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March 23, 2007

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Commissioner for Trademarks  
UNITED STATES PATENT AND TRADEMARK APPEALS BOARD  
600 Dulany Street, Concourse Level  
Trademark Assistant Center  
Alexandria, VA 22313-1451

**TTAB**

Re: MARK: MOCEAN  
Class: 25  
Applicant: CrosSport Mocean, Inc.

Dear Sir:

Enclosed for filing in the above matter is a 1) Notice of Reliance on Deposition of Donn L. Pierson together with the deposition transcript of Donn Pierson, and 2) Notice of Reliance on Deposition of Kimberley Pierson together with the deposition transcript of Kimberley Pierson.

Enclosed also is a stamped return receipt postcard. Please date stamp and return the postcard to this office upon receipt of this correspondence.

If you have any questions with regard to the enclosed please call.

Sincerely,



Regina F. Meyer  
Legal Assistant to Darren P. Johnson

RFM  
Enclosures



03-26-2007

U.S. Patent & TMO/TM Mail Rcpt Dt. #01



**PROOF OF SERVICE**

Crossport Mocean, Inc. v. Donn L. Pierson, et al.  
Petition to Cancel No.: 92044780

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 19800 MacArthur Boulevard, Suite 1100, Irvine, California 92612-1086.

On March 23, 2007, I served the foregoing document(s) described as follows:

**NOTICE OF RELIANCE ON DEPOSITION OF DONN L. PIERSON**

on the interested parties in this action by placing  a true copy  the original thereof enclosed in a sealed envelope and addressed as follows:

Donn L. Pierson  
Kimberley L. Pierson  
330 Paseo Marguerita  
Vista, California 92084-2559

**(MAIL)** I am readily familiar with Friedman Stroffe & Gerard's ordinary business practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on the same day with postage thereof fully prepaid at Irvine, California in the ordinary course of business. I followed this business practice and I placed the envelope for collection and mailing on the date identified above. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

**(FEDERAL)** I declare under the laws of the United States of America that I am employed in the office of a member of the Bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Executed on March 23, 2007, at Irvine, California.

  
Regina F. Meyer

Mocean v. Pierson,  
Trademark Case No.: 2009440, Cancellation No.: 92044780

CERTIFICATE OF MAILING

I hereby certify that this:

- 1) Deposition Transcript of Donn Pierson;
- 2) Deposition Transcript of Kimberley Pierson;
- 3) Notice of Reliance for Donn Pierson; and
- 4) Notice of Reliance for Kimberley Pierson.

is being deposited with the Federal Express Service as an overnight priority mail in an envelope addressed to the United States Patent and Trademark Appeals Board, 600 Dulany Street, Concourse Level, Trademark Assistant Center, Alexandria, VA 22313, on March 23, 2007.

Name: Regina F. Meyer

Signature:

A handwritten signature in cursive script that reads "Regina Meyer". The signature is written in black ink and is positioned above a horizontal line.

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

CROSSPORT MOCEAN, INC., )  
 )  
 ) Petitioner, ) Cancellation No. 92044780  
 vs. ) Registrants: Donn and  
 ) Kimberley Pierson  
 ) Reg Subject to Cancellation  
 DONN L. PIERSON and )  
 KIMBERLEY L. PIERSON, ) No.: 2009440  
 ) Mark: Mocean  
 ) Registrants. ) International Class: 25  
 )  
 \_\_\_\_\_ )

DEPOSITION OF DONN PIERSON

IRVINE, CALIFORNIA

WEDNESDAY, MARCH 14, 2007

REPORTED BY:  
LISA C. PUETTMANN-HAWTON  
CSR NO. 11368, CCR NO. 521

Job No. 636995A

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
3  
4

5	CROSSPORT MOCEAN, INC.,	)	
		)	
6	Petitioner,	)	Cancellation No. 92044780
	vs.	)	Registrants: Donn and
7		)	Kimberley Pierson
	DONN L. PIERSON and	)	Reg Subject to Cancellation
8	KIMBERLEY L. PIERSON,	)	No.: 2009440
		)	Mark: Mocean
9	Registrants.	)	International Class: 25
		)	

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Deposition of DONN PIERSON,  
taken on behalf of the Petitioner at  
19800 MacArthur Boulevard, Suite 1100,  
Irvine, California, beginning at  
3:05 p.m. and ending at 5:12 p.m. on  
Wednesday, March 14, 2007, before  
LISA C. PUETTMANN-HAWTON, Certified  
Shorthand Reporter No. 11368.

1 APPEARANCES:

2

3 For Petitioner:

4 FRIEDMN, STROFFE & GIRARD, PC  
5 BY: DARREN JOHNSON, ESQ.  
6 19800 MacArthur Boulevard  
7 Suite 1100  
8 Irvine, California 92612-2425  
9 (949) 265-1100

10 For Registrants, Donn and Kimberley Pierson:

11 Donn and Kimberley Pierson  
12 (In Pro Per)  
13 330 Paseo Marguerita  
14 Vista, California 92084-2559  
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WITNESS

EXAMINATION

DONN PIERSON

(BY MR. JOHNSON)

5

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PETITIONER'S

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1 IRVINE, CALIFORNIA - WEDNESDAY, MARCH 14, 2007

2 3:05 p.m. - 5:12 p.m.

3 -o0o-

4  
5  
6 MS. REPORTER: Would you please raise your  
7 right hand?

8 Do you solemnly swear that the testimony you  
9 will give in this deposition will be the truth, the  
10 whole truth, and nothing but the truth?

11 THE WITNESS: Yes.

12  
13 EXAMINATION

14 BY MR. JOHNSON:

15 Q Good afternoon, Mr. Pierson. My name is  
16 Darren Johnson again.

17 I represent CrossSport Mocean in this matter.  
18 Can you state your full name and spell your last name  
19 for the record?

20 A Donn Locke, P-i-e-r-s-o-n.

21 Q What is your current address?

22 A 330 Paseo Marguerita, Vista, California,  
23 92084.

24 Q Just to be clear, you're here today -- you're  
25 not represented by counsel in this matter; is that

1 correct?

2 A Correct.

3 Q Have you had your deposition taken before?

4 A No.

5 Q This is the first deposition for you?

6 A In this matter.

7 Q In any other -- in any circumstances have you  
8 had your deposition taken?

9 A I've had a deposition taken.

10 Q When was that?

11 A 1994. I'm afraid I just don't know the exact  
12 date.

13 Q Was it just one other deposition?

14 A That was the only other deposition I've ever  
15 been in.

16 Q What were the circumstances of that  
17 deposition?

18 A A civil suit.

19 Q I, you, against you?

20 A Against me.

21 Q Without giving us the full details, what was  
22 the nature of the suit?

23 A A guy broke his arm -- or excuse me -- his leg  
24 on the stairs above my apartment.

25 Q And you were sort of the property owner?

1 A I was there.

2 Q You were a witness?

3 A Yeah.

4 Q Okay. Were you a defendant in the case?

5 A Yes.

6 Q So he somehow blamed you for the fall?

7 A Exactly.

8 Q Other than that deposition in that case, have  
9 you given deposition testimony?

10 A No testimony, no deposition.

11 Q The oath that you've taken today is the same  
12 oath that you would take in a court of law, so the  
13 testimony that you give today carries the same weight  
14 and importance as if you were testifying in court  
15 before a judge or jury.

16 Do you understand that?

17 A Uh-huh, yes.

18 Q It's also important that you give audible  
19 responses; yes and no responses, verbal responses,  
20 rather than nods of the head or shakes of the head or  
21 uh-huh or huh-uh so that the court reporter can take  
22 down everything accurately today.

23 Some of the things I'm going to ask you about  
24 happened in the past, a number of years ago. I'm just  
25 looking for your best recollection as to those events.

1           If you don't remember something or you just  
2 have no basis of knowing the answer to my question,  
3 that's a perfectly fine answer. Just tell me you don't  
4 know or you don't remember. Basically, I don't want  
5 you to guess.

6           The court reporter is going to prepare a  
7 transcript of the testimony today. You will have a  
8 chance to review the transcript and make any changes to  
9 your answers.

10           I would caution you though that if you make  
11 any substantive changes, anybody can comment on those  
12 changes down the road and it could reflect negatively  
13 on your credibility and it could hurt your position in  
14 this matter.

15           Do you understand that?

16           A     Yes.

17           Q     Is there any reason that you can't give your  
18 best testimony today?

19           You didn't have five martinis at lunch today,  
20 for example?

21           A     None that I can think of at this moment.

22           Q     I'm going to ask you a little bit about some  
23 background information, then we can sort of jump into  
24 the substance of this case.

25           Are you married?

1 A Yes.

2 Q And what is your wife's name?

3 A Kimberley.

4 Q And that's K-i-m-b-e-r-l-e-y?

5 A Correct.

6 Q Do you have any children?

7 A Yes.

8 Q How many?

9 A Three.

10 Q Have you ever been convicted of a felony?

11 A No.

12 Q What is your -- who is your current employer?

13 A C-Mrk, C, dash, M-r-k.

14 Q What kind of company is that?

15 A We own licenses to Disney and we also operate  
16 a brand of apparel for apparel manufacturing.

17 Q It's basically a clothing brand, C-Mrk?

18 A Yes.

19 Q Is that the name that's used?

20 A It's the corporate name.

21 Q What sort of apparel brands are used under  
22 that corporate name?

23 A Pineapple Connection, Ocean Current, Disney,  
24 D-i-s-n-e-y.

25 Q And where physically do you work?

1 A Vernon, California.

2 Q What is your title with C-Mrk?

3 A Director of Product Development.

4 Q Sort of briefly, can you describe what your  
5 duties are on a day-to-day basis?

6 A I oversee the brands and their development.

7 Q That's all the brands of the company;  
8 Pineapple Connection, Ocean Current, Disney?

9 A Yes.

10 Q How long have you held that position?

11 A Three weeks.

12 Q Where did you work prior to C-Mrk?

13 A Vans, V-a-n-s.

14 Q How long did you work for Vans?

15 A Two years.

16 Q What was your title with Vans?

17 A Product Development Director.

18 Q Where physically did you work when you worked  
19 at Vans?

20 A Santa Fe Springs, California.

21 Q Where did you work prior to Vans?

22 A Prana, P-r-a-n-a.

23 Q P-r-a-n-a?

24 A Correct.

25 Q What kind of company is that?

1 A Apparel manufacturing company.

2 Q Where are they located?

3 A Vista, California.

4 Q What was your title with Prana?

5 A Men's Design Director.

6 Q What were your duties with Prana?

7 A Oversee and design the men's line.

8 Q How long were you with Prana?

9 A Eighteen months.

10 Q Do you remember what year you started with  
11 Prana? 2002?

12 A I don't recollect exactly, sorry.

13 Q Then where did you work -- maybe it's easier  
14 if we start with your partnership.

15 Were you a partner in a partnership with your  
16 wife?

17 A I was one of the two founding partners.

18 Q What was the name of that partnership?

19 A I don't know if we named the partnership.

20 Q Okay. So you don't recall if it was even  
21 named Mocean or CrossSport Mocean?

22 A It wasn't given either one of those names.

23 Q Do you recall when you started that  
24 partnership with your wife?

25 A Approximately 1990.

1 Q Was there a partnership address?

2 A It was in Corona Del Mar.

3 Q What was the purpose of the partnership?

4 A Make money.

5 Q How did the partnership go about making money?

6 A We designed and manufactured clothing.

7 Q Who were the primary customers of the  
8 partnership?

9 A Yacht clubs, sports specialty stores and  
10 retailers.

11 Q Did the partnership -- did the clothing -- let  
12 me back up.

13 Did the partnership manufacture the clothing?

14 A The partnership placed orders with factories  
15 to cut and sew the clothing.

16 Q Let's see, was any of the clothing sold under  
17 any particular brand name?

18 A Yes.

19 Q What were those brand names?

20 A Mocean, M-o-c-e-a-n.

21 Q Any other brand names?

22 A None that I can think of.

23 Q Then how long was it -- how long were you in  
24 partnership with your wife?

25 A Two to three years.

1 Q Then the assets of the partnership were sold  
2 to CrossSport Mocean, Inc.; is that correct?

3 A The partnership was incorporated into  
4 CrossSport Mocean, Inc.

5 Q Then did you work for CrossSport Mocean, Inc.?

6 A Yes.

7 Q What was your title when you started with  
8 CrossSport Mocean, Inc.?

9 A I was the President.

10 Q How long did you hold that position?

11 A I don't recall the exact number of years.

12 Q Can you estimate?

13 A Four. It's just an estimate. Like I said, I  
14 don't recall exactly.

15 Q That's fine. And then did you take on a new  
16 title after President at CrossSport Mocean, Inc.?

17 A I don't think I had a new title at CrossSport  
18 Mocean, Inc.

19 Q So then were you the President until you left  
20 the company?

21 A Shortly after, no.

22 Q How long did you work for CrossSport Mocean,  
23 Inc.?

24 A I don't recall. I can help you though. About  
25 a month after we brought in an additional partner, I

1 left the company.

2 Before I left, they took the title President  
3 away from me.

4 Q So you worked there for about a month where  
5 you didn't have a title?

6 A Correct.

7 Q So overall you worked for the company for  
8 about four years?

9 A I don't recall how many years.

10 Q About approximately, is that a fair estimate?

11 A A fair estimate would be a specific time which  
12 I can't tell you. I don't know.

13 Q So you don't know.

14 A If I had the timeline in front of me, then I  
15 could tell you. It's not something I hold onto.

16 Q Where did you go to work when you left  
17 CrossSport Mocean, Inc.?

18 A I was immediately hired by Gotcha,  
19 G-o-t-c-h-a, as a men's designer.

20 Q Did you resign from CrossSport Mocean, Inc. or  
21 were you terminated?

22 A CrossSport Mocean, Inc. could not afford to pay  
23 me so I had to leave to support my family -- to earn  
24 money, so I don't know if I was fired or if I quit.

25 The people that were in control refused to

1 pay.

2 Q Which people were those?

3 A WJM Hindman Management Group.

4 Q Anybody else?

5 A Not that I can recall.

6 Q Were they effectively acting as, I guess, the  
7 President or the manager of the company?

8 A There wasn't a President at the time and I  
9 reckon it would be their task to manage the well-being  
10 of the company at that time.

11 Q Were you involved in bringing the WJM Hindman  
12 Group to CrossSport Mocean, Inc.?

13 A Absolutely.

14 Q Is there a Mr. Hindman in charge of the  
15 management group?

16 A Yes.

17 Q Is that person in any way related to your  
18 wife?

19 A Yes.

20 Q How is that?

21 A I don't know, an uncle removed somehow or  
22 another. I'm not sure.

23 Q Why was that management group brought in to  
24 manage CrossSport Mocean?

25 A Why or how?

1 Q Why?

2 A We were growing the company nicely and we  
3 needed additional funding to continue to fill the  
4 orders and grow the company.

5 Q Did you work anywhere between Gotcha and  
6 Prana?

7 A Yeah -- yes.

8 Q Do you recall where?

9 A No, not right at the moment.

10 Q Do you recall an estimate of how many years  
11 you worked at Gotcha?

12 A Year and a half.

13 Q And, again, you were designing men's clothing  
14 at Gotcha?

15 A Yes.

16 Q Did you graduate from high school?

17 A Yes.

18 Q Did you go on -- what high school did you  
19 graduate from?

20 A Fountain Valley High.

21 Q What year?

22 A 1976, 3.6.

23 Q That's your GPA?

24 A Yeah.

25 Q Very good. Did you go on --

1 A I surfed all the time.

2 Q But you still found time to study?

3 A Didn't need to study. No, I found time to  
4 study. Go on.

5 Q Did you go to college?

6 A Yes.

7 Q Where did you go to college?

8 A Orange Coast College.

9 Q Did you earn a degree?

10 A An A.A.

11 Q Did you go on to any college after  
12 Orange Coast?

13 A Yes.

14 Q Where was that?

15 A University of Sound and Arts, Los Angeles,  
16 California.

17 Q That's in Los Angeles?

18 A Correct.

19 Q Does it go by a different name today?

20 A I think it was bought by Arts Center. I don't  
21 know.

22 Q And did you earn a degree there?

23 A I earned a license there.

24 Q What is the name of the license?

25 A FCC, First Class.

1 Q What year was that?

2 A Don't recall, 1984, '85. I don't recall,  
3 sorry.

4 Q Did you receive any other formal education  
5 other than what we've just discussed?

6 A I've attended trade schools, computer software  
7 program seminars and schools.

8 Q Do you have any other degrees or licenses  
9 other than what you've told me about?

10 A I have a State of California manufacturing  
11 license -- apparel manufacturing license. I hold that.

12 Q When did you earn that?

13 A 1993, somewhere in there.

14 Q Any other licenses or degrees?

15 A None that I can think of at the moment --  
16 driver's.

17 Q There you go. Have you ever taken any  
18 business classes?

19 A Several.

20 Q Where did you take those classes?

21 A Orange Coast College as well as teaching at  
22 Brooks College.

23 Q What did you teach at Brooks College?

24 A Apparel design concept to completion,  
25 marketing and business.

1 Q When did you teach at Brooks College, just  
2 general time frame?

3 A Five years ago. I'm sorry, I don't recall.

4 Q That's all right.

5 A I'm sorry.

6 Q How long did you teach at Brooks College?

7 A I could only afford to teach there for two  
8 semesters.

9 Q So you taught there for two semesters?

10 A Yes, kind of giving back to the industry as I  
11 was calling it.

12 MR. JOHNSON: Let's look at some documents.

13 I'll hand you this first.

14 We'll call this Exhibit A.

15 (Petitioner's Exhibit A (later remarked as  
16 Exhibit 1) was marked for identification by  
17 the court reporter.)

18 BY MR. JOHNSON:

19 Q Is that a copy of the Mocean trademark that is  
20 at issue?

21 A Yes. I made it.

22 Q You made it?

23 A Yes.

24 MR. JOHNSON: Why don't we go off the record  
25 for a minute.

1 (Discussion held off the record.)

2 MR. JOHNSON: Back on.

3 BY MR. JOHNSON:

4 Q You mentioned you designed that mark?

5 A I don't know if that's correct to say that I  
6 designed it.

7 Q Okay. Do you know the circumstances of the  
8 creation of that mark?

9 A It was a requirement for the brand.

10 Q And is that a trademark that you were using  
11 when selling clothing under the partnership with your  
12 wife?

13 A No.

14 Q Was there a separate mark that you were using  
15 in the partnership?

16 A Yes -- let me back up. I want to back up on  
17 that question that you asked.

18 We may have sold some apparel using this in  
19 the partnership. I don't recall. This is the second  
20 mark.

21 The first one was a squiggly wave design.

22 Q Did it have any lettering or words associated  
23 with it?

24 A Yes.

25 Q What did it say?

1 A M-o-c-e-a-n.

2 Q So as best as you can recall, there was an  
3 earlier Mocean mark?

4 A Correct.

5 Q And then this was a subsequent mark that  
6 replaced an earlier mark?

7 A That is a design that has the word Mocean in  
8 it.

9 Q Is the old mark still being used to your  
10 knowledge?

11 A Not that I know of.

12 Q But you don't recall when the mark that we're  
13 marking as Exhibit A --

14 A Was first incorporated? No, honestly I can't  
15 and I wish I could.

16 It sure would be helpful.

17 Q Is there any kind of documentation that would  
18 sort of help clarify that?

19 A Not off the top of my head.

20 Q Do you know who created that mark, Exhibit A?

21 A I believe it was a collaboration between many  
22 people.

23 Q Do you know who those people were?

24 A I would be one, my wife would be one.

25 Q Anybody else?

1           A     I know there were others but I can't recall  
2 who they were.

3                     It would be people that would visit us and  
4 hang out. There were so many.

5           Q     So this mark was sort of a work in progress  
6 over a number of days or weeks.

7                     Is that fair to say?

8           A     Yes, the creation of it. That's just the way  
9 the process works.

10          Q     Sure. As between you and your wife, does one  
11 of you claim to be more of the creator than the other?

12          A     She'll probably claim to be more of the  
13 creator.

14          Q     If I can ask, what is the inspiration for the  
15 design?

16          A     Everything that matters goes into a circle for  
17 the trademark when we created the name Mocean;  
18 mountains, movement and water.

19          Q     Why those three elements?

20          A     They're in everyday life no matter where you  
21 are.

22          Q     What about the name, M-o-c-e-a-n? What is the  
23 inspiration for that, the word?

24          A     I stated that just a moment ago; mountains,  
25 movement and water.

1 Q So in fact those mountains, movement and water  
2 would be the inspiration for both the name and the  
3 design itself; is that correct?

4 A Yes.

5 Q Then you registered this trademark with the  
6 Patent and Trademark Office; is that correct?

7 A Correct.

8 Q Do you know when you registered the mark?

9 A Originally in 1991. I don't remember, mid  
10 year somewhere -- April, May, June.

11 Q Why do you recall that being the day of  
12 registration?

13 A Because it was a big day. I mean, it was just  
14 that that year was a formidable year in the forming of  
15 the partnership or the concept or the idea of selling  
16 apparel.

17 Q So maybe I'm not clear. You registered this  
18 trademark in Exhibit A in 1991 but you didn't use the  
19 trademark in selling apparel under the partnership?

20 A You've just asked me a question that has many  
21 different answers. Let me help you here.

22 We trademarked the name Mocean in 1991 --

23 Q Okay.

24 A -- or filed for the trademark.

25 Q And the filing, a sample of the trademark,

1 would be reflected in Exhibit A; is that correct?

2 A No, that would be incorrect. It was the  
3 original mark.

4 Q Is that the design with the squiggly line?

5 A Correct.

6 Q Do you recall when you registered the design  
7 in Exhibit A?

8 A No, I don't.

9 MR. JOHNSON: Let me hand you this. This will  
10 be marked as Exhibit B and see if that sort of  
11 refreshes your memory.

12 (Petitioner's Exhibit B (later remarked as  
13 Exhibit 2) was marked for identification by  
14 the court reporter.)

15 BY MR. JOHNSON:

16 Q It looks like a --

17 A Is it dated?

18 Q -- Trademark Application With Declaration. It  
19 looks like it's two pages.

20 The second page looks like it has a date of  
21 November 29th, 1994.

22 A Yeah -- yup.

23 Q Based on this document, would you agree that  
24 on or around November 29th, 1994, you and your wife  
25 filed an application to register the trademark in

1 Exhibit A?

2 A Yes.

3 Q Looking on the second page there, is that your  
4 signature?

5 A Yes.

6 Q Does that appear to be your wife's signature?

7 A Yes, everything looks in order.

8 Q Then on the first page, the Seashore Drive  
9 address, that was the business address as of that date?

10 A Yes. It was our business and our home  
11 address.

12 Q Then looking halfway down the first page where  
13 it says "goods or services using the mark," is that a  
14 correct description of the goods that you were using in  
15 your business with this trademark?

16 A Uh-huh, yes.

17 Q As of that date, November 29th, 1994, do you  
18 recall if were you using the trademark as individuals  
19 or under the partnership or under CrossSport Mocean,  
20 Inc.?

21 A Ask me again and let me --

22 Q As of the date of this document, November  
23 1994, were you using the trademark -- or registering  
24 the trademark for use by you and your wife individually  
25 or for use with a business entity?

1 A Individual, just for ourselves.

2 Q Then it says that the use of the first mark  
3 was February 23, 1990.

4 I think what you've told me that -- based on  
5 what you've told me is the first use of the mark a  
6 actually different version of the mark with the  
7 squiggly lines.

8 Would that be accurate?

9 A I think the name Mocean, M-o-c-e-a-n, would be  
10 accurate.

11 Q Looking at the mark on Exhibit A, did you  
12 first -- you and your wife first start using that mark  
13 in 1990, February of 1990?

14 A We first started using the name Mocean,  
15 M-o-c-e-a-n, back in 1990.

16 This is actually the first date of sales that  
17 we could prove with clothing having the name Mocean on  
18 it.

19 Q Then it says specify the type of commerce,  
20 interstate commerce.

21 Were you selling products under the Mocean  
22 name outside of California?

23 A Yes.

24 Q Where were you selling the products?

25 A To yacht clubs, sports specialties and

1 retailers.

2 Q Where are they located though? Where outside  
3 of California?

4 A I don't recall. Where there was an ocean or  
5 water, they would have reason to buy the product.

6 Q But you can't specifically say that you were  
7 selling to customers in Hawaii or Australia or Florida?

8 A No, I can't.

9 Q During the time that you sold the goods at the  
10 partnership, were there different labels using the  
11 Mocean mark or was there only a single label?

12 A I don't recall.

13 Q Did you maintain a copy of the registration  
14 application documents that you submitted to the Patent  
15 and Trademark Office?

16 A I might have. I don't recall. There's so  
17 many files.

18 Q Actually backing up, did you review any  
19 documents in preparation for today's deposition?

20 A Yes.

21 Q What documents were those?

22 A This document.

23 Q You're showing me a Notice of Continuance of  
24 the deposition; correct?

25 A Yes.

1 Q Did you review any other documents other than  
2 the Deposition Notice?

3 A No.

4 Q Did you speak with anybody to prepare for the  
5 deposition?

6 A On the way down I talked to my wife. We rode  
7 in the car together.

8 If we weren't talking about the kids, we  
9 probably talked about if we were on time.

10 Q Did you speak with anybody else in preparation  
11 for the deposition today?

12 A No.

13 MR. JOHNSON: I'm going to hand you this Bill  
14 of Sale. It looks like it's seven pages and we'll keep  
15 them clipped together.

16 We'll mark it Exhibit C.

17 (Petitioner's Exhibit C (later remarked as  
18 Exhibit 3) was marked for identification by  
19 the court reporter.)

20 BY MR. JOHNSON:

21 Q Do you recognize that document?

22 A Yeah -- yes, I recognize it. It was very  
23 specific down to like a half of yard of pellow.

24 That's like 18 inches of a material.

25 Q Where are you looking now so we're on the same

1 page?

2 A Looks like Page 491. I would think that the  
3 assets are very specific here, very specific what the  
4 assets are.

5 Q Looking at this Page 491, what is that a  
6 listing of then?

7 A Assets. It appears to be -- what do they call  
8 this -- Exhibit A.

9 Q Exhibit A to the Bill of Sale?

10 A Right, but apparently it's got to be here --  
11 mentioned here somewhere what it is.

12 Q Just backing up, as far as you understand,  
13 this was a document that transferred the assets of the  
14 partnership that belonged to you and your wife to this  
15 new entity called Crossport Mocean, Inc.; correct?

16 A Incorrect.

17 Q Why don't you --

18 A I'm looking at a list of the assets of the  
19 partnership that were transferred to the corporation.

20 It specifically states that, what this  
21 Exhibit A is. That's attached and fully including all  
22 assets as more fully identified in Exhibit A.

23 Q I'm just asking you about in general the  
24 document including Page 1, the whole document together.

25 A The boiler plate Bill of Sale language.

1 Q Just in general. I'm not trying to trick you.

2 A You're not tricking me.

3 Q By this document, the partnership that  
4 belonged to you and your wife was transferring certain  
5 assets to this new entity called CrossSport Mocean,  
6 Inc.; is that correct?

7 A Yes. This is the Bill of Sale that --

8 Q That does that?

9 A Right, that does that.

10 Q Okay.

11 A Do I get to keep these?

12 Q I can give you an exact copy. She's going to  
13 take them and you'll get them shortly.

14 A Got it.

15 Q Then is it your contention that by this Bill  
16 of Sale, the Mocean trademark was not transferred to  
17 CrossSport Mocean, Inc.?

18 A It's specifically left out.

19 Q That's based on the fact that the trademark is  
20 not listed in the list of assets?

21 A It wasn't an asset or owned by the  
22 partnership.

23 It wasn't available.

24 Q So it's your contention that the trademark was  
25 owned by you and your wife but not by the partnership.

1 A It's a fact.

2 Q Okay.

3 A It's in the Trademark Office there.

4 Q But you would agree that the Bill of Sale  
5 reflects a transfer of all the partnership's assets and  
6 liabilities to the new company; correct?

7 A That are listed in Exhibit A as it clearly  
8 spells out in the bottom of Paragraph 2 of the Bill of  
9 Sale.

10 Q Okay.

11 A There's no trademark listed in that list.

12 Q Would you agree that the Mocean trademark was  
13 one of the most important -- if not the most  
14 important -- asset of the partnership?

15 A No, the partners were and the product.

16 Q So it's your contention that the Mocean  
17 trademark was not integral to the sale of the product  
18 by the partnership?

19 A Ask me that again.

20 Q Is it your contention then that the Mocean  
21 trademark was not integral to the sale of the products  
22 by the partnership?

23 A I would tend to agree with that statement. It  
24 seemed to be saying a lot more.

25 Q Let me make it more simple. Was the Mocean

1 trademark reflected in Exhibit A a significant part or  
2 reason for the sale of products by the partnership?

3 A No.

4 Q Okay.

5 A The product would have sold itself without a  
6 label.

7 Q Regardless of the name or label?

8 A Yes.

9 Q Why do you say that?

10 A I seem to recall that the people were more  
11 interested in the product than the name -- the people  
12 that were buying it.

13 Q Was that based on comments from customers?

14 A No.

15 Q What is that based on?

16 A Observations, me looking and watching.

17 Q Based on looking and watching what?

18 A People buying the product.

19 Q So customers?

20 A Yes.

21 Q Would you agree or would your opinion be  
22 different today that the Mocean mark was important to  
23 the sale of products by CrossSport Mocean, Inc.?

24 A Perhaps, but I don't know if I'm the best  
25 person to answer that question.

1 Q Why do you say that?

2 A I would suspect that -- yeah, I would think  
3 it's important.

4 I would like to retract what I said. I think  
5 it would be important to the brand -- to the position  
6 that CrossSport, Inc. is in today.

7 I would think that that --

8 Q So the label --

9 A But I would also have to say that if they were  
10 to have to change trademarks, that that company would  
11 still be able to sell its products without using...

12 Q And you're pointing to Exhibit A?

13 A Correct.

14 Q Why do you think that the mark today is  
15 important to the sale of the product whereas during the  
16 time of the partnership the label was not important --  
17 was not crucial to the sales of the products?

18 A The company, CrossSport Mocean, has repeat  
19 business buying that brand.

20 Q Which was?

21 A That brand of apparel.

22 Q Which was absent during the partnership?

23 A The repeat customers? No.

24 Q The partnership did have repeat customers?

25 A Yes.

1 MR. JOHNSON: Just to clarify, why don't we  
2 mark -- we've been labeling these as letters.

3 I think we should mark them as numbers so now  
4 A will become Exhibit 1, B will become Exhibit 2, C  
5 will become Exhibit 3.

6 BY MR. JOHNSON:

7 Q Looking back at Exhibit 3 on the second page,  
8 is that your signature?

9 A Yes.

10 Q Does that appear to be the signature of your  
11 wife?

12 A Yes.

13 Q Did you negotiate this sale on behalf of the  
14 partnership?

15 A I don't recall any negotiating. It was a  
16 joyous time.

17 Q Okay. Who represented CrossSport Mocean, Inc.  
18 in connection with this Bill of Sale?

19 A It was probably me as President.

20 Q Okay. So if there was any negotiation, it  
21 would be between you and your wife on behalf of the  
22 partnership with you and your wife on behalf of the  
23 corporation.

24 Is that fair to say?

25 A No, it's not fair to say that. It is also

1 incorrect.

2 Q Can you clarify?

3 A Yes. Robert Hindman, Kimberley's uncle, who  
4 is not affiliated with WJM Hindman Management Group was  
5 the Chairman of the Board of Directors of the  
6 corporation, and he represented and oversaw and checked  
7 all of the transactions that occurred.

8 Q Do you know what Robert Hindman's relationship  
9 is?

10 A He's her uncle. There's two uncles involved.  
11 One, the guy that we spoke of previous, WJM -- Willis  
12 -- James Willis Hindman.

13 Q Is that person the brother of Robert Hindman?

14 A I don't think that they're -- I don't know  
15 that.

16 I'm sorry, I couldn't tell you how closely  
17 related they are.

18 Q Okay. So at some point you sat down with  
19 Robert Hindman and discussed the terms of that Bill of  
20 Sale?

21 A Many times. Many times we would gather and  
22 strategize and talk about what has to be done, what can  
23 be done, what needs to be done.

24 Everything needed to be up on the table, up  
25 above water.

1 Q Prior --

2 A Robert Hindman is no longer here, and as far  
3 as I know, CrossSport Mocean has initiated this action  
4 after his death so he can't be disposed to tell you  
5 everything else you need to know. Go on.

6 Q Deposed you mean? He passed away.

7 A He's right, deposed.

8 Q It looks like the date of this is January  
9 1994.

10 Would you agree with that?

11 A Yeah, that was a long time ago. Yes.

12 Q Do you know when Robert Hindman died?

13 A Two or three years ago. I couldn't tell you  
14 exactly.

15 Q Based on what you just told me, is it your  
16 contention that if he were still alive, that CrossSport  
17 Mocean, Inc. would not have brought this Petition to  
18 cancel the trademark registration?

19 A We probably would have worked it out to where  
20 whomever is behind this thing would be happy.

21 I don't know. I'm not Robert.

22 Q Fair enough. At any time prior to signing  
23 this Bill of Sale, was there discussion between you or  
24 your wife and Mr. Robert Hindman regarding treatment of  
25 the Mocean trademark?

1 A Yes.

2 Q What was discussed?

3 A The licensing and the perfecting -- like  
4 getting the mark down, nailing it.

5 Q As far as the design of it?

6 A The design of it, the locking it up at  
7 trademark, putting together the whole plan on how to  
8 maintain it. All of that, yeah.

9 Q Relative to January of 1994, the date of this  
10 Bill of Sale, was the trademark depicted in Exhibit 1  
11 finalized?

12 Had the design been finalized?

13 A Possibly, possibly.

14 Q But you can't say for sure?

15 A I cannot.

16 Q Again, that's consistent with your earlier  
17 comment -- and correct me if I'm wrong -- that you  
18 don't recall whether the mark in Exhibit 1 was actually  
19 used by the partnership.

20 A I can't tell you the exact date when that mark  
21 that you showed me first appeared in commerce.

22 MR. JOHNSON: Let me show what we'll mark  
23 Exhibit 4.

24 The pages are labeled at the bottom DON0089  
25 through DON0100 and it looks like these documents

1 reflect a Board of Directors Meeting in December of  
2 1993.

3 (Petitioner's Exhibit 4 was marked for  
4 identification by the court reporter.)

5 BY MR. JOHNSON:

6 Q Do you recognize those documents?

7 A I only recognize my signature. I recognize my  
8 signature.

9 It appears to be my signature and Kimberley's  
10 and Robert's.

11 Q On the first page there?

12 A Correct.

13 Q Who would prepare as of this time frame when  
14 the corporation got started, who would prepare --

15 A Vince LePore, L-e-P-o-r-e -- yeah. He was the  
16 Secretary of the Board of Directors.

17 He did all the filings. He did all the legal  
18 work for the partnership and the corporation.

19 Q Looking at the second page of that exhibit, it  
20 says that the following directors were present;

21 Donn Pierson, Kimberley Pierson, Robert E. Hindman.

22 A Uh-huh.

23 Q And it says absent were no one. Do you have  
24 any reason to dispute that you and your wife were at  
25 this Board meeting?

1 A No reason that I can think of.

2 Q As best as you can recall consistent with this  
3 document, the first Board meeting was December 31,  
4 1993?

5 Does that sound accurate at least?

6 A It was New Years day, perhaps somewhere around  
7 there. '93, you know, Baley would have been -- was he  
8 born on that day?

9 No, he was born a year later, '94.

10 Q So that sounds accurate?

11 A Yes, sorry about that.

12 Q Let me just quickly, directing your attention  
13 to Page 8 --

14 A Okay, I'm on it.

15 Q Then sort of halfway down where it says  
16 resolved --

17 A Yeah.

18 Q It says that, "It is in the best interest of  
19 the corporation to accept said offer to obtain on  
20 January 1, 1994, the entire business including all  
21 assets and liabilities of the general partnership,  
22 specifically including without limitation the assets  
23 described in Exhibit A attached to these Minutes and  
24 incorporated herein."

25 A I see that.

1 Q Did you raise any objection to that language  
2 for any reason?

3 A No.

4 Q Did you generally agree?

5 A Nothing that I can recall.

6 Q Then looking at Page 9, is it accurate then  
7 that you and your wife were the two original  
8 shareholders of CrossSport Mocean, Inc.?

9 A Yes. According to this, yes.

10 Q Can you explain why the assets were  
11 transferred to CrossSport Mocean, Inc. effective January  
12 1994 and -- well, strike that.

13 Do you recall when -- do you recall the first  
14 sale of any product bearing the mark reflected in  
15 Exhibit 1?

16 A No.

17 Q Just maybe an estimate if you don't have an  
18 exact date.

19 A No, for like the third or fourth or fifth  
20 time, I don't recall.

21 Sorry, Darren, I've answered that question  
22 numerous times. I just can't help you. I don't recall  
23 exactly when.

24 Q Did you ever register a mark under the name  
25 Mocean Sport?

1           A     I believe we considered it. I don't know the  
2 extent that we proceeded, how far along that had  
3 gotten.

4           Q     Was that going to be an additional mark or was  
5 that a prior or a different version of what became  
6 Exhibit 1?

7           A     The trend at the time was to have Sport after  
8 trademarks, like Spot Sport and other -- there was lots  
9 of that going on. So what we were -- I think we were  
10 trying to cover that.

11                   We may have applied. We may have pursued it  
12 but I don't own anything called Mocean Sport.

13           Q     Did you ever individually sell any products  
14 bearing the Mocean trademark as in Exhibit 1?

15           A     Yes, we have.

16           Q     What products have you sold individually?

17           A     We sold several pairs of shorts that were  
18 given to us by Bill Levitt.

19           Q     When you say "we," do you mean you and your  
20 wife?

21           A     Yes. Back to the old partnership thing, yes.

22           Q     So the shorts given to you by Bill Levitt,  
23 when was that?

24           A     I don't recall. It was a box of paddling  
25 shorts -- paddling and sailing shorts.

1           There was probably 50 or 60 pairs in it.

2           Q     When? Do you know when that was?

3           A     Couple of years ago.

4           Q     So that would be what, 2004?

5           A     I don't recall.

6           Q     Why did Bill Levitt give you a box of paddling  
7 and sailing shorts?

8           A     He didn't know how to sell them. He didn't  
9 know what to do with them.

10           He would have thrown them out if we didn't  
11 take them.

12           Q     Is that because CrossSport Mocean, Inc. wasn't  
13 in the business at the time of selling paddling and  
14 sailing shorts?

15           A     No. It was because Bill didn't know how to  
16 sell them.

17           Q     Can you be more specific?

18           A     No.

19           Q     Was that -- were those shorts, was that a  
20 typical product of CrossSport Mocean, Inc. something  
21 that they typically sold?

22           A     Yes.

23           Q     Was it your understanding that that model of  
24 clothing was not selling well for the company?

25           A     No, not -- no. It wasn't an understanding of

1 mine.

2 Q Were there other -- were these 50 or 60 pairs  
3 the last pairs that Bill had in his possession that he  
4 couldn't get rid of?

5 A I don't know.

6 Q Do you recall, were they leftover pairs that  
7 just couldn't be sold to another manufacturer -- I mean  
8 another retailer or distributor?

9 A I don't know.

10 Q Did Bill Levitt tell you anything else in  
11 connection or anything else about why he gave you those  
12 50 to 60 pairs of shorts to sell?

13 A No, sorry.

14 Q Just basically said here's some shorts, I  
15 can't sell them?

16 A It was a box. I said okay.

17 Q Where that -- was that at your home or his  
18 office?

19 A It was at his office at CrossSport Mocean.

20 Q Other than this box of shorts, have you sold  
21 any other products under the Mocean trademark?

22 A I don't recall right now, probably -- maybe.  
23 I'm sorry.

24 Q It's possible, you just don't recall?

25 A It is indeed possible.

1 Q Let me ask, are there any documents that you  
2 think you could go to to sort of help clarify that  
3 issue?

4 A Just invoices probably that were receipts from  
5 the individual buyers that bought the shorts  
6 specifically.

7 Therein lies where I struggle, is that I  
8 wouldn't want to say I sold anything if I couldn't back  
9 it up.

10 Q So as far as you know, you don't have receipts  
11 that show other sales other than that?

12 A Other than those shorts?

13 Q The 50 to 60 shorts.

14 A That we were given to sell, yes.

15 Q Do you know if you have receipts that reflect  
16 the sale of these 50 to 60 pairs of shorts?

17 A We probably have many receipts for those.

18 Q Do you have them at home?

19 A Yeah. I don't have them here.

20 MR. JOHNSON: Why don't we take a two-minute  
21 break.

22 Off the record.

23 (Short break taken.)

24 MR. JOHNSON: Let's go back on the record.  
25 I hand you what looks like a PayPal statement. We'll

1 mark it as Exhibit 5.

2 (Petitioner's Exhibit 5 was marked for  
3 identification by the court reporter.)

4 BY MR. JOHNSON:

5 Q Let me ask you, is this a receipt that  
6 reflects the sale of one of the shorts included in the  
7 box that Bill Levitt gave you?

8 A I would say yes, definitely.

9 Q Then looking at the email --

10 A That's Kimberley's old email address.

11 Q Then looking at the email, it looks like  
12 December of 2004.

13 Does that sound about accurate that it was the  
14 time that you sold the box of shorts?

15 A Unfortunately, I can't -- I can say that their  
16 time stamp is probably correct, but Kimmy did all of  
17 these.

18 I didn't personally sell them.

19 Q She did the sales?

20 A Yes, she did the sales. You can see it's  
21 addressed to her, Dear Kimberley Pierson.

22 I thought it was a great idea.

23 Q Let me ask you, other than this one PayPal  
24 receipt, do you know if you or your wife have more of  
25 these receipts reflecting other sales?

1           A     Knowing Kimmy, she probably has a stack of  
2 them.

3           Q     Then let me ask, do you --

4           A     You want me to get them for you?

5           Q     Definitely, but do you have any receipts  
6 reflecting sales made by you?

7           A     Personally me?

8           Q     Yes, as opposed to your wife reflecting the  
9 sale of any products under the Mocean mark.

10          A     Probably not.

11          Q     When did you -- are you still a shareholder of  
12 CrossSport Mocean, Inc.?

13          A     Yeah, definitely, as far as I know unless they  
14 did something naughty.

15          Q     Are you affiliated with CrossSport Mocean  
16 Incorporated in any other way currently?

17          A     As a shareholder?

18          Q     In any way.

19          A     Yeah, a couple of ways. I have a Royalty  
20 Agreement that was signed, a Royalty Release Agreement,  
21 and I have -- is that what you mean?

22          Q     I think so, yeah.

23          A     Like if I have agreements with them?

24          Q     Yes.

25          A     I have a license to them for the trademark

1 name, Mocean, that lends it to them. Let me see.

2 I made all the patterns they're still using  
3 today, that kind of freaked me out. I made all of the  
4 designs.

5 I personally brought Bill Levitt in, the guy  
6 who is running it.

7 Q Let's kind of take some of those. You're not  
8 on the Board of Directors today; is that correct?

9 A No.

10 Q Do you recall when you resigned from the Board  
11 of Directors?

12 A Yeah, when the WJ Hindman Management Group was  
13 brought on board.

14 The dates I don't remember.

15 Q Let me show you this. It's a document labeled  
16 CMI00467.

17 Does that refresh your recollection as to when  
18 you resigned as a Board member?

19 A That's my signature and that's probably the  
20 right date, 4/8/98.

21 Q Then, again, briefly you mentioned that you  
22 have a Royalty Agreement with the company?

23 A Royalty and Release Agreement that  
24 specifically states that they can't sue me or they  
25 can't bring legal action, for example, if you would

1 consider this a legal action.

2 Q But the Royalty and Release Agreement only  
3 concerns specific designs to be used by the company in  
4 its products; is that correct -- apparel design?

5 A If you say so.

6 Q What is your --

7 A What is my take on that? It's a fairly  
8 comprehensive document.

9 If you haven't read it and the words that you  
10 just said to me kind of tell me that you're not  
11 familiar with it.

12 It's not just for -- it covers several legal  
13 aspects of the relationship between me and the current  
14 management.

15 MR. JOHNSON: Why don't I hand you this so  
16 we're all on the same page.

17 It's Exhibit 6. It's call Agreement of  
18 Royalty and Release.

19 (Petitioner's Exhibit 6 was marked for  
20 identification by the court reporter.)

21 BY MR. JOHNSON:

22 Q Is this the agreement that you're referencing?

23 A Yes. Yeah, it goes on and on.

24 Q So looking at the first page, it says,  
25 "Whereas Pierson created designs prior to the

1 incorporation of Mocean and such designs were  
2 transferred into Mocean upon the incorporation of  
3 Mocean, and whereas Pierson represents that he created  
4 such designs and acknowledges and agrees that all such  
5 designs created by Pierson are owned by Mocean and not  
6 by Pierson, that Pierson represents that no designs  
7 were transferred or sold in any manner so as to give  
8 any interest in any such designs to any other party"  
9 and it continues on.

10 A Uh-huh.

11 Q Then it says at the bottom of that first page,  
12 it describes the payment of royalty to you based on  
13 that sale by the company beginning in 1999.

14 A Yes.

15 Q Is that correct?

16 A Yes. That's what it reads.

17 Q So I guess in your mind, does this agreement  
18 cover the Mocean trademark depicted in Exhibit A?

19 A Nope.

20 Q Do you have in your mind which design this  
21 agreement covers?

22 A Yes.

23 Q Is there a list of designs somewhere where we  
24 could go to to see which designs are included?

25 A I don't see it. It's referring to the apparel

1 as the designer.

2 Q Is it your understanding that you're entitled  
3 to a royalty based on all sales of apparel by the  
4 company or only sales of particular products with  
5 designs that you created?

6 A If it was a design that I created and they  
7 sold those designs, then I would get a royalty on it.

8 If it was design that someone else created, I  
9 wouldn't get a royalty on it -- this royalty that's  
10 mentioned here.

11 Q Do you know if any of the designs that are  
12 addressed by this agreement are listed or included in  
13 the Bill of Sale that we looked at in Exhibit 2?

14 A I wouldn't know.

15 Q I'm sorry, Exhibit 3.

16 A No, I don't know.

17 Q Actually, I guess if you would, just look at  
18 the agreement and maybe it will help you.

19 A Let me look at --

20 Q Look at Exhibit A to Exhibit 3.

21 A Yeah, on this page there are -- these are the  
22 list of garments that I designed or that were actually  
23 co-designed with many people to tell you the truth.

24 Q So tell me what page you're referencing and  
25 the example.

1           A     It's 00489. I would say that I made the  
2 patterns for all of these though for sure.

3           Q     It had a list of sort of design names then?

4           A     Yes.

5           Q     Or pattern names?

6           A     This is the pattern name. This is the style  
7 number.

8           Q     So it's fair to say --

9           A     The pattern is worth money.

10          Q     Is there any reason that you waited until  
11 December of 2000 to enter into this Royalty Agreement?

12          A     No, just that it took some pounding out and I  
13 think we were all pretty busy with our lives.

14          Q     How did this come about? Did you approach the  
15 company -- somebody at the company and ask for a  
16 Royalty Agreement?

17          A     The royalty -- as far as I know, the Royalty  
18 Agreement was offered because of the method in which  
19 the whole business transaction had occurred between the  
20 WJM Hindman Group coming in, and so they wanted to make  
21 sure that there was a release for their own -- for  
22 everybody's protection.

23                     That's my snapshot on it.

24          Q     So basically the company could continue to use  
25 the design that maybe you created; correct?

1           A     I think they didn't want me to take the design  
2 other places.

3           Q     But still we can agree that this Royalty  
4 Agreement did not address the Mocean trademark in  
5 Exhibit A.

6           A     It's not mentioned in there whatsoever.

7           Q     Did you ever discuss with anyone drafting or  
8 entering into a licensing agreement or Royalty  
9 Agreement for use of the Mocean trademark?

10          A     Yes.

11          Q     When did you first have that discussion with  
12 anyone?

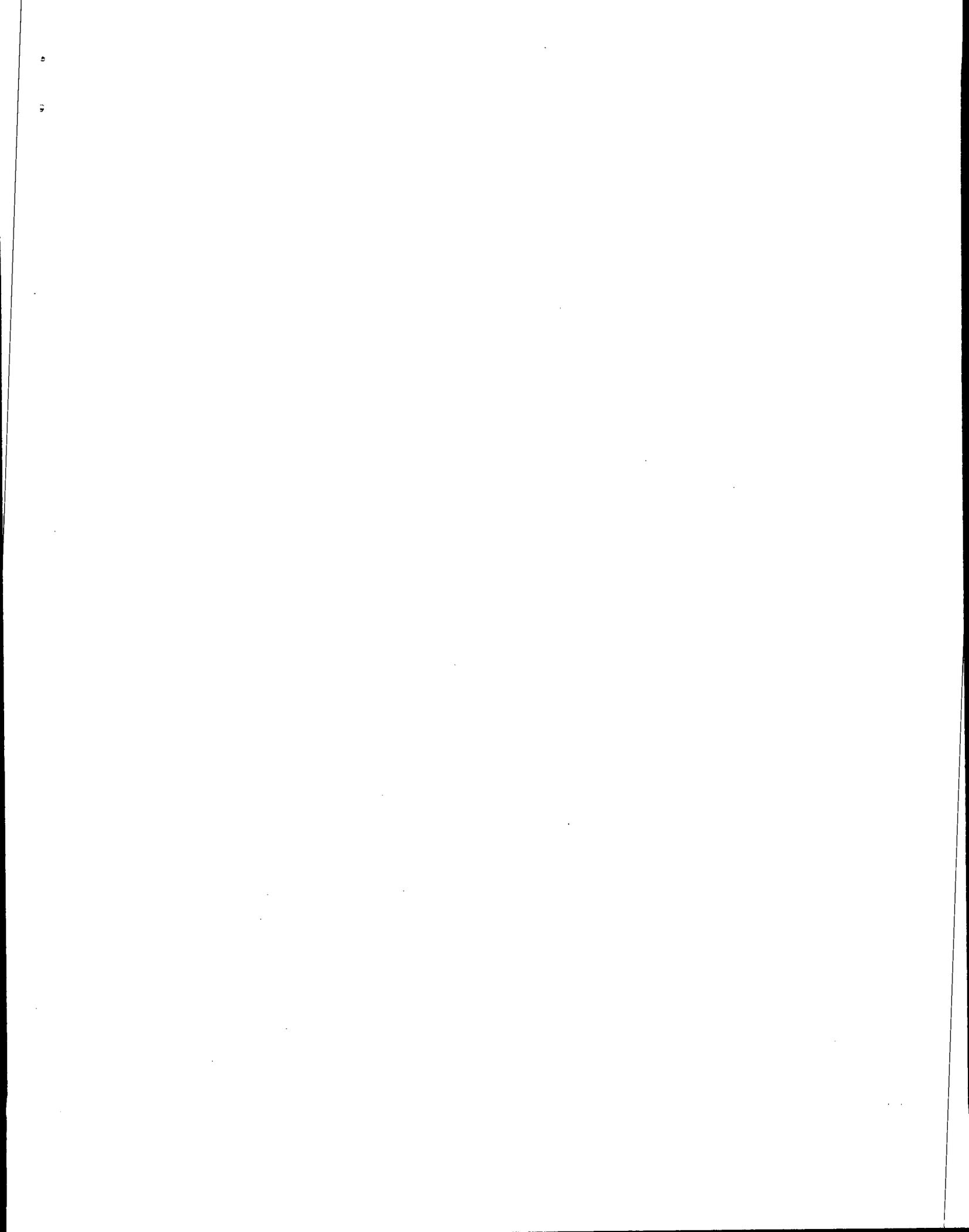
13          A     During the -- man, during the filing process  
14 of the initial trademark in '91.

15                 I think it was in '91 where we decided to  
16 register the trademark as individuals and not as a  
17 partnership or a corporation and that because of that,  
18 with the partnership using it, we needed to have an  
19 agreement between ourselves to let the partnership use  
20 our trademark.

21          Q     But then putting the partnership aside, did  
22 you ever have that discussion with the corporation  
23 CrossSport Mocean, Inc. --

24          A     Yes.

25          Q     -- about the use of the trademark or any sort



1 of royalty or license arrangement?

2 A Yes.

3 Q When did you first raise that issue?

4 A It was a continuing strategy as I recollect  
5 through the entire evolution of the business and that  
6 in -- before we changed the corporation -- I mean  
7 changed the partnership into a corporation, that we  
8 needed to formalize that agreement to license the name  
9 to the corporation.

10 Q So as far as you recall, you were having those  
11 discussions --

12 A With --

13 Q -- from the beginning of the time the  
14 corporation was formed?

15 A It was not by any means an ongoing discussion.  
16 It was just a matter of a check -- just kind of a  
17 business thing.

18 Our discussions day-to-day were design and  
19 sales.

20 Q Can you say at any point that you actually had  
21 sort of concrete discussions about a royalty  
22 percentage, for example, regarding the trademark -- use  
23 of the trademark?

24 A No. We always agreed to not have to charge  
25 the corporation money to use our trademark until it got

1 to a point when it can pay us.

2 Q So it was sort of a royalty-free license?

3 A Yes. Basically that's what it is, yes. We  
4 didn't have to invoice them.

5 We didn't have to pay invoices. It was just  
6 kind of --

7 Q Was that arrangement ever reduced to writing?

8 A Oh, yeah. You don't have it?

9 Q I don't think so.

10 A Okay.

11 Q Do you have an agreement that relates to the  
12 royalty-free --

13 A Yes.

14 Q -- license to use the trademark?

15 A Yes, and I gave it to my counsel too.

16 Q How many pages is it?

17 A Four or five.

18 Q Do you know what the date of it is?

19 A I don't know, December '93. I don't know. It  
20 was somewhere right about where we incorporated because  
21 we had all kinds of documents that we had to legalize.

22 Q Was it an actual agreement or was it reflected  
23 in the Corporate Minutes?

24 A I think it's discussed in the incorporation  
25 papers that we're still working on it.

1           It clearly spells that out as I recall because  
2 I was -- I was a bit worried and it got me back to  
3 going back at it.

4           What was your question? I'm sorry.

5           Q     I'm just trying to -- you mentioned that this  
6 royalty-free license was reduced to writing --

7           A     Correct.

8           Q     -- at some point and I haven't seen it. I  
9 don't believe that you sent us a copy of it.

10          A     Okay.

11          Q     So I'm trying to figure out what it looks like  
12 or how many pages or what it's dated.

13                 You think that it's dated sometime around '93  
14 or '94?

15          A     Right around the time the corporation was  
16 formed.

17          Q     Is it a letter? Maybe I do have it.

18          A     It's a letter.

19          Q     Is that what you're referring to?

20          A     Yeah. This is it, yup.

21                 MR. JOHNSON: Why don't we -- so we're clear,  
22 let's mark this Exhibit 7.

23                 (Petitioner's Exhibit 7 was marked for  
24 identification by the court reporter.)

25                 THE WITNESS: You said you didn't have it and

1 here it is.

2 BY MR. JOHNSON:

3 Q So basically your understanding is that you  
4 and your wife are granting to the company use of the  
5 Mocean mark without charging any royalty?

6 A Yes, as long as this agreement is in effect.

7 Q As long as which agreement is in effect?

8 A This agreement that we're looking at.

9 Q Was that agreement ever terminated?

10 A I've never sent them a termination notice nor  
11 have they ever sent me a notice of termination.

12 Q Did you and your wife draft this agreement?

13 A No.

14 Q Do you know who did?

15 A Yeah, Vince or the secretary.

16 Q Did anyone else -- was anyone else involved in  
17 negotiating or finalizing this agreement other than you  
18 and your wife?

19 A I don't know. I don't know. We talked about  
20 it and I read it and I signed it.

21 I thought it was great. I thought it was  
22 perfect.

23 Q At any point, did you approach the corporation  
24 and seek actual royalty or payment for the company's  
25 use of the Mocean trademark?

1 A Yes.

2 Q When was that?

3 A A couple of years ago I suggested to Bill in a  
4 letter that they consider -- now that the company is up  
5 and running that they consider a royalty. It was just  
6 a quick fax -- or I mean a quick email.

7 Q As far as you recall, that was a couple of  
8 years ago?

9 A Yes. I think we had a phone conversation and  
10 he said, "Well, let me see what you're thinking." I  
11 said okay.

12 Q What was his response?

13 A I don't recall. I don't think there was a  
14 response.

15 Maybe this action is the response.

16 MR. JOHNSON: This will be Exhibit 8.

17 (Petitioner's Exhibit 8 was marked for  
18 identification by the court reporter.)

19 BY MR. JOHNSON:

20 Q Is this the email that you sent to Bill Levitt  
21 raising the issue of royalty for the Mocean trademark?

22 A What is marked confidential?

23 Q That would have been our production to you.

24 A Yeah. When is this? 11/1/04, and then  
25 shortly thereafter this trademark -- where they

1 challenged the trademark comes up.

2 This is his answer.

3 Q Well, this is your -- but this is true. This  
4 is your email to Mr. Levitt?

5 A I would think so, yeah.

6 Q Is this the first time that you raised the  
7 trademark royalty issue with the corporation?

8 A This is the first time I raised the trademark  
9 issue, I think, with Bill Levitt.

10 Q Did you raise it with anybody else at the  
11 corporation?

12 A Well, other than --

13 Q Prior to this.

14 A Other than the people that are involved in the  
15 transaction -- the transition of the partnership into  
16 the corporation.

17 Q Meaning you and your wife?

18 A Me and my wife and Vince and whoever Vince  
19 needed to talk to before then about this.

20 Q But let me reask that. Do you recall raising  
21 the issue of actually being paid a royalty for use of  
22 the Mocean trademark --

23 A I don't recall.

24 Q -- at any point prior to this email to Bill?

25

1 A I don't recall, no.

2 Q Looking at the second paragraph on Exhibit 8 a  
3 couple of lines down, "It's not your fault that today  
4 we're at odds over the continued use of the trademark  
5 Mocean. It's in fact because Adam did not do what he  
6 agreed to do in submitting the verbally agreed-to  
7 revisions in writing to Vince LePore for approval prior  
8 to signing the management agreement."

9 A Yes.

10 Q What is it that you're referencing there and  
11 suggests that -- first, who is Adam?

12 A Adam Shavis (phonetic) is WJM's general  
13 counsel who was supposed to pull together an agreement  
14 of some sort.

15 Q What was the mistake that you're referencing  
16 here?

17 A When we -- when we brought in the  
18 WJM Management Group, there was a contract.

19 Q A management --

20 A A management agreement and Vince LePore, Adam,  
21 Tim Hindman -- that's another Hindman -- Kimberley and  
22 myself had all met and we went over the agreement.

23 Adam was to make specific changes and agreed  
24 to them and that was not done. The agreement was  
25 ratified, and I think maybe one of those things may

1 have been to address this issue. I'm not sure.

2 Q The use of the trademark?

3 A Perhaps so but I don't know if you can read  
4 that into there.

5 I think when that was written, I was just  
6 trying to let Bill know I'm on his side, that I don't  
7 blame him for it.

8 Q Did you ever -- putting aside yourself and  
9 your wife, did you ever notify anyone at CrossSport  
10 Mocean, Inc. that you intended to register the Mocean  
11 trademark with the Patent and Trademark Office?

12 A Yes. In this agreement, we as owners of the  
13 mark --

14 Q Which agreement now?

15 A I'm sorry?

16 Q Exhibit 7, I think, is what you're looking at.  
17 Is it the February 10th, 1994, letter?

18 A We agreed to --

19 Q Just so we're clear, is that what you're  
20 looking at?

21 A I'm looking at the license -- the agreement to  
22 license the name Mocean.

23 Q Is it dated February 10th, 1994?

24 A Correct, yes.

25 Q Just so we're all on the same page.

1           A       We're bound by this agreement to maintain the  
2 mark.

3                   That's why we continue to register it.

4           Q       But back it up to my question though.  Other  
5 than obviously you wouldn't inform yourself and your  
6 wife that you were going to register the mark, but did  
7 you inform anyone else involved with the corporation  
8 that you intended to register the mark in your name?

9           A       Nobody asked and the mark was always  
10 registered in our name.

11                   Before any of those people came on board, as a  
12 matter of public record the mark was in Donn Pierson  
13 and Kimberley Pierson's individual names.

14           Q       You didn't apply to register it until some  
15 eleven months after the CrossSport Mocean was  
16 incorporated; correct?

17           A       Incorrect.

18           Q       If we look at Exhibit 2, the Declaration in  
19 support of the registration is dated November 1994, and  
20 in Exhibit 3 the date of the Bill of Sale transferring  
21 the assets to the corporation is January of 1994.

22           A       We originally registered the trademark.  We  
23 originally filed for registration of the trademark back  
24 in 1991.

25           Q       The trademark in Exhibit 1?

1 A Mocean, M-o-c-e-a-n, that name.

2 Q But not --

3 A That's what I know.

4 Q But not necessarily what's depicted on  
5 Exhibit 1; correct?

6 A The word Mocean is in Exhibit Number 1, so  
7 that would be inclusive in my view on what we  
8 registered it for.

9 If you were to put Mocean in any script, if  
10 you were to put it in any different -- well, I'll leave  
11 it at that.

12 Q We can argue; right?

13 A Yeah.

14 Q I'm not trying to argue with you. I'm trying  
15 to clarify that what you registered in 1991 is not in  
16 the same form as what's depicted in Exhibit 1 in front  
17 of us here; is that correct?

18 A I don't know.

19 Q So backing up to my earlier question, did you  
20 notify anybody as CrossSport Mocean, Inc. that you  
21 intended to register the mark in Exhibit 1 with the  
22 Patent and Trademark Office in your individual names?

23 A I did not verbally contact anybody.

24 Q Did you contact anybody in writing?

25 A Other than what's in this agreement stating

1 that we will maintain the mark.

2 Q Which is the agreement between you and your  
3 wife and you and your wife; correct?

4 A It's the agreement between the people who own  
5 the trademark and the people who are being licensed --  
6 the trademark.

7 Q Other than what's reflected in writing on  
8 Exhibit 7, which I think you're referencing, did you  
9 ever contact or notify anybody at CrossSport Mocean,  
10 Inc. in writing that you intended to or had registered  
11 the trademark -- the Mocean trademark in your  
12 individual names?

13 A No, I did not.

14 Q Why not?

15 A No one asked.

16 Q And it was never an issue?

17 A Never.

18 Q Is there any reason -- then let's back up.  
19 You left the company in 1998; correct?

20 A I don't remember what year I left it.

21 Q This document that we looked at earlier, that  
22 states, "Please accept my resignation as Director and  
23 Officer as of April 8, 1998, signed Donn Pierson," does  
24 that sound accurate?

25 A For what it says, yes.

1 Q Do you have any reason --

2 A I don't know when I left Mocean. It  
3 doesn't -- I don't know when I left that company.

4 Q So you don't know if it was in 1998?

5 A I know it wasn't in the last four or five  
6 years.

7 It's been several years.

8 Q So then my question is, was there any reason  
9 that you waited until November of 2004 -- which is I  
10 guess approximately at least five years after you left  
11 the company -- to raise the issue of receiving a  
12 royalty for use of the Mocean trademark by CrossSport  
13 Mocean, Inc.?

14 A I suppose that this letter may have been --  
15 no, I don't.

16 I don't know the answer to your question why I  
17 would suddenly write this to Bill.

18 Q Then just to clarify, comparing your email to  
19 Bill about receiving a royalty for the use of the  
20 trademark and comparing that with the sale by your wife  
21 through PayPal of water shorts, did you -- were the  
22 sales by your wife before or after you raised the issue  
23 of receiving a royalty with Bill Levitt?

24 A This one that you have here that I'm looking  
25 at, this one particular item, it's dated 12-17-04.

1           This letter is dated 11-1-04.

2           Q     Okay, so the sale by your wife came at least,  
3 I guess, a month after you raised the issue of a  
4 royalty with Bill Levitt; correct?

5           It's not a trick question.

6           A     I'm just wondering if I asked for a royalty in  
7 here.

8           Q     I think at the top of the second paragraph at  
9 the bottom of Exhibit 8 --

10          A     Ask your question again. I don't know -- I  
11 would say the dates are pretty clear.

12          Q     Well, right. Let's just kind of clear it up.  
13 I think we've determined that this email here dated  
14 November 1st, 2004, which we've marked as Exhibit 8,  
15 was your initial email or contact to Bill Levitt  
16 raising the issue of you and your wife being paid a  
17 royalty based on the Mocean trademark; correct?

18          A     This would be -- yeah. I would say this is my  
19 first written contact with Bill on that.

20          Q     Then earlier we were discussing sales by you  
21 and your wife of products using the Mocean trademark.  
22 And according to the PayPal receipt that we've marked  
23 as Exhibit 5, the sale of the shorts by Kimberley  
24 happened approximately a month and a half after your  
25 email to Bill raising the royalty issue; is that

1 correct?

2 A This sale on this one particular item? There  
3 may have been many before. There may have been some  
4 after.

5 Remember, there's more than one.

6 Q Otherwise, just looking at this one particular  
7 sale and receipt, what I've said is correct?

8 A Yes.

9 Q Have you yourself done any sort of marketing  
10 of any products under the CrossSport Mocean trademark?

11 A Yes -- well, when I was an employee of the  
12 company.

13 Q What about since leaving the company?

14 A Huh-uh.

15 Q Is that a no?

16 A No. What is marketing?

17 Q You would know better than me. You're in the  
18 business -- effort to take the product to market or  
19 advertise?

20 A To audit the product is part of the marketing  
21 as well.

22 Q Audit?

23 A Audit, yes, to check the product itself to see  
24 how the market is reacting to the product. That in  
25 which I have done, but to try to take the name and

1 market the name, like build a brand, I have not.

2 Your question is super general.

3 Q I'm not trying to be general. When you say  
4 "audit," what have you done in terms of auditing --

5 A Checking to make sure the product is good,  
6 talking to people on the street that are wearing it --  
7 the cops -- making sure they're happy with it, making  
8 sure it's performing, that it has the right quality,  
9 the quality is there, making sure that what they're  
10 ordering is what they're getting, are they getting them  
11 in time.

12 It's all been pretty --

13 Q Why have you done that?

14 A Because it's my trademark. I have to keep my  
15 eye on it.

16 Q CrossSport Mocean, Inc. primarily sells their  
17 clothing to law enforcement; is that correct?

18 A Yes.

19 Q Have you licensed the Mocean trademark to  
20 anyone?

21 A Yes, Darren, to the people at  
22 CrossSport Mocean.

23 Q Okay. Have you licensed the trademark to  
24 anyone other than CrossSport Mocean, Inc.?

25 A No.

1 Q At any time, did you object to CrossSport  
2 Mocean selling products under the Mocean trademark?

3 A Not that I can recollect.

4 Q Did you ever raise the issue of receiving a  
5 royalty for the company's use of the Mocean trademark  
6 with Mr. Hindman?

7 A Which one?

8 Q Let's see, Robert Hindman?

9 A Not to my recollection.

10 Q Have you ever made any changes to the Mocean  
11 trademark depicted in Exhibit 1?

12 A I'm sorry, repeat that, please.

13 Q Have you yourself ever made any changes to the  
14 Mocean trademark in Exhibit 1?

15 A Yes.

16 Q What changes are those?

17 A I've resized it to make their catalogs for  
18 them.

19 Q Okay. Other than resizing it, have you made  
20 any changes to the appearance of the mark?

21 A Skewed it, s-k-e-w-e-d.

22 Q Meaning made it longer to fit in a certain  
23 space?

24 A Uh-huh.

25 Q You mentioned doing their catalog. You do the

1 company catalog?

2 A Yes.

3 Q You still do that today?

4 A I think there's using the same one I made  
5 last.

6 Q When did you last make the catalog for the  
7 company?

8 A A few years ago. I can't remember, sorry.  
9 It's a good catalog.

10 Q Did the company pay you to create their  
11 catalog?

12 A Probably. I don't remember how much.

13 Q Have you ever become aware that anybody other  
14 than either you or your wife or CrossSport Mocean, Inc.  
15 has been selling products under the Mocean trademark?

16 A No.

17 Q Going back to the catalog that you created a  
18 couple of years ago, did you ever use that catalog to  
19 sell Mocean trademarked goods, you yourself  
20 individually?

21 A Yes.

22 Q Was that in connection with the Internet  
23 sales?

24 A No.

25 Q What sales have you yourself done?

1 A As a salesman for the company.

2 Q When did you last work as a salesman for the  
3 company?

4 A I think it's been 1998. I don't recall.

5 Q Did you create the catalog for the company  
6 after you left the company or before you left the  
7 company?

8 A It would be after I left the company.

9 Q I think you said earlier actually within just  
10 a couple of years ago; is that correct?

11 A The catalog that you're referring to was  
12 after.

13 Q Do you recall how many years ago or how long  
14 after you left the company that you created this  
15 catalog?

16 A No, I don't.

17 Q Can you estimate?

18 A Two to six.

19 Q Safe. Let's back up. So just to be clear, I  
20 think you told me that you actually used that catalog  
21 that you created two to six years after you left the  
22 company in connection with sales by you of Mocean  
23 products.

24 A I see what you're getting at and I  
25 misunderstood what you're saying.

1 Q Let's be clear.

2 A No. I have not used that catalog.

3 Q In connection with sales by you?

4 A No.

5 Q What I just said is correct?

6 A Correct.

7 Q Do you own any other registered trademarks  
8 other than the one in Exhibit 1?

9 A I own the trademark. The trademark that I own  
10 is Mocean, M-o-c-e-a-n.

11 Q Okay. Are you telling me that's the same or  
12 different than what's depicted in Exhibit 1?

13 A It's the same.

14 Q So other than that trademark, you don't claim  
15 to own any other trademarks?

16 A None.

17 Q Do you intend to continue to use the Mocean  
18 trademark in your individual capacity today or going  
19 forward?

20 A Yes.

21 Q How?

22 A Well, when we get over this, my hope is that  
23 we can come to a good agreement with CrossSport Mocean.

24 Q As far as a royalty arrangement?

25 A Whatever it may be.

1 Q Okay. I think just a couple more questions  
2 here.

3 That's fine, I think we're done so let's just  
4 go off the record for a minute.

5 (Short break taken.)

6 MR. JOHNSON: Back on the record. The court  
7 reporter has reminded me to clarify for the witness  
8 that, again, you'll have a chance to make any changes  
9 to your answers in the deposition transcript. The  
10 questions are what they are, so don't attempt to make  
11 any changes to the questions even if they're not that  
12 good.

13 I'm proposing that we agree to release the  
14 court reporter of her duties under the Code. She'll  
15 prepare the transcript of the original and it will be  
16 delivered to your home address in Vista.

17 We will give you until next Thursday, March  
18 22nd, to make any changes to the transcript in writing  
19 and notify our office in writing of any changes that  
20 you've made to your answers and sign the transcript.

21 Then basically, if the original transcript --  
22 you will maintain custody of the original transcript.  
23 If the original goes unsigned or is lost or misplaced  
24 or otherwise unavailable, a certified copy can be used  
25 for any and all purposes in this matter.

1 Does that sound fair?

2 THE WITNESS: Yes.

3

4 (Deposition concluded at 5:12 p.m.)

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DECLARATION

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I hereby declare I am the deponent in the within matter; that I have read the foregoing proceedings and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, at \_\_\_\_\_, California.

\_\_\_\_\_  
DONN PIERSON

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witness in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: \_\_\_\_\_

\_\_\_\_\_  
LISA C. PUETTMANN-HAWTON  
CSR No. 11368, CCR No. 521



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TRADEMARK/SERVICE MARK APPLICATION, PRINCIPAL REGISTER, WITH DECLARATION	MARK (Word(s) and/or Design)  MOCEAN	CLASS NO. (If known)  025
TO THE ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS:		
APPLICANT'S NAME: Donn L. Pierson and Kimberley L. Pierson (husband and wife)		
APPLICANT'S BUSINESS ADDRESS: <u>7405 Seashore Drive</u> (Display address exactly as it should appear on registration) <u>Newport Beach, CA 92663</u>		
APPLICANT'S ENTITY TYPE: (Check one and supply requested information)		
<input checked="" type="checkbox"/>	Individual - Citizen of (Country): Both Mr. and Mrs. Pierson are U.S. Citizens	
	Partnership - State where organized (Country, if appropriate): _____ Names and Citizenship (Country) of General Partners: _____	
	Corporation - State (Country, if appropriate) of Incorporation: _____	
	Other (Specify Nature of Entity and Domicile): _____	
GOODS AND/OR SERVICES:		
Applicant requests registration of the trademark/service mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended) for the following goods/services (SPECIFIC GOODS AND/OR SERVICES MUST BE INSERTED HERE): <u>Men's, women's and children's clothing; namely jackets, coats, shirts, pants, shorts, bathing suits, dresses and skirts. Headgear; namely hats, caps and headbands.</u>		
BASIS FOR APPLICATION: (Check boxes which apply, but never both the first AND second boxes, and supply requested information related to each box checked.)		
<input checked="" type="checkbox"/>	Applicant is using the mark in commerce on or in connection with the above identified goods/services. (15 U.S.C. 1051(a), as amended.) Three specimens showing the mark as used in commerce are submitted with this application. • Date of first use of the mark in commerce which the U.S. Congress may regulate (for example, interstate or between the U.S. and a foreign country): <u>February 23, 1990</u> • Specify the type of commerce: <u>interstate commerce</u> (for example, interstate or between the U.S. and a specified foreign country) • Date of first use anywhere (the same as or before use in commerce date): <u>February 23, 1990</u> • Specify manner or mode of use of mark on or in connection with the goods/services: <u>The mark is used on labels affixed to goods (i.e. Applicant's clothing and headgear)</u> (for example, trademark is applied to labels, service mark is used in advertisements)	
<input type="checkbox"/>	Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods/services. (15 U.S.C. 1051(b), as amended.) • Specify intended manner or mode of use of mark on or in connection with the goods/services: _____ (for example, trademark will be applied to labels, service mark will be used in advertisements)	
<input type="checkbox"/>	Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods/services, and asserts a claim of priority based upon a foreign application in accordance with 15 U.S.C. 1126(d), as amended. • Country of foreign filing: _____ • Date of foreign filing: _____	
<input type="checkbox"/>	Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods/services and, accompanying this application, submits a certification or certified copy of a foreign registration in accordance with 15 U.S.C. 1126(e), as amended. • Country of registration: _____ • Registration number: _____	
NOTE: Declaration, on Reverse Side, MUST be Signed		

Δ π EXHIBIT 2  
 Deponent D. Pierson  
 Date 3/14/07 Rptr. ltt  
 WWW.DEPOBOOK.COM

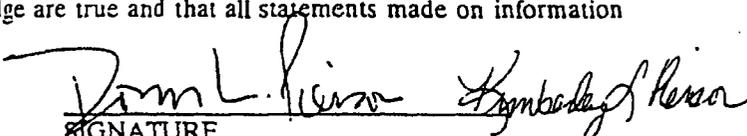
DON0026

If submitted on one page, side two of the form should be "Upside Down" in relation to page 1.

### DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

NOVEMBER 29, 1994  
DATE

  
SIGNATURE

714-646-2841  
TELEPHONE NUMBER

DONN L. PIERSON KIMBERLEY L. PIERSON  
PRINT OR TYPE NAME AND POSITION  
(HUSBAND AND WIFE)

### INSTRUCTIONS AND INFORMATION FOR APPLICANT

TO RECEIVE A FILING DATE, THE APPLICATION MUST BE COMPLETED AND SIGNED BY THE APPLICANT AND SUBMITTED ALONG WITH:

1. The prescribed FEE (\$245.00 effective 10/1/93)\* for each class of goods/services listed in the application;
2. A DRAWING PAGE displaying the mark in conformance with 37 CFR 2.52;
3. If the application is based on use of the mark in commerce, THREE (3) SPECIMENS (evidence) of the mark as used in commerce for each class of goods/services listed in the application. All three specimens may be in the nature of: (a) labels showing the mark which are placed on the goods; (b) photographs of the mark as it appears on the goods, (c) brochures or advertisements showing the mark as used in connection with the services.
4. An APPLICATION WITH DECLARATION (this form) - The application must be signed in order for the application to receive a filing date. Only the following person may sign the declaration, depending on the applicant's legal entity: (a) the individual applicant; (b) an officer of the corporate applicant; (c) one general partner of a partnership applicant; (d) all joint applicants.

SEND APPLICATION FORM, DRAWING PAGE, FEE, AND SPECIMENS (IF APPROPRIATE) TO:  
Commissioner of Patents and Trademarks  
Box TRADEMARK  
Washington, D.C. 20231

Additional information concerning the requirements for filing an application is available in a booklet entitled Basic Facts About Registering a Trademark, which may be obtained by writing to the above address or by calling: (703) 308-HELP.

\*Fees are subject to change; changes usually take effect on October 1. If filing on or after October 1, 1994, please call the PTO to confirm the correct fee.

This form is estimated to take an average of 1 hour to complete, including time required for reading and understanding instructions, gathering necessary information, recordkeeping, and actually providing the information. Any comments on this form, including the amount of time required to complete this form, should be sent to the Office of Management and Organization, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231, and to Paperwork Reduction Project 0651-0009, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Do NOT send completed forms to either of these addresses.

DON0027

1-8100  
OFFICE SUPPLIES

BILL OF SALE

This Bill of Sale is made and entered into effective the 1st day of January, 1994, by and between CrossSport Mocean, a California general partnership having offices at 7405 Seashore Drive, Newport Beach, California 92663 ("Seller"), and CrossSport Mocean, a California corporation having offices at 7405 Seashore Drive, Newport Beach, California 92663 ("Buyer").

FOR AND IN CONSIDERATION Buyer's issuance to the owners and general partners of Seller's general partnership of all of the corporation's initial issuance of common stock (i.e. 1,000 shares to Donn L. Pierson and 1,000 shares to Kimberley L. Pierson), and in consideration of Buyer's assumption of all liabilities of Seller's general partnership, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, Seller has sold, transferred, assigned and delivered, and by these presents does sell, transfer, assign and deliver unto Buyer all of Seller's right, title and interest in and to all of Seller's business, including all assets and liabilities, if any, as more fully identified on Exhibit "A" attached hereto and fully incorporated herein ("Assets").

TO HAVE AND TO HOLD unto Buyer, its representatives, heirs, successors, and assigns forever, and Seller hereby binds itself to forever WARRANT AND DEFEND the Assets unto Buyer, and unto its representatives, heirs, successors and assigns from and against any and all claims whatsoever.

Seller represents, warranties and covenants to Buyer that (i) Seller is the owner and has absolute title to each and every item of the Assets, free and clear of all claims, liens, encumbrances and all other defects of title of any kind whatsoever, (ii) Seller has not made any prior sale, assignment or transfer of any item of the Assets or any interest therein to any person or other entity whatsoever, (iii) Seller has the present power and authority to sell, transfer, assign, and deliver the Assets to Buyer, (iv) the transfer by Seller to Buyer of the Assets in no way violates and/or breaches the terms or conditions of any agreement to which Seller is a party, including, but not limited to any security agreement or any agreement under which Seller obtains credit and/or financing of whatsoever kind, and (v) that the Assets are in full and absolute compliance with all applicable laws, ordinances, regulations and agreements regarding the Assets and their construction and operation.

Seller further agrees that it will execute and deliver any and all conveyances, deeds, assignments, bills of sale, certificates, instruments of transfer, and other documents which may be necessary or appropriate to fully effectuate the terms hereof, and to vest in the Buyer, its representatives, heirs, successors, and assigns,

Δ π EXHIBIT	3
Deponent	D. Pierson
Date	3/14/09 Rptr LH
WWW.DEPOBOOK.COM	





# HARD ASSETS: EQUIPMENT

Description	Volts	Make	Serial #	Value	Purchase Date
Toyota Celica				800	Dec 92
Truck B2000 1986		Mazda		5200	Dec 92
<b>Sewing Machines</b>					
Multi needle	220			2475	June 6 1993
Single Needle	220	Consew	B408026	1500	June 6 1993
Over lock	220	Goldax	516155	1100	June 6 1993
Multi-use	110	Singer		600	June 6 1993
Foots				200.41	May 1993
Parts				147.14	May 7 1993
				<b>6022.55</b>	
<b>Production Equipment</b>					
Dyes for Padding (6)				700	May 1993
Pattern Notcher				26	Apr 1993
Electric Cutter				455	Apr 1993
Hot Knife				80	Mar 1993
Hand Press Eyelet				200	July 93
Dyes for Eyelet (6)				400	June 4 1993
Cutting Bars				300	May 25 1993
Stack Cutter		Bluestreak		1500	May 25 1993
Phase Converter3- 220V				600	May 25 1993
Looper				20	May 25 1993
Pattern Punch				80	Nov 22 1993
French Curve, Pattern Curves				102.5	May 25 1993
Scissors				60	June 1993
Cutting Tables 5				500	Jan 93
Shelves				100	Nov 93
Lights				50	Feb 21 1993
Chairs				30	Apr 4 1993
Spreader Rack				68	April 93
				<b>5271.5</b>	
<b>Office Equipment</b>					
Fax: Sharp UX 103				300	Sept 3 1992
Intercom				84	Feb 1993
IBM Computer386				1500	Jan 12 1993
Office Desk and File Set				160	April 10 1993
Okidata Printer				100	Nov 1993
HP4P Printer				1200	May 10 1993
Computer Software				2057	May 19-Sept 13 1993
				5401	
<b>Sales Supplies</b>					
High Quality Sales Hangers				140	Aug 92
Garment Bags				300	Aug 92
Garment Racks				250	Aug 92
Rounder Rack				150	Aug 92
Gridding				300	Aug 92
Waterfalls				200	Aug 92
Manequin				75	Aug 92
Wire Hangers				55	Sept 92
				1470	
<b>Total Equipment Value</b>				<b>24165.05</b>	
<b>Mark's to buy</b>					
Button Hoier	220	Reeca	S2-17594		

12-07-93 KLH

CMI 00490

HARD ASSETS: EQUIPMENT

Description	Yardage	Value	Cost Per Yd
S2 Navy	3	10.95	3.65
S2 Sage	8	29.2	3.65
S2 Plum	3	10.95	3.65
S2 Iris	5	18.25	3.65
S2 Royal	5	18.25	3.65
S2 Copper	7	25.55	3.65
S2 Moonstone	8	29.2	3.65
S3 Olive	5	19.25	3.85
S3 Sage	12	46.2	3.85
S3 Plum	12	46.2	3.85
S3 Navy	4	15.4	3.85
S3 Red	3	11.55	3.85
U2 Navy	50	315	6.3
U2 Huckleberry	7	44.1	6.3
U2 Silver	4	25.2	6.3
U3 Spruce	1	6.9	6.9
U3 Spruce2	4	27.6	6.9
U3 Forest	35	241.5	6.9
U3 Navy	7	48.3	6.9
U3 Royal	6	41.4	6.9
U3 Red	15	103.5	6.9
U3 Red2	5	34.5	6.9
PC420 Navy	10	33.5	4.95
PC420 Grey	7	23.45	4.95
PC420 Black	33	110.55	4.95
PC420 White	2	6.7	4.95
PC420 Silver	10	49.5	4.95
PC420 Royal	15	60.25	4.95
PC420 Teal	18	53.6	4.95
PC420 Yellow	6	20.1	4.95
PC420 Silver/Plum	5	24.75	4.95
C330 Hunter	7	28	4
C330 Black	75	300	4
C330 Spruce	35	140	4
PD600 Red	390	1306.5	3.35
PD600 Royal	4	13.4	3.35
PD600 Purple	30	100.5	3.35
PD600 Teal	55	184.25	3.35
PD600 Navy	25	83.75	3.35
O200 Blue	3	8.85	2.95
Calvery Twill Hunter	7	34.65	4.95
Calvery Twill Copper	7	34.65	4.95
Ripstop-Red	7	24.15	3.45
Ripstop-White	4	13.8	3.45
Ripstop Yellow	4	13.8	3.45
Ripstop Berri	10	34.5	3.45
Ripstop Navy	5	17.25	3.45
Ripstop Royal	10	34.5	3.45
Mesh Black	35	42.7	1.22
Mesh White	8	8.4	1.05
Pellon	125	93.75	0.75
Taffeta Black	10	17	1.7
Spandura Navy	4	95.6	23.9
Spandura Red	11	262.9	23.9
X-Factor Black	40	660	16.5

12-07-93 KLH

# HARD ASSETS: EQUIPMENT

X-Factor Navy	10	165	16.5
Dartexx Black	3	64.5	21.5
Durapel 2Black	6	35.7	5.95
Supplex/Lycra Blk	40	450	11.25
HB Cotton Twill Nvy	287	875.35	3.05
HB Cotton Twill Ryl	277	844.85	3.05
Fleece SS Pkt	15	47.25	3.15
Fleece 200S Blk	20	226	11.3
Fleece 100S Black	13	94.25	7.25
Fleece 100S Navy	6	43.5	7.25
Fleece EcoSpun	10	62.5	6.25
Fleece WP1000Purp/Grey	6	105	17.5
Fleece Misc Color	15	45	3
Thinsulate 100	5		
Thinsulate 50	5		
Thinsulate 25	10		

Thread 125

**Total Materials 8278.15**

12-07-93 KLH

CMI 00492

HARD ASSETS: EQUIPMENT

Bartacker	110	Brother	J0586222	
Single Needle	110	Brother	E6587163	
Single Needle	110	Brother	D4543794	
Overlock	220	Pegasus	8723173	
Overlock	220	Pegasus	8723171	7000

12-07-93 KLH

CMI 00493

7-0700

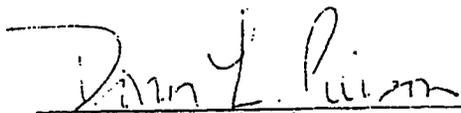
WAIVER OF NOTICE AND CONSENT TO HOLDING OF  
ORGANIZATIONAL MEETING OF BOARD OF DIRECTORS

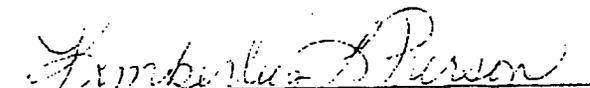
OF

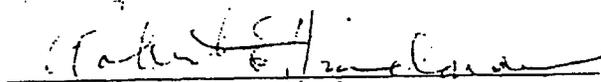
CrossSport Mocean

We, the undersigned, being all the Directors of CrossSport Mocean, a California corporation, waive notice of the first meeting of the board of directors of the corporation at 10:00 A.M. on Friday, December 31, 1993, at 7405 Seashore Drive, Newport Beach, California 92663, and consent to this meeting being held at that time and place and to the transaction of any and all business introduced at the meeting, including electing officers, adopting a corporate seal and form of share certificate, providing for the issuance of stock, and any other action that may be required or appropriate to complete the organization of the corporation.

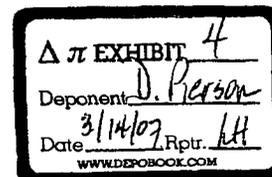
DATED: December 31, 1993

  
\_\_\_\_\_  
Donn L. Pierson

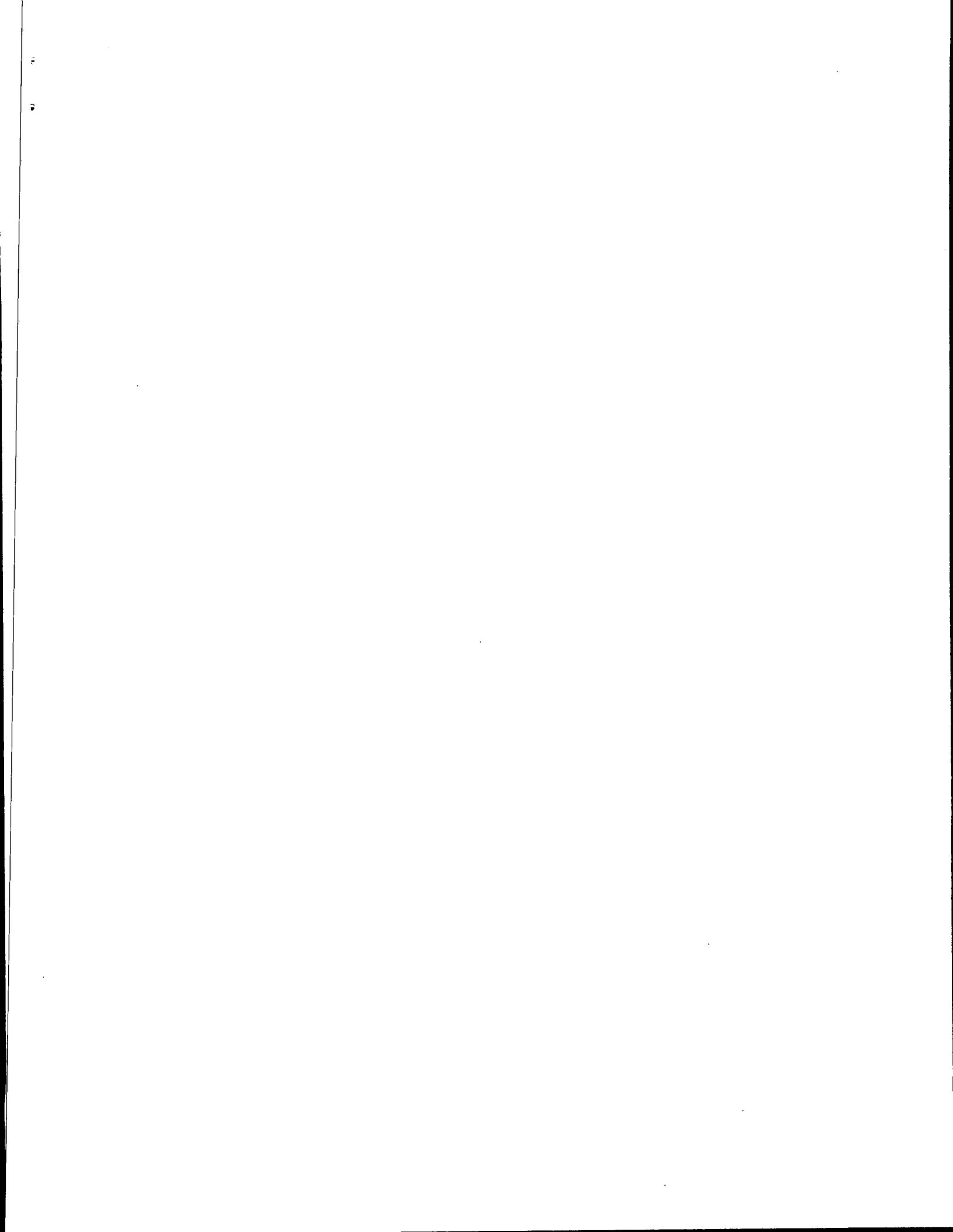
  
\_\_\_\_\_  
Kimberley L. Pierson

  
\_\_\_\_\_  
Robert E. Hindman

VL-249



DON0089



to hold said position subject to the corporation's Bylaws, until the next Annual Meeting of the corporation's Board of Directors or until his successor is duly elected and qualified. Also, upon motion duly made, seconded and unanimously carried, Vincent J. Le Pore III, Esq. was elected Secretary of the meeting.

The Chairman stated that the Articles of Incorporation of the Corporation were filed in the office of the California Secretary of State on December 1, 1993. The Chairman presented to the meeting a certified copy of the Articles of Incorporation and the Secretary was directed to insert the copy of the Minute Book in the Corporation.

The meeting proceeded to the completion of the organization of the corporation and, upon motion duly made, seconded, and unanimously carried, the following resolutions were adopted:

RESOLVED: That the corporation commence its business and operations on January 1, 1994.

RESOLVED: That any and all actions heretofore taken by the corporation's Incorporator, that being Vincent J. Le Pore III, Esq., are hereby ratified and approved.

RESOLVED: That, to the maximum extent permitted by law, the corporation hereby fully indemnifies and holds the corporation's

Incorporator harmless from and against any and all liabilities, damages, costs or expenses (including attorneys' fees), which may arise as a result of the Incorporator's actions.

RESOLVED: That Vincent J. Le Pore III, Esq., named as this corporation's initial agent for service of process in the Articles of Incorporation, is hereby confirmed in such capacity.

RESOLVED FURTHER: That the Bylaws presented to this meeting be, and the same hereby are, adopted as and for the Bylaws of this corporation, and the Secretary is directed to certify the adoption of said Bylaws and to maintain a copy of the Bylaws, so certified, at the corporation's principal executive or business office in California in accordance with Section 213 of the California General Corporation Law.

RESOLVED FURTHER: That the corporate seal in the form, words, and figures presented to this meeting and impressed upon the last page of these minutes, be, and it hereby is, adopted as the seal of this corporation.

RESOLVED FURTHER: That the form of stock certificate (s) presented to this meeting be, and it hereby is, approved and adopted, and the Secretary is directed to insert a specimen certificate in the Minute Book immediately following these minutes.

RESOLVED FURTHER: That 7405 Seashore Drive, Newport Beach, California 92663 be, and the same hereby is, designated and fixed as the principal executive office for the transaction of the business of this corporation.

ELECTION OF OFFICERS

The Chairman stated the next item of business would be to elect officers of the corporation for the coming year. After discussion, and upon nominations duly made and seconded, the following persons were unanimously elected to the offices respectively set forth, to hold said offices subject to the corporation's Bylaws, until the next Annual Meeting of the corporation's Board of Directors, or until their successors are duly elected and qualified:

TITLE	NAME
President and Chief Executive Officer	Donn L. Pierson
Treasurer and Chief Financial Officer	Kimberley L. Pierson
Secretary	Vincent J. Le Pore III

The Directors thereupon unanimously adopted the following resolution:

RESOLVED: That the corporate Officers are hereby directed to prepare and file with the California Secretary of State the Information Statement as required by Section 1502 of the California General Corporation Law.

FISCAL YEAR

The Chairman stated it would be advisable for the corporation to establish a fiscal year. Upon motion duly made, seconded, and unanimously carried, the following resolution was adopted:

RESOLVED: That the fiscal year of this corporation shall commence on January 1st and end on December 31st of each year, starting with January 1, 1994.

ESTABLISH BANK ACCOUNTS

The Chairman next proposed the Board make provision for the deposit of the funds of the corporation and their withdrawal. Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED: That this corporation established in its name one or more deposit accounts with Bank of America, 3475 Via Lido, Newport Beach, California, 92663, upon the terms and conditions as may be agreed upon with said financial institution, and that the

President, Treasurer and/or Secretary of this corporation be, and they hereby are, authorized to establish such accounts; and

RESOLVED: That DONN L. PIERSON as the President and KIMBERLEY L. PIERSON as the Treasurer of this corporation, be and hereby are, authorized to draw checks on said accounts of this corporation, signed as provided herein with signature duly certified to said financial institution and said financial institution is hereby authorized to honor and pay any and all checks so signed, including those drawn to the individual order of any Officer or other person authorized to sign the same; and

RESOLVED FURTHER: That DONN L. PIERSON as President and KIMBERLEY L. PIERSON as the Treasurer of this corporation, be and hereby are, authorized to endorse checks, drafts or evidences of indebtedness made payable to the order of this corporation, for the purposes of deposit.

PAYMENT OF INCORPORATION EXPENSES

In order to provide for the payment of the expenses of the incorporation and organization of the corporation, upon motion duly made, and seconded, the following resolution was unanimously adopted:

RESOLVED: That the Officers of the corporation are authorized and directed to pay the expenses of its incorporation and

organization, including effecting reimbursement to any persons who have advanced funds to the corporation for such purposes and payment of any amounts remaining owing to the corporation's attorney (and/or accountants) for services in connection therewith.

#### RATIFICATION OF PRE-INCORPORATION CONTRACTS

The Board next considered the ratification of commitments made on behalf of the corporation prior to the completion of its organization. Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED: That the contracts and transactions entered into on behalf and for the benefit of this corporation, be and they hereby are accepted, adopted and ratified by this corporation; and

RESOLVED FURTHER: That this corporation save, defend, indemnify and hold harmless the persons who entered into said contracts and transactions on behalf and for the benefit of this corporation, from and against any liability or expense arising therefrom and thereunder.

#### ISSUANCE OF SHARE AND ACQUISITION OF ASSETS

The Chairman stated that the corporation had received a offer to transfer to this corporation the entire business, including all

assets and liabilities, if any, of that certain California general partnership known as CrossSport Mocean (the "General Partnership"), in consideration for the assumption by this corporation of all liabilities of said General Partnership, if any, and in consideration for the issuance by this corporation of all its initial stock issuance to the general partners of the General Partnership that being Donn L. Pierson and Kimberley L. Pierson, thereby making all the owners of the General Partnership all the owners of this corporation. The Chairman further explained that since all the owners of the General Partnership would have 100% control of the Corporation after the transfer to the General Partnership's business to the Corporation, that this transaction would be treated as a tax-free exchange under Internal Revenue Code Section 351. Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED: That it is in the best interest of the corporation to accept said offer to obtain on January 1, 1994 the entire business, including all assets and liabilities, of the General Partnership, specifically including, without limitation, the assets described in Exhibit "A" attached to these Minutes and incorporated herein (collectively the "Business"), in exchange for the corporation's assumption of all liabilities of said General Partnership and in exchange for the corporation's issuance of its the initial common stock issuance to the owners of the General Partnership, thereby making said individuals the owners of this Corporation.

RESOLVED FURTHER: That, to the maximum extent permitted by law the corporation hereby fully indemnifies and agrees to hold the General Partnership harmless from and against any and all liabilities, damages, costs or expenses (including attorneys' fees) which may relate in any manner to the Business being transferred to the corporation.

RESOLVED FURTHER: The officers of this corporation be, and they hereby are, authorized and directed to sell and issue on January 1, 1994, all of this corporation's initial issuance of common stock, in the amount of 2,000 shares, to the owners of the General Partnership as follows:

<u>Shareholder</u>	<u>Certificate No.</u>	<u>No. of Shares</u>
DONN L. PIERSON	1	1,000
KIMBERLEY L. PIERSON	2	1,000

RESOLVED FURTHER: That the Officers of this corporation be, and each of them, acting alone, are hereby, authorized and empowered to (i) execute and deliver all documents which are required to consummate the transfer of the Business to this corporation (including, but not limited to, the execution delivery of any and all conveyances, assignments, bills of sale, certificates, instruments of transfer, and other documents which may be necessary or appropriate) on terms and conditions any Officer of the corporation shall approve, such approval to be

conclusively evidenced by such Officer's execution thereof, and (ii) take all of other actions which any Officer of the corporation shall deem necessary, appropriate or expedient to carry out the transfer of the subject Business to the corporation and the issuance of the subject common stock to Donn L. Pierson and Kimberley L. Pierson in exchange therefore, pursuant to these resolutions.

RESOLVED FURTHER: That such shares be sold without the publication of any advertising or general solicitation.

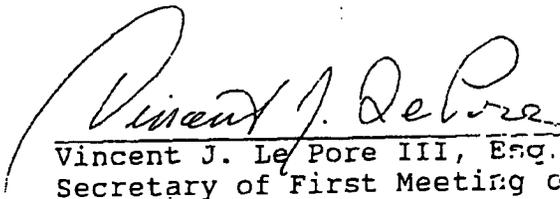
RESOLVED FURTHER: That such shares shall be issued within the exemption from qualification afforded by Section 25102(f) of the California Corporate Securities Law of 1968 and shall, in all respects, meet the requirements thereof.

RESOLVED FURTHER: That each of the proposed issues shall execute an investment representation letter with respect to the purchase of the securities of the corporation, and set forth therein their respective preexisting personal or business relationship with one or more of the corporation's directors or officers, or business or financial experience (or that of their professional advisors who are not in any way affiliated with or compensated by this corporation or its agents) by reason of which they can reasonably be assumed to have the capacity to protect their own interests in connection with the transaction.

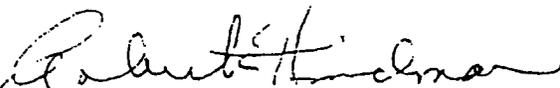
RESOLVED FURTHER: The Officers and Directors of this corporation shall cause to be prepared, executed and timely filed with the California Commissioner of Corporations, a Notice in the form prescribed pursuant to Section 25102(f), and shall take such other further action as may be necessary or desirable to effectuate the foregoing resolutions.

RESOLVED FURTHER: That this corporation is a small business corporation as defined in Section 1244 of the Internal Revenue Code, and that the shares of its capital stock to be sold and issued hereunder shall be sold and issued to the extent they qualify as such pursuant to Section 1244 of the Internal Revenue Code.

There being no further business to come before this meeting, upon motion duly made, seconded and unanimously carried, the meeting was adjourned.

  
\_\_\_\_\_  
Vincent J. LePore III, Esq.;  
Secretary of First Meeting of Board  
of Directors

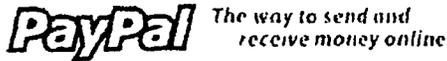
ATTEST:

  
\_\_\_\_\_  
Robert E. Hindman, Chairman of  
Board of Directors

VL-250



Subj: **Item #7121141135 - Notification of an Instant Payment Received from kavan03**  
**(kavanatta@hotmail.com)**  
 Date: 12/17/04 12:49:56 PM Pacific Standard Time  
 From: kavanatta@hotmail.com  
 To: seamscapeKP@aol.com



Dear Kimberley Pierson,

This email confirms that you have received a \$12.76 USD from kavan03  
 (kavanatta@hotmail.com).

View the details of this transaction here: [9TL064021J903224R](#)

### Payment Details

Item #	Item Title	Quantity	Price	Subtotal
7121141135	MOCEAN SAIL KAYAK WATER SHORTS SMALL H/BLK	1	\$5.76 USD	\$5.76 USD

Shipping & Handling via USPS Priority Mail to 812XX \$7.00 USD  
 (includes any seller handling fees)

Shipping Insurance (optional) : \$0.00 USD

**Total:** \$12.76 USD

**Note:**

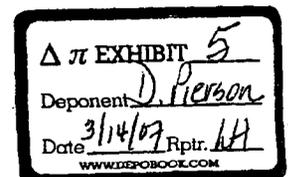
### Shipping Information

**Address:** Ken Vanatta  
 228 West 6th Street  
 Salida, CO 81201  
 United States

**Address Status:** Confirmed

Thank you for using PayPal!  
 The PayPal Team

PayPal Email ID: PP341



DON0004



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AGREEMENT OF ROYALTY AND RELEASE

THIS AGREEMENT OF ROYALTY AND RELEASE (Agreement) is made as of December 18, 2000, by and among Donn Pierson ("Pierson") and CrossSport Mocean, a California corporation ("MOCEAN").

WHEREAS Pierson is a founder of MOCEAN and holds an equity interest in MOCEAN; and,

WHEREAS Pierson was employed by MOCEAN and during the term of his employment he created designs for MOCEAN; and,

WHEREAS Pierson created designs prior to the incorporation of MOCEAN and such designs were transferred into MOCEAN upon the incorporation of MOCEAN; and,

WHEREAS Pierson represents that he created such designs and acknowledges and agrees that all such designs created by Pierson are owned by MOCEAN, and not by Pierson and Pierson represents that no designs were transferred or sold in any manner so as to give any interest in any such designs to any other party; and,

WHEREAS Pierson's employment with MOCEAN was terminated,

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements of the parties contained herein, the parties hereby agree as follows:

1. Payment of Royalty to Pierson - MOCEAN hereby agrees to pay a royalty to Pierson in the amount of one half of one percent (1/2%) on net sales (defined as gross sales other than samples, less discounts, returns and allowances) made by the Company beginning on January 1, 1999 and continuing for a period of five years until December 31, 2004. Such royalty shall be paid by the Company to Pierson on an annual basis within One Hundred Twenty

Δ π EXHIBIT	6
Deponent	D. Pierson
Date	3/14/09 Rptr. hlt
WWW.DEPOBOOK.COM	

DON0601

days (120) of the closing of the Company's year end on December 31 with the amounts for the year ending December 31 1999 due upon execution of this Agreement. Pierson agrees that if the ownership of such designs is challenged by a third party that Pierson will cooperate in any manner necessary to defend MOCEAN's ownership of such designs.

2. No Admission - Nothing in this Agreement nor the fact that this Agreement was made shall constitute any admission of any nature whatsoever of either party.

3. Mutual Release - Each party to this Agreement, as individuals or in any other capacity in which a relationship exists such as shareholders, officers, Etc. hereby irrevocably and unconditionally mutually remises, releases and forever discharges each other, their successors, assigns, shareholders, officers, directors and agents from any and all manners of action, causes of action, proceedings, dues, contracts, judgements, damages, claims, and demands whatsoever in law or equity against each other which they ever had, now have, or which their successors or assigns can, shall or may have for or by any reason of any matter, cause, or thing, whatsoever arising from their relationship. If either party shall be forced to seek additional intervention to enforce or defend their rights pursuant to the terms of this Agreement, the non-prevailing party shall be fully responsible for and pay to the prevailing party an amount equal to all of the costs and expenses, including attorneys fees, incurred by the prevailing to enforce or defend the prevailing party's rights.

4. Confidentiality - The existence of this Agreement, its

terms, and acts or omissions related thereto, are confidential and shall not be used as evidence or otherwise in any action or proceeding and shall not be otherwise disclosed, except (1) pursuant to court order or the agreement of the parties; (2) as required by law (3) by either of the parties to this Agreement in an action or proceeding to enforce or defend the terms of this Agreement.

5. Entire Agreement - This Agreement contains the full understanding and undertaking of the parties and there are no other oral or written agreements, undertakings, understandings, representations or warranties unless specifically mentioned herein. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties hereto, related to any transaction contemplated by this Agreement. Except as otherwise specifically provided herein, nothing in this Agreement is intended or shall be construed to confer upon or to give any person other than the parties hereto any rights or remedies under or by reason of this Agreement. No modification or waiver of anything contained in this Agreement shall be effective or binding on the parties unless in writing and signed by all the parties.

6. Governing Law - This Agreement shall be governed by and construed in accordance with the laws of the State of California.

7. Counterparts - This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original document, but all of which counterparts shall together

constitute one and the same instrument. This Agreement shall not be effective unless and until executed by all parties hereto.

8. Survival - This Agreement and all of its representations and provisions shall survive closing.

9. Representations by Counsel - The parties hereto agree that they enter into this Agreement after having the opportunity to receive full advice from counsel of their choice with respect to this Agreement and all matters related thereto.

IN WITNESS WHEREOF, this Agreement has been executed under seal by Seller and Buyer as of the date first above written.

Attest/Witness:

[Signature]

Crossport Mocean:

By: [Signature]  
William Levitt, President

Ronn Pierson:

[Signature]

[Signature]



February 10, 1994

RECEIVED  
NOV 07 2005

Donn L. Pierson  
Kimberly L. Pierson  
7405 Seashore Drive  
Newport Beach, CA 92663

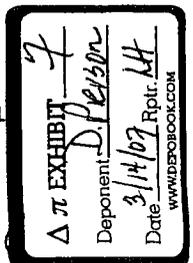
Re: "MOCEAN" Trademarks

Dear Mr. and Mrs. Pearson:

At the December 31, 1993 organizational meeting of Cross Sport Mocean, a California corporation ("Mocean"), each of you, as all the general partners of Cross Sport Mocean, a California general partnership ("Partnership"), did transfer all the business, assets and liabilities of the Partnership (as listed in Exhibit "A" to the minutes of the meeting, "List"), to Mocean, in exchange for Mocean's initial issuance of common shares i.e. 1,000 shares issued to Mr. Pierson and 1,000 shares issued to Mrs. Pierson.

As you know, the List does not include any trademarks, tradenames names or patents, which fact is also stated in the February 7, 1994 letter from Mocean's Incorporator. The purpose of this letter is to confirm with you in writing our oral agreement, effective January 1, 1994, as to Mocean's use of the tradename and trademark of "Mocean Sports & Design" and "Mocean" and any and all derivatives of the same, all of which Mocean acknowledges are owned exclusively by you (collectively, the "Trademarks"). Our agreement is as follows:

1. Donn L. Pierson and Kimberly L. Pierson (collectively, the "Piersons") grant to Mocean an exclusive and non-transferable world-wide license (without the right sub-license or assign) to use the Trademarks solely for the purpose of manufacturing, marketing, distributing and selling Mocean's products, that being men's, women's and children's clothing; namely jackets, coats, skirts, pants, shorts, bathing suits, dresses and shirts, and headgear; namely hats, cap and headbands. In that the Piersons are shareholders of Mocean, as long as this agreement is in effect, the Piersons will not charge Mocean any fee, royalty or other monetary charge of whatsoever kind, for Mocean's use of the Trademarks.
2. Mocean agrees to defend, indemnify and hold the Piersons harmless against all claims, damages, costs, expenses and losses (including attorneys' fees and costs) which arise from or relate anyway to (i) Mocean's use of the Trademarks, (ii) Mocean's products, (iii) Mocean's manufacturing, marketing, distribution and/or selling of its' products, and (iv) Mocean's breach of this agreement. At all times, Mocean shall maintain appropriate general and product liability insurance concerning its' obligations under this agreement



DON0001

Donn L. Pierson  
Kimberly L. Pierson  
February 10, 1994  
Page 2

3. At all times the Piersons shall remain the sole and exclusive owner of the Trademarks. As such, Mocean will not take any action whatsoever which will harm the Trademarks or negatively affect in anyway the Piersons' ownership of the same.
4. The Piersons agree to take all reasonable actions to continue, in their names, their current registration efforts with the United States Patent and Trademarks office in regard to the Trademarks (any one or more, as determined solely by the Piersons). In this regard, the Piersons will have the sole and exclusive right, in their names, to obtain registrations or any other legal protections of the Trademarks (state, federal and any others), in a manner determined solely by the Piersons. Once a registration is obtained for a Trademark, the Piersons agree, at their cost, to take all reasonable actions necessary to maintain such registration in their names, including, but not limited to the filing of an affidavit of continued use as required by Section 8 of the Trademark Act of 1946, in regard to registrations obtained from the U.S. Patent and Trademark Office. Mocean agrees to cooperate with the Piersons with all their registration efforts. The Piersons retain and shall have the right to prosecute and defend any action or proceeding that the Piersons deem necessary or desirable to protect the Trademarks.
5. Mocean agrees it will not make any changes or modifications of whatsoever kind to the words and/ or design of the Trademarks, without first obtaining the prior written consent of the Piersons. In the even Mocean shall develop any deviations, improvements or modifications of any kind to the Trademarks, such deviations, improvements or modifications shall be the sole property of the Piersons.
6. Mocean shall fully comply with the trademark, copyright, and patent marking provisions of the intellectual property laws of all countries whose intellectual property laws are applicable to the Trademarks.
7. Either Mocean or the Piersons can terminate this agreement at any time for any reason, by providing the other party at least 60 days prior written notice.
8. Upon the expiration or earlier termination of this agreement, Mocean shall thereafter immediately cease all further use of the Trademarks and the manufacturing, marketing, distribution and selling of Mocean's products containing the Trademarks, and all rights granted to Mocean under this agreement shall immediately terminate and immediately revert to the Piersons.

DON0002

Donn L. Pierson  
Kimberly L. Pierson  
February 10, 1994  
Page 3

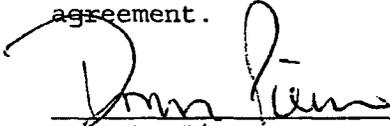
9. This agreement, including any rights set forth herein, shall not be assigned by Mocean except with the prior written consent of the Piersons. This agreement shall be binding upon and shall inure to the benefit of all successors and assigns of the parties. If any action of whatsoever kind is taken by either party to interpret or enforce any provision hereof, the non-prevailing party agree to reimburse the prevailing party for all costs and expenses (including attorneys' fees) incurred in taking such action. Failure to enforce any provision of this agreement shall not constitute a waiver of any term hereof. This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, superseding any prior or contemporary oral and such a written understanding or agreement relating to the same subject matter. This agreement may be only modified only by a writing signed by both parties. This agreement shall be governed by and construed in accordance with California Law, United States of America.

If you agree that this letter accurately sets forth our agreement, effective January 1, 1994, as to Mocean's use of the subject Trademarks, please signify the same by executing this letter in the space provided. Thank you.  
Sincerely,

Donn L. Pierson, President

Kimberly L. Pierson, Treasurer

The undersigned, Donn L. Pierson and Kimberly K. Pierson, the owners of the Trademarks defined above, hereby consent to all the terms and conditions of this agreement concerning Cross Sport Mocean's use of the Trademarks in its' clothing business as described in this letter agreement.

  
\_\_\_\_\_  
Donn L. Pierson

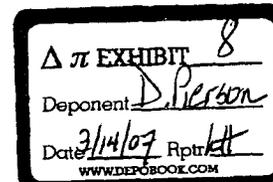
  
\_\_\_\_\_  
Kimberly L. Pierson

VL-277

DON0003



Subj: building blocks & mocean  
 Date: 11/1/04 12:13:12 PM Pacific Standard Time  
 From: SeamscapeDP  
 To: Moceanbl



Hi Bill,

Yesterday, Chloe discovered Zane's building blocks that you gave to Bayley many years back. Now she's enjoying the 'building process' thanks again for this endearing gift. You know, back when Kimberley & I made all of the decisions about Mocean; well Bob too, we decided that you would be the best person to take MOCEAN to the next level. That was many years ago and sure, there were other candidates; but we decided to put our trust & part of our future in you.

It's been awhile since we last met; Kimberley & I thought it best to allow some time to pass in order to reflect about the trademark issue that is now before us. It's not your fault that today; we are at odds over the continued use of the trademark MOCEAN. In fact, it's because Adam did not do what he agreed to do in submitting the verbally agreed to revisions in writing to Vince LePore for approval prior to signing the Management Agreement. And this is why we need to make the decision that needs to be made now: "Will the company the operates from 1635 Monrovia, Costa Mesa continue to use the trademarked name MOCEAN, or not?"

You know the story: the registered trademark & name MOCEAN is owned by Donn & Kimberley Pierson. The trademark ownership has been a matter of public record since we first registered it. This record has always been/is free and easily accessible to the Management Company & yourself. Furthermore, the trademark MOCEAN had never been listed as a company asset nor was it offered to be traded or 'put-up' for sale prior to or under any clause within the Management Agreement. Now, if Adam or Jim would have done as Adam agreed to do i.e.; make the revisions to the Management Agreement and submit the revised Management Agreement to Vince LePore for approval prior to being submitted for signing, than quite possible, we would not have to be making this decision about whether or not the trademark MOCEAN will continued to be used by the company at 1635 Monrovia, Costa Mesa.

Where does this leave us, where are we going about this? Many of the people/ investors who have loaned their assets to the company at 1635 Monrovia, Costa Mesa have been paid interest on these loans and rightfully so. Some are paid at interest rates that amount to hi-risk junk status others in the form of stock, right? These interest rates are a statement of their willingness to make the loan and their confidence in the company and in the manager of their investment. Noteworthy, is that such rates should never be paid on a loan to corporation that is made by the same person that is managing it or has control the monies invested. This is the basis for the term 'conflict of interest' and the legal loophole is to pay themselves, like the other investors', dividends. But you already know this, right? But this is not my point.

What we are proposing is that the company pay Kimberley & I interest on the loan of our asset, or pay a royalty based on a licensing agreement for the use of our trademark 'MOCEAN'. Pretty simple isn't it? A licensing agreement would be satisfactory to Kimberley & I if, sales targets and product quality standards were set, the specific market is included and the royalty is paid monthly. We have reached a dollar/ royalty value of 3% of gross monthly sales and agreement renewal increments would need to be agreed upon.

We feel this is a fair proposition as Kimberley & I can no longer afford to invest from a 'sweat equity' position. There has been ample time for this company to expand its market share, become profitable and to begin to issue dividends. There are several other (local) companies within the apparel industry that are far more successful and have started with less. They also have inferior products, have less to offer, have lower paid executive(s) and their management does not have prior records of success.

CMI 00444

CONFIDENTIAL

8

Nevertheless, Kimberley & I still believe in the company MOCEAN and I will personally support and even work for the company, for you Bill, to support & help push the growth. Bill, I'll help you in any way that I can.

Please respond to this letter ASAP but more importantly, thank you for all of your hard work. We believe in you AND thank you again for thinking about my family, the proof of that is in a simple gift known as "The Building Blocks".

Respectfully,  
Donn & Kimberley Pierson

If you need to call, pls reach me on my cell 760-420-4853 or at home 760-732-0364

CONFIDENTIAL

CMI 00445

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

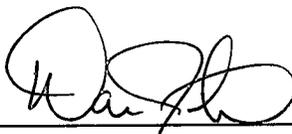
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CROSSPORT MOCEAN, INC.,	:
	:
Petitioner,	: Cancellation No. 92044780
	: Registrants: Donn and Kimberley Pierson
v.	: Reg Subject to Cancellation No.: 2009440
	: Mark: MOCEAN
	: International Class: 25
DONN L. PIERSON and	:
KIMBERLEY L. PIERSON	:
	:
Registrants.	:
-----X	:

**NOTICE OF RELIANCE**  
**ON DEPOSITION OF KIMBERLEY L. PIERSON**

Petitioner/Plaintiff, CROSSPORT MOCEAN, INC. ("Mocean") hereby files this Notice of Reliance along with the deposition transcript of Kimberley L. Pierson, whose testimony was taken before a duly authorized court reporter. Mocean intends to rely on the deposition transcript of Kimberley L. Pierson in support of Mocean's Petition to Cancel Trademark Registration.

Dated: March 23, 2007.

FRIEDMAN STROFFE & GERARD, P.C.

By:  \_\_\_\_\_

Darren P. Johnson  
Attorneys for Petitioner  
CROSSPORT MOCEAN, INC.

**PROOF OF SERVICE**

Crossport Mocean, Inc. v. Donn L. Pierson, et al.  
Petition to Cancel No.: 92044780

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 19800 MacArthur Boulevard, Suite 1100, Irvine, California 92612-1086.

On March 23, 2007, I served the foregoing document(s) described as follows:

**NOTICE OF RELIANCE ON DEPOSITION OF KIMBERLEY L. PIERSON**

on the interested parties in this action by placing  a true copy [ ] the original thereof enclosed in a sealed envelope and addressed as follows:

Donn L. Pierson  
Kimberley L. Pierson  
330 Paseo Marguerita  
Vista, California 92084-2559

**(MAIL)** I am readily familiar with Friedman Stroffe & Gerard's ordinary business practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on the same day with postage thereof fully prepaid at Irvine, California in the ordinary course of business. I followed this business practice and I placed the envelope for collection and mailing on the date identified above. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

**(FEDERAL)** I declare under the laws of the United States of America that I am employed in the office of a member of the Bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Executed on March 23, 2007, at Irvine, California.

  
Regina F. Meyer

Mocean v. Pierson,  
Trademark Case No.: 2009440, Cancellation No.: 92044780

CERTIFICATE OF MAILING

I hereby certify that this:

- 1) Deposition Transcript of Donn Pierson;
- 2) Deposition Transcript of Kimberley Pierson;
- 3) Notice of Reliance for Donn Pierson; and
- 4) Notice of Reliance for Kimberley Pierson.

is being deposited with the Federal Express Service as an overnight priority mail in an envelope addressed to the United States Patent and Trademark Appeals Board, 600 Dulany Street, Concourse Level, Trademark Assistant Center, Alexandria, VA 22313, on March 23, 2007.

Name: Regina F. Meyer

Signature:

  
Regina Meyer

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

CROSSPORT MOCEAN, INC., )  
 )  
 ) Petitioner, ) Cancellation No. 92044780  
 vs. ) Registrants: Donn and  
 ) Kimberley Pierson  
 ) Reg Subject to Cancellation  
 DONN L. PIERSON and )  
 KIMBERLEY L. PIERSON, ) No.: 2009440  
 ) Mark: Mocean  
 ) Registrants. ) International Class: 25  
 )  
 \_\_\_\_\_ )

DEPOSITION OF KIMBERLEY PIERSON

IRVINE, CALIFORNIA

WEDNESDAY, MARCH 14, 2007

REPORTED BY:  
LISA C. PUETTMANN-HAWTON  
CSR NO: 11368, CCR NO. 521

Job No. 636995B

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

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CROSSPORT MOCEAN, INC.,	)	
	)	
Petitioner,	)	Cancellation No. 92044780
vs.	)	Registrants: Donn and
	)	Kimberley Pierson
DONN L. PIERSON and	)	Reg Subject to Cancellation
KIMBERLEY L. PIERSON,	)	No.: 2009440
	)	Mark: Mocean
Registrants.	)	International Class: 25
	)	

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Deposition of KIMBERLEY PIERSON,  
taken on behalf of the Petitioner at  
19800 MacArthur Boulevard, Suite 1100,  
Irvine, California, beginning at  
5:14 p.m. and ending at 5:47 p.m. on  
Wednesday, March 14, 2007, before  
LISA C. PUETTMANN-HAWTON, Certified  
Shorthand Reporter No. 11368.

1 APPEARANCES:

2

3 For Petitioner:

4 FRIEDMN, STROFFE & GIRARD, PC  
5 BY: DARREN JOHNSON, ESQ.  
6 19800 MacArthur Boulevard  
7 Suite 1100  
8 Irvine, California 92612-2425  
9 (949) 265-1100

10 For Registrants, Donn and Kimberley Pierson:

11 Donn and Kimberley Pierson  
12 (In Pro Per)  
13 330 Paseo Marguerita  
14 Vista, California 92084-2559  
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INDEX

WITNESS

EXAMINATION

KIMBERLEY PIERSON

(BY MR. JOHNSON)

5

EXHIBITS

(NONE OFFERED)

1 IRVINE, CALIFORNIA - WEDNESDAY, MARCH 14, 2007

2 5:14 p.m. - 5:47 p.m.

3 -oOo-

4

5

6 MS. REPORTER: Would you please raise your  
7 right hand?

8 Do you solemnly swear that the testimony you  
9 will give in this deposition will be the truth, the  
10 whole truth, and nothing but the truth?

11 THE WITNESS: Yes.

12

13 EXAMINATION

14 BY MR. JOHNSON:

15 Q Good, I guess, evening now, Ms. Pierson. Can  
16 you state your name and spell your last name, please?

17 A Kimberley Pierson, P-i-e-r-s-o-n.

18 Q Again, my name is Darren Johnson and I  
19 represent CrossSport Mocean, Inc. in this matter  
20 regarding the Mocean trademark.

21 Have you ever been deposed before?

22 A No.

23 Q Never?

24 A Never.

25 Q In any matter or any cases before?

1 A Huh-uh.

2 Q Just briefly so you know what's going on, I'm  
3 going to ask you questions that relate to the  
4 trademark.

5 The court reporter is going to take down  
6 everything that we say today and prepare a transcript.  
7 You've also taken an oath to tell the truth under  
8 penalty of perjury. It's the same oath that you would  
9 take in a court of law, so the testimony that you give  
10 today carries the same weight and importance as if you  
11 were testifying in court.

12 Do you understand that?

13 A Yes.

14 Q Again, the court reporter is going to prepare  
15 a transcript that you'll have a chance to review and  
16 make any changes to your answers.

17 I would caution you though that if you make  
18 any substantive changes, anybody including myself can  
19 comment on those changes and it could reflect  
20 negatively on your credibility and it could ultimately  
21 hurt your cause in this case.

22 Do you understand that?

23 A Yes.

24 Q It's important that we speak one at a time and  
25 speak clearly so that the court reporter can take down

1 everything accurately today.

2           Some of the things that we're going to discuss  
3 happened in the past or may involve things that you  
4 weren't involved in. So if I ask you something that  
5 you don't remember or you just don't know the answer  
6 to, just let me know that.

7           "I don't know" or "I don't recall" is a fair  
8 answer.

9           Do you understand?

10          A     Yes.

11          Q     Is there any reason that you can't give your  
12 best testimony today?

13          A     No.

14          Q     All right. You are married to Donn Pierson;  
15 correct?

16          A     Yes.

17          Q     And your home address is?

18          A     330 Paseo Marguerita, Vista, California,  
19 92084.

20          Q     Where do you currently work?

21          A     I'm self-employed. I guess I work at home.

22          Q     Are you -- do you provide service to any  
23 companies?

24          A     I'm a real estate appraiser.

25          Q     Sort of an independent contractor?

1 A Uh-huh.

2 Q How long have you been doing that work?

3 A Two years.

4 Q Do you have an appraisal license?

5 A Uh-huh.

6 Q What is that license called?

7 A It's -- I'm actually a trainee -- appraisal  
8 trainee licensed with the State of California. It's  
9 called a real estate appraiser license, I believe.

10 Q When did you last work in the apparel  
11 industry?

12 A I don't know. I don't know the exact date.

13 Q That's fine. What was your last job that was  
14 related to the apparel industry?

15 A Where I got paid because -- where I got paid?

16 Q Yes.

17 A It was with Mocean in 2001.

18 Q You left the company in 2001?

19 A Uh-huh, I believe so. Yeah.

20 Q A lot of these questions, if you don't have  
21 exact dates or times, just sort of estimate.

22 Give me your best estimate. I'm not trying to  
23 test you.

24 A Okay.

25 Q What was your title at Mocean when you left?

1 A Vice President of National Sales.

2 Q Did you pursue your appraisal career after you  
3 left Mocean?

4 A Not immediately. I was pregnant. I pursued  
5 my homemaking career.

6 Q That's a tough job too. What was the last job  
7 that you worked without pay in the apparel industry?

8 A Well, I have started a Christian clothing  
9 business for children.

10 Q What did you call it?

11 A It's a Christian clothing business. It's  
12 little dresses and things for girls.

13 Q That's a business that you started?

14 A Uh-huh -- well, no. I'm working on it right  
15 now.

16 It's in the conception stage, so I don't have  
17 a business license.

18 Q So it's not a company that's up and running  
19 and generating revenue or paying salaries?

20 A Right.

21 Q But hopes to be some day?

22 A Uh-huh.

23 Q Is that a yes?

24 A Yes.

25 Q When did you first -- let's back up. You were

1 in a partnership with your husband; is that correct?

2 A Yes.

3 Q Did the partnership have a name?

4 A Yes.

5 Q What was the name of the partnership?

6 A Mocean.

7 Q How do you spell that?

8 A M-o-c-e-a-n.

9 Q Do you recall when you started that  
10 partnership?

11 A Yes.

12 Q When was that?

13 A Okay. I don't recall exactly the date. It  
14 was about 1991.

15 Q The Mocean partnership sold apparel; is that  
16 correct?

17 A Yes.

18 Q Did you sell apparel to the law enforcement  
19 industry?

20 A Initially?

21 Q At any time during the partnership's  
22 operation.

23 A Yes.

24 Q You did, okay. That wasn't its initial  
25 customer base though; correct?

1 A No.

2 Q What was the initial customer base?

3 A The outdoor industry.

4 Q Towards the end of the partnership, was the  
5 customer base primarily law enforcement?

6 A Towards the end of the partnership?

7 Q Not the corporation but just the partnership.

8 A No.

9 Q It was still sort of a small percentage of the  
10 customers?

11 A Yes.

12 Q Then you're aware that the partnership sold  
13 its assets to CrossSport Mocean, Inc.

14 A Yes.

15 Q Have you ever -- just so you know, there are  
16 eight exhibits in front of you that were previously  
17 marked as exhibits in connection with Donn Pierson's  
18 deposition.

19 Referencing Exhibit 3, did you review,  
20 approve, and sign this Bill of Sale?

21 A Yes.

22 Q That's your signature on the second page?

23 A Uh-huh, yes.

24 Q Do you recall discussing any particulars of  
25 that asset sale with anyone other than your husband?

1           A     I don't recall.

2           Q     Do you have any understanding as to whether  
3 this asset sale included sale of the Mocean trademark?

4           A     I have not reviewed that document but I do not  
5 believe that it would.

6           Q     Looking at the trademark reflected in  
7 Exhibit 1, is that the trademark that you and your  
8 husband registered with the Patent and Trademark  
9 Office?

10          A     I registered two times. The first time, no,  
11 the second time, yes.

12          Q     When was the first registration?

13          A     I don't remember the date.

14          Q     Can you estimate the year?

15          A     I think I started the process in 1992.

16          Q     Was that trademark similar to this?

17          A     No.

18          Q     The trademark here?

19          A     No.

20          Q     Did it include the name Mocean?

21          A     Yes.

22          Q     Just briefly, how was that trademark  
23 different?

24          A     It was completely different. It had a wave  
25 instead of a mountain.

1 Q Then looking at Exhibit 1, you separately  
2 registered this trademark; is that correct?

3 A Uh-huh.

4 Q What year did you and your husband register  
5 this trademark in Exhibit 1?

6 A I believe 1994. I don't recall all the dates.  
7 It's been awhile.

8 Q No problem. That's why we have documents. As  
9 we discussed with your husband and looking at  
10 Exhibit 2, the signatures reflect November 29th, 1994.

11 Based on that document, would you agree that  
12 you registered the trademark in Exhibit 1 or at least  
13 applied for registration in November of 1994?

14 A Yes.

15 Q Then sort of two-thirds of the way down the  
16 first page of Exhibit 2, it says that the mark was  
17 first used at interstate commerce in February of 1990.

18 Would that be accurate as to the trademark  
19 reflected in Exhibit 1?

20 A Yes.

21 Q Looking at this Exhibit 1, did you use that  
22 trademark in connection with the business of the  
23 partnership?

24 A Yes.

25 Q In that exact form?

1 A Yes.

2 Q So you used that mark but you hadn't  
3 registered it prior to 1994?

4 A Well, I think I started the process prior to  
5 1994 of registering it, yes, but I did use it before  
6 then as well.

7 Q That was basically a label on the clothing  
8 that the partnership sold?

9 A Yes.

10 Q Then you went to work for CrossSport Mocean,  
11 Inc.; is that correct?

12 A Yes.

13 Q What was your position when you started with  
14 the company?

15 A With the incorporation?

16 Q Yes.

17 A Vice President.

18 Q Did your title change at any time during the  
19 time that you worked for the corporation?

20 A Yes.

21 Q What titles did you hold?

22 A National Sales Manager.

23 Q So you were a Vice President and then became  
24 the National Sales Manager?

25 A Yes.

1 Q How long were you a National Sales Manager?

2 A I don't recall the exact dates.

3 Q Can you estimate maybe how many years?

4 A Couple years.

5 Q At any time during the time that you -- let's  
6 back up.

7 Do you recall the date or the month and the  
8 year that you left the company, CrossSport Mocean, Inc.?

9 A 2000 -- let me add my kids' ages up. Was it  
10 2002?

11 Q I'll just show you this document marked  
12 DON0279.

13 Does that help clarify at all when you left  
14 the company?

15 A Yes, 2001.

16 Q October 2001?

17 A Uh-huh.

18 Q Based on -- at least based on the Bill of Sale  
19 in Exhibit 3, you became an employee of CrossSport  
20 Mocean, Inc. sometime around January of 1994.

21 Does that sound accurate?

22 A Yes.

23 Q At any time, did you renew the trademark  
24 license for Exhibit 1?

25 A Yes.

1 Q Do you know when you did that?

2 A I believe it was 2004.

3 Q Okay. At any time during the time that you  
4 worked at CrossSport Mocean, Inc., did you notify anyone  
5 at the company other than perhaps your husband that you  
6 were going to register the trademark in Exhibit 1 with  
7 the Patent and Trademark Office?

8 A No.

9 Q Did you notify anyone at the company during  
10 the time that you worked there that you had previously  
11 registered the trademark depicted in Exhibit 1?

12 A Yes.

13 Q Who did you notify?

14 A It was in the paperwork provided when we sold  
15 the company.

16 Q Are you referring to Exhibit 7?

17 A That one, yes.

18 Q Is there any other paperwork that informed  
19 CrossSport Mocean, Inc. that you had registered or  
20 intended to register the Mocean trademark in the name  
21 of you and your husband?

22 A No. I thought it was common knowledge.

23 Q Based on the fact that it was registered?

24 A That I had registered it individually, yes,  
25 with -- go ahead.

1 Q Did you think that everyone at the company  
2 knew that?

3 A Well, not everyone but the Trademark Office  
4 has that as public information.

5 Q But at least during the time you worked at the  
6 company, you never had discussions say with anyone  
7 other than perhaps your husband about the trademark  
8 registration.

9 Is that fair to say?

10 A I don't recall.

11 Q Do you recall any specific conversations --

12 A No.

13 Q -- regarding that subject matter?

14 A Huh-uh.

15 Q Is that a no?

16 A No.

17 Q Did you yourself ever raise the issue with  
18 Crossport Mocean, Inc. of receiving a royalty for the  
19 company's use of the Mocean trademark?

20 A What do you mean by discussion? I don't  
21 understand. I'm confused.

22 Q Your husband told us that you sent  
23 Bill Levitt an email depicted in Exhibit 8.

24 You can see at the top of the second paragraph  
25 it raises the issue of a royalty --

1 A Uh-huh.

2 Q -- relative to the trademark. So basically my  
3 question is the same for you.

4 Did you ever raise this issue, whether orally  
5 or in writing, with anyone at CrossSport Mocean, Inc.?

6 A Only in support of my husband but not  
7 personally.

8 Q You didn't directly contact or have that  
9 discussion with someone at the company?

10 A No. You mean recently?

11 Q Really at any time. I mean, I know we have  
12 this document and this email sent by your husband but  
13 I'm asking if you yourself --

14 A No.

15 Q -- ever sent a similar communication to anyone  
16 at CrossSport Mocean, Inc. regarding a royalty.

17 A No.

18 Q Just to clarify this email on Exhibit 8, it  
19 says it's from seamscapeDP.

20 What is the seamscapeDP reference, do you  
21 know?

22 A That was his email address.

23 Q That was just a name that he used for his  
24 email?

25 A Uh-huh.

1 Q Are you aware of how the issue of the  
2 ownership of the Mocean trademark was first raised?

3 A Well, "first" is kind of ambiguous to me.  
4 What do you mean?

5 Q You understand that this case sort of involves  
6 registration and ownership of the trademark in  
7 Exhibit 1; correct?

8 A Yes.

9 Q Do you have any understanding as to how the  
10 dispute or disagreement ever was -- first came about or  
11 who first raised it?

12 A Yes.

13 Q Can you tell me how that happened?

14 A I know that Bill Levitt contacted my husband  
15 to release the trademark.

16 Q Do you know when that was? Was it most likely  
17 after November of 2004?

18 A Yes.

19 Q Is there any reason that you never indicated  
20 to anyone at the company that you claimed ownership of  
21 the CrossSport Mocean trademark?

22 A There was no need to.

23 Q Okay. Then what I really want to ask you  
24 about is Exhibit 5.

25 Did you -- looking at Exhibit 5, does this

1 reflect a sale by you of a pair of shorts under the  
2 Mocean trademark?

3 A Yes.

4 Q It looks like it was done in December of 2004.

5 A Okay, yes.

6 Q You don't have any reason to believe that's  
7 not the case; correct?

8 A No.

9 Q Can you tell me how many shorts under the  
10 Mocean name or under the Mocean label that you sold  
11 individually?

12 A Probably -- you mean in 2004?

13 Q I'm asking really at any time.

14 A At any time personally or when I was an  
15 employee?

16 Q I'm not asking you about sales that you did  
17 working for the company.

18 I'm just asking you about sales in your  
19 individual capacity.

20 A Probably 30.

21 Q Do you have receipts that reflect those sales?

22 A Yes.

23 Q Are those PayPal receipts?

24 A Uh-huh.

25 Q So what we're looking at here is just a sample

1 of similar receipts?

2 A Yes.

3 Q Do you have those receipts with you?

4 A No.

5 Q Or at home?

6 A I don't know.

7 Q You don't know?

8 A I probably do, yes.

9 Q Do you think you could send me a copy of the  
10 receipts --

11 A Okay.

12 Q -- if you have them?

13 A I'll send you what I have.

14 Q Great. I'm just trying to clarify it because  
15 I think the documents that you did send to us only  
16 included this one receipt.

17 So if there's others, I just want to make sure  
18 there are and what the receipts show.

19 Regarding the other 30 or so sales, were they  
20 all of the same type of shorts?

21 A Yes.

22 Q Were those given to you by Bill Levitt?

23 A Yes.

24 Q Do you recall the circumstances why he gave  
25 you those shorts to sell?

1           A     Because he's no longer selling anything except  
2 for law enforcement uniforms.

3           Q     This was more of a sports short that was not a  
4 law enforcement uniform?

5           A     Right.

6           Q     Did he indicate that these were sort of  
7 leftover inventory that he just couldn't do anything  
8 with?

9           A     Yes.

10          Q     Did CrossSport Mocean, Inc. ever sell any sort  
11 of sportswear similar to these shorts?

12          A     Yes.

13          Q     Do you know when they last sold those type of  
14 products?

15          A     No.

16          Q     Can you estimate?

17          A     2000.

18          Q     Then at some point after 2000, their product  
19 primarily became law enforcement uniforms?

20          A     Yes.

21          Q     Other than those shorts that Bill Levitt gave  
22 you, did he ever give you any other product under the  
23 Mocean label to sell?

24          A     No.

25          Q     Did he voluntarily give you those products or

1 did you ask for any leftover products?

2 A He voluntarily gave them to me.

3 Q Was there any just sort of out of the blue --  
4 there was no sort of discussion ahead of time?

5 A He was just cleaning up the back room.

6 Q The other sales of these shorts, do you know  
7 would those have been done prior to or subsequent to  
8 December of 2004?

9 A Prior to, you're talking about the 30 that I  
10 sold?

11 Q Right.

12 A Right about the same time.

13 Q Can you tell me sort of timewise how long it  
14 took between the time you sold the first pair and the  
15 last pair, how long?

16 A Maybe three months.

17 Q And each of the pairs basically went to  
18 individual buyers?

19 A Yes.

20 Q Can you tell me about the buyers in general?  
21 Were they all located locally?

22 A No, they were within the US.

23 Q Like all across the US?

24 A Yes.

25 Q Other than those 30 pairs of shorts, are you

1 aware of any other sales by you in an individual  
2 capacity of the products with the Mocean label?

3 A No.

4 Q Are you still a shareholder of CrossSport  
5 Mocean, Inc.?

6 A Yes.

7 Q Were you on the Board of Directors when you  
8 left the company in 2001?

9 A No.

10 Q When were you last on the Board of Directors?

11 A It was before we incorporated. I believe  
12 2001, I think.

13 I should say I don't recall.

14 Q Just briefly, how is Dr. Robert Hindman  
15 related to you?

16 A Personally or with the company?

17 Q Is he related to you personally?

18 A Yes.

19 Q How is that, or I guess I should say was he  
20 related?

21 Has he passed away?

22 A Yes.

23 Q How was he related?

24 A He's my dad's cousin.

25 Q Then what about WJ Hindman? How is he related

1 to you?

2 A My dad's cousin.

3 Q Are those two Hindmans then brothers?

4 A No.

5 Q Did you ever raise the issue with  
6 Robert Hindman -- the issue of receiving a royalty for  
7 the company's use of the Mocean trademark?

8 A We were not going to receive a royalty and  
9 Dr. Hindman knew that as long as the company was doing  
10 well.

11 Q Is that something that you sort of discussed  
12 orally?

13 A Yes.

14 Q Was there any more details supplied as far as  
15 what it meant "the company doing well"?

16 A I don't know. I know it was important to us  
17 that it have good quality, and I'm not sure if that was  
18 in writing or not.

19 Q Was there a certain point in time or a certain  
20 level of revenue that you were supposed to start  
21 receiving a royalty?

22 A No.

23 Q Did you ever have discussions with  
24 Robert Hindman about your registration of the Mocean  
25 trademark?

1 A I don't recall exact discussions.

2 Q Do you recall any discussions at all in  
3 general terms?

4 A Yes. Generally, yeah.

5 Q Do you recall what was discussed?

6 A It would be just during our Board of Directors  
7 meetings.

8 We talk about things we needed to do.

9 Q Relative to the trademark?

10 A Uh-huh.

11 Q Anything in particular?

12 A I don't recall, no. It was a long time ago.

13 Q Do you know why you or your husband waited  
14 until November of 2004 to raise the issue of receiving  
15 a royalty for the company's use of the Mocean  
16 trademark?

17 A Because we were asked by Bill Levitt to  
18 release the trademark.

19 Q So in response to that, you asked him to pay  
20 you and your husband a royalty?

21 A Right.

22 Q But is there any reason that you didn't raise  
23 the issue of receiving a royalty with the company prior  
24 to this email reflected in Exhibit 8?

25 A Mocean has been doing well and were able to

1 view the product and keep an eye on it.

2 Q Maybe you can explain it because maybe I don't  
3 understand it.

4 The company has been doing well so that meant  
5 that you didn't want to raise the issue of receiving a  
6 royalty?

7 A The quality of goods and services is primarily  
8 what I'm concerned about is in regards to the mark.

9 Q How does the quality of the goods and  
10 services, how does that relate to your interest in or  
11 request to receive a royalty based on the company's use  
12 of the trademark?

13 A I guess it would be related to Bill Levitt  
14 asking us to release property that he should have  
15 common knowledge or paperwork that he should know it's  
16 our property.

17 Q Putting aside the ownership of the trademark,  
18 I mean if you owned it, was there any reason you didn't  
19 request receiving a royalty say the day that you left  
20 the company in 2001?

21 A Because we want what's best for the company.

22 Q You thought --

23 A At that time, I don't know -- I don't believe  
24 it was a good time to ask for a royalty.

25 Q That was based on just how the company was

1 performing at that time?

2 A Yes, and my relationship with Bill Levitt.

3 Q So you thought that actually receiving or  
4 asking the company to pay you a royalty would be a  
5 burden on the company and you thought that wasn't in  
6 the best interest of the company.

7 Is that what you're talking about?

8 A No. I thought the company -- I know the  
9 company was doing well.

10 My valuing the mark -- I value the Mocean  
11 trademark because of the quality that it represents.

12 Q Then I guess you didn't want to sort of bother  
13 Bill Levitt about royalty at that time?

14 A It didn't even cross my mind. It wasn't  
15 something I was planning to do.

16 Q So maybe that clarifies. So actually  
17 receiving a royalty wasn't something that you ever  
18 wanted or something that you weren't interested in  
19 really until he raised the issue of releasing the  
20 trademark?

21 Is that fair?

22 A We decided not to receive a royalty for a set  
23 period of time. Actually, it wasn't set.

24 Q Basically until Bill Levitt raised the issue  
25 of the registration of the mark?

1 A Right.

2 Q Just briefly, again, going back to the PayPal  
3 receipts, where do you think you would have the other  
4 receipts stored?

5 A In my office.

6 Q At your home office?

7 A Yes.

8 Q I believe that's all the questions that I  
9 have.

10 A Okay.

11 Q We're all done.

12 A Thank you.

13

14 (Deposition concluded at 5:47 p.m.)

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16

17 (PREVIOUSLY AGREED-UPON STIPLATION AT THE DEPOSITION OF  
18 DONN PIERSON TAKEN ON WEDNESDAY, MARCH 14, 2007, IS AS  
19 FOLLOWS:

20 MR. JOHNSON: Back on the record. The court  
21 reporter has reminded me to clarify for the witness  
22 that, again, you'll have a chance to make any changes  
23 to your answers in the deposition transcript. The  
24 questions are what they are, so don't attempt to make  
25 any changes to the questions even if they're not that

1 good.

2 I'm proposing that we agree to release the  
3 court reporter of her duties under the Code. She'll  
4 prepare the transcript of the original and it will be  
5 delivered to your home address in Vista.

6 We will give you until next Thursday, March  
7 22nd, to make any changes to the transcript in writing  
8 and notify our office in writing of any changes that  
9 you've made to your answers and sign the transcript.

10 Then basically, if the original transcript --  
11 you will maintain custody of the original transcript.  
12 If the original goes unsigned or is lost or misplaced  
13 or otherwise unavailable, a certified copy can be used  
14 for any and all purposes in this matter.

15 Does that sound fair?

16 THE WITNESS: Yes.)

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DECLARATION

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I hereby declare I am the deponent in the within matter; that I have read the foregoing proceedings and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, at \_\_\_\_\_, California.

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KIMBERLEY PIERSON

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witness in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: \_\_\_\_\_

\_\_\_\_\_  
LISA C. PUETTMANN-HAWTON  
CSR No. 11368, CCR No. 521