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

| | |
|------------------------|--|
| Proceeding | 92054629 |
| Party | Plaintiff Sheltered Wings, Inc. |
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| Submission | Testimony For Plaintiff |
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| Signature | /Jennifer L. Gregor/ |
| Date | 10/01/2013 |
| Attachments | 2013-10-01 FINAL Petitioner's Notice of Filing.pdf(108254 bytes) DEPO Lizdas, Benjamin (REDACTED).PDF(2680434 bytes) Lizdas_9-10-13_Exhibit_36 (Part 1).pdf(2862928 bytes) Lizdas_9-10-13_Exhibit_36 (Part 2).pdf(2964891 bytes) Lizdas_9-10-13_Exhibit_37.PDF(991225 bytes) Lizdas_9-10-13_Exhibit_38.PDF(1377903 bytes) Lizdas_9-10-13_Exhibit_39.PDF(1241201 bytes) Lizdas_9-10-13_Exhibit_40.PDF(781217 bytes) Lizdas_9-10-13_Exhibit_41.PDF(194510 bytes) Lizdas_9-10-13_Exhibit_42.PDF(123900 bytes) Lizdas_9-10-13_Exhibit_43.PDF(713632 bytes) Lizdas_9-10-13_Exhibit_44.PDF(1104814 bytes) Lizdas_9-10-13_Exhibit_45.PDF(180125 bytes) Lizdas_9-10-13_Exhibit_46.PDF(172370 bytes) Lizdas_9-10-13_Exhibit_47.PDF(371775 bytes) Lizdas_9-10-13_Exhibit_48_CONFIDENTIAL FILED UNDER SEAL.PDF(549865 bytes) |

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

| | | |
|----------------------------------|---|---------------------------|
| In re Registration No. 3,904,929 |) | |
| |) | |
| SHELTERED WINGS, INC. |) | |
| |) | |
| Petitioner, |) | Cancellation No. 92054629 |
| |) | |
| v. |) | |
| |) | |
| WOHALI OUTDOORS, LLC |) | |
| |) | |
| Respondent. |) | |

PETITIONER'S NOTICE OF FILING

In accordance with 37 C.F.R. §§ 2.123 and 2.125, please take notice that the Petitioner is hereby filing and serving the following trial testimony transcripts and exhibits:

Testimony of Daniel C. Hamilton, President and Founder of Eagle Optics:

1. The September 10, 2013 trial testimony of Daniel C. Hamilton [with confidential portions redacted], signed errata sheet, and exhibits 1 through 14 and 16 through 35;
2. The confidential portions of the September 10, 2013 trial testimony of Daniel C. Hamilton and confidential exhibit 15;

Testimony of Benjamin D. Lizdas, Sales Manager of Eagle Optics:

3. The September 10, 2013 trial testimony of Benjamin D. Lizdas [with confidential portions redacted], signed errata sheet, and exhibits 36 through 47;
4. The confidential portions of the September 10, 2013 trial testimony of Benjamin D. Lizdas, and confidential exhibit 48.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Filing and testimony transcripts referenced above were served by email and Federal Express overnight courier on October 1, 2013, upon the following:

Steven M. Harris (steve.harris@1926blaw.com)
S. Max Harris (max.harris@1926blaw.com)
DOYLE HARRIS DAVIS & HAUGHEY
1350 South Boulder, Suite 700
Tulsa, OK 74119

I further certify that all of the exhibits referenced above were served in electronic format to Messrs. Harris and Harris on a compact disc via Federal Express overnight on October 1, 2013.

I also certify that I cause a true and complete copy of all the foregoing documents to be filed with the Board's ESTTA system on October 1, 2013.

Dated: October 1, 2013

/Jennifer L. Gregor/
Jennifer L. Gregor

In The Matter Of:
Sheltered Wings, Inc. v.
Wohali Outdoors, LLC

Deposition of Benjamin D. Lizdas
September 10, 2013

For The **Record** Inc.
Excellence In Court Reporting

Original File Lizdas Benjamin.txt
Min-U-Script® with Word Index

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

In re Registration No. 3,904,929
SHELTERED WINGS, INC.,
Petitioner,
v.
Cancellation Case No. 92054629
WOHALI OUTDOORS, LLC,
Respondent.

DEPOSITION

BENJAMIN D. LIZDAS
Madison, Wisconsin
September 10, 2013

Carmen Harder, RPR
Registered Professional Reporter

1 DEPOSITION of BENJAMIN D. LIZDAS, a
2 witness of lawful age, taken on behalf of the
3 Petitioner, wherein Sheltered Wings, Inc. is
4 Petitioner and Wohali Outdoors, LLC is Respondent,
5 pending in the United States Patent and Trademark
6 Office before the Trademark Trial and Appeal Board,
7 pursuant to notice, before Carmen Harder, a
8 Registered Professional Reporter and Notary Public in
9 and for the State of Wisconsin, at the offices of
10 Godfrey & Kahn, S.C., Attorneys at Law, One East Main
11 Street, in the City of Madison, County of Dane, and
12 State of Wisconsin, on the 10th day of
13 September 2013, commencing at 2:58 in the afternoon.
14
15
16

A P P E A R A N C E S

19 JAMES D. PETERSON and JENNIFER L. GREGOR, Attorneys,
20 for GODFREY & KAHN, S.C., Attorneys at Law,
21 One East Main Street, Suite 500, Madison,
22 Wisconsin 53703, appearing on behalf of the
23 Petitioner.
24 STEVEN M. HARRIS, Attorney,
25 for DOYLE, HARRIS, DAVIS & HAUGHEY, Attorneys at Law,
1350 South Boulder, Suite 700, Tulsa,
Oklahoma 74119, appearing on behalf of the
Respondent.

I N D E X

Table with 3 columns: No., Description, Identified. Includes entries for BENJAMIN D. LIZDAS (Direct Examination, Cross-Examination) and EXHIBITS (Packet of print ads, Birdwatcher's Digest, Living Bird, Birding, Wildbird, Declaration of Ben Lizdas, Exhibit H - 2011 Donations, Eagle Optics, Pelican Island, Pelican Eagle Optics advertisement, Centennial Partnership Award, Two color copied photographs, Two Sales Charts).

1 BENJAMIN D. LIZDAS,
2 called as a witness, being first duly sworn,
3 testified on oath as follows:
4

DIRECT EXAMINATION

6 By Ms. Gregor:
7 Q Good afternoon. Would you please state your name
8 for the record.
9 A Benjamin Lizdas.
10 Q Would you state your residential address for us.
11 A 212 South 2nd Street, Mount Horeb,
12 Wisconsin 53572.
13 Q Are you presently employed?
14 A Yes.
15 Q Where do you work?
16 A Eagle Optics.
17 Q What is your position at Eagle Optics?
18 A I'm the sales manager.
19 Q How long have you worked at Eagle Optics?
20 A Thirteen years this fall.
21 Q How long have you been a sales manager of
22 Eagle Optics?
23 A Six or seven years, 2006, 2007.
24 Q Before you were the sales manager of Eagle Optics,
25 what other positions did you hold at the company?

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1 A My title would have been salesperson. And for a
2 number of years prior to being a sales manager I
3 also I guess you would say would have been an
4 outside event coordinator. I coordinated trade
5 shows that we went to, retailer shows.
6 Q Was your role as an outside event coordinator a
7 separate position than as a salesperson?
8 A No, no. It all kind of wrapped into one. It was
9 part of my particular job as a salesperson.
10 Q And have you had any -- other than currently
11 serving as a sales manager of Eagle Optics and
12 other than serving as a salesperson, have you had
13 any other positions at Eagle Optics?
14 A No.
15 Q Have you held any positions with Vortex Optics?
16 A No.
17 Q And what is the highest level of education you've
18 received?
19 A Undergraduate degree.
20 Q What was your degree in?
21 A Landscape architecture.
22 Q Where did you receive your degree from?
23 A University of Wisconsin-Madison.
24 Q So going back to your position at Eagle Optics
25 currently -- well, actually, let's do it the other

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1 way around. Let's talk about your position when
2 you started, your position as sales manager with
3 the Eagle Optics company. What were your
4 responsibilities when you were a salesperson at
5 Eagle Optics?
6 A When I was a salesperson?
7 Q Salesperson.
8 A My responsibilities were talking to customers,
9 providing them with technical advice about our
10 products, placing orders, having those orders
11 processed and shipped out. And then I, you know,
12 eventually had further duties before I became
13 sales manager where I was in charge of events that
14 we would attend as well.
15 So I would coordinate attending birdwatching
16 festivals, nature festivals. Primarily we did a
17 couple of other, you know, national park
18 appreciation type, you know, societies, so it
19 wasn't all just birdwatching, those type of events
20 for our company. So I would coordinate the
21 logistics in terms of us traveling to these
22 events, setting up a booth at a trade show,
23 possibly giving lectures or discussions at these
24 events. Some of them I would lead birdwatching
25 field trips as well.

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1 Q Did you participate in marketing activities as a
2 salesperson at Eagle Optics?
3 A If you would consider the coordinating of the
4 festivals and outside events as marketing -- which
5 as sales manager now I currently do, yes, I would
6 say. Although, at the time I was doing it, maybe
7 I wouldn't have considered myself involved in
8 marketing. But now that I'm in charge of all the
9 things, I look back at that, and yeah, that was
10 marketing.
11 Q Let's talk about your responsibilities in your
12 current role as sales manager. Can you just
13 briefly give me an overview of the types of
14 responsibilities you have in that role.
15 A Sure. What I do is I coordinate the
16 responsibilities that the staff does. By and
17 large, I do a lot of delegation of
18 responsibilities. I deal with the mechanics of
19 our sales operations, outside websites that we
20 might sell on, such as eBay or Amazon.
21 What I do is definitely coordinate our
22 marketing efforts in terms of I still do all the
23 shows that we manage. I also oversee the person
24 who manages Google AdWords. I'm in charge of
25 print advertising. I'm in charge -- I oversee our

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1 affiliate program. I'm in charge of the
2 sponsorships that we do with certain non-profits,
3 like the Cornell Lab of Ornithology, for example.
4 I am -- let's see. Yeah, kind of just the general
5 day-to-day operations.
6 Q So do you have any involvement in training the
7 staff of Eagle Optics?
8 A Yes, I do. I train them in terms of company
9 policies, procedures, train them on technical
10 aspects to some extent to the products that we
11 sell.
12 Q Do you have any involvement in manufacturer or
13 supplier relationships?
14 A Yes, I do. I'm the liaison for our company with
15 the various suppliers that we have. So, you know,
16 as a retailer, we sell -- in addition to our own
17 brand of optics, we sell optics made by a whole
18 host of other manufacturers, names likes Nikon or
19 Bushnell or Swarovski, Zeiss. And so I'm the
20 liaison, the main contact person for, you know,
21 our various reps and people who work for those
22 manufacturers as well.
23 And I also, in addition to that, I do kind of
24 coordinate our purchasing, if you will. So I
25 oversee our purchasing, decide what products we're

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1 going to stock, what sort of levels of inventory
2 we're going to manage. So inventory management is
3 something I work on as well.
4 Q Is there any other general categories of
5 responsibilities that you have as the sales
6 manager of Eagle Optics that we haven't just
7 overviewed?
8 A Purchasing, sales, marketing. Not that I can
9 think of.
10 Q Well, let's go back to the marketing aspects of
11 your role then. Can you just briefly give me an
12 overview of the types of things that you oversee
13 for marketing for Eagle Optics.
14 A So what I do is I mainly am an outreach person for
15 social media type outlets, bloggers. When I
16 travel to birding festivals, I do a lot of
17 coordination with things like bird tour companies,
18 tour operators. I do coordination with
19 non-profits that we work with in terms of
20 sponsorship and, you know, how we're going to be
21 portrayed in the marketplace in terms of some of
22 the groups that we support.
23 I help with ad strategy. I approve, and I
24 help develop ads. And then I oversee people who
25 do online advertising for us as well, things like

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1 Google AdWords, you know -- and not just Google
2 but Bing and Yahoo!, similar types of
3 pay-per-click advertising.
4 And I also oversee -- I also oversee someone
5 who manages an affiliate program, which is kind of
6 a commission-based program for outside websites
7 that promote our store and our products. I also
8 oversee internally the people who write our blogs
9 and some outside websites that we have developed
10 as well. So we have some independent websites
11 that we operate as well as some blogs online. So
12 there's that aspect of it.
13 Q So you've described a wide variety of things that
14 fall under your umbrella of marketing
15 responsibilities. I'd like to just try to find a
16 way to categorize these a little bit so we can
17 talk about some of them in more detail. So based
18 on what you just described, it sounds like one of
19 the aspects of marketing at Eagle Optics is
20 attending trade shows or events or festivals?
21 A Yes.
22 Q Would it be fair for us to talk about those types
23 of promotional activities as events or trade
24 shows --
25 A Sure.

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1 Q -- as a category?
2 A Yeah.
3 Q And then I heard you talk about things like social
4 media, blogs, print advertising, online
5 advertising, and perhaps the affiliate program
6 might fall into this category, but would it be
7 fair to categorize those types of activities as
8 media-related activities?
9 A Yes.
10 Q Are there any other activities than what I just
11 listed that you'd put into that bucket?
12 A In media?
13 Q Yes.
14 A Blogs, Facebook, print media, web banners on
15 forums. You know, there's online forums with
16 banners. That pretty much is it.
17 Q And then the type of things that we haven't
18 already categorized, you mentioned things like
19 sponsorships, working with non-profits.
20 A We do a lot of support of various non-profit
21 groups in terms of donations that we send out to
22 them and outright cash contributions in terms of,
23 you know, helping them with events. We will
24 sponsor some of the festivals we go to. We will
25 sponsor other events that non-profits will ask,

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1 you know, inquire with us.
2 Part of our effort is to maintain a
3 reputation and be sort of interactive in the
4 communities that our customers partake in, which
5 is, you know, the outdoors, outdoor enthusiasts.
6 Hunting and birdwatching are probably the
7 two primary ones.
8 Q How would you categorize that bucket of
9 activities?
10 A The sponsorships and the donations?
11 Q That type of thing.
12 A I would characterize it -- well, most certainly
13 it's marketing, but --
14 Q Is it fair to call them partnerships?
15 A Partnerships, absolutely, yes. I mean, this is
16 where we will pick organizations that we want to
17 be affiliated with, essentially that we will --
18 you know, someone who will recognize us and say
19 Hey, Eagle Optics is helping us do this. And then
20 we can look to -- we can show our customers, say
21 We're helping this group. So I would definitely
22 call them partnerships in the sense that it's kind
23 of a -- we both give to one another and highlight
24 each another's brand.
25 Q And I'll ask you some more about this stuff, but I

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1 wanted to sort of get an organized framework for
 2 how we go through it all. So let's start with the
 3 media type activities. And so you listed several
 4 types of activities that fall under the media
 5 category. Print ads were one of the categories?
 6 A Another one that -- I don't know if you would
 7 classify it under media, would be when we used to
 8 print a catalog. We used to have a print catalog
 9 too that I would work on to, you know, develop the
 10 content of that. We recently stopped doing a
 11 print catalog just this past year due to the fact
 12 that our website has sort of taken over.
 13 We have a catalog. It's now a PDF that you
 14 can download. So I guess the work that I did with
 15 the print catalog is still being done, but it's
 16 all digital now. But at one point when we had a
 17 prominent print catalog, I guess I would consider
 18 that part of the media as well.
 19 Q What year did you switch from doing traditional
 20 hard copy catalogs to --
 21 A Just this past year. So in 2012 we still had a
 22 hardcopy catalog that a customer could call and
 23 have us mail one out to. And now we have that
 24 same type of document, just in digital form only.
 25 Q And so let's mark some exhibits of print ads.

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1 (Exhibit No. 36 marked for
 2 identification)
 3 Q I've just handed you what's been marked as
 4 deposition Exhibit 36. Would you take a moment
 5 and look through it and get familiar -- take as
 6 long as you need to familiarize yourself with it,
 7 and then I'll ask you some questions about it.
 8 And the first question I'll ask you is if you can
 9 tell me what it is.
 10 A We are looking at what appear to be ad proofs that
 11 are for print ads that we would have run in
 12 various publications, a mix of them featuring
 13 different products. Some of them feature our
 14 store more so than products. Some of them are
 15 product centric.
 16 Q Can you tell from that what time frame those ads
 17 were run, generally speaking?
 18 A They have -- well, the earliest one I see here
 19 is -- well, let me look through here.
 20 MR. HARRIS: This is exhibit what
 21 again?
 22 MS. GREGOR: 36.
 23 MR. HARRIS: 36.
 24 A It looks to go back to 2009 and extending
 25 through -- I see ads from 2011. Let's see. 2012.

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1 It looks like it goes into 2012.
 2 Q Do you know what are some of the publications in
 3 which ads like these would have been run?
 4 A Absolutely. Living Bird magazine, Wildbird
 5 magazine, Bird Watcher's Digest magazine, a
 6 publication called Michigan Birds and Natural
 7 History. Indiana Outdoor News is one of them.
 8 Birding magazine would be another one.
 9 Q Are the ads that we're looking at in Exhibit 36
 10 representative of the type of print advertising
 11 that Eagle Optics has done since you've been the
 12 sales manager?
 13 A I would say since I've been the sales manager and
 14 even when I was just a salesperson, it would be
 15 representative of the type of ads we've been
 16 doing.
 17 Q And the publications that you just listed, such as
 18 Bird Watcher's Digest, Birding magazine,
 19 Living Bird, and the like, are those publications
 20 representative of the types of publications that
 21 Eagle Optics ran print ads in while you have been
 22 the sales manager of the company?
 23 A Yes.
 24 Q Let's just look at the first page of the exhibit
 25 for a moment. There's some header information on

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1 the document. Does that provide information about
 2 the ad?
 3 A Well, I see EO here, which would denote
 4 Eagle Optics as opposed to say Vortex Optics, you
 5 know, our sister company. It says October '09,
 6 which is a date. I don't know if that -- and then
 7 I see another date, 9/15/2009, and then there's a
 8 time. I don't know exactly what those specific
 9 connotations mean in terms of if one of them is
 10 the due date of the ad or if it is, you know, the
 11 date of the publication or the date that the
 12 publication is set to mail.
 13 Q For example, on this page I see that those dates
 14 are only about a month apart. One of them is a
 15 notation for October '09, and the other is a
 16 notation for September 2009. Would it be fair to
 17 assume that the ad was run in the fall of 2009
 18 based on those dates?
 19 A Absolutely.
 20 Q Can you talk a little bit about how ads are placed
 21 in print publications and --
 22 A Sure.
 23 Q -- how the timing might typically work --
 24 A Sure.
 25 Q -- in terms of sending in your ad?

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1 A So we have a graphics department, and someone in
2 the graphics department gets the ad schedule from
3 publishers. And what the person in the graphics
4 department will do is let me know when we have ads
5 that need to be developed and give me a deadline,
6 say We need to have an ad developed by this
7 particular date for this upcoming issue of this
8 particular publication, which is going to be the,
9 you know, spring, November, December, however the
10 publication works.
11 And so the person in the graphics department
12 will coordinate with me on developing an ad. And
13 then I will work with them to develop an ad, and
14 they will submit it. So the actual submission
15 process of the ad as well as getting the print
16 dates and when the materials are needed by is
17 something that I don't do myself. But I oversee
18 the development of the content within the context
19 of when the ad is going to be viewed by consumers,
20 customers.
21 Q Did your graphics department work on the
22 collection of ads that we're looking at right now?
23 A Yes.
24 Q I have a follow-up question about the notations
25 we've been looking at in the header of the

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1 document.
2 A Uh-huh.
3 Q So, for example, on the first page, it reads
4 "EO_BB." Does the notation BB provide any
5 information about the ad?
6 A In this context I don't know what BB in this ad is
7 referring to. BB could be Birder's Bulletin.
8 Normally I would expect to see something. For
9 instance, in this ad right here (indicating) -- I
10 don't know if you can look at -- there's not page
11 numbers here, but --
12 Q So let's make a record of the page number. How
13 many pages in is it?
14 A One, two, three, four. So on the fourth page we
15 see BWD, and that would stand for Bird Watcher's
16 Digest.
17 Q So that notation or abbreviation in the header
18 would provide some information about the
19 publication that the ad was placed in?
20 A Yes, it would.
21 Q But you would need to know which --
22 A But in this case with BB, this may have been a
23 one-off publication. This may have been a
24 one-time mailing or a supplemental mailing from
25 say Bird Watcher's Digest that would have had

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1 something abbreviated as BB, which maybe I would
2 have come across, you know, two or three times
3 throughout the course of doing this, which is why
4 I'm not too sure what BB stands for in the case of
5 this ad. But BWD, you know, that's a standard
6 publication we do all the time. That's very
7 obvious to me.
8 And some of these ads I can look at, and I
9 know what publication they're in just based on the
10 content. So, for instance, there's an ad on
11 page -- 1, 2, 3, 4, 5, 6 -- 7 featuring a
12 beginning birder kit, and it does not have that
13 notation that we saw. But I know that because it
14 features The American Birding Association and it
15 has that logo right there, I know that this ad was
16 run in the ABA publication called Birding. I
17 don't know when this ad was run, though,
18 particularly because I don't see a date on there.
19 Q I've got some other examples of ads for you.
20 (Exhibit No. 37 marked for
21 identification)
22 Q I'm showing you what has been marked as
23 Exhibit 37. Would you take a look at that and let
24 me know what it is.
25 A This looks to be photocopies of select pages from

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1 an issue of Bird Watcher's Digest from July/August
2 of 2012. And in this compilation I'm seeing
3 two ads of ours, one for an Eagle Optics branded
4 binocular, the Golden Eagle HD, and the second, an
5 ad for Eagle Optics featuring products made by
6 Swarovski Optic.
7 Q Are these two advertisements in Exhibit 37
8 representative of the type of print advertising
9 that Eagle Optics had for Golden Eagle and for
10 products sold by other manufacturers by
11 Eagle Optics?
12 A Yes. It would have been sold by Eagle Optics, the
13 products from our manufacturers.
14 Q Got it.
15 (Exhibit No. 38 marked for
16 identification)
17 Q I'll hand you another one. This one has been
18 marked as Exhibit 38. Would you take a look at
19 that, and let me know what it is.
20 A This looks to be excerpts from Living Bird
21 magazine, which is done by the Cornell Lab of
22 Ornithology. There's the table of contents, and
23 then there are two ads. It looks like they're on
24 page 10. One of them once again featuring an
25 Eagle Optics product, the Eagle Optics Ranger ED

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1 binocular. And the second one is featuring a
2 product from a manufacturer whose goods we carry
3 called Kenko. So it's an Eagle Optics ad
4 featuring a product made by someone else. In this
5 case it's Kenko.
6 (Exhibit No. 39 marked for
7 identification)
8 Q And here's Exhibit 39. Can you take a look at
9 that, and let us know what it is.
10 A This is an issue of Birding magazine it looks like
11 from May of 2012 and, you know, copies of -- we've
12 got a table of contents it looks like, a list of
13 the publications and staff. And then on the last
14 page here it looks like we have another ad that we
15 developed, in this case featuring a product by one
16 of the manufacturers we work with,
17 Swarovski Optic.
18 (Exhibit No. 40 marked for
19 identification)
20 Q And here's Exhibit 40.
21 A Okay.
22 Q Would you look at that, and let me know what it
23 is.
24 A These are excerpts from an issue of Wildbird
25 magazine dated March/April 2012. And then towards

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1 the back there is a full page Eagle Optics ad
2 featuring some Nikon products, in this case a
3 small spotting scope.
4 Q So the last four exhibits that we just looked at,
5 Exhibits 37, 38, 39, and 40, these are not proofs
6 but actual placed advertising. Are these
7 advertisements the type of print ads that are
8 representative of the print advertising
9 Eagle Optics did during your time as a sales
10 manager?
11 A Yes.
12 Q You mentioned some other types of advertising or
13 promotional activities that we categorized as
14 media types of activities. One of those was
15 banner advertisements. Can you tell me a little
16 bit about what kind of advertising Eagle Optics
17 does in that context.
18 A Sure. So banner advertisement would be an online
19 advertisement that we would place on a website
20 that we feel as though people who either are our
21 customers or could be potential customers would
22 visit. Generally these websites would be centered
23 on outdoor activities, occasionally hunting,
24 primarily birdwatching. An example would be, that
25 I can think of right now, a website called

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1 10,000 Birds, which is a blog all about
2 birdwatching, that we run banner ads on at the
3 moment. And these would be advertisements that
4 would occasionally feature specific products to be
5 purchased at Eagle Optics. Occasionally these
6 banner ads would just feature Eagle Optics the
7 website as opposed to a specific product.
8 Q Can you give any other examples of websites where
9 Eagle Optics would place banner ads?
10 A There's a website called Best Binoculars Reviews,
11 which is a binocular review website. We've placed
12 banner ads there. And there have been some other
13 websites as well, general outdoor websites that we
14 have done one or two banner ads in the past. And
15 I'm not recalling the specific names of them
16 because it would have been quite some time ago,
17 and it wasn't something -- you know, it wasn't
18 ones we did all the time.
19 In terms of regular banner advertising,
20 probably 10,000 Birds and Best Binoculars Reviews'
21 website. Occasionally we would get banner ad
22 placement on websites that are run by non-profits,
23 but we would get that space in exchange for a
24 sponsorship. I would kind of put that maybe in
25 the silo of partnerships. It's a sponsorship

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1 instead of just straight-up media advertising.
2 Instances of websites like that would be the
3 website of the American Birding Association. The
4 website of the Space Coast Birding and Nature
5 Festival, the website of Black Swamp Bird
6 Observatory, and there are probably a host of
7 others I could name as well.
8 Q Well, referring back to what you described as your
9 regular -- the websites where you regularly placed
10 banner advertisements, such as 10000birds.com and
11 the bestbinocularsreviews.com --
12 A Yes.
13 Q -- how frequently would Eagle Optics typically
14 place banner ads on those sites?
15 A Well, we have had -- for the last two years we've
16 had contracts for placing banner ads in
17 10,000 Birds year-round, so --
18 Q So continually throughout the year?
19 A Continually on that website in particular. In the
20 case of a website like Best Binoculars Reviews, we
21 would place them periodically depending on what
22 space was available, rates, and whatnot. And we
23 would do that in cycles of anywhere from three to
24 six months. At this exact moment I don't think
25 there's a banner ad for us on that website.

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1 Q And what you just described with 10000birds.com
2 and bestbinocularsreviews.com, how long have you
3 been doing that?
4 A On those websites, about two years.
5 Q Prior to the last two years, what kind of
6 activities did Eagle Optics do with respect to
7 banner ads on websites?
8 A Infrequently to the point where I don't know if I
9 could document specific instances. It was a small
10 portion of the advertising relative to the print
11 advertising we were doing. Exceptions would have
12 been in situations where we would have gotten
13 banner space in exchange for a sponsorship or
14 products being donated, which would have been on,
15 you know, a whole host of smaller websites. But I
16 don't know if I could recite pretty clear dates.
17 Q You mentioned social media as an aspect of media
18 promotions that Eagle Optics does. Can you tell
19 me about the types of social media that the
20 company's involved in.
21 A So in social media I would include our blogs that
22 we do. We manage a number of different blogs that
23 will vary from product reviews to just insight
24 into, you know, articles we might write about
25 groups who are helping certain products, blogs

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1 that would be a question-answer type blog that we
2 would do. In addition to that, we put a lot of
3 effort into our Facebook presence, the birding
4 community on Facebook.
5 So we've run a contest in the past on
6 Facebook, but we use Facebook to promote new
7 products coming out, things that we find of
8 interest in the birding community, other bird
9 blogs that we find interesting, and just general
10 interaction with our customers. The nice thing
11 about social media is our customers kind of steer
12 the conversation for the most part, which makes it
13 a pretty unique advertising menu.
14 Q Any other types of social media that Eagle Optics
15 is involved in?
16 A Not that I can recall right now.
17 Q Do you know how many fans Eagle Optics has on
18 Facebook approximately?
19 A I would say approximately 5,000. I would expect
20 it would be more. Last time I checked I think it
21 was around 5,000, and I don't check that stat too
22 often. Social media is something I delegate to a
23 couple people on my staff in terms of the
24 maintenance of it.
25 Q For blogs, can you give me some examples of blogs

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1 that promote Eagle Optics or Eagle Optics
2 products?
3 A Okay. Let's see. We have a number of different
4 independent websites and blogs. And when I think
5 of the URLs, we have optics101. We have
6 birdingbinoculars.com. We have
7 allaboutoptics.com. We have binocularreviews.com
8 or it could be binocularreviews.org. I'm not sure
9 what the final three letters are on that one. And
10 these would be all websites that are either a blog
11 or just an external website that we manage that
12 posts information about optics or product reviews
13 in some instances. And then, of course, we have a
14 blog called eagleoptics -- I believe the address
15 is eagleopticsblog.com.
16 Q All of these blogs that we've just been talking
17 about are run by Eagle Optics --
18 A Correct.
19 Q -- employees?
20 A These are all websites that are -- I call them
21 external websites because they're not part of our
22 eagleoptics.com domain, but they are run in-house
23 by our company.
24 Q Are there third-party non-Eagle Optics blogs that
25 promote Eagle Optics products?

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1 A We have a number of them through our affiliate
2 program. So that would be where external websites
3 would have a link to our website, and the person
4 who owns that website, the publisher of that
5 website, would get a commission on the sales made
6 through that channel, so for instance,
7 Houston Audubon, Black Swamp Bird Observatory,
8 Space Coast Birding Festival. Best Binoculars
9 Reviews is an affiliate. The American Birding
10 Association is an affiliate website of ours. The
11 Cornell Lab of Ornithology is an affiliate website
12 of ours. There's a whole host of them.
13 And once again, I don't -- someone else
14 manages Commission Junction, which is the
15 third-party that we use to channel these affiliate
16 programs through. But there are a number of
17 websites that the website publisher has a
18 financial incentive to promote Eagle Optics, and
19 that is because any purchases made, part of that
20 purchase we give to that publisher.
21 Q Are there any other types of activities other than
22 what we've just been talking about that would fall
23 into that social media or blog space?
24 A Not that comes to mind.
25 Q So let's put some time frames on these. How long

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1 has Eagle Optics approximately been running its
2 affiliate program with Commission Junction?
3 A I know that it was in existence before I was
4 involved in it personally, so knowing that when I
5 got involved, I'm going to say 2003, 2004 is
6 likely when we started that.
7 Q So Eagle Optics was involved with
8 Commission Junction prior --
9 A Prior --
10 Q -- to you becoming the sales manager?
11 A Correct.
12 Q And the Eagle Optics blogs that we talked about,
13 such as Optics 101, Birding Binoculars, All About
14 Optics, and the Eagle Optics blog, how long has
15 Eagle Optics been operating those blogs?
16 A I would say four to five years would be what I
17 recollect.
18 Q What about the Facebook page; how long has
19 Eagle Optics been doing that?
20 A Since 2008, 2009 would be where I would put it at.
21 At some point we had signed up on Facebook in kind
22 of a placeholder capacity before we were actively
23 using it. So when I'm saying 2009ish, 2008ish,
24 I'm thinking back when we were actively using it,
25 but we may have actually had our account on there

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1 prior to that.
2 Q I'm just looking for an estimate. So you would
3 estimate 2008 or '09?
4 A Yeah.
5 Q Does Eagle Optics have a YouTube account?
6 A We do have a YouTube account.
7 Q What does Eagle Optics do on YouTube?
8 A Yes. We post a lot of videos that we develop on
9 YouTube, and those videos are also linked on our
10 website. So I often don't think of YouTube as an
11 external site because we use the content on our
12 own domain, but now that I think of it, I'm sure
13 we probably get lots of visitors who watch those
14 videos who come through the YouTube channel as
15 opposed to our website.
16 Q What kinds of videos are on the Eagle Optics
17 YouTube page?
18 A We will do videos that will be product
19 demonstration videos, as well as I would call it
20 educational videos, helping customers understand
21 concepts about tripods, binoculars, spotting
22 scopes, and all the other products we carry.
23 Q Do you know approximately how long Eagle Optics
24 has been hosting a page on YouTube?
25 A Well, we've been doing videos I want to say for at

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1 least four years.
2 Q I think you mentioned Google AdWords earlier. Can
3 you tell me more about what Eagle Optics does in
4 terms of Google AdWords type activities?
5 A Uh-huh. So Google AdWords is a service done by
6 Google where we pay for ad placement to show up
7 when people search for relevant keywords, such as
8 binoculars, rangefinders, hunting binoculars,
9 birdwatching binoculars. And there's a whole host
10 of keywords, of course.
11 And I have someone on my staff that manages
12 our account there, and we bid on keywords, and we
13 pay for placement of ads to show up when consumers
14 will search certain keywords that will highlight
15 our store and direct customers to target landing
16 pages on our website. And this is an activity
17 that's a daily activity that we do. I don't
18 manage it personally, but I oversee the person who
19 manages it.
20 Q Does Eagle Optics purchase keywords on any other
21 search engine other than Google?
22 A Oh, yes. Google AdWords is the lion's share of
23 the industry of what users are using because it's
24 a really popular search engine, but of course you
25 have people using Bing and Yahoo! as well. And so

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1 we will do Ad -- they're not called AdWords there.
2 I'm not sure what their proprietary name is.
3 AdWords is the proprietary term that Google uses,
4 but the industry refers to it as pay-per-click
5 advertising.
6 Q How long has Eagle Optics been doing pay-per-click
7 advertising?
8 A Since before I was sales manager. Dan used to
9 manage it himself when I first took over as sales
10 manager, but I don't know when he started.
11 Q And you said earlier that you're involved in
12 advertising strategy and development?
13 A Uh-huh.
14 Q Can you describe your role in that.
15 A So I will decide what publications we're going to
16 advertise in, how frequently we will advertise in
17 them, as well as the nature of the ads, be it a
18 product centered ad or an ad featuring us as a
19 retailer as opposed to a specific product and then
20 also look at the graphic nature of the ad. I'll
21 work with our graphics department to, you know,
22 approve a final design, if you will.
23 Q You mentioned outreach earlier as well. Is that
24 something different than what we've been talking
25 about in terms of media, or is that something

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1 that's included in what we've just talked about?
 2 A Well, usually I think of outreach in the context
 3 of partnerships. And that would be --
 4 Q Okay.
 5 A -- working with non-profits and whatnot.
 6 Q So let's switch over to those. Will you give me
 7 an overview of the types of things that you
 8 consider to be outreach activities or partnership
 9 type promotional activities for Eagle Optics.
 10 A So one of the key -- one of the most important
 11 things for our company is our reputation, how our
 12 customers perceive us and our brand. And part of
 13 that reputation that we have, part of our branding
 14 is that we give back to the greater, you know, say
 15 birdwatching community, outdoor community, nature
 16 conservation community.
 17 And so part of the way that we implement that
 18 is through working with and supporting the efforts
 19 of a lot of non-profits that we perceive our
 20 customer base would empathize with or relate to.
 21 So this could be groups from wetland conservation
 22 associations that might be based in Wisconsin.
 23 This could be groups that might do raptor
 24 conservation based out of the Golden Gate area in
 25 San Francisco. This could be the Cornell Lab of

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1 Ornithology.
 2 The scale of these organizations vary from
 3 small, very regional to national organizations.
 4 But we put a lot of time and effort into having a
 5 presence in supporting the work that these
 6 organizations do because they promote our brand,
 7 of course. And then we can also promote this to
 8 our customers and let them know that we aren't
 9 just a company that is there to sell optics, but
 10 we're also a company that believes in supporting
 11 the causes that our customers tend to back.
 12 (Discussion off the record)
 13 (Exhibit No. 41 marked for
 14 identification)
 15 Q I've handed you what we've just marked as
 16 Exhibit 41. Would you take a minute and get --
 17 take a look at it, and then when you're ready,
 18 would you let me know what this document is.
 19 A This is my declaration.
 20 Q When you say your declaration, it's a declaration
 21 that you signed and submitted in connection with
 22 this proceeding?
 23 A Correct, yes.
 24 Q And I'll just direct you to the last page of the
 25 document.

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1 A Uh-huh.
 2 Q Is that your signature?
 3 A That is my signature.
 4 Q And have you had an opportunity to review this
 5 document recently?
 6 A Yes.
 7 Q To your knowledge is it still accurate today?
 8 A Yes.
 9 Q So in connection with the preparation of this
 10 declaration, did you collect a list of donations?
 11 A I collected a list of organizations that we
 12 donated to.
 13 Q Yes.
 14 (Exhibit No. 42 marked for
 15 identification)
 16 Q This document that I'm showing you was just marked
 17 as Exhibit 42. Does that document look familiar
 18 to you?
 19 A Yes.
 20 Q Can you tell me what it is.
 21 A So this would be a list of groups, mostly
 22 non-profits, that we would have supported through
 23 donations for various fundraisers typically, not
 24 exclusively fundraisers. In some cases we would
 25 support them by donating optics for their staff to

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1 use for various research. So what the donations
 2 were finally used for varied, but essentially
 3 these were all groups that we felt good being
 4 affiliated with and wanted to support the work
 5 they were doing.
 6 Q Do you know where the information in this document
 7 came from?
 8 A Yes. This came from -- I have someone on my staff
 9 that administers or -- that administers donations.
 10 So once a donation request comes in, they'll come
 11 to me. I'll approve it, and then I will say We're
 12 going to donate this product. And then I will
 13 forward the donation request to another one of our
 14 staff who does the follow-up and see that the
 15 donation is invoiced and gets sent out. And then
 16 that is where I got this list.
 17 Q You mentioned earlier a few different types of
 18 scenarios in which Eagle Optics would make a
 19 donation.
 20 A Uh-huh.
 21 Q Can you just highlight a few of those examples on
 22 this list or maybe start -- and I just want a few
 23 examples to illustrate, but maybe talk a little
 24 bit about the American Birding Association, which
 25 I think you referred to earlier.

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1 A Sure. So the American Birding Association is a
2 non-profit. The membership is largely bird
3 watchers. And they run a program called
4 Birders Exchange where they will take binoculars
5 that will be donated from the U.S. and bring them
6 down to Central and South America to support
7 conservation efforts being done with migratory
8 birds over winter.
9 A lot of the ornithologists down there don't
10 have access to good equipment, so
11 Birders Exchange, which is run by American Birding
12 Association, will do optics drives. And
13 oftentimes we will donate binoculars to
14 Birders Exchange to send down there.
15 In addition, we will also collect binoculars
16 from our customers to donate. And then they'll
17 donate to Birders Exchange, and we'll just be a
18 collection point for them, if you will. So that
19 would be an example of the kind of donation we
20 would do to the American Birding Association.
21 Q And do you have a recollection of what would be a
22 typical size or amount of a donation to the
23 American Birding Association?
24 A That's a group that we partner with on a pretty
25 significant level, so I would expect if you were

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1 to look at the value of the donations in total
2 that we would do to the American Birding
3 Association, it would be measured in the thousands
4 of dollars.
5 Whereas, you could look at this list right
6 here, and I see M&I Golf Outing, Ronald McDonald
7 House, Wisconsin. This would have been a local
8 event that we would have donated a product to that
9 would have maybe not so much featured our, you
10 know, target customer, and odds are this would
11 have been a one-time donation of a product of
12 lesser value. You know, tens of dollars is what
13 the value of a product we would donate to a group
14 like that would have been.
15 Q Going back to the American Birding Association for
16 a moment, you mentioned product donations. What
17 types of products would Eagle Optics donate to the
18 American Birding Association?
19 A Binoculars, spotting scopes, monoculars, tripods.
20 Q What brands of products would be donated?
21 A When we do product donations, typically what we do
22 is we donate our own branded products. We feel as
23 though we get more marketing leverage that way
24 because it's our own brand that's out there.
25 Also, the cost to us is less, so in terms of the

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1 bottom line cost it works out well. So for
2 branding purposes and for practical accounting
3 purposes, when we do donations, it's almost
4 exclusively our own product that we're donating.
5 Q On the list that we've been looking at in
6 Exhibit 42, it sounds like the American Birding
7 Association would be among the larger donations in
8 the list; is that right?
9 A Yeah.
10 Q But there's a range?
11 A Yeah. A lot of these -- I mean, there's a couple
12 organizations like the American Birding
13 Association that would get more substantial
14 donations from us.
15 Q What are some of the other organizations that
16 Eagle Optics would give more substantial donations
17 to?
18 A Madison Audubon, International Crane Foundation,
19 Houston Audubon, HawkWatch International. And
20 when I say more major donations, probably, you
21 know, throughout the course of a year totaling
22 over a thousand dollars, you know. And it could
23 be, you know, like in the case of the ABA,
24 American Birding Association, several thousands.
25 Donation to the Rio Grande Valley Birding

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1 Festival would have been substantial, Port Aransas
2 Festival Sponsorship in here. What else? The
3 Ohio Young Birder's Conference, I believe we had a
4 pretty substantial donation to there. Point Reyes
5 Bird Observatory, we do a lot of work with them.
6 Rocky Mountain Bird Observatory, we do a lot of
7 work with them. Space Coast Festival, that would
8 have been another one that would have been a
9 larger donation.
10 Q And the list is over two pages long.
11 A Yeah.
12 Q Does the list of donations change from year to
13 year?
14 A Yeah. I mean, it varies in content, not so much
15 in size. This is pretty typical in terms of the
16 number of different organizations we would donate
17 to. But I would say 90 percent of them are
18 ongoing donations where once you donate something,
19 you get another donation request. They're going
20 to follow up with you year after year, you know,
21 especially the ones we have more substantial
22 donations to. These are organizations we have
23 relationships with. We maintain these
24 relationships.
25 So annually we do re-donations all the time.

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1 But I'd probably say anywhere from 5 to 10 percent
2 could be donations we've done for the first time
3 or donations that might a one-off. But it's
4 probably closer to the 5 percent than it would be
5 the 10 percent.
6 Q So is it fair to say that between 90 to 95 percent
7 of this list are repeat donations --
8 A Absolutely.
9 Q -- from year to year?
10 A Absolutely.
11 Q During your time as the sales manager of
12 Eagle Optics, this list of donations, has it been
13 representative from year to year?
14 A Yes. Are you talking about like the names here,
15 the size of it, both?
16 Q Both, during the time frame in which you've been
17 the sales manager.
18 A Yes.
19 Q So going back to your declaration, which we have
20 marked as Exhibit 41. Actually, I'll just do
21 these.
22 (Exhibit No. 43 marked for
23 identification)
24 Q Instead of going back to your declaration, we'll
25 do this. I've handed you what's been marked as

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1 Exhibit 43. Would you take a look at that, and
2 let me know what it is.
3 A This is a product catalog that we did -- an
4 excerpt from a product catalog, not the catalog in
5 total, that featured exclusively our products.
6 And it looks like there is an example here of the
7 kind of work that we like to promote that we do in
8 terms of supporting a conservation-based
9 non-profit. In this case it would be
10 Operation Migration.
11 Q Can you tell me what Operation Migration does?
12 A Yeah. It is a non-profit that works to -- that's
13 working to help reestablish the migratory flock of
14 whooping cranes that goes from Wisconsin to
15 Florida annually. And Operation Migration,
16 they're best known for -- and this is pretty high
17 profiling they do. They man an ultralight
18 aircraft and essentially, you know, as they raise
19 new whooping crane chicks, they introduce them to
20 the migratory flight path. The ultralight
21 airplane flies from Wisconsin down to Florida and
22 back and essentially shepherd these whooping
23 cranes with them.
24 And as you can see here, we are a big
25 supporter of theirs. They're affiliated with the

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1 International Crane Foundation in Baraboo, which
2 is a group we do a lot of work with. And due to
3 the level of sponsorship and support that we've
4 given them, you can see an image where they have
5 put our name and logo on their ultralight
6 aircraft. And it's my understanding that this
7 particular aircraft right now is in one of the
8 Smithsonian museums. It's recently been retired.
9 Q Do you know how long Eagle Optics has been
10 partnering with Operation Migration?
11 A Boy, since before I started there I want to say.
12 Q Since before you started with the company?
13 A Eagle Optics, yeah. When I started Eagle Optics,
14 there was already a relationship established.
15 Q Is there still a relationship today?
16 A Yes.
17 Q And has the relationship changed other time
18 between --
19 A No.
20 Q -- Operation Migration and Eagle Optics?
21 A I don't know the particulars of the early
22 relationship and how it was established, but since
23 I've been there and since I've had knowledge of
24 the particulars of the relationship, it hasn't
25 changed. We donate both products to them, we give

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1 them cash, and we also promote their non-profit on
2 our website.
3 Q What kind of product does Eagle Optics give them?
4 A We give them our own branded Eagle Optics
5 binoculars and spotting scopes.
6 Q Approximately how much product do you give them in
7 a year?
8 A I would probably say it would, you know, number in
9 the thousands, thousands of dollars, low thousands
10 of dollars perhaps.
11 Q And how much cash does Eagle Optics donate to the
12 organization per year?
13 A I don't know that we donate cash annually. I know
14 we just did a donation for them. That was \$1,000
15 cash donation. That was just done this year, if I
16 recall correctly.
17 Q And then you mentioned that Eagle Optics promotes
18 the organization?
19 A Uh-huh.
20 Q To what does Eagle Optics do to promote
21 Operation Migration?
22 A What we would do with like Operation Migration is
23 we would have a blog post about it where we would
24 write a blog that would feature, you know, the
25 work they were doing, tell our customers about why

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1 we support them, we think they're doing good work.
 2 And then what we would do is we would also promote
 3 that blog post there by promoting them in say an
 4 e-mail blast that we would send out to our
 5 customers. So we have an e-mail list of 15,000 to
 6 16,000 customers that we send out weekly e-mails
 7 to. And, you know, our supportive of
 8 Operation Migration and the work they're doing is
 9 something that we would feature in an e-mail like
 10 that.
 11 Q Does Operation Migration promote Eagle Optics?
 12 A There's a copy of our logo and our name right on
 13 their ultralight, which is pretty good promotion
 14 considering that's hanging in the Smithsonian
 15 somewhere right now.
 16 Q And how many ultralights does Operation Migration
 17 have?
 18 A Well, they recently retired this one, and I
 19 believe they have a couple new ones that have our
 20 logo on it as well. I want to say there's at
 21 least two, but it could be more right now that
 22 they're using. Like I said, the retiring of this
 23 one was a relatively recent event that they did.
 24 I believe they also promote us or list us as
 25 sponsors on their website, so the promotion would

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1 extend beyond just the aircraft.
 2 Q In this document that we're looking at,
 3 Exhibit 43, do you know where that came from?
 4 A From our archives of catalogs that we keep.
 5 Q And are those the types of records that you have a
 6 responsibility for in your capacity as a sales
 7 manager of the company?
 8 A No. Our graphics department archives old
 9 catalogs, so I would go to that department to get
 10 a copy of this.
 11 Q But is this type of document the type that your
 12 graphics department would ordinarily keep in the
 13 course of --
 14 A Yeah.
 15 Q -- their daily operation?
 16 A Uh-huh.
 17 (Exhibit Nos. 44 through 46 marked
 18 for identification)
 19 Q I've just handed you what we've marked as
 20 Exhibits 44, 45, and 46. Will you take a look at
 21 these, and tell me what they are.
 22 A So 44 is an Event Program from an event done by
 23 the U.S. Fish & Wildlife Service commemorating the
 24 100-year anniversary of the Pelican Island
 25 National Wildlife Refuge. If you look on page 5

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1 of this publication under Saturday's Features, you
 2 can see our support of this event listed. It says
 3 "Spotting scope with tripod and scope carrier;
 4 Commemorative Centennial 'Pelican' Binocular;
 5 Birder's vest; and Field Guide donated by
 6 Eagle Optics."
 7 So this would be an example of a partnership
 8 that we would have that would be promoting our
 9 brand in condition junction with the work that in
 10 this case the U.S. Fish & Wildlife Service was
 11 doing.
 12 Exhibit No. 45 is a point of purchase
 13 display, I guess is what you would call it, for
 14 that particular binocular, which we developed as a
 15 fundraising mechanism for the National Wildlife
 16 Refuge. And you can see here it states that we
 17 had a goal of reaching \$150,000 through this
 18 project to support refuge projects. And that
 19 would have been generated through the sales of
 20 this binocular.
 21 And then Exhibit No. 46 is an award that we
 22 got from the National Wildlife Refuge System, the
 23 Centennial Partnership Award, just essentially
 24 thanking us for the work we did in developing this
 25 binocular for them and promoting the work that

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1 they were doing and supporting it.
 2 Q Were you at Eagle Optics in 2003?
 3 A Yes. I was not the sales manager at this time.
 4 So I sold lots of these binoculars as a
 5 salesperson, but I was not involved in this
 6 project personally other than being one of a
 7 handful of people that was working to sell this
 8 binocular to consumers.
 9 Q So you sold the Pelican binocular, just to make
 10 the record clear, that is pictured in Exhibit 45?
 11 A Correct.
 12 Q Did you collect these documents at Exhibits 44,
 13 45, and 46 for purposes of this case?
 14 A Yes.
 15 Q Where did you get them?
 16 A I got Exhibit No. 45 from our graphics department,
 17 who developed this. Exhibit No. 46 is a photo
 18 that one of my staff took of this award that is
 19 currently hanging on the wall at our store. And
 20 Exhibit No. 44 is a copy of the program that I
 21 found online and downloaded from the
 22 Fish & Wildlife Service, one of their websites.
 23 Q So referring back to Exhibit 44, can you identify
 24 some of the ways that Eagle Optics was featured in
 25 connection with this promotion?

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1 A Well, where it listed in the program course --
 2 Q And I think you identified one of them earlier.
 3 I'm not trying to make it a memory test, but if
 4 you could just give us an overview of --
 5 A You bet.
 6 Q -- how this works.
 7 A So keep in mind I was not at this event, but as I
 8 look at the program --
 9 Q So I'll refer you to -- there's some page markings
 10 at the bottom of the document. They start with SW
 11 followed by a number.
 12 A Uh-huh.
 13 Q So if you look at SW02841 --
 14 A Uh-huh.
 15 Q -- there's a list of sponsors.
 16 A Oh, yes. So if you look at the sponsors and
 17 partners, Eagle Optics is listed, you know,
 18 chronologically here. So that would be an example
 19 of a promotion that we would have gotten since
 20 then. And then on SW02842, the following page, is
 21 when we were listed at the "Centennial Raffle at
 22 the Pelican Island Preservation Society Booth;
 23 items include." And it lists the items that we
 24 donated, including Pelican binocular, spotting
 25 scope, tripod, and scope carrier.

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1 Q And I think we can skip to 02848.
 2 A All right.
 3 Q Are the events featured examples of --
 4 A Yes.
 5 Q -- seminars or lectures?
 6 A So you see events that we sponsored here. For
 7 instance, this is an itinerary of events that are
 8 happening on Sunday, March 16 when this event
 9 occurred. And you see a photography contest
 10 sponsored by Eagle Optics, and you see
 11 "The Pelican Island Centennial Raffle Drawing
 12 Sponsored by Eagle Optics."
 13 Q And then I'll just point you to page 02856.
 14 A And there you see a list of sponsors and partners
 15 and our logo on what looks to be the second row,
 16 maybe third row, depending on how you call that,
 17 on the left-hand side, our Eagle Optics logo right
 18 there. That was one of the primary sponsors. We
 19 got a graphic representation here instead of just
 20 being listed.
 21 Q We just talked about a couple of partnerships, the
 22 most recent being the Pelican binocular project in
 23 connection with the Pelican Island National
 24 Wildlife Refuge and Operation Migration. Can you
 25 give any more examples about partnerships that

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1 Eagle Optics has with other organizations?
 2 A Sure. I mean, we have a partnership with
 3 Houston Audubon where they host us for an event
 4 annually. And we will go down to Houston and do
 5 seminars for their members and sell binoculars.
 6 And we'll do a fundraiser where we will donate
 7 part of everything we sell back to Houston Audubon
 8 that we do at that event. We do a similar event
 9 on an annual basis with Chicago Audubon as well.
 10 So that would be examples right there. We were
 11 one of the sponsors of the Black Swamp Bird
 12 Observatory, which is a non-property out of Ohio.
 13 It's a pretty high profile. We're one of their
 14 main business sponsors.
 15 Q What do you do for them?
 16 A Give them money, is what we do for them, and we
 17 will also donate products to them that they use
 18 for various fundraising efforts. Once again, you
 19 know, products donated are Eagle Optics branded
 20 products, which we do for greater exposure.
 21 Q These types of sponsorships and partnerships that
 22 we've been talking about, are these types of
 23 activities representative of the types of
 24 sponsorships and partnerships that Eagle Optics
 25 has been doing since you've been business manager

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1 of the company?
 2 A Yes.
 3 Q Let's switch over and talk about some of the
 4 events and trade shows. Would you just briefly
 5 overview for me what kinds of promotional
 6 activities fall into this category.
 7 A So this would be our attendance and also including
 8 our support and sponsorship of consumer events,
 9 primarily in the birdwatching market; although,
 10 there are some general outdoor markets that we do
 11 as well. An example of that would be, like,
 12 Canoeopia here in Madison where we attend, you
 13 know, a show. We will have a booth where we will
 14 display binoculars and spotting scopes and
 15 tripods. We will talk to the public about our
 16 products. We will sell our products at these
 17 shows.
 18 At some of the -- at a good number of the
 19 events what I will do is I will do seminars on
 20 optics as well, do presentations on optics as part
 21 of the itinerary of the event. And also there are
 22 a couple of events where I will act as a field
 23 guide as well where I will lead field trips and
 24 participate in excursions to go bird watching with
 25 people. So I kind of -- a lot of the shows we

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1 tend to have a sales component, a lecture
2 component, and a field trip component.
3 Q In connection with these types of events, is there
4 an brand message or strategy that Eagle Optics
5 tries to communicate?
6 A Well, certainly a large part of what makes these
7 events valuable for us is that we're able to
8 connect with our customers. We're a very customer
9 service oriented company. We have invested a lot
10 of time in really having a well-trained and
11 knowledgeable staff. So we feel as though the
12 more our staff can interact with our customers,
13 the stronger it makes our brand and our
14 reputation, spending a lot of time in front of
15 customers.
16 We get a lot of business by word of mouth,
17 and certainly our reputation is largely built on
18 our personal interactions with customers. And we
19 can do that on a lot more intimate basis of course
20 going to -- attending events and mixing with our
21 customers than say a print ad, which tends to be
22 not as personal.
23 So attending these events definitely plays a
24 strong role in how we identify with our customers,
25 and not only in terms of just attending these

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1 events but also showing our customers that we
2 sponsor these events, and we support these events
3 locally.
4 So, you know, we're not just a company that's
5 going in there to sell stuff and kind of be I
6 guess maybe what I would say extractive, but we
7 also go in there, and we give back to the event to
8 ensure that, you know, we're giving back to it,
9 and they can continue to do these events in the
10 future.
11 Q What about your logo; do you display the
12 Eagle Optics logo at these events?
13 A All the time, displayed on -- when we go to these
14 events, we sell a whole host of the products that
15 we carry, so not just our own branded products but
16 our own branded products and products made by
17 other manufacturers. So certainly our logo will
18 be on all of our own branded products if we sell
19 there.
20 It will also be on products that we donate.
21 Part of the donations are for say a silent auction
22 or a raffle that's happening at the event. But
23 then, of course, we have displays such as
24 binocular risers with our logo on it. I have
25 shirts with our logo on it that I will wear. I

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1 have harness straps with our logo on it that I
2 will wear when I'm leading field trips. There
3 will be logos on our tablecloth and on our display
4 banners as well.
5 Q Do you have any handouts or giveaways?
6 A Yes. Oftentimes we will do giveaways of binocular
7 accessories that generally have our logo on it,
8 not exclusively but generally, and certainly
9 catalogs or buying guides that we have, which is
10 perhaps a little bit different than the catalog, a
11 product buying guide, which is more educational
12 and less product centric. It's full of our logo,
13 and that is something we hand out a lot.
14 Q Any schwag?
15 A T-shirts. We hand out t-shirts. We give away
16 t-shirts that will have our logo on it, hats,
17 baseball caps that will have our logo on it.
18 (Exhibit No. 47 marked for
19 identification)
20 Q I've just handed you what's been marked as
21 Exhibit 47. Take a look at that, and let me know
22 what it is.
23 A This is an exhibit of ours, a photo of an exhibit
24 of ours from -- it looks like this was taken at
25 the Wildlife Refuge Center at the Bosque del

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1 Apache National Wildlife Refuge in New Mexico.
2 That's what the first one is anyway. The second
3 photo --
4 Q How can you tell that?
5 A Well, because I've been there many times at that
6 festival, and I can identify the displays in the
7 background.
8 The second one is a photo of our booth at
9 Canoecopia. So this would be an example of a
10 non-birdwatching centric event that we would do.
11 So we're targeting more of the general outdoor
12 market.
13 Q And I'm familiar with Canoecopia because it's here
14 in Madison, but would you just describe for our
15 record what Canoecopia is.
16 A So Canoecopia is a large trade show, consumer
17 trade show I guess you would say, that features
18 water sports, so kayaking, canoeing, paddle
19 boarding, things that are centric to that type of
20 activity, but nonetheless, an appreciation of the
21 outdoors. And we consider anyone who spends a lot
22 of time in the outdoors to be a target customer of
23 ours.
24 Q How can you tell the photo was taken at
25 Canoecopia?

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1 A I can tell it was taken at Canoecopia -- well,
2 once again, I've attended this event many times.
3 And there I recognize the background. It's one of
4 the few events that we do that's in a large
5 exhibit hall like this, so I can tell it's back
6 there. And I'm looking at the limited selection
7 of products on our table because at Canoecopia we
8 generally bring a smaller selection of products
9 because these are consumers that could be easily
10 overwhelmed if you present them 20 different
11 binocular selections. So we bring more of the
12 mid-selection to things that we think would cater
13 to them in particular. So based on what I'm
14 seeing with the backdrop and then the products on
15 the table, this is from Canoecopia.
16 Q The photos that we're looking at now and the
17 displays and types of promotional materials that
18 you just described for Eagle Optics' involvement
19 at trade shows and festivals, is that
20 representative of the type of displays that
21 Eagle Optics has had at these types of events
22 since you've been the sales manager?
23 A Yes.
24 Q And you mentioned some example events previously,
25 but I'll just refer you back to what we marked as

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1 Exhibit 41.
2 A Uh-huh.
3 Q And in particular page 3 of that document.
4 There's a bullet point list there.
5 A Uh-huh. So this is a bullet point list of an
6 example of some of the events we would attend in a
7 given year. And you can see a reference to
8 Chicago Audubon Society's Birding American event
9 in Chicago. I made reference to that. It's kind
10 of a partnership where they host us there. You
11 can see Canoecopia on there, of course,
12 Eagle Optics Days with Houston Audubon Society.
13 But, yeah, these are a number of events that we
14 attend pretty annually for the most part. It
15 looks like all these events are ones that we
16 attend annually.
17 Q Are there events that you can think of that
18 Eagle Optics has attended that are not on this
19 list?
20 A Oh, yes. I wouldn't call this a comprehensive
21 list. There are more events that we attend. I
22 would say annually we would attend anywhere from,
23 you know, 16 to 20 events perhaps.
24 Q Has that been consistent since you've been the
25 sales manager at Eagle Optics?

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1 A Yeah. I don't think we ever attended less than 15
2 in any given year. You know, with ups and downs
3 in the economy, sometimes you would attend more
4 events than others. But it's consistently been
5 kind of a core element of our business. Marketing
6 in terms of how we interact with our customers and
7 how we develop our reputation is to attend events,
8 pretty key to what we do.
9 Q And what portion of the events that Eagle Optics
10 attends in a given year are repeats of events
11 attended in the prior year?
12 A 95 percent.
13 Q And I gather that not all events are the same
14 size?
15 A Correct.
16 Q Can you explain the size and scope of some of
17 these events?
18 A Sure. So you'll have events like the Rio Grande
19 Valley Bird Festival, The Biggest Week in American
20 Birding, Space Coast Birding Festival that
21 attracts thousands, sometimes tens of thousands of
22 people. The Biggest Week in American Birding in
23 2011, you know, drew over 30,000 people. So those
24 would be large scale events over the course of
25 multiple, multiple days.

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1 Almost all of the events we attend are
2 several days, and usually I would say they average
3 about four days. It's usually a Thursday, Friday,
4 Saturday, Sunday type events that we do. We
5 generally don't travel for single day events. The
6 exception would be in Chicago because it's so
7 close we can drive.
8 So thousands of people at some of the larger
9 events. Some of the smaller events, it could be
10 around 100 people that will attend. And, you
11 know, I will decide to attend those events based
12 on Well, are there any schedule conflicts in the
13 calendar? Are we available that day? But also
14 the quality of the experience. You know, when
15 there's fewer people, you can just have sometimes
16 a higher quality experience per person. You
17 interact with the same people more often, so from
18 a branding perspective that's quite desirable.
19 Q And in your declaration under the list of events
20 there's a paragraph that lists some of the
21 attendance numbers for the events. For example,
22 4,000 attendees at the Rio Grande Valley Bird Fest
23 in 2011. The one you just mentioned, 32,000
24 attendees at The Biggest Week in American Birding.
25 Did you help gather those numbers?

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1 A Yeah. I got those numbers by contacting the event
 2 hosts, if you will, the people who coordinated the
 3 events and asked them what their attendance
 4 figures were. Attendance figures are usually
 5 done, you know, probably a number of ways. Some
 6 of these events require registration where you
 7 will have a hard number of people that will be
 8 registered, so they can say Here's how many
 9 registered attendants we have at this event.
 10 But part of the events is this aspect of an
 11 exhibitor hall or an expo. And, you know, all the
 12 exhibitors don't want to have just the people who
 13 are registered attend those. So oftentimes the
 14 exhibitor hall is going to be open to the general
 15 public who can come in there as well. So it's a
 16 way of keeping us vendors happy because not only
 17 do we have the registered attendees that are
 18 customers there, but also the general public is
 19 open to come to the exhibitor hall, and we'll
 20 interact with them as well.
 21 So sometimes these numbers are just limited
 22 to registrants, what I guess I would call more of
 23 a closed event, as some of these are. But for the
 24 most part, the exhibit halls are free and open to
 25 the public. And those figures I get from, you

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1 know, the people who are at the front door
 2 probably with a click in their hand or that they
 3 have to go through a turnstile or something to
 4 come up with the number of people that are
 5 attending.
 6 Q And the numbers in paragraph 8 on page 3 of your
 7 declaration, what population do those represent?
 8 A Let's see. On some of these larger ones, these
 9 would definitely be the number of people who would
 10 have attended the event in total, not just
 11 registrants, but registrants and general public
 12 would have gone to the event.
 13 Q And how did you get those numbers?
 14 A By contacting the people who hosted the events.
 15 Q And based on your experience attending all of
 16 these events over the years, do these seem like
 17 accurate numbers to you?
 18 A Yeah.
 19 Q Do the size of events vary very much from year to
 20 year, for example, this Rio Grande Valley Bird
 21 Fest, The Biggest Week in American Birding?
 22 A Typically not, not nearly as much as say one small
 23 event would vary to a big event. You know, so
 24 we'll see a huge variation in different specific
 25 events, you know, this event in this location

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1 versus this event in a different location. But
 2 year to year the same event year after year
 3 attendance figures are usually pretty consistent.
 4 Q You mentioned e-mail blasts before.
 5 A Uh-huh.
 6 Q How does the company use e-mail blasts?
 7 A So we send out an e-mail on a weekly basis to a
 8 list that we maintain. The last time I checked,
 9 which was maybe six months ago, it was around
 10 16,000 e-mail addresses. We send out about
 11 16,000 e-mails on a weekly basis to people who opt
 12 in. This is, you know, people who have given us
 13 their e-mail address saying I want you to send me
 14 these newsletters.
 15 And we'll send out e-mails that will serve a
 16 number of different purposes. It may promote a
 17 certain product because it's new, because it's on
 18 sale. It may not promote a product. It may
 19 promote a video we just did or something
 20 educational. It may promote one of our blogs that
 21 we do, either a review blog or our own
 22 Eagle Optics blog. So we'll use the e-mail as a
 23 way of getting in touch with customers on a bunch
 24 of different levels, not just on a product level
 25 but, you know, trying to engage them in --

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1 Q How frequently does Eagle Optics send out e-mail
 2 blasts?
 3 A Once a week, every Tuesday.
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

13 Q So you said that Vortex started doing the
14 wholesale aspect in 2004?
15 A In 2004 we separated the wholesale and the retail
16 operations internally. The wholesale operations
17 I'm referring to is Vortex, which is what they
18 later become. I don't know if they were called
19 Vortex in 2004 to be honest with you. But
20 internally we separated wholesale and retail
21 operations, which is why you're seeing the
22 difference in the way we accounted for it in the
23 computer programs starting in 2004.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 MR. PETERSON: Let's take a break.
23 (Recess)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16
17
18
19
20
21

MS. GREGOR: That's all I have.
Have you got questions?
MR. HARRIS: A couple.

CROSS-EXAMINATION
By Mr. Harris:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3 Q This is Exhibit 37. When I was just wandering
4 around the Internet looking for binoculars that
5 contained the Eagle name, this Sears site popped
6 up, and I saw the reference to Atlas. I did not
7 know until I took Mr. Hamilton's deposition that
8 Atlas was affiliated with Eagle Optics. Is it
9 affiliated with Eagle Optics?

10 A Yes.

11 Q And Vortex is affiliated with Eagle Optics, right?

12 A Yes.

13 Q Are there other -- like, I think he described it
14 kind of like, well, General Motors has Chevrolet
15 and Buick and so on. Are there other names that
16 are affiliated with Eagle Optics and yet it
17 wouldn't be apparent to the consumer that they are
18 affiliated?

19 MS. GREGOR: Objection to the form.

20 Q Go ahead.

21 A Are you referring to what is currently on the
22 marketplace, or are you asking it within an
23 historical content?

24 Q Let's just go back to the last ten years.

25 A The last ten years?

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1 Q Yes.

2 A There was a line of binoculars called Sportoculars

3 that was out.

4 Q Sportoculars?

5 A Sportoculars, compact binoculars that were

6 relatively inexpensive, branded with college logos

7 on it, NCAA licensed.

8 Q Okay.

9 A There was Audubon brand binoculars where we had a

10 license to use the Audubon brand on some

11 binoculars. Those would be the only two other

12 instances that I can recall right now.

13 Q With respect to Atlas Optics, just that name

14 standing alone, and then of course I think it's

15 always followed by the name of the binocular, but

16 as to Atlas Optics, what was the thinking behind

17 offering a brand like Atlas Optics?

18 MS. GREGOR: Objection, foundation.

19 A Atlas Optics was a brand that we developed that we

20 would have no wholesale channels on. So our

21 Eagle Optics brand binoculars and our Vortex brand

22 binoculars have a wholesale component, and we had

23 to have a pricing structure that respected the

24 fact that they had to be resold with a profitable

25 margin.

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1 We wanted a line of binoculars that we could

2 feel like we could be very competitively priced on

3 that we wanted to offer more as a manufacturer

4 direct type of brand. And that's what Atlas was.

5 So Atlas is a house brand of ours but doesn't

6 carry the Eagle Optics name because it is not

7 wholesale like the other Eagle Optics products.

8 It's exclusively a house brand, if you will.

9 Q Now, when Eagle Optics wholesales a product for

10 resale by someone else -- and that would be -- is

11 that a correct way of describing it?

12 A That would be a correct way of describing it

13 because Eagle Optics is a retail entity and does

14 not have a wholesale operation. Vortex Optics,

15 which is a sister company, has the wholesale

16 operation, and they will wholesale Eagle Optics

17 branded products in addition to Vortex branded

18 products.

19 Q But Vortex is owned by Sheltered Wings?

20 A Correct.

21 Q So they all sit under the umbrella, but we have a

22 division over here called Vortex, and Vortex sells

23 Eagle branded products, the Golden Eagle

24 binoculars, for example?

25 A At a wholesale level.

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1 Q At a wholesale level?

2 A Correct.

3 Q And Eagle Optics is strictly focused on the retail

4 sale of the same product, retail being direct to

5 an end-user like me?

6 A Eagle Optics only sells retail.

7 Q But then we have sales like this (indicating) in

8 which Sears is selling the product, but it says

9 beneath it when I click on it, it's advising me

10 that it's sold by Eagle Optics. What do you call

11 the sale when you're not selling it directly to

12 the consumer, Sears is arranging for the sale but

13 you're providing the product? What kind of sale

14 do you call that?

15 A This would be similar to -- I forget the term.

16 There's a term -- like PriceGrabber, for instance,

17 you can go on PriceGrabber and shop for items.

18 PriceGrabber will capture a sale and direct it to

19 Eagle Optics. So Eagle Optics would charge a card

20 and pay PriceGrabber a fee essentially on the

21 service like that. In terms of what Sears does,

22 Sears is not a wholesale account of ours. Sears

23 is not --

24 Q Is Amazon?

25 A No. We don't sell to Sears or to Amazon.

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1 Q So they don't provide any product?

2 A No, they don't.

3 Q Go ahead.

4 A This Sears thing is kind of somewhat of an

5 exceptional situation. I've come across this once

6 or twice before, but to be honest with you, I

7 can't think of us ever selling anything through

8 this channel. And what Sears does is Sears picks

9 up a product feed essentially that allows it to

10 populate its website with products it doesn't

11 stock, nor does it sell, nor does it service.

12 Q How does it get paid?

13 A I don't believe Sears does get paid. I think

14 Sears does this to broaden its offerings and to

15 drive traffic to their website.

16 Q To drive traffic to the website, and yet they

17 don't make -- let's say that I click on the Sears

18 website and I buy them. Obviously Eagle Optics is

19 actually selling the product. Does Sears get any

20 commission or any money out of that?

21 A Not that I know of. I've made no arrangements

22 with Sears to do this. And I don't know of any

23 instance at all where I've had a customer that I

24 know of that purchased anything through the Sears

25 website of ours.

1 Q What about Amazon; do they get paid? Do they get
2 some --
3 A We will give Amazon a commission on any sales we
4 make on Amazon.
5 Q So if I go to Amazon and I buy some Atlas Optics
6 binoculars, then you the company, Sheltered Wings,
7 will pay money to Amazon?
8 A Correct.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 Q Well, you know, I've been on obviously the
18 Eagle Optics website, and I think you carry, like,
19 maybe as many as 25 brands of binoculars?
20 A Possibly. 25 brands of products maybe.
21 Q No, binoculars.
22 A Tripods.
23 Q I mean, I specifically went to your site, and I
24 said Show me the binoculars and zoom. It was a
25 lengthy list. And my recollection is it was

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1 roughly 25.
2 A Uh-huh.
3 Q And I went down the list, and of course I see
4 Nikon, and I see a lot of names I recognize,
5 Nikon, Canon. Bushnell I think is one, Zeiss for
6 sure. And then I see Atlas, and I'm thinking
7 Well, Atlas is just like Nikon and just like Zeiss
8 and others. And I was never -- I mean, I had no
9 clue that there was any connection between
10 Atlas Optics and Eagle Optics. Why don't you
11 publicize that more so that people would know that
12 Atlas Optics is affiliated with Eagle Optics?
13 A The Eagle Optics brand is well established, well
14 recognized, and it has a value not only to
15 Eagle Optics but to all the people who wholesale
16 Eagle Optics products.
17 Q Okay.
18 A So its brand identity is very much part -- the
19 pricing structure of it, the types of products,
20 how they're built, all of that is built around a
21 product that was designed for a retail and a
22 wholesale market.
23 Atlas is -- a very different mindset went
24 into developing that product without any
25 consideration into a wholesale component. So it's

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1 a very different brand identity. It's treated
2 very differently in terms of how we price it, in
3 terms of the look and feel of the product. And so
4 we really don't -- aren't anxious to promote that
5 brand as affiliated with Eagle Optics because they
6 have two separate identities.
7 Q In fact, part of your motivation is is that if you
8 drew that connection or you publicized the event
9 that Atlas is really just a division of
10 Sheltered Wings and a sister company of
11 Eagle Optics that that might create problems for
12 your Eagle Optics brand?
13 A I wouldn't call it a sister company. I would call
14 it a house brand. And we're not reluctant at all
15 to tell customers that it's affiliated with
16 Eagle Optics. We will tell people it's a house
17 brand of ours, but it's different from the
18 Eagle Optics brand that there's not a wholesale
19 component. So I don't have to worry -- I can
20 price an Atlas binocular at whatever I want.
21 Q I know you tell people that, but if I'm just on
22 your website, there's nothing on your website that
23 would reflect that there's any affiliation between
24 Atlas and Eagle Optics. So for you to inform me
25 or you tell customers, I'd have to talk to you on

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1 the phone about it, right?
2 A Yeah. Give us a call sometime and ask us about
3 Atlas binoculars. We'll tell you.
4 Q But I'd have to call and ask; you don't just
5 volunteer the information? You certainly don't
6 volunteer it on your website?
7 A Not on the website, no. You know, we may have
8 done a blog post introducing Atlas Optics as a
9 house brand of ours. It's just nothing that we
10 keep secret from customers.
11 Q It's just that you don't reveal the fact that
12 there's some connection on the website?
13 MS. GREGOR: Objection. That
14 misstates prior testimony.
15 Q Well, let's go back to the prior testimony. Has
16 there ever been any publicity on the website of
17 Eagle Optics that Atlas Optics is a house brand of
18 Eagle Optics?
19 A I'm trying to think if there's ever been any
20 promotion on our website that Eagle Optics is a
21 house brand of Eagle Optics. I guess it's
22 assumed. So are you saying that it's assumed that
23 it's not because of the name?
24 Q It doesn't say so. I mean, how would I
25 distinguish between -- I see Nikon. I see Atlas.

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1 I'm thinking Well, I don't see any affiliation
2 between Nikon and Eagle Optics. You're just
3 selling their product. I don't know who Atlas is,
4 but it doesn't say there's any affiliation between
5 Atlas and Eagle Optics. I figure it's just
6 another company.
7 A I guess my experience is with most consumers, when
8 they see a brand they don't recognize, they make
9 inquiries about it.
10 Q Let's say when I make inquiries, I click on the
11 website, and I say Who are these Atlas people?,
12 what would I find out?
13 A You would find out that -- you would find out that
14 they're a -- you know, we do all the warranty
15 work. I mean, I would say you could deduce that's
16 an Eagle Optics binocular based on perhaps the
17 fact that we service the warranty on it, whereas
18 all the other products on our website, the
19 warranty would be serviced by the manufacturer.
20 So the fact that we service and warranty
21 Atlas binoculars would presume an affiliation.
22 So, for instance, if you had a Bushnell binocular
23 you bought from us and it broke down, we'd send
24 you to Bushnell because they offer the warranty on
25 that because it's a Bushnell product.

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1 Q So you don't provide any warranty -- if I buy
2 something from you and it's let's say a Nikon
3 product, you're not going to stand behind the
4 product at all?
5 A Correct. Nikon issues a warranty on that, whereas
6 we issue warranties on products that we
7 manufacture, including Atlas.
8 Q Of course, actually, Eagle Optics doesn't
9 manufacture anything; you actually buy it from
10 somebody else, right?
11 A Define manufacture.
12 Q People that put the device, the binoculars --
13 A Assembly?
14 Q Sure.
15 A Yeah. To the best of my knowledge, I don't know
16 of any products that we assemble. I mean, we
17 certainly do product development.
18 Q Doesn't Eagle Optics purchase the binoculars as a
19 finished product from somebody else built to your
20 specifications?
21 A It's my understanding -- I mean, like I said, a
22 finished product, I don't know if we --
23 Q Where are the binoculars made?
24 A I'm not involved in product development, so --
25 Q Don't you know the products are built in Taiwan?

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1 A Oh, I know the country origin on products is not
2 in the U.S., and I know that we don't have
3 factories in China and Japan.
4 Q And nor in Taiwan?
5 A Nor in Taiwan.
6 Q So you have no employees and no factories in
7 Taiwan, yet there's where the binoculars come
8 from?
9 A Correct.
10 Q Now, I've noticed that Atlas in the several pages
11 of this Exhibit 37, Atlas Optics offers
12 Iron Eagle, Bold Eagle, Black Eagle, Eagle Owl,
13 and Strike Eagle. Now, given all the Eagles that
14 appear in that name offered by Atlas Optics, are
15 you aware of any confusion that has ever occurred
16 between someone who wanted to buy let's say a
17 Golden Eagle binoculars and somehow got confused
18 and bought the Strike Eagle instead?
19 A Do I know of instances where someone had intended
20 to buy a Golden Eagle binocular and bought a
21 different product instead?
22 Q Right.
23 A No.
24 Q And are you aware that the use of so many
25 different types of Eagle binoculars offered by

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1 Atlas Optics -- has that resulted in your
2 experience as sales manager, has that resulted in
3 any confusion by anybody in the public?
4 A Perhaps. Inquiries about Atlas binoculars would
5 always come to us. So any of my sales staff would
6 be really quick to explain Oh, yeah, it's a house
7 brand of Eagle Optics.
8 Q I understand, but I want your personal knowledge.
9 Have you learned of any specific instance in which
10 a customer expressed confusion over so many Eagle
11 type binoculars because you've flooded the market
12 with at least five different versions, Iron Eagle,
13 Bold Eagle, Black Eagle, Eagle Owl, and
14 Strike Eagle? And I'm curious whether or not that
15 has resulted in any of your customers getting
16 confused.
17 MS. GREGOR: Objection. That
18 mischaracterizes the testimony.
19 Q Go ahead.
20 A I would say that I have had conversations where
21 people have assumed that an Atlas binocular was an
22 Eagle Optics binocular because of the word Eagle
23 in there where they probably saw the word Eagle
24 and thought Atlas was a model and not a brand,
25 whereas, we would have had to clarify that with

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1 them. And, you know, at the time of those
 2 conversations, like I said, it's something
 3 customers -- it's easy to correct a customer on
 4 that on our part because we make the Atlas
 5 binoculars.
 6 Q If the customer inquires, if you learn of a
 7 customer inquiring, at that point then you make it
 8 clear, but you don't say anything on your website,
 9 right?
 10 A That the Atlas binoculars --
 11 Q Is merely a house brand.
 12 A -- is merely a house brand? Like I said, in terms
 13 of warranty coverage when you see that
 14 Eagle Optics covers the warranty, you can make the
 15 connection. But we don't explicitly say This is a
 16 binocular made by Eagle Optics; it's got a
 17 different brand on it.
 18 Q Yes. When I saw this, I didn't see any connection
 19 at all, but I would have to look at the warranty,
 20 and I only get the warranty after I bought the
 21 product, right?
 22 A No. We list all the warranty stuff on our
 23 website.
 24 Q They're not listed here, so if I click on --
 25 A That's not our website.

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1 Q Right. But if I were to -- right. It's not on
 2 your website. And a lot of your sales result like
 3 at Amazon and other companies?
 4 A No. We sell --
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 Q All right. So if I go to the website and I go
 9 through the steps of buying some binoculars,
 10 during that series of events when do I learn about
 11 the terms and conditions of the warranty as to the
 12 product I'm buying? When do I learn what the
 13 terms and conditions of the warranty are?
 14 A When you're at the product, what I would call the
 15 product page. So at the product page we list the
 16 specifications of all the products. And there's
 17 also a separate section right there on the product
 18 page, you can say What is my warranty on this?
 19 You can click on that, and it will say You have
 20 this kind of warranty, you know, contact this
 21 company for warranty information, and we'll list
 22 the manufacturer. In the case if you click on an
 23 Atlas binocular, it says Contact Eagle Optics for
 24 warranty information.
 25 Q And from that you expect the consumer to deduce

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1 that Atlas is a house brand of Sheltered Wings?
 2 A Do I expect the consumer to deduce that? The
 3 consumer certainly could deduce that.
 4 Q It's a possibility?
 5 A Absolutely it's a possibility. A lot of consumers
 6 in our market, in sport optics, one of the -- you
 7 know, you have elements that get -- that are
 8 involved in selling binoculars, like
 9 specifications, price, et cetera. Binoculars are
 10 one of the few things that we buy these days that
 11 have lifetime warranties on them.
 12 So, for instance, your cell phone, your
 13 laptop, your car, these are all somewhat, you
 14 know, items that you kind of go through. They
 15 have a short shelf life. Binoculars are purely
 16 mechanical instruments. The Amish are huge
 17 consumers of binoculars. They love them.
 18 As a result, they're -- because they're
 19 purely mechanical, they have lifetime warranties
 20 on it. In the case of a number of different
 21 manufacturers, they have lifetime unconditional
 22 warranties. So certainly as a consumer is
 23 researching binoculars, I would say that warranty
 24 is something that goes into their consideration
 25 every bit as who the manufacturer is. Is this an

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1 8 power or a 10 power? The consumer's choice to
 2 choose one brand over another can absolutely be
 3 swayed by warranty.
 4 So a lot of binocular consumers pay attention
 5 to warranties. It's not an afterthought.
 6 Whereas, if you're buying a cell phone, a
 7 computer, hand lotion, whatever, you know,
 8 warranties are kind of the same, non-existent,
 9 that type of thing.
 10 Q When I buy a Nikon lens, I only get five years.
 11 A Exactly. So whether it's a Nikon or a Canon, it
 12 wouldn't necessarily sway your purchase based on
 13 warranty, whereas binoculars, because warranties
 14 will vary substantially for manufacturers, it's a
 15 pretty key specification that customers will often
 16 investigate and ask about.
 17 MR. PETERSON: I'd like to suggest
 18 a break.
 19 MR. HARRIS: Sure. We can take a
 20 break.
 21 (Recess)
 22 Q I may have asked you this before, but Vortex is
 23 also a house brand?
 24 A No.
 25 Q You know, I seen -- so are there Vortex

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1 binoculars?
 2 A Yes. Vortex -- a house brand -- I would define
 3 Atlas as a house brand because it's only available
 4 at Eagle Optics. We're the only place -- we're
 5 the only people that sell it, the only place you
 6 can find it. Obviously you found it on Sears, but
 7 this would all come right straight to us. Vortex
 8 is a -- I treat Vortex Optics like I treat -- or
 9 like I envision all other brands that we sell.
 10 Q Like Nikon?
 11 A Like Nikon or Bushnell, whereas just, you know, a
 12 company that makes many different things, we don't
 13 sell everything they make. They have lots of
 14 other customers other than us that do a lot more
 15 business with them than we do.
 16 Q So I'm trying to make sure that the record is
 17 clear regarding the terminology. Eagle Optics is
 18 not a house brand because other vendors sell your
 19 product?
 20 A Correct. I wouldn't consider it a house brand.
 21 Q And Vortex is not a house brand because other
 22 vendors sell that product?
 23 A Correct.
 24 Q But Atlas is not because it's only sold by you
 25 even though it may be presented in advertising by

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1 third-parties?
 2 A Atlas is a house brand because it is only sold by
 3 us.
 4 Q In other words, I can only buy it from you even
 5 though you're aware that on the Internet it is
 6 being advertised by others?
 7 MS. GREGOR: Objection. That
 8 misstates the prior testimony.
 9 Q It says sears. Sears is clearly promoting the
 10 Atlas line of binoculars, and Sears makes it very
 11 clear that the item will be sold by Eagle Optics,
 12 but they're advertising.
 13 A So wouldn't that make it a house brand if it's
 14 sold by Eagle Optics?
 15 Q The house brand name, you know, you have a
 16 definition for that. That's fine.
 17 A So if you were to buy a binocular --
 18 Q I'm just talking from the advertisement layer.
 19 MS. GREGOR: Let him ask the
 20 questions.
 21 Q Is it clear to you that Sears on its Internet site
 22 is making it appear that there's some connection
 23 between Atlas Optics because the product is
 24 offered on the Sears website? It is offered on
 25 the Sears website, isn't it?

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1 A It says Sold by Eagle Optics.
 2 Q I understand that, but it's offered on the Sears
 3 website. If I'm the consumer, would I reach the
 4 conclusion that there's some connection between
 5 Sears and Atlas, that Sears is involved with this
 6 somehow?
 7 A I don't know what the consumer would assume when
 8 they see Marketplace Item, Sold by Eagle Optics.
 9 Q Has Eagle Optics or Sheltered Wings ever contacted
 10 Sears and said Quit doing this; you're putting our
 11 product on Sears's website, which the public might
 12 be deceived and think there's some connection
 13 between the two? Has Eagle Optics ever contacted
 14 Sears and complained regarding the appearance of
 15 the Atlas product on Sears' website?
 16 A We have never contacted Sears to complain about
 17 Atlas products on their website.
 18 Q And have you been contacted by anybody that they
 19 were confused because they thought that there was
 20 some connection between Atlas and Sears?
 21 MS. GREGOR: Objection, asked and
 22 answered. We've already gone over this.
 23 MR. HARRIS: Not this issue, not --
 24 A I have never talked to anyone who has ever looked
 25 at binoculars on Sears -- I have -- I suppose I

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1 had -- someone brought this to my attention, so I
 2 have talked to people who have sought and seen
 3 binoculars at Sears and contacted Eagle Optics
 4 because they saw it was sold by Eagle Optics. I
 5 don't know if it was an Atlas binocular or not.
 6 Q Now, as sales manager, I assume that you're
 7 involved in product development in terms of what's
 8 going to sell, or do you just -- what you see is
 9 what you get?
 10 A Yeah, there are other people who are engineers and
 11 whatnot who do product development. That's not --
 12 Q Maybe product development is the wrong term. What
 13 is the process that internally the company goes
 14 through to decide to call, with respect to
 15 Atlas Optics, to list five different Eagle type
 16 binoculars? What was the thinking there?
 17 A I was not involved in that process. I'm not
 18 familiar with that process.
 19 Q So the decision making process of offering
 20 Iron Eagle, Bold Eagle, Black Eagle, Eagle Owl,
 21 and Strike Eagle, you had nothing to do with that?
 22 A Nothing to do with that.
 23 Q Is that a fairly recent -- how long has the
 24 Iron Eagle, Bold Eagle, Black Eagle, Eagle Owl,
 25 and Strike Eagle been on the market?

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1 A The Atlas brand in general isn't, you know, a big
2 selling line, so it's what I would call a
3 low-impact brand. It's not on the radar so much.
4 I would say we've had Atlas binoculars for -- I
5 want to say five years maybe we've had Atlas
6 binoculars. In terms of those specific models
7 from Atlas, I don't know, three years, two years,
8 four years. I don't know about those specific
9 models, but Atlas binoculars we've had for I'm
10 going to say five years, my best recollection.
11 Q Well, I see that, you know, in this sheet it says
12 Atlas Optics Intrepid binoculars and Radian
13 binoculars and Sky King binoculars, and then I see
14 all of the ones that have Eagle in the name. And
15 I was just curious when Sheltered Wings decided to
16 start offering so many binoculars with different
17 names that all have Eagle in the name. When did
18 that first come up? You're the sales manager,
19 right?
20 A Yeah.
21 Q How long have you been selling the Eagle version
22 of Atlas Optics binoculars?
23 A We don't sell very many of them.
24 Q Why is that?
25 A It's not as well known of a brand.

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1 Q I'm sorry.
2 A It's not as well known of a brand.
3 Q So you wouldn't view the sales of Iron Eagle,
4 Bold Eagle, and the others, the five listed names,
5 you wouldn't view those as jeopardizing sales of
6 the Golden Eagle binoculars offered by
7 Eagle Optics?
8 A They're completely different products. The
9 Golden Eagle binocular is like a \$600 Roof
10 Prism -- it's a much nicer binocular than these.
11 This is a much lower price point. If someone was
12 shopping for a binocular that sells for \$120, I
13 don't think that they would get that confused for
14 a binocular that almost sells for \$600.
15 Q But these were intended to be lower priced
16 binoculars because you're not selling them in the
17 wholesale industry and don't have to have
18 artificial price supports, right? So is there
19 really that much disparity in the quality?
20 A Absolutely.
21 Q So these Atlas Optics with the Iron Eagle,
22 Bold Eagle, Black Eagle, Eagle Owl, and
23 Strike Eagle, those would all be much inferior to
24 the Golden Eagle product?
25 A Absolutely.

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1 Q Is there any concern on your part as sales manager
2 that someone might mistakenly buy one of these, in
3 other words, be confused? I realize they may say
4 Well, gosh, you know, it's an Iron Eagle. It
5 sounds just like Golden Eagle and a much lower
6 price. This is what I need to buy. Do you have
7 any concerns of that kind of confusion?
8 A I'm assuming that a customer who is going to
9 spend -- you know, if you're considering buying a
10 Golden Eagle binocular which sells for almost \$600
11 and you're going to make -- which for a lot of
12 consumers would be kind of a substantial purchase.
13 I mean, \$600 for a pair of binoculars, a lot of
14 people would gasp that you'd spend that much.
15 For someone who is prepared to spend \$600 on
16 a pair of Golden Eagle binoculars and they came
17 across something called an Iron Eagle binocular
18 for \$120, I wouldn't expect that that would throw
19 them off.
20 Q You would think that a discerning customer who's
21 shopping around and prepared to spend 600 bucks
22 would do the study and recognize that there's a
23 distinct difference between the Iron Eagle sold by
24 Atlas Optics and a Golden Eagle binocular sold by
25 Eagle Optics, right? You would expect them to try

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1 to learn the difference?
2 A I don't think that they would try to learn the
3 difference. I mean, when I think of it, a
4 customer would see this binocular for \$120 and say
5 It's not what I'm looking for. I mean, based on
6 price alone -- you know, customers will shop for
7 binoculars largely based on price. And what I
8 mean by it is like a class of binoculars.
9 You know, a lot of our customers spend quite
10 a bit of money on binoculars. I mean, we have a
11 higher ticket item, is kind of what our average
12 prices are, which is probably why we don't sell a
13 lot of these because your average -- our average
14 purchase that a customer will make with us is in
15 the range of \$500, you know, ranging from \$2,000
16 down to \$50, you know, so that an average ticket
17 price is \$500. And I don't know that -- I
18 wouldn't concede that a customer would see this
19 binocular for \$120 and make a connection to the
20 Golden Eagle and think of them as being the same
21 or -- it's very different binoculars.
22 Q So the customer would be not just looking at the
23 name Iron Eagle as opposed to Golden Eagle; they
24 would be comparing price and other issues?
25 A Price, features, manufacturer. I mean, it says

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1 Iron Eagle, but it says Sold by Eagle Optics here.
 2 So it's saying we are the manufacturer of this.
 3 Q No, it just says Sold by Eagle Optics. You sell
 4 Nikons; you don't make them.
 5 A That's true, but we don't have Nikons on the Sears
 6 website. I hope not.
 7 Q But you have them on your own website.
 8 A Technically we don't right now, but --
 9 Q Why is that? I noticed that when I tried to click
 10 on the Eagle Optics website and I tried to bring
 11 up Nikon binoculars.
 12 A There weren't any, yeah.
 13 Q There were none. Why is that?
 14 A We were Nikon dealers for 25 years, and they sent
 15 us a letter in January saying they weren't going
 16 to renew our dealership.
 17 Q Did they explain why?
 18 A Not at all.
 19 Q Did it have anything to do with you guys suing
 20 them?
 21 MS. GREGOR: Objection,
 22 mischaracterizes the facts.
 23 Q Were you aware that Eagle Optics, Sheltered Wings
 24 brought a cancellation proceeding against Nikon?
 25 A No.

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1 Q You weren't aware of that until today?
 2 A Yeah. You're the first person that's told me
 3 anything about Nikon in a while, so --
 4 Q So you'll no longer be marketing the Eagleview
 5 binoculars from Nikon?
 6 A Correct.
 7 Q Is that a terrible seller, average seller, good
 8 seller? Where does --
 9 A For us?
 10 Q Yes, for you guys, Eagleview.
 11 A It's a compact zoom binocular. It's not -- we
 12 don't sell very many of that type of binocular.
 13 Q Are any of the Atlas Optics the same compact zoom?
 14 A No.
 15 MR. HARRIS: That's all the
 16 questions I have. And as I know you will,
 17 we'll request the witness read and sign.
 18 MS. GREGOR: Can we take a break?
 19 MR. PETERSON: Let's take a break.
 20 (Recess)
 21
 22 REDIRECT EXAMINATION
 23 By Ms. Gregor:
 24 Q If a third-party binocular seller used a brand
 25 name that contained the term Eagle, would you be

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1 concerned about that?
 2 A Yes.
 3 Q Why is that?
 4 A I can give an example of a company called
 5 Eagle Eye Optics, which branded products with the
 6 term Eagle in it and made rifle scopes with it.
 7 I've had a couple conversations with customers who
 8 have purchased Eagle Eye Optics rifle scopes that
 9 have come to us for service after -- who have had
 10 problems develop with their stuff, and they
 11 thought we were the manufacturer of it. So they
 12 would contact us and say What's going on? Can you
 13 fix this? And we would have to explain to them
 14 No, that's not us. We didn't make that. I'm
 15 sorry.
 16 And there's been instances where I've had to
 17 go on some online forums, similar situations where
 18 someone would be complaining about, you know, I
 19 got this rifle scope that shows it's Eagle Eye
 20 Optics. You know, it's not tracking right, all
 21 these problems with it. You know, who should I
 22 get in touch with? And then someone else from the
 23 forum responded Oh, get in touch with
 24 Eagle Optics. They can take care of it for your.
 25 Their customer service is really good. Then I had

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1 to jump in the forum and say Hey, I'm the sales
 2 manager for Eagle Optics. We don't sell rifle
 3 scopes. We don't make rifle scopes. We don't
 4 have any brand of rifle scopes. This is not
 5 something we can handle.
 6 So having a third-party with that, you know,
 7 with that name, it creates customer service issues
 8 for sure and confusion sort of after the purchase.
 9 MR. HARRIS: That prompts a couple
 10 questions. I was looking around for the
 11 Wohali exhibits.
 12 (Discussion off the record)
 13
 14 RECROSS-EXAMINATION
 15 By Mr. Harris:
 16 Q I'm going to show you Wohali's Exhibit 27. Do you
 17 have any familiarity with the Golden Eagle scope
 18 that's offered by Japan Optics?
 19 A No.
 20 Q Does the offering by Japan Optics of a
 21 Golden Eagle scope give you concern?
 22 A Yeah.
 23 Q And do you know whether or not Eagle Optics has
 24 done anything about that?
 25 A I don't know. This particular instance has not

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1 been brought to my attention.
 2 Q You can't sell the Eagleview anymore, but that's a
 3 binocular that's offered by Nikon. Does Eagle in
 4 the name of the binocular give you concern?
 5 A No. Well, in this case Nikon is clearly
 6 identified as the manufacturer, and everyone -- if
 7 you see Nikon Eagleview Zoom, the brand
 8 recognition of Nikon tells you right away
 9 obviously it's a Nikon binocular. Whereas,
 10 Eagle Eye Optic, you know, that --
 11 Q Well, Japan Optics sells Golden Eagle. But you
 12 think from that that a consumer would not be
 13 confused because they would clearly recognize that
 14 the Golden Eagle scope is being sold by
 15 Japan Optics, not Eagle Optics, right?
 16 A No.
 17 Q That wouldn't be clear?
 18 A No, I don't know that that would be clear. I
 19 don't know how it's marketed. I've never heard of
 20 Japan Optics before. Nikon is a really recognized
 21 brand. If I read Nikon Eagleview Zoom, I
 22 understand it's a Nikon binocular.
 23 Q Right. And this would be a Japan Optics scope.
 24 A Okay.
 25 Q Does it say otherwise on the document?

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1 A Well, it doesn't say Japan Optics scope, but it
 2 says it's a scope offered by Japan Optics.
 3 Q Right. And here you've got a binocular that's
 4 offered by Nikon.
 5 A No. This is a binocular offered by Amazon. It's
 6 made by Nikon. It's offered from the sellers.
 7 Q Let's see. Does it say sold by them or sold by
 8 Nikon? I can't tell.
 9 MS. GREGOR: I just --
 10 Q In any event --
 11 MS. GREGOR: -- want to note that
 12 the record probably does not reflect what
 13 document you're talking about.
 14 Q Well, we're talking about Exhibit 28.
 15 MR. PETERSON: Wohali.
 16 Q On Exhibit 28, because the word Nikon is also in
 17 conjunction with Eagleview, you think that would
 18 eliminate the confusion?
 19 MS. GREGOR: And to be clear, we're
 20 talking about Wohali Exhibit 28.
 21 MR. HARRIS: We are,
 22 Wohali Exhibit 28.
 23 A Correct, because Nikon is globally a well
 24 recognized brand, so I think a consumer would read
 25 Nikon Eagleview and easily deduce this as a Nikon

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1 binocular.
 2 Q And not a binocular that is sold by Eagle Optics
 3 or manufactured by Eagle Optics?
 4 A This is a binocular that was sold by Eagle Optics.
 5 We sold some of these.
 6 Q Right.
 7 A But I don't think a customer would think that
 8 Eagle Optics made this binocular because it had
 9 the word Eagleview in it because it clearly is a
 10 Nikon product.
 11 Q The concern I would have is do you know whether or
 12 not Eagle Optics ever contended that this
 13 binocular offered by Nikon called Eagleview
 14 created confusion in the marketplace, filed sworn
 15 documents with the USPTO that that binocular using
 16 that name created confusion with the public? Did
 17 you ever learn that, that such an accusation was
 18 made?
 19 MS. GREGOR: Objection. That
 20 misstates the facts.
 21 MR. HARRIS: I've read the petition
 22 for cancellation, Counsel. It says exactly
 23 that.
 24 A I'm not familiar with the particulars about the
 25 relationship with Eagle Optics and Nikon. I'm

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1 familiar that there was litigation -- maybe not
 2 litigation. I don't know what the proper legal
 3 term is. I'm familiar with the fact that there
 4 was communication with Nikon about the Eagleview.
 5 Who was presenting what points, I'm not familiar
 6 with the terms of it.
 7 Q But based on your knowledge of Nikon and the use
 8 of the Eagleview name in connection with that, do
 9 you think there's any risk that the discerning
 10 binocular buying public would somehow be confused
 11 and -- confuse that somehow with some different
 12 product offered by Eagle Optics?
 13 A I don't think so.
 14 Q Now, here's a product that's offered -- let's say
 15 it's advertised by Amazon, and it's called the
 16 Philadelphia Eagles Compact Binoculars, uses the
 17 term Eagles in the name. Does the addition of the
 18 word Philadelphia in connection with the word
 19 Eagles, do you think that eliminates any
 20 possibility of confusion, that someone might
 21 confuse that with an Eagle product offered by
 22 Eagle Optics?
 23 A I would imagine that a consumer who would look at
 24 a Philadelphia Eagles Compact Binocular would
 25 recognize Philadelphia Eagles as a sports team,

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1 would see the logo of the Philadelphia Eagles, and
2 see it's sold by Fox Sports Gear. So when I look
3 at this, there's no confusion that this is a
4 Philadelphia Eagles Compact Binocular.
5 I don't know who makes this binocular. In
6 terms of the origin of this binocular, I would be
7 confused what the origin is, but I wouldn't assume
8 it's an Eagle Optics binocular just because it has
9 Philadelphia Eagles in there because that
10 obviously is being used to reflect the brand of
11 the sports franchise.
12 Q Exactly. But if we eliminated the word
13 Philadelphia and it just said Eagles Compact
14 Binoculars, would you be concerned?
15 A Yeah, I would be.
16 Q But with the addition of Philadelphia, you're not
17 concerned, right?
18 A It becomes very recognizable.
19 Q Now, here we have a Black Eagle scope. Do you
20 think that represents any potential confusion with
21 an Eagle product, an optical product sold by
22 Eagle Optical?
23 MS. GREGOR: For the record,
24 Counsel --
25 MR. HARRIS: It is Wohali

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1 Exhibit 31.
2 A I would conceive there being confusion with the
3 Eagle Optics brand. I don't think it would be
4 confused with an Eagle Optics product. We don't
5 sell rifle scopes, and we don't have any rifle
6 scopes. So someone could see this and think --
7 they wouldn't be confused like this is, you know,
8 this is this product from Eagle Optics, you know.
9 But in terms of the brand, Sure-Loc Black Eagle
10 29 millimeter Scope. So is Sure-Loc the
11 manufacturer here?
12 Q As far as I know, yes.
13 A Okay. So --
14 Q But you would say that because Eagle Optics has
15 never sold scopes, anyone who would put the Eagle
16 name on a scope, there would be no confusion
17 associated with that, right?
18 MS. GREGOR: Objection, Counsel.
19 Why don't you give the witness time to look
20 at the document.
21 MR. HARRIS: Well, I thought he had
22 finished with his previous answer.
23 A No, I'm not agreeing with what you just said.
24 Could you just repeat that one more time?
25 Q Sure. You said because Eagle Optics doesn't make,

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1 doesn't sell rifle scopes, if someone sold a rifle
2 scope with the word Eagle on it, no one would be
3 confused that it comes from Eagle Optics because
4 you don't sell scopes?
5 A That's not correct. I would say no one could
6 confuse it with a similar product made by
7 Eagle Optics because we don't make rifle scopes,
8 but they could be confused not with a similar
9 product, for instance -- you know, is there a
10 corresponding Eagle Optics product? No. There's
11 no corresponding Eagle Optics product with a rifle
12 scope. So to think that this is an
13 Eagle Optics -- if someone is looking for an
14 Eagle Optics rifle scope, that's not going to
15 happen because there is no existing Eagle Optics
16 rifle scope.
17 My concern is that if someone would purchase
18 something like this, then they would get it
19 confused as coming from Eagle Optics. So they're
20 not familiar with our company. They're not
21 familiar with what we sell. But if they have a
22 problem with something like this, they look up Oh,
23 there's Eagle Optics. That must be the
24 manufacturer. That would be my concern.
25 Q So your concern would be that this particular

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1 product, because it uses the name Black Eagle and
2 you offer a Black Eagle product through Atlas,
3 right, that there's a danger that there might be
4 some improper connection between the Black Eagle
5 offered by Atlas and the Black Eagle that's
6 offered here in this advertisement, right?
7 A Well, my concern with confusion has more to do
8 with the manufacturer, in this case, the example I
9 gave, Eagle Eye Optics being the manufacturer. So
10 here that has Black Eagle in it. I see it clearly
11 identifies a Sure-Loc product, so there's no
12 confusion to me that it's a Sure-Loc product
13 called the Black Eagle, so --
14 Q All right. So let me be clear. If all that was
15 on this Exhibit 31, it just said Black Eagle
16 scope, you would have concern, correct?
17 A I would have concern.
18 Q But when we add the word Sure-Loc in front of the
19 word Black Eagle, you don't have concern because
20 it's clearly somebody different than Eagle Optics?
21 A It's clear to me.
22 Q Good. Now we have Wohali Exhibit 33, and I see --
23 the first two pages I've just simply highlighted
24 every time the word Eagle appears in connection
25 with binoculars. Can you see that on pages 1 and

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1 2 a variety of different flavor of Eagle
2 binoculars are being offered by this seller?
3 MS. GREGOR: Take your time and
4 look at the document.
5 A So who is this seller? As someone who sells
6 binoculars, I've never heard of this.
7 Q This is a page that I took off the Internet. I
8 know as much about it as you do.
9 A Okay.
10 Q It was just -- you know, you go on the Internet,
11 and you run the word Eagle and the word binocular,
12 and it's amazing what will come up, including
13 these pages.
14 Now, does what you see there cause you
15 concern because it uses the word Eagle and
16 binocular together?
17 A Does it cause me concern?
18 Q Well, in terms of confusion with the public, the
19 buying public. Do you think people would be
20 confused when they see that and think possibly
21 these things come from Eagle Optics?
22 A Well, I haven't ever heard of this website before.
23 And I'm looking at these products and --
24 Q Clearly there's a product on this exhibit that
25 uses the word Eagle and binocular, and my question

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1 is now that you're looking at that, does that
2 cause you concern that the consuming public would
3 be confused or misled?
4 A I'm concerned as to how the term is being used.
5 I'm confused. So "The real thing made accessible
6 eagle eye 8 x 42 binoculars," I'm trying to figure
7 out what that sentence is saying: "The real thing
8 made accessible eagle eye." Are they using
9 eagle eye to describe a feature? Are they using
10 it as a brand?
11 MS. GREGOR: Let him ask the
12 questions.
13 Q If that's a question to me, I can't answer it.
14 A Yeah.
15 Q It's a rhetorical question?
16 A Yeah, I guess it's a rhetorical question.
17 Q Now let's go back to my question. My question is
18 based on what you see on those pages, does that
19 cause you concern that the consuming public might
20 be confused and think this is a product that
21 originates from Eagle Optics?
22 A I don't think the consuming public would buy
23 binoculars from this website.
24 Q That wasn't the question. The question was do you
25 think the consumer -- not whether they would buy

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1 from that website. Do you think that the
2 consuming public might be confused or misled in
3 thinking that these binoculars bought by anybody
4 might be -- they might think that they come from
5 Eagle Optics?
6 A It's possible. I suppose if someone had a
7 binocular -- once again, I guess I'm making a
8 distinction about people who are, who are going to
9 make a transaction. So my concern is a lot less
10 when I see this and I see, you know -- okay. So
11 they think this is Eagle Optics. That's not as
12 much of my concern. It's that if someone buys a
13 Trinidad Eagle binocular, gives it to their friend
14 as a gift, it falls apart on them, who are they
15 going to call to fix it? Well, they're going to
16 search Eagle binoculars, and the first thing
17 that's going to show up when you search
18 Eagle Optics on Google is going to be us, not
19 AliExpress.
20 Q When you say us, did you mean Atlas or
21 Eagle Optics?
22 A Eagle Optics.
23 Q But Atlas has more binoculars with the Eagle name
24 than Eagle Optics does.
25 A Okay.

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1 Q So wouldn't they call Atlas first because you
2 offer more binoculars with the Eagle name?
3 A But I have no concern if they call Atlas first
4 because Atlas is us.
5 Q Well, that's, you know, only deduced by
6 Sherlock Holmes who draws the connection between
7 the terms of your warranty, but you don't disclose
8 that on your website, do you?
9 MS. GREGOR: Objection,
10 mischaracterizes the testimony.
11 A Anyone who's looking to find information on
12 Atlas Optics will always be steered towards us.
13 Q But do you have any concern that this page might
14 confuse the consuming public with a product that
15 is represented as being from Atlas because Atlas
16 offers so many, at least five versions?
17 A But I don't see the word Atlas here at all. And
18 once again, my concern probably doesn't stem
19 from --
20 Q And I don't see the word Eagle Optics there
21 either.
22 A I think the word Eagle a lot.
23 Q Right. And there's more Eagles associated with
24 Atlas than there are with Eagle Optics?
25 A That's right.

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1 Q Because you've only got what? Is there only
2 one version of binoculars offered by Eagle Optics
3 that has the name Eagle?
4 A In the model name?
5 Q Yes. Is it only the Golden Eagle?
6 A At the moment.
7 Q But Atlas offers five versions with the Eagle name
8 in it, right?
9 A That's right. But that doesn't concern me because
10 any problems with Atlas binoculars, any warranty
11 service, if someone has an Atlas binocular and
12 they need something, they're going to come to us.
13 Q Right. It doesn't concern you because if they go
14 to Atlas, they're going to end up with you?
15 A Correct. Anything that has to do with an Atlas
16 binocular, if there's an issue with it -- brand
17 control is done by us. If a customer has a
18 problem with it, I can service it.
19 My concern about this situation is the same
20 as I would have when it comes to the Eagle Eye
21 rifle scopes, not that there's someone out there
22 selling Eagle Eye rifle scopes -- I mean, I'm not
23 crazy about that either, but the confusion that
24 I've seen happen happens when a customer who has
25 one of these products in their possession expects

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1 us to service it, to honor the warranty that was
2 implied or given when they bought that product
3 from someone else.
4 Q All right. So your concern is not from the
5 purchase side; it's concern with the warranty
6 side? You don't want these folks showing up on
7 your doorstep; that's your concern, right?
8 A That's one of my concerns. The other concern that
9 I would have would be, you know, not just the
10 warranty side but also the products themselves. I
11 mean, if it has -- if it's an Atlas product, you
12 know, yes, we service and warranty that, and that
13 warranty is sort of part of the brand, if you
14 will.
15 Q All right. You're time slicing it. We've got the
16 advertisement, the decision to make a purchase,
17 then a problem, and then a warranty. My question
18 is focused at only the decision making stage, not
19 these other problems.
20 A Okay.
21 Q Because we've already talked about these other
22 slices. I'm now focused on the decision making
23 point in time in which the consumer sees this,
24 clicks and says I'm going to buy that. Now, do
25 you have a concern that the use of the word Eagle

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1 here in the binoculars is likely to confuse a
2 consumer that the product originates from Atlas?
3 A Am I assuming that this customer is looking for an
4 Atlas binocular, or am I -- what assumptions am I
5 making about this customer?
6 Q Only that the customer is aware that Atlas offers
7 a variety of Eagle binoculars in the name.
8 A So if I'm assuming the customer is aware that
9 Atlas binoculars offers a variety of Eagle
10 binoculars and they're at this website, am I
11 concerned that they're going to purchase one of
12 these binoculars thinking it's an Atlas binocular?
13 Q Exactly. Yes or no?
14 A I'm not going to answer yes or no. I'm not going
15 to do that. No. My level of concern would be --
16 I think it's very plausible that they could make
17 that mistake thinking they're buying an Atlas
18 binocular. Having said that, Atlas binoculars are
19 such a small section of our sales that my concern
20 about Atlas is minimal. I'm not worried about us
21 losing Atlas sales because I know that a customer
22 who's interested in Atlas binoculars has visited
23 our website or maybe the Sears website, and
24 therefore, they have discovered us, they found us,
25 they know us.

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1 If a customer were to go to this website with
2 this poor presentation, I'm not concerned they
3 would get this website confused with our website.
4 And because Atlas products are only available on
5 our website and on the Sears website, I'm not
6 concerned that they would get them confused due to
7 the origin of it. Atlas' origin would be with us.
8 Whereas, the origin of this is obviously not
9 Eagle Optics. And because Atlas is such a small
10 brand for us -- like I said, this concern about
11 Atlas is something I -- I generally don't have
12 concern about Atlas products.
13 Q You said something a moment ago. You said on this
14 Exhibit 33, that looking at this, no one would
15 confuse this with products offered by
16 Eagle Optics?
17 A No. I'm saying by looking at this no one would
18 confuse this website with Eagle Optics' website.
19 Q Let's get closer. Let's just deal with the
20 product and not the website in general because
21 websites are not particularly the issue here.
22 It's the product.
23 Now, are you concerned, not about somebody
24 confusing this website with your website, but
25 thinking Well, maybe these guys are resellers of

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1 Atlas Eagle type binoculars?
 2 MS. GREGOR: Objection to form.
 3 Q They wouldn't know one way or the other that
 4 they're only offered -- I mean, do you have
 5 some --
 6 A Because I don't see the word Atlas anywhere in
 7 here, I don't know.
 8 Q All right. So since the word Atlas is not there,
 9 that eliminates confusion, right?
 10 A Not just because the word Atlas is there.
 11 Q No, is not there.
 12 A Is not there. That's not the only reason. The
 13 reason it would eliminate confusion -- and maybe I
 14 wouldn't say eliminate. The reason I'm not
 15 concerned about it as opposed to eliminating
 16 confusion, there's a host of reasons. One would
 17 be the website it's at. So someone who's
 18 interested in Atlas binoculars would have been on
 19 our website. Maybe they were on the Sears
 20 website, which will say Sold by Eagle Optics, on
 21 our website or on the Sears website, or maybe they
 22 were on Amazon, okay?
 23 So a consumer who's been to our website,
 24 Amazon, or Sears' website and saw an Atlas
 25 binocular there and then they were to go to this

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1 website, that's part of why I wouldn't be so
 2 confused. Because as a consumer who shops online,
 3 I see a website like this, and I would be like
 4 Well, how did you come across this? You know, you
 5 search for Eagle, but someone who's, you know,
 6 searching for an Atlas binocular would probably
 7 search for Atlas.
 8 Q Would your concern be different if you saw this
 9 product being offered on Amazon.com?
 10 MS. GREGOR: Objection, vague.
 11 Q The description of the product, not all the other
 12 aspects of the AliExpress at the top, but would
 13 you agree with me that Amazon.com has a very
 14 professional presentation of their website?
 15 A Yes.
 16 Q And if this product were offered, presented on the
 17 Amazon website, would you be concerned that the
 18 Trinidad Eagle or the Flying Eagle or any of the
 19 other Eagles that are referenced here as a type of
 20 binocular, would you then have concerns if this
 21 product showed up being advertised by Amazon.com?
 22 A Yes.
 23 Q Why?
 24 A Because it's got -- someone who could buy it on
 25 Amazon -- because Amazon is a reputable website.

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1 They sell lots of stuff. This is on Amazon. I
 2 would assume they're selling lots of these. I'd
 3 make that assumption because it's a big reputable
 4 website. If it's on Amazon, they probably sell
 5 them.
 6 And my concern would be, once again, after
 7 these are sold someone contacts Amazon -- I don't
 8 know if you've ever tried to contact Amazon. You
 9 really can't reach anyone there. So someone's
 10 going to go Oh, I've got a Flying Eagle binocular
 11 here that's falling apart. Okay. I'm going to do
 12 a search for Eagle binoculars. And my concern
 13 would be that they'd come back to us once again
 14 after the sale. My concern with Amazon would be
 15 because I would expect Amazon to sell these.
 16 Q Again, I was focused on the decision to buy and
 17 not the problems that occur afterwards. You've
 18 continually expressed a concern that a disgruntled
 19 customer with a broken product is going to come
 20 back to you for warranty service.
 21 A Uh-huh.
 22 Q I'm not looking at that at all. I'm looking at
 23 the decision making process at the time of buying.
 24 Do you have concerns regarding the decision of
 25 buying the product on Amazon.com that it would

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1 deprive Eagle Optics or Atlas of a sale?
 2 MS. GREGOR: Objection, vague.
 3 A It would -- yeah, it would depend on the nature of
 4 the product. Which product are you talking about?
 5 Q This product and any product offered by the Wings
 6 company.
 7 MS. GREGOR: Objection, vague and
 8 to form, and there is no question.
 9 Q Let me start over again. If any of these products
 10 were offered on Amazon, do you believe that there
 11 could possibly be confusion in the mind of the
 12 public that they might think when they buy this
 13 product on Amazon.com that they are buying a
 14 product that is offered by your company?
 15 MS. GREGOR: Objection to form,
 16 vague.
 17 A I think if someone bought one of these products or
 18 were to see and buy one of these products on
 19 Amazon, they could get confused that they were
 20 buying a product that was made by our company.
 21 But I don't think that they would be -- that they
 22 would get it -- I don't think a consumer looking
 23 at our products, who's familiar with our products,
 24 who's researched our products, I don't think a
 25 consumer intent on buying one of our products

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1 would get one of these confused with them at all.
 2 Q All right. So people that are familiar with your
 3 product would not be confused by the products that
 4 we see here on Exhibit 33 even if they appeared on
 5 the Amazon.com website, right?
 6 A Someone who is familiar with our products?
 7 Q Yes.
 8 A I would say that's fair to say.
 9 Q And if someone is not familiar and doesn't even
 10 know of your products, they couldn't possibly be
 11 confused because they don't know about you, right?
 12 Right?
 13 A Sure. You're saying that someone could not be
 14 confused because they don't know about us?
 15 Q Right.
 16 A At the time of purchase --
 17 Q Right.
 18 A -- correct, they wouldn't know about us. My
 19 concern would be is when there would be a problem
 20 with the binocular, then they would know about us
 21 because they would look for, you know,
 22 Flying Eagle, Trinidad Eagle, Eagle binoculars,
 23 and then they would find us and assume Oh, these
 24 must be the people who made that binocular that I
 25 bought on Amazon.

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1 Q So if I understand, your concern is not with the
 2 decision to buy the product, your concern is if
 3 the product fails, this consumer might contact you
 4 for warranty service, right?
 5 A Yeah, that probably sums it up.
 6 Q Now, Adorama, do they sell or do not sell any
 7 product offered by Sheltered Wings?
 8 A They may be a Vortex dealer. I don't know because
 9 I don't deal with wholesale accounts. I don't
 10 think they sell Eagle Optics branded products. I
 11 would expect them not to sell Eagle Optics branded
 12 products.
 13 Q Now, on this Wohali Exhibit 34, I notice that they
 14 offer binoculars which they call Eagle Ghost. Is
 15 the use of the word Eagle in this context preceded
 16 by the word Armasight, does that present any
 17 concerns that that might confuse the public that
 18 this is somehow an Eagle Optics product?
 19 MS. GREGOR: Take a moment and look
 20 at the document.
 21 A Well, once again, I guess it would kind of depend
 22 on the buying public. So if I'm looking at a
 23 \$6,000 pair of night vision binoculars, my concern
 24 wouldn't be that someone shopping for a \$6,000
 25 pair of night vision binoculars would buy them at

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1 Adorama thinking they were buying an Eagle Optics
 2 \$6,000 night vision binocular. We don't offer
 3 such product.
 4 Once again, any concern I would have would be
 5 after they purchased the \$6,000 night vision
 6 product. If for some reason Armasight wasn't
 7 there -- it's that service issue. As is presented
 8 right here, Armasight Eagle Ghost Night Vision
 9 \$6,000 binocular, I don't think a customer would
 10 get this confused with our product if I look at
 11 the total of the information presented there.
 12 Q Okay. This is Wohali Exhibit 35. This is a
 13 seller of binoculars, but the company name says
 14 Desert Eagle Technologies. They've used the name
 15 Eagle in their company name, and they sell
 16 binoculars. Does that present any concerns to
 17 you?
 18 A No.
 19 Q Good. We've talked about the Sears ad before.
 20 Here is a company called Eagle Eye Sights, but you
 21 can see that they're selling rifle scopes. But in
 22 their name they call it Eagle Eye Sights. Any
 23 concern regarding any kind of confusion that the
 24 public might be misled or draw some connection
 25 between Eagle Eye Sights and Eagle Optics?

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1 A Well, I would certainly be more concerned if they
 2 had Eagle Eye Sights branded products. As a store
 3 named Eagle Eye Sights, no.
 4 Q So merely a company that uses the name Eagle in
 5 its name but selling branded products of others,
 6 no concern from a sales manager perspective?
 7 A I wouldn't say -- I mean, I would say when I look
 8 at Eagle Eye Sights, no concern. And I would say
 9 that if -- and we don't sell rifle scopes. I
 10 would say maybe I would have concern if they were
 11 selling binoculars. If Eagle Eye Sights was
 12 selling binoculars and they sold a lot of the same
 13 products we sold, I would probably be concerned.
 14 Q So if they were selling binoculars using the name
 15 Eagle Eye Sights, that would cause concern, but
 16 because they're only selling scopes, you would not
 17 have a concern, right?
 18 A Yeah, I don't really consider them to be a lot
 19 like us.
 20 Q Now, your products are -- Eagle Optics is offered
 21 at B&H, right?
 22 A Yeah, for now. They're in the process of not
 23 carrying them, but yeah, Eagle Optics products
 24 have historically been offered at B&H.
 25 Q Now, when I went on the B&H site and I typed in

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1 the word Eagle and Binocular and hit GO, it gave
 2 me three versions of the Armasight Eagle
 3 binocular. The fourth item -- and it's clipped
 4 off the photo, but the fourth item was an
 5 Eagle Optics binocular, the 10 by 42 Golden Eagle
 6 HD binocular, which is your top of the line,
 7 right?
 8 A Uh-huh.
 9 Q Now, given the fact that there are three
 10 Armasight Eagle binoculars on the same page as an
 11 Eagle Optics Golden Eagle binocular, do you think
 12 there's any concern with the consuming public that
 13 somehow someone might confuse and think the
 14 Armasight is somehow affiliated with Eagle Optics?
 15 A Well, when I look at this, I see clearly that's
 16 where the manufacturer is stated, Armasight,
 17 Armasight, Armasight, Eagle Optics. And so I see
 18 that as being pretty clearly delineated here. And
 19 once again, I look at the two product categories
 20 where we're looking at a \$3,000, \$6,000 piece of
 21 night vision equipment, which is very different
 22 than a binocular, so I don't know how a customer
 23 would get confused as far as are these products
 24 the same?
 25 Q And if they were priced all comparably, is the

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1 deciding factor the appearance of the Armasight
 2 word before the reference to Eagle binoculars?
 3 A There's still two different product classes. I
 4 mean, a night vision is used within I guess a
 5 completely different context than binoculars are
 6 used. At least that's how I think of it.
 7 Q And that's part of the discerning public; they're
 8 looking at this very carefully to make sure they
 9 don't get confused and buy the wrong thing, right?
 10 And isn't that your typical experience with
 11 buyers, is they do their homework for binoculars?
 12 A For the most part I would say, yeah.
 13 Q But does the Armasight name here play any part in
 14 eliminating confusion? Because in each instance
 15 Armasight precedes the reference to the words
 16 Eagle and Binocular.
 17 A I would say that the term Armasight there is one
 18 of a number of factors that would eliminate
 19 confusion.
 20 Q Do you think it's a major factor that eliminates
 21 confusion?
 22 A I don't know if I would be able to qualify that.
 23 No. I would say first and foremost the way we
 24 would eliminate confusion is one's night vision
 25 and one's a binocular.

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1 Q And certainly one is made by Armasight, and some
 2 other product is made by Eagle Optics?
 3 A That's right.
 4 MR. HARRIS: I don't have any
 5 further questions.
 6 MS. GREGOR: Me neither.
 7 MR. HARRIS: Let the record reflect
 8 I'm leaving all these with the court
 9 reporter. And do you want to read a sign?
 10 THE WITNESS: Sure.
 11 MR. PETERSON: Yes.
 12 MS. GREGOR: Yes.
 13 (Adjourning at 6:56 p.m.)
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1 STATE OF WISCONSIN)
 2 COUNTY OF DANE) ss.
 3 I, CARMEN HARDER, a Registered Professional Reporter
 4 and Notary Public duly commissioned and qualified in
 5 and for the State of Wisconsin, do hereby certify
 6 that pursuant to notice, there came before me on the
 7 10th day of September 2013, at 2:58 in the afternoon,
 8 at the offices of Godfrey & Kahn, S.C., Attorneys at
 9 Law, One East Main Street, the City of Madison,
 10 County of Dane, and State of Wisconsin, the following
 11 named person, to wit: BENJAMIN D. LIZDAS, who was by
 12 me duly sworn to testify to the truth and nothing but
 13 the truth of his knowledge touching and concerning
 14 the matters in controversy in this cause; that he was
 15 thereupon carefully examined upon his oath and his
 16 examination reduced to typewriting with
 17 computer-aided transcription; that the deposition is
 18 a true record of the testimony given by the witness.
 19 I further certify that I am neither
 20 attorney or counsel for, nor related to or employed
 21 by any of the parties to the action in which this
 22 deposition is taken and further that I am not a
 23 relative or employee of any attorney or counsel
 24 employed by the parties hereto or financially
 25 interested in the action.

1 In witness whereof I have hereunto set my
2 hand and affixed my notarial seal this 18th of
3 September 2013.

4

5

6 Notary Public, State of Wisconsin
7 Registered Professional Reporter

8 My commission expires
9 10/6/2013

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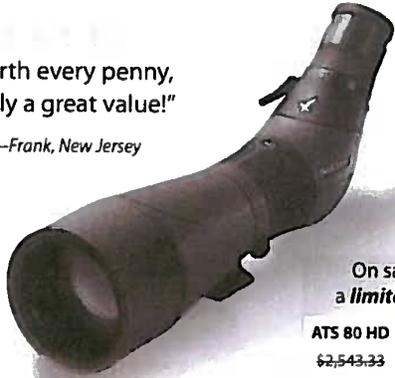
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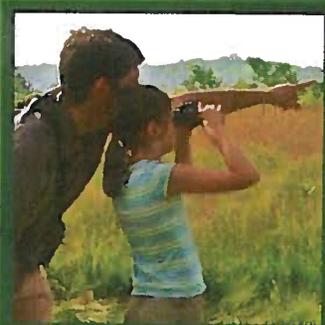


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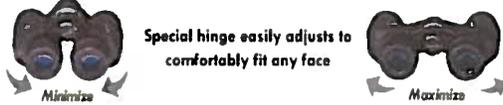
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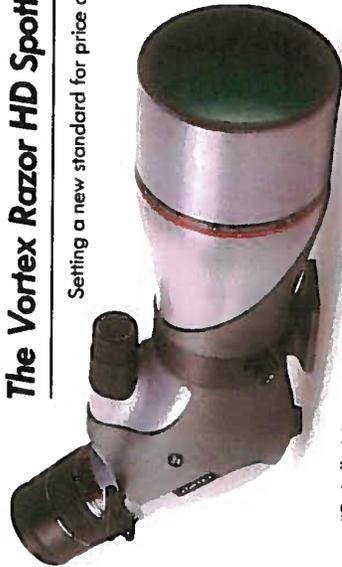
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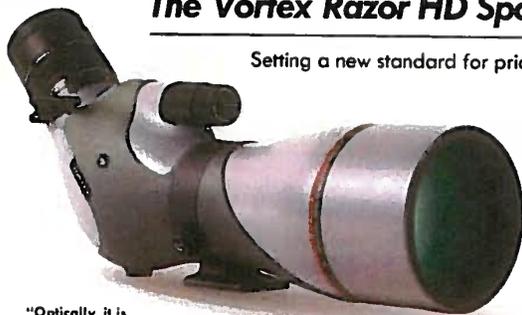


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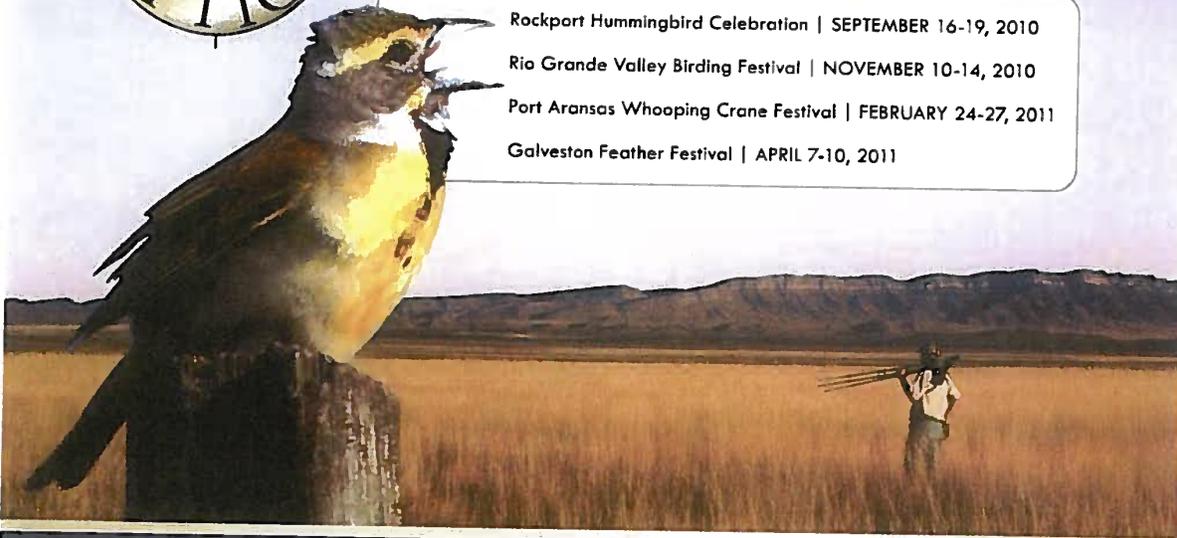
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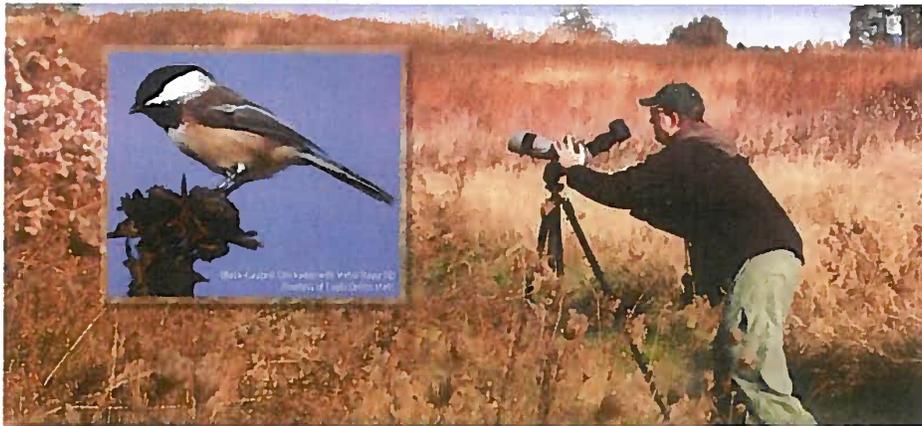


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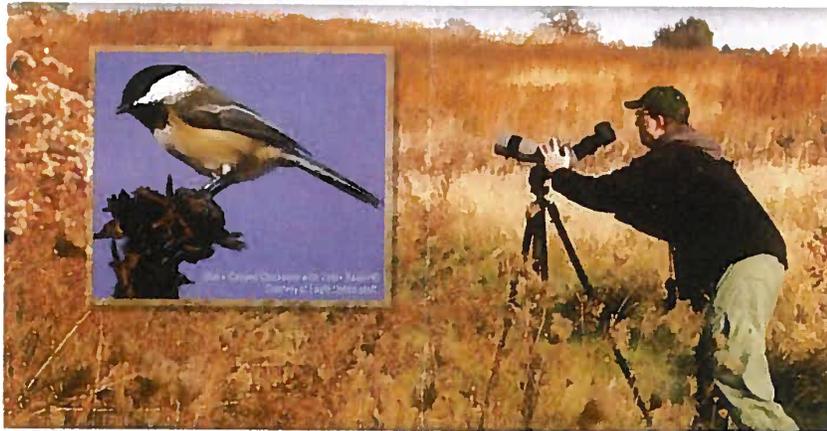
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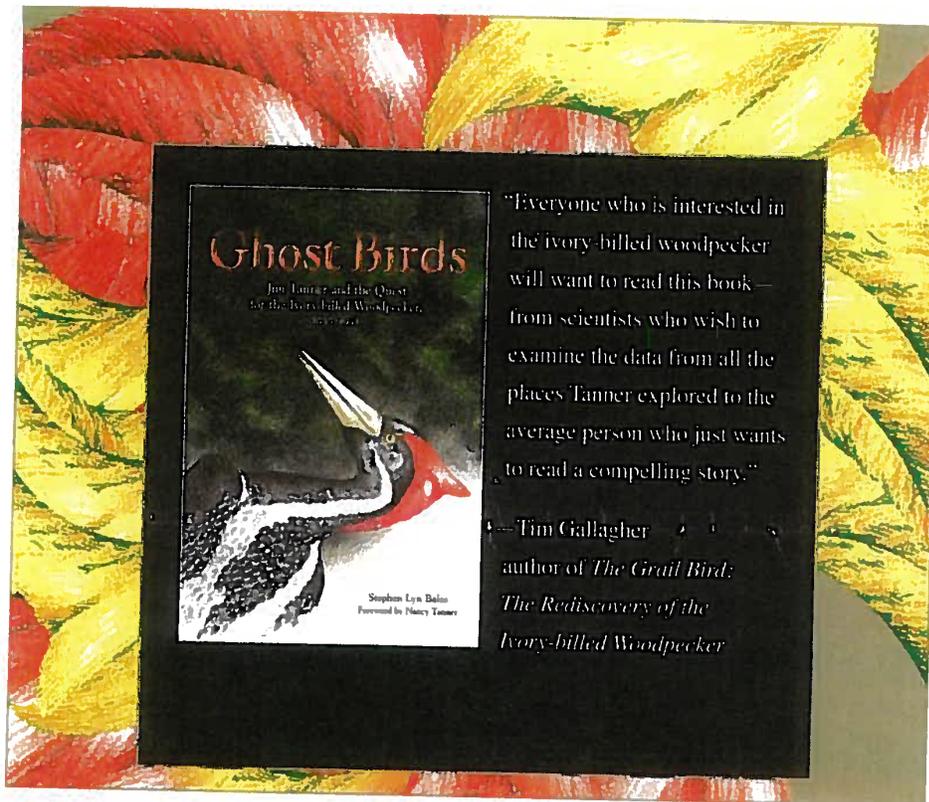
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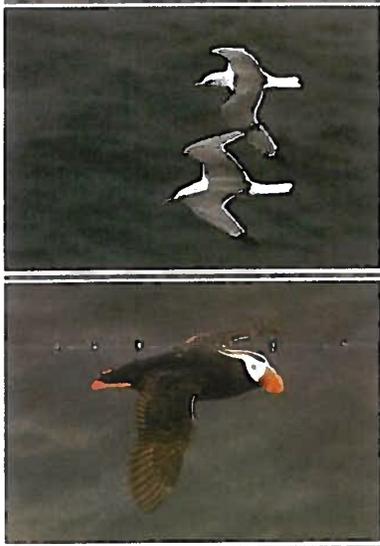
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- 20-60x zoom eyepiece
- 85mm high-density glass objective lens

"Optically, it is among the top few scopes in the world for brightness and sharpness."

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(Amendable)

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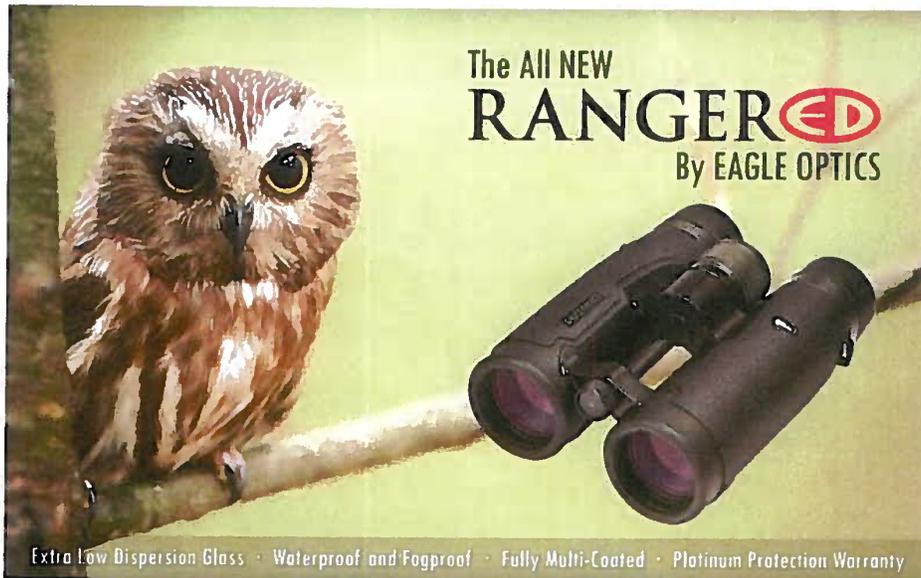
EO Ad: Birding Magazing - May/June, 2011

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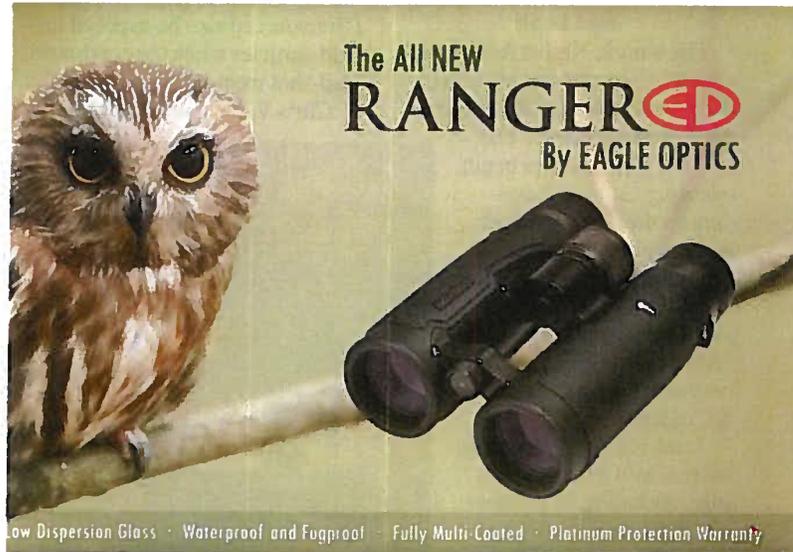
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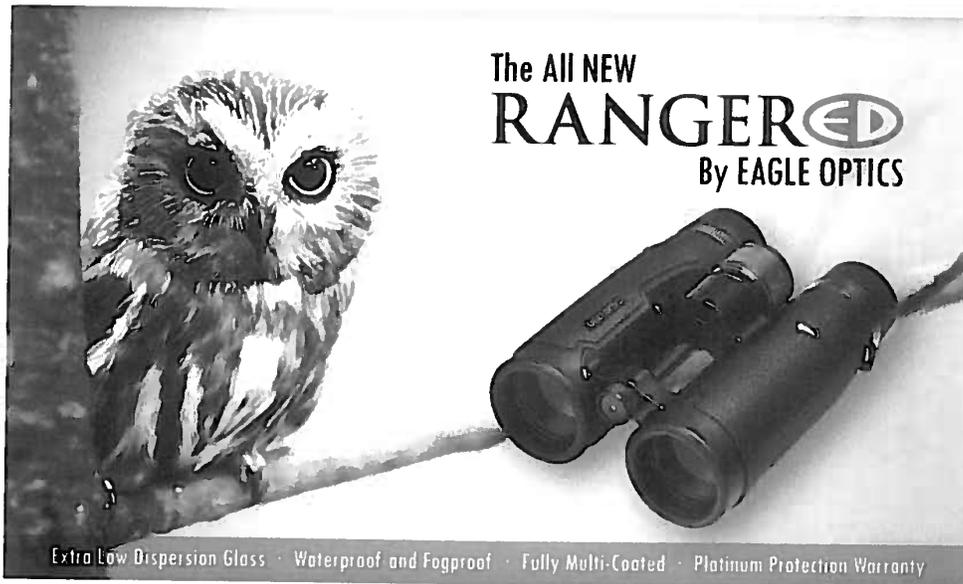
* Scope body and eyepiece sold separately.

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EL 50 SWAROVISION MORE DETAILS. MORE LIGHT.

When observing nature, seeing fine details can make all the difference – because seeing is knowing. With their incredible detail recognition, the EL 50 SWAROVISION are perfect binoculars for serious birders, where experience is combined with great optical performance.



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TRADE-IN SPECIAL

SAVE \$800! Trade in your working condition 42mm EL for an instant \$800 credit toward the purchase of a new Swarovision EL binocular. If you want to try out a Swarovision before sending in your old EL you will have 30 days to try a pair out. Call our staff for more information. *

* \$800 credit available on binoculars purchased at regular pricing. Trade-in binoculars must be in working condition to be eligible.

ED AD BIRD WATCHERS DIGEST - SEPT/OCT, 2011



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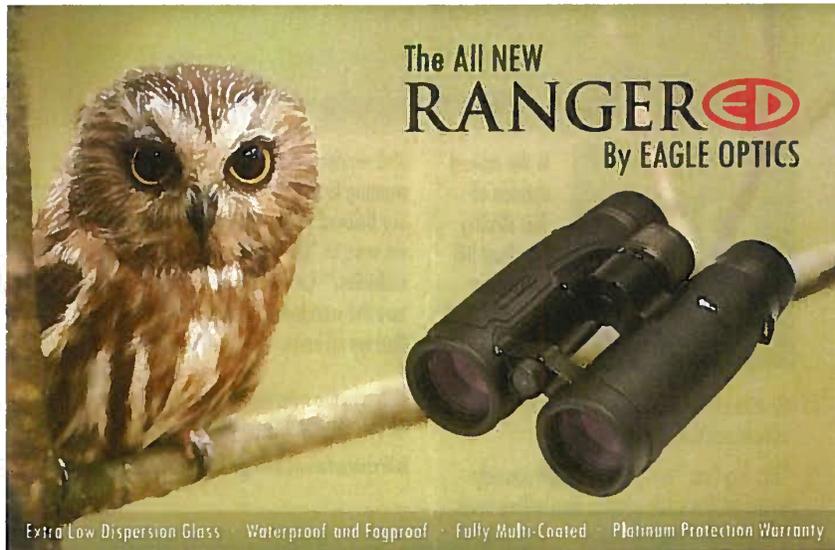
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BIRD WATCHERS DIGEST - SEPT/OCT, 2011
- NIKON CO-OP

The advertisement features a green header with the Eagle Optics logo on the left, which consists of a stylized eagle head inside a circular frame with the words 'EAGLE OPTICS' around it. To the right of the logo, the text 'EAGLE OPTICS®' is written in a large, white, serif font, with the tagline 'We know birds, birders, and birding equipment.' in a smaller, white, sans-serif font below it. The main body of the ad is dark green with a subtle pattern of small circles. In the center, a pair of Nikon EDG binoculars is shown in a dark, reflective setting. To the right of the binoculars is the Nikon logo (a yellow square with a black 'N') and the 'EDG' logo in a bold, yellow, sans-serif font. Below the binoculars, the text 'A NEW CLASS OF OPTICS. FOR A NEW CLASS OF BIRDER.' is written in a bold, yellow, sans-serif font. At the bottom of the ad, there is a dark green box with a white border containing the text 'EDG BINOCULARS THE CUTTING EDGE IN SPORT OPTICS' in a bold, white, sans-serif font. Below this, a list of features is presented in a white, sans-serif font: ':: Extra-Low Dispersion Glass', ':: Fully Multi-Coated Lenses', ':: Di-Electric Prism Coatings', and ':: Experience a world of wonders beyond your wildest dreams.' At the very bottom of the ad, the website 'WWW.EAGLEOPTICS.COM' and the phone number '800.289.1132' are listed in a white, sans-serif font. Below the website and phone number, the text 'FOLLOW US ON' is followed by icons for Twitter, Facebook, and YouTube.

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Nikon
EDG

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Bird Watchers Digest - Sept/Oct, 2011
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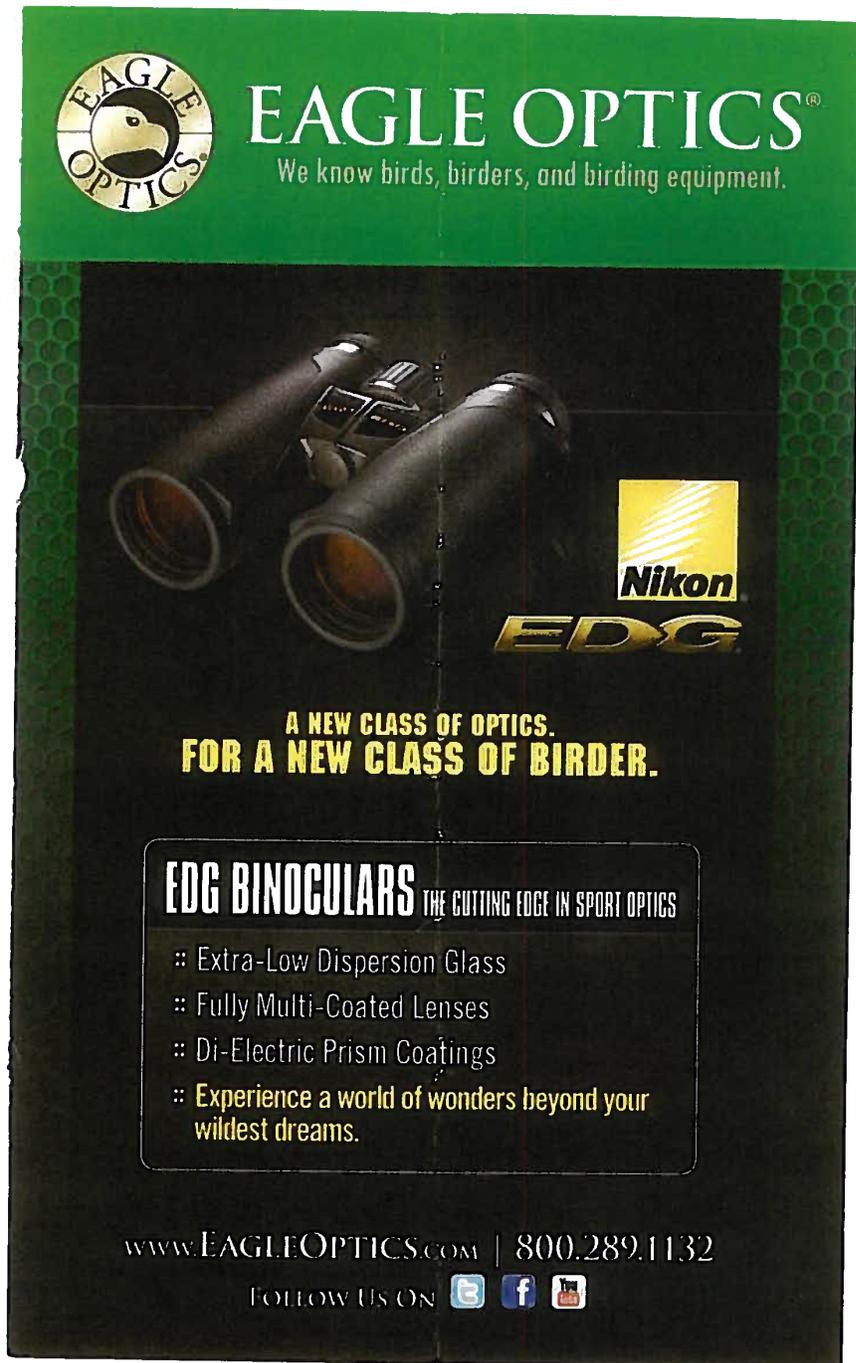
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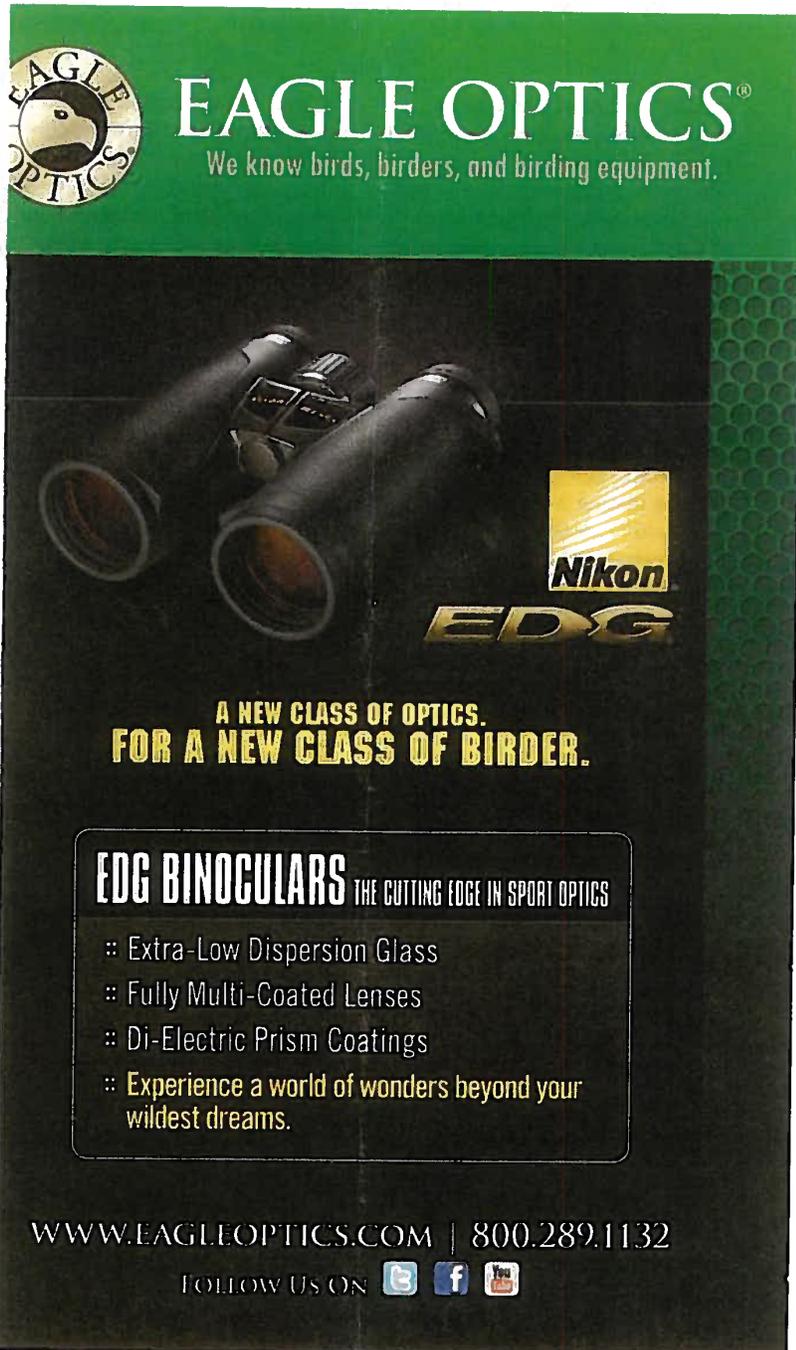
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Living Bird Magazine, Autumn - 2011



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NEW

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When observing nature, seeing fine details can make all the difference — because seeing is knowing. With their incredible detail recognition, the EL 50 SWAROVISION are perfect binoculars for serious birders, where experience is combined with great optical performance.



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SAVE \$800 Trade in your working condition 42mm EL for an instant \$800 credit toward the purchase of a new Swarovision EL binocular. If you want to try out a Swarovision before sending in your old EL, you will have 30 days to try a pair out. Call our staff for more information.*

*\$800 credit available on binocular purchase at regular pricing. Trade-in binocular must be in working condition to be eligible.

LIVING BIRD MAG., WINTER, 2011



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- :: **OPTICAL EXCELLENCE** Swarobright | Swarodur | Swarotop



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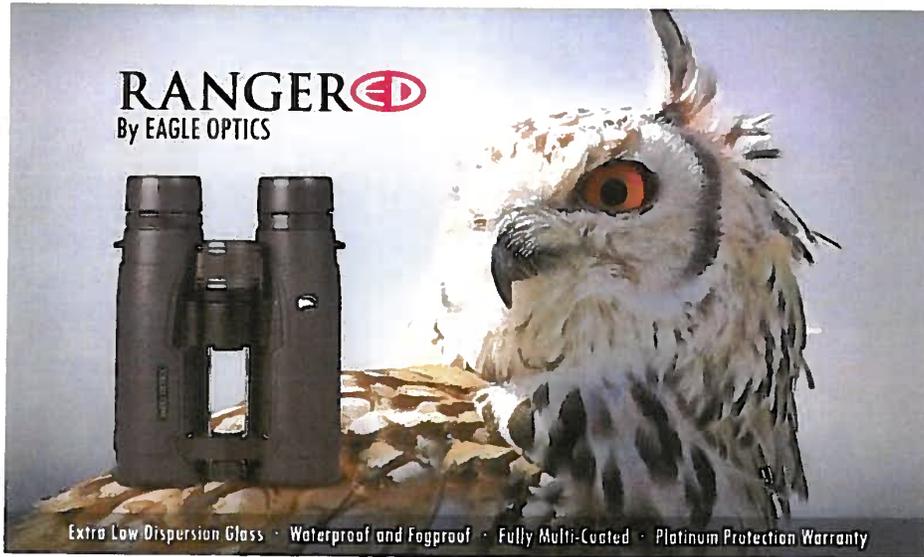
BWD-2012-1

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BWD-2012-2

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STARTING AT \$1,999.00
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Birdwatchers Digest: Mar/Apr, 2012

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FEATURES

The new Eagle Optics® Golden Eagle™ makes watching the soaring antics of eagles, warblers, and everything in between a pure joy. The rugged and lightweight Golden Eagle houses High Density (HD) extra-low dispersion glass with fully multi-coated lenses that engulf you in fine details, rich color, and bright views.

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Birdwatchers Digest: July/August, 2012

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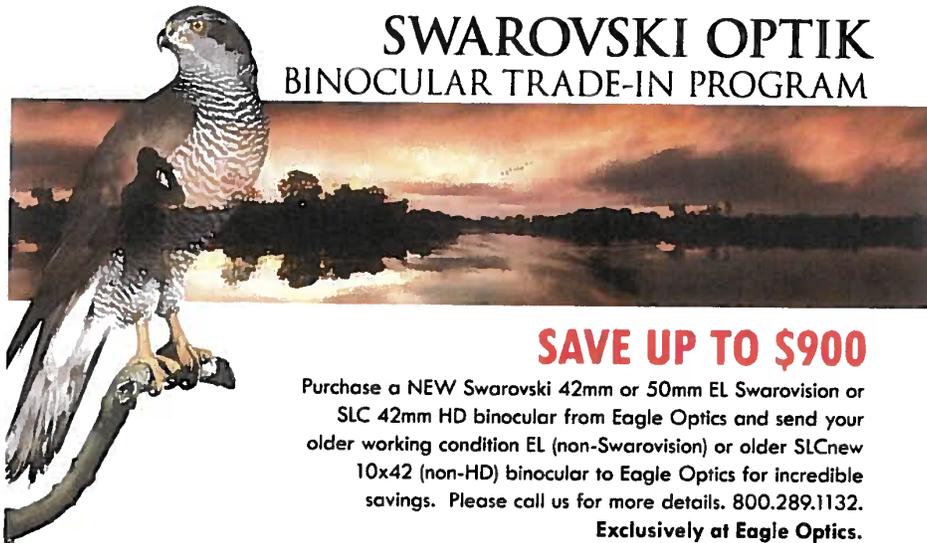
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Birdwatchers Digest: May/June, 2012



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Exclusively at Eagle Optics.

SLC HD



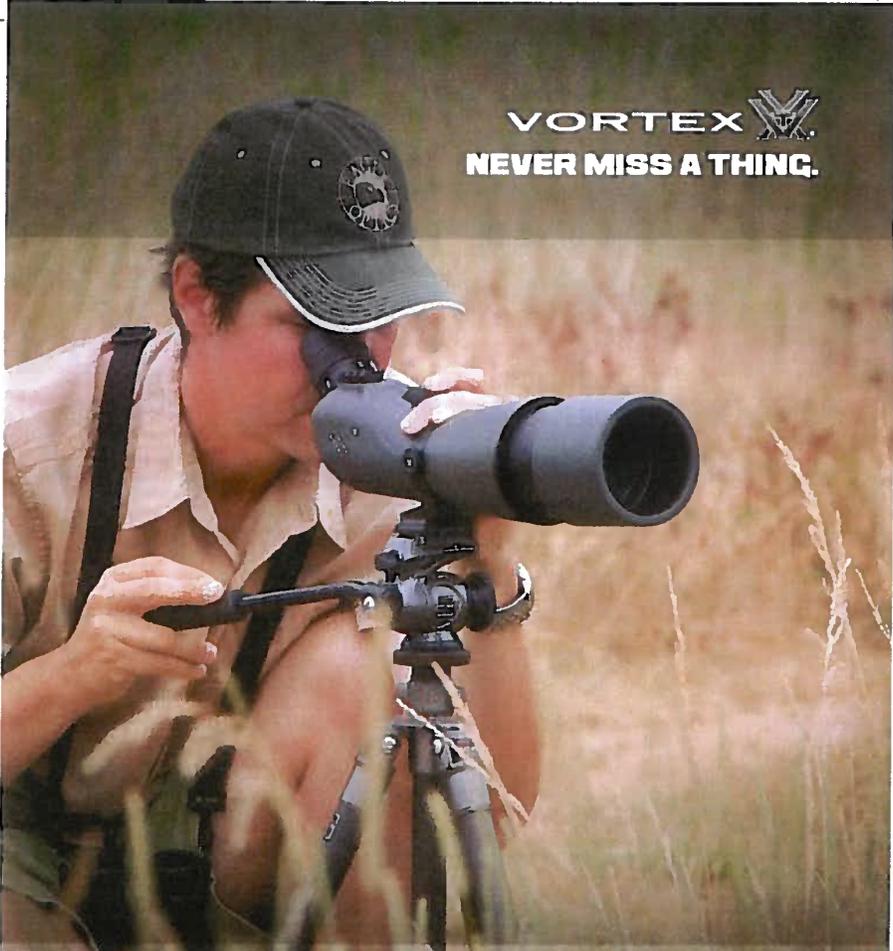
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Birdwatchers Digest: July/August, 2012 - Swarovski Co-op



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Birdwatchers Digest: Sept/Oct, 2012

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"VERY SATISFIED!"
"AWESOME!"

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Birding Magazine: Mar/Apr, 2012

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THE BRILLIANT LIGHTWEIGHT

- :: **FIELD FLATTENER** Unsurpassed edge sharpness.
- :: **WIDE FIELD-OF-VIEW** 8x - 423 feet at 1000 yards.
- :: **COMPACT AND LIGHTWEIGHT** 5.3 inches x 4.3 inches, 20.5 ounces.

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Birding Magazine: May/June, 2012

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Birding Magazine: Jul/Aug, 2012



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- ▶ High Density Extra-Low Dispersion Glass
- ▶ Fogproof and Waterproof
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Birding Magazine: September/October, 2012

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Birding Magazine: September/October, 2012 (Zeiss Co-op)



RANGER ED
By EAGLE OPTICS

Waterproof & Fogproof
Extra-Low Dispersion Glass

★★★★★ **"GREAT VALUE!"... "VERY SATISFIED!"... "AWESOME!"** ★★★★★

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Platinum Protection Warranty

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Living BIRD - Spring, 2012



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- ▶ Fogproof and Waterproof
- ▶ Platinum Protection Lifetime Warranty



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Living Bird - Summer, 2012

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- :: **WIDE FIELD-OF-VIEW** 8x - 423 feet at 1000 yards.
- :: **COMPACT AND LIGHTWEIGHT** 5.3 inches x 4.3 inches, 20.5 ounces.

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Living Bird - Fall, 2012

WB-2012-1



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Capture all the action without being weighed down.

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WildBird - March/April, 2012 - NIKON

10N-2012-1

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Indiana Outdoor News - 07/2012, Pentax Ad

10N-2012-1

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PENTAX DCF-SP 8x43
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Indiana Outdoor News - 02/2012, Pentax AG



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Michigan Birds and Natural History: 2012

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Vol. 34 No. 6, July/August 2012

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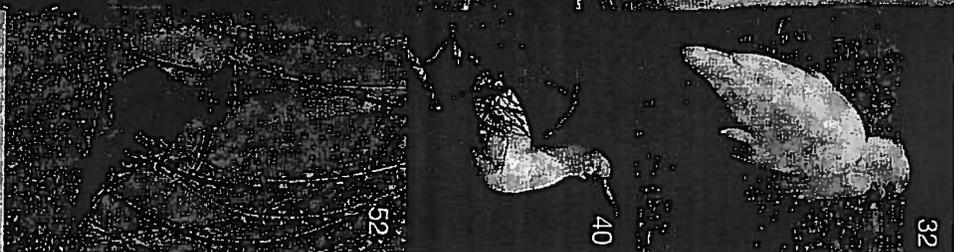
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"Sora—Backwater Prowler"
by Alan Messer



Like any bird watcher, I'm thrilled by a sighting of the furtive sora. This picture was developed from notes of the rails' visit to a muddy corner of New York's Central Park a few years ago. I offer these cryptic little charms as an answer to the question I often hear, "What good is that swampy patch?"



Alan Messer is the president of the Linnaean Society of New York. His works have been shown at the Cape May Bird Observatory, Jamaica Bay Wildlife Refuge, and the Lincoln Center. His illustrations appear in books, field guides, and periodicals, including BWD's The Backyard Birds Newsletter.

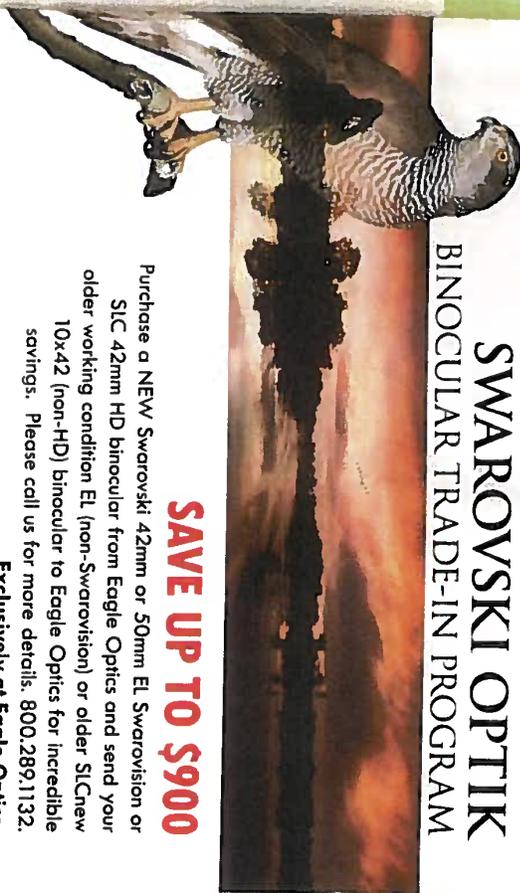
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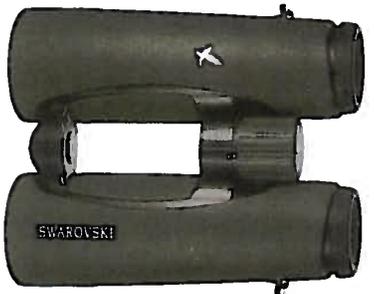
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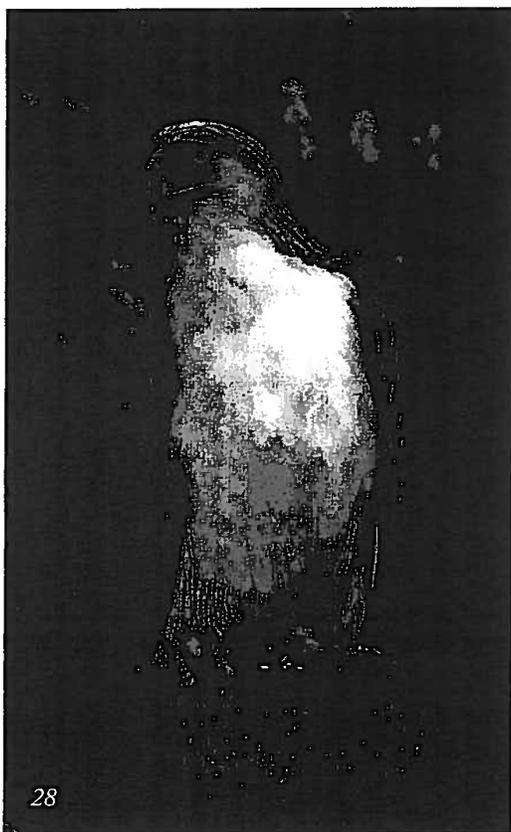
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Cover: The Yellow-eyed Penguin is a New Zealand endemic that nests in forests or scrub. Read more about this and other New Zealand birds on page 18. Photograph by Cliff Beittel.

Back cover: The Bushtit is one of the smallest passerines in North America. It builds a pendant nest (shown in photograph) that is made of moss and lichens, held together with spider-web silk, and lined with feathers. Photograph by Gerrit Vyn.

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Spring 2012

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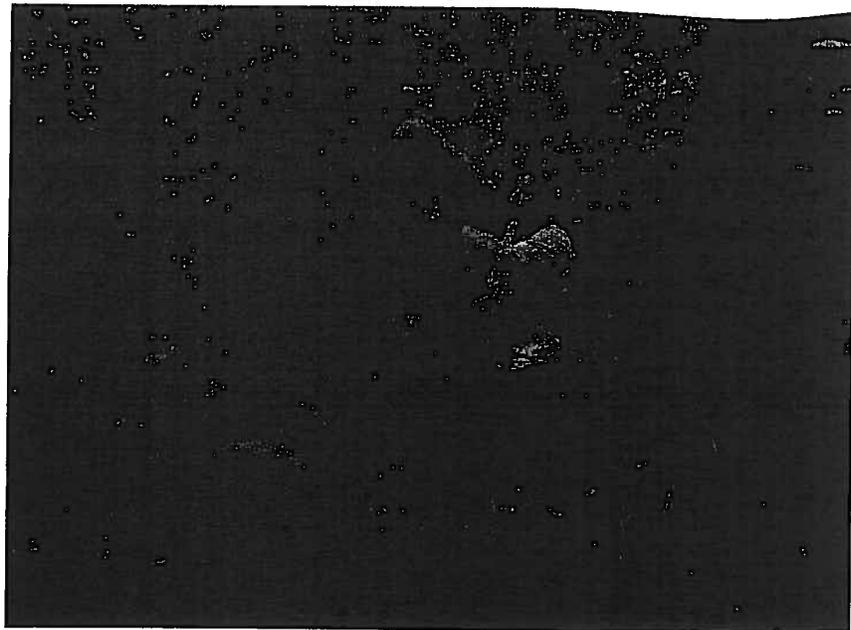
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Letters



TIM LAMAN

Mixed Reviews

Mel White's "Terra Incognita" (Winter 2012), describing the expedition into the Foja Mountains of New Guinea, misses the mark. The article would be more suitable for an adventure travel magazine than a scientific/citizen-science journal such as *Living Bird*. The author does a nice job of describing the geology and location of the Fojas as well as the interactions and contributions of the indigenous people during the expedition. There are also good descriptions of the birds in or near camp and the difficult camp logistics. Unfortunately, the purpose of the expedition and its importance to the Cornell Lab and the benefits to the Fojas, its endemic species, ecosystems, and ongoing conservation is limited to the phrase, "to continue the exploration and research."

Nowhere does the author provide a summary about the research being conducted, other than stating nine pages into the article, "People were actually doing research." He describes Ed Scholes' work of wanting to prove the Carola's Parotia should be split into separate species and of "Nev" seeing an unknown pigeon and

wanting to kill it with an air rifle presumably to collect the skin. The reader receives zero context as to the breadth and vision of the research being done, its purpose or importance. The author mentions the mining and logging companies but fails to describe the status of the Foja Mountains or any of the ongoing conservation initiatives, if any, to protect them.

This article was the main feature for the 50th anniversary issue of *Living Bird* and should have reflected how far science and its connectedness to ongoing discovery and conservation have come. Unfortunately, the expedition described could have been taken from the journal of a 19th-century collector in the Hawaiian Islands, collecting endemics in a race to be the first and collecting for the sake of collecting.

BOB ARRIGONI
 SAN FRANCISCO, CALIFORNIA

I loved reading Mel White's fine article about the Foja Mountains. This is science writing at its best, capturing all of the excitement and adventure of an expedition as well as the humor. Bravo!

BILL ROBERTS
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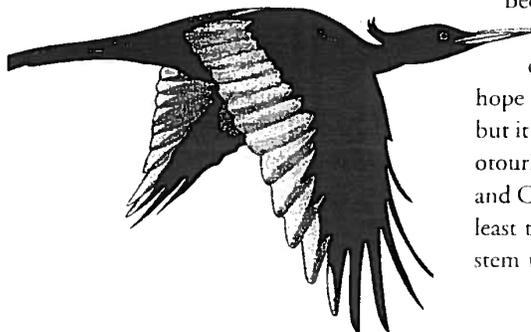
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and greed that led to the demise of this magnificent bird. Though the specifics are different, the stories of the Ivory-Billed and Imperial woodpeckers are basically

the most sobering and depressing journeys of my life." Indeed this is a story that has sadly been told all too often.



Because man's needs always come first, we will continue to lose more species that most of us will never see. I hope to see a turnaround in my lifetime, but it seems doubtful. The burgeoning ecotourist industry that is starting in South and Central America is certainly a start. At least these poor nations are attempting to stem the tide of wildlife destruction. But



full glory. Maybe enough of the human race will step up and follow his example regarding the world we live in before it's too late. All we can do is hope.

PHIL YTURBE

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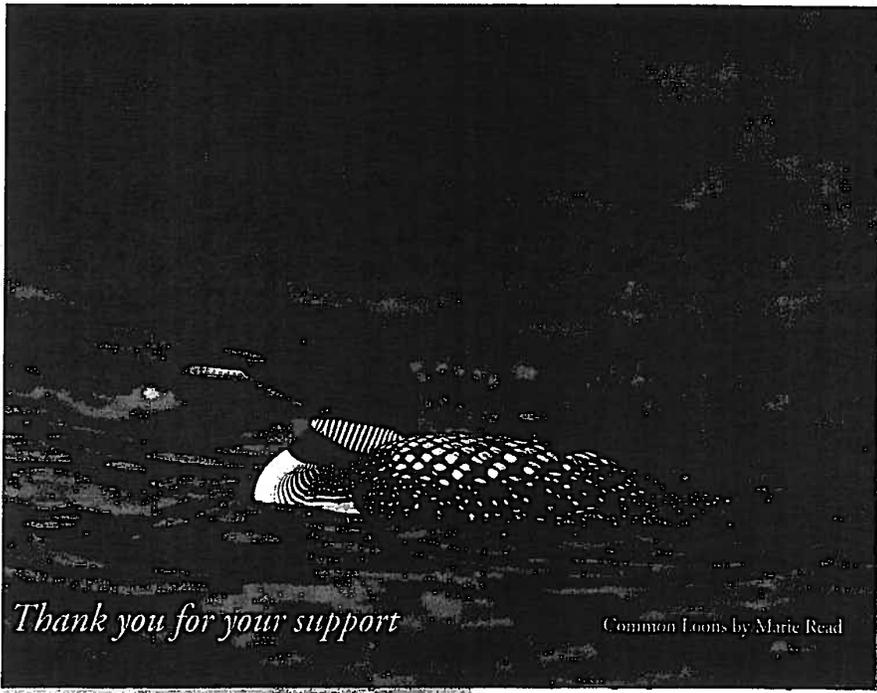


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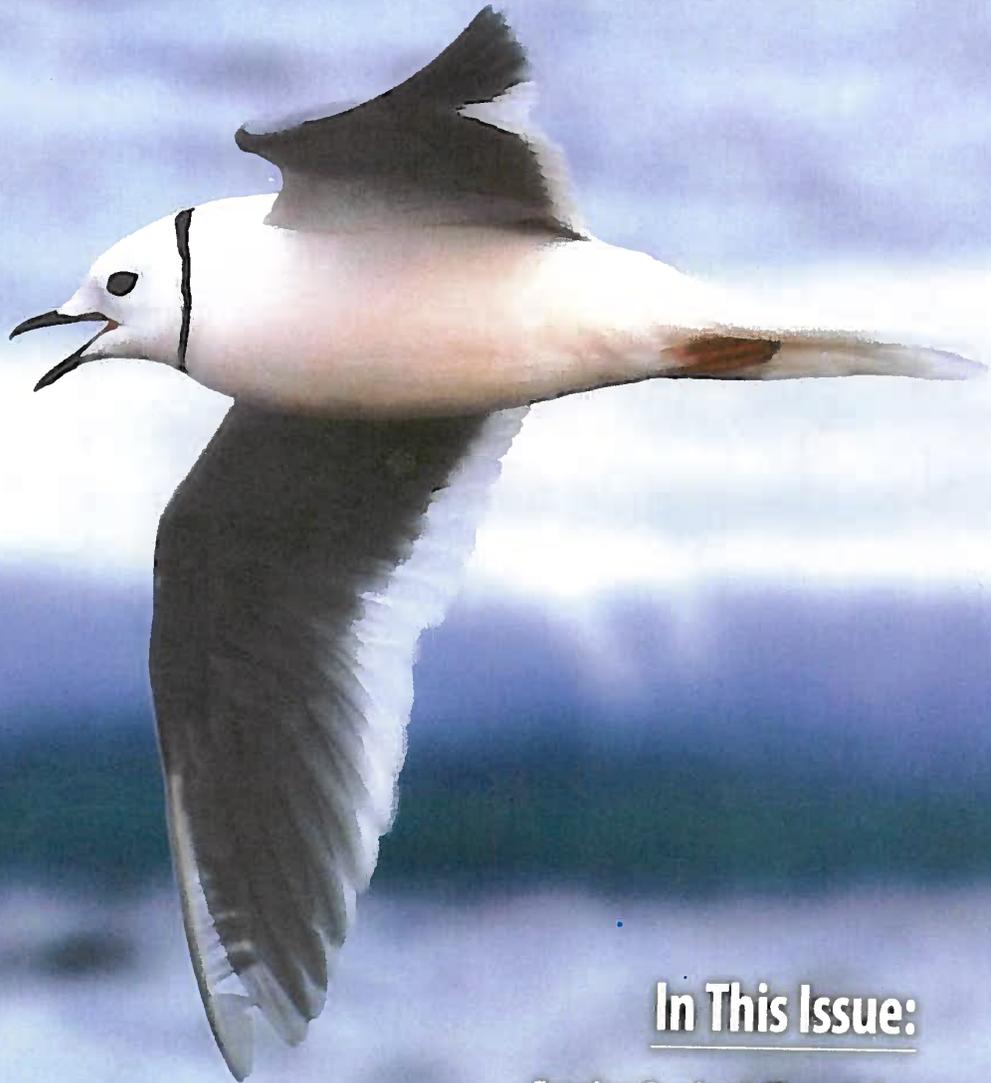
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Cover image: This adult **Ross's Gull** is on final approach to its nesting grounds at Nasaruvaalik Island, Nunavut.
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Learn more about the adventures and misadventures of those who seek Ross's Gulls in Canada's High Arctic:
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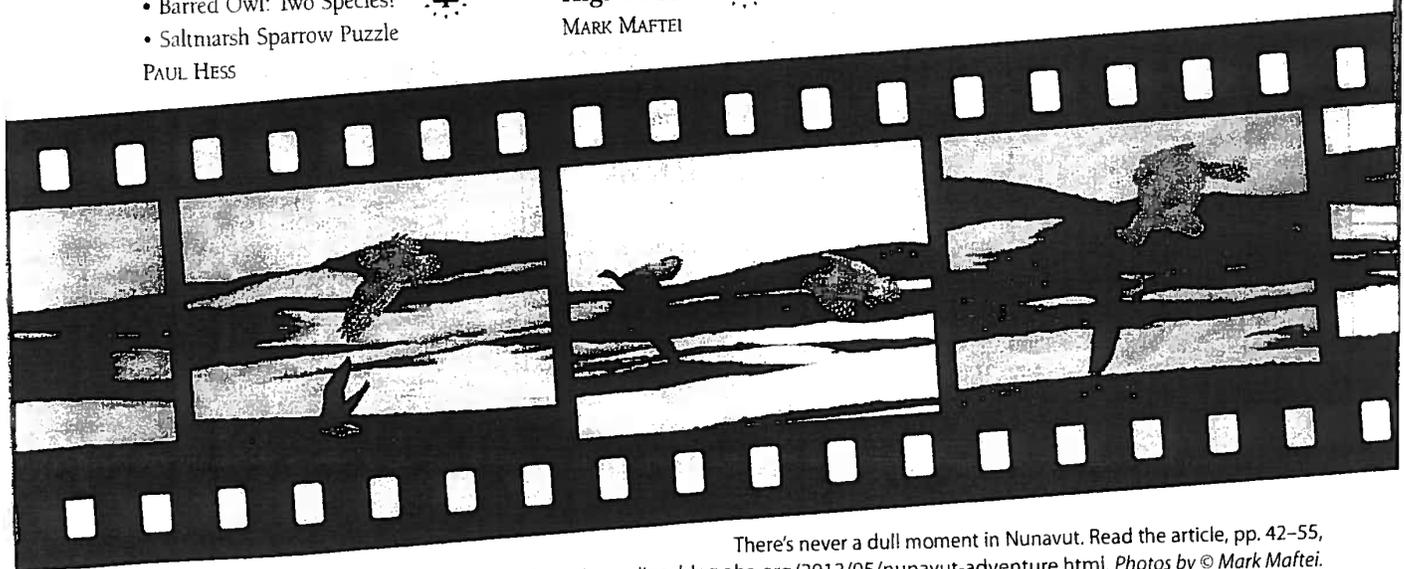
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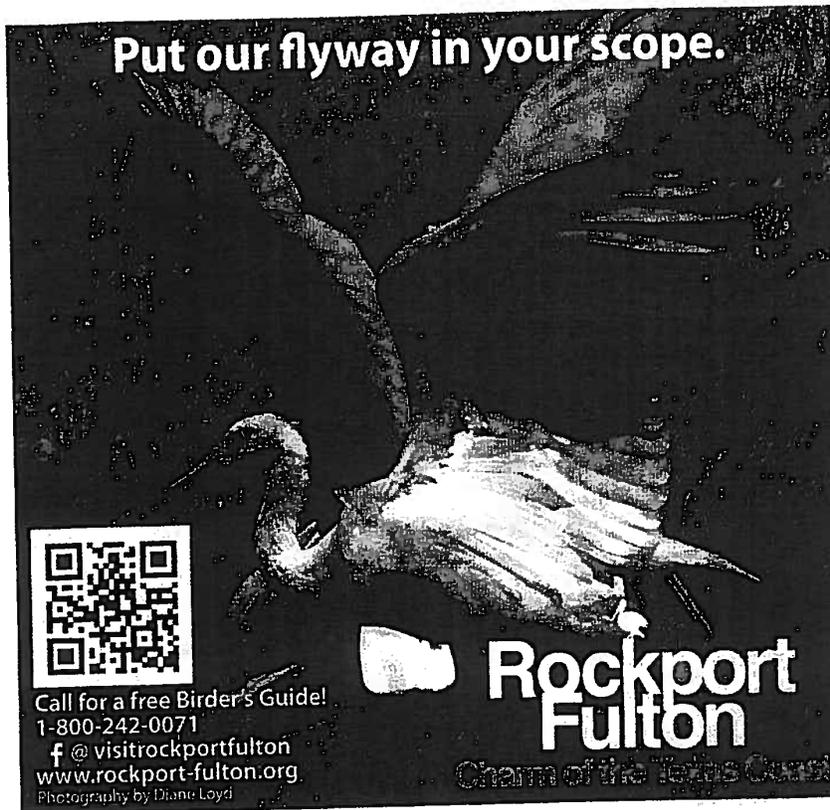
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GRANT MCCREARY

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There's never a dull moment in Nunavut. Read the article, pp. 42-55,
and join the discussion online: blog.aba.org/2012/05/nunavut-adventure.html. Photos by © Mark Maftel.

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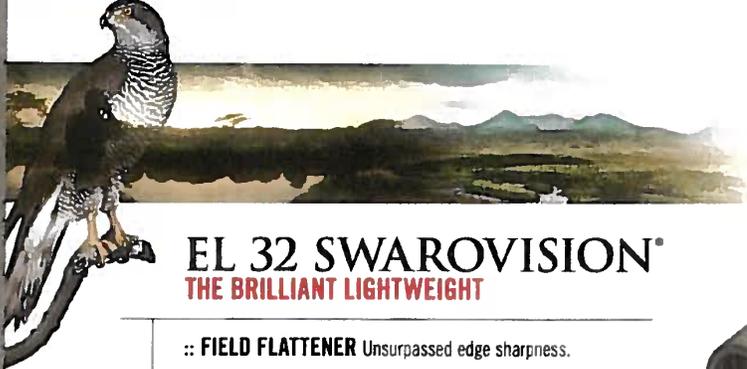
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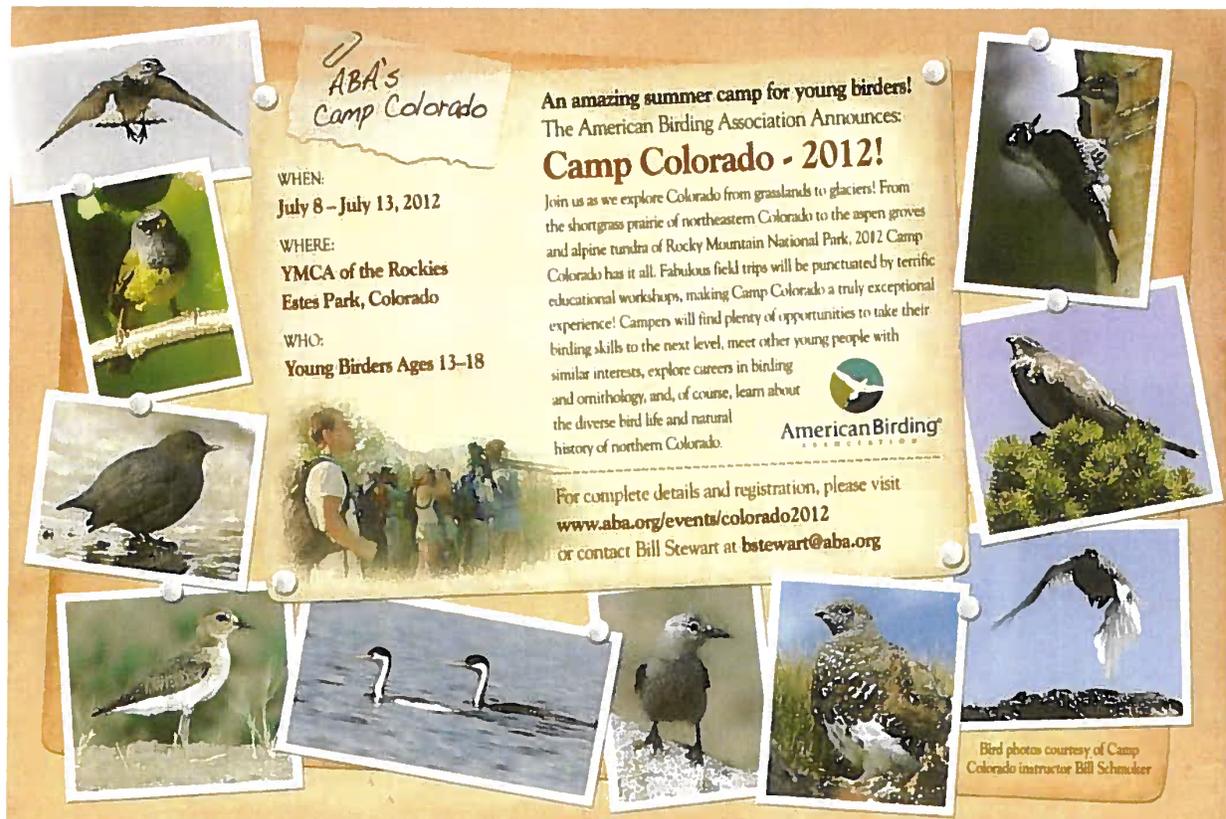
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Bird photos courtesy of Camp Colorado instructor Bill Schneider

BIRDING AT ITS BEST

DECLARE A FIRST PHOEBE DAY PG 24

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MARCH/APRIL 2012

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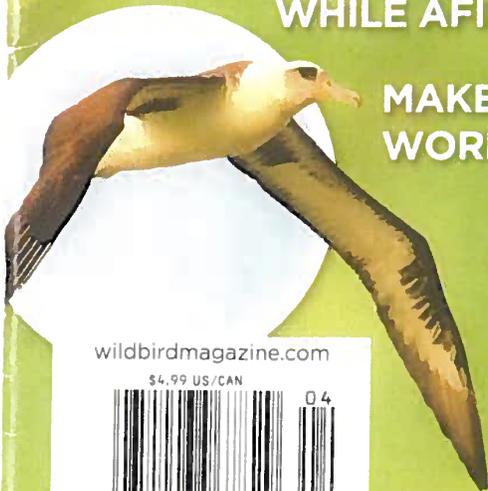
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BIRDING AT ITS BEST **WildBird**

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Black-chinned Sparrow

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Our Mission
 WildBird educates and entertains readers with useful details about North American birds and birding—in readers' back yards and in the entire Western Hemisphere. WildBird urges readers to share their appreciation for birds and to consider beginners' education and habitat conservation as means of ensuring avian species' survival.



Roseate Spoonbill (left) and Wood Stork by Maslowski Photo

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Join the movement to follow nature's calendar.
BY DON FREIDAY

26 24th Annual Photo Contest

Compete for fabulous prizes by entering two images per category before May 11.

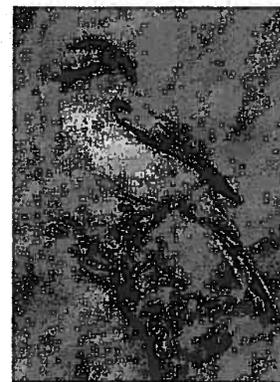
30 Travel Gear

Before your next outing near or far, see if these recent products will add to your comfort or productivity.



32 Sea Kayaking

California's Salton Sea offers a surreal site for birding.
BY CHUCK GRAHAM



ON THE COVER

Verdin by Alan Murphy
Photography.com

The unique, small bird lives all year in hot desert areas.

INSET: Laysan Albatross by Cliff Beittel; see page 10

EDITOR'S NOTE

New horizons

BY AMY K. HOOPER

Many bird species migrate to meet their needs, and it makes sense to me that we humans should move about regularly, too. I'm not sold on the idea of uprooting my life from one locale to live in another for months on end, though; the Southern California climate suits my needs just fine.

Despite that comfort level, I do see fit to travel regularly, as do many birders. We often go to unfamiliar sites to look for treasures — feathered or not — and to create memories. In this issue, we celebrate those quests that satisfy our urge for the unfamiliar and add more species to our memory banks.



Many of us can't leave home without our cameras. If you fit into that category, turn to page 26 for details about WildBird's 24th annual photo contest. Perhaps you've created an award-winning image during a previous journey... and maybe your prize-nabbing pic is just around the corner! The entry deadline is May 11, so you have plenty of time to snap avian models for this contest.

Before heading out the door, please make sure that you're prepared with appropriate clothing, food, gear and knowledge about the sites. You'll see why after reading the tale on page 20.

If you're in the market for travel gear, turn to page 30 for possible purchases that can make your journey more comfortable or productive. Other trip preparations naturally focus on the birds, and our homework increasingly uses technology. You'll find tech pointers on page 6.

During your adventures, please talk with nonbirders about the reasons for your visit. Traveling birders easily can spread the message about birds and conservation; learn how you can help on page 10.

If you haven't chosen a destination this year, turn to page 32 for a water-based view of a Southern California hotspot. Kayakers can enjoy a unique perspective on Salton Sea birdlife, but even shore-bound birders will encounter interesting species around and over the below-sea-level site.

Happy trails!

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WildBird

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| In re Registration No. 3,904,929 |) | |
| SHELTERED WINGS, INC. |) | |
| Petitioner, |) | Cancellation No. 92054629 |
| v. |) | |
| WOHALI OUTDOORS, LLC |) | |
| Respondent. |) | |

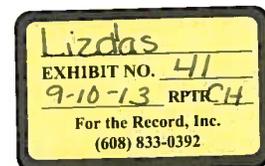
DECLARATION OF BEN LIZDAS

I, Ben Lizdas, declare as follows:

1. I am the Sales Manager of Eagle Optics, a division of petitioner, Sheltered Wings, Inc., and submit this declaration in support of petitioner’s opposition to Wohali Outdoors, LLC’s motion for summary judgment. I have been employed by Eagle Optics for 12 years, and have held my current position for 6 years. In my position as Sales Manager, I am responsible for coordinating the marketing activities of Eagle Optics and budgeting and tracking the company’s marketing expenses and efforts. I have personal knowledge of the facts in this declaration and, if called upon, I could and would testify to these facts.

2. The Eagle Optics company markets and promotes its EAGLE OPTICS brand in several ways: through advertisements in the primary industry publications; attendance and participation at trade shows and events; donations and sponsorships; Internet advertising and promotional activities; as well as through Eagle Optics’ blogs and newsletter.

3. Eagle Optics’ advertising and marketing efforts have grown over the years, in



correlation with the growth of the company. As an example of some of Eagle Optics' early advertising, group **Exhibit A** comprises true and correct copies of representative EAGLE OPTICS advertisements that were published in Bird Watcher's Digest from 1988 through 1992.

4. More recently, for example, in the last five years, Eagle Optics has regularly placed advertisements in each of the major print publications targeted towards bird watchers, such as Bird Watcher's Digest, Birding Magazine, Indiana Outdoor News, Living Bird Magazine, Michigan Birds and Natural History, and WildBird Magazine. Attached as group **Exhibit B** are representative copies of proofs of advertisements that were published in these publications from 2009 to the present.

5. Additional representative advertisements are also attached here. **Exhibit C** is a true and correct copy of an advertisement for EAGLE OPTICS' GOLDEN EAGLE binocular and an advertisement for a SWAROVSKI binocular sold by the EAGLE OPTICS store published in the July/August 2012 edition of Bird Watcher's Digest. **Exhibit D** comprises a true and correct copy of two advertisements published in the Spring 2012 edition of Living Bird magazine: one is an ad for the EAGLE OPTICS RANGER binocular, and one is an ad for a KENKO binocular sold by the EAGLE OPTICS store. **Exhibit E** is a true and correct copy of an advertisement published in the May 2012 edition of Birding magazine for a SWAROVSKI binocular sold by the EAGLE OPTICS store. **Exhibit F** is a true and correct copy of an advertisement published in the March/April 2012 issue of WildBird magazine for a NIKON binocular sold by EAGLE OPTICS.

6. We also promote and market the EAGLE OPTICS brand through our attendance and participation at trade shows, festivals, and other events. For example, Eagle Optics representatives regularly attend and staff a booth at events including:

- Space Coast Birding and Wildlife Festival in Titusville, Florida
- Port Aransas Whooping Crane Festival in Port Aransas, Texas
- Chicago Audubon Society's Birding America event in Chicago, Illinois
- San Diego Bird Festival
- Canoecopia in Madison, Wisconsin
- Galveston Featherfest in Galveston Island, Texas
- Eagle Optics Days with Houston Audubon Society at High Island, Texas
- Florida's Birding and Fotofest, St. Augustine, Florida
- The Biggest Week in American Birding: Magee Marsh, Oak Harbor, Ohio
- Kachemak Bay Birding Festival, Homer, Alaska
- Detroit Lakes Festival of Birds, Detroit Lakes, Minnesota
- Rockport Hummingbird Festival, Rockport, Texas
- Midwest Birding Symposium, Lakeside, Ohio
- ABA (American Birding Association) Half Moon Bay, California
- Rio Grande Valley Bird Fest, Harlingen, Texas
- Festival of the Cranes at Bosque Del Apache, Socorro, New Mexico

7. Attached as **Exhibit G** are several images showing our EAGLE OPTICS booths at various tradeshow events in 2011 and 2012.

8. Some of the larger of these events and festivals include the Rio Grande Valley Bird Fest (attended by about 4,000 in 2011); Midwest Birding Symposium (attended by about 1,000 in 2011); The Biggest Week in American Birding (attended by about 32,000 in 2011); Space Coast (attended by about 5,300 in 2011); and Canoecopia (attended by about 25,000 in 2011).

9. As part of its promotional and marketing efforts, and to be a good citizen in the outdoor and bird watching communities, Eagle Optics also makes donations of money and products to certain organizations in the bird watching and hunting markets, and sponsors certain events and activities in these markets. For example, in 2011, Eagle Optics made donations to the 91 organizations listed in **Exhibit H**. Each of these donations was publicly acknowledged in programming materials offered by the recipient. Although the recipients of donations from Eagle Optics will vary a bit from year to year, the above list is typical of our donations in the last

five years.

10. Eagle Optics also does special donations or participates in partnerships with certain organizations on a case-by-case basis. For example, in 2003, Eagle Optics partnered with Operation Migration which promotes conservation and reintroduction of Whooping Cranes, an endangered bird species. As shown in **Exhibit I**, which was a highlight in the 2003 Eagle Optics catalog, Eagle Optics outfitted the volunteers of Operation Migration with binoculars and a spotting scope for their field operations and observations.

11. Another example is that Eagle Optics made a special edition PELICAN binocular to commemorate the U.S. Fish & Wildlife Service's centennial celebration of the Pelican Island National Wildlife Refuge in 2003. The profits from the sales of the PELICAN binocular were donated to the National Wildlife Refuge System, and EAGLE OPTICS was acknowledged in programming materials for the centennial celebration, in advertising, and with an award from the National Wildlife Refuge System. **Exhibit J** is a copy of the programming materials; **Exhibit K** is a copy of an EAGLE OPTICS advertisement for the PELICAN binocular; and **Exhibit L** is an image of Eagle Optics' National Wildlife Refuge System Centennial Partnership Award.

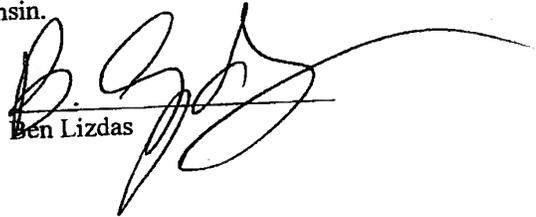
12. In addition to the promotional activities above, Eagle Optics also engages in several types of Internet advertising. For example, Eagle Optics places advertisements with Internet news providers and blogs, such as OutdoorNews.com and 10000Birds.com. Eagle Optics also purchases ads on Internet search engines such as Google, Yahoo! and Bing. Eagle Optics has a Facebook page with more than 4900 fans, and has a YouTube account where it has several instructional and promotional videos, collectively having more than 350,000 views since March 2008.

13. Eagle Optics also publishes its own newsletter, which is distributed to 16,000

people weekly, and its own blogs, such as the "Eagle Optics Blog" at www.eagleopticsblog.com, the "Birding Binoculars Q&A" at www.birdingbinoculars.com, and the "Binocular Reviews" at www.binocularreviews.org. Eagle Optics' main website at www.eagleoptics.com, and its blog websites receive approximately 41,000 unique visitors each month.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

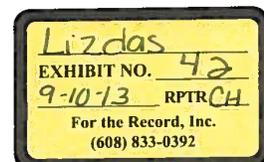
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Ben Lizdas

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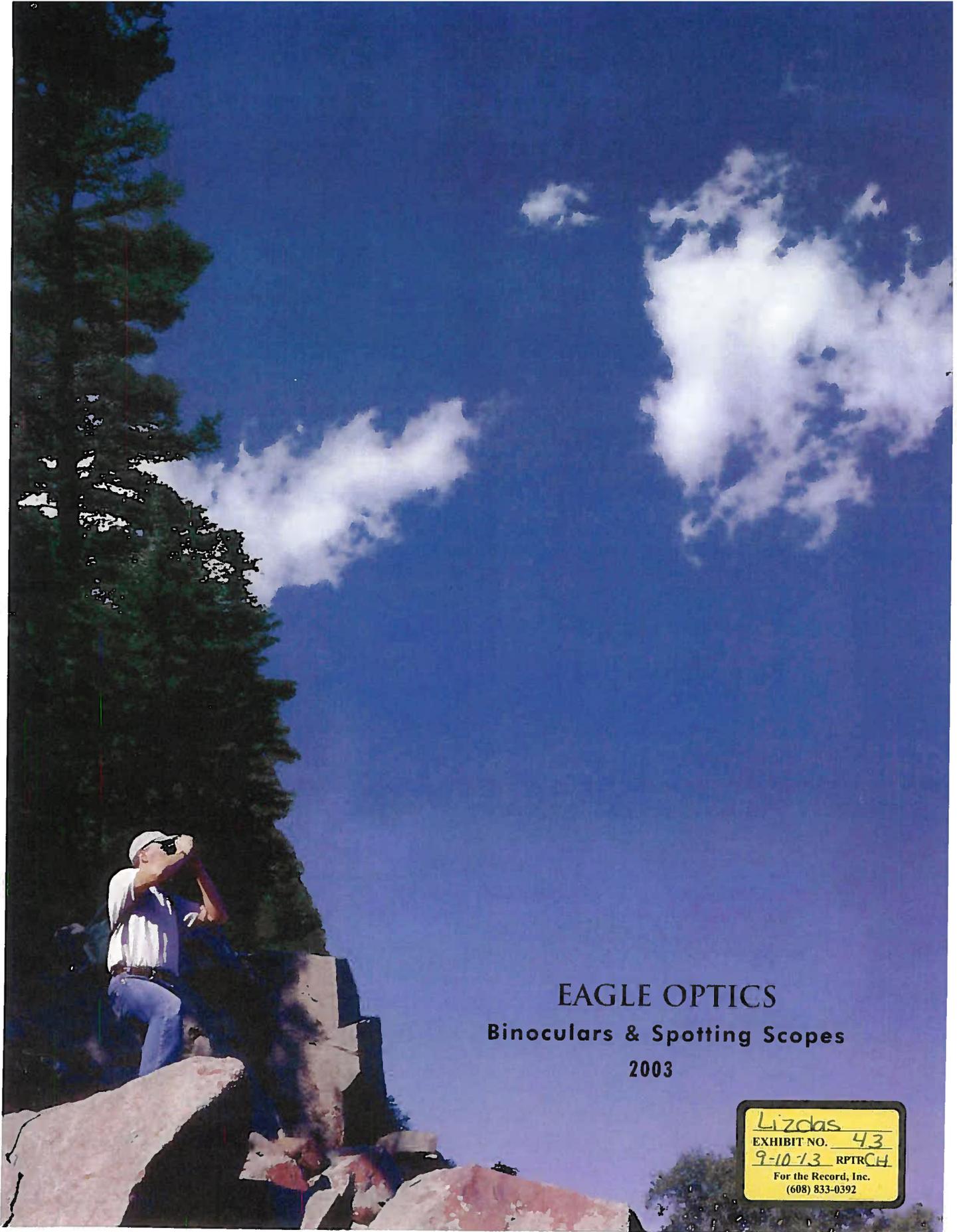
Exhibit H—2011 Donations

- American Birding Association
- Aldo Leopold Nature Center, WI
- Amos W. Butler Audubon
- Ascutney Mountain Audubon, VT
- Ballard Nature Center, IL
- Benefit for the Birds, DE
- Bluebirds Across Nebraska TAK-Along Project, NE
- Black Swamp Bird Observatory, OH
- Bird Watcher's Digest for Midwest Birding Symposium, OH
- Cache River Festival, IL
- Coastal Bend Audubon Society
- Columbus Audubon Fundraiser, OH
- CraneFest, MI
- Detroit Lakes Festival
- Discover Center Manitowish Waters Bird Fest, WI
- Driftless Area Land Conservancy, WI
- Eagle Bluff Environmental Center, MN
- Environmental Learning Program, WI
- Fish and Wildlife Foundation
- Four Lakes Wildlife Center, WI
- Gathering Waters, WI
- Gulf Coast Bird Observatory, TX
- Hawk Mountain, PA
- Hawk Ridge Birdathon, MN
- Hawk Watch
- Hawkins Preserve Festival, CO
- HawkWatch International, UT
- Headwaters Science Center
- Houghton Mifflin, MA
- Houston Audubon
- Houston Audubon Birdathon, TX
- Houston Nature Center Festival of the Owls, MN
- IA State, IA
- IATTE, FL
- International Crane Foundation Birdathon, WI
- Kachemak Bay, AK
- Kickapoo Reserve, WI
- Klamath-Siskiyou Wildlands Center, OR
- Loudoun Conservancy, VA
- Love Creek Nature Center Birdathon, MI
- M&I Golf Outing, Ronald McDonald House, WI
- Madison Audubon, WI



- Merritt Island Visitor Center, FL
- Middleton Fire Department Annual Festival and Raffle, WI
- Montezuma National Wildlife Refuge, NY
- North American Nature Photography Association Foundation Auction, CO
- National Resources Foundation, WI
- New River raffle, WV
- NYC Audubon, NY
- Ohio Young Birder's Conference, OH
- Operation Migration, WI
- Pheasants Forever Auction
- Pheasants Forever, WI
- Pipestem Creek Ann Festival, ND
- Port A Festival Sponsorship, TX
- Prairie Chicken Festival, OK
- Prairie Enthusiasts Raffle
- Point Reyes Bird Observatory, CA
- Project Wild Backyard Bird Packages, NE
- Queen City Festival, IN
- Raymondville Chamber Wild in Willacy Fest, TX
- Rio Grande Valley Bird Fest Kids Programs, TX
- Rio Grande Valley Bird Fest Quiz Show, TX
- Rio Grande Valley Bird Fest Sponsorship, TX
- River Alliance, WI
- Riverside High School, WI
- Rocky Mountain Bird Observatory, CO
- Roger Tory Peterson Festival, NY
- Sierra Club
- Simple Hope, WI
- Space Coast Festival, FL
- South Padre Island Nature Center, TX
- Strawberry Plains Audubon
- The Wetlands Initiative, IL
- Todd Johnson Memorial Fund Silent Auction, WI
- Travis Audubon Awards Luncheon, TX
- University of Alaska, Fairbanks, AK
- Valley Nature Center, TX
- Ventana Wildlife Society Wings Over the World, CA
- West Virginia Wild Game Dinner, WV
- White Mountain Nature Center, AZ
- WI Falconer's Association, WI
- WI Public Television
- WI River Sportsmen's Club Fundraiser, WI
- WI Wetlands Association, WI
- Wildlife Habitat Council, MD

- Wings Over the Hills Vendor Registration, TX
- Women in Outdoors Conference, WI
- Woodland Dunes Nature Center, WI
- Whitefish Point Bird Observatory Birdathon, MI
- Young Birder Competition, CO



EAGLE OPTICS
Binoculars & Spotting Scopes
2003

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The Eagle Optics Difference

So maybe you already have binoculars—sitting in the closet, on the bookshelf, in the trunk of the car . . . there are reasons you aren't using them!

1. They weigh too much to be used comfortably.

In years past, binoculars were constructed using brass and steel—this made them tough (and tough-looking!), but not very handy. Modern optics use lightweight materials to maximize durability and make the binoculars something you enjoy taking outdoors. Titanium-alloy, aluminum, magnesium, and polycarbonates are the building materials of today. If you think of binoculars as "heavy", then you'll understand the difference when you put a pair of Eagle Optics binoculars in your hands.

2. They don't work like they used to.

It shouldn't be difficult to get a singular image out of binoculars—and it certainly shouldn't hurt to look through them. A binocular has precision-aligned lenses and prisms. This means it is an inherently fragile system. A good whack can knock many cheaply made binoculars "out of alignment". This means the barrels are no longer pointing at the same position—in practical terms you would see a "double-image" or your eyes would feel strained when looking through them. A well-made binocular is engineered to take the force of most accidents and keep on working. Eagle Optics binoculars are well-made, built to perform optimally for a lifetime of use.

3. They're old and outdated.

The manufacturing of optical equipment is a high-tech industry and, similar to computers, has seen many advancements in the last two decades. Prior to these advancements, most inexpensive binoculars were of only marginal quality. The technological advancements of the last twenty years have allowed Eagle Optics to create high quality optics with very reasonable prices.

Since we all play outdoors at Eagle Optics, we keep it simple—we build optical instruments to use in the field ourselves. A crisp, bright optical image with a modest price tag is what we demand and is what we now offer to you.

4. They just aren't the right size or style.

Binoculars vary in size and magnification. Compact binoculars are ideal for travel and hiking while full-size models offer brighter images—ideal for wildlife observation and use in low-light. Choosing the right binoculars can be similar to selecting the right shoes. You wouldn't play tennis in hiking boots and you probably won't hit the trails often if you've got two pound binoculars around your neck.

Call us toll-free at **800-289-1132**—we can help you choose the best binoculars for your needs. The folks that answer our phones are the same ones who work on designing our optics and testing them in the field.

Inside Eagle Optics

Binoculars

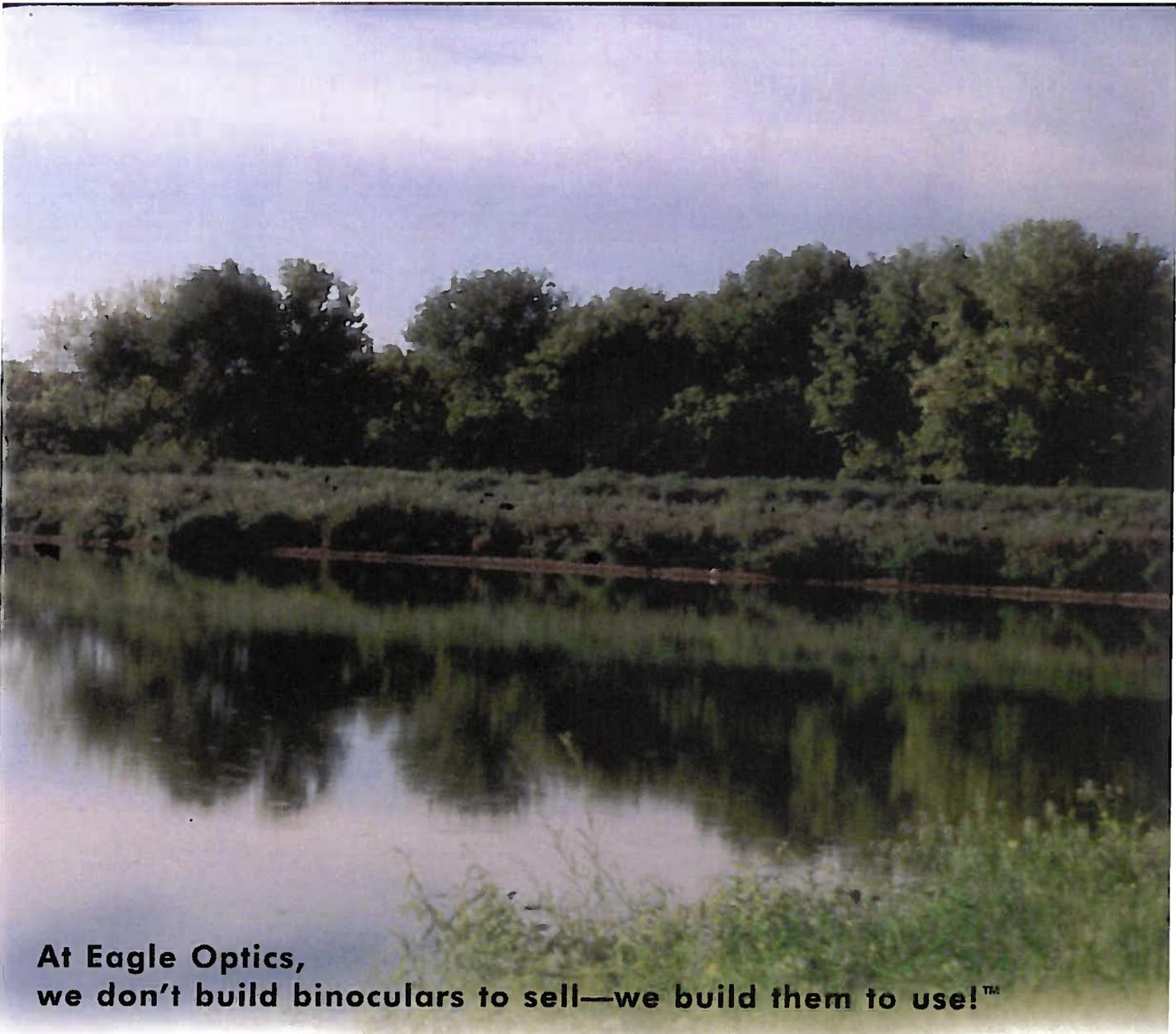
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we don't build binoculars to sell—we build them to use!™**

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All of our optical equipment has a money back guarantee for 30 days after your purchase. Beyond that, Eagle Optics will warranty all of our optical equipment against manufacturing defects and workmanship for a lifetime.

At Eagle Optics, we proudly stand behind every product that bears our name. Try one and you'll understand why!

The Eagle Advantage

Eagle Optics understands that accidents happen, and your optical equipment may sometimes suffer minor (or major) damages. For this reason we created The Eagle Advantage.

Included with most Eagle Optics products, the Eagle Advantage allows you **one** opportunity to service your binoculars or spotting scope for just \$20 (plus return shipping & handling) regardless of the extent of the repair or the cause of the damage. The Eagle Advantage does not apply to lost or stolen binoculars.



Three Convenient Ways to Shop

Call us toll-free at 1-800-289-1132 for answers to your product questions and to place orders.

Online at www.eagleoptics.com for product information and ordering on our secure site.

Visit a Wild Birds Unlimited store near you. Locations and phone numbers are listed on the Order Form found in the center of this catalog.

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Hope takes wing...



Eagle Optics is the official optics sponsor of Operation Migration. Eagle Optics outfits the volunteers of Operation Migration with binoculars and a spotting scope for their field operations and observations. We are proud to be affiliated with the amazing people and organizations cooperating in this historic initiative.

Find out more about the current Operation Migration initiatives at www.operationmigration.org.



Eagle Optics logo as seen on pilot Deke Clark's ultralight.

Fewer than 400 Whooping Cranes remain between survival and extinction. The creatures that taught us the art of flying need our help...how can we refuse?

Historical estimates indicate approximately 1400 whooping cranes existed in the 1800's when their range included a good portion of North America. Their population declined because of unregulated hunting and habitat destruction until 1941 when the last migrating flock dwindled to an alarming low of 15 birds. Since then, this wild population has slowly increased and currently stands at slightly fewer than 200 individuals.

This last, naturally occurring flock winters at the Aransas National Wildlife Refuge on the Gulf coast of Texas. Each spring they migrate north, traveling more than 2500 miles to breed and raise their young in the remote wetlands of the Wood Buffalo National Park in Northern Alberta and the Northwest Territories of Canada.

Wildlife officials and biologists have long recognized the risk of having all of the wild whooping cranes using just one wintering and breeding location. With these remaining cranes concentrated in one small area, the entire population could be wiped out by disease, extreme weather, or human impacts. Whooping crane survival depends on additional, distinct populations.

In 1993, efforts began to introduce a non-migratory flock in central Florida. Whooping cranes, raised in captivity at several captive breeding centers in the United States and Canada, were released into the Kissimmee Prairie region, south of Orlando. This resident flock currently contains approximately 100 cranes.

In 1999, the Canada/U.S. Whooping Crane Recovery Team sanctioned Operation Migration's ultralight aircraft migration technique as a viable method of reintroducing a migrating population of whooping cranes into eastern North America. Accomplishing this would fulfill the mandate of the recovery team and eventually lead to the downlisting of this endangered crane.

The whooping crane chicks that Operation Migration used had no training for their important fall migration, so their handlers embarked on a five-month training season at the Necedah Wildlife Refuge in Wisconsin. Operation Migration pilots and handlers spent each day conditioning the young birds to accept and follow the small ultralight aircraft in flight.

This conditioning process utilizes the bird's natural instinct of imprinting. Pilots, dressed in costumes to mask their human form used puppets resembling adult cranes to interact with the young birds, eventually leading them in flights over the wetlands of central Wisconsin.

Following a "dress rehearsal" ultralight-led migration using non-endangered sandhill cranes in 2000, the stage was set to lead the first flock of whooping cranes south. On October 17th, 2001 three Ultralight airplanes lifted off from the Necedah Wildlife Refuge in central Wisconsin—followed closely by a small flock of imprinted whoopers.

On each day weather allowed, the Operation Migration pilots and handlers would guide the birds along their new migration path, which took them through Wisconsin, Illinois, Indiana, Kentucky, Tennessee, Georgia, and half-way through Florida to the central west coast and the remote island where the cranes spent the winter on the Chassahowitski National Wildlife Refuge.

During the winter months, two of the cranes succumbed to bobcat predation. The remaining five whooping cranes initiated their return migration north on April 9th, 2002—unassisted. Eleven days later they arrived at their fledging grounds in Wisconsin from where they had first flown alongside their mechanical surrogate.

This small flock represents the first migratory whooping cranes in the skies over eastern North America following an absence of more than a hundred years.

Although this work is a major milestone in the conservation of whooping cranes, in a larger sense it encourages others to step forward and do their part. It demonstrates that small grass roots organizations can work hand in hand with government agencies on an international level and, together, can accomplish what neither could achieve alone.

This amazing and important whooping crane reintroduction effort will continue for another 4-5 years with Operation Migration leading a new cohort of young cranes south each fall.

What you can do to help:

Operation Migration needs your help to continue this historical journey for the survival of the Whooping Crane. Purchase a membership or send a tax-deductible contribution by calling 1-800-675-2618, or if you prefer, send donations to either:

Operation Migration-USA
PO Box 868
Buffalo, New York 14207

Operation Migration
PO Box 280
Blackstock, Ontario L0B 1B0



U.S. Fish & Wildlife Service



Pelican Island
NATIONAL WILDLIFE REFUGE
Centennial



*March 13-16, 2003
Event Program*



**100 years of Pelican Island and
the National Wildlife Refuge System**



SW02835

U.S. Fish & Wildlife Service



Harvard College Library

President Theodore Roosevelt

March 14, 1903— the day that changed the history of wildlife conservation in America. On that day, President Theodore Roosevelt issued an Executive Order establishing Pelican Island, located along the east coast of Florida, as a federal bird reservation. This act marked the first time that the federal

government set aside land for the primary purpose of conserving wildlife. Pelican Island and the refuges that followed would become America's only network of lands dedicated to wildlife conservation.

A century later, there are 540 national wildlife refuges protecting nearly 100 million acres of habitat across America. From bison to butterflies, and salmon to sandhill cranes, national wildlife refuges conserve land for more than 1,000 species of fish and wildlife. Refuges provide unparalleled recreational activities, including hunting, fishing, and wildlife observation. More than 35 million people visit national wildlife refuges each year to enjoy the wonders of nature.

The U.S. Fish and Wildlife Service, The Pelican Island Preservation Society, and our many partners and sponsors are proud to welcome you to the Celebration of a Century of Conservation and the 11th Annual Pelican Island Wildlife Festival. Join us as we begin a second century of wildlife conservation.



SW02836

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Paul Kroegel, a German immigrant who settled in Sebastian, Florida in the late 1800s, was the first person to take an interest in protecting the pelicans and other birds of Pelican Island. He worked with noted conservationists of the day to help convince President Theodore Roosevelt to establish Pelican Island as our nation's first federal bird reservation. Kroegel became the first national wildlife refuge manager, for which he was paid \$12. He stayed at his post until 1926. After being retired from federal service, Kroegel remained in Sebastian, where he died in 1948.



George Nelson

SW02837

Centennial Kick-off Events
Sunday, March 9 - Thursday, March 12

Sunday, March 9

12:00 noon - 4:00 pm

Ecofest

Environmental Learning Center, Wabasso

A pre-Centennial event featuring Pelican Island and the natural history of the Indian River Lagoon.

Wednesday, March 12

1:05 pm

Pelican Island Day

Dodgertown, Vero Beach

Learn about Pelican Island National Wildlife Refuge while watching the The I.A Dodgers take on the New York Mets in a spring training match up. For ticket information, visit www.vbdodgers.com or call 772/569 4900.

Thursday, March 13

National Wildlife Refuge System

Time Capsule Exhibit Dedication

Indian River Mall, Vero Beach

12:30 - 1:00 pm

Bald Eagle Demonstration

Featuring Challenger the Bald Eagle

1:00 - 2:00 pm

Time Capsule Exhibit Dedication Ceremony

- U.S. Fish and Wildlife Service Director Steve Williams will unveil an exhibit showcasing artifacts from some of America's 540 national wildlife refuges.
- Entertainment by the Peabody Orlando Ducks and Jim Foote as Theodore Roosevelt.

2:00 - 4:00 pm

Centennial Activity Areas

- Tours of the National Wildlife Refuge System Time Capsule Exhibit by Dr. Mark Madison, U.S. Fish and Wildlife Service National Historian.
- Waldenbooks will host Edmund Morris, Winner of the Pulitzer Prize and author of *Theodore Rex*, and Karen Hollingsworth, whose photographs are featured in the new *Smithsonian Book of National Wildlife Refuges*, at a special Centennial book signing.
- Have your photo taken with the Blue Goose, symbol of the refuge system.
- Pelican Island Preservation Society raffle.
- Public exhibition of Pelican Island Wildlife Festival Youth Poster Contest and Pelican Island Commemorative Stamp coloring exhibition.

Centennial Celebration
Friday, March 14
Riverview Park, Sebastian

10:00 am - 12:00 noon

National Wildlife Refuge System Centennial Celebration

A celebration of American wildlife conservation hosted by Jack Hanna of *Jack Hanna's Animal Adventures* and featuring Voices of Liberty from the Walt Disney World® Resort, local singer Jernie Talles, and Jim Foote as Theodore Roosevelt. Also features a fly-over by Challenger the bald eagle, live wildlife demonstrations by Jack Hanna, the Sebastian River High School Band and video programs showcasing the National Wildlife Refuge System.

12:00 noon - 1:00 pm

Centennial Ceremony and U.S. Postal Service Commemorative Stamp First Day of Issue Ceremony
 Secretary of Interior Gale Norton, U.S. Fish & Wildlife Service Director Steve Williams, and other conservation dignitaries are joined by the U.S. Postal Service to mark the 100th anniversary of Pelican Island National Wildlife Refuge and the National Wildlife Refuge System.

7:00 pm

Arlo Guthrie Concert

A free public concert featuring Pete Harris and Sebastian's own Arlo Guthrie. Sponsored by the Sebastian Area Chamber of Commerce.

9:00 pm

Fireworks Show

Sponsored by the City of Sebastian.

Special Exhibit Areas

- Visit the U.S. Postal Service booth to purchase Pelican Island National Wildlife Refuge Commemorative Stamp T-shirts, pins, tote bags, caps and cachets. Riverview Park is the only place in the country where the first day cover for this stamp is available.
- Don't miss an opportunity to talk with U.S. Fish and Wildlife Service staff from around the country, who will have exhibits about national wildlife refuges and other Service programs. Open 10:00 am - 2:00 pm
- See the Exhibition of Flags along Indian River Drive. All 540 national wildlife refuges and wetland management districts in the National Wildlife Refuge System are represented. Flags were sponsored in part by refuge staff, refuge Friends groups and volunteers of national wildlife refuges. For a list of refuges and wetland management districts whose flags were sponsored, go to pelicanisland.fws.gov.

Food vendors at Riverview Park throughout the day.

**Pelican Island National Wildlife
Refuge Commemorative Stamp**



The United States Postal Service will issue a Pelican Island National Wildlife Refuge commemorative stamp on March 14, 2003 to honor the Centennial Celebration of the National Wildlife Refuge system of the U.S. Fish and Wildlife Service.

Affix stamp here

In conjunction with the National Centennial Celebration on March 14, 2003, the U.S. Postal Service will hold a First Day of Issue Ceremony at Riverview Park in Sebastian, Florida. This will be the first day this first-class stamp is sold, and on that day, Sebastian will be the only place in the country the stamp can be purchased and canceled. For each new stamp, the U.S. Postal Service generally selects a specific location as the place for the first day of issue dedication ceremony and the first day postmark. The new stamps generally are only sold in this location on the day of issue, and go on sale at post offices around the country the following day.

The stamp features a photograph of a brown pelican by Dr. James Brandt. Pelican Island first garnered national attention in the early 1900s as the last breeding ground for brown pelicans on the east coast of Florida. It was this national attention that led President Theodore Roosevelt to establish Pelican Island as the first official national wildlife refuge in the United States.

The commemorative stamp is a 37-cent First Class stamp with text at the bottom which reads "Pelican Island National Wildlife Refuge 1903-2003." The issuance of this stamp by the U.S. Postal Service signifies the importance of this event in American history.

Carl T. Herrman is the art director for the commemorative Pelican Island stamp and has been an Art Director for the U.S. Postal Service since 1992.

For more information on commemorative stamps and the U.S. Postal Service, go to www.usps.com.

Centennial Celebration Sponsors and Partners

- AMC Indian River 24 Theaters
- City of Sebastian
- "Ding" Darling Wildlife Society
- Disney's Vero Beach Resort
- Dodgertown
- Environmental Learning Center
- Eagle Optics
- FLAUSA
- Florida Floor Fashions
- Florida Today
- Indian River County
- Indian River County Chamber of Commerce
- Merritt Island National Wildlife Refuge
- National Fish and Wildlife Foundation
- Orchid Island Juice Company
- Pelican Island Elementary School
- Pelican Island Preservation Society
- Press Journal
- Sebastian Airport
- Sebastian River Area Chamber of Commerce
- Sebastian River Boat Tours
- Sebastian River High School
- Sebastian River Medical Center
- School District of Indian River County
- Simon-Indian River Mall
- The Conservation Fund
- Treasure Coast Refuse
- U.S. Fish and Wildlife Service
- U.S. Postal Service
- Vero Beach Book Center
- VisitTitusville.com
- Waldenbooks
- Walt Disney World Co.
- WAVE Country 92.7 FM
- WGYL - FM 93.7

Pelican Island Wildlife Festival
Saturday, March 15; 9:30 am – 4:00 pm
Riverview Park, Sebastian



Saturday's Features

- Jack Hanna of *Jack Hanna's Animal Adventures* Live Wildlife Show, 12:00 noon
- U.S. Postal Service Pelican Island Commemorative Stamp Booth
- Special Centennial Book Signings at the Vero Beach Book Center Booth
- Public Exhibition of the Photography Contest Entries and the Student Poster Contest Entries
- Centennial Raffle at the Pelican Island Preservation Society Booth; items include:
 - Spotting scope with tripod and scope carrier; Commemorative Centennial "Pelican" Binocular; Birder's vest; and Field Guide donated by Eagle Optics
 - Kayak, paddle and life jacket donated by Kayaks etc.

*Raffle proceeds support refuge projects.
Drawing Sunday at 3:00 pm.*

See map on back cover for location of all events.

Main Stage

9:30 am

Opening Ceremonies and Welcome by Paul Tritaik, Refuge Manager, Pelican Island National Wildlife Refuge

9:45 am

Release of a rehabilitated brown pelican

10:00 am

Ma Jaya River School Music Ensemble

11:00 am – 11:15 am

The Feather Wars Skit

11:15 am – 11:40 am

Keynote Speech: Jim Foote as President Theodore Roosevelt

12:00 pm – 1:00 pm

Live Wildlife Presentation by Jack Hanna of *Jack Hanna's Animal Adventures*

1:00 pm

Live music by The Shade Tree Pickers – *Bluegrass*

1:45 pm

Live music by Blue Eyed Monsters – *The Story of Pelican Island Song and other Contemporary Music*



Jack Hanna

© Rick Probst



2:30 pm
Live music by Rich Mermer and Larry Smith –
Finger style guitarist and instrument builder

3:15 pm
Live music by Charlie Cowles
Guitarist and master musician

Center Stage

1:00 pm
100th Birthday Party for Pelican Island
National Wildlife Refuge – cake served

2:30 pm
Live Birds of Prey Presentation
The Avian Reconditioning Center, Scott and Carol
McCorkle, Falconer and Wildlife Rehabilitators

Kid's Activity Area

Environmental Education Activities

10:00 am – 4:00 pm

- Earn a Jr. Refuge Manager Badge
- Make Centennial Wildlife Buttons
- Make a Manatee
- Bird Beaks
- Mama Fauna's Pizzeria
- Fossil Find
- Wildlife Puppet Show
- Migration Headaches

Wildlife Seminars

10:00 am – 11:00 am

Pelicans and Other Water Birds of Pelican Island
Steve Nesbitt, Florida Fish and Wildlife Conservation
Commission

11:30 am – 12:30 pm

The Great Florida Birding Trail
Lori Haynes, Florida Fish and Wildlife Conservation
Commission

1:00 pm – 2:00 pm

"Let's Go Wild"

A Multimedia Presentation of the National Wildlife
Refuge System – Karen Hollingsworth (Don't miss
Karen at the Centennial book signing.)

Saturday, March 15; 9:30 am – 4:00 pm

2:30 am – 3:30 pm

The History of Pelican Island

Paul Tritaik, Refuge Manager, and
Ruth Stanbridge, County Historian

Boat Tours

*Sponsored by Harbor Princess Touring Adventures.
Tickets and departure at the Yacht Club across from
Riverview Park.*

Every 1/2 hour from 10:00 am – 3:30 pm

Pelican Island Tour (1 hour)

Tours sold on first come, first serve basis: \$5/person

Kayak Tours

Sponsored by Kayaks etc.

9:30 am and 1:00 pm

**Pelican Island Eco-tour (2 1/2 hours, weather
dependent): \$20/person**

Every hour from 10:00 am – 3:00 pm

Indian River Lagoon Spoil Island Tours (1 hour)

\$10/person

All day from 10:00 am – 4:00 pm

Free Kayaking Demonstrations

At The Environmental Learning Center (ELC)

Kenn Kaufman (nationally known birder and conservationist)

*Directions: From Wabasso on US1, turn east on CR 510.
Turn right on Wabasso Island Lane before the tall
bridge. FLC is on the right.*

3:30 pm – 4:30 pm

Butterfly Seminar: A Birder Looks at Butterflies

5:00 pm – 6:30 pm

Pelican Island Sunset Bird Watching Boat Tour

At Pelican Island National Wildlife Refuge

Pelican Island Viewing Area First Day of Opening

The Centennial Trail and Observation Tower
to view Pelican Island

Open from 7:30 am to sunset

*Directions: US 1 to 510 east to A1A. 3.7 miles north on
A1A, turn left onto Historic Jungle Trail, .6 miles, turn
right into the Viewing Area.*

Sunday, March 16; 9:30 am – 4:00 pm

Sunday's Features

- Jim Fowler of *Wild Planet*
Live Wildlife Show, 12:00 pm
- U.S. Postal Service Pelican Island
Commemorative Stamp Booth
- Special Centennial Book Signings at the
Vero Beach Book Center Booth
- Public Exhibition and Awards Presentation of the
Photography Contest Entries and the Student Poster
Contest Entries
- Pelican Island Centennial Raffle at the
Pelican Island Preservation Society Booth
 - Spotting scope with tripod and scope carrier;
Commemorative Centennial "Pelican" Binocular;
Birder's vest; and Field Guide donated by Eagle Optics
 - Kayak, paddle and life jacket donated by Kayaks etc.

*Raffle proceeds support refuge projects.
Drawing Sunday at 3:00 pm.*

See map on back cover for location of all events.

Main Stage

9:30 am

Welcome by Paul Tritaik, Refuge Manager
Pelican Island National Wildlife Refuge

9:45 am

Release of a rehabilitated brown pelican

10:00 am

Pelican Island Elementary School program

11:00 am – 11:15 am

The Feather Wars Skit

11:15 am – 11:40 am

Keynote Speech: Jim Foote as President Theodore
Roosevelt

12:00 pm – 1:00 pm

Live Wildlife Presentation by Jim Fowler of *Wild Planet*

1:00 pm

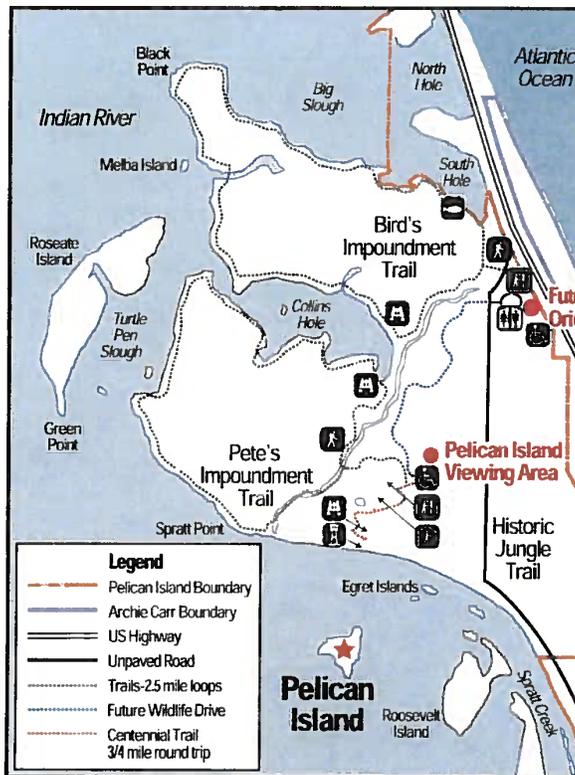
Live music by Barry Brogan - *Finger style and slide
guitarist who just can't get enough of the blues*

The Centennial Trail: Welcoming the Public on Pelican Island's 100th Birthday

Most of America's 540 national wildlife refuges offer a variety of wildlife dependent recreational opportunities for the public. However, for the past 100 years, the only way to experience Pelican Island National Wildlife Refuge has been by boat.

To mark the 100th anniversary of Pelican Island and the National Wildlife Refuge System, the refuge and Indian River County will open new public facilities on refuge lands near the original island. The new facilities include parking areas, restrooms, foot trails, fishing areas, and The Centennial Trail, a 3/4 mile boardwalk with an 18 foot observation tower to view Pelican Island.

Pelican Island Public Facilities Area





The Centennial Trail will offer the public its first opportunity to view Pelican Island from land. In addition, the trail winds through newly restored habitat, interprets the history of the refuge system and features a timeline of the creation of our nations 540 national wildlife refuges.

The public is invited to visit the Centennial Trail at the Pelican Island Viewing Area during the Wildlife Festival, where staff and volunteers will be on-hand to explain the history of the refuge system and Pelican Island. The new facilities will be open daily thereafter from 7:30 am to sunset.



These partnerships have made the new refuge public facilities possible:

- Caterpillar, Inc.
- ConocoPhillips
- Florida Department of Environmental Protection
- Florida Inland Navigation District
- Florida Power and Light Co.
- Florida Youth Conservation Corps.
- Indian River County
- Kennedy Groves
- Lewis Environmental Services, Inc.
- National Fish and Wildlife Foundation
- National Park Service
- Save America's Treasures Grant
- National Sierra Club Outings Program
- Pelican Island Preservation Society
- Rollins College, Brevard Campus Environmental Studies Program
- St. Johns River Water Management District
- U.S. Postal Service
- Wild Birds Unlimited, Inc.
- Pathways To Nature Program

Sunday, March 16; 9:30 am – 4:00 pm

1:45 pm

Live music by Doug Moss - *Fine singer and guitarist that will cover all your contemporary favorites*

2:30 pm

Live music by Jazzmin - *This trio will be performing all your jazz favorites*

3:15 pm

Live music by Harp and Harmony - *Peggy and Tim Behrendt perform as a duo on harp, keyboard and harmonica*

Center Stage in Park

1:00 pm

100th Birthday Party for Pelican Island National Wildlife Refuge – cake served

1:30 pm

Amateur 'Natural Florida' Photography Contest Awards Presentation
First Place Prize
Sponsored by Eagle Optics

Youth Environmental Poster Contest Awards Presentation

3:00 pm

The Pelican Island Centennial Raffle Drawing *Sponsored by Eagle Optics and Kayaks etc.*

3:15 pm

Live Florida Turtles, Snakes and Alligator Presentation *Pat and Jerry Loll, Wildlife Rehabilitators*

Centennial Book Signings

Stop by the Vero Beach Book Center Booth to pick up a schedule of Centennial book signings happening throughout the weekend. Nationally acclaimed authors will be featured, including:

- Edmund Morris, who will sign copies of *Theodore Rex*. Morris won a Pulitzer Prize and the American Book Award for his first volume on Theodore Roosevelt, *The Rise of Theodore Roosevelt*
- Karen Hollingsworth will autograph copies of the new *Smithsonian Book of National Wildlife Refuges* which features her photography.
- Kenn Kaufman, one of the world's best-known bird experts, will sign copies of *The Birds of North America*, *Butterflies of North America*, and *Kingbird Highway*.

Additional authors will be signing copies of their works.



Kid's Activity Area

Environmental Education Activities

10:00 am – 4:00 pm

- Earn a Jr. Refuge Manager Badge
- Make Centennial Wildlife Buttons
- Make a Manatee
- Bird Beaks
- Mama Fauna's Pizzeria
- Fossil Find
- Wildlife Puppet Show
- Migration Headaches

Wildlife Seminars

10:00 am – 11:00 am

Florida Panther Life History & Conservation

Darrell Land, Florida Fish and Wildlife Conservation Commission

11:30 am – 12:30 pm

"Let's Go Wild"

A Multimedia Presentation of the National Wildlife Refuge System – Karen Hollingsworth

1:00 pm – 2:00 pm

South Florida's Endangered Species

Tylan Dean, U.S Fish and Wildlife Service, Ecological Services

2:30 am – 3:30 pm

The Indian River Lagoon

Ed Garland, St. Johns River Water Management District

Boat Tours

Sponsored by Harbor Princess Touring Adventures.

Tickets and departure at the Yacht Club across from River view Park

Every 1/2 hour from 10:00 am – 3:30 pm

Pelican Island Tour (1 hour)

Tours will be sold on a first come, first serve basis;
\$5/person

Sunday, March 16; 9:30 am – 4:00 pm



US Fish & Wildlife Service

Pelican Island

Kayak Tours

Kayak Tours, sponsored by Kayaks etc.

9:30 am and 1:00 pm

Pelican Island Eco-tour (2 1/2 hours, weather dependent); \$20/person

Every hour from 10:00 am – 3:00 pm

Indian River Lagoon Spoil Island Tours (1 hour)
\$10/person

All day from 10:00 am – 4:00 pm

Free Kayaking Demonstrations

At The Environmental Learning Center (ELC)

Kenn Kaufman

(nationally known birder and conservationist)

Directions: From Wabasso on US1, turn east on CR510. Turn right on Wabasso island lane before the tall bridge. ELC is on the right. For more information, call the ELC at 772/589 5050.

7:30 am – 9:00 am

Pelican Island Sunrise Bird Watching Boat Tour

9:30 am – 10:30 am

Butterfly Seminar: A Birder Looks at Butterflies

At Pelican Island National Wildlife Refuge

Visit Pelican Island Viewing Area Opening Weekend

The Centennial Trail and Observation Tower
to view Pelican Island

Open from 7:30 am to sunset

Directions: US 1 to 510 east to A1A, 3.7 miles north on A1A, turn left onto Historic Jungle Trail, .6 miles, turn right into the Viewing Area.

Exhibitors and Vendors Directory

*A Special Thanks to All Our Exhibitors
Who Make This Festival a Success*

Environmental Education, Nonprofit, Historical

Audubon of Florida
Caribbean Conservation Corporation
City of Palm Bay—Turkey Creek Sanctuary
Cultural Council of Indian River County
Ducks Unlimited
ECO Troop Pelican Island Elementary
EEL Program
Environmental Learning Center
Florida Tech - School of Management
Friends of Historic Roseland
Friends of St. Sebastian River
Indian River County Cooperative Extension Service
Indian River Lagoon Program
Kashi Foundation
Keep Indian River Beautiful
Ma Jaya River School
Manatee Observation and Education Center
Marine Resources Council
Noah's Notes
Pelican Island Audubon Society
Savannas Reserve Endowment
St. Sebastian River Buffer Preserve
Sea Turtle Preservation Society
Sebastian Area Historical Society Inc.
Sebastian Inlet State Park
Sebastian Inlet Power Squadron
Sebastian River Medical Center - First Aid Booth -
Festival Sponsor
Turtle Coast Group Sierra Club
U.S. Coast Guard Auxiliary #56
U.S. Mint
U.S. Postal Service
Walter Obermayr

Live Wildlife and Touch Tanks

Florida Bat Center
Harbor Branch Oceanographic Institution
Pat and Jerry Loll's Live Wildlife
Smithsonian Marine Station at Ft Pierce
The Avian Reconditioning Center
Treasure Coast Herpetological Society
Treasure Coast Wildlife Hospital

Exhibitors and Vendors Directory

**U.S. Fish and Wildlife Service, National Wildlife Refuges,
Nonprofit Refuge Friends Groups**

Archie Carr National Wildlife Refuge
Arthur Marshall Loxahatchee National Wildlife Refuge
Blue Goose Alliance
Chassahowitzka National Wildlife Refuge
"Ding" Darling Wildlife Society
Federal Association of Refuge Officers
Florida Panther National Wildlife Refuge
Friends of the Carr Refuge
Friends of the Chassahowitzka National Wildlife Refuge
Friends of the Florida Panther Refuge
J. N. "Ding" Darling National Wildlife Refuge
Lower Suwannee National Wildlife Refuge
Loxahatchee Natural History Association
Merritt Island National Wildlife Refuge
Merritt Island Wildlife Association
National Wildlife Refuge Association
National Key Deer Refuge
Okefenokee National Wildlife Refuge
Pelican Island National Wildlife Refuge
Pelican Island Preservation Society
St. Marks National Wildlife Refuge
St. Vincent National Wildlife Refuge
U.S. Fish & Wildlife Service – Ecological Services
U.S. Fish & Wildlife Service – Partners for Fish and
Wildlife Program
U.S. Fish & Wildlife Service – Law Enforcement

*As a special feature for the Centennial, more than
thirty exhibits representing national wildlife refuges
and other U.S. Fish and Wildlife Service activities
will be displayed.*

Commercial

Beach Cove Sebastian*
Eagle optics*
Florida Today*
Kayaks etc*
Mary Kay Cosmetics
Peak Performance Co.*
Press Journal*
Seabird Publishing Inc.
Sebastian River Boat Tours*
Vero Beach Book Center – Book Signings

* Festival sponsor

Exhibitors and Vendors Directory

Arts & Crafts

Art by Joan – Joan Turner
Art Petite – Anita Dimon
Artworks by Lydia – Lydia Thompson
Authentic Wildlife Creations – Chester Zaremba
Candi & Spice Ceramics & Pottery – Lois Santara
Carl Mett
Chainsaw Art by George – George Hewitt
Corian Creations – Douglas B. Stewart
Debby Holly
Downstairs Gallery – Marlene Comiltino
Garden Critters – Lori Watson
Gloria Renneker
Ironwork – Karon Irons
James Nevins/Bob Montanaro
Jim Angy's Wildlife Photography
John Goss
Kevin Doxstater Photography
Linda Munford
Lisanne Monier
Loufer Ink – Fern Doodman
Nature in Primitive – Engor L. Maggard
Marti Meyer
Patrik McMullen Photographer Artist
Pop Bottle Art – Bob Kirby
St. Augustine Art & Gift Corp.
Stephen E. Gasnell
The Art of Damien Share
The Natural Garden – Laura Parkel
Troia Photography
Unique Art by R.T.

Food

Bono's Barbeque & Grill
Fins Grill & Raw Bar
Geo Bella Concessions
Italian American Club
Long Horn Kettle Korn
Mellisa's Gourmet Bakery
Vero Lake Volunteer Fire Dept.

**Great Florida Birding Trail Guided Tours
Saturday, March 15 and Sunday, March 16**

*Organized by the Pelican Island Audubon Society
and the Environmental Learning Center*

Pre-registration required, space is limited.

Call Audubon at 772/567 3520 for information and to pre-register. After Friday, 12:00 noon, March 14th, pre-register at the Pelican Island Audubon Society booth in Riverview Park.

Directions also available at Audubon booth.

8:00 am – 11:00 am

Sebastian Inlet State Park

Tour begins on the North Entrance with light walking tour to see wading and shore birds, ocean view and mangroves for migratory songbirds.

Guide Billi Wagner

8:00 am – 11:00 am

Blue Cypress Conservation Area

Canoeing a trail developed by Sebastian High School Students in impounded marshes harboring migratory birds, resident ducks, and wading birds including limpkins. Canoes and gear will be provided.

Guide George Anderson

8:00 am – 11:00 am

Indian River County Wetlands Treatment Facility

Visit boardwalk and overlook system for an excellent view of wading birds, ducks, and shorebirds.

Guides Patrick Pitts and Denny Coats

8:00 am - 12:00 noon

T. M. Goodwin Waterfowl Management Area

Walk around dikes to view ducks, shorebirds, hawks, swallow-tailed kites, crested caracara.

Guide Roy Brook

8:00 am - 12:00 noon

St. Sebastian River State Buffer Preserve

(North Entrance)

Ride in back of pickup and some walking to observe Bachman's sparrow, scrub-jays, red-cockaded woodpeckers, migratory songbirds, and swallow-tailed kites.

Guide David Simpson



5:00 pm – 6:30 pm Saturday / 7:30 am – 9:00 am Sunday

Environmental Learning Center

A pontoon-boat ride to Pelican Island to observe storks, pelicans, egrets, and other birds.

Guide Kenn Kaufman

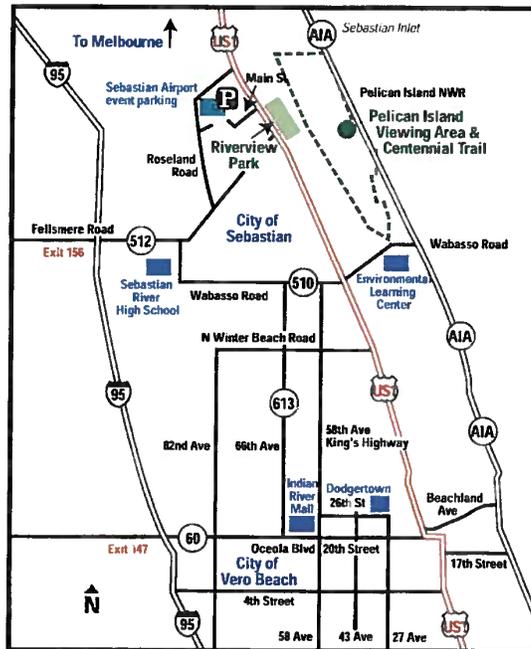
8:00 am- 12:00 noon Sunday only

Oslo Riverfront Conservation Area (ORCA)

Canoe on the backwaters of the Indian River Lagoon to visit a major Florida rookery. Canoes and gear provided to observe shore and wading birds nesting.

Guides Richard Baker and Alice Rowe

Area Events Map



Festival Sponsors and Partners

Festival Sponsors



Additional Sponsors:

Beach Cove Sebastian ■ Disney's Vero Beach Resort
 Eco-Florida Magazine ■ Florida Floor Fashions
 Florida Today ■ Garden Club of Indian River County, Inc.
 Noah's Notes ■ Peg Rondeau ■ Phil and Karen Morgan
 Publix Supermarket ■ Orchid Island Juice Company
 Sam's Club ■ School District of Indian River County
 Spectrum Interior Design

Festival Partners

Captain Dick Catri ■ City of Sebastian ■ Environmental Learning Center ■ Florida Fish and Wildlife Conservation Commission ■ Florida Tech ■ Indian River County ■ Indian River County Chamber of Commerce
 Keep Brevard Beautiful ■ Keep Indian River Beautiful
 Pelican Island Audubon Society ■ Sebastian Inlet State Park ■ Sebastian River Area Chamber of Commerce
 U.S. Postal Service ■ Vero Beach Book Center

Pelican Island Preservation Society Membership Application



Please check one:

- Student (under 18) - \$5 per year
- Individual - \$10 per year
- Family (Joint) - \$15 per year
- Contributing - \$50 per year
- Corporate/Business - \$100 per year
- Supporting - \$250 per year
- Life - \$500

Name(s): _____

Company: _____

Address: _____

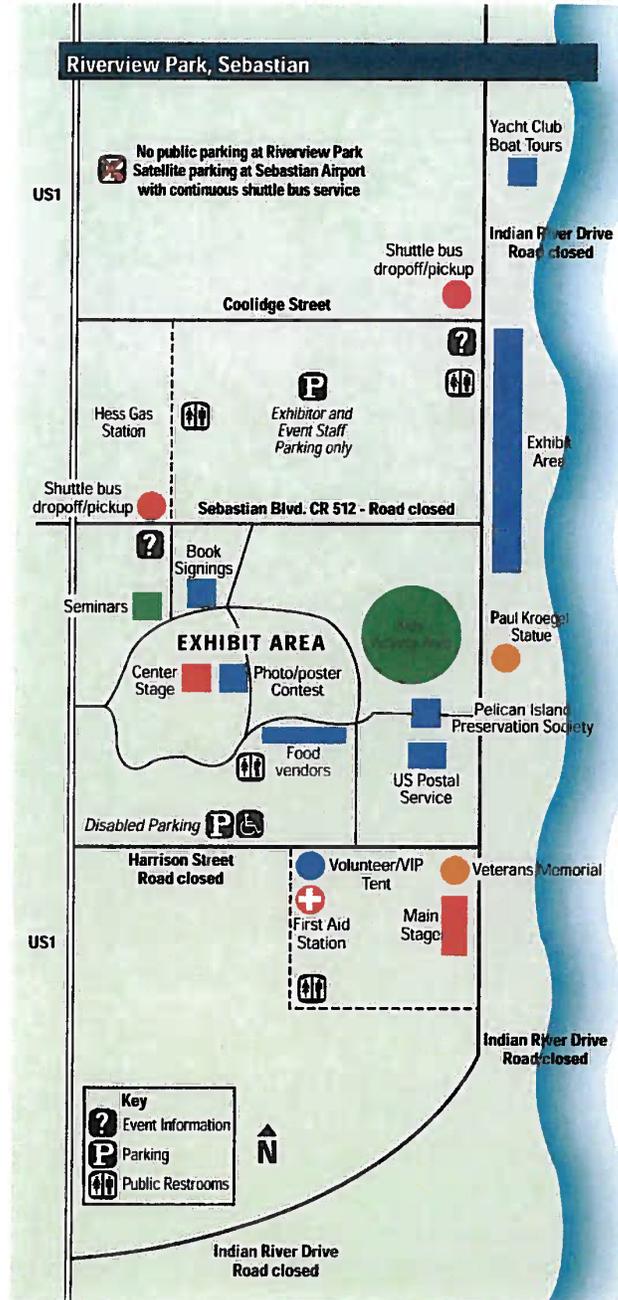
City/State/Zip: _____

Phone: _____

E-mail: _____

Send completed application and dues to:
PIPS Membership
PO Box 1903
Sebastian, Florida 32978-1903

The Pelican Island Preservation Society, Inc. is an environmental education organization established in 1995 to heighten the awareness of and support for Pelican Island National Wildlife Refuge.



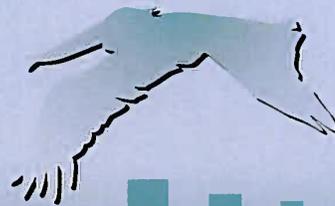
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CELEBRATING A
CENTURY
of CONSERVATION
1903 - 2003

PELICAN
8x25



\$69⁹⁹



On March 14, 2003, Americans celebrated a century of wildlife conservation that began when President Theodore Roosevelt declared that tiny Pelican Island in Florida's Indian River be protected forever as a safe haven for pelicans and other species of birds. This was the birth of America's best kept secret...our National Wildlife Refuges. This network of vitally important lands specifically set aside for wildlife now includes almost 540 refuges encompassing 95 million acres. Over the past century, these lands have played a quiet but critical role in the protection of our nation's wildlife and wild places. Show your support of our National Wildlife Refuges and accentuate your love of the outdoors by purchasing the 8x25 Pelican. A significant portion of each Pelican sale will be donated to the National Wildlife Refuge System. The National Fish & Wildlife Foundation will match each dollar raised, and our goal is to reach \$150,000.00 to support refuge projects.

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National Wildlife Refuge System
Centennial Partnership Award
March 14, 2003



Steve Hallgren

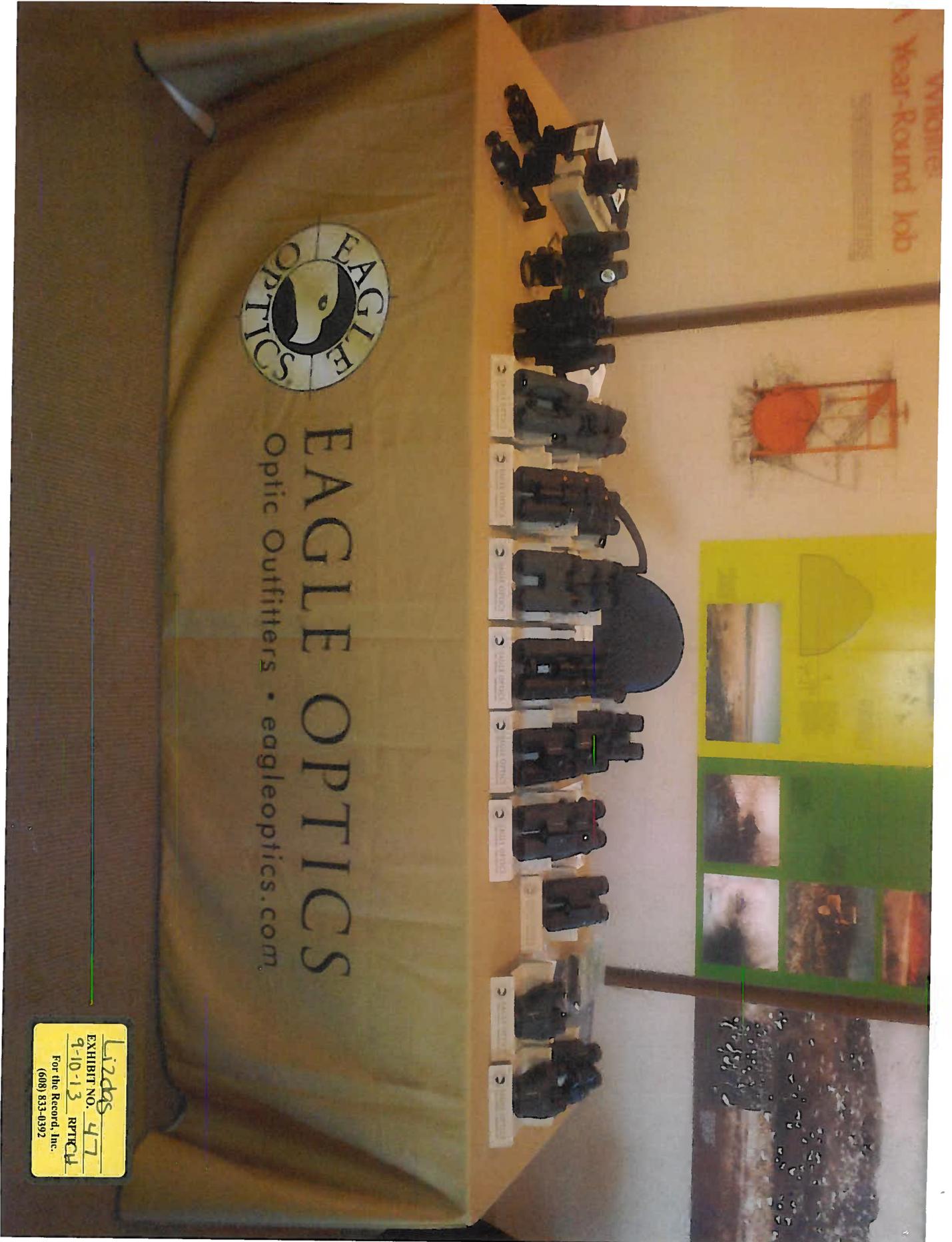
*Launching a second century of
wildlife conservation together*



CENTURY
CELEBRATING A
CENTURY OF
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**PETITIONER'S TRIAL
DEPOSITION EXHIBIT 48**

**CONFIDENTIAL
TRADE SECRET/COMMERCIALY SENSITIVE
INFORMATION**

**PER THE PROTECTIVE ORDER IN
CANCELLATION NO. 92054629
IN THE USPTO TRADEMARK TRIAL AND APPEAL BOARD**

PETITIONER'S TRIAL DEPOSITION EXHIBIT 48