
6 Q. Do you have an Internet site?
7 A. Yes.
8 Q. Do you have like a bulletin
9 board, something where you ask for customer
10 evaluation or comments?
11 A. Well, we have a bulletin board on
12 each of our branded sites. We have a separate
13 subsite for each brand that we sell and there
14 is a bulletin board where people can discuss
15 whatever they want to discuss. We don't tell
16 them what to discuss or ask them. It's there
17 for their use as a community.
18 But in that, in the context of
19 those websites you will find lots of comments
20 and compliments and questions and things about
21 strings so you get lots of feedback about our
22 products from those bulletin boards, and they
23 are reviewed daily.
24 Q. Does that also include EXP
25 strings?

16

1 D'Addario
2 A. Absolutely.
3 Q. Okay. Do you get any input from
4 distributors or retailers?
5 A. We are always in touch with our
6 customers. We have eight people on the
7 telephones talking to retailers daily. We have
8 four on the road visiting retailers. We have
9 four people on the road visiting distributors
10 worldwide so we get lots of feedback through
11 that network. We also obviously get
12 correspondence from our customers, B to B
13 customers as ~~just~~ opposed to these consumers
14 like you see here.
15 Q. The consumers you see in Exhibit
16 BU?
17 A. Yes.
18 Q. Okay. Do you consider
19 J. D'Addario & Company to be an innovative
20 company?
21 A. Yes. Absolutely. I think that
22 that's what we built the business on as being
23 in the forefront of technology for accessories.
24 Q. Okay. Do you come out with new
25 products?

17

1 D'Addario
2 A. Continually. Maybe too many my
3 marketing people say.
4 Q. Does the company hold any
5 patents?
6 A. Yes. We have quite a few patents
7 concentrated in the recent years, it's been,
8 you know, kind of very active. We have I
9 believe more than 25 U.S. patents and maybe 30
10 some odd total U.S. and international.
11 Q. Okay, and these are on your
12 musical accessories?
13 A. Yes. On all the products we
14 make. Depends on what the claims in the
15 innovation might be.
16 Q. Okay. Do you consider
17 J. D'Addario & Company to be well known in the
18 musical industry?
19 A. Well, we are the largest
20 manufacturer of strings in the world and second
21 largest manufacturer of drum heads. We have
22 the largest market share of strings worldwide,
23 so it would be very safe to assume that we are
24 well known. Judging from the fact that just
25 guitar sets alone we sell more than 12 million

18

1 D'Addario
 2 a year. A lot of times printing the name
 3 D'Addario on the package, somebody must know
 4 about us.
 5 Q. That includes the EXP strings?
 6 A. Yes.
 7 Q. And is the company particularly
 8 known as an accessory company?
 9 A. Yes.
 10 Q. Do you believe the company is
 11 well known to consumers?
 12 A. Sure.
 13 Q. And to retailers?
 14 A. Uh-huh.
 15 Q. And to distributors?
 16 A. Yes.
 17 Q. Do you put the name J. D'Addario
 18 & Company on each of your products that have
 19 the mark EXP or EXP COATED?
 20 A. Yes.
 21 Q. So when someone sees the mark EXP
 22 or the mark EXP COATED on the products, they
 23 also see the company name?
 24 A. Yes.
 25 Q. Do you consider Gibson or

19

1 D'Addario
 2 Epiphone to be a competitor of J. D'Addario &
 3 Company?
 4 A. Not of any significance, no.
 5 Their market share is infinitesimal in strings
 6 and accessories.
 7 Q. Do you know if Epiphone makes any
 8 strings?
 9 A. I don't think they do. Our
 10 research shows that they don't have a brand for
 11 strings. They don't use their brand on
 12 strings.
 13 Q. What about Gibson?
 14 A. Gibson does make some strings and
 15 market them but their market share is very
 16 small. Maybe 1 percent.
 17 Q. When you sell strings to a
 18 consumer, how are they typically sold, as a set
 19 of six strings?
 20 A. Vast majority of guitar players
 21 buy a set of strings and change the set.
 22 Violin players might buy one string.
 23 Q. This who include EXP strings?
 24 A. Absolutely, right.
 25 Q. How much does a set of EXP

20

1 D'Addario
 2 strings typically sell for at the consumer
 3 level?
 4 A. Depending on the model, \$9.99 to
 5 \$14.99.
 6 Q. Do you have any idea what a
 7 Gibson guitar would cost to a consumer?
 8 A. Hundreds of dollars, 500, a
 9 thousand dollars, I don't know. Gibson guitar
 10 is a high-priced guitar so the average price
 11 might be close to a thousand, I guess. 800.
 12 I'm not sure. But --
 13 Q. You are saying around there at
 14 that level?
 15 A. Yes. In the hundreds.
 16 Q. What about an Epiphone guitar?
 17 A. It's known as a lower priced line
 18 of similar design as Gibson's, so whatever the
 19 comparable instrument in the Gibson line, it
 20 might be cheaper in the Epiphone line because
 21 it is imported.
 22 Q. Okay. Are you using the marks
 23 EXP and EXP COATED on your products?
 24 A. Yes. On musical instrument
 25 strings.

21

1 D'Addario
 2 MR. BODNER: I would like to mark
 3 as Exhibit BV, document production
 4 numbers D 000040 through D 000071.
 5 MR. LANQUIST: I have D 10
 6 through --
 7 MR. BODNER: That's because I
 8 probably gave you the wrong one. Here
 9 you go.
 10 (Handing)
 11 (Whereupon, EXP registration file
 12 bearing production numbers D 000040
 13 through D 000071 marked Registrant's
 14 Exhibit BV for identification, as of
 15 this date.)
 16 MR. BODNER: I'll state for the
 17 record this was a document that was
 18 produced to Mr. Lanquist and it is the
 19 file history of the EXP COATED -- no,
 20 EXP, the EXP registration, and I am
 21 going to show it to Mr. D'Addario and
 22 have him take a look at it.
 23 (Handing)
 24 MR. LANQUIST: To clarify, it is
 25 a copy of the EXP registration file.

22

1 D'Addario
 2 MR. BODNER: Prosecution filed
 3 before the Patent and Trademark Office.
 4 THE WITNESS: Right.
 5 Q. Okay, Mr. D'Addario, can you
 6 please turn to document number 48, the last two
 7 digits are 48. So it is D 000048.
 8 A. Right.
 9 Q. Do you recognize that document?
 10 A. Yes.
 11 Q. Is that the registration for your
 12 mark EXP?
 13 A. Yes.
 14 Q. And the registration number is
 15 2,554,110, is that correct?
 16 A. Yes. That's correct.
 17 Q. I would like you to take a look,
 18 Mr. D'Addario, at document numbers D 000067 and
 19 68, which is the next page.
 20 A. Uh-huh.
 21 Q. I believe this is the application
 22 for filing the trademark application for
 23 registration of the mark EXP. Is that correct?
 24 A. Yes, it is.
 25 Q. On page 68, is that your -- do

23

1 D'Addario
 2 you recognize that to be your signature on that
 3 page?
 4 A. Yes, it is.
 5 Q. I would like you to take a look
 6 at 56, number 56, and the full number is
 7 D 000056. As part of the file history, I
 8 believe that's a specimen of a box of D'Addario
 9 strings that was submitted.
 10 A. Uh-huh.
 11 Q. Do you recognize that?
 12 A. Yes.
 13 Q. Okay. And do you verify that
 14 that is a specimen of a box that the --
 15 A. It is a photocopy of EXP guitar
 16 string packaging.
 17 Q. Okay. Now I would like you to
 18 turn to number 54 and the full number is
 19 D 000054. And with that is the next page too
 20 which is D 000055. Now, I believe this is what
 21 is called an allegation of use, and on page 55,
 22 do you recognize the signature that's on that
 23 page?
 24 A. Yes.
 25 Q. And who is that --

24

1 D'Addario
 2 A. Michael Russo, chief operating
 3 officer, J. D'Addario & Company.
 4 Q. Do you recognize that signature
 5 to be his signature?
 6 A. Yes.
 7 Q. If you go to page 54, towards the
 8 bottom of that page, under the heading "Use
 9 Information," I believe it says, "First use
 10 anywhere date" and after that it has
 11 "01/22/2001."
 12 A. That's correct.
 13 Q. And below that it has first use
 14 in commerce date as 01/22/2001. Is it your
 15 contention that your first use in commerce and
 16 first use anywhere for your EXP strings is
 17 January 22, 2001?
 18 A. Yes.
 19 MR. BODNER: Now, I would like to
 20 mark as an exhibit, document numbers,
 21 production numbers I should say,
 22 D 000010 through D 000039 as BW.
 23 (Whereupon, file history for mark
 24 EXP COATED bearing production numbers
 25 D 000010 through D 000039 marked

25

1 D'Addario
 2 Registrant's Exhibit BW for
 3 identification, as of this date.)
 4 Q. Mr. D'Addario, I would like you
 5 to take a look at this document. Again I'll
 6 state for the record that this is the file
 7 history for the mark EXP COATED, the registered
 8 mark EXP COATED, that was from the Patent and
 9 Trademark Office records.
 10 Please turn to number 17, which
 11 is D 000017. Do you recognize that document to
 12 be the registration for your mark EXP COATED?
 13 A. Yes.
 14 Q. Can you go towards the end of
 15 this package of documents to number 35 and 36,
 16 and the full numbers would be D 000035 and
 17 D 000036. Do you recognize this to be an
 18 application for filing your trademark before
 19 the Patent and Trademark Office for the mark
 20 EXP COATED?
 21 A. Yes, it is.
 22 Q. And on page 36, do you recognize
 23 that signature to be yours?
 24 A. Yes, it is.
 25 Q. I would like you to turn to page

26

1 D'Addario
 2 22 and page 23, and the full numbers would be
 3 D 000022 and D 000023.
 4 A. Yes.
 5 Q. This has a heading "Allegation of
 6 Use." And on page 23 there is a signature
 7 there. Do you recognize that signature?
 8 A. Yes. Mike Russo's signature.
 9 Chief operating officer.
 10 Q. And you know that that is Mr.
 11 Russo's signature?
 12 A. Uh-huh.
 13 Q. Okay. I would like you to turn
 14 to page 22, and under the heading "Use
 15 Information," it has an entry that says "First
 16 use anywhere date" and it is 01/22/2001. Does
 17 that stand for January 22, 2001?
 18 A. Yes.
 19 Q. And is that your first use of the
 20 mark EXP COATED anywhere?
 21 A. Yes.
 22 Q. Okay. Right below that it says
 23 "First use in commerce date" and it is
 24 01/22/2001?
 25 A. Uh-huh.

27

1 D'Addario
 2 Q. Does that mean that your first
 3 use in interstate commerce for the mark EXP
 4 COATED is January 22, 2001?
 5 A. Yes.
 6 Q. What products do you use EXP and
 7 EXP COATED on?
 8 A. Acoustic guitar, electric guitar
 9 and mandolin strings and classic guitar also.
 10 So guitar and mandolin strings.
 11 Q. It is guitar strings and mandolin
 12 strings?
 13 A. It is only on strings.
 14 Q. Okay. So EXP and EXP COATED are
 15 not used on any other product other than guitar
 16 strings -- I'm sorry, other than musical
 17 instrument strings?
 18 A. Correct.
 19 Q. Are EXP and EXP COATED displayed
 20 on your products?
 21 A. Yes.
 22 Q. Do you know where on the products
 23 the marks are displayed?
 24 A. They are on the packaging.
 25 Q. Are you still using EXP and EXP

28

1 D'Addario
 2 COATED on your products?
 3 A. Absolutely.
 4 Q. In what countries are your guitar
 5 strings using EXP & EXP COATED sold?
 6 A. They are sold worldwide. We have
 7 extensive distribution in 106 countries. In
 8 2003, 55 percent of our product was exported,
 9 so that would be about 45 percent of the sales
 10 to be in America, 55 percent in the other 106
 11 countries.
 12 Q. Okay, are they sold nationwide in
 13 the United States?
 14 A. Absolutely, yes.
 15 Q. How many retailers are your EXP
 16 and EXP COATED strings sold in?
 17 A. I would only be able to estimate
 18 that because we sell our products to retailers
 19 directly and we also sell to distributors who
 20 sell to retailers, so we don't know how many
 21 retailers those other distributors are selling
 22 to but we estimate that we are probably in five
 23 to 6,000 storefronts across the country.
 24 Q. Okay.
 25 A. And we deal directly with 4500 of

29

1 D'Addario
 2 those.
 3 Q. What about in Canada?
 4 A. About 800.
 5 Q. Okay. How many distributors do
 6 you have?
 7 A. In America?
 8 Q. Yes.
 9 A. Seven.
 10 Q. And this includes for
 11 distributing EXP and EXP COATED strings?
 12 A. Yes, among our other products as
 13 well, sure.
 14 Q. All right.
 15 MR. BODNER: I'm going to mark as
 16 Exhibit BX, a one-page document
 17 entitled "2003 EXP Sales."
 18 (Whereupon, document entitled
 19 "2003 EXP Sales" marked Registrant's
 20 Exhibit BX for identification, as of
 21 this date.)
 22 MR. BODNER: For the record, this
 23 whole deposition should be marked
 24 confidential until we have a chance to
 25 go through it and do otherwise.

30

1 D'Addario

2 Q. Do you recognize this document

3 Exhibit BX?

4 A. Yes.

5 Q. Who generated that document?

6 A. John D'Addario III.

7 Q. Did you ask him to generate that

8 document?

9 A. Yes, I did.

10 Q. This document is used to refresh

11 your recollection as far as the sales of EXP

12 strings in the United States and abroad, and I

13 was wondering if you could tell us what those

14 sales are, the sales figures?

15 A. All right, this is just for sets

16 of EXP musical instrument strings, which is the

17 primary vehicle for selling the strings. We do

18 sell some individually but that is a very small

19 portion. I just asked for a summary of the set

20 sales. Last year, 201,905 sets were sold in

21 the U.S.A. and 104,626 sets were sold to the

22 export market, the 123,467 domestic dollar

23 sales was 1.2 million and export sales was

24 \$562,00 for a total of about \$1.78 million.

25 Q. Do you market the marks EXP and

31

1 D'Addario

2 EXP COATED in connection with your products?

3 A. Market them?

4 Q. Do you market products bearing

5 the marks EXP and EXP COATED?

6 A. Yes, musical instrument strings.

7 Q. Okay. How do you market them,

8 the various ways which you would?

9 A. We do a lot of print advertising,

10 we do web advertising on our websites in other

11 portals where we participate. We do extensive

12 sales on the road and training. We have

13 clinicians go into stores and do

14 string-changing clinics. We also have an

15 extensive artist relations program where we

16 have a total of seven people, some part-timers

17 but seven people in our organization that just

18 handle artists.

19 Q. When you say artists, you mean

20 guitar --

21 A. Musician.

22 Q. Famous guitarist?

23 A. Guitarists, drummers, whoever

24 might be using our product, and we supply them

25 with free merchandise. We never pay anybody

32

1 D'Addario

2 for an endorsement in terms of the EXP strings,

3 I believe we have over 400 endorsees using EXP

4 strings.

5 Q. In what countries do you

6 advertise, generally?

7 A. Generally --

8 Q. The number of countries?

9 A. It would be an estimate, but

10 outside of the U.S.A., we either directly

11 advertise or support an advertising program in

12 cooperation with a distributor in the major

13 markets, probably I would say in 25 major

14 markets.

15 Q. Okay. That includes EXP and EXP

16 COATED strings?

17 A. Yes. We also have OEM customers

18 buy EXP strings for their higher priced

19 instruments and we use those people to help us

20 market the product as well. Their

21 recommendation that they use the product; like

22 an endorsement.

23 Q. Okay, and you said there were

24 famous guitarists or artists that endorse the

25 product?

33

1 D'Addario

2 A. Yes.

3 MR. BODNER: I would like to mark

4 as Exhibit BY, a multipage document.

5 THE WITNESS: Confidential too.

6 MR. BODNER: Right. All of this

7 is confidential.

8 (Whereupon, artist relations

9 database marked Registrant's Exhibit BY

10 for identification, as of this date.)

11 MR. BODNER: I would like to show

12 it to the witness.

13 A. Yes.

14 Q. At the top of Exhibit BY, on

15 the -- actually on every page, it has the

16 heading "Artist Roster EXP Usage."

17 A. Uh-huh.

18 Q. Mr. D'Addario, have you ever seen

19 this document before?

20 A. Yes.

21 Q. Can you explain what this

22 document is?

23 A. This is a printout of our artist

24 relations database that I asked our artist

25 relations manager, Grace Newman, to prepare for

34

1 D'Addario

2 me to see how many of our endorsees have been

3 using or have switched to our EXP COATED

4 product as opposed to our regular uncoated

5 strings, and she gave me this report which has

6 over 400 artists on it and which strings they

7 actually use. Which model.

8 Q. Are there any artists that you

9 would like to point out on here that are

10 particularly well known?

11 A. Yes, there are quite a few.

12 Obviously there are names that you wouldn't

13 know but there are some very big names on this

14 list. People like Al Demeola, Arlo Guthrie,

15 Ben Harper, Stephen Stills, David Crosby, Bruce

16 Springsteen, Carlos Santana, just to mention a

17 few. The Jay Hawks, popular band today. John

18 Mayer, Lou Reed, Robin Ford, Peter Frampton,

19 Randy Travis. There are some big names.

20 Q. In what magazines and catalogues

21 do you advertise products bearing the marks EXP

22 and EXP COATED?

23 A. Magazines that I know we have

24 advertised in, in trade magazines would be

25 Music and Sound Retailer, Music Trades, Musical

35

1 D'Addario

2 Merchandise Review, Music, Inc. Consumer

3 magazines like Guitar Player, Guitar One,

4 Acoustic Guitar, Guitar World. Just to mention

5 a few. I mean I don't have the list in front

6 of me. It is probably another 20 or so. You

7 know, worldwide.

8 Q. Does your company attend trade

9 shows where products bearing the mark EXP and

10 EXP COATED are displayed or advertised?

11 A. Yes. We do quite a few shows.

12 Q. Could you name approximately how

13 many shows you do a year?

14 A. Shows that would pertain to EXP

15 because we do some that are educational that --

16 a band or orchestra. Shows that are

17 particularly guitar-oriented or that overlap?

18 Q. Anywhere where you have EXP or

19 EXP COATED?

20 A. I would say about 25 a year.

21 Q. Can you name some of the larger

22 shows?

23 A. The bigger ones are the main

24 trade shows, which is NAMM.

25 Q. Where is that done?

36

1 D'Addario

2 A. There are two of those. There is

3 one in Anaheim, California in January. That's

4 the biggest show. And then in July, there is

5 another one that has historically been in

6 Nashville but it is the last year it is in

7 Nashville, it is moving. And the Frankfurt

8 fair in March or April. Those are the big

9 international fairs where we meet our to-be

10 customers.

11 Then we do bluegrass shows,

12 guitar trading shows. We do quite a few shows

13 where we either partner with a retailer and

14 give them display materials and strings to sell

15 on consignment or we actually send our people

16 there and meet with the consumers.

17 Q. What do you mean by a bluegrass

18 show?

19 A. Like International Music, IBMA is

20 in Louisville, Kentucky. We do Telluride. We

21 just came back from Folk Alliance in

22 California. Those types of shows where it is a

23 combination of performances, there might be

24 clinics, you know. There is like Dallas guitar

25 show in the Cotton Bowl, vintage guitar shows,

37

1 D'Addario

2 that kind of thing.

3 Q. Okay.

4 MR. BODNER: I would like to mark

5 as Exhibit BZ a one-page document that

6 has the heading "2003 Marketing

7 Expenses Specific to EXP Strings."

8 (Whereupon, document headed "2003

9 Marketing Expenses Specific to EXP

10 Strings" marked Registrant's Exhibit BZ

11 for identification, as of this date.)

12 MR. BODNER: I would like Mr.

13 D'Addario to take a look at that.

14 A. Uh-huh.

15 Q. Maybe this refreshes your

16 recollection, but my question is, how much do

17 you spend on marketing in the United States for

18 EXP products?

19 A. Yes, this seems to be a

20 summarized budget from 2003 in round numbers

21 for the marketing of the EXP product.

22 Q. Before you go on, let me just ask

23 you, who prepared this?

24 A. I believe Jennifer Verdi prepared

25 this.

38

1 D'Addario

2 Q. Did you ask her to do this?

3 A. Yes, I did.

4 Q. My question is did you ask her to

5 do this?

6 A. Yes.

7 Q. Now the grand total is 337,000.

8 Do you believe that to be correct?

9 A. Yes.

10 Q. Does the company place any

11 displays for the EXP and EXP COATED strings in

12 any retail stores?

13 A. Yes.

14 Q. Okay. Do those displays actually

15 show EXP and EXP COATED?

16 A. Some do, yes.

17 Q. Does your company sponsor any

18 concerts?

19 A. We participate in the sponsorship

20 of concerts like cooperatively. We don't

21 usually sponsor our own events. We will be

22 co-sponsors with others companies.

23 Q. Do you know if EXP strings are

24 advertised at these concerts?

25 A. Sometimes, yes.

40

1 D'Addario

2 received any correspondence or telephone calls

3 about Gibson or Epiphone using EXP, EXP COATED

4 or EX as marks in connection with their

5 products being confused thinking that they

6 belong to D'Addario?

7 A. I know of no issues where people

8 were confused with our strings or a guitar, or

9 Gibson's guitar or Epiphone's guitar.

10 Q. What about -- so no distributor

11 has ever told you or indicated that there was

12 some confusion?

13 A. No.

14 Q. What about a retailer, any

15 retailers?

16 A. No.

17 Q. When did you first learn that

18 Gibson is claiming trademark rights in EXP?

19 A. I don't recall the date. It

20 was --

21 Q. Doesn't have to be a date.

22 Generally.

23 A. We heard from the Patent and

24 Trademark Office that there was I guess some

25 kind of claim.

39

1 D'Addario

2 Q. Would you know if your company

3 ever received any correspondence or telephone

4 calls from consumers or distributors or

5 retailers evidencing any confusion between your

6 EXP and EXP COATED strings and Gibson's

7 guitars?

8 A. I know of no correspondence to my

9 knowledge that anybody has ever been confused

10 about our product with any guitar. Including

11 Gibson's.

12 Q. Or confusion between your use of

13 EXP and EXP COATED strings and Gibson or

14 Epiphone's use of EXP or EX?

15 A. Right. True.

16 Q. How would you know this?

17 A. I am very active in reading and

18 scanning important consumer and B to B

19 correspondence. My people are trained that if

20 there is any kind of an issue, whether it is a

21 quality issue or a marketing issue like this

22 would be something that I'm sure would be

23 brought to my attention immediately.

24 Q. So to your knowledge, no one in

25 your company and you, of course, have ever

41

1 D'Addario

2 Q. Was that the petition to cancel?

3 A. Petition to cancel our

4 registrations, right.

5 Q. Have you ever seen Gibson or

6 Epiphone use EXP or EXP COATED in connection

7 with the sale or advertising of their products?

8 A. I have not.

9 Q. Have you ever seen Epiphone use

10 EXP or EXP COATED in connection with the sale

11 or advertising of their products?

12 A. No, I have not.

13 Q. Have you ever seen either

14 Epiphone or Gibson use EX in connection with

15 the sale or advertising of their products?

16 A. I have not.

17 Q. Do you actively police the marks

18 of your company?

19 A. Yes.

20 Q. Does this include EXP and EXP

21 COATED?

22 A. Yes.

23 Q. How do you do this?

24 A. Well, first of all we are very

25 fastidious about keeping -- registering our

42

1 D'Addario

2 brands and keeping the brand name registrations

3 current and renewed and so forth. We use your

4 firm to do that. And we have gone as far as to

5 have clinics here where you've come in and

6 lectured all of my marketing people about how

7 to mark their products in the marketing

8 strategies so that the brand names and the

9 trade names are utilized properly and legally

10 protected.

11 And then we also obviously

12 scan -- all marketing people, brand managers,

13 marketing people are responsible for scanning

14 through publications and so on to see if -- and

15 the websites, to see if there is anything that

16 we need to take action on.

17 Q. And also when you go to trade

18 shows or others in your company go to trade

19 shows, do they also look for people using EXP

20 and EXP COATED?

21 A. Sure, and they will report to us,

22 we will get reports after the trade shows, we

23 get complete reports of what's gone on and, you

24 know, we will find out about trademark issues,

25 you know, like we have had instances of

43

1 D'Addario

2 actually blatant counterfeit strings, things

3 like that, where people just are counterfeiting

4 a product in Bulgaria or China.

5 Q. And you take action against those

6 counterfeiters?

7 A. To the best of our ability we

8 take action, yes. When we can find them.

9 Q. Can you describe the kind of

10 purchaser that buys your EXP and EXP COATED

11 strings?

12 A. I would identify the EXP customer

13 as a more sophisticated string user, the middle

14 to high-end user, somebody who has a very high

15 quality instrument, you know, a Martin or a

16 Taylor guitar, something that he spent upward

17 of a thousand to \$3,000 for and someone who

18 knows the difference and wants a good-sounding

19 string and the convenience of that string

20 lasting longer and having that tone a longer

21 time. It is a more sophisticated user.

22 Q. Are the strings, are these just

23 ordinary guitar strings or are they a higher

24 end type of string?

25 A. We like to think that none of our

44

1 D'Addario

2 strings are ordinary. We put a great deal of

3 care and effort making all of our strings to be

4 of high quality. These have the feature of

5 being, of using a wrapping wire that has been

6 coated with a microscopic, urethane coating,

7 which prevents that material from corroding

8 from perspiration or atmospheric conditions,

9 and thus, the string lasts three to five times

10 longer.

11 Q. Also is there something

12 particular about the core wire that these are

13 wrapped on?

14 A. Yes, we use a hexagonally shaped

15 wrap wire so -- core wire, so that each turn of

16 the wrap wire is digging into the edges of the

17 core wire, makes a better bond.

18 Q. Okay. Are your EXP and EXP

19 COATED strings more expensive than typical

20 strings?

21 A. Generally speaking they are, if

22 compared to the comparable string that we make

23 uncoated, they were about double the price on

24 the street.

25 Q. So when you filed your trademark

45

1 D'Addario

2 applications for the marks EXP and EXP COATED,

3 did you have any knowledge of Gibson using

4 either EXP or EX?

5 A. No, we did not.

6 Q. To your knowledge, does the word

7 "coated" have any relevance in the guitar

8 industry?

9 A. Not to my knowledge, not to what

10 I know about guitars and their manufacture, no.

11 Q. So would you consider Gibson's

12 mark EXP famous in the musical industry?

13 A. Hardly.

14 Q. And what about the mark EX?

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

16 MR. BODNER: I would like to mark

17 as Exhibit CA, looks like about a

18 five-page document entitled

19 "J. D'Addario & Company's Answer to

20 Gibson's Petition to Cancel."

21 (Whereupon, document entitled

22 "J. D'Addario & Company's Answer to

23 Gibson's Petition to Cancel" marked

24 Registrant's Exhibit CA for

25 identification, as of this date.)

46

1 D'Addario
2 Q. Mr. D'Addario, I would like you
3 to take a look at Exhibit CA.
4 A. Yes.
5 Q. Have you ever seen this document
6 before?
7 A. Yes, I have.
8 Q. Do you recognize this to be the
9 answer to Gibson's petition to cancel your mark
10 EXP?
11 A. Yes.
12 MR. BODNER: Now I would like to
13 mark as Exhibit CB, a five-page
14 document that has the heading
15 "J. D'Addario & Company's Answer to
16 Gibson's Petition to Cancel." It also
17 has the notation "EXP COATED" on it.
18 (Whereupon, document headed
19 "J. D'Addario & Company's Answer to
20 Gibson's Petition to Cancel" marked
21 Registrant's Exhibit CB for
22 identification, as of this date.)
23 Q. I would like you to take a look
24 at that document.
25 A. Uh-huh.

47

1 D'Addario
2 Q. Do you recognize that document?
3 A. Yes.
4 Q. Is that J. D'Addario & Company's
5 answer to Gibson's petition to cancel your mark
6 EXP COATED?
7 A. Yes.
8 MR. LANQUEST: I just want to
9 object to Exhibit CA and CB as being
10 hearsay.
11 MR. BODNER: Just to correct the
12 record, Exhibit CA, and I'll show it to
13 the witness again.
14 Q. Is this J. D'Addario & Company's
15 answer to Gibson's petition to cancel the mark
16 EXP?
17 A. Yes, it is.
18 Q. And Exhibit CB, is that D'Addario
19 & Company's answer to Gibson's petition to
20 cancel the mark EXP COATED?
21 A. Yes, it is.
22 MR. BODNER: I would like to mark
23 as Exhibit CC, a document, production
24 numbers D 000072 through D 000076.
25 (Whereupon, press releases

48

1 D'Addario
2 bearing production numbers D 000072
3 through D 000076 marked Registrant's
4 Exhibit CC for identification, as of
5 this date.)
6 Q. Mr. D'Addario, can you please
7 take a look at Exhibit CC.
8 A. Yes.
9 Q. Can you tell me what this is?
10 A. These are press releases for the
11 introduction or the continual marketing of our
12 EXP line of coated music strings.
13 MR. BODNER: I would like to mark
14 as Exhibit CD document production
15 numbers D 000077 through D 000097.
16 (Whereupon, advertising materials
17 for EXP string product bearing
18 production numbers D 000077 through
19 D 000097 marked Registrant's Exhibit CD
20 for identification, as of this date.)
21 Q. Mr. D'Addario, I would like you
22 to take a look at these documents --
23 A. Uh-huh.
24 Q. - in Exhibit CD. When you get a
25 chance, can you just tell me what these

49

1 D'Addario
2 documents are?
3 A. These are advertising materials
4 for our EXP string product. That's both trade
5 and consumer and also some trade show
6 promotional pieces and so on.
7 Q. I would like you to turn to
8 number 85, that's D 000085.
9 A. Yes.
10 Q. And can you tell me what that
11 document shows?
12 A. This is a list of EXP artists of
13 significance that use the product.
14 MR. BODNER: I would like to mark
15 as Exhibit CE, document production
16 number D 000098 through D 000100.
17 (Whereupon, pages from 2001 and
18 2002 fretted instrument string
19 catalogue bearing production numbers
20 D 000098 through D 000100 marked
21 Registrant's Exhibit CE for
22 identification, as of this date.)
23 MR. BODNER: I would like the
24 witness to take a look at Exhibit CE.
25 A. This is photocopies of pages from

50

1 D'Addario
 2 our 2001 and 2002 fretted instrument string
 3 catalogue. These pages pertain to the EXP
 4 models of strings that we market.
 5 MR. BODNER: I would like to mark
 6 as Exhibit CF, document production
 7 numbers D 000101 through 000106.
 8 (Whereupon, poster bearing
 9 production numbers D 000101 through
 10 D 000106 marked Registrant's Exhibit CF
 11 for identification, as of this date.)
 12 MR. BODNER: I would like Mr.
 13 D'Addario to take a look at Exhibit CF
 14 and, when he has a chance, just tell me
 15 what it is.
 16 A. This is a Dave Matthews poster
 17 for EXP strings but cut into pages. That's
 18 what this is. So it is a xerox -- photocopy of
 19 it.
 20 Q. All right. Hold on one second.
 21 There are actually two groups of documents in
 22 this exhibit. One is ending with 101 through
 23 10, it is hard to see, probably 103, the other
 24 is 104 through 106. So are you saying that
 25 these are two posters?

51

1 D'Addario
 2 A. Yes, I believe we used this
 3 graphic on some display panels as well.
 4 Q. Okay.
 5 A. At trade shows.
 6 MR. BODNER: I would like to mark
 7 as Exhibit CG, document production
 8 numbers D 000107 through D 000110.
 9 (Whereupon, EXP product pages
 10 from 2002-2003 fretted instruments
 11 string catalogue bearing production
 12 numbers D 000107 through D 000110
 13 marked Registrant's Exhibit CG for
 14 identification, as of this date.)
 15 MR. BODNER: I would like Mr.
 16 D'Addario to take a look at Exhibit CG
 17 and when he is free, just tell me what
 18 it is.
 19 A. This is a xerox copy of the EXP
 20 product pages from our 2002-2003 fretted
 21 instruments string catalogue.
 22 MR. BODNER: Okay, I would like
 23 to mark as Exhibit CH, document
 24 production numbers D 000111 through
 25 000166.

52

1 D'Addario
 2 (Whereupon, 2002 and 2003
 3 D'Addario string player's calendar
 4 bearing production numbers D 000111
 5 through D 000166 marked Registrant's
 6 Exhibit CH for identification, as of
 7 this date.)
 8 Q. Mr. D'Addario, can you please
 9 take a look at that packet that I've referred
 10 to as Exhibit CH.
 11 A. This is a photocopy of our 2002
 12 D'Addario string player's calendar. Inside
 13 this, there are many of our endorsees'
 14 photographs, and where applicable, inserted
 15 photos of the string packages that they use.
 16 Q. Okay. Can you also take a look
 17 at --
 18 A. And 2003, right. Right after
 19 2002 is 2003. There are two calendars here.
 20 Q. Is the 2003 calendar starting at
 21 D 000139?
 22 A. Yes.
 23 Q. Both are advertisements for EXP
 24 and EXP COATED strings?
 25 A. Yes, they are for all our strings

53

1 D'Addario
 2 and EXP and EXP COATED are featured in there.
 3 MR. BODNER: I would like to mark
 4 as Exhibit CI, document production
 5 numbers D 000167 through D 000172.
 6 (Whereupon, domestic dealer
 7 direct price sheet bearing production
 8 numbers D 000167 through D 000172
 9 marked Registrant's Exhibit CI for
 10 identification, as of this date.)
 11 Q. I would like you to take a look
 12 at Exhibit CI and please tell me what this is?
 13 A. This is a domestic dealer direct
 14 price sheet, dealer meaning retailer. That's a
 15 storefront, a store. And this document
 16 describes the minimum advertising price, the
 17 MAP price policy for several of our products
 18 which include D'Addario EXP COATED strings.
 19 MR. BODNER: I would like to mark
 20 as Exhibit CJ, document production
 21 numbers D 000173 through D 000182.
 22 (Whereupon, press releases
 23 bearing production numbers D 000173
 24 through D 000182 marked Defendant's
 25 Exhibit CJ for identification, as of

54

1 D'Adlaro
 2 this date.)
 3 Q. Mr. D'Adlaro, can you please
 4 take a look at Exhibit CJ and describe what
 5 that is?
 6 A. These are a series of press
 7 releases that all discuss EXP strings. These
 8 would be sent to magazines and distributors.
 9 MR. BODNER: I would like to mark
 10 as Exhibit CK, document production
 11 numbers D 000183 through 000193.
 12 (Whereupon, confidential export
 13 price list bearing production numbers
 14 D 000183 through D 000193 marked
 15 Defendant's Exhibit CK for
 16 identification, as of this date.)
 17 Q. Mr. D'Adlaro, can you please
 18 take a look at Exhibit CK.
 19 A. It's a confidential price list
 20 for our string products which includes EXP.
 21 This is an export price list.
 22 MR. BODNER: I would like to mark
 23 as Exhibit CL, document production
 24 numbers D 000194 through 000208.
 25 (Whereupon, marketing program

55

1 D'Addario
 2 bearing production numbers D 000194
 3 through D 000208 marked Defendant's
 4 Exhibit CL for identification, as of
 5 this date.)
 6 Q. Mr. D'Addario, can you please
 7 take a look at Exhibit CL and describe what
 8 that is?
 9 A. This is a marketing program for
 10 D'Addario EXP strings to be sold to what we
 11 call OEM, original equipment manufacturers.
 12 It's a co-op program where if they buy our EXP
 13 product, we cooperatively use them in our
 14 consumer and trade marketing programs, so it is
 15 a co-marketing, cooperative marketing program.
 16 MR. LANQUIST: I want to object
 17 to Exhibit CL because it's been
 18 redacted.
 19 MR. BODNER: I would like to mark
 20 as Exhibit CM document production
 21 numbers D 000209 through 000212.
 22 (Whereupon, fractional page
 23 advertisements bearing production
 24 numbers D 000209 through D 000212
 25 marked Defendant's Exhibit CM for

56

1 D'Addario
 2 identification, as of this date.)
 3 Q. Mr. D'Addario, I would like you
 4 to take a look at Exhibit CM and tell me what
 5 that is?
 6 A. These are photocopies of
 7 fractional page advertisements for our EXP
 8 strings in cooperation with OEM brands of
 9 guitars that utilize our strings as original
 10 equipment.
 11 MR. BODNER: I would like to mark
 12 as Exhibit CN, document production
 13 numbers D 000213 through 000222.
 14 (Whereupon, sales bulletins
 15 bearing production numbers D 000213
 16 through D 1000222 marked Defendant's
 17 Exhibit CN for identification, as of
 18 this date.)
 19 Q. Mr. D'Addario, can you take a
 20 look at Exhibit CN and just tell us what that
 21 is?
 22 A. These are sales bulletins that
 23 are used internally and for our salespeople to
 24 notify them when products are being released
 25 and also to our distributors.

57

1 D'Addario
 2 Q. Okay. Do these sales bulletins
 3 relate to EXP?
 4 A. They are all EXP-related, yes.
 5 MR. BODNER: I would like to mark
 6 as Exhibit CO, document production
 7 numbers D 000223 through D 000243.
 8 (Whereupon, advertisements
 9 bearing production numbers D 000223
 10 through D 000243 marked Defendant's
 11 Exhibit CO for identification, as of
 12 this date.)
 13 Q. Mr. D'Addario, can you please
 14 take a look at Exhibit CO and describe what
 15 that is?
 16 A. These are advertisements for EXP
 17 strings. Copies of them.
 18 MR. BODNER: I would like to mark
 19 as Exhibit CP, document production
 20 numbers D 000247 through 000248.
 21 (Whereupon, sales bulletin
 22 bearing production numbers D 000247
 23 through D 000248 marked Defendant's
 24 Exhibit CP for identification, as of
 25 this date.)

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1 D'Adlaro
2 Q. Mr. D'Adlaro, can you please
3 take a look at Exhibit CP and tell us what this
4 is?
5 A. These look like sales bulletin
6 for EXP 8020 bronze acoustic guitar strings.
7 MR. BODNER: I would like to mark
8 as Exhibit CQ, document production
9 numbers D 000249 through 000261.
10 (Whereupon, retail price list
11 bearing production numbers D 000249
12 through D 000261 marked Defendant's
13 Exhibit CQ for identification, as of
14 this date.)
15 Q. Mr. D'Adlaro, I would like you
16 to take a look at Exhibit CQ and tell us what
17 this is?
18 A. Copy of a retail price list which
19 includes EXP COATED string products.
20 MR. BODNER: I would like to mark
21 as Exhibit CR, document production
22 numbers D 000262 through 000287.
23 (Whereupon, factory direct dealer
24 catalogue bearing production numbers
25 D 000262 through D 000287 marked

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1 D'Addario
2 Defendant's Exhibit CR for
3 identification, as of this date.)
4 Q. Mr. D'Addario, please take a look
5 at Exhibit CR and let us know what that is.
6 A. This is a copy of our factory
7 direct dealer catalogue. This is something you
8 produce twice a year. This is the 2003 winter
9 version, and it includes our EXP string
10 products.
11 MR. BODNER: I would like to mark
12 as Exhibit CS, document production
13 numbers D 000288 through 000301.
14 (Whereupon, 2003 distributor net
15 price list bearing production numbers
16 D 000288 through D 000301 marked
17 Defendant's Exhibit CS for
18 identification, as of this date.)
19 Q. Mr. D'Addario, please take a look
20 at Exhibit CS and tell us what this is.
21 A. This is a copy of our 2003
22 distributor net price list for domestic
23 distributors.
24 Q. I would like for you to take a
25 look again as Exhibit BV, and in particular,

60

1 D'Addario
2 document number 000056. Now, earlier, this
3 document was identified as the file history for
4 the trademark application for the mark EXP. Do
5 you recognize what is on document number 56?
6 A. That's a photocopy of one of our
7 string packages for EXP strings.
8 Q. And I would also like you to take
9 a look at Exhibit BW again, and in particular,
10 the page having document production number
11 D 000024. Again, earlier, this was identified
12 as the file history for the trademark
13 application for registration of the mark EXP
14 COATED. Can you identify what is on document
15 number 24?
16 A. Photocopy of one of our string
17 packages for EXP strings.
18 MR. BODNER: All right. I think
19 we should take a little break.
20 MR. LANQUIST: Okay.
21 (Recess taken)
22 MR. BODNER: I'm going to mark as
23 Exhibit CT a number of documents from
24 the Internet.
25 (Whereupon, search responses on

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1 D'Addario
2 Internet for EXP marked Defendant's
3 Exhibit CT for identification, as of
4 this date.)
5 Q. I would like to show that to you,
6 Mr. D'Addario, and please take a look at it.
7 A. Yes, these are search responses
8 on the Internet for EXP, the use of EXP on
9 guitars, and it illustrates that there are some
10 people selling instruments from the Peavey
11 company, the Legend Guitar Company, the Ed
12 Roman Company, ESP company and -- so those
13 companies have guitar models that they
14 designate as ESP but they do not have any --
15 it's EXP. ESP makes an EXP guitar, a little
16 confusing, a mouthful.
17 Q. Now when did you do this search?
18 A. Well, we have done these
19 searches, we do them all the time. This
20 particular one I did in preparation for today
21 and asked my secretary to print them out and
22 make copies of them, which was the delay.
23 Q. Okay. There is a date at the
24 bottom right-hand corner.
25 A. Right.

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1 D'Addario
2 Q. Seems to be mostly on all the
3 pages?
4 A. Yes.
5 Q. What is that date?
6 A. 3-- March 4, 2004. Today.
7 Q. Okay. Do you know a company
8 called Peavey?
9 A. Uh-huh.
10 Q. How do you spell that Peavey,
11 P-e-a-v-e-y, for the record?
12 A. Yes.
13 Q. Do you know if they make an EXP
14 guitar?
15 A. Yes, they do, they make several
16 models.
17 Q. Did you ever hear of a company
18 called ESP?
19 A. Yes.
20 Q. Where have you heard of them?
21 A. They were a guitar manufacturer,
22 importer. Been around a while.
23 MR. BODNER: I don't think I have
24 any further questions. Just one more
25 housekeeping thing.

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1 D'Addario
2 MR. LANQUIST: I want just to
3 object to Exhibit CT as hearsay.
4 MR. BODNER: Okay, I really have
5 no further questions. I'm just going
6 to give you a notice of testimony
7 deposition of Dave Berryman. This is
8 for our trial testimony and we have it
9 scheduled for March 15, but if that is
10 not convenient, just let me know.
11 (Handing)
12 MR. LANQUIST: Okay.
13 EXAMINATION BY
14 MR. LANQUIST:
15 Q. Mr. D'Addario, my name is Ed
16 Lanquist. Let's start with Exhibit CT, the
17 last exhibit that we talked about.
18 A. Yes.
19 Q. How many EXP guitars has Peavey
20 sold?
21 A. I have no idea.
22 Q. When did they start selling the
23 EXP guitar?
24 A. Not sure.
25 Q. It's been in the last year,

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1 D'Addario
2 hasn't it?
3 A. I'm not sure.
4 Q. Are you aware Gibson actually
5 sent a cease and desist letter to Peavey
6 Guitar?
7 A. I am.
8 Q. Now, you said on direct
9 examination that you are aware from time to
10 time of people using or selling counterfeit EXP
11 strings, is that correct?
12 A. No, I said counterfeit strings.
13 Q. Do they sell counterfeit EXP
14 strings?
15 A. I have not seen that yet.
16 Q. Do D'Addario have any other
17 registered trademarks for their strings?
18 A. Yes.
19 Q. And have any of these competitors
20 used the D'Addario trademark on their
21 counterfeit strings?
22 A. Yes.
23 Q. Okay. And so does that preclude
24 D'Addario from protecting its registered mark?
25 A. I'm not sure I understand the

65

1 D'Addario
2 question.
3 Q. Well, you said there have been
4 counterfeiters from time to time that have used
5 D'Addario registered trademarks on their
6 strings, correct?
7 A. Uh-huh, yes.
8 Q. What I'm saying is, does that
9 mean that D'Addario's registered trademark is
10 no longer protectable if it is being used on a
11 counterfeit product?
12 MR. BODNER: I think that is a
13 legal question. I don't think Mr.
14 D'Addario can answer that question.
15 MR. LANQUIST: Is he refusing to
16 answer?
17 MR. BODNER: I didn't say that.
18 If he doesn't feel comfortable
19 answering a legal question he should
20 not be asked that question.
21 A. I would say I don't know the
22 answer to that question.
23 Q. If someone were to come in
24 saying, gosh, Mr. D'Addario, you developed a
25 lot of goodwill with the mark but because there

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author details the various methods used to collect and analyze the data. This includes both manual and automated processes. The goal is to ensure that the information gathered is both reliable and comprehensive.

The third part of the document focuses on the results of the analysis. It shows that there is a clear trend in the data, which suggests that the current strategy is effective. However, there are some areas where improvement is needed, particularly in terms of efficiency and cost reduction.

Finally, the document concludes with a series of recommendations for future action. These include implementing new software tools, training staff on best practices, and conducting regular audits to ensure ongoing accuracy and compliance.

Appendix A: Detailed breakdown of the data points used in the analysis.

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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?

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1 D'Addario
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.

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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

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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

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1 D'Addario
 2 objection.
 3 Q. Okay, what -- isn't it true that
 4 EXP means extended play?
 5 A. In relationship to what?
 6 Q. Well, in relationship to your
 7 advertising.
 8 A. To our product?
 9 Q. Yes.
 10 A. EXP is a brand name that we came
 11 up with for our extended play strings.
 12 Q. Okay. And isn't it true that in
 13 your press releases and advertising you say
 14 that EXP means extended play?
 15 A. That is a headline in one of the
 16 ads.
 17 Q. Isn't it also throughout your
 18 press releases as well?
 19 A. Uh-huh, it is an extended play
 20 product, yes.
 21 Q. But your press release says EXP
 22 means extended play, correct?
 23 A. Yes.
 24 Q. Now, coated. Isn't it true that
 25 one thing that distinguishes your strings from

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1 D'Addario
 2 others is the fact that they have a specific
 3 coating on them, correct?
 4 A. That's correct.
 5 Q. So these strings are coated
 6 strings, correct?
 7 A. Uh-huh.
 8 Q. You need to say yes --
 9 A. Yes.
 10 Q. You say you were a Martin sales
 11 rep, is that correct?
 12 A. That's correct.
 13 Q. When you were a sales rep and/or
 14 working with Martin, Martin sold guitars,
 15 correct?
 16 A. Absolutely right.
 17 Q. And Martin also sold strings?
 18 A. That's correct.
 19 Q. Okay. Do other guitar
 20 manufacturers also sell guitars and strings?
 21 A. Yes, they do.
 22 Q. In fact Gibson sells guitars and
 23 strings, is that correct?
 24 A. That's correct.
 25 Q. Now, you sell to -- you sell OEM

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1 D'Addario
 2 products, correct?
 3 A. Yes.
 4 Q. So many companies put your
 5 strings on their guitars, correct?
 6 A. Yes.
 7 Q. Now let me get you to take a look
 8 at Exhibit BV, which is the compilation of
 9 e-mails and laudatory statements for EXP
 10 strings.
 11 A. BV is it?
 12 Q. Yes.
 13 A. Okay. Got it.
 14 Q. Do you know how many of these
 15 people play Gibson guitars?
 16 A. No, I have no idea.
 17 Q. Do you know how many of these
 18 people play Epiphone guitars?
 19 A. No, I do not.
 20 Q. Do you have any opinion as to the
 21 market share for guitars for Gibson and
 22 Epiphone guitars?
 23 A. No, I'm not in the guitar
 24 business.
 25 Q. Is Gibson Guitar Corp. a large

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1 D'Addario
 2 guitar manufacturer?
 3 A. Yes.
 4 Q. And do your guitars, guitar
 5 strings get placed on Gibson guitars?
 6 A. Yes.
 7 Q. Okay. Not as original equipment,
 8 I might add.
 9 Q. They get placed after-market?
 10 A. Correct, yes.
 11 Q. And in fact, some of your artists
 12 that represent EXP strings are actually playing
 13 Gibson instruments, is that correct?
 14 A. I don't know of any off the top
 15 of my head but I would make that assumption.
 16 Q. Okay. You sell mandolin strings
 17 as well, correct?
 18 A. Yes.
 19 Q. And in fact you sell EXP mandolin
 20 strings, correct?
 21 A. Yes, we do.
 22 Q. And Gibson sells and
 23 manufacturers mandolins, is that correct?
 24 A. Yes, they do.
 25 Q. In fact Gibson is one of the

74

1 D'Addario
 2 leaders in mandolins, is that correct?
 3 A. I'm not sure.
 4 Q. You said on direct that you had a
 5 sizable market share of the guitar string
 6 industry, is that correct?
 7 A. Yes.
 8 Q. I think you said, I can't
 9 remember what number you used, what number did
 10 you use, rough?
 11 A. Be specific about the question.
 12 Is it guitar strings, music strings, acoustic,
 13 electric guitar strings?
 14 Q. Just let's go with guitar
 15 strings.
 16 A. I would say we probably have
 17 about, between 20 and 25 percent market share.
 18 Q. Do you know whether Peter
 19 Frampton is a Gibson artist?
 20 A. No, I don't.
 21 Q. Okay, do you know whether --
 22 well, we can keep going. Do you know whether
 23 Martina McBride is a Gibson artist?
 24 A. No, I don't.
 25 Q. Do you know whether Ricky Skaggs

75

1 D'Addario
 2 is a Gibson artist?
 3 A. I do not. What do you mean by
 4 Gibson artist?
 5 Q. Does Ricky Skaggs play Gibson
 6 musical instruments?
 7 A. Maybe. I don't know.
 8 Q. Now, on direct you stated that
 9 you advertise EXP strings in various magazines,
 10 correct?
 11 A. Yes.
 12 Q. One of those is MMR magazine?
 13 A. Yes.
 14 Q. And isn't it true that Gibson
 15 also advertises in MMR magazine?
 16 A. Yes.
 17 Q. Isn't it true that Gibson
 18 advertises in Guitar Player magazine?
 19 A. Yes.
 20 Q. Isn't it true that Gibson
 21 advertises in Guitar One Magazine?
 22 A. Yes.
 23 Q. Isn't it true that Gibson markets
 24 its products in Guitar World magazine?
 25 A. Yes.

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1 D'Addario
 2 Q. Now you said that you went to
 3 various trade shows and you mentioned the NAMM
 4 show and the Frankfurt show, is that correct?
 5 A. Yes.
 6 Q. Isn't it true that Gibson shows
 7 its products at the NAMM shows?
 8 A. Yes.
 9 Q. And isn't it true that Gibson
 10 shows its products at the Frankfurt show?
 11 A. Yes.
 12 Q. Now you also said that you
 13 sponsor or promote EXP products at business to
 14 consumer shows, B to C shows such as guitar
 15 shows, things like that, is that correct?
 16 A. Yes.
 17 Q. And at these shows there will be
 18 guitars from Gibson, isn't that correct?
 19 A. Yes.
 20 Q. And in fact there will be
 21 Explorer guitars from Gibson as well, isn't
 22 that correct?
 23 MR. BODNER: If you know.
 24 A. Don't know.
 25 Q. Do you know the Explorer guitar?

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1 D'Addario
 2 A. Yes.
 3 Q. Do you know when the Explorer
 4 guitar originated?
 5 A. No.
 6 Q. Have you ever heard of the
 7 57 Korina guitar?
 8 A. No.
 9 Q. You said that you promote EXP
 10 strings at concerts, is that correct?
 11 A. Yes.
 12 Q. Isn't it also a common occurrence
 13 that at these concerts, they have guitar
 14 sponsors, the concerts?
 15 A. Yes.
 16 Q. You stated on direct that you
 17 believe that the consumers of your strings are
 18 sophisticated consumers, is that correct?
 19 A. I said that the users of EXP
 20 strings are sophisticated users.
 21 Q. Okay. I think you stated on
 22 direct that EXP strings cost about ten dollars
 23 at MSRP?
 24 A. Yes.
 25 Q. Okay. How much do your lower end

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1 D'Addario
 2 guitar strings cost?
 3 A. About half that.
 4 Q. So we are still talking about a
 5 purchase of less than \$15, is that correct?
 6 A. Yes.
 7 Q. Now, how often -- how long do
 8 your EXP guitar strings last?
 9 A. It is different for different
 10 players.
 11 Q. How often does a standard
 12 electric guitar player change his or her
 13 strings?
 14 MR. BODNER: Objection. There is
 15 no definition of what standard is.
 16 MR. LANQUIST: Okay.
 17 A. It's different for every player.
 18 Not a question you can answer.
 19 Q. Okay. Do many guitar players
 20 change their strings multiple times in one
 21 year?
 22 A. Yes.
 23 Q. And as a result, do these people
 24 place your strings to replace the OEM strings
 25 on their guitars?

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1 D'Addario
 2 A. Yes.
 3 Q. Now, you also sell your strings
 4 to retailers, correct?
 5 A. Yes.
 6 Q. Would these retailers also sell
 7 guitars?
 8 A. Yes.
 9 Q. Would these retailers also sell
 10 Gibson guitars?
 11 A. Yes.
 12 Q. Would these retailers also sell
 13 Gibson Explorer guitars?
 14 A. Don't know.
 15 Q. Let me ask you to take a look at
 16 Exhibit CC, please.
 17 A. Okay.
 18 Q. Specifically, D 000074.
 19 A. Uh-huh.
 20 Q. You need to say yes for his
 21 benefit --
 22 A. Yes, I'm sorry.
 23 Q. Is this a press release that was
 24 issued by D'Addario?
 25 A. Yes.

80

1 D'Addario
 2 Q. In the second paragraph, it says,
 3 "To backtrack a little, the 'EXP' stands for
 4 extended play." Do you see that?
 5 A. Yes.
 6 Q. So it is correct that in its
 7 press releases, D'Addario has used "EXP" to
 8 mean extended play?
 9 A. Yes.
 10 Q. Let's go on to Exhibit CD.
 11 A. Okay.
 12 Q. Specifically, D 84.
 13 A. Okay.
 14 Q. Upper left corner, is that an ES
 15 guitar?
 16 A. Bill Frisell's picture?
 17 Q. Yes.
 18 A. I have no idea.
 19 Q. Let's look at Exhibit CE.
 20 A. Okay.
 21 Q. Specifically D 100.
 22 A. Yes.
 23 Q. And the drawing in the upper
 24 right corner shows that the exterior winding
 25 wrap is coated, is that correct?

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1 D'Addario
 2 A. Yes, it is.
 3 Q. Let's go to Exhibit CH, which is
 4 the calendar. Start with 116.
 5 A. Yes.
 6 Q. Isn't that a Gibson ES shown --
 7 A. 116?
 8 Q. Yes.
 9 A. Don't know.
 10 Q. Let's go back to 146.
 11 A. Yes.
 12 Q. Isn't that a Les Paul?
 13 A. Yes, it is.
 14 Q. Les Paul is manufactured by
 15 Gibson?
 16 A. Uh-huh. Yes, it is.
 17 Q. And that is Ann McCue, correct?
 18 A. Yes, it is.
 19 Q. Exhibit -- I'm sorry, page 160,
 20 still on Exhibit CH.
 21 A. Yes.
 22 Q. What kind of guitar is that?
 23 A. It's a Gibson Les Paul, I
 24 believe.
 25 Q. Page 162, which is two pages

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1 D'Addario

2 later. Do you know what kind of guitar that

3 is?

4 A. No, I'm not sure exactly what

5 model it is.

6 Q. Does it look like an ES?

7 A. It does.

8 Q. Is ES manufactured by Gibson?

9 A. Yes.

10 Q. Let's go on to CJ.

11 A. Yes.

12 Q. Specifically page 174.

13 A. Okay.

14 Q. Another press release, correct?

15 A. Correct.

16 Q. And in the second paragraph again

17 it states that EXP stands for extended play, is

18 that correct?

19 A. Yes.

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

21 A. Yes.

22 Q. I notice that you are using EXP

23 as an item designation as well, is that

24 correct?

25 A. That's correct.

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1 D'Addario

2 Q. And why do you use EXP as an item

3 designation as well as a trademark?

4 A. To distinguish them from our

5 regular strings.

6 Q. And how do consumers or

7 distributors use an item name?

8 A. Item number or name?

9 Q. Number.

10 A. Well, all our computer systems

11 use an item number field and that's the

12 designation for that product.

13 Q. So when people call up they say,

14 I want some EXP 15's?

15 A. That's correct.

16 Q. Let's go to Exhibit CL. Page

17 206. Center of the page.

18 A. Uh-huh.

19 Q. Down at the bottom. Is that a

20 Gibson Les Paul?

21 A. Yes, it is.

22 Q. Let's go to Exhibit CO.

23 A. Okay.

24 Q. Specifically page 225.

25 A. Okay.

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1 D'Addario

2 Q. Do you know what kind of mandolin

3 that is?

4 A. It appears to be a Gibson. I

5 can't read the head stock.

6 Q. Exhibit --

7 A. I'm not sure.

8 Q. Page 231?

9 A. Yes.

10 Q. Exhibit CO.

11 A. Uh-huh. Yes.

12 Q. What does that head stock look

13 like to you?

14 A. It's kind of blurry.

15 Q. Does it look like a dove wing peg

16 head?

17 A. Could be.

18 Q. Does Gibson sell dove wing peg

19 heads?

20 A. Yes.

21 Q. Exhibit CR, page 268, please.

22 Bottom of the page.

23 A. Uh-huh. Yes.

24 Q. Is that a Gibson ES?

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

85

1 D'Addario

2 those questions. I am not a guitar

3 manufacturer so that could be a copy of one, it

4 could be a similarly designed guitar. I can't

5 answer that. It's too --

6 Q. Okay, page 278.

7 A. Okay.

8 Q. Right middle shows Doyle Lawson.

9 A. Obviously a Gibson instrument.

10 Q. Gibson mandolin?

11 A. Correct.

12 Q. As a matter of fact it is the

13 Gibson mandolin?

14 A. It is a Gibson mandolin. I don't

15 know what that -- I see what you mean. It says

16 the Gibson on it. Right.

17 Q. Page 283.

18 A. Yes.

19 Q. Again picture of Doyle Lawson?

20 A. Yes.

21 Q. It's the Gibson mandolin?

22 A. Yes, it is.

23 Q. Are you aware of anyone referring

24 to the Gibson Explorer guitar as an EXP?

25 A. No.

86

1 D'Addario

2 Q. Does Gibson sell guitar strings?

3 A. Yes, they do.

4 Q. In your OEM program, do you take

5 any steps to require manufacturers to

6 specifically tell consumers that the EXP

7 strings that may be on their guitar originate

8 from D'Addario?

9 A. Yes.

10 Q. How do you do that?

11 A. We have a marketing program that

12 if they are part of it they get a little bit

13 better price. If they promote our strings for

14 us.

15 Q. Right, but do you require the

16 manufacturers to label the products as having

17 D'Addario EXP strings?

18 A. To be part of the OEM/EXP

19 program, they have to indicate that the guitar

20 is strung with D'Addario EXP COATED strings.

21 Q. But they don't have to?

22 A. To get the special price they do,

23 yes.

24 Q. But if they don't want the

25 special price?

87

1 D'Addario

2 A. They don't have to.

3 Q. Okay. Let me hand you what we

4 will mark as Exhibit 15.

5 (Whereupon, trade ad for

6 D'Addario EXP COATED strings marked

7 Petitioner's Exhibit 15 for

8 identification, as of this date.)

9 Q. Can you identify Exhibit 15?

10 A. This appears to be a trade ad or

11 press release, I'm not sure, for D'Addario EXP

12 COATED strings.

13 Q. And did this originate from

14 D'Addario?

15 A. Yes, it did.

16 Q. In the upper left does it say

17 "EXP means extended play"?

18 MR. BODNER: Objection.

19 THE WITNESS: Does that mean not

20 to answer it?

21 MR. BODNER: You can answer it.

22 A. Yes, it does say that.

23 Q. Let me hand you what we will mark

24 as Exhibit 16.

25 (Whereupon, document from website

88

1 D'Addario

2 marked Petitioner's Exhibit 16 for

3 identification, as of this date.)

4 Q. Can you identify this document?

5 A. It's from our website.

6 Q. Is this website maintained by or

7 for D'Addario or at D'Addario's instruction?

8 A. Yes.

9 Q. About a little bit under halfway

10 down in the middle column does it say "EXP

11 means extended play"?

12 A. Yes.

13 MR. BODNER: Objection. This is

14 beyond the direct examination of this

15 witness.

16 Q. Does D'Addario markets strings

17 with the EXP mark as opposed to its packaging?

18 In other words, you testified on direct that

19 D'Addario marks its packaging with EXP,

20 correct?

21 A. Uh-huh.

22 Q. You need to say yes for his

23 benefit.

24 A. Yes. Sorry.

25 Q. Does EXP -- I'm sorry, does

89

1 D'Addario

2 D'Addario place "EXP" on the strings

3 themselves?

4 A. It's not possible to do that.

5 The strings are too small.

6 Q. Does D'Addario place "D'Addario"

7 on its strings?

8 A. No.

9 Q. Now, you testified on direct that

10 in addition to mandolin strings and electric

11 guitar strings, that D'Addario also

12 manufactures bass strings?

13 A. Yes.

14 Q. Does Gibson sell basses?

15 A. Yes.

16 Q. You testified that D'Addario

17 sells strings for acoustic guitars, correct?

18 A. Yes.

19 Q. And does Gibson sell acoustic

20 guitars?

21 A. Yes.

22 Q. Do D'Addario EXP strings end up

23 on Gibson Explorer guitars?

24 MR. BODNER: If you know.

25 A. I don't know the answer to that.

90

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)

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1 D'Addario
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

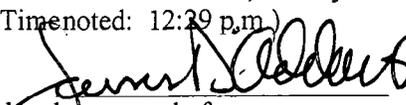
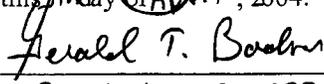
92

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

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1 D'Addario
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

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1 D'Addario
 2 questions.
 3 MR. LANQUIST: Mr. D'Addario,
 4 thank you.
 5 THE WITNESS: Sure, thank you.
 6 (Time noted: 12:39 p.m.)
 7
 8 
 9 Subscribed and sworn to before me
 10 this 5th day of April, 2004.
 11 
 12
 13 Registration No. 02B04937733
 14 Commission Expires on June 20, 2006
 15
 16
 17
 18
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 25

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1 March 4, 2004
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 3 I N D E X
 4 Witness Page
 5 James D'Addario 3
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 7 E X H I B I T S
 8 Defendant's
 9 For Identification Page
 10 BT Mission statement 9
 11 BU Correspondence 12
 12 BV EXP registration file bearing 21
 13 production numbers D 000040
 14 through D 000071
 15 BW File history for mark EXP 24
 16 COATED bearing production
 17 numbers D 000010 through
 18 D 000039
 19 BX Document entitled "2003 EXP 29
 20 Sales"
 21 BY Artist relations database 33
 22 BZ Document headed "2003 37
 23 Marketing Expenses Specific
 24 to EXP Strings"
 25 CA Document entitled 45
 "J. D'Addario & Company's
 Answer to Gibson's Petition
 to Cancel"
 CB Document headed "J. D'Addario 46
 & Company's Answer to
 Gibson's Petition to Cancel"

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1
 2 C E R T I F I C A T E
 3 S T A T E O F N E W Y O R K)
 4) s s . :
 5 C O U N T Y O F N E W Y O R K)
 6 I, ROBERT E. LEVY, a Certified
 7 Shorthand Reporter and Notary Public within
 8 and for the State of New York, do hereby
 9 certify:
 10 That I reported the proceedings in
 11 the within entitled matter, and that the
 12 within transcript is a true record of such
 13 proceedings.
 14 I further certify that I am not
 15 related, by blood or marriage, to any of
 16 the parties in this matter and that I am
 17 in no way interested in the outcome of this
 18 matter.
 19 I N W I T N E S S W H E R E O F , I h a v e h e r e u n t o
 20 set my hand this 13th day of March,
 21 2004.
 22
 23 ROBERT E. LEVY, C.S.R.
 24
 25

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1 March 4, 2004
 2
 3 E X H I B I T S (C o n t i n u e d)
 4 Defendant's
 5 For Identification Page
 6 CC Press releases bearing 47
 7 production numbers D 000072
 8 through D 000076
 9 CD Advertising materials for EXP 48
 10 string product bearing
 11 production numbers D 000077
 12 through D 000097
 13 CE Pages from 2001 and 2002 49
 14 fretted instrument string
 15 catalogue bearing production
 16 numbers D 000098 through
 17 D 000100
 18 CF Poster bearing production 50
 19 numbers D 000101 through
 20 D 000106
 21 CG EXP product pages from 51
 22 2002-2003 fretted instruments
 23 string catalogue bearing
 24 production numbers D 000107
 25 through D 000110
 CH 2002 and 2003 D'Addario 52
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 CI Domestic dealer direct price 53
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 D 000172
 CJ Press releases bearing 53
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9	D 000193	
10	CL Marketing program bearing	54
11	production numbers D 000194	
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13	CM Fractional page	55
14	advertisements bearing	
15	production numbers D 000209	
16	through D 000212	
17	CN Sales bulletins bearing	56
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19	through D 1000222	
20	CO Advertisements bearing	57
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	CO Retail price list bearing	58
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9	15 Trade ad for D'Addario EXP	87
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