ESTTA Tracking number: **ESTTA245219**
Filing date: **10/27/2008**

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

Proceeding	92048271
Party	Defendant Patriarch Partners Agency Services, LLC
Correspondence Address	Patrick J. Orme Chirstie, Parker & Hale, LLP P.O. Box 7068 Pasadena, CA 91109-7068 UNITED STATES pto@cph.com
Submission	Other Motions/Papers
Filer's Name	Patrick J. Orme
Filer's e-mail	pto@cph.com, pjo@cph.com
Signature	/Patrick J. Orme/
Date	10/27/2008
Attachments	R643_110-2-1_DeclarationUnderSeal.pdf (49 pages)(1080310 bytes)

TRADEMARK
Docket No. 110.2*1/R643

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

RHINO LININGS, USA, INC. Petitioner, v. PATRIARCH PARTNERS AGENCY SERVICES, LLC (RAPID RACK INDUSTRIES, INC.) Respondent.	Cancellation No. 92048271 Registration No. 1,698,407 Date of Issue: June 30, 1992

DECLARATION OF PATRICK J. ORMÉ IN SUPPORT OF RESPONDENT'S OPPOSITION TO PETITIONER'S SECOND MOTION FOR SANCTIONS

I, Patrick J. Ormé, declare as follows:

1. I am an attorney with Christie, Parker & Hale, LLP, representing Rapid Rack Industries, Inc., the Respondent in this case. I have personally reviewed the discovery and pleadings in this matter as well as the correspondence between Respondent and Petitioner. I declare that all statements made in this declaration of my own personal knowledge are true, and all statements made on information and belief are believed to be true.

2. Attached to this declaration as Exhibit A is a true and correct copy of a September 16, 2008 email I sent to Petitioner's counsel.

3. Attached to this declaration as Exhibit B is a true and correct copy of Exhibit 1 from the deposition of Mr. Harry Randall Taylor.

4. Attached to this declaration as Exhibit C is a true and correct copy of relevant portions of the transcript of the deposition of Mr. Harry Randall Taylor.

5. Attached to this declaration as Exhibit D is a true and correct copy of relevant portions of the transcript of the deposition of Mr. Harry Randall Taylor filed under seal.

6. Rhino Lining's counsel never responded or accepted Rapid Rack's offer of another Rule 30(b)(6) witness before filing its Second Motion for Sanctions.

Sworn to under the penalty of perjury this 27th day of October, 2008 in Pasadena, California

Patrick J. Ormé

PJO PAS820605.1-*-10/27/08 7:09 PM

EXHIBIT A

Patrick J. Orme

From: Patrick J. Orme
Sent: Tuesday, September 16, 2008 7:11 PM
To: 'Joe Dowdy'
Cc: Reed Hollander; David Harlow; David Dillard
Subject: Protective Order Violations

Dear Joe,

I am quite concerned regarding the violations of the Protective Order contained in your motion to compel. As I am sure you are aware, you wrote on June 24, 2008 "I agree that the 'Trade Secret/Commercially Sensitive' designation will afford attorneys-eyes-only classification to information so designated and that the 'Confidential' designation shall be the standard designation for information which is not for public disclosure." Additionally, 37 C.F.R. 2.116(g) applies a Standard Protective Order to all cases filed before the TTAB on or after August 31, 2007.

All discovery responses designated "Trade Secret/Commercially Sensitive" or "Confidential" are required to be submitted under seal pursuant to 37 C.F.R. 2.27 and TBMP 412.04. Rhino Linings disclosed such designated information in its motion to compel by failing to file Exhibit 1, Rapid Rack's Interrogatory Responses, under seal. There are at least nine different disclosures in Exhibit 1 that violate the Protective Order by your failure to file under seal.

If you immediately withdraw the motion to compel, Rapid Rack may not be forced to move for sanctions pursuant to 37 C.F.R. 2.125(e), 37 C.F.R. 2.120(g) and Federal Rule of Civil Procedure 37(b)(2), including dismissal of the entire cancellation proceeding.

Regards,
Patrick

The information in this communication and any attached documents contain information from the law firm of Christie, Parker and Hale, LLP that may be confidential and/or privileged. If you are not the intended recipient, or an agent responsible for delivering it to the intended recipient, you may not read, copy, distribute or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete all electronic copies and destroy any hard copies.

EXHIBIT B

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

In the Matter of Registration No. 1,698,407
Date of Issue: June 30, 1992

RHINO LININGS USA, INC., Petitioner,	)	
vs.	)	Cancellation No. 92048271
RAPID RACK INDUSTRIES, INC., Registrant.	)	

NOTICE OF DEPOSITION OF RAPID RACK INDUSTRIES, INC.
(RULE 30(b)(6) DEPOSITION)

PLEASE TAKE NOTICE that commencing at 8:30 a.m. PDT on September 22, 2008, at the law offices of Christie, Parker & Hale, LLP, 350 W. Colorado Blvd. Suite 500, Pasadena, CA 91105-1836, Rhino Linings USA, Inc. ("Rhino Linings" or "Petitioner"), by and through counsel, will take the deposition of Rapid Rack Industries, Inc. ("Rapid Rack" or "Registrant") pursuant to Rule 26, 28, and 30 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120. In accordance with Rule 30(b)(6) of the Federal Rules of Civil Procedure, Rapid Rack shall designate one or more officers, directors, managing agents, or other persons to testify as to all maters known or reasonably available to Rapid Rack for those matters designated below.

The deposition shall be taken before a Notary Public or some other officer duly authorized by law to administer oaths. The deponent's testimony shall be recorded by audio,

EXHIBIT
1
Taylor 9/26/08

audiovisual, or stenographic means. Counsel for Rhino Linings shall conduct the deposition via telephone.

If for any reason this deposition is not completed on the date set forth above, the deposition shall be continued from day to day and from time to time until completed. Plaintiff reserves the right to use the deposition testimony as evidence at the trial of this action, to the extent allowed by law.

DEFINITIONS

The definitions set forth in Petitioner's First Set of Interrogatories to Registrant are hereby incorporated by reference and shall apply to this Notice of Deposition.

TOPICS UPON WHICH EXAMINATION IS REQUESTED

In accordance with Rule 30(b)(6) of the Federal Rules of Civil Procedure, examination is requested on the following topics:

1. The corporate organization of Registrant.

2. The nature and type of business conducted by Registrant from January 1, 1998 to present.

3. The conception, registration, and maintenance of Registrant's Mark.

4. Registrant's filings with the United States Patent and Trademark Office concerning Registrant's Mark.

5. Registrant's ownership and assignment, if any, of Registrant's Mark.

6. Registrant's use of Registrant's Mark from January 1, 1998 to the present.

7. Registrant's use of Registrant's Mark in commerce from January 1, 1998 to the present.

8. Whether Registrant possesses a specimen of use which demonstrates use of Registrant's Mark in commerce in each calendar year from 1998 to the present.

9. The products in connection with which Registrant uses or has used Registrant's Mark in commerce from January 1, 1998 to the present.

10. The place(s) of manufacturing for the products in connection with which Registrant uses or has used Registrant's Mark in commerce from January 1, 1998 to the present.

11. The specific states of the United States of America and any foreign nations in which Registrant has offered and/or is offering products in commerce using Registrant's Mark in commerce from January 1, 1998 to the present.

12. The channels of distribution in which Registrant has offered products in connection with Registrant's Mark in commerce from January 1, 1998 to the present.

13. The end users of the products offered by Registrant in connection with Registrant's Mark in commerce from January 1, 1998 to the present.

14. Sales revenue received by Registrant from the sale of products offered by Registrant in connection with Registrant's Mark from January 1, 1998 to the present.

15. Registrant's annual advertising, promotion, and marketing expenditures relating to the sale or offering for sale of goods on which Registrant's Mark was used in each year between January 1, 1998 and the present.

16. The manner in which Registrant used Registrant's Mark in connection with any products in commerce, including but not limited to whether Registrant's Mark is used on packaging for the products, whether the products themselves bear Registrant's Mark, and/or whether Registrant's Mark appears on any advertising or other materials in connection with any products from January 1, 1998 to the present.

17. Registrant's use of Registrant's Mark in advertising, including any such use in periodicals, journals, radio and/or television advertisements, and Internet websites from January 1, 1998 to the present.

18. Registrant's use of Registrant's mark in sales, advertising, marketing and promotional materials or items, including without limitation periodical and trade journal advertisements, brochures, leaflets, print or broadcast advertisements, bulletins, points of purchase materials, trade letters, press releases, or other documents or things relating to or displaying Registrant's Mark which were distributed or displayed by or on behalf of Registrant to other persons or used in any way from January 1, 1998 to the present.

19. Any discontinuation(s) of the manufacturing, advertising, production, and/or sale of any product offered in connection with Registrant's Mark at any time from January 1, 1998 to the present, the reasons for any such discontinuation(s), and a detailed description of all non-privileged written or oral communications in which any of Registrant's employees or agents participated or of which any of Registrant's employees or agents are aware concerning any such discontinuation(s).

20. Any discontinuation(s) of the use of Registrant's Mark at any time from January 1, 1998 to the present, the reasons for any such discontinuation(s), and a detailed description of all non-privileged written or oral communications in which any of Registrant's employees or

agents participated or of which any of Registrant's employees or agents are aware concerning any such discontinuation(s).

21. Registrant's use of its GORILLA RACK Mark in connection with the manufacturing, advertising, producing and/or selling of work tables (with or without wheels), work benches, industrial shelving, storage racks, component parts for these items from January 1, 1998 to the present.

22.. The specific states of the United States of America and any foreign nations in which Registrant has offered and/or is offering products in connection with its GORILLA RACK Mark.

23. The channels of distribution in which Registrant has offered products in connection with its GORILLA RACK Mark in commerce from January 1, 1998 to the present.

24. The end users of the products offered by Registrant in connection with its GORILLA RACK Mark in commerce from January 1, 1998 to the present.

25. The annual sales revenue received by Registrant from the sale of products offered by Registrant in connection with its GORILLA RACK Mark from January 1, 1998 to the present.

26. Registrant's annual advertising, promotion, and marketing expenditures relating to the sale or offering for sale of goods on which Registrant's GORILLA RACK Mark was used in each year between January 1, 1998 and the present.

27. The manner in which Registrant used its GORILLA RACK Mark in connection with any products in commerce, including but not limited to whether the GORILLA RACK is used on packaging for the products, whether the products themselves bear the GORILLA

RACK Mark, and/or whether the GORILLA RACK Mark appears on any advertising or other materials in connection with any products from January 1, 1998 to the present.

28. Registrant's use of its GORILLA RACK Mark in advertising, including any such use in periodicals, journals, radio and/or television advertisements, and Internet websites from January 1, 1998 to the present.

29. Registrant's use of its GORILLA RACK Mark in sales, advertising, marketing and promotional materials or items, including without limitation periodical and trade journal advertisements, brochures, leaflets, print or broadcast advertisements, bulletins, points of purchase materials, trade letters, press releases, or other documents or things relating to or displaying the GORILLA RACK Mark which were distributed or displayed by or on behalf of Registrant to other persons or used in any way from January 1, 1998 to the present.

30. Litigation concerning Registrant's Mark other than the present cancellation proceeding.

31. Litigation concerning Registrant's GORILLA RACK Mark.

32. The complete factual basis for the assertion in the document styled "Combined Declaration of Use in Commerce and Application for Renewal of Trademark" filed by Registrant on April 9, 2002 that Registrant's Mark was in use by Registrant as of March 26, 2002.

33. The factual information Registrant relied upon in preparing the document styled "Combined Declaration of Use in Commerce and Application for Renewal of Trademark" filed by Registrant with the United States Patent and Trademark Office on April 9, 2002.

34. The misrepresentations, if any, in the document styled "Combined Declaration of Use in Commerce and Application for Renewal of Trademark" filed by Registrant on April 9, 2002, whether Registrant had knowledge of any misrepresentations, and Registrant's intended purpose in making any such misrepresentations.

35. The complete factual basis for all admissions, denials, defenses, and other statements set forth in Registrant's Answer filed in the present cancellation proceeding.

36. Registrant's responses to Interrogatories, Requests for the Production of Documents and Things, and Requests for Admissions propounded by Rhino Linings in the present cancellation proceeding.

37. The documents and things produced by Registrant in response to Requests for the Production of Documents and Things propounded by Rhino Linings in the present cancellation proceeding.

38. Registrant's efforts to investigate whether there was information and/or documents responsive to Interrogatories, Requests for the Production of Documents and Things, and Requests for Admissions propounded by Rhino Linings in the present cancellation proceeding, and the identification of the person(s) employed by Registrant who were responsible for any such investigation(s).

39. Registrant's assertion, in response to any discovery request propounded in the present cancellation proceeding, that "some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005" or words of like effect.

40. Registrant's assertion, in response to any discovery request propounded in the present cancellation proceeding, that "much of the requested information is not readily

available due to its location in old, possibly corrupt and no longer readily accessible databases" or words of like effect.

41. The location and condition of any electronic databases which contain, or which Registrant believes may contain, information and/or documents or things responsive to the Interrogatories, Requests for Production of Documents or Things, and/or Requests for Admissions propounded by Rhino Linings to Registrant.

42. The location and condition of any files of documents—electronic or hardcopy—which contain, or which Registrant believes may contain, information and/or documents or things responsive to the Interrogatories, Requests for Production of Documents or Things, and/or Requests for Admissions propounded by Rhino Linings to Registrant.

43. Registrant's efforts to search for information and/or documents or things—stored in either electronic or hardcopy format–which are, or which Registrant believes may be, information and/or documents or things responsive to the Interrogatories, Requests for Production of Documents or Things, and/or Requests for Admissions propounded by Rhino Linings to Registrant.

44. The complete factual basis for Registrant's contention, if any, that it possesses or formerly possessed any information and/or documents or things which showed use or use in commerce of Registrant's Mark, but which have not been provided in response to the Interrogatories, Requests for Production of Documents or Things, and/or Requests for Admissions propounded by Rhino Linings to Registrant.

45. The identify of all employees or agents of Registrant with knowledge concerning any of the foregoing topics set forth in this Notice, and a summary of the knowledge possessed by each such person.

Respectfully submitted this 3rd day of September, 2008.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: _____

David A. Harlow
N.C. State Bar. No. 1887
Reed J. Hollander
N.C. State Bar No.: 23405
Joseph S. Dowdy
N.C. State Bar No. 31941
4140 Parklake Avenue
Glenlake One, Suite 200
Raleigh, NC 27612
Direct Dial: (919) 877-3800
Fax (919) 877-3799
E-mail: david.harlow@nelsonmullins.com
reed.hollander@nelsonmullins.com
joe.dowdy@nelsonmullins.com

CERTIFICATE OF SERVICE

I hereby certify that on this day a true and correct copy of the foregoing document has been served this day by electronic mail and by depositing copies thereof in a depository under the exclusive care and custody of the United States Postal Service in a first class postage prepaid envelope and properly addressed as follows:

David A. Dillard, Esq.
Patrick J. Orme, Esq.
Christie, Parker and Hale, LLP
350 W. Colorado Blvd., Suite 500
Pasadena, CA 91105-1836

This the 3rd day of September, 2008.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By:

David A. Harlow
N.C. State Bar. No. 1887
Reed J. Hollander
N.C. State Bar No.: 23405
Joseph S. Dowdy
N.C. State Bar No. 31941
4140 Parklake Avenue
Glenlake One, Suite 200
Raleigh, NC 27612
Direct Dial: (919) 877-3800
Fax (919) 877-3799
E-mail: david.harlow@nelsonmullins.com
reed.hollander@nelsonmullins.com
joe.dowdy@nelsonmullins.com

EXHIBIT C

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3

In the Matter of Registration No. 1,698,407
4 Date of Issue: June 30, 1992

5 RHINO LININGS USA, INC.,)
Petitioner,)
6)
vs.)Cancellation No.
7) 92048271
RAPID RACK INDUSTRIES, INC.,)
8 Registrant.)
_____)
9

10 TELEPHONIC DEPOSITION
OF
11 HARRY RANDALL TAYLOR

12

LOCATION: CHRISTIE, PARKER, HALE LLP
13 350 W. COLORADO BLVD., SUITE 500
PASADENA, CA 91105
14 (626) 795-9900

15

16 DATE AND TIME: FRIDAY, SEPTEMBER 26, 2008
8:45 A.M. TO 11:50 A.M.
17

18

19

REPORTED BY:
20 MARIA L. RENO, C.S.R.
(NO. 11367)
21

22

23

24

25

1 Industries, Inc.?
2 A. Yes.
3 Q. Just going forward I'm going to use the term
4 Rapid Rack without the rest of it. You understand I'll
5 be referring to Rapid Rack without the Inc.?
6 A. Yes.
7 Q. What is your position with Rapid Rack?
8 A. Director of operations.
9 Q. How long have you held that position, sir?
10 A. I've got to think here. About a year, year
11 and a half.
12 Q. Did you hold a position with Rapid Rack
13 before that?
14 A. Yes.
15 Q. What position did you hold before that?
16 A. Just before this one?
17 Q. Yes, sir.
18 A. R&D manager.
19 Q. Research and development manager?
20 A. Yes.
21 Q. How long did you hold that position?
22 A. About a year and a half.
23 Q. Did you hold any positions with Rapid Rack
24 before that?
25 A. Yes.

1 Q. What was that position?
2 A. Engineering manager and customer service.
3 Q. Can you give me the approximate dates that
4 you held that position?
5 A. No.
6 Q. You cannot?
7 A. No, not really. I've been with the company
8 for 20 years, so.
9 Q. Did you start with the company right out of
10 high school?
11 A. No.
12 Q. When did you start with the company?
13 A. 1989.
14 Q. 1989. So since that time what positions have
15 you held other than that position, than the ones you've
16 mentioned other than engineering manager, customer
17 service and R&D manager and director of operations?
18 A. From the beginning I started out in outside
19 sales. Within a year or so I took over as inside sales
20 manager.
21 Q. Okay.
22 A. Then I took over as project management
23 manager.
24 Q. Okay.
25 A. Then I took over as engineering manager.

1 Q. I will represent to you that it is a Notice
2 of Deposition for the corporate deposition of Rapid
3 Rack pursuant to this Notice that you're testifying
4 today. If you will, please turn with me to page two of
5 this document. There's a section in bold and centered
6 a little more that halfway down that says, "Topics Upon
7 Which Examination is Requested." Do you see that, sir.
8 ?
9 A. Yes, I do.
10 Q. You see there are a number of topics, I
11 believe one through 45 between page two and nine listed
12 their. Are you prepared to testify with respect to
13 each of these topics today?
14 MR. ORME: Objection; we haven't -- that's
15 not for him to respond to. I'm happy to tell you which
16 topics he's willing to discuss today.
17 MR. DOWDY: Okay. What topics is he prepared
18 to discuss today?
19 MR. ORME: One.
20 MR. DOWDY: Okay.
21 MR. ORME: Two, six, seven, eight, nine, ten,
22 some of 11.
23 MR. DOWDY: Which parts of 11?
24 MR. ORME: The -- well, you can ask questions
25 and you can find out the extent of his knowledge on

1 that on representing the corporation. 16, 17, 18, 19,
2 20, 21, 22, 23, 24, 25, 26, 27, 28, 29; that's it.
3 MR. DOWDY: Will someone else be appearing
4 today to testify as to the other topics?
5 MR. ORME: Well, considering the extent of
6 topics that he will be testifying to we will not have
7 another deponent available today. We expect this is
8 going to take most of the day.
9 MR. DOWDY: Okay. Hold on one moment.
10 (Pause in proceeding.)
11 For purposes of the deposition today, Rapid Rack
12 is refusing to produce a witness for topics three
13 through five, 11 through 15?
14 MR. ORME: Hold on just a moment, Joe. That
15 is not what we're saying. You have listed 45 topics
16 here in your Notice of Deposition.
17 MR. DOWDY: Yes, sir.
18 MR. ORME: To expect to get through 45 topics
19 of deposition in one day is really unreasonable and to
20 expect one person to be able to testify to all 45 is
21 also unreasonable. You have not given any indication
22 of how long these are going to take, so we are not
23 refusing to produce somebody. We have looked at this
24 and said the extent of information that you are seeking
25 goes well beyond a single day of deposition testimony.

1 MR. DOWDY: I'm just a little unclear as to
2 why then you didn't move for a protective order if you
3 thought we needed -- in other words, I listed and asked
4 somebody to appear today.
5 MR. ORME: And we have produced somebody to
6 appear; that's correct.
7 MR. DOWDY: But not as to all topics. You
8 could have produced more than one person today. I've
9 done those kind of depositions before where there's
10 several people sitting there and we can ask -- and I
11 have not been given any notice today of which topic to
12 prepare to examine somebody on or to cover certain
13 topics as opposed to others.
14 MR. ORME: We have produced somebody who is
15 going to be testifying to nearly half of your topics
16 which are numerous in breadth and scope, so we have
17 given -- you know, we're producing someone that was
18 responsive to your Notice of Deposition.
19 MR. DOWDY: With the exception of the half of
20 the topics that you haven't produced somebody for? I
21 mean, I guess my question is no one will be appearing
22 today with respect to those other topics that you
23 haven't listed already; is that correct?
24 MR. ORME: That is correct, because you haven't
25 indicated how long this deposition will take and given

1 I want to know whether he's prepared to testify for
2 topic four for the company.
3 MR. ORME: You're going in two directions
4 here, Joe. One was: Are we going to have another
5 30(b)(6). My first question was: Will you be finished
6 in four hours with this witness?
7 MR. DOWDY: I wouldn't -- I'm not committing
8 one way or the other.
9 MR. ORME: So you're asking us to bring other
10 deponents in and sit here all day and you have no idea
11 how long this will take; is that correct?
12 MR. DOWDY: That is not correct. What I'm
13 saying is I may ask a question about any of the topics
14 because the topics are interrelated. And I prepared
15 for this deposition in good faith believing that a
16 30(b)(6) designee was going to be appearing, one or
17 more 30(b)(6) designees to testify as to all the topics
18 and I don't have that right now. I came in sort of at
19 the last minute. Not even when I called and was told
20 you needed 15 more minutes to get the conference room
21 ready, not even then was I told I only had one person
22 who was only going to testify as to some topics.
23 It's my position he's the Rule 30(b)(6) designee.
24 He can offer testimony on the topics today or there's
25 been a refusal to produce with respect to the remaining

1 topics and I can ask about the topics he hasn't been
2 designated on. If he does not have any evidence to
3 offer then the company doesn't have any evidence to
4 offer. That's my position on it.
5 MR. ORME: Okay. Well, let's first off
6 clarify the record. The reason I stated 15 minutes is
7 your court reporter what not here this morning, and I
8 would make that very clear. It was Rhino Linings USA
9 was stuck in traffic getting here, through no fault of
10 her own, and that's why I asked for a 15-minute delay
11 to accommodate Rhino Linings.
12 Secondly, we are not refusing to produce a
13 deponent for other topics; there you're mistaken. We
14 have never stated we are refusing to produce that. As
15 you indicated, there is more -- you were expecting more
16 than one 30(b)(6) then you're also in the same breath
17 saying we want one deponent for all of them. That's
18 inconsistent. Please let me know what exactly is your
19 position.
20 MR. DOWDY: Okay. I didn't say the last
21 part, Patrick. I want whoever is going to appear for
22 the company on 1, 2, 10, 20 to appear for the Rule
23 30(b)(6) deposition to appear for the Rule 30(b)(6)
24 deposition that I'm prepared to take today. I don't
25 care how many people show up, and you know, if at the

1 end of the day because -- if I'm finish taking the
2 deposition today and there's no testimony offered on
3 those topics that I've asked questions about, then it's
4 my position that the company does not have any evidence
5 to produce on this topic. They haven't produced a
6 designee and they refused to appear as to those topics.
7 MR. ORME: Well, that's not the case
8 whatsoever. We're not refusing. We have offered up a
9 deponent in good faith believing that he is going to
10 testify nearly half of the 45 different topics you have
11 requested, and in order to get through 45 topics it's
12 going to take the entire day. If, as I asked you
13 earlier, it's only going to take you four hours, then
14 we can consider getting someone else here to testify on
15 other topics. So if you give me a time limit as to
16 what -- how long you will be deposing Mr. Taylor, I'll
17 be happy to inquire into having another deponent. And
18 we are not stating there was no evidence, and I think
19 that is just a complete misstatement and unreasonable
20 on you part to even put forth such an accusation, okay.
21 MR. DOWDY: Patrick, there's nobody being
22 produced to testify as to the discovery responses that
23 have been given and the documents produced. Is it your
24 position that you're not -- I mean, no, I'm not going
25 to -- there's so many ways to go with this.

1 First of all, I'm not going to limit my
2 examination. I'm going to ask the question and what --
3 I'm not required by law to ask them in any particular
4 order. Rapid Rack nor its counsel get to choose what
5 order I ask the questions in. It's my deposition.
6 MR. ORME: We've never stated that was the
7 case, Joe, so please don't misstate what I've put
8 forth.
9 MR. DOWDY: What if I want to ask questions
10 about number four first? Who's going to respond to
11 those right now? Let's say that's what I want to talk
12 about first.
13 MR. ORME: I want to ask you. We could
14 designate more than one person for different 30(b)(6)
15 topics. I would hope you understand that.
16 MR. DOWDY: I do --
17 MR. ORME: Hold on a moment, please. If you
18 want to ask a question with regard to number four, you
19 want us to have one deponent, then if you want to go to
20 topic number one, of which we've designated Randy
21 Taylor, we're going to stop, swear in another witness
22 and go back and forth with multiple witness all day?
23 Is that what you're proposing?
24 MR. DOWDY: Got it all. They all be sworn in
25 and they all ask -- whenever I've done it in the past,

1 you swear in all three witnesses at once, they sit
2 wherever they sit around the table and then when you
3 ask a question the appropriate designee answers it.
4 MR. DOWDY: I ask that we go off the record.
5 I'm going to put you on mute and we'll be right back.
6 (Off the record.)
7 MR. ORME: Okay. We're back on the record.
8 THE COURT REPORTER: Counsel, I just want to
9 clarify something. I had the deposition start time for
10 this deposition as 8:30. I was in the lobby at 8:20
11 and asked for five minutes to set up. I was in
12 traffic, but I did not get here after 8:30.
13 MR. DOWDY: I understood.
14 MR. ORME: You know, Joe, I have never heard
15 of taking multiple deponents at one time. Can you
16 please provide me case law that supports a proposition
17 if that's really how you would like to proceed. Like I
18 said, I've never heard of multiple deponents. One,
19 having multiple deponents for the court reporter to
20 take care of multiple witnesses and who's testifying.
21 I think perhaps we should take this up with the
22 interlocutory attorney, but that's your decision. You
23 need to agree however that we are not refusing to
24 produce evidence to topics that Mr. Taylor's not
25 designated on.

1 single deponent knowledgeable on all topics. You have
2 failed to indicate how long this deposition will occur
3 to the extent that this witness has not been designated
4 for other Rule 30(b)(6) topics. In no way is Rapid
5 Rack Industries indicating they will not produce
6 evidence or produce a deponent to those topics. We'll
7 make that perfectly clear. And to the extent the
8 witness cannot answer to a topic he's not been
9 designated on in no way is Rapid Rack admitting they
10 don't have evidence. On those grounds we will proceed
11 with the deposition.
12 MR. DOWDY: I don't consent with that, but I
13 agree to proceed with the deposition. We'll let the
14 Board decide what it means.
15 MR. ORME: That's fine.
16 Q. (BY MR. DOWDY): Mr. Taylor, are you prepared
17 to testify as to topic four listed on the deposition
18 notice today?
19 A. No.
20 Q. Are you prepared to testify as to topic five
21 listed on the Notice of Deposition today?
22 A. No.
23 Q. Are you prepared to testify as to topic
24 number 11 in the Deposition Notice --
25 A. No.

1 A. Patriarch.
2 Q. Is Patriarch -- is Rapid Rack a wholly-owned
3 subsidiary of Patriarch?
4 A. I would have no knowledge of that.
5 Q. You don't know the answer to that one?
6 A. No, I do not.
7 Q. What's the full name of Patriarch?
8 A. I don't know.
9 Q. Does Rapid Rack have any subsidiaries?
10 A. Not to my knowledge.
11 Q. At Rapid Rack who's responsible for
12 overseeing -- well, strike the question.
13 Sir, is it true that Rapid Rack is owner of
14 registration number 1,698,407 for the Mark Rhino Rack?
15 A. I wouldn't actually know that.
16 Q. You don't know the answer to that?
17 A. No, sir.
18 Q. Do you know when Rapid Rack first filed for
19 trademark right with respect to the Rhino Rack Mark?
20 MR. ORME: Objection; question for which he's
21 not designated.
22 MR. DOWDY: Please answer, sir.
23 THE WITNESS: No.
24 Q. (BY MR. DOWDY): From now on I'm going to
25 refer to the Rhino Rack Mark the registrant contends

1 that it has, I'm going to use the shorthand term
2 Registrant's Mark or Rhino Rack Mark; do you understand
3 that, sir?
4 A. Yes.
5 Q. Do you know when Rhino Rack first filed a
6 Specimen of Use with United States Patent and Trademark
7 Office for the Rhino Rack Mark?
8 MR. ORME: Objection; topic for which he's
9 not designated.
10 MR. DOWDY: Please answer.
11 THE WITNESS: No.
12 Q. (BY MR. DOWDY): Do you know what the
13 Specimen of Use was that was first filed with United
14 States Patent and Trademark Office?
15 A. Objection; same objection.
16 MR. DOWDY: I'll give you a running objection
17 to these, Patrick.
18 MR. ORME: Okay.
19 THE WITNESS: No.
20 MR. ORME: However, I think I'll insert it
21 just to have it clear on the record.
22 MR. DOWDY: Understood.
23 Q. (BY MR. DOWDY): Sir, do you know whether the
24 Rhino Rack Mark is registered for the following goods:
25 Work tables with and without wheels, work benches,

1 industrial shelving, storage racks and component parts
2 therefore?
3 MR. ORME: Objection; compound. Objection;
4 asking for topics for which he's not designated.
5 MR. DOWDY: Please answer.
6 THE WITNESS: No.
7 Q. (BY MR. DOWDY): Do you know what a work
8 table is, sir, as it's defined in the registration?
9 MR. ORME: Objection; topic for which he's
10 not designated. He can only answer in an individual
11 capacity.
12 MR. DOWDY: That's for the Board, but please
13 answer if you can, sir -- please answer the question.
14 Q. (BY MR. DOWDY): Do you know what a work
15 table is as described in the registration?
16 MR. ORME: Same objection.
17 THE WITNESS: No.
18 Q. (BY MR. DOWDY): Do you know what a work
19 bench is as described in the registration?
20 MR. ORME: Same objection.
21 THE WITNESS: No.
22 Q. (BY MR. DOWDY): Do you know what industrial
23 shelving is as defined in the registration?
24 MR. ORME: Same objection.
25 THE WITNESS: No.

1 MR. DOWDY: Do you know what a storage rack
2 is as defined in the registration?
3 MR. ORME: Same objection.
4 THE WITNESS: No.
5 Q. (BY MR. DOWDY): Do you know what component
6 parts for those items would be as described in the
7 registration?
8 MR. ORME: Same objection.
9 THE WITNESS: No.
10 Q. (BY MR. DOWDY): Do you know whether the
11 registration includes cabinetry?
12 MR. ORME: Same objection.
13 THE WITNESS: No.
14 Q. (BY MR. DOWDY): Do you know whether the
15 registration includes consumer shelving?
16 MR. ORME: Same objection.
17 THE WITNESS: No.
18 Q. (BY MR. ORME): Do you know whether the
19 registration includes worktops?
20 MR. ORME: Same objection.
21 THE WITNESS: No.
22 Q. (BY MR. DOWDY): Do you know if there's a
23 difference between consumer shelving and industrial
24 shelving?
25 A. Yes.

1 Q. Does this also appear to be a copy of a
2 photograph?
3 MR. ORME: I'm going to object to the extent
4 that Exhibit 3 is outside the scope of his testimony.
5 We've already stated he's not testifying with respect
6 to topic 37.
7 MR. DOWDY: Okay. Go ahead and answer the
8 question.
9 MR. ORME: And 36.
10 THE WITNESS: Repeat the question, please.
11 Q. (BY MR. DOWDY): Does page 507 also appear to
12 be a copy of a photograph?
13 A. Possibly.
14 Q. Do you know who took the photograph?
15 A. No.
16 Q. Do you know where it was taken?
17 MR. ORME: Objection. When you refer to you
18 are you referring to the Company or are you referring
19 to him in his individual capacity?
20 MR. DOWDY: You means Company in this
21 deposition.
22 THE WITNESS: I have no personal knowledge.
23 Q. (BY MR. DOWDY): Does it appear to be -- you
24 see there's a product number referenced in the middle
25 of the page by the upper right-hand corner of what

1 MR. ORME: Objection; calls for speculation.
2 THE WITNESS: No.
3 Q. (BY MR. DOWDY): Can you please turn to page
4 515?
5 A. Okay.
6 Q. Can you tell me what -- I'll represent
7 there's what appears to be a drawing on the page. Do
8 you know what that drawing is?
9 MR. ORME: I'm just going to object to the
10 extent this is outside the scope of his designated
11 topics.
12 MR. DOWDY: You're objecting -- you're not
13 saying it's not in the Notice of Deposition, you're
14 objecting to the extent you say he has not been
15 designated a witness for this; is that right?
16 MR. ORME: That's correct.
17 MR. DOWDY: Please answer the question. Do
18 you know what this is on page 515?
19 A. Can you clarify your question again, please.
20 Q. There's a pictorial representation on page
21 515. Can you tell me where this came from?
22 MR. ORME: Objection; mischaracterizes the
23 document.
24 THE WITNESS: No, I cannot.
25 Q. (BY MR. DOWDY): What does what appears on

1 page 515 appear to be to you?
2 MR. ORME: Objection; calls for speculation.
3 THE WITNESS: Looks like a shelving unit that
4 can be broke down between shelving bench or other
5 applications or assembled differently.
6 Q. (BY MR. DOWDY): Do you know what product
7 number this would be used in connection with?
8 MR. ORME: Objection; calls for speculation.
9 THE WITNESS: No.
10 Q. (BY MR. DOWDY): Do you know if it was used
11 in connection with any product?
12 THE WITNESS: Can you reword that, please.
13 Q. (BY MR. DOWDY): Was this, what appears on
14 page 515, used to advertise any products?
15 MR. ORME: Objection; asked and answered.
16 THE WITNESS: I would have a no personal
17 knowledge of that.
18 Q. (BY MR. DOWDY): Okay. Can I get you to turn
19 to page 519, Mr. Taylor? Are you there?
20 A. Yes.
21 Q. Can you tell me what 519 is?
22 MR. ORME: Objection; outside the scope of
23 his designated topic.
24 THE WITNESS: By reading the header on it its
25 an inventory sales history report.

1 to what we were talking about, the Rhino Rack Mark
2 itself. Do you know how or why -- well, strike the
3 question.
4 Do you know why Rapid Rack chose the Rhino Rack
5 Mark?
6 MR. ORME: Objection; outside the scope of
7 topics.
8 A. No, I have no personal knowledge of that.
9 Q. (BY MR. DOWDY): Do you know how Rapid Rack
10 devised the Rhino Rack Mark?
11 MR. ORME: Same objection.
12 THE WITNESS: Same response. I have no
13 personal knowledge of that.
14 Q. (BY MR. DOWDY): Do you know whether there
15 have been any studies done showing public recognition
16 of the mark?
17 MR. ORME: Objection.
18 MR. DOWDY: Of the Rhino Rack Mark?
19 MR. ORME: Sorry Joe. It was actually
20 outside the scope.
21 THE WITNESS: No, I would have no personal
22 knowledge of that.
23 Q. (BY MR. DOWDY): Do you know how Rapid Rack
24 decides when it's going to use the Rhino Rack Mark as
25 opposed to when it's going to use the Gorilla Rack

1 Mark?
2 MR. ORME: Objection; beyond the scope of
3 topics.
4 THE WITNESS: No, no personal knowledge of
5 that.
6 Q. (BY MR. DOWDY): Do you know whether
7 consumers generally associate the Rhino Rack Mark with
8 Rapid Rack?
9 MR. ORME: Objection; beyond the scope, calls
10 for speculation.
11 THE WITNESS: I would have no personal
12 knowledge of that.
13 Q. (BY MR. DOWDY): Do you know whether the
14 Rhino Rack Mark has acquired public acceptance and is
15 recognized by the public as being associated with
16 higher quality hardware products?
17 MR. ORME: Objection; compound, beyond the
18 scope, calls for speculation.
19 THE WITNESS: No, I have no personal
20 knowledge of that.
21 Q. (BY MR. DOWDY): I may turn now to, Madam
22 Court Reporter, if you would take out the envelope
23 that's marked Interrogatory Responses, if we could mark
24 that as an exhibit.
25 THE COURT REPORTER: That will be Exhibit 5.

1 for each of the products identified in Response to
2 Interrogatory No. 1."
3 Now, if you look, and then it says, Response to
4 Interrogatory No. 15. And the first paragraph is
5 objections and then it says, "Rapid Rack's
6 investigation is continuing and Rapid Rack will
7 supplement this response when and if such information
8 becomes available. Some information relative to this
9 request may have been destroyed during a flood at Rapid
10 Rack's facilities in 2005."
11 Do you know whether any information responsive to
12 that request was actually destroyed in a flood in 2005?
13 A. The date on this document is incorrect. It
14 was 2004 as far as the flood date.
15 Q. So the flood was in 2004. Do you know
16 whether or not any information responsive to
17 Interrogatory No. 15 was destroyed in that flood in
18 2004? Was it actually destroyed?
19 A. I would have no personal knowledge on that.
20 Q. Interrogatory No. 16 asks the same question
21 for 2001 -- actually, let me back up to No. 15 for just
22 a second. It says, "Rapid Rack's investigation is
23 continuing." Have you been involved in looking for any
24 materials involved in Response to Interrogatory No. 15?
25 MR. ORME: Objection; beyond the scope of his

1 cannot produce and documentary or demonstrative
2 evidence or proof of use of Registrant's Mark in
3 calendar year 2000; do you see that?
4 MR. ORME: You just said Request For
5 Admission No. 3 on page three?
6 MR. DOWDY: On page two.
7 MR. ORME: I'm sorry. I believe you referred
8 to it as No. 3 Go ahead again.
9 MR. DOWDY: I'm looking for Request for
10 Admission No. 3 on page two. It says, Registrant
11 cannot produce any documentary or demonstrative
12 evidence or proof of use of Registrant's Mark in
13 calendar year 2000."
14 MR. ORME: Objection; outside the scope of
15 his designated testimony."
16 Q. (BY MR. DOWDY): Okay. You see that in
17 Response to Request For Admission No. 3 there's an
18 objection. Then the second sentence says,
19 "Notwithstanding the above objections and without
20 waiver thereof, Registrant denies this request." Do
21 you see that, sir?
22 A. No, I do not.
23 Q. I'm looking under Response to Request For
24 Admission No. 3.
25 A. Hold on.

1 or demonstrative evidence or proof of use of
2 Registrant's Mark in 2001." You see that, sir?
3 A. Yes, I do.
4 Q. You see under Response to Request For
5 Admission No.8 if you look at the second sentence very
6 last bit there it says, "Registrant denies the
7 request." Do you see that, sir?
8 A. Yes, I do.
9 Q. What documentary or demonstrative evidence or
10 proof of use of Registrant's Mark does Rapid Rack have
11 for calendar year 2001?
12 MR. ORME: Objection; Responses to Request
13 for Admissions are outside the scope of his designated
14 topics.
15 MR. DOWDY: You can answer the question.
16 THE WITNESS: The only personal knowledge I
17 have are the screen prints that I printed out last
18 night for the RR-4805.
19 Q. (BY MR. DOWDY): That's the Exhibit 7 we
20 looked at a moment ago?
21 A. That is correct.
22 Q. If you'll look with me for Request for
23 Admission No. 13 and it says, "Registrant cannot
24 produce any documentary or demonstrative evidence or
25 proof of use of Registrant's Mark in calendar year

1 2002. Do you see that, sir?
2 A. Yes, I do.
3 Q. And you see in Response to Request For
4 Admission No. 13 at the very end, it says, "Registrant
5 denies this request"?
6 A. Yes, I do.
7 Q. What documentary or demonstrative evidence or
8 proof of use of Registrant's Mark does Rapid Rack have
9 for calendar year 2002?
10 MR. ORME: Objection; outside the scope.
11 THE WITNESS: Again, the printout that I
12 personally made last night for the RR-4805s.
13 Q. (BY MR. DOWDY): Is that the same answer you
14 would give, sir, with respect to years 2003 through
15 2006?
16 A. No, it is not.
17 MR. ORME: Objection; vague, there were
18 multiple questions in this.
19 Q. (BY MR. DOWDY): Turn to Request For
20 Admission 18, Please?
21 A. And as on page seven it says, Registrant
22 cannot produce any documentary or demonstrative
23 evidence or proof of use of Registrant's Mark for
24 calendar year 2003. Do you see that, sir.
25 MR. ORME: I'm sorry. I didn't hear. You

1 actually cut out a little there.
2 MR. ORME: Go ahead. Would you repeat that,
3 please Jeff.
4 MR. DOWDY: I read Request For Admission No.
5 18.
6 MR. ORME: Gotcha.
7 Q. (BY MR. DOWDY): Do you see Request For
8 Admission No. 18, Mr. Taylor?
9 A. Yes, I do.
10 Q. Do you see where registrant has denied that
11 question?
12 A. Yes, I do.
13 Q. What documentary or demonstrative evidence or
14 proof of use of Registrant's Mark does Rapid Rack have
15 for calendar year 2003?
16 MR. ORME: Objection; outside the scope.
17 THE WITNESS: The printout that. I printed
18 last night for the RR-4805.
19 Q. That's Exhibit No. 7 we've discussed?
20 A. That is correct.
21 Q. If you'll turn to page eight a Request For
22 Admission No. 23 asks the same thing about calendar
23 year 2004. Do you see that Registrant has denied that
24 request?
25 A. Yes, I do.

1 Q. What documentary or demonstrative evidence or
2 proof of use of Registrant's Mark does Rapid Rack have
3 for calendar year 2004?
4 MR. ORME: Objection; outside scope of
5 designated testimony.
6 THE WITNESS: I have no personal knowledge of
7 that.
8 Q. (BY MR. DOWDY): So there's nothing you're
9 aware of, sir?
10 MR. ORME: Objection, same objection.
11 THE WITNESS: Not personally.
12 Q. (BY MR. DOWDY): With respect -- I'm looking
13 now at Request for Admission No. 28 on page ten that
14 concerns the same thing for calendar year 2005.
15 You see that Registrant has denied that request.
16 A. Yes, I do.
17 Q. What documentary or demonstrative evidence or
18 proof of use of Registrant's Mark does Rapid Rack have
19 for calendar year 2005?
20 MR. ORME: Same objections.
21 A. I have no personal knowledge of that.
22 Q. You're not aware of anything?
23 A. Personally, no, I am not.
24 Q. Let's look at Request For Admission No. 3
25 that asks for an admission as to year 2006 of the same

1 scope we've just discussed and you see that Registrant
2 has denied that request also?
3 MR. ORME: Same objection.
4 THE WITNESS: Yes, I do, I see it.
5 Q. (BY MR. DOWDY): What documentary or
6 demonstrative evidence or proof of use of Registrant's
7 Mark does Rapid Rack have for calendar year 2006?
8 MR. ORME: Same objection.
9 THE WITNESS: I have no personal knowledge of
10 that.
11 Q. You're not aware of anything?
12 A. Personally no.
13 Q. Let me ask you this: What documentary or
14 demonstrative evidence or proof of use of Registrant's
15 Mark does Rapid Rack have for calendar year 2007?
16 MR. ORME: Objection beyond the scope.
17 Q. (BY MR. DOWDY): You can answer.
18 THE WITNESS: I have no personal knowledge of
19 that.
20 Q. (BY MR. DOWDY): You're not aware of
21 anything?
22 A. No, I am not personally aware of it.
23 MR. DOWDY: Can you give me -- like can we
24 take a quick 60-second stretch break and go off the
25 record for 60, 120 seconds, something like that.

1 would you kindly confirm that you won't share any of
2 the exhibits or any of the deposition transcripts with
3 anyone than the parties in this litigation?
4 THE COURT REPORTER: Yes. I will not.
5 MR. DOWDY: My understanding is the original
6 transcript comes to us and there's an errata. You get
7 a copy and then you have an errata statement. You have
8 an errata and it comes to us.
9 MR. ORME: In California that's not how it
10 goes. The original goes to the folks who actually have
11 their deposition taken. We review that and then
12 forward the original and an errata sheet.
13 MR. DOWDY: How long does that take?
14 MR. ORME: I believe we have 30 days, so I
15 think from 30 days from the time we actually receive
16 the transcript and -- to provide an errata sheet and
17 the original.
18 MR. DOWDY: Well, let's, Madam Court
19 Reporter, can we get back with you on that? I suppose
20 I'd like to talk to counsel off line about that and
21 sort of see which rules apply. I don't want to
22 accidentally anger the TTAB and fail to follow their
23 rules. We could talk off line.
24 THE COURT REPORTER: In California the Code
25 is the witness has to come to the reporter's office to

1 sign the transcript, but the parties can stipulate to
2 send the original to the witness for signature.
3 MR. ORME: For the record, the deposition is
4 occurring in California and we're operating under the
5 rules of the Central District of California.
6 (Discussion regarding signature of the original
7 transcript held off the record.)
8 MR. ORME: I would like to reach a
9 stipulation. Why don't we take a 15-minute break, Joe,
10 while you review the rules.
11 MR. DOWDY: That's okay. We don't stipulate.
12 We want him to come to her office. I want him to come
13 review the deposition in your office.
14 MR. ORME: We're going to go off the record
15 for a few minutes. We'll be right back.
16 (Off the record.)
17 MR. DOWDY: Let me apologize. I
18 misunderstood something the court reporter said. We'll
19 stipulate to -- we'll make a standard stipulation of
20 the Central District.
21 MR. ORME: The original will come to us.
22 We'll -- the witness will review, provide an errata
23 sheet and then we will forward the original to you.
24 MR. DOWDY: Right, right, right. We
25 stipulate that the errata sheet could be made within 30

EXHIBIT D

EXHIBIT D TO THE DECLARATION OF PATRICK J. ORMÉ IN SUPPORT OF RESPONDENT'S OPPOSITION TO PETITIONER'S SECOND MOTION FOR SANCTIONS

FILED UNDER SEAL

PURSUANT TO A PROTECTIVE ORDER DATED JUNE 24, 2008

TRADEMARK
Docket No. 110.2*1/R643
Cancellation No. 92048271
Registration No. 1,698,407

CERTIFICATE OF TRANSMISSION AND SERVICE

I certify that on October 27, 2008, the foregoing **DECLARATION OF PATRICK J. ORMÉ IN SUPPORT OF RESPONDENT'S OPPOSITION TO PETITIONER'S SECOND MOTION FOR SANCTIONS** is being electronically filed with the Trademark Trial and Appeal Board addressed as follows:

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

It is further certified that on October 27, 2008, the foregoing **DECLARATION OF PATRICK J ORMÉ IN SUPPORT OF RESPONDENT'S OPPOSITION TO PETITIONER'S SECOND MOTION FOR SANCTIONS** is being served by mailing a copy thereof by first-class mail addressed to:

David A. Harlow
Joseph S. Dowdy
Nelson, Mullins Riley & Scarborough LLP
4140 Parklake Avenue GlenLake One, Suite 200
Raleigh, NC 27612

By Joyce Reese

CHRISTIE, PARKER & HALE, LLP
PO Box 7068
Pasadena, CA 91109-7068