

ESTTA Tracking number: **ESTTA625375**

Filing date: **09/04/2014**

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

Proceeding	92058068
Party	Defendant Fence Systems NW, Inc.
Correspondence Address	CLARK A PUNTIGAM JENSEN & PUNTIGAM PS 2033 6TH AVENUE, SUITE 1020 SEATTLE, WA 98121-2584 UNITED STATES docket@jensenpuntigam.com, clark@jensenpuntigam.com
Submission	Other Motions/Papers
Filer's Name	Kyle D. Netterfield
Filer's e-mail	knetterfield@elmlaw.com, clark@jensenpuntigam.com, cwyer@elmlaw.com
Signature	/Kyle D. Netterfield/
Date	09/04/2014
Attachments	SJM FINAL L0494 01.pdf(164255 bytes) Decl of KDN re SJM FINAL L0394 01.pdf(28663 bytes) Ex A - C.pdf(1908193 bytes) Ex D - R.pdf(4616172 bytes) Decl of Strong.pdf(803430 bytes)

1
2
3
4
5
6 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

7 JKS ENTERPRISES, INC.,

8 Petitioner,

9 v.

10 FENCE SYSTEMS NW, INC.,

11 Respondent.

CANCELLATION NO. 92058068

RESPONDENT'S MOTION FOR SUMMARY
JUDGMENT

12 **I. INTRODUCTION AND RELIEF REQUESTED**

13 **A. Respondent requests Summary Judgment on all Counts**

14 Respondent, Fence Systems NW, Inc. asks the Board to enter Summary Judgment
15 pursuant to FRCP 56 and 37 CFR §2.127(e)(1) against Petitioner JKS Enterprises, Inc. on both
16 counts alleged in its Petition For Cancellation. **Count I**, "Likelihood of Confusion," fails
17 because Petitioner did not have "prior use" of either of Respondent's Marks. **Count II**,
18 "Fraudulent Procurement," also fails because Respondent reasonably believed every statement
19 in its applications to be truthful and there is no evidence of fraudulent intent.

20 **B. Respondent has two registered trademarks: a Word Mark, and a Logo Mark.**

21 Respondent has two registered trademarks, both of which Petitioner mistakenly seeks to
22 cancel. Respondent's Word Mark, is "*Economy Fence Center*," and is identified as follows.

1 Serial Number 77413027
Filing Date March 4, 2008
2 Registration Number 3582510
Registration Date March 3, 2009
3

4 Respondent's "Logo Mark" utilizes the words "Economy Fence Center" in a stylized
5 design and is identified as follows.

6 Serial Number 77414073
Filing Date March 5, 2008
7 Registration Number 3582512
Registration Date March 3, 2009



8 C. Procedural History

9 Petitioner filed its Petition For Cancellation on June 30, 2014. Respondent has
10 answered the Petition and both parties have exchanged initial disclosures and discovery
11 requests with responses. The principals of both parties have been deposed. Discovery closed
12 July 30, 2014. Petitioner's Trial Period has not yet commenced, and its Pretrial Disclosures are
13 due September 13, 2014.

14 II. EVIDENCE AND CITATION

15 In this motion, *Exhibits A* through *R* are to the Declaration of Kyle D. Netterfield filed
16 with this motion. This motion relies upon the deposition testimony of the principals for both
17 parties: Jerry Sturlaugson of Petitioner and Derek Smith of Respondent. The deposition
18 excerpts are as follows:

- 19
- The deposition of Jerry Sturlaugson dated July 18, 2014 is cited "Sturlaugson."
20 Excerpts are combined as *Exhibit A*.
 - The deposition of Derek Smith dated July 17, 2013 is cited "Smith." Excerpts are
21 combined as *Exhibit B*.
- 22
23

1 • The 30(b)(6) deposition of Fence Systems NW, Inc. is cited “FSNW”. Excerpts are
2 combined as *Exhibit C*.

3 This motion also relies upon the Declaration of Scott Strong, which is filed with this
4 motion. Relevant portions are cited as “*Strong ¶#.*”

5 Finally, this motion relies upon certain admitted statements of fact from the Petition For
6 Cancellation filed on June 30, 2014. It is cited as “*Petition ¶#.*”

7 **III.BACKGROUND FACTS**

8 There is no genuine dispute regarding any facts material to this motion. Rather, Jerry
9 Sturlaugson - Petitioner’s owner and president - concedes almost all material facts through his
10 Petition and Deposition. Accordingly, most citations are to his testimony and to the exhibits of
11 his deposition.

12 **A. Relevant Persons and Parties**

13 ***1. Chainlink Specialties, Inc.***

14 In 1981, Chainlink Specialties, Inc. began using the trade name “Economy Fence
15 Center” in conjunction with the sale and installation of fences through three stores in
16 Washington. *Sturlaugson 21:20-25*. Petitioner concedes the facts necessary to establish that
17 Chainlink began using the trade name - Economy Fence Center - in Commerce in 1981.

18 Q. Well, do you know when Chainlink Specialties started using the trade
name Economy Fence Center?

19 A. About 1981.

20 Q. Do you know what kind of business -- what kind of work they were
21 doing in 1981?

22 A. Fence sales and installations.

23 Q. Did they have retail stores?

1 A. Yes.

2 Q. Do you know whether they did work on federal installations at that
3 time?

4 A. Yes.

5 ...

6 Q. ... And you believe that they did work on tribal lands around that time?

7 A. Yes, I believe they did.

8 *Sturlaugson 21:20-22:12.*

9 Mr. Sturlaugson's understanding of these facts is consistent with those of Derek Smith,
10 Respondent's President. *FSNW 81*. In addition, Mr. Smith's understanding was based in part on
11 the text of a brochure printed and circulated by Scott Strong in the late 1980's, which states in
12 part: "Since its founding in 1981, Economy Fence Center has grown to be one of the
13 Northwest's leading fence specialists." *Exhibit D; FSNW 81*.

14 Well, so as I stated, there was a brochure that Scott had that talked about
15 Economy Fence Center in 1981, and when I was hired in '85, I didn't have
16 the feeling like the business had changed all that much, and at that time
17 Economy Fence Center, you know, did work for the government. They
18 did work for, you know, Navy base, Air Force Base. They did work on
19 tribal lands; all sorts of things of that nature. And so my assumption was,
20 or my belief was that what was happening in '81 was very similar to what
21 was happening in '85 when I first got hired.

22 *Id. at 40:11-21.*

23 In late 1983, Chainlink filed for bankruptcy. *Strong ¶3*. It sold its Everett business to
24 Scott Strong and its Mount Vernon operation to Jerry Sturlaugson. *Strong ¶4; Sturlaugson*
25 *9:15-17, 28:2-21; FSNW 41:7-13.*

1 **2. Scott Strong / Economy Fence Center, Inc.**

2 On January 13, 1984, Scott Strong purchased certain assets related to Chainlink’s store
3 in Everett, WA from Chainlink. *Exhibit E - “Chainlink-Strong Contract;” Sturlaugson 28;*
4 *Strong ¶4.* Three days later, on January 16, 1984, Mr. Strong formed, Economy Fence Center,
5 Inc., which began doing business using the Word Mark and Logo Mark at issue in this case.
6 *Strong ¶5; Sturlaugson 47:5-20, 73:1-8.* The Chainlink-Strong Contract provides that Strong
7 acquired “the right to do business at 11918 Airport Road, Everett, WA as Economy Fence
8 Center.” *Petition ¶13; Exhibit E.* Derek Smith began working for Economy Fence Center, Inc.
9 in 1985 and became familiar with its history and operations. *FSNW 32:18-33:8.*

10 **3. Fence Systems NW, Respondent**

11 Derek and Kara Smith formed Fence Systems NW, Inc. in 2001. They are its sole
12 owners and two of its officers. Its other officer is Chad Morgan, a key employee. In 2003,
13 Respondent purchased Economy Fence Center, Inc.’s assets. *Smith 54-55; Exhibits F and G;*
14 *Strong ¶13.* The Bill of Sale expressly transferred all of Economy Fence Center, Inc.’s rights
15 in the name Economy Fence Center and in the logo.

16 Economy Fence Center, Inc. ... hereby transfers to Fence Systems NW, Inc. ...
17 all of grantors’ right title and interest in and to ... [t]he trade name Economy
18 Fence Center or any variance thereof, together with any and all trade names,
trademarks ... used by grantor in the operation of the business.

19 *FSNW 47; Exhibit F.*

20 Further, Economy Fence Center, Inc., warranted and represented to Respondent that
21 “[n]either the trade name “Economy Fence Center” nor the logo used by Seller’s Company are
22 subject to any known claim of a third party within the state of Washington.” *Exhibit G.*
23 Accordingly, upon closing this sale, Mr. Smith reasonably believed he had purchased and had

1 the exclusive right to use the name “Economy Fence Center” and the related logo. *FSNW 41:7-*
2 *13.*

3 Fence Systems NW now operates three retail stores in Western Washington under the
4 name Economy Fence Center. It has continuously sold fences and fence materials throughout
5 the region, including Alaska (*FSNW 77:8*) Oregon (*Id. at 76:22-24; 78*) and California (*Id. at*
6 *78:1-6*). It provides wholesale materials to other contractors and vendors including Home
7 Depot. It also installs fences for Home Depot customers in Western Washington. *Smith 10:1-8.*

8 ***4. Jerry Sturlaugson***

9 On February 2, 1984 – three weeks **after** the Chainlink-Strong Contract – Jerry
10 Sturlaugson signed a contract to buy certain assets from Chainlink. *Sturlaugson 9:17, 13:15-*
11 *25; Petition ¶5.* The contract is titled “Agreement of Purchase of [sic] Sale” (“Chainlink-
12 Sturlaugson Contract”). *Exhibit H.* The relevant term of the Chainlink-Sturlaugson Contract
13 states: The Purchaser has the right to continue to do business under the name of ECONOMY
14 FENCE CENTER at the address of 2201 Riverside Dr. Mt. Vernon, Wa.” *Id.; Petition ¶5.*

15 Mr. Sturlaugson promptly registered his sole proprietorship with the Department of
16 Revenue and Department Labor and Industries¹ as “**Economy Fence Center of Mount**
17 **Vernon.**” *Sturlaugson 73:1-6, Exhibit I, Exhibit J.* He used the same name for both
18 registrations. *Id.*

19 Mr. Sturlaugson states two reasons for including “**of Mount Vernon**” in his legal name
20 and in his advertising. First, the name “Economy Fence Center, Inc.” was already taken by Mr.
21
22

23 ¹ In Washington State, the Department of Labor and Industries is responsible for Contractor Registration
and Industrial Insurance.

1 Strong's company. *Sturlaugson* 73:1-6. Second, he wanted to distinguish himself from Mr.
2 Strong's business; Economy Fence Center, Inc., to avoid confusion in the marketplace.

3 Q. ... you're distinguishing yourself from Scott by the use of "of Mount
4 Vernon"?

5 A. Yes.

6 Q. And to the best of your knowledge, it was fairly effective because there
7 wasn't much confusion back in 2002, 2003, was there?

8 A. None that I'm aware of.

9 *Sturlaugson* 90:15-21; see also, *Id.* at 81:11-15; 83:23-84:1; 86:22-24; 88:3-5. For the next
10 ten years, the Sturlaugsons operated a sole proprietorship, doing business as "Economy Fence
11 Center of Mount Vernon," "Economy Fence Center" and "Economy Fence" *Id.* at 7:24-8:15.

12 **5. Petitioner JKS Enterprises, Inc.**

13 Petitioner, JKS Enterprises, Inc. was formed in 1994. *Sturlaugson* 7:16-24. Jerry
14 Sturlaugson and his wife Kathy have been Petitioner's sole owners since its inception. *Id.* at
15 6:15-23. Likewise, Mr. Sturlaugson has been Petitioner's president since its formation and is
16 the person most knowledgeable regarding its business affairs. *Id.*

17 JKS began doing business in 1994 without purchasing or otherwise acquiring any legal
18 right to claim or tack Mr. Sturlaugson's trade names or logo. *Sturlaugson* 30:16-31:12.
19 Nonetheless, upon formation, JKS Enterprises began using and has continuously used the name
20 "Economy Fence Center of Mount Vernon" in the City of Everett, Snohomish County and
21 other markets. *Exhibit R.* For example:

- 22 • *Exhibit K*, 1996 GTE Snohomish County Business White Pages: "ECONOMY
23 FENCE CENTER OF MOUNT VERNON;"
- *Exhibit L*, 1998 Corporate Check #7001: "JKS Enterprises, Inc. d.b.a. Economy
Fence Center of Mount Vernon;"

- 1 • *Exhibit M*, 2002 City of Stanwood Business License: “JKS Enterprises, Inc. d.b.a. Economy Fence Center of Mount Vernon”;
- 2
- 3 • *Exhibit N*, 2006 Snohomish County Verizon Yellow Pages: “ECONOMY FENCE CENTER OF MOUNT VERNON”;
- 4 • *Exhibit N*, 2007 Snohomish County Verizon Yellow Pages: “ECONOMY FENCE CENTER OF MOUNT VERNON”;
- 5
- 6 • *Exhibit O*, 2009 Town of Concrete Business License: “JKS Enterprises, Inc. d.b.a. Economy Fence Center of Mt. Vernon.”

7 Additionally, in some locations, JKS utilized the name “Economy Fence Center”
8 without “of Mount Vernon.” But at all times prior to the Registrations and up to the present,
9 Petitioner retained the Contractor Registration name of “Economy Fence Center Mt Vernon”
10 with the Department of Licensing. *Exhibit J*.

11 **B. Relevant Geography**

12 The parties both do business primarily in western Washington. Respondent’s main
13 office is in the City of Everett, which is approximately 28 miles north of Seattle. Everett is in
14 Snohomish County, which has approximately 713,000 residents. Respondent’s second store is
15 in Tacoma, which is 33 miles south of Seattle and has a population of approximately 200,000.
16 Tacoma is in Pierce County (population 795,000). And Respondent operates a third store in
17 Redmond, a suburb 15 miles east of Seattle and the home of Microsoft. Redmond and Seattle
18 are in King County, which has a population of just under two million.

19 Petitioner’s only store is 62 miles north of Seattle in Mount Vernon, which has a
20 population of just over 30,000. Mount Vernon is in Skagit County, which has approximately
21 117,000 residents.

1 **C. Petitioner and Respondent each have their own distinctive logo**

2 ***1. Respondent's Logo Mark has been in use since 1985***

3 Respondent's predecessor, Economy Fence Center, Inc. created a distinctive logo to use
4 in its business in approximately 1985. *Sturlaugson 36:5, Strong ¶11.*



9 Respondent purchased this logo in 2003 and immediately began using it. Petitioner
10 seeks to have the registration for this Logo Mark cancelled.

11 ***2. Petitioner's Logo is distinct from Respondent's***

12 Likewise, shortly after buying the Mount Vernon store from Chainlink, Mr. Sturlaugson
13 created his own new logo. *Sturlaugson 69:9-16.* Mr. Sturlaugson testifies that he created the
14 logo so he would have his own distinct design. *Id. at 66-67.* By 1985 or 1986, he began using
15 the logo with the sign below. *Id. Exhibit P.*



20 Notably, Petitioner, JKS uses this sign and logo in its business and considers it to be its
21 "present sign" even though it did not purchase or legally acquire any right to use the logo from
22 Sturlaugson. *Sturlaugson 67:9-17.* Mr. Sturlaugson concedes Petitioner's logo has become
23

1 distinctive of its business and is easily recognizable as distinct from Respondent's Logo Mark.
2 *Id. at 70:3-9.*

3 IV. AUTHORITY

4 **A. Summary Judgment should be granted on both Count I and Count II because**
5 **there is no genuine issue of any material fact and Respondent is entitled to**
6 **Judgment as a matter of law.**

7 Summary judgment is appropriate when there is no genuine issue as to any material fact
8 and the moving party is entitled to judgment as a matter of law. The district court must view
9 the evidence in a light most favorable to the party opposing the motion and draw all reasonable
10 inferences in its favor. *L.D. Kichler Co. v. Davoil, Inc.*, 192 F.3d 1349, 1351 (Fed. Cir. 1999),
(Internal citations omitted). Fed.R.Civ.P. 56(c).

11 The purpose of the motion is judicial economy, that is, to avoid an unnecessary
12 trial where there is no genuine issue of material fact and more evidence than is
13 already available in connection with the summary judgment motion could not
14 reasonably be expected to change the result in this case.

15 TBMP §528.01.

16 Here, there is no genuine issue of any fact that is material to the essential elements of
17 Petitioner's claims. Rather, Petitioner's President establishes almost all facts necessary for
18 summary dismissal. Nothing will change with a prolonged testimony period.

19 **B. Summary Judgment must be granted against Petitioner's Count 1 – Likelihood**
20 **of Confusion - because Petitioner cannot meet its burden to prove "prior use."**

21 Count I of the Petition seeks cancellation for "Likelihood of Confusion" under section
22 2(d) of the Lanham Act. To prevail on Count I, Petitioner must establish that it acquired rights
23 in the disputed trademark before the Respondent. *See, Coach House Rest., Inc. v. Coach & Six*
Restaurants, Inc., 934 F.2d 1551, 1559 (11th Cir. 1991).

In order to cancel a registration under Lanham Act Section 2(d) in this case,
petitioner must prove: (1) that the registered mark resembles petitioner's mark, (2)

1 that petitioner acquired trade identity rights in the mark **before the registrant**
2 **used the mark**, and (3) that the registered mark is likely to cause confusion when
used in connection with the services of registrant.

3 *Id.* (emphasis added). All three elements must be proven for either of the registrations to be
4 cancelled. Petitioner did not have “prior use” of either mark.

5 ***1. Petitioner cannot prove “Prior Use” of the Logo Mark.***

6 First, regarding the Logo Mark, Petitioner neither alleges nor attempts to prove that it
7 ever had any interest in Respondent’s Logo Mark nor has Petitioner ever used it. Rather,
8 Petitioner concedes Mr. Sturlaugson created his own distinct logo around 1985. *Sturlaugson*
9 *69:9-16*. It is impossible for Petitioner to show “Prior Use” of the Logo Mark.

10 ***2. Petitioner cannot show” Use” of the Word Mark that is “Prior” to***
11 ***Respondent.***

11 Likewise, regarding the Word Mark, Petitioner cannot establish the mandatory element
12 of “Prior Use.”

13 First, Petitioner’s rights, if any, begin by use in 1994 – ten years after Economy Fence
14 Center Inc. had fully established its use of the Word Mark in Commerce. Petitioner cannot tack
15 any rights back to Mr. Sturlaugson’s use between 1984 and 1994 because Mr. Sturlaugson did
16 not sell, assign or otherwise transfer those rights to JKS Enterprises, Inc.

17 Q. Do you understand JKS to be a separate legal entity than you, Jerry
18 Sturlaugson?

19 A. Yes.

20 Q. Which is why you formed it, correct?

21 A. Correct.

22 Q. Because you didn't want the liabilities of the company to come back on
you personally?

23 [Objection]

1 A. Yes

2 Q. But to the best of your knowledge, **you've made no effort to**
3 **document any transfer of rights from you personally to JKS**
4 **Enterprises**, correct?

4 [Objection]

5 A. **As far as my knowledge, no.**

6 *Sturlaugson 30:16-31:12.*

7 There is no evidence that Mr. Sturlaugson ever sold, assigned, or transferred any
8 trademark rights to Petitioner. *Id. at 15:18-16:2; 18:20-24.* If any transfer document existed, it
9 would have been produced. *Id. at 19:8-14.* Therefore, instead of “prior use” the evidence is
10 that Petitioner’s use trails Respondent’s by at least 10 years.

11 Second, even if Petitioner could tack back to Mr. Sturlaugson’s use, it is undisputed that
12 Mr. Sturlaugson’s contract with Chainlink was signed February 3, 1984, three weeks after the
13 Chainlink-Strong Contract. *Petition ¶¶5, 13; Exhibit E; Exhibit H.* Again, Mr. Sturlaugson’s
14 use was after – not prior to – Economy Fence Center, Inc.’s.

15 Finally, even if the dates of the Chainlink contracts were deemed inconsequential, it is
16 undisputed that use began with Chainlink Specialties, the predecessor to both Economy Fence
17 Center, Inc. and Mr. Sturlaugson. If both parties could tack their interests back to Chainlink
18 then Petitioner’s use it is simultaneous with Respondent – not prior.

19 The material facts are not in dispute. Petitioner cannot prove “prior use” with regard to
20 either the Word Mark or the Logo Mark. Therefore Summary Judgment should be entered
21 against Petitioner on Count I.

1 **C. Summary Judgment must be granted on Count II - Fraudulent Procurement -**
2 **because Petitioner cannot establish by clear and convincing evidence that**
3 **Respondent knew any statement was false and made with the intent to deceive.**

4 ***1. All elements for cancellation pursuant to Fraudulent Procurement must be***
5 ***proven and the burden is very high.***

6 Petitioner's second effort at cancellation is "Fraudulent Procurement." Fraud in
7 procuring a mark occurs "when an applicant knowingly makes false, material representations of
8 fact with the intent to deceive." *L.D. Kichler Co. v. Davoil, Inc.*, 192 F.3d at 1351. But, merely
9 showing that a statement in an application was untrue is not sufficient to cancel a mark. *See, Id.*

10 Because this is a motion for Summary Judgment, Respondent should not and will not
11 attempt to prove that every statement in the applications was true when made. Instead, the
12 issue for the Board is Petitioner's inability to present clear and convincing evidence that
13 Respondent (a) *knew* any material representation of fact was false or (b) made any materially
14 false representation with the *intent to deceive*.

15 The bar for cancelling a trademark based on fraud is very high. The Petitioner must
16 show five elements by clear and convincing evidence: (1) a false representation of a material
17 fact, (2) the registrant's knowledge that the representation is false, (3) the registrant's intent to
18 induce reliance on the misrepresentation, (4) actual and reasonable reliance on the
19 misrepresentation, and (5) damages proximately caused by the reliance. *Hokto Kinoko Co. v.*
20 *Concord Farms, Inc.*, 738 F.3d 1085, 1097 (9th Cir. 2013). Petitioner "must prove the alleged
21 fraud by clear and convincing evidence." *See L.D. Kichler Co. v. Davoil, Inc.*, 192 F.3d at
22 1351.

23 In *Hokto*, Hokto USA sold mushrooms using marks registered with the United States
Patent Office and used under a license agreement from Hokto's Japanese parent corporation.

1 *Id.* at 1091. Concord Farms also sold mushrooms using the same marks but without a
2 trademark or the permission of the Japanese company. *Id.* When Hokto USA brought an
3 infringement action against Concord Farms, Concord sought to cancel Hokto USA’s trademark
4 registration arguing that Hokto committed fraud in its applications by claiming the mark would
5 be used on a wide range of non-mushroom products. *Id.* at 1089. Hokto USA acknowledged
6 that it had no intention of using the mark on any product other than mushrooms, constituting a
7 misrepresentation of material fact. *Id.* at 1090. Nonetheless, the Ninth Circuit found that even
8 though Hokto USA made a false statement in its application, the registration would not be
9 cancelled because Petitioner, Concord Farms failed to put forward evidence as to establish the
10 remaining four elements, including an intent to deceive. *See, id.* at 1097. “[A]rgument, in the
11 absence of evidence, does not create a triable dispute of material fact.” *Id.* at 1098.

12 ***2. Petitioner admits that Respondent did not lie in its applications.***

13 Here, instead of presenting evidence of fraud, Mr. Sturlaugson concedes Respondent
14 did not lie in its trademark applications and has no idea whether any statement in the
15 application was false.

16 Q: Do you believe that my client lied in his trademark applications that
17 were filed in 2008?

18 [Objection]

19 A. No.

20 Q. Do you believe that my client made false statements in his trademark
21 applications filed in 2008?

22 [Objection]

23 A. I don't know whether he made false statements or not.

1 *Sturlaugson 48:6-19*. Moreover, Mr. Sturlaugson has no personal knowledge on which he
2 could assert Respondent made a false statement of any kind. *Id. at 21:3-13*. Petitioner openly
3 admits to having no knowledge of whether Respondent or any of its officers knew about the
4 Chainlink - Sturlaugson Contract before filing the current action. *Id. at 20:17-24*.

5 Q. Do you believe that Derek Smith was lying when he said that he did not
6 know the terms of that contract, which is Exhibit 10?

7 [Objection]

8 A. I don't know if he was lying or not because I don't know what he saw.

9 Q. You have no idea what he saw?

10 A. No.

11 *Id. at 21:3-9*. Likewise, Mr. Sturlaugson had never spoken with Mr. Smith (*Id. at 19:20-22*) or
12 had any conversation with any of Petitioner's officers regarding the trade name. *Id. at 20:1-3*.

13 Further, Petitioner expressly affirms the truth of many of factual statements of the
14 Applications that are contested "upon information and belief" in the Petition. For example,
15 Petitioner affirms that Chainlink Specialties began using the trade name "Economy Fence
16 Center" in conjunction with its fence sales and installation work in 1981. *Id. at 21:20-25*. He
17 affirms that Chainlink operated retail stores and performed work on both federal and tribal
18 lands since 1981. *Id. at 22:1-12*. And, he admits that he has no reason to believe Chainlink did
19 not do business in other states from 1981. *Id. at 22:21-23*.

20 ***3. Petitioner identifies only one allegedly false statement, but that alleged
21 misstatement is not found in Respondent's Applications nor is it inconsistent
22 with the declarations of the Applications or Response to Office Action.***

23 When pressed, Mr. Sturlaugson could identify only one alleged statement that he
considered to be incorrect. He believes that in approximately 1985, Mr. Smith knew Mr.
Sturlaugson was operating as "Economy Fence Center" – without using "of Mount Vernon."

1 His sole basis for that belief is the hearsay statement from a former employee of Economy
2 Fence Center, Inc., recounting that she recalls observing Mr. Smith unloading materials when
3 he worked for Economy Fence Center, Inc. around 1985. *Sturlaugson at 49-51.*

4 After identifying this solitary alleged misstatement, Mr. Sturlaugson again affirmed he
5 knows of no other facts that might support his contention that Respondent made a false
6 statement in its applications.

7 Q: Do you have any other factual basis for your contention that my client
8 knew that certain statements were false?

9 A. No.

10 *Sturlaugson 53:19-22.*

11 Still, Mr. Scott Strong also believes that during the period of 1985 through 1993, Mr.
12 Smith became aware “Mr. Sturlaugson’s business used the trade name “Economy Fence
13 Center” as a “result of numerous dealings between the companies.” *Strong ¶14.*

14 Therefore, on Summary Judgment, the Board should accept as undisputed the
15 contention that Mr. Smith knew Mr. Sturlaugson used the trade name “Economy Fence Center”
16 between 1985 and 1993. But this “presumed fact” is not inconsistent with anything in
17 Respondent’s 2008 Applications or Response to Office Action. At most, it is tangentially
18 related to the following declaration in the Response to Office Action:

19 ECONOMY FENCE CENTER has become distinctive of the
20 goods/services through the applicants substantially exclusive and
21 continuous use in commerce for at least the five years immediately before
22 the date of this statement.

23 But any apparent contradiction does not show an intent to deceive when the undisputed
24 facts known to Mr. Smith in 2008 that reasonably lead him to believe the foregoing declaration
25 was true. For example:

- 1 • The Seller, which was selling its assets to Respondent, was legally named and
operating as “Economy Fence Center, Inc. *Exhibits F & G.*
- 2 • The Bill of Sale expressly transferred all of Economy Fence Center, Inc.’s
3 rights in its trade name and logo. *Exhibit F.*
- 4 • Seller expressly warranted that no one else had any claim to the name or logo:
5 “[n]either the trade name ‘Economy Fence Center’ nor the logo used by
6 Seller’s Company are subject to any known claim of a third party within the
7 state of Washington.” *Exhibit G.*
- 8 • The sale closed five years before making the declaration and 10 years after
1993.
- 9 • JKS’s Contractor name registered with Washington State was Economy Fence
Center of Mount Vernon. *Exhibits I & J*
- 10 • JKS expressly marketed itself as “Economy Fence Center of Mount Vernon”
with the express purpose of distinguishing itself from Respondent and its
predecessor. *Supra § III.A.5.*
- 11 • JKS’s sign had its own distinct logo stating “Economy Fence Center Mount
12 Vernon” *Exhibit P.*
- 13 • There was no confusion in the marketplace between the companies preceding
the declaration. *Supra §III.A.5.*

14 In light of these undisputed facts, there is no way the Applications can be considered
15 fraudulent – even if the “presumed fact” were true in 1993. Instead, Mr. Smith reasonably
16 believed he alone had the right to use “Economy Fence Center” and that the addition of “of
17 Mount Vernon” was a meaningful and effective distinction that caused his use of his Mark to
18 be exclusive.

19 My understanding is that Scott bought the name. His company was called,
20 Economy Fence Center, Inc. He used the name, Economy Fence Center,
21 exclusively, and so my understanding is that Scott purchased that from
Chainlink Specialties, or bankruptcy, or, you know, and then I purchased
that from Scott.

22 *FSNW 41:7-13.*

1 Further, the fact that Respondent believed its declarations to be true is reflected in the
2 letter its attorney sent to Mr. Sturlaugson in January 2012. The following assertion would only
3 be made if Respondent believed – even if inaccurately – that it were true.

4 Fence Systems recognizes that its predecessor, from whom it bought the
5 Trademark may have given tacit approval for you to use the name
6 Economy Fence Center when always attached to the description “of
7 Mount Vernon” and when limited to business in Skagit County.

8 *Exhibit Q.* Neither this statement nor the letter would make any sense if Mr. Smith knew
9 Petitioner was using the Word Mark under a claim of right pursuant to a contract from
10 Chainlink.

11 At most if any part of the Applications contradicted the “presumed fact” it could be
12 considered an inadvertent false statement, but that does not establish fraud. *See, Hokto Kinoko*
13 *Co. at 1098.* If a false statement is inadvertently made, with a reasonable and honest belief that
14 it was true, then no fraud occurred. *See, Levi Strauss & Co. v. Espirit U.S. Distribution Ltd.,*
15 *588 F. Supp. 2d 1076, 1084 (N.D. Cal. 2008).*

16 The party alleging trademark fraud bears a “heavy” burden of proof. In
17 order to survive summary judgment, the party alleging fraud must show
18 that there is a genuine issue as to whether the failure to make a disclosure
19 to the PTO was made “in bad faith or with knowledge” that disclosure was
20 required. “[F]raud will not lie if it can be proven that the statement, though
21 false, was made with a reasonable and honest belief that it was true.”

22 *Id.* at 1084 (internal citations omitted).

23 The evidence all supports the reasonableness of Respondent’s actual belief in the truth
of the Applications and the Response to Office Action with regard to exclusivity and
distinctiveness. Accordingly, like Concord Farms in *Hokto*, and Esprit in *Levis Straus*, JKS
provides no evidence of intent to defraud the USPTO nor that Respondent even made a
knowing misrepresentation.

1 Intent to deceive cannot be inferred solely from the fact that information
2 was not disclosed; there must be a factual basis for a finding of deceptive
3 intent. Esprit has not demonstrated that there is a triable issue of fact as to
4 whether LS & Co. knew the affidavit was incorrect or whether LS & Co.
acted in bad faith. Accordingly, LS & Co.’s motion for summary judgment
on this issue is GRANTED.

5 Like in *Hokto*, and *Levi Straus*, JKS’s argument “in the absence of evidence, does not
6 create a triable dispute of material fact” and should not survive summary judgment.

7 V. SUMMARY AND CONCLUSION

8 Petitioner cannot meet its burden to present evidence sufficient to support the elements
9 of either claim in its Petition. Summary Judgment is appropriate on Count I, because Petitioner
10 cannot present evidence to contradict the undisputed fact that Respondent’s used the term
11 “Economy Fence Center” and its logo before or simultaneously with Petitioner. Petitioner
12 cannot establish “prior use” with regard to either the Work Mark or the Logo Mark.

13 Likewise, Summary Judgment is appropriate on Count II with regard to the Logo Mark,
14 because there is no evidence that anyone, including Petitioner, ever attempted to use that Mark.
15 There is no allegation – much less evidence – that Petitioner made any statement in its
16 applications that could be considered false, much less fraudulent with regard to the Logo Mark.

17 Finally, Summary Judgment is also proper on Count II with regard to the Word Mark
18 because all of Respondent’s statements were true. Moreover, even with regard to any statement
19 or inference Petitioner may contend was mistaken, the overwhelming evidence is that Mr.
20 Smith was entirely justified in his reasonable belief in the truth of what is declared. In
21 particular, to the extent Mr. Smith was mistaken in his belief regarding the extent of
22 Respondent’s use of the name “Economy Fence Center,” any mistake was because 1)
23 Respondent consistently held itself out as “Economy Fence Center of Mount Vernon” – for the

1 express purpose of creating distinction, and 2) Mr. Strong's written representations led Mr.
2 Smith to believe Respondent had acquired the exclusive right to use the Word Mark.

3 A trial would be a waste of judicial recourses. Summary Judgment for Respondent is
4 appropriate on both counts – for both Marks.

5
6 DATED this September 4, 2014

7 ELLIS, LI & MCKINSTRY PLLC

8 By: /s/ Kyle D. Netterfield
9 Kyle D. Netterfield WSBA No. 27101
10 Attorneys for Fence Systems NW, Inc.

11 JENSEN & PUNTIGAM P.S.

12 By: /s/ Clark A. Puntigam
13 Clark A. Puntigam WSBA No. 4619
14 Attorneys for Fence Systems NW, Inc.

1 **CERTIFICATE OF SERVICE**

2 I certify that on this date a copy of the foregoing document was served by electronic
3 mail (by agreement), addressed to counsel for Petitioner:

4 Jonathan I. Feil [jfeil@sksp.com]

5
6 DATED this September 4, 2014

7 By: /s/ Cynthia Wyer
8 Cynthia Wyer
9 Paralegal to Kyle D. Netterfield
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1
2
3
4
5
6 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

7 JKS ENTERPRISES, INC.,

8 Petitioner,

9 v.

10 FENCE SYSTEMS NW, INC.,

11 Respondent.

CANCELLATION NO. 92058068

DECLARATION OF KYLE D. NETTERFIELD
IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

12 KYLE D. NETTERFIELD declares:

- 13 1. I am an attorney for the Respondents.
- 14 2. Attached as Exhibit A is a true and correct copy of excerpts of Jerry
15 Sturlaugson's deposition dated July 18, 2014.
- 16 3. Attached as Exhibit B is a true a correct copy of excerpts of Derek Smith's
17 deposition dated July 17, 2013.
- 18 4. Attached as Exhibit C is a true and correct copy of excerpts of Fence Systems
19 NW, Inc. 30(b)(6) deposition dated July 17, 2013.
- 20 5. Attached as Exhibit D is a true and correct copy of Economy Fence Center's
21 advertising brochure.
- 22 6. Attached as Exhibit E is a true and correct copy of the Offer of Purchase dated
23 January 13, 1984: "Chainlink – Strong Contract."

1 7. Attached as Exhibit F is true and correct copy of the Economy Fence Center Bill
2 of Sale dated December 4, 2003.

3 8. Attached as Exhibit G is a true and correct copy of the Asset Purchase and Sale
4 agreement dated November 13, 2003.

5 9. Attached as Exhibit H is a true and correct copy of the Agreement of Purchase
6 of Sale dated February 2, 1984: "Chainlink – Sturlaugson Contract."

7 10. Attached as Exhibit I is a true and correct copy of Washington State Department
8 of Revenue Business Records Database Detail for Economy Fence Center of Mount
9 Vernon.

10 11. Attached as Exhibit J is a true and correct copy of the Department of Labor and
11 Industries proof of Registration for Economy Fence Center Mt Vernon.

12 12. Attached as Exhibit K is a true and correct copy of the GTE Everything Pages
13 for Snohomish County dated December 1996.

14 13. Attached as Exhibit L is a true and correct copy of an Economy Fence Center of
15 Mount Vernon business check.

16 14. Attached as Exhibit M is a true a correct copy of Economy Fence Center
17 Stanwood Business Licenses.

18 15. Attached as Exhibit N is a true and correct copy of various white and yellow
19 page advertisements prepared for Economy Fence Center of Mount Vernon.

20 16. Attached as Exhibit O is a true and correct copy of Economy Fence Center
21 Concrete Business Licenses.

22 17. Attached as Exhibit P is a true and correct copy of Economy Fence Center of
23 Mount Vernon signage.

1 **CERTIFICATE OF SERVICE**

2 I certify that on this date a copy of the foregoing document was served by electronic
3 mail (by agreement), addressed to counsel for Petitioner:

4 Jonathan I. Feil [jfeil@sksp.com]

5
6 DATED this September 4, 2014

7
8 By: /s/ Cynthia Wyer
9 Cynthia Wyer
10 Paralegal to Kyle D. Netterfield

Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

JKS ENTERPRISES, INC.,)
)
 Petitioner(s),)
)
 vs.) Cancellation No. 92058068
)
FENCE SYSTEMS NW, INC.,)
)
 Respondent(s).)

Deposition Upon Oral Examination of
JERRY N. STURLAUGSON

9:42 a.m.

July 18, 2014

2025 First Avenue, Penthouse A
Seattle, Washington



REPORTED BY: Mindi L. Pettit, RPR, CCR #2519



YAMAGUCHI OBIEN MANGIO
court reporting, video and videoconferencing
800.831.6973 206.622.6875
production@yomreporting.com
www.yomreporting.com

Page 6

1 Seattle, Washington; July 18, 2014

2 9:42 a.m.

3 --oOo--

4 JERRY N. STURLAUGSON,

5 sworn as a witness by the Certified Court Reporter,

6 testified as follows:

7 EXAMINATION

8 BY MR. NETTERFIELD:

9 Q. What's your name?

10 A. Jerry Nathan Sturlaugson.

11 Q. Are you the president of JKS Enterprises?

12 A. Yes.

13 Q. Who are the other officers of JKS Enterprises?

14 A. My wife, Kathy.

15 Q. Anybody else?

16 A. No.

17 Q. Are there other owners of JKS Enterprises?

18 A. No.

19 Q. Are you the person most knowledgeable with

20 regard to the business affairs of JKS Enterprises?

21 A. Yes.

22 Q. Is there anyone more knowledgeable than you?

23 A. No.

24 Q. What did you do to prepare for your deposition

25 today?

Page 7

1 A. Checked over the statements that we made.

2 Q. What statements?

3 A. About the years that we've been in business --

4 doing business as Economy Fence Center.

5 Q. What else did you do?

6 A. Slept.

7 Q. What else did you do?

8 A. Woke up.

9 Q. What else did you do?

10 A. Nothing, I guess.

11 Q. Did you talk to your lawyer?

12 A. Yes, this morning.

13 Q. Did you do anything else to prepare for your

14 deposition?

15 A. No.

16 Q. How long have you been president of JKS

17 Enterprises?

18 A. Since 1994.

19 Q. Is that when the company was formed?

20 A. No.

21 Q. When was the company formed?

22 A. As far as JKS Enterprises?

23 Q. Correct.

24 A. Yes, it was formed in 1994.

25 Q. And before that, were you doing business as a

Page 8

1 sole proprietorship?

2 A. Yes.

3 Q. Under what name?

4 A. Economy Fence Center.

5 Q. Any other name?

6 A. No.

7 Q. You did not do business as Economy Fence

8 Center of Mount Vernon? Is that your testimony?

9 A. No, we did have Mount Vernon, yes.

10 Q. You did business under business licenses of

11 JKS Enterprises, correct?

12 A. As of 1994.

13 Q. And you did business prior to 1994 as Economy

14 Fence Center of Mount Vernon, correct?

15 A. Yes. We also did it as Economy Fence.

16 Q. Do you believe that you have the legal right

17 to use the trade name Economy Fence Center?

18 MR. FEIL: Objection, calls for a legal

19 conclusion.

20 I will allow -- allow my client to answer if

21 the question is rephrased to his understanding rather

22 than a legal conclusion.

23 Q. (By Mr. Netterfield) Do you believe that you

24 have the right to use the name Economy Fence Center?

25 MR. FEIL: Objection.

Page 9

1 A. Yes.

2 MR. FEIL: Same objection. If you

3 would --

4 MR. NETTERFIELD: On what --

5 MR. FEIL: If you feel you can answer

6 the --

7 MR. NETTERFIELD: He did answer. The

8 answer was yes.

9 MR. FEIL: I'm sorry, did you -- did you

10 take that down? Was that over -- was that while I was

11 objecting?

12 THE REPORTER: Yes.

13 MR. FEIL: It was while I was doing the

14 objection. All right.

15 Q. (By Mr. Netterfield) On what basis did you

16 acquire the right to use the name Economy Fence Center?

17 A. By purchasing it from Dennis McElrath.

18 Q. And that was pursuant to the agreement of

19 purchase sale, which has been previously marked as

20 Exhibit 10; is that correct?

21 A. I'd have to look at it. Yes.

22 (Discussion off the record.)

23 Q. (By Mr. Netterfield) And in particular, the

24 language in this contract which says, The purchaser has

25 the right to continue to do business under the name of



Page 10

1 Economy Fence Center at the address of 2201 Riverside
 2 Drive, Mount Vernon, Washington -- that is the language
 3 that you allege gives you the right to use the name
 4 Economy Fence Center, correct?
 5 MR. FEIL: Objection, calls for a legal
 6 conclusion on the part of the witness.
 7 The witness may answer to the best of his
 8 understanding, not being a lawyer. Go ahead.
 9 A. Yes.
 10 Q. (By Mr. Netterfield) Do you believe that
 11 Chainlink Specialties abandoned the name Economy Fence
 12 Center?
 13 MR. FEIL: Objection, can --
 14 "abandonment" is a legal term, calls for a legal
 15 conclusion of the witness.
 16 The witness may answer according to his
 17 nonlegal understanding.
 18 A. Yes.
 19 Q. (By Mr. Netterfield) You believe they
 20 abandoned it?
 21 A. Yes.
 22 Q. If they abandoned it, how did they sell it to
 23 you?
 24 A. They abandoned it after they sold it to me
 25 because they were out of business.

Page 11

1 Q. Okay. So the sale to you occurred first, and
 2 then they abandoned it, correct?
 3 A. To my knowledge, yes.
 4 Q. Was your right or what you believed to be your
 5 right to continue to do business under the name of
 6 Economy Fence Center at the address of 2201 Riverside
 7 Drive, Mount Vernon, Washington, a significant term and
 8 condition for your agreement to purchase the assets of
 9 the Mount Vernon store?
 10 A. I don't understand the question.
 11 Q. You testified earlier that you acquired the
 12 right to do business as Economy Fence Center pursuant
 13 to this contract, right?
 14 A. Yes.
 15 Q. In particular, the language of paragraph
 16 capital B, small (a), correct?
 17 A. Yes.
 18 Q. And was that right to use Economy Fence Center
 19 important to you?
 20 A. Yes.
 21 Q. And you would not have entered into this
 22 contract without the right to use Economy Fence Center,
 23 is that right?
 24 A. I wouldn't have bought it, no.
 25 Q. Do you agree with the statement that Chainlink

Page 12

1 Specialties Fence Company abandoned the mark as a
 2 matter of law when it gave each of the three purchasers
 3 its stores?
 4 MR. FEIL: Object --
 5 Q. (By Mr. Netterfield) Do you agree with that
 6 statement?
 7 MR. FEIL: Objection, calls for a legal
 8 conclusion by the witness. I'd also like to hear the
 9 question reasked -- I mean, I'd like to hear it
 10 repeated, if you could repeat it, because there is
 11 something I didn't quite catch.
 12 MR. NETTERFIELD: I'll repeat it.
 13 Q. (By Mr. Netterfield) Do you agree with the
 14 statement that Chainlink Specialties Fence Co.
 15 abandoned the mark as a matter of law when it gave each
 16 of the three purchasers of its stores in Mount Vernon,
 17 Everett, and Wenatchee the right to use Economy Fence
 18 Center as part of the purchase? Do you agree with that
 19 statement?
 20 MR. FEIL: Same objection as before,
 21 which calls for a legal conclusion by the witness and
 22 uses legal terms which have different terms and
 23 vernacular.
 24 I will allow the witness -- or witness may go
 25 ahead and answer to the best of his understanding as a

Page 13

1 nonlawyer.
 2 A. Best of my knowledge, that when we purchased
 3 the store, that we had the legal right to use that name
 4 because they abandoned it.
 5 Q. (By Mr. Netterfield) Okay. You were aware
 6 that Scott Strong had previously purchased the Everett
 7 store?
 8 A. Yes.
 9 Q. How did you know that?
 10 A. Because we were all together at the same time
 11 that they offered the stores to us.
 12 Q. Where were you together?
 13 A. In -- at Chainlink Specialties' office on
 14 Chennault Beach Road in Mukilteo.
 15 Q. The date of your contract is February 2nd,
 16 1984. Is that correct?
 17 MR. FEIL: Would you hold on a minute
 18 before he answers. I'm going to object to the
 19 characterization of the -- excuse me. I'm going to
 20 object to the question as ambiguous as to the term
 21 "date of the contract."
 22 The witness can go ahead and answer, if he
 23 understands the question.
 24 A. To my knowledge, yes, it was in February of
 25 1984.



Page 14

1 Q. (By Mr. Netterfield) Okay. Where were you
 2 when you signed this?
 3 A. At their office on Chennault Beach Road.
 4 Q. And Scott Strong was there when you signed?
 5 A. No.
 6 Q. He had previously purchased under a separate
 7 contract; is that right?
 8 A. To my knowledge, yes.
 9 Q. Was Derek Smith a part of any of those
 10 conversations?
 11 A. No.
 12 Q. This agreement of purchase of sale is between
 13 you personally and Chainlink Specialties, correct?
 14 A. Yes.
 15 Q. JKS Enterprises did not exist at the time,
 16 correct?
 17 A. No.
 18 Q. JKS Enterprises was created in 1994?
 19 A. Yes.
 20 Q. Under what document did you, Jerry
 21 Sturlaugson, transfer your rights to use the name
 22 Economy Fence Center to JKS Enterprises?
 23 A. I don't follow the question.
 24 Q. Do you believe that JKS Enterprises has the
 25 right to use the name Economy Fence Center?

Page 15

1 A. Yes.
 2 Q. How did it acquire those rights?
 3 MR. FEIL: I'm just going to object to
 4 the degree it calls for a legal conclusion.
 5 The witness may answer as he understands it.
 6 A. Because we had been doing business prior to
 7 that as Economy Fence Center.
 8 Q. (By Mr. Netterfield) Who had?
 9 A. I had.
 10 Q. You, Jerry Sturlaugson, had?
 11 A. Yes.
 12 Q. Right. So Jerry Sturlaugson purchased the
 13 right to use whatever this contract gives you, correct?
 14 A. Correct.
 15 Q. And then now you're operating as JKS
 16 Enterprises?
 17 A. D/b/a Economy Fence Center.
 18 Q. Right. So my question to you is when JKS
 19 Enterprises began doing business as Economy Fence
 20 Center and/or Economy Fence Center of Mount Vernon, was
 21 there a document that transferred rights from Jerry
 22 Sturlaugson to JKS Enterprises?
 23 A. I don't know.
 24 Q. Did you prepare any sort of asset purchase and
 25 sale agreement to transfer title of any assets from

Page 16

1 Jerry Sturlaugson to JKS Enterprises?
 2 A. I don't know.
 3 Q. Who would know?
 4 A. I don't remember. Let's put it that way.
 5 I -- I don't remember.
 6 Q. Were you represented by an attorney at the
 7 time that you formed JKS Enterprises?
 8 A. Yes.
 9 Q. What papers were prepared in relationship to
 10 the creation of JKS Enterprises?
 11 A. I did not bring those. They must be at my
 12 office, or they're at the attorney's office.
 13 Q. What attorney?
 14 A. Cole & Gilday.
 15 Q. Cole & Gilday was the attorney who represented
 16 you at the time that you formed JKS Enterprises?
 17 A. Yes.
 18 Q. Did you ask him for any documents related to
 19 your rights to use Economy Fence Center?
 20 A. I don't remember if I asked him or not.
 21 Q. When was the last time you spoke with him?
 22 A. About this particular --
 23 MR. FEIL: The question is just when was
 24 the last time you spoke with him.
 25 A. 2013.

Page 17

1 Q. (By Mr. Netterfield) And did you talk to him
 2 about this trademark issue?
 3 MR. FEIL: Objection. That invades --
 4 objection on the basis of attorney-client privilege.
 5 And based on the attorney-client privilege, I
 6 instruct my client not to answer that question.
 7 Q. (By Mr. Netterfield) Have you requested any
 8 documents from him or his office related to this
 9 trademark litigation?
 10 A. Repeat the question, please.
 11 Q. Have you asked him or his office for any
 12 documents related to this trademark litigation?
 13 MR. FEIL: I'm going to object to that
 14 question again on the basis of attorney-client
 15 privilege. I would not object to a question that would
 16 ask him if he received documents.
 17 And I will instruct the witness not to answer
 18 a question concerning a privileged communication.
 19 Q. (By Mr. Netterfield) Have you made any
 20 attempt to acquire any documents related to the
 21 formation of JKS Enterprises or the transfer of any
 22 rights from Jerry Sturlaugson to JKS Enterprises from
 23 any person?
 24 A. I don't know.
 25 Q. You don't know whether you tried --



Page 18

1 A. I don't remember if I tried or not.

2 Q. You have no memory of trying to get documents

3 related to that transaction?

4 A. No, I do not remember.

5 Q. Okay. To the best of your knowledge today,

6 there is no document that transfers the right to use

7 the trade name Economy Fence Center from Jerry

8 Sturlaugson to JKS Enterprises, correct?

9 MR. FEEL: Objection, asked and

10 answered.

11 The witness may go ahead and answer the

12 question, if he understands it.

13 A. I don't understand the question.

14 MR. NETTERFIELD: Can you read it back,

15 please.

16 (Reporter read back as requested.)

17 A. I don't know if there is a document or not.

18 If there is, my other attorney has it, which is Cole &

19 Gilday.

20 Q. (By Mr. Netterfield) And my question

21 specifically is, as you sit here today, you don't know

22 of any such document, correct?

23 A. I don't know if there is a document or not,

24 yes.

25 Q. Yes, you don't know?

Page 19

1 A. I don't know.

2 Q. Okay. And you have made no effort to try to

3 find one, correct?

4 A. I didn't know that I had to.

5 Q. You made no effort to try to find one,

6 correct?

7 A. No, I have not.

8 Q. Are you aware of any document that transferred

9 any rights of any kind from Jerry Sturlaugson to JKS

10 Enterprises?

11 A. I'm not aware of any, no.

12 Q. And if they existed, they would be with this

13 attorney?

14 A. Yes.

15 Q. And his office is where?

16 A. Stanwood.

17 Q. Have you ever had a personal conversation with

18 Derek Smith?

19 A. No.

20 Q. Have you ever exchanged any kind of written

21 correspondence with Derek Smith?

22 A. No, I have not.

23 Q. Have you had a conversation with anyone at

24 Fence Systems Northwest?

25 A. Oh, yeah, I've talked to people there.

Page 20

1 Q. Have you had any conversations with people at

2 Fence Systems Northwest with regard to the trade name?

3 A. No.

4 Q. Are you aware of any correspondence between

5 anyone at Fence Systems Northwest and anyone at JKS

6 Enterprises regarding the trade name, other than

7 between the lawyers?

8 A. Not that I'm aware of, no.

9 Q. Do you believe that Derek Smith knew anything

10 about the terms of your contract, a copy of which is in

11 front of you as Exhibit 10, prior to this litigation?

12 MR. FEEL: Objection, lack of

13 foundation.

14 The witness may answer.

15 A. Re -- say the question again, please.

16 Q. (By Mr. Netterfield) I'll ask it differently.

17 Do you believe that Derek Smith or any officer of Fence

18 Systems Northwest knew the terms of Exhibit 10 prior to

19 2009?

20 MR. FEEL: Objection, lack of

21 foundation, calls for speculation.

22 You may go ahead and answer.

23 A. To my knowledge, I don't know. I don't know

24 if they knew about this document or not.

25 Q. (By Mr. Netterfield) Do you have any reason

Page 21

1 to believe that they did?

2 A. No.

3 Q. Do you believe that Derek Smith was lying when

4 he said that he did not know the terms of that

5 contract, which is Exhibit 10?

6 MR. FEEL: Objection, lack of

7 foundation, calls for speculation.

8 You may answer.

9 A. I don't know if he was lying or not because I

10 don't know what he saw.

11 Q. (By Mr. Netterfield) You have no idea what he

12 saw?

13 A. No.

14 Q. And you have no idea what he knows?

15 A. All I know is if he got the same documents I

16 got. That's all I know.

17 Q. You don't know whether he got the same

18 documents as you did, is that right?

19 A. Yes.

20 Q. Well, do you know when Chainlink Specialties

21 started using the trade name Economy Fence Center?

22 A. About 1981.

23 Q. Do you know what kind of business -- what kind

24 of work they were doing in 1981?

25 A. Fence sales and installations.



Page 22

1 Q. Did they have retail stores?
 2 A. Yes.
 3 Q. Do you know whether they did work on federal
 4 installations at that time?
 5 A. Yes.
 6 Q. You believe they did?
 7 A. Um-hum.
 8 Q. Yes?
 9 A. I believe they did.
 10 Q. Yes. And you believe that they did work on
 11 tribal lands around that time?
 12 A. Yes, I believe they did.
 13 Q. And do you believe that they sold product out
 14 of state at that time?
 15 A. That, I don't know.
 16 Q. Okay. And do you believe that they purchased
 17 materials from out of state at that time?
 18 A. That, I don't know either.
 19 Q. You have no reason to doubt that they did?
 20 A. No.
 21 Q. You have no reason to believe that they did
 22 not do business out of state at that time, do you?
 23 A. No.
 24 Q. Do you believe that Fence Systems Northwest's
 25 use of the trade name Economy Fence Center creates

Page 23

1 confusion in the marketplace?
 2 MR. FEIL: Objection, calls for a legal
 3 conclusion. Also object to "believe" rather than
 4 asking the witness for facts.
 5 You can answer the question to the best of
 6 your understanding as a nonlawyer.
 7 A. Best of my knowledge, no, there's no
 8 confusion.
 9 Q. (By Mr. Netterfield) Are you aware of any
 10 circumstances of confusion between JKS Enterprises or
 11 the d/b/a or the sole proprietorship of Jerry
 12 Sturlaugson, on the one hand, and Economy Fence Center,
 13 Fence Systems Northwest on the other?
 14 A. There may be.
 15 Q. Are you aware of any?
 16 A. No.
 17 Q. So, as you sit here today, you do not know of
 18 any time when anyone has been confused between your
 19 business and Mr. Smith's business; is that right?
 20 A. I'm sure there is, and I believe that there
 21 probably is a confusion, but on the same token, there
 22 is a confusion between his company and my company in
 23 Mount Vernon.
 24 Q. My question is what are the circumstances --
 25 tell me what are the occasions when there has been

Page 24

1 confusion between these two companies.
 2 MR. FEIL: Just, excuse me, to clarify,
 3 you mean, going in either direction?
 4 MR. NETTERFIELD: Yes.
 5 MR. FEIL: Okay.
 6 A. Customers maybe think that they're dealing
 7 with one store and not the other or vice versa.
 8 Q. (By Mr. Netterfield) You said "maybe"?
 9 A. Yes.
 10 Q. No, I'm asking for specific circumstances when
 11 there has been confusion.
 12 A. No.
 13 Q. You're not aware of any specific situations
 14 where there has been confusion between your company and
 15 Mr. Smith's company because of the name Economy Fence
 16 Center, correct?
 17 A. Let me rephrase that. Yes, there are -- I do
 18 know of a couple occasions.
 19 Q. What are they?
 20 A. Well, one of them was a job that we did in
 21 Lake Stevens that she had called us -- our number. I
 22 went and made the estimate, sold the job. She wanted
 23 to know when we could do it. I told her that by the
 24 time the crew got loaded up out of the store in Mount
 25 Vernon, that they'd be down here in a certain amount of

Page 25

1 time. And she said okay. We did the job. We got paid
 2 for the job. And then she called us back to give her
 3 another bid for another location on the same job.
 4 Q. And when did that happen?
 5 A. March, I believe it was, or May of 2012.
 6 Q. All right. What other circumstances are you
 7 aware of where there has been confusion?
 8 A. Just recently, there was a gentleman that
 9 called for a quote on a job. There, again, too calling
 10 my number in Mount Vernon -- or my Everett number. And
 11 when I got to the location, it was a vinyl fence, and I
 12 told him we could not match this. I don't believe that
 13 we did this job. And so I never gave him a quote.
 14 Therefore, he then turned and called Derek's company.
 15 Q. And did that happen in the last two years?
 16 A. Yes.
 17 Q. What other circumstances are you aware of
 18 where there has been confusion?
 19 A. He did a job in Mount Vernon that the
 20 contractor thought he was calling us and called him.
 21 He did the job. And this was in about 2008, I believe
 22 it was, 2009.
 23 Q. And what was that project?
 24 A. I don't recall the name, but it was for
 25 Chaffey homes. We had done a lot of work for Chaffey



Page 26

1 homes in the Mount Vernon area.

2 Q. Okay. What other circumstances?

3 A. Tesoro Industries, he did a job there. And I

4 had been working with Tesoro for about two years on

5 this project.

6 Q. When did that happen?

7 A. About 2010.

8 Q. What other circumstances?

9 A. Off the top of my head, I can't recall.

10 Q. What documents would you look at to refresh

11 your recollection?

12 MR. FEIL: Hold on a moment. Could you

13 tag where we are in this in case I want to come back.

14 Thank you.

15 A. Ask the question, please.

16 Q. (By Mr. Netterfield) Are there any documents

17 that you could review to refresh your recollection

18 about circumstances where there has been confusion

19 between your company and Mr. Smith's?

20 A. There may be.

21 Q. What documents would you look at?

22 A. Estimates.

23 Q. Where would those estimates be located?

24 A. In my office.

25 Q. Did you produce those estimates in response to

Page 27

1 the discovery requests that we propounded to you in

2 this case?

3 A. I don't recall that you asked for estimate

4 forms.

5 MR. FEIL: I'm -- answer his -- answer

6 the question.

7 Q. (By Mr. Netterfield) My question --

8 MR. FEIL: Would you reask the question.

9 (Reporter read back as requested.)

10 A. No.

11 Q. (By Mr. Netterfield) What file are they in?

12 A. My estimate file.

13 Q. And you would need to review your entire

14 estimate file to see if there were circumstances of

15 confusion?

16 A. Yes.

17 Q. How big is that file?

18 A. Five years' worth probably.

19 Q. It only goes back five years?

20 A. Yes.

21 Q. What happened to the earlier ones?

22 A. Probably destroyed them.

23 Q. This was previously marked as Exhibit 8. I'll

24 represent to you that Mr. Smith testified this is -- or

25 I'll represent to you that it is called an offer of

Page 28

1 purchase. It states that it's between Scott Strong and

2 Chainlink Specialties Fence Co., Inc. And it states at

3 the bottom that "This document is submitted in good

4 faith this 13th day of January 1984." Do you see that?

5 A. Yes.

6 Q. And it's signed by Scott Strong and Dennis

7 McElrath. Do you see that?

8 A. Yes.

9 Q. Do you have any reason to believe that this is

10 not the contract whereby Scott Strong purchased certain

11 rights from Chainlink Specialties?

12 MR. FEIL: I'm going to object to the

13 degree to which it calls for a legal conclusion.

14 The witness may answer to the best of his

15 understanding as a nonlawyer.

16 A. To my knowledge, this is the agreement that

17 Scott had with Dennis McElrath.

18 Q. (By Mr. Netterfield) And do you have any

19 reason to believe that it was not signed on or about

20 January 13th of 1984?

21 A. No.

22 Q. And January 13th of 1984 is prior to February

23 of 1984, is it not?

24 A. Yes.

25 (Deposition Exhibit 24 was marked for

Page 29

1 identification.)

2 MR. FEIL: Say this off the record.

3 (Discussion off the record.)

4 Q. (By Mr. Netterfield) I'll represent to you

5 that this is a Petition for Cancellation which your

6 attorney filed with the United States Patent and

7 Trademark Office in this action. Take a moment,

8 please, review the document, and tell me whether you

9 recognize it.

10 A. Yes, I do recognize it.

11 Q. Did you review it before it was filed?

12 A. Yes.

13 Q. Do you believe that everything in it is true

14 and accurate?

15 A. To my knowledge --

16 MR. FEIL: I'm going to -- excuse me. I

17 object to that question. Just looking for something --

18 I'm going to object to that question on the basis of

19 allegations made on information and belief.

20 You may answer the question as asked.

21 A. To my knowledge, yes.

22 Q. (By Mr. Netterfield) Directing your attention

23 to paragraph 5 on page 2, it states, "Petitioner is

24 successor in interest to the rights of Jerry

25 Sturlaugson under an agreement of purchase of sale with



Page 30

1 Chainlink Specialties Fence Co., Inc.," paren,
 2 "Chainlink Fence," closed paren, "signed on February
 3 2nd, 1984." Do you believe that to be a true and
 4 accurate statement?
 5 A. Yes.
 6 Q. What is your factual basis for your contention
 7 that petitioner JKS Enterprises is a successor in
 8 interest to the rights of Jerry Sturlaugson?
 9 MR. FEIL: I'm going to object to that
 10 to the degree it calls for a legal conclusion.
 11 The witness may answer to the best of his
 12 knowledge as a nonlawyer.
 13 A. Because we were doing business with -- as
 14 Economy Fence and we just changed it to a corporation.
 15 Q. (By Mr. Netterfield) Do you understand JKS to
 16 be a separate legal entity than you, Jerry Sturlaugson?
 17 A. Yes.
 18 Q. Which is why you formed it, correct?
 19 A. Correct.
 20 Q. Because you didn't want the liabilities of the
 21 company to come back on you personally?
 22 MR. FEIL: Objection, calls for a legal
 23 conclusion, lack of foundation.
 24 The witness may answer.
 25 A. Yes.

Page 31

1 Q. (By Mr. Netterfield) But to the best of your
 2 knowledge, you've made no effort to document any
 3 transfer of rights from you personally to JKS
 4 Enterprises, correct?
 5 MR. FEIL: Objection, calls for a legal
 6 conclusion, asked and answered earlier, and misstates
 7 witness's earlier testimony.
 8 You may answer.
 9 A. Could you ask the question again, please.
 10 (Reporter read back as requested.)
 11 MR. FEIL: Same objection.
 12 A. As far as my knowledge, no.
 13 Q. (By Mr. Netterfield) Directing your attention
 14 to paragraph 6. Oh --
 15 MR. FEIL: Could I just ask a favor? Do
 16 you have an extra highlighter?
 17 (Discussion off the record.)
 18 Q. (By Mr. Netterfield) Do you understand this
 19 to be your complaint -- this document, paragraph 24 --
 20 or Exhibit 24, your petition? It's -- I'm sorry,
 21 Exhibit 24, do you understand Exhibit 24 to be your
 22 petition in this matter?
 23 A. Yes.
 24 Q. Do you understand paragraph 5 to be an
 25 allegation within your petition?

Page 32

1 A. Yes.
 2 Q. And you did nothing prior to this deposition
 3 to familiarize yourself with the factual basis for this
 4 allegation, correct?
 5 MR. FEIL: Objection -- oh -- objection,
 6 lack of foundation, speculative, and ambiguous.
 7 You may answer, if you understand the
 8 question.
 9 A. I don't quite understand the question.
 10 Q. (By Mr. Netterfield) You did not do anything
 11 to further your understanding to make sure that you had
 12 a complete understanding of the factual basis for this
 13 allegation in paragraph 5 before coming here today,
 14 correct?
 15 MR. FEIL: Objection, lack of
 16 foundation, ambiguous, particularly ambiguous as to
 17 whether "you" is the entity or the individual.
 18 You may go ahead and answer.
 19 A. Just because of the purchase agreement that I
 20 had with Chainlink Specialties to use the name Economy
 21 Fence is all that I've been going by.
 22 Q. (By Mr. Netterfield) And in preparation for
 23 this deposition today, you did not do anything to
 24 further your knowledge or understanding of that issue;
 25 is that right?

Page 33

1 A. No.
 2 Q. That is not right, or it is right?
 3 A. I didn't do anything -- any more than what I
 4 already have.
 5 Q. What you -- what you already knew?
 6 A. Correct.
 7 Q. Okay. Drawing your attention to paragraph 6.
 8 It states, "Upon information and belief, respondent and
 9 its predecessor in interest have been aware of
 10 petitioner's purchase agreement from on or about the
 11 date it was signed up to the present." Did I read that
 12 correctly?
 13 A. Yes.
 14 Q. Respondent is Economy -- is Fence Systems
 15 Northwest?
 16 A. Yes.
 17 Q. And it is your allegation that my client was
 18 aware of your purchase and sale agreement from the time
 19 it was signed until now, correct?
 20 A. I don't know if North -- Fence Systems
 21 Northwest knew of my purchase agreement.
 22 Q. So you believe Scott Strong knew of your
 23 purchase and sale agreement?
 24 A. Yes.
 25 Q. But you have no idea whether Derek Smith or



Page 34

1 anyone at Fence Systems Northwest knew about your
 2 purchase agreement?
 3 A. Of the purchase agreement, no, I do not know.
 4 Q. So this statement that respondent and its
 5 predecessor have been aware of petitioner's purchase
 6 agreement from on or about the date it was signed up to
 7 the present is not a true statement, correct?
 8 MR. FEIL: Objection, misstates the
 9 allegation, misstates prior testimony.
 10 Go ahead. You may answer.
 11 A. To my knowledge, no, I don't know.
 12 Q. (By Mr. Netterfield) Okay. So, to the best
 13 of your knowledge, respondent did not know about your
 14 purchase and sale agreement?
 15 MR. FEIL: Objection, asked and
 16 answered. Witness stated that he did not know. I
 17 believe this is oppressive to the witness to be asking
 18 the same question to try to get him to change his
 19 answer.
 20 You may answer.
 21 A. I knew that he knew that we were there, but as
 22 far as the purchase agreement, no, I don't know that he
 23 knew anything about the purchase agreement.
 24 Q. (By Mr. Netterfield) Okay. So that is a
 25 false statement.

Page 35

1 MR. FEIL: Objection. Objection to
 2 client -- to counsel testifying. Objection to the
 3 misstatement of the witness's testimony. And I believe
 4 that that statement on the record is thoroughly
 5 improper for a deposition.
 6 Q. (By Mr. Netterfield) Directing your attention
 7 to page 5. On what date do you believe that the Fence
 8 Systems Northwest logo was first used in commerce?
 9 MR. FEIL: Objection -- I'm going to
 10 object to the question based on the -- asks for a legal
 11 conclusion as to first use, first use in commerce.
 12 I'll object on the basis of foundation as well.
 13 The witness may answer to his understanding as
 14 a nonlawyer, if he understands the question.
 15 A. Can you repeat the question, please.
 16 Q. (By Mr. Netterfield) Do you know what the --
 17 do you know what the Economy Fence Center -- Fence
 18 Systems Northwest logo looks like?
 19 A. I know what they both look like, yes.
 20 Q. Do you know what the Fence Systems Northwest,
 21 Economy Fence Center logo looks like?
 22 A. Yes.
 23 Q. Okay. When do you believe it was first used
 24 in the marketplace?
 25 MR. FEIL: Objection, calls for

Page 36

1 speculation, asks for belief, no foundation established
 2 as to knowledge, and ambiguous.
 3 You may answer the question, if you understand
 4 it.
 5 A. I believe probably around 1985, '86.
 6 Q. (By Mr. Netterfield) On what basis do you
 7 have that belief?
 8 A. Seeing it on their trucks.
 9 Q. And you previously testified, I believe, that
 10 the name Economy Fence Center was first used in the
 11 marketplace around 1981; is that right?
 12 A. Yes.
 13 Q. Paragraph 15 states, "Respondent's marks" --
 14 and I'll represent to you that earlier that references
 15 the name Economy Fence Center and the name, plus design
 16 that are subject to the litigation here today. Do you
 17 understand what I mean?
 18 A. No.
 19 Q. There are two marks in this litigation.
 20 There's the name Economy Fence Center, and there's the
 21 logo -- the name, plus design. Those are the two
 22 marks. Do you understand that?
 23 A. Yes.
 24 Q. Okay. And paragraph 15 says, "Respondent's
 25 marks were not used in commerce by respondent as early

Page 37

1 as the dates stated in the applications" -- it goes on.
 2 But do you see what I read there?
 3 A. Um-hum.
 4 Q. Did I read that properly?
 5 A. Yes.
 6 Q. Is that a true statement?
 7 MR. FEIL: Objection, calls for a legal
 8 conclusion.
 9 Witness may answer to the extent he
 10 understands the terminology as a nonlawyer.
 11 A. What do you mean by "commerce"?
 12 Q. (By Mr. Netterfield) Do you understand
 13 whether -- do you believe it was used in the
 14 marketplace?
 15 A. Yes.
 16 Q. And you earlier testified that that included
 17 federal installations and Indian reservations, correct?
 18 MR. FEIL: Objection, misstates client's
 19 earlier testimony. Objection to the word "it" as
 20 inconsistent with prior questions.
 21 You can answer, if you understand the
 22 question.
 23 A. I don't know if they did all those tribals and
 24 whatever. I don't know what their books did or what
 25 jobs they did.



Page 46

1 A. Yes.

2 Q. (By Mr. Netterfield) Just so I'm clear, you

3 agree that respondent's marks were being used as of

4 March 2008, correct?

5 MR. FEIL: Objection on the basis of

6 legal conclusion.

7 You may answer.

8 A. Yes.

9 Q. (By Mr. Netterfield) And do you have any

10 reason to believe that they were not being used in

11 interstate commerce?

12 A. I don't have any idea whether they were or

13 not.

14 Q. Okay. Fence Systems Northwest has used the

15 name Economy Fence Center continuously since at least

16 1993, isn't that right?

17 MR. FEIL: Objection, calls for a legal

18 conclusion.

19 Witness may answer to his understanding as a

20 nonlawyer.

21 A. From 1993, I'm -- I don't believe so. I don't

22 believe Fence Systems Northwest was in existence in

23 1993.

24 Q. (By Mr. Netterfield) Very good. Let me

25 restate it. 2003. Fence Systems Northwest has used

Page 47

1 Economy Fence Center consistently since 2003; isn't

2 that right?

3 MR. FEIL: Same objection.

4 A. To my knowledge, yes.

5 Q. (By Mr. Netterfield) And before that, Scott

6 Strong as Fence -- as Economy Fence Center, Inc., used

7 that name consistently since 1984. Is that right?

8 MR. FEIL: Objection, calls for a legal

9 conclusion.

10 You may answer as a nonlawyer.

11 A. As far as I know, yes.

12 Q. (By Mr. Netterfield) Okay. And the logo

13 for -- which is the mark -- the second mark in this

14 case -- that has been used consistently since 1985 --

15 continuously since 1985, correct?

16 MR. FEIL: Objection, calls for a legal

17 conclusion.

18 You may answer as his understanding as a

19 nonlawyer.

20 A. Yes.

21 Q. (By Mr. Netterfield) Okay. That would

22 be . . . Directing your attention to paragraph -- to

23 page 7. Do you believe that my client lied in its

24 application for trademark?

25 MR. FEIL: I'm going to object to the

Page 48

1 reference to page 7, because there is nothing in the

2 question that actually -- actually references anything

3 on page 7. So ambiguous and a false assumption.

4 Do you understand the question?

5 THE WITNESS: No, I don't.

6 Q. (By Mr. Netterfield) Do you believe that my

7 client lied in his trademark applications that were

8 filed in 2008?

9 MR. FEIL: Objection, lack of

10 foundation.

11 You may answer.

12 A. No.

13 Q. (By Mr. Netterfield) Do you believe that my

14 client made false statements in his trademark

15 applications filed in 2008?

16 MR. FEIL: Lack of foundation.

17 Witness may answer.

18 A. I don't know whether he made false statements

19 or not.

20 Q. (By Mr. Netterfield) Directing your attention

21 to paragraph 7 -- I mean, to page 7, paragraph 27 --

22 26. It states, "Respondent knew that these statements

23 were false." Did I read that correctly?

24 A. Yes.

25 Q. And respondent is my client Fence Systems

Page 49

1 Northwest?

2 A. Yes, he is.

3 Q. And you have alleged in your petition that

4 my -- respondent knew that certain statements were

5 false, correct?

6 A. Certain statements, yes.

7 Q. Yeah. What were those statements that he knew

8 were false?

9 MR. FEIL: Objection, calls for

10 speculation.

11 But witness may answer -- or lack of

12 foundation.

13 Answer.

14 A. He stated that he didn't know that there was

15 any other companies in -- with that name.

16 Q. (By Mr. Netterfield) What name?

17 A. Economy Fence Center.

18 Q. And on what basis do you believe he knew there

19 was another company with the -- using the name Economy

20 Fence Center?

21 A. Because I had been in existence since '84 and

22 he worked for Scott Strong in '85. And the people that

23 we purchase supplies from would be delivering materials

24 to both of us. And he saw that -- when he unloaded the

25 truck, that he saw that there was other -- another



Page 50

1 Economy Fence. And so, therefore, he knew that I was
 2 there.
 3 Q. And how do you know what was -- that he saw
 4 what was unloaded from the truck?
 5 A. Because he had the paperwork and he took it
 6 into the office and they said this wasn't ours.
 7 Q. When did this happen?
 8 A. '85-ish, '86.
 9 Q. Scott Strong?
 10 A. When Scott owned the company, yes.
 11 Q. Scott was the one who came into the office
 12 that day?
 13 A. No, Derek.
 14 Q. Derek?
 15 A. Yes.
 16 Q. Okay. Came into the office where?
 17 A. At Economy Fence Center on Airport Road in
 18 Everett when he was unloading supplies off the trucks.
 19 Q. And how do you know this?
 20 A. From the gal that worked in the office.
 21 Q. What gal is that?
 22 A. Janice Snyder.
 23 Q. And what did she tell you?
 24 A. That he knew that we were in existence.
 25 Q. And when did she tell you this?

Page 51

1 A. Over a period of years, since '85 to 2013. I
 2 keep in contact with her.
 3 Q. When was the last time you talked to her?
 4 A. About two weeks ago.
 5 Q. Did you talk to her about this case?
 6 A. Yes.
 7 Q. And what did you say?
 8 A. Just told her what was happening.
 9 Q. And what did you tell her was happening?
 10 A. That he was suing over the name.
 11 Q. That he was suing over the name?
 12 A. Yeah.
 13 Q. You told Janice Snyder that my client had
 14 filed a lawsuit against you?
 15 A. Yeah, the cease and desist from using the name
 16 Economy Fence.
 17 Q. Do you understand that you're the one who
 18 filed this lawsuit, not Mr. Smith?
 19 A. Well, he sent the paperwork to me first to
 20 cease and desist of using the name.
 21 Q. But you told Janice Snyder that Mr. Smith was
 22 suing over the name?
 23 A. That I couldn't use the name any longer, yes.
 24 Q. Okay. What else did you tell her?
 25 A. That's about it.

Page 52

1 Q. That's about it. What else?
 2 A. That's it.
 3 Q. That's all?
 4 A. Yeah.
 5 Q. You just said he's suing over the name?
 6 A. Yeah. And then we talked about other things
 7 as far as our lives, you know, what we've been doing
 8 the last 15 years or whatever.
 9 Q. What other conversations have you had with Ms.
 10 Snyder regarding the trademark --
 11 A. None.
 12 Q. -- trademark litigation?
 13 A. None.
 14 Q. When did she tell you that Mr. Smith unloaded
 15 materials from the truck and went into the office on
 16 Airport Road?
 17 A. When did she tell me this?
 18 Q. Yeah.
 19 A. When I talked to her two weeks ago.
 20 Q. Did you ask her a question that elicited that
 21 response?
 22 A. No.
 23 Q. Just, hi, Janice, and then she said, oh, by
 24 the way, Derek Smith unloaded stuff from the truck and
 25 brought it into the office?

Page 53

1 A. We were talking about Scott, how he's doing
 2 well with his new job, and that Derek bought the
 3 company. And that's all that was said. And then he
 4 said, oh, that he had worked there in '85 and he was a
 5 yard individual.
 6 Q. Okay. And what else?
 7 A. That's about it.
 8 Q. Well, that's what you told me a minute ago
 9 before you just told me what you just told me now. You
 10 said before that was it, but now you just told us
 11 something new.
 12 MR. FEIL: Objection --
 13 Q. (By Mr. Netterfield) So what else is there?
 14 MR. FEIL: Objection, mischaracterizes
 15 the witness's testimony. The questioner is testifying.
 16 If the witness understands the question, he
 17 can answer.
 18 A. None.
 19 Q. (By Mr. Netterfield) Do you have any other
 20 factual basis for your contention that my client knew
 21 that certain statements were false?
 22 A. No.
 23 Q. What other statement, other than the presence
 24 of the other company, do you consider to be false?
 25 A. I don't follow the question.



Page 66

1 Q. (By Mr. Netterfield) We're done with that
 2 one. This is previously marked as Exhibit 13. I've
 3 handed you what's been marked as Exhibit 13. Going
 4 back four pages --

5 MR. FEIL: Do you have a copy for me?
 6 MR. NETTERFIELD: I didn't bring copies
 7 of yesterday's.
 8 MR. FEIL: Okay. I'll just share with
 9 Jerry.

10 Q. (By Mr. Netterfield) There is a sign. It
 11 says, "Economy Fence Center Mount Vernon," has a
 12 contractor license and two phone numbers; is that
 13 right?

14 A. Correct.
 15 Q. This is your current sign?
 16 A. Yes.
 17 Q. This is the sign that you use on fences?
 18 A. Yes.
 19 Q. Where else do you use this sign?
 20 A. Advertising.
 21 Q. Advertising how?
 22 A. Like a skating rink.
 23 Q. Okay. When did you start using this sign?
 24 A. About 1985, '86.
 25 Q. Okay. In this -- in this form?

Page 67

1 A. In those italicized words, yes.
 2 Q. Yes. And with the words "Mount Vernon"?
 3 A. Yes.
 4 MR. NETTERFIELD: Okay. I'm going to
 5 mark that document as its own exhibit.
 6 (Deposition Exhibit 26 was marked for
 7 identification.)
 8 MR. FEIL: What number is that?

9 Q. (By Mr. Netterfield) Exhibit 26 is the same
 10 document as is in front of you that we were just
 11 talking about; is that right?
 12 A. Yes.
 13 Q. And this is your present sign?
 14 A. Yes.
 15 Q. And it says, "Economy Fence Center Mount
 16 Vernon"?
 17 A. Yes.

18 MR. FEIL: I'll want a copy of that
 19 before we go just to make sure that I have the right
 20 page. Thanks.
 21 (Deposition Exhibit 27 was marked for
 22 identification.)
 23 MR. FEIL: So we're up to 27?
 24 THE REPORTER: 27.
 25 Q. (By Mr. Netterfield) I will represent to you

Page 68

1 that on many of these documents, there is a marking
 2 JKS000 and then three digits. I'll represent to you
 3 that these are documents that we received from your
 4 lawyer and put these numbers on.
 5 So the JKS is something that signifies that we
 6 got that from your lawyer. Okay? Just so you know
 7 what those are. So, when I ask you about a document,
 8 I'm not referring to the -- to -- the Bates number,
 9 that's -- that's our numbering; that's not yours.
 10 But --
 11 MR. FEIL: Welcome -- welcome to do
 12 that. I appreciate your excellent organization. And I
 13 will find out from you afterwards how you do such good
 14 Bates numbering.
 15 Q. (By Mr. Netterfield) Please look through
 16 Exhibit 27 and tell me what these are.
 17 A. These are Web site pages.
 18 Q. Okay. These are your Web site pages?
 19 A. Yes.
 20 Q. When were these Web site pages created?
 21 A. About 2011, I believe.
 22 Q. Okay. Prior to 2011, did you have a Web site?
 23 A. Not that I'm aware of, no.
 24 Q. Okay. Oh, I'm sorry, are there any other
 25 pages to your Web site other than shown here?

Page 69

1 A. No.
 2 (Deposition Exhibit 28 was marked for
 3 identification.)
 4 Q. (By Mr. Netterfield) What is Exhibit 28?
 5 A. That's a Web site that one of the phone
 6 companies set up for us.
 7 Q. When was that created?
 8 A. About the same time.

9 Q. Okay. Looking at Exhibits 26, 27, and 28
 10 together, there is a stylized font for the word Economy
 11 and then Fence Center --
 12 MR. FEIL: I think he needs --
 13 Q. (By Mr. Netterfield) -- within a bar. It's
 14 fairly consistent between the three. Do you consider
 15 that to be your logo?
 16 A. Yes.

17 Q. How did you create that logo?
 18 A. Between myself and my cousin.
 19 Q. Your cousin who?
 20 A. Gary Countryman.
 21 Q. Okay. When did you create it?
 22 A. About '84, '85.
 23 Q. Why?
 24 A. Because I wanted my own design.
 25 Q. Okay. And do you believe it fairly represents



Page 70

1 how you want to represent your company?
 2 A. Yes.
 3 Q. Do you believe this logo has become distinct
 4 in the marketplace?
 5 A. Yes.
 6 Q. Do you believe people understand that when
 7 they see this logo, they're dealing with you, your
 8 company?
 9 A. Yes.
 10 (Deposition Exhibit 29 was marked for
 11 identification.)
 12 Q. (By Mr. Netterfield) Do you recognize
 13 Exhibit 29?
 14 A. Yes.
 15 Q. What is it?
 16 A. It's a Fence Systems Northwest logo for
 17 Economy Fence.
 18 Q. Which has been in use since roughly 1985; is
 19 that right?
 20 A. To my knowledge, yes.
 21 Q. Do you believe that in the marketplace when
 22 people see this logo Exhibit 29 they understand that
 23 they're dealing with Fence Systems Northwest?
 24 A. Yes.
 25 Q. Do you believe that in the marketplace, people

Page 71

1 recognize the distinction between your logo as
 2 reflected on Exhibit 28 and Fence Systems Northwest's
 3 logo as represented on Exhibit 29?
 4 A. Yes.
 5 Q. And usually in the marketplace, except where
 6 it's black and white, yours is in blue and Fence
 7 Systems Northwest is in red?
 8 A. Yes.
 9 Q. And there's really no confusion with regard to
 10 the logos, is there?
 11 A. No.
 12 (Deposition Exhibit 30 was marked for
 13 identification.)
 14 Q. (By Mr. Netterfield) I'll represent to you
 15 that we received this from your attorney. It's a
 16 Washington State Department of Revenue State Business
 17 Records Database Detail. Do you recognize this to be
 18 for your business between 1984 and 1993?
 19 MR. FEIL: Excuse me. Just to clarify,
 20 are you talking about the whole page or just --
 21 Q. (By Mr. Netterfield) I'm sorry, the top.
 22 A. Yes.
 23 Q. Do you recognize that? And the entity name is
 24 Sturlaugson, Jerry N. and Kathleen M., correct?
 25 A. Yes.

Page 72

1 Q. And your business name is Economy Fence Center
 2 of Mount Vernon, correct?
 3 A. Yes.
 4 Q. And this is a publicly available document that
 5 anyone between 1984 and 1983 -- 1993 can go and look up
 6 your business name, correct?
 7 A. Yes.
 8 (Deposition Exhibit 31 was marked for
 9 identification.)
 10 Q. (By Mr. Netterfield) Do you recognize
 11 Exhibit 31?
 12 A. Yes.
 13 Q. What is it?
 14 A. Business license for the City of Snohomish.
 15 Q. Your business license?
 16 A. Yes.
 17 Q. And it is issued to Economy Fence Center of
 18 Mount Vernon?
 19 A. Yes.
 20 Q. It says the issue date is January of 2014; is
 21 that right?
 22 A. Yes.
 23 Q. Had you previously used the name Economy Fence
 24 Center of Mount Vernon in Snohomish?
 25 A. Yes.

Page 73

1 Q. Why did you use the name Economy Fence Center
 2 of Mount Vernon?
 3 A. Because the State already had a licensee for
 4 Economy Fence Center, Inc., and they told us that we
 5 had to change the name to something other than just
 6 Economy Fence.
 7 Q. The State told you that?
 8 A. Yes.
 9 Q. What did the City of Snohomish tell you?
 10 A. Because we were licensed with the State as
 11 that, that that's what we used.
 12 Q. Okay. So it's your testimony that you were
 13 required by the State to register yourself in the City
 14 of Snohomish as Economy Fence Center of Mount Vernon?
 15 A. Because that's what the State had on my
 16 license for registration.
 17 Q. Okay.
 18 MR. FEIL: I'll produce this -- that's a
 19 bad scanning job.
 20 (Deposition Exhibit 32 was marked for
 21 identification.)
 22 Q. (By Mr. Netterfield) I'll represent this came
 23 from your lawyer, and I've blown it up to try to see it
 24 as clearly as possible. Looks like it had a dark
 25 background, so it's a little bit difficult to read.



Page 78

1 Enterprises, Inc., d/b/a Economy Fence Center of Mount
 2 Vernon, correct?
 3 A. Yes.
 4 Q. You did business in the City of Stanwood as
 5 Economy Fence Center of Mount Vernon in 2002, correct?
 6 A. Yes.
 7 Q. And have consistently done so since then?
 8 A. Yes.
 9 Q. Do you advertise in the Yellow Pages?
 10 A. Yes.
 11 Q. In several markets?
 12 A. Yes.
 13 Q. With several different advertisers?
 14 A. Yes.
 15 (Deposition Exhibit 36 was marked for
 16 identification.)
 17 MR. FEIL: Do you have a copy? Thanks.
 18 Q. (By Mr. Netterfield) Exhibit 36 we received
 19 from your attorney. It's an invoice from MacGregor
 20 Publishing dated December 22nd, 2004. The address on
 21 it is Economy Fence Center, dash, MT V. Do you see
 22 that?
 23 A. Yes.
 24 Q. Did the State or the City or MacGregor require
 25 you to put MT V on there?

Page 79

1 A. No.
 2 Q. Going to the next page. It's a copy of a
 3 check stub, 17070, and it reflects JKS Enterprises
 4 d/b/a Economy Fence Center of Mount Vernon for a check
 5 dated December 28, 2004. Is that right?
 6 A. Yes.
 7 Q. And that's from your company?
 8 A. Yes.
 9 Q. Economy Fence Center of Mount Vernon, correct?
 10 MR. FEIL: Wait a minute. Objection.
 11 Ambiguous as to "company."
 12 Go ahead.
 13 A. Yes.
 14 (Deposition Exhibit 37 was marked for
 15 identification.)
 16 Q. (By Mr. Netterfield) Exhibit 37, Dex Media
 17 Advertising Authorization Order from March of 2006, is
 18 that right?
 19 A. Yes.
 20 Q. And it is addressed to Economy Fence Center of
 21 Mount Vernon, a division of JKS Enterprises Inc.,
 22 correct?
 23 A. Yes.
 24 Q. And that is your signature below?
 25 A. Yes.

Page 80

1 Q. You represented to Dex Media that you were
 2 doing business as Economy Fence Center of Mount Vernon,
 3 a division of JKS Enterprises, correct?
 4 A. Yes.
 5 Q. Going to the next page. Halfway down the page
 6 on the left, there's some handwriting that says "your
 7 ad," with an arrow pointed to a box. Do you see that
 8 writing?
 9 A. Yes.
 10 Q. Do you know whose writing that is?
 11 A. No, I do not.
 12 Q. Do you have any reason to believe that would
 13 not be from Dex Media from your account rep or whoever
 14 you were dealing with in re-upping your -- your
 15 advertising?
 16 A. I don't have any reason to believe it is not.
 17 Q. Okay. And right beside that arrow, there is a
 18 box, and it says, "Economy Fence Center of Mount
 19 Vernon, a division of JKS Enterprises, Inc.," correct?
 20 A. Yes.
 21 Q. And it has your license number?
 22 A. Yes.
 23 Q. And your phone numbers?
 24 A. Correct.
 25 Q. All right. You advertised in Dex on-line in

Page 81

1 2005 as Economy Fence Center of Mount Vernon, a
 2 division of JKS Enterprises, correct?
 3 A. Yes.
 4 Q. Did the State of Washington require you to
 5 advertise that way?
 6 A. No.
 7 Q. Directly above it, there's another box, and in
 8 that, it has Economy Fence Center with the logo used by
 9 my client. Do you see that?
 10 A. Yes, I do.
 11 Q. The reason that you put of Mount Vernon, a
 12 division of JKS Enterprises in this particular Yellow
 13 Pages was to distinguish yourself from my client, is it
 14 not?
 15 A. Yes.

16 (Deposition Exhibit 38 was marked for
 17 identification.)
 18 Q. (By Mr. Netterfield) Exhibit 38 is from --
 19 has a date on it of February 21st, 1995. Do you see
 20 that in the top right-hand corner?
 21 A. Yes.
 22 Q. And this is for a directory in Bellingham?
 23 A. Yes.
 24 Q. From CMC? That's a Yellow Pages advertiser;
 25 is that right?



Page 82

1 A. To my knowledge, yes.

2 Q. Okay. And in the center, it has your logo

3 Economy Fence Center -- JKS Enterprises, Inc., d/b/a

4 Economy Fence Center of Mount Vernon; is that right?

5 A. Yes.

6 Q. And you included "of Mount Vernon" in order to

7 distinguish yourself from my client?

8 A. No.

9 Q. Why did you include Mount Vernon in this

10 advertisement?

11 A. Because this was a Bellingham directory and we

12 were just telling them we were in Mount Vernon.

13 Q. So you were just simply doing business as

14 Economy Fence Center of Mount Vernon?

15 A. Yes.

16 (Deposition Exhibit 39 was marked for

17 identification.)

18 Q. (By Mr. Netterfield) Looking at Exhibit 39.

19 This is --

20 MR. FEIL: Can I have my copy, please?

21 MR. NETTERFIELD: Oh, sorry.

22 Q. (By Mr. Netterfield) Exhibit 39 is from

23 December 1996. Do you see that?

24 A. Yes.

25 Q. For Snohomish County GTE Yellow Pages?

Page 83

1 A. Yes.

2 Q. On the second page, in the top right-hand

3 quadrant, there is a listing for Economy Fence Center

4 of Mount Vernon. Do you see that?

5 A. Yes.

6 Q. And it shows Everett, and it has a phone

7 number?

8 A. Yes.

9 Q. That's for -- that's yours?

10 A. The one that says "of Mount Vernon," yes.

11 Q. Okay. And directly below that, there is

12 another listing for Economy Fence Center of Mount

13 Vernon, Camano Island. Do you see that?

14 A. Yes.

15 Q. And that has another phone number?

16 A. Yes.

17 Q. Which is yours?

18 A. Correct.

19 Q. So you have two listings in the GTE Yellow

20 Pages, both of which are Economy Fence Center of Mount

21 Vernon, one for Everett and one for Camano Island?

22 A. Yes.

23 Q. And because this was Snohomish County, your

24 reason for "of Mount Vernon" was to distinguish

25 yourself from my client?

Page 84

1 A. Yes.

2 (Deposition Exhibit 40 was marked for

3 identification.)

4 (Discussion off the record.)

5 Q. (By Mr. Netterfield) Exhibit 40 says in

6 handwriting at the top, "GTE Everett and vicinity

7 1993." Do you recognize that handwriting?

8 A. Yes.

9 Q. Whose is it?

10 A. My wife's.

11 Q. And along the right-hand side and near the

12 center in large lettering -- large font, it says,

13 "Economy Fence Center," and it has your address and

14 phone number and a Camano Island phone number. Do you

15 see that?

16 A. Yes.

17 Q. Then there is below that Economy Fence Center,

18 Inc., and at that time, that would have been Mr.

19 Strong's company; is that right?

20 A. Yes.

21 Q. And below that, it says, "Economy Fence Center

22 of Mount Vernon, Camano Island," and it has a different

23 phone number?

24 A. Yes.

25 Q. Why did you advertise both as Economy Fence

Page 85

1 Center and as Economy Fence Center of Mount Vernon in

2 the same phone book at the same time?

3 A. I don't remember.

4 Q. Were you attempting to represent that you had

5 two different companies?

6 A. I don't remember. I really don't.

7 Q. Do you recall yourself advertising that way in

8 other circumstances where you had both Economy Fence

9 Center and Economy Fence Center of Mount Vernon in the

10 same phone book?

11 A. In what year?

12 Q. Any -- anytime.

13 A. I don't recall.

14 Q. Okay.

15 (Deposition Exhibit 41 was marked for

16 identification.)

17 MR. FEIL: Isn't this the same thing?

18 MR. NETTERFIELD: The first page is the

19 same, and I apologize for that.

20 MR. FEIL: Okay.

21 MR. NETTERFIELD: We'll go to the second

22 page of 41.

23 MR. FEIL: Do you want to amend 41 just

24 to take the first page out -- no -- since it's

25 duplication and we can just do it as a two pager?



Page 86

1 Q. (By Mr. Netterfield) Exhibit 41 is a two-page
 2 document. The top right-hand corner of the first page
 3 shows MacGregor's 2006-2007 Everett and vicinity
 4 directory. Do you see that?
 5 A. Yes.
 6 Q. And here at the center of the page -- the
 7 center column, in the bottom third, there's
 8 highlighting showing Economy Fence Center of Mount
 9 Vernon with your phone number?
 10 A. Yes.
 11 Q. That's your advertising?
 12 A. Yes.
 13 Q. You are doing business as Economy Fence Center
 14 of Mount Vernon, correct?
 15 A. Yes.
 16 Q. Directly above it, there's Economy Fence
 17 Center on Marine View Drive in Everett. That's my
 18 client, correct?
 19 A. No, this was Scott's.
 20 Q. I'm sorry, that's Scott. 2007 --
 21 A. Oh, excuse me, it was yours. I'm sorry, yes.
 22 Q. And you used "of Mount Vernon" in this context
 23 to distinguish yourself from my client?
 24 A. Yes.
 25 Q. The second page is also related to your

Page 87

1 advertising with U.S. West Dex, has a date near the
 2 bottom of October 28th, 1999; is that right?
 3 A. Yes, yes.
 4 Q. And, again, here you advertise that you're
 5 doing business as Economy Fence Center of Mount Vernon?
 6 A. Yes.
 7 (Deposition Exhibit 42 was marked for
 8 identification.)
 9 (Discussion off the record.)
 10 MR. FELL: I didn't rip anything.
 11 MR. NETTERFIELD: That's impressive.
 12 Q. (By Mr. Netterfield) Exhibit 42 is a
 13 multipage document with several advertisements. Top of
 14 the first page -- or to the left of the first page,
 15 there is handwriting, "Verizon, Verizon Yellow Pages,
 16 Snohomish County April 2006." Again, that's your
 17 wife's handwriting?
 18 A. Yes.
 19 Q. And on to the right of it, there is the name
 20 Economy Fence Center of Mount Vernon?
 21 A. Yes.
 22 Q. And it shows an Everett phone number, which is
 23 your phone number?
 24 A. Yes.
 25 Q. And directly above that, there is my client's

Page 88

1 ad of Economy Fence Center?
 2 A. Yes.
 3 Q. And, again, you're doing so to distinguish
 4 yourself from my client?
 5 A. Yes.
 6 Q. The second page, center quadrant, middle of
 7 the page, Economy Fence Center of Mount Vernon with the
 8 Camano Island phone number. That's you?
 9 A. Yes.
 10 Q. And directly above that, there's Economy Fence
 11 Center of Mount Vernon with an Everett phone number,
 12 and that's you?
 13 A. Yes.
 14 Q. And directly above that, there is Economy
 15 Fence Center, which is my client?
 16 A. Yes.
 17 MR. FELL: I'm sorry, is there a date on
 18 this? It looks like it's cut off at the top. I don't
 19 know whether it was in the original production. It's
 20 hard to tell then who was -- whether it was your client
 21 or his predecessor too.
 22 MR. NETTERFIELD: Correct.
 23 Q. (By Mr. Netterfield) The next page,
 24 MacGregor's 2006-2007, bottom third quadrant -- before
 25 I -- yeah, let's go with that one. Next page, Verizon,

Page 89

1 Verizon Yellow Pages, Snohomish County April 2007.
 2 Left-hand column, halfway down, Economy Fence Center of
 3 Mount Vernon?
 4 A. Yes.
 5 Q. Camano Island phone number, that's you?
 6 A. Yes.
 7 Q. Directly above that, Economy Fence Center of
 8 Mount Vernon, Everett phone number, that's you?
 9 A. Yes.
 10 Q. Okay. The next page says, "Verizon, Verizon
 11 Yellow Pages, Snohomish County April 2007." On the
 12 right-hand side near the top, there's my client's ad,
 13 Economy Fence Center, with their logo. Do you see
 14 that?
 15 A. Yes.
 16 Q. And you would recognize that to be theirs?
 17 A. Yes.
 18 Q. And directly below that has your ad of Economy
 19 Fence Center of Mount Vernon, correct?
 20 A. Yes.
 21 Q. And an Everett phone number?
 22 A. Yes.
 23 Q. Next page is Verizon Super Pages, 2000 --
 24 looks like 2007 -- 2004-2005. Do you see that?
 25 A. Yes.



Page 90

1 Q. Economy Fence Center of Mount Vernon, bold
 2 letters on the left, that's you?
 3 A. Yes.
 4 Q. Next page, 2002-2003, Verizon Super Pages
 5 Snohomish County?
 6 A. Yes.
 7 Q. A little below halfway down the page, Economy
 8 Fence Center of Mount Vernon with an Everett phone
 9 number, that's you?
 10 A. Yes.
 11 Q. And directly above that, that's Economy Fence
 12 Center with the Mukilteo Speedway address. That would
 13 be Scott?
 14 A. Yes.
 15 Q. And back in 2002-2003, you're distinguishing
 16 yourself from Scott by the use of "of Mount Vernon"?
 17 A. Yes.
 18 Q. And to the best of your knowledge, it was
 19 fairly effective because there wasn't much confusion
 20 back in 2002, 2003, was there?
 21 A. None that I'm aware of.
 22 (Deposition Exhibit 43 was marked for
 23 identification.)
 24 Q. (By Mr. Netterfield) MacGregor Yellow Pages
 25 North Snoho -- can you read that?

Page 91

1 A. Snohomish County.
 2 Q. Okay. 2013-2014, so fairly recently. Down in
 3 the bottom right-hand corner, it says Economy Fence
 4 Center of Mount Vernon. It has an address in Camano
 5 Island; is that right?
 6 A. Yes.
 7 Q. And what is that address, 79 North Lake Grove
 8 Road, Camano Island?
 9 A. Back in the day of this, they didn't have like
 10 a call forwarding -- call forwarding numbers, so they
 11 had what they called a closet phone. There was no
 12 phone in a home or anything. That's just what the
 13 phone companies determined it. And in order to have a
 14 phone on the island, you had to have a closet phone.
 15 And that's what this is. That was one of my employee's
 16 homes at the time.
 17 Q. 79 North Lake Grove Road, Camano Island?
 18 A. Yes.
 19 Q. So there really is no office for Economy Fence
 20 Center of Mount Vernon on Camano Island?
 21 A. No.
 22 Q. It's just your employee's home?
 23 A. Yes.
 24 Q. What other vicinities do you have a closet
 25 phone number in?

Page 92

1 A. At the time when it was first determined was
 2 the Everett number.
 3 Q. And what was that Everett address?
 4 A. 4518 - 83rd Avenue Southeast.
 5 Q. And what is at that address?
 6 A. My home.
 7 Q. That's your home -- your personal home?
 8 A. When I was -- when I lived there.
 9 Q. Do you currently have a closet phone for
 10 Everett?
 11 A. No, because they're all call forwarding
 12 numbers now.
 13 Q. Okay. We're looking at the MacGregor Yellow
 14 Book for 2013-2014, which is the first page of 43.
 15 That's fairly recent, isn't it?
 16 A. Yes.
 17 Q. And that has the closet phone?
 18 A. Yes.
 19 Q. Is that to give the impression that you have
 20 an office or you have a yard or some sort of presence
 21 on Camano Island?
 22 A. I have no idea why the telephone company put
 23 the address in there.
 24 Q. You gave them an address though?
 25 A. At the time that it was. And we could not get

Page 93

1 the numbers out of the phone book as far as addresses.
 2 They just would not do it. We tried to for years.
 3 Q. Looking at the third page of MacGregor Yellow
 4 Book North Snohomish County 2011-2012. It has Economy
 5 Fence Center of Mount Vernon about a third --
 6 two-thirds of the way down the page. Do you see that?
 7 A. The one that says Camano Island?
 8 Q. Yes.
 9 A. Yes.
 10 Q. And has the phone number?
 11 A. Yes.
 12 Q. And it has the same phone number as the first
 13 page?
 14 A. Yes.
 15 Q. But it does not have a closet address. It
 16 simply has Camano Island?
 17 A. Yes.
 18 Q. And the same is true on the next page.
 19 MacGregor Yellow Book, center page near the top,
 20 Economy Fence Center of Mount Vernon has Camano Island,
 21 but no -- no closet --
 22 A. Yes.
 23 Q. -- or address? And you have no idea why one
 24 of them has a closet address and one doesn't?
 25 A. No.



Exhibit B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
FOR THE WESTERN DISTRICT OF WASHINGTON

JKS Enterprises, Inc.,	)	Cancellation No. 92058068
	)	Trademark Registration
Petitioner,	)	No. 3,582,510
	)	Mark: ECONOMY FENCE
Vs.	)	CENTER
	)	Registered: March 3, 2009
Fence Systems NW, Inc.,)	
	)	Trademark Registration
Registrant.	)	No. 3,582,510
	)	Mark: ECONOMY FENCE
	)	CENTER & DESIGN
	)	Registered: March 3, 2009

Deposition Upon Oral Examination Of
DEREK S. SMITH

July 17, 2014

999 Third Avenue, Suite 25252

Seattle, Washington

REPORTED BY: PEGGY FRITSCHY HAMILTON, RPR, CSR, CLR,
29906/No. 2704

Page 6

1 corporation could reasonably get. So that is the
 2 extent that it was different.
 3 A. Okay.
 4 Q. Now we're questioning you as president of the
 14:00:23 5 corporation, but we have not listed specific items in
 6 the deposition notice on which you have to be prepared
 7 to speak on behalf of the corporation from the entire
 8 corporation's knowledge.
 9 A. Okay.
 14:00:38 10 Q. So what I'm doing is I'm asking you questions
 11 of you as the president of the company to answer to
 12 the best of your knowledge and belief as an
 13 individual. Okay?
 14 A. Um-hum.
 14:00:48 15 Q. Okay. So the question that was pending is
 16 whether you advertise in phone books in Whatcom
 17 County, covering Whatcom County?
 18 A. I believe we currently do for the last year
 19 possibly.
 14:01:10 20 Q. Skagit County?
 21 A. I don't know if we advertise in the Skagit
 22 County book, or not. We may or we may not. It would
 23 be as simple as finding a book and opening it up and
 24 seeing.
 14:01:29 25 Q. Apart from, say, currently advertising, do

Page 7

1 you know if you have advertised there in the past?
 2 A. Whatcom County and Skagit County, we may get
 3 a free listing in the Skagit book possibly because we
 4 are a Snohomish County business, so we could have been
 14:01:54 5 in there. I guess I would need to know specifically
 6 what dates you are talking about, so if you could give
 7 me dates, then maybe I could answer it better, but I
 8 don't know.
 9 Q. I think the dates and from your recollection
 14:02:11 10 wouldn't be as worthwhile as researching. So Camano
 11 and in Island County?
 12 A. In Island County, we have advertised in
 13 Island County.
 14 Q. What has been the form of your advertising?
 14:02:27 15 A. Primarily a Yellow Page advertisement, phone
 16 books, and -- yeah.
 17 Q. More specific, say, to Camano Island?
 18 A. Camano Island. I don't know where the books
 19 draw the line. I do know that there's a Whidbey
 14:02:47 20 Island book, I think, that's part of the Island
 21 County, and we've often been in the Whidbey Island
 22 book, so if that includes Camano Island, then we
 23 probably are in the Camano island book.
 24 Q. You mentioned advertising by signs.
 14:03:17 25 A. Um-hum.

Page 8

1 Q. I understand, tell me if this is correct,
 2 that you put up fence signs when you complete a job
 3 generally?
 4 A. Yes, we typically do attachment to the fence.
 14:03:29 5 Q. When you are talking about advertising by
 6 signs, do you refer to any other kind of sign?
 7 A. Well, there's graphics on all of our
 8 equipment, so trucks, sales vehicles, business cards.
 9 There's -- you'll often see signs at like sporting
 10 events. The Monroe Speedway, we have a big sign out
 11 there in the outfield, or the -- you know, so there
 12 are other types.
 13 Q. And do you have signage at your business
 14 location?
 15 A. Yes.
 14:04:05 16 Q. In addition to your ownership and management
 17 of Fence Systems NW, I understand that you are owner
 18 of or part owner of a few other entities. Is my
 19 understanding correct that you are, you and your wife,
 20 are the owners of an entity named Kelly Creek, LLC?
 14:05:18 21 A. Yeah --
 22 MR. NETTERFIELD: Objection. Relevance.
 23 Q. Go ahead.
 24 A. Yes, we are.
 14:05:28 25 Q. Does Kelly Creek, LLC, have, any ownership

Page 9

1 interest in the trademarks that we're discussing
 2 today?
 3 A. No, it does not.
 4 Q. Does Kelly Creek do any business in fencing
 14:05:45 5 materials or installation?
 6 A. No, it does not.
 7 Q. Okay.
 8 A. It's a holding company.
 9 Q. In deference to your counsel's objection, my
 14:05:58 10 whole purpose here is to find out if there are any
 11 other entities with interest in the mark.
 12 MR. NETTERFIELD: That's a good question,
 13 a straightforward question.
 14 Q. The other one I see is Bitter Root
 14:06:15 15 Investments, LLC, in which you and Chad Morgan are
 16 members. Does that company do any business in fencing
 17 materials or installation?
 18 A. No, it doesn't.
 19 Q. Does it hold any ownership interest in
 20 trademarks?
 14:06:30 21 A. No, it does not.
 22 Q. Is there any other entity in which you have
 23 an interest as an owner, employee, manager, officer,
 24 director other than Fence Systems NW, Inc., that has
 14:06:49 25 any ownership or interest in the trademarks?

Page 10

1 A. No, there's not.

2 Q. Does Fence Systems NW, Inc., do any business
3 under its corporate name as opposed to that name --

4 A. Yes, we do a little bit of business. We do
5 work for Home Depot and we wholesale materials to Home
6 Depot, we install fences for Home Depot, and we use
7 the name Fence Systems Northwest, Inc., for the
8 purpose of that.

9 MR. FEIL: Let's mark this.
10 (Exhibit-18 marked.)

11 Q. I'll say, I can't remember how I looked this
12 up and found it on the web, but can you identify what
13 Exhibit-18 is?

14 A. Yeah. And so I didn't realize this was still
15 on the web. It's not a maintained site; hasn't been
16 maintained in years. But what it is is what you are
17 asking me; is that correct?

18 Q. Let's make it little more organized.
19 A. Sure.

20 Q. Am I correct these are screen shots of pages
21 of the FenceSystemsNW.com website?

22 A. Apparently, yes, that's correct.

23 Q. Approximately when did you set up this
24 website?

25 A. This was set up, I'm going to say, somewhere

Page 11

1 around 2000 -- I really -- somewhere -- it's been at
2 least five years. Probably it's been set up for that
3 long.

4 Q. I'm looking at the bottom of the first page
5 where there's a copyright notice, 2008.

6 A. Okay.

7 Q. Does that refresh your recollection?
8 A. Yes. That's about five years. Kind of falls
9 in line. I don't know when it was exactly set up.

10 That seems reasonable to me.

11 Q. What was the purpose of setting up a web
12 commerce site separate from --

13 A. The reason this was set up, we wholesale a
14 lot of materials, and the purpose of this was we sold
15 a lot of materials to other fence companies. Okay.

16 So this was kind of the parent company, if you will,
17 to allow other fence companies to not feel like they
18 were buying from a competitor.

19 Q. Do you have an employee named Randy Cole?
20 A. Yeah.

21 Q. How long has he worked for the company?
22 A. So Randy has worked for me since -- Randy
23 worked as long as 2003, and then he left our company
24 in -- it's been one year -- he left our company around
25 two years ago, year and a half. Somewhere in there.

Page 12

1 And then my recollection is we hired Randy back,
2 seeing like it might be going on six months.

3 Q. Are you aware that Randy is Jerry's
4 brother-in-law?

5 A. Yes.

6 Q. You talked to Randy from time to time about
7 how things are at my client's business?

8 A. Never asked him.

9 Q. Okay. Do you employ or have employed someone
10 named Matt Hayes?

11 A. Yes.

12 Q. During what time frame?

13 A. Matt's been with me, I think, since 2003 as
14 well.

15 Q. Continuously?

16 A. Continuously. Right in there, 2003, 2004.

17 Q. And are you aware that he's Jerry's nephew?

18 A. Yes.

19 Q. I'll ask you the same question. Have you at
20 any time talked to him about his uncle's business?

21 A. No.

22 (Discussion off record.)
23 (Exhibits-19-21 marked.)

24 Q. Do you recognize Exhibit-19?
25 A. Yes, I do.

Page 13

1 Q. This is a letter and attachments from your
2 attorney, Mr. Nathaniel Taylor, to my client dated
3 January 23, 2012. Was this letter sent with your
4 authorization?

5 A. I believe it was.

6 Q. I'd like you to take a look at Exhibit-20,
7 please. Have you seen this letter, Exhibit-20,
8 before?

9 A. I vaguely remember a response, and so this is
10 probably it. It doesn't ring -- it doesn't
11 immediately look familiar, but the gist of it is I did
12 read it.

13 Q. You do, however, recall that there was a
14 response to the original --

15 A. Yes.

16 Q. -- letter, and you received a copy of that
17 response and read it?

18 A. I don't remember. I really don't. I don't
19 remember reading it.

20 Q. But you remember that there was a response
21 and you received a copy?

22 A. Vaguely.

23 Q. Okay. In the third paragraph of Exhibit-20,
24 which is a letter from Gregory Gilday to Nathaniel
25 Taylor dated January 26, 2012, it refers to a copy of

Exhibit C

Page 30

1 read it into the record if you want to.
 2 MR. FEIL: I don't know about the
 3 depositions you've been to, but it's often asked and
 4 often asked in trial. But if you have an objection, I
 10:19:48 5 have no difficulty reading this into the record.
 6 Q. And I will read that paragraph into the
 7 record. "Pursuant to Federal Rule of Civil Procedure
 8 30(b)(6), Fence Systems NW, Inc., has the duty to
 9 designate one or more officers, directors, or managing
 10:20:07 10 agents, or other persons who consent to testify on its
 11 behalf concerning the foregoing subjects. It may set
 12 out the matters on which each person designated will
 13 testify. The person or persons designated must
 14 testify about information known or reasonably
 10:20:28 15 available to the corporation."
 16 A. So what's your --
 17 Q. My question now is: Are you the person being
 18 designated by the corporation to testify about
 19 information known or reasonably available to the
 10:20:44 20 corporation?
 21 A. Yes, I am.
 22 Q. Okay. So with that in mind, I would like to
 23 get your answer to the question: What you understand
 24 the words "substantially exclusive" to mean?
 10:21:16 25 MR. NETTERFIELD: Asked and answered.

Page 31

1 MR. FEIL: Would you go back and see if
 2 that was answered.
 3 (Reporter read back as requested the
 4 question and answer as follows:
 10:17:27 5 Q. Do you have an understanding and
 6 tell me what it is of the term, next
 7 line, "substantially exclusive"?
 8 A. I guess I don't get what -- I don't
 9 understand exactly what you are
 10:17:45 10 asking.)
 11 MR. NETTERFIELD: Objection was wrong.
 12 A. Are you asking me what it means or are you
 13 asking me how it relates to the mark?
 14 Q. I'm asking you what you understand the
 10:21:57 15 meaning to be.
 16 A. Okay. I understand the meaning to be that
 17 the mark, Economy Fence Center, is exclusive and
 18 distinctive to my organization.
 19 Q. Please take a look at Exhibit-1.
 10:24:20 20 A. Okay.
 21 Q. And I'd like you to take a look at the third
 22 page -- I'm sorry. Not Exhibit-1. I'm doing it
 23 again. Exhibit-3.
 24 A. Okay.
 10:24:44 25 Q. I'm going to ask you to take a look at the

Page 32

1 third page of that document -- third page of the
 2 exhibit, rather. Under the field, "First Use Anywhere
 3 Date," the answer given is, "At least as early as
 4 06-01-1981." Is my understanding correct that you did
 10:25:30 5 not work for Fence Systems NW, Inc., or any
 6 predecessor on or about June 1st, 1981?
 7 A. I was hired -- I worked for Economy Fence
 8 Center in right around 1985.
 9 Q. Do you have any personal knowledge of the
 10:26:14 10 Economy Fence Center business before you started work
 11 in 1985?
 12 A. Before 1985, no, I did not -- I was not aware
 13 of the company before I started working there.
 14 Q. So is it fair to say that the answer, that
 10:26:37 15 the mark was first used anywhere at least as early as
 16 June 1, 1981, does not come from your personal
 17 knowledge?
 18 A. No, I don't think that's fair to say at all.
 19 I mean, I had all kinds of -- when I was hired in
 10:26:54 20 1985, I had conversations with Scott Strong about it,
 21 I had conversations with other employees, I had
 22 conversations with vendors, I had conversations with
 23 contractors. I mean, I became -- from that point
 24 forward, I became aware of how Scott had attained the
 10:27:10 25 mark and so forth.

Page 33

1 Q. Then would you tell us in this deposition
 2 what the factual basis is for stating that the mark
 3 was first used as early as June 1st, 1981?
 4 A. It was just my understanding. It was my
 10:27:31 5 understanding through what I just said: through
 6 conversations I had with Scott, through relationships
 7 in the business, getting to know customers,
 8 contractors, listening.
 9 Q. Was that sufficiently precise for you to give
 10:28:01 10 the date, June 1st, 1981?
 11 A. That I don't -- I don't remember -- I don't
 12 recall. Alls I know is that was my understanding when
 13 we presented the application, that the name was used
 14 in the marketplace around that time.
 10:28:28 15 Q. Around that time?
 16 A. Well, I don't -- that was my understanding,
 17 yes.
 18 Q. Was the business owned by Scott Strong at
 19 that time, June 1st, 1981?
 10:28:45 20 A. My understanding is, no.
 21 Q. What business was it, if you know, that first
 22 used the mark, at least as early as the date you've
 23 given there?
 24 A. What business?
 10:29:02 25 Q. What business? What's the name of the

Page 38

1 record.
 2 A. Okay.
 3 Q. Which exhibit are you looking at?
 4 A. Well, I'm not sure yet. Let me find it.
 10:56:58 5 Yeah. So Exhibit-4.
 6 Q. Okay.
 7 A. So at the time I signed this, where it says
 8 "First Use Anywhere Date, 6-1-85."
 9 Q. Yes.
 10:57:08 10 A. Okay. So I did think that's when it was
 11 first used, and we're talking about the logo. I later
 12 realized that it was more probably somewhere between
 13 '85 and '92.
 14 Q. And when was it that you determined this?
 10:57:39 15 A. Recently. I don't really remember exactly
 16 when, but I did come across that.
 17 Q. Does "recently" mean since the discovery
 18 requests were served on you?
 19 A. Yes. As I started looking through items, the
 10:58:03 20 mark very well could have been used in '85, but it was
 21 somewhere in between '85 and, I would say, '92. In
 22 that range.
 23 Q. And this concerns the design, the circle with
 24 the bar across it?
 10:58:27 25 A. Yes, that's correct.

Page 39

1 Q. And not the actual wording, Economy Fence
 2 Center?
 3 A. Yes.
 4 Speaking of the wording, Economy Fence
 10:58:40 5 Center, you did ask me earlier about when that name
 6 was first used in commerce, and I did submit
 7 something, you have it, a brochure that Scott had that
 8 said the name was used in commerce back in 1981. You
 9 have a copy of that somewhere. I guess just to
 10:59:08 10 clarify on that, my assumption is that I said, you
 11 know, I wasn't sure what Chainlink Specialties did,
 12 but I think it's reasonable for me to assume what
 13 Economy Fence Center was doing after that they were
 14 also doing back in 1981 as well.
 10:59:29 15 Q. Well, maybe we'll be asking you about that
 16 brochure later on.
 17 When you are correcting through your
 18 testimony here the date of first use in the
 19 application for the words and design, does that
 11:00:05 20 correction affect both first use anywhere and first
 21 use in commerce?
 22 A. Can you clarify what you are trying to ask
 23 me?
 24 Q. Okay. You said the logo was used somewhere
 11:00:15 25 between 1985 and 1982.

Page 40

1 A. 1992.
 2 Q. Excuse me. 1992.
 3 A. Yes.
 4 Q. Was it used in commerce at the same time that
 11:00:28 5 it was first used anywhere?
 6 A. My recollection is, yes. I would assume that
 7 it was used the same back then as it's -- yes, I would
 8 say so.
 9 Q. And when it was first used, what information
 11:00:52 10 do you have that it was used in commerce?
 11 A. Well, so as I stated, there was a brochure
 12 that Scott had that talked about Economy Fence Center
 13 in 1981, and when I was hired in '85, I didn't have
 14 the feeling like the business had changed all that
 15 much, and at that time Economy Fence Center, you know,
 11:01:19 16 did work for the government. They did work for, you
 17 know, Navy base, Air Force Base. They did work on
 18 tribal lands; all sorts of things of that nature. And
 19 so my assumption was, or my belief was that what was
 11:01:47 20 happening in '81 was very similar to what was
 21 happening in '85 when I first got hired.
 22 Q. Let's go on and examine the ownership of the
 23 trademark, Economy Fence Center. Is it correct to say
 24 that -- strike that. Let me start the sentence
 11:02:34 25 differently.

Page 41

1 To your knowledge and understanding, who
 2 was the first owner of the trademark, Economy Fence
 3 Center?
 4 MR. NETTERFIELD: Objection. Calls for
 11:02:53 5 legal conclusion.
 6 Q. You may answer.
 7 A. My understanding is that Scott bought the
 8 name. His company was called, Economy Fence Center,
 9 Inc. He used the name, Economy Fence Center,
 11:03:18 10 exclusively, and so my understanding is that Scott
 11 purchased that from Chainlink Specialties, or
 12 bankruptcy, or, you know, and then I purchased that
 13 from Scott.
 14 Q. So that I understand you. Are you saying
 11:03:46 15 that before Scott purchased it the mark was owned by
 16 Chainlink Fence?
 17 MR. NETTERFIELD: Objection. Calls for a
 18 legal conclusion.
 19 A. I don't know. I don't know -- can you say
 11:04:06 20 that again, your question?
 21 Q. You said that Scott purchased the mark from
 22 Chainlink Fence?
 23 A. Yes.
 24 MR. NETTERFIELD: Objection.
 11:04:13 25 Mischaracterizes the testimony.

Page 46

1 Yeah, I think he was an employee of Scott's.
 2 Q. As an employee of Scott's, was he working in
 3 this area west of the mountains or east of the
 4 mountains, Lake Wenatchee?
 11:12:45 5 A. This side, in the Everett office, and I'm
 6 pretty sure of that. If it's the same Mike Mulligan,
 7 I think that that is correct.
 8 Q. Do you know either from Scott or otherwise
 9 whether Mike joined after running a company in
 11:13:10 10 Wenatchee?
 11 A. I have no idea where Mike came from.
 12 Q. Have you or Scott, to your knowledge, ever
 13 employed anyone who was an employee of Mike Mulligan
 14 at any time?
 11:13:41 15 A. I don't know who Mike Mulligan is, so how
 16 would he employ anybody? I guess I don't understand.
 17 No, I don't.
 18 Q. You said you understood that Mike Mulligan
 19 was an employee of Scott's at some point in time.
 11:13:58 20 A. I'm relatively confident that's the case.
 21 Would I stake my life on it? No. Just that name
 22 vaguely rings a bell to me.
 23 Q. So my question is: When he was hired by
 24 Scott, was your understanding, did he bring anybody
 11:14:17 25 else along who was hired by Scott?

Page 47

1 A. Not that I'm aware of.
 2 MR. FEIL: Let's mark this.
 3 (Exhibit-9 marked.)
 4 Q. The reporter has marked as Exhibit No. 9
 11:14:59 5 documents that were produced to us by your attorneys
 6 in response to the discovery requests. Can you
 7 identify what's included in Exhibit-9?
 8 A. So these are the documents, bill of sale,
 9 that was used when I purchased the assets from Scott.
 11:15:42 10 Q. Who prepared these documents?
 11 A. Which documents are you talking about
 12 specifically?
 13 Q. Let's go one at a time, then.
 14 A. Okay.
 11:15:52 15 Q. Your counsel has conveniently given us
 16 numbering at the bottom. You see at the bottom you
 17 have the FSN?
 18 MR. NETTERFIELD: It's a neat trick. You
 19 might try it.
 11:16:10 20 MR. FEIL: I use it, depends on the volume
 21 of documents.
 22 Q. So when you identify who the preparer of
 23 parts of this were, you do so with a document number.
 24 A. Okay.
 11:16:24 25 Q. Starting with the journal entry.

Page 48

1 A. So the journal entry was probably -- well,
 2 was prepared for or was organized in this manner by my
 3 accountant.
 4 Q. And who was your accountant?
 11:16:44 5 A. Mark Youngs, with an S on the end.
 6 Q. Where does he practice?
 7 A. Bellevue.
 8 Q. Does he have a firm name other than Mark
 9 Youngs?
 11:17:15 10 A. Do you want me to look it up on my phone? I
 11 can give it to you.
 12 Q. Sure. Go ahead. I don't know how many more
 13 Youngs there are.
 14 A. Action Accounting and Tax.
 11:17:36 15 Q. Did he prepare this page just for you as an
 16 accounting of the purchase, or was this part of the
 17 closing documents between the parties?
 18 A. My understanding that I -- I would have to
 19 find out. I don't know. I don't know. I would
 11:18:07 20 assume -- I don't know.
 21 Q. Okay. I don't know is I don't know.
 22 A. Yeah.
 23 Q. Would you take a look at the following two
 24 pages. You see the settlement agent is someone I
 11:18:27 25 know, Jeff Laws. Was this settlement statement

Page 49

1 prepared by Mr. Laws?
 2 A. So I would assume that it was, since his name
 3 is on it. Other than that, I don't remember who Jeff
 4 Laws is or what he did.
 11:18:51 5 Q. I see two different pages, two different
 6 dates here. Can you explain why we have two different
 7 settlement statements?
 8 A. Well, the one looks like it was signed by
 9 both Scott and I, and I can't tell who the signature
 11:19:29 10 is down here.
 11 MR. FEIL: I want to ask your counsel. Do
 12 you know whether this was cut off in doing the
 13 numbering? I'm going to make a request that you check
 14 your records to see if we have a complete copy of this
 11:19:50 15 with all signatures. Can I have your commitment to do
 16 so?
 17 MR. NETTERFIELD: Is the original back at
 18 your office?
 19 THE WITNESS: It is.
 11:20:01 20 MR. NETTERFIELD: Yeah, we'll try to find
 21 it.
 22 MR. FEIL: Very good.
 23 MR. NETTERFIELD: It probably was in the
 24 scan.
 11:20:08 25 Q. Looking at the next page, and this has the

Page 54

1 information, but my memory is that's when I first saw
 2 this. But again, that's my recollection.
 3 MR. FEIL: If you want to take that break
 4 to make a phone call, this would be good. Let's take
 11:29:07 5 five.
 6 (Recess.)
 7 (Exhibit-11 marked.)
 8 MR. FEIL: Let's move on to Exhibit-11,
 9 which while we were on break, the witnesses had a
 11:47:41 10 chance to look at.
 11 Q. Do you recognize this document?
 12 A. Yes, I do, I recognize it.
 13 Q. Could you describe what it is, or just tell
 14 us what it is?
 11:47:55 15 A. It's an asset purchase and sale agreement.
 16 Q. Now, the copy we have is not signed. Do you
 17 know from personal knowledge and for a fact whether
 18 this agreement actually was signed prior to at or at
 19 any time after the closing?
 11:48:14 20 A. I'm relatively confident this was signed and
 21 is part of the agreement.
 22 Q. I see some scribble on the beginning, which
 23 "system" is changed to "systems," and there's
 24 initials. Looks to me like the initials of you and
 11:48:40 25 Scott Strong on a correction; is that accurate?

Page 55

1 A. That would be correct, those look like my
 2 initials.
 3 Q. And the others, to your knowledge, can you
 4 identify Scott Strong's initials?
 11:48:53 5 A. It looks like Scott's initials, too.
 6 Q. I want you to take a look at page 3 and
 7 section 5g. Actually, let me ask you something before
 8 that. Can you tell me who drafted this asset purchase
 9 and sale agreement?
 11:49:44 10 A. I am -- my recollection is it was Ellis Li
 11 McKinstry.
 12 Q. That's the same law firm that's your attorney
 13 here?
 14 A. Yes.
 11:50:01 15 Q. That firm is representing you in the
 16 transaction?
 17 A. Yes.
 18 Q. Did Mr. Strong have legal counsel?
 19 A. Yes, he did, but I don't remember who it was.
 11:50:16 20 Q. Do you know if the asset purchase and sale
 21 agreement went through any revisions between the
 22 version prepared by your attorney and the version that
 23 was signed?
 24 A. To my knowledge, no. You mean after they
 11:50:39 25 were signed?

Page 56

1 Q. No. You know, in negotiating agreements, he
 2 drafts, sends to the other lawyer, the other lawyer
 3 comes back, doesn't like this paragraph, wants to
 4 change this. Sometimes -- let me finish -- sometimes
 11:50:54 5 when you have easy terms, these things go through
 6 without change. I'm interested in what actually you
 7 know happened on the exchanges of drafts.
 8 A. My recollection was it was a negotiating
 9 thing back and forth trying to figure out where to
 11:51:09 10 settle -- you know, it was an asset sale, so what was
 11 the bottom line going to be.
 12 Q. Business terms?
 13 A. When you say "business terms."
 14 Q. Price, what was included, not -- what I'm
 11:51:24 15 curious about is when you talk about back and forth
 16 negotiations, were they over those kind of elements,
 17 or specific wording of the agreement, or what?
 18 A. I don't recall the wording of the agreement.
 19 I do know there was, you know, negotiating back and
 11:51:41 20 forth between Scott and I.
 21 Q. Now, let's go back to page 3. On the
 22 "Representations of Seller," section 5, subsection g,
 23 it states that "The seller represents, warrants, and
 24 agrees as follows," and g, "neither the trade name,
 11:52:11 25 quote, Economy Fence Center, end quote, nor the logo

Page 57

1 used by seller's company are subject to any known
 2 claim of a third party within the state of
 3 Washington." First of all, can you tell me to your
 4 knowledge what the reason was for section 5g in this
 11:52:33 5 agreement?
 6 A. To my knowledge, it just was legalese put in
 7 the contract, put in the agreement.
 8 Q. So as the individual who signed this, you did
 9 not have any other understanding personally of what
 10 this section was about other than that it was, you
 11 know, put together by lawyers to handle legal --
 12 A. Well, my understanding was I was buying the
 13 name, Economy Fence Center.
 14 Q. Earlier on when we were talking about the
 15 meaning of certain terms, we talked about the term
 16 "exclusive," and while we were on break I asked the
 17 court reporter to read me so I could take down word
 18 for word one of your answers when you were talking
 19 about your -- the purchase of the name by Scott, and
 11:53:22 20 you said, When I'm saying exclusively, I mean he
 21 didn't market, he didn't try to brand his company
 22 other than Economy Fence Center. We can look up the
 23 specific words, but do you remember saying that in
 24 your testimony?
 11:53:44 25 A. Yeah. I mean, I remember the discussion,

Page 74

1 Directory 2010-2011," three pages.
 2 A. I don't recall ever seeing it till now.
 3 Q. Okay. "Stanwood & Camano, 2011 Action Pages
 4 Telephone Directory," have you ever seen that before?
 12:33:11 5 A. I don't recall ever seeing this before until
 6 you sent it to us.
 7 Q. "Bellingham/Whatcom County, 2011-2012
 8 Directory, MacGregor Yellowbook?"
 9 A. I don't recall seeing it till now.
 12:33:30 10 Q. Finally, a printout, join Facebook, August
 11 11th, 2011 --
 12 A. Yeah. I see you are a fan of his.
 13 Q. I sure am.
 14 A. You gave him five stars. Isn't that
 12:33:56 15 convenient? I haven't seen this until you sent it to
 16 us.
 17 Q. I'll let you know, by the way, I did that on
 18 my own.
 19 A. Okay. Sure.
 12:34:04 20 Q. I was never asked. And I give all my clients
 21 five stars as long as they pay their bills to me.
 22 They are stellar when they retain me. All right.
 23 I'm going to hand you two more exhibits,
 24 which were part of your discovery responses, and the
 12:35:08 25 main thing I want to ask you is to --

Page 75

1 (Exhibits-15 and -16 marked.)
 2 Q. These were produced to us by your counsel in
 3 response to your document requests, and I'd like to
 4 understand what they are and what they show.
 12:36:04 5 A. Okay.
 6 Q. So would you go ahead and tell me what
 7 Exhibit-15 -- what is Exhibit-15?
 8 A. So this is a fence sign. This shows the
 9 license number under there. It shows that's Economy
 12:36:31 10 Fence Center, Inc.'s, contractor license number. This
 11 shows that the mark was being used in Federal
 12 installations prior to my purchasing the business from
 13 Scott, the assets.
 14 Q. Let's see. That's the first two pages?
 12:36:59 15 A. That is the first two pages, correct.
 16 Q. And are both of these pages from the same --
 17 A. Yes.
 18 Q. -- Air Force installation?
 19 A. Yes.
 12:37:11 20 Q. And which installation is it; do you know?
 21 A. It's on Airport -- or it's on -- it's in
 22 Everett by Paine Field. I don't know the exact
 23 address.
 24 Q. Following this is a two-page, "Transaction
 12:37:36 25 Detail By Account, January 2003 to December 2004."

Page 76

1 Can you explain what this is?
 2 A. So let me look at this. It looks like it is
 3 a journal entry and it looks like it has -- it shows a
 4 purchase from Kroy, an out-of-state manufacturer that
 12:38:29 5 we bought vinyl from; Main Media is a company that we
 6 purchased signs from; and May Advertising is, again,
 7 that's who -- that's an out-of-state company where we
 8 purchase -- we don't purchase from them anymore, but
 9 we did for years, purchased our fence signs from them.
 12:38:59 10 Q. Do they deliver those fence signs to you in
 11 Washington state?
 12 A. Yes, they do.
 13 Q. Following these two pages are seven pages of
 14 invoices.
 12:39:29 15 A. Yeah, it looks like it.
 16 Q. Okay. Am correct to say that you show
 17 invoices to customers outside of the state of --
 18 A. Yes. We can go through them, if you want.
 19 Q. Okay.
 12:39:49 20 A. The first one is Dick's Evergreen Fence &
 21 Deck. Did a lot of business with them. They're out
 22 of Oregon.
 23 Q. Were you purchasing or billing?
 24 A. Both: selling and purchasing.
 12:40:00 25 Q. Next.

Page 77

1 A. Chinook Properties, this is a contractor on
 2 the peninsula that did a lot of work for the Navy
 3 where we -- we did a lot of work for the Navy,
 4 sometimes directly to the Navy, sometimes through
 12:40:25 5 Chinook Properties.
 6 Q. Next page.
 7 A. So this is an example of -- we do a lot of
 8 business up in Alaska, and this apparently is an
 9 invoice for some materials that we sent up there.
 12:40:46 10 Q. Next page.
 11 A. Delta Western. Okay. So this is another
 12 example of materials that we sent up to Dutch Harbor,
 13 which says it on the invoice there in Alaska.
 14 Q. Next page.
 12:41:14 15 A. Same thing. This is materials that were sent
 16 up to Alaska.
 17 Q. Next page.
 18 A. This is another example, USDA Forest Service,
 19 Sitka Ranger Station, materials, business that we did
 20 up in Alaska.
 21 Q. And the last page of the invoices?
 22 A. Spenard Builders Supply. Okay. Again, this
 23 is more materials sent to Alaska.
 24 Q. And the final photograph on the final page
 12:41:48 25 there.

Page 78

1 A. This is, again, a fence sign showing the mark
 2 being used, and it's actually a great picture, because
 3 it shows it in two spots. It also shows the mark,
 4 Economy Fence Center, on the UltraGuard sign, who is a
 12:42:15 5 company we used to purchase vinyl from out of
 6 California.

7 Q. Was this an installation by Economy Fence
 8 Center, Inc.?
 9 A. Yes, it was, and you can tell that by looking
 10 at the --
 11 Q. Corporation number?
 12 A. The contractor's registration number.
 13 Q. Okay. Now, I see in this exhibit a number of
 14 instances in which you have sold fencing materials out
 12:42:50 15 of state. Do you do any installation jobs out of
 16 state?
 17 A. I don't have exact examples of installation
 18 jobs that we have done out of state. My recollection
 19 is, is that we have -- and I want to say down in
 12:43:10 20 Oregon we've done a lot of -- we sold a lot of
 21 materials to different people in Oregon. We've had
 22 relationships with subcontractors down there. So I
 23 believe that we have.
 24 Q. To do fencing installation in Oregon, do you
 12:43:34 25 need to be licensed as a contractor in Oregon?

Page 79

1 A. I'm really not sure. I'm not up on what the
 2 different states are requiring.
 3 Q. Do you have any contractor licenses outside
 4 the state of Washington?
 12:43:50 5 A. Not that I'm aware of.
 6 Q. We're done with that exhibit. Would you take
 7 a look at Exhibit-16, please, and describe what this
 8 is.
 9 A. Well, the first page of Exhibit-16 references
 10 a company called Pacific Source, and Pacific Source is
 11 a customer that shipped materials to primarily Hawaii.
 12 We used to sell them a lot of materials that would end
 13 up in Hawaii; Delta Western, again, on the second
 14 page, we talked about them. They're from Sitka,
 12:44:36 15 Alaska. It looks like materials we sent up there.
 16 These are all the same ones we've already
 17 gone through. This is just the transaction detail
 18 account report that shows it, the Forest Service and
 19 Delta Western, and then you have Spenard Builders on
 12:44:54 20 the third page, which we already discussed, and we
 21 have Dick's Evergreen Fence & Deck in Oregon that
 22 we've already discussed.
 23 Q. Okay. I'm ready to conclude the corporate
 24 deposition.
 12:45:11 25 MR. NETTERFIELD: We'll reserve signature.

Page 80

1 MR. FEIL: Sure.
 2 Q. We'll take an hour break, if it's okay with
 3 you, and return with you wearing your individual hat?
 4 A. Okay.
 12:45:24 5 Q. I could just continue in this mode, except
 6 for the fact that we have the specific matters on
 7 which you were to be prepared, and so when I'm going
 8 beyond that, then I have to close the corporate and
 9 begin the personal.
 10 A. Okay.
 11 MR. FEIL: We're in recess.
 12 (Recess for lunch at 12:45.)
 13 * * *
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 81

1 Seattle, Washington; Thursday, July 17, 2014
 2 1:52 P.M.
 3 -----
 4 E-X-A-M-I-N-A-T-I-O-N (Resumed)
 13:52:15 5 BY MR. FEIL:
 6 Q. We're back in the original dep. This is not
 7 a new depo.
 8 A. Okay.
 9 (Exhibit-17 marked.)
 10 Q. The court reporter has marked as 17,
 11 Exhibit-17, two pages of the materials that were
 12 produced to us in response to discovery requests,
 13 produced to us by your attorney.
 14 Earlier in your deposition you referred to
 15 some kind of brochure, circular, in which Economy
 16 Fence Center under Scott Strong had described the kind
 17 of business you do. Is this the circular you were
 18 referring to?
 19 A. Yes. This is the brochure that I was talking
 20 about, yes.
 21 Q. Okay. Going back, then, to Exhibits-5 and
 22 -6.
 23 A. Um-hum.
 24 Q. I examined you earlier about the statements
 25 about how the mark has become, quote, distinctive of

Exhibit D

OUR CUSTOMER'S COMMENTS

"We had our idea of the type of fence we wanted and Economy Fence was able to build exactly what we wanted, and it looks great! Your crew was prompt, courteous and professional. We are especially pleased with the way they were able to finish ahead of schedule."
 Lonnie & Martin Lupton

"Thank you for the wonderful assistance you provided in helping construct our first fence . . . your hands on lesson was invaluable."
 Richard W. Rouse
 Pastor

"We are pleased with the services and the friendly professionalism displayed by the installing crew."
 Henry S. Brown

"You installed the fence skillfully and payed attention to every detail. You followed the contour of the lot perfectly."
 Jeannie O'Connor

"We are very pleased with the workmanship and materials used. The crew did a super job."
 Bill & Carel Birdsall

"Your crew was prompt, courteous and demonstrated great patience during the entire project. Since completion . . . We have received many compliments on the fence, many from neighbors who are planning to install fences of their own."
 Kathleen Walsh

CALL US FOR FREE ESTIMATES

881-0884

EASTSIDE

447-1536

SEATTLE

347-1355

SNOWHORN COUNTY

HOW TO FIND US



Since its founding in 1981, Economy Fence Center has grown to be one of the Northwest's leading fence specialists. We pride ourselves in our professionalism, superior products and customer satisfaction. We attribute our success to our commitment of tendering the highest level of service and care to every client we serve.

As president of Economy Fence Center, you have my pledge that each fence we sell will be constructed in the most economical and efficient way with the highest quality materials available. Whether our professional crews build your fence, just set your posts, or you choose to construct it yourself, our aim is to show true the definition of economy: "A thrifty and efficient use of material resources and expenditures, therefore, getting the best value for your dollar."

At Economy Fence Center, we do the work right, on time and at the price we promise you. I personally guarantee your satisfaction!

Scott O. Strang
 President

COMMERCIAL • RESIDENTIAL • CUSTOM

OPTIONS FOR BUILDING

INSTALL THE ENTIRE FENCE YOURSELF:

With this option, a truck will be dispatched to your site to deliver all the essential materials for your fence construction. We'll also provide a step by step plan for you to follow. We are always available to answer your questions and pass along many helpful hints derived from our years of experience. It's our goal that the fence you build looks like we built it.

WE INSTALL POSTS... YOU DO THE REST:

"We'll do the hard part, you do the easy part." That sums up this option which allows you to save money by participating in a portion of your fence installation yourself. Our field crew will arrive first to install your posts as only professionals can. They will also explain the proper technique for finishing your fence, building gates, etc. A few days later, our truck will deliver the balance of materials and hardware necessary for the completion of your project.

WE DO IT ALL:

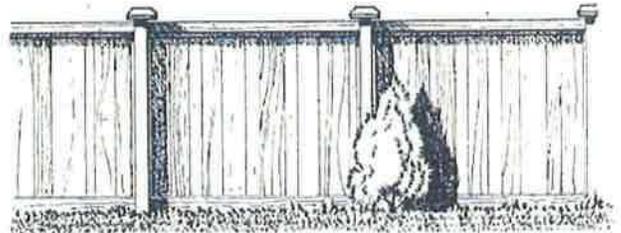
Once you have chosen the perfect fence style to suit your needs, our skilled craftsmen go to work. We follow the progress of your project from start to finish, assuring you the prompt and efficient service you deserve. Each installer employed by Economy Fence Center is a qualified fence professional whose ultimate goal is total customer satisfaction. You'll truly take pride in our finished product. It will give you years of beauty, protection and enjoyment.

FREE LOCAL DELIVERY

TYPES OF FENCES

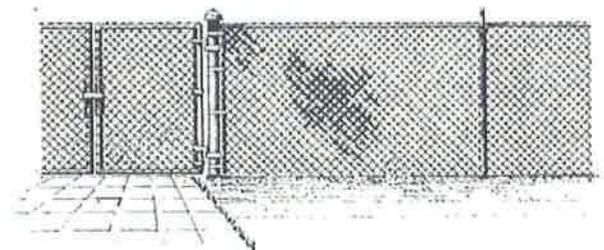
WESTERN RED CEDAR

At Economy Fence Center, we use only #1-Two Face grade western red cedar. We can buy directly from the best cedar mills in Washington and Oregon due to the tremendous volume of business we do with them each year. Further, because of our long standing relationships with these companies, we can order cedar milled strictly to our own high quality specifications. We carry only Western Red cedar, famed for its light weight, straight grain, easy workability and extraordinary resistance to decay. Protective measures to preserve it are unnecessary since it does not deteriorate appreciably, even under the severe climatic conditions of the Pacific Northwest. We have more than 20 different styles of cedar fencing for you to choose from, and we can help you with design and construction of almost any style of cedar fence you can conceive.



CHAIN LINK

Whatever your need; residential, industrial or commercial, we have the materials and expertise for your project. With a wide range of heights, colors and other options, we can design a system to meet your specific requirements. From pet enclosures and backyards to the most formidable task, no challenge is too great. Economy Fence Center uses only the highest quality galvanized steel, PVC and aluminum fencing materials available. We back up that quality with service, experience and reliability to match.



ORNAMENTAL IRON

We carry a wide assortment of ornamental iron fencing. With styles ranging from basic varieties, to the most unique artistic statements; we offer a variety of options to meet all of your ornamental fencing needs. As always, we guarantee the highest quality materials and the finest workmanship available.



Ex 17

Exhibit E

OFFER OF PURCHASE

Scott O. Strong, hereinafter referred to as Strong, herein makes the following offer of purchase to Chainlink Specialties Fence Co., Inc., hereinafter referred to as Chainlink.

Strong is desirous of purchasing the Economy Fence Center business located at 11918 Airport Road, Everett, Washington, Snohomish County, under the following terms and conditions:

1. The purchase price is the sum of \$ 5,000.00 free and clear of all liens and encumbrances, ~~plus~~ plus the "cost" price of the inventory on date of closing this transaction.
2. The offer is under the following terms and conditions:
 - a. Strong is to acquire the right to do business at 11918 Airport Road, Everett, WA as Economy Fence Center.
 - b. The offer includes the telephone number 347-1355 and also with the option of acquisition of telephone number 881-0884 and/or telephone number 774-9893. Strong will receive and assume the existing contract with G.T.E., relative to Yellow Pages advertising. Strong recognizes that assumption of this contract requires payment of telephone obligations.
 - c. Chainlink will assign to Strong all leasehold rights in aforesaid premises, including the last month's rent. Strong recognizes that assumption of aforesaid leasehold rights is subject to approval of the landlord, and closing of this transaction shall be subject to such approval.
 - d. This sale shall include those items of equipment, furniture, inventory and leasehold improvements at the aforesaid premises, and any goodwill incidental to the above location.
 - e. No accounts receivable are included in this said sale, nor are any accounts payable, excepting that described in item "b" above.
3. This offer shall expire if it is not approved by the Bankruptcy Court within thirty (30) days.

This document is submitted in good faith this 13th, day of January, 1984.


Scott O. Strong
1926 W. Casino Road #K-105
Everett, Washington 98204

Approved and accepted:

Chainlink Specialties Fence Co., Inc.


Dennis McIlrath, President
P. O. Box 329
Lynnwood, Washington 98036

Exhibit F

BILL OF SALE
(Economy Fence Center)

The undersigned Economy Fence Center, Inc., a Washington Corporation, ("grantor"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby transfers to Fence Systems NW, Inc. a Washington Corporation ("grantee") all of grantor's right title and interest in and to the following assets owned and used by grantor in connection with their business commonly known as Economy Fence Center ("business").:

1. All of the equipment [used in the operation of the business] ~~[on the attached equipment list]~~, together with all fixtures, goodwill, inventory, trademarks, tradenames, and all other intangible assets, including without limitation sellers rights to the telephone numbers (206) 447-1536, (425) 881-0884, (425) 347-1355, and (425) 347-1357
2. All work in progress and supplies used or to be used in connection with the business.
3. The trade name Economy Fence Center or any variance thereof, together with any and all trade names, trademarks, tradesecrets, and other intangibles of any kind used by grantor in the operation of the business
4. All documents, Records, and files connected with the business, operations, or assets of grantor, including, without limitation, customer lists, supplier lists.
5. All manufacturers', Vendors' and suppliers' warranties to the extent assignable, in respect to each item of property included in the above described assets transferred by grantor to grantee.

Grantor warrants to grantee that they have good and marketable title to all of the above described assets. Grantor will indemnify grantee and hold them harmless from, and defend them against any claims, demands, damages, or judgments which challenge or affect title to the above assets.

IN WITNESS WHEREOF, grantor has executed this bill of sale this 4th day of December, 2003.

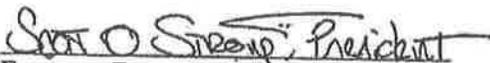

Economy Fence Center, Inc.
By: Scott O. Strong, President

Exhibit G

ASSET PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made this 13th day of November, 2003, between ECONOMY FENCE CENTER INC., a Washington corporation ("Seller"), and FENCE SYSTEM NW, INC., a Washington corporation ("Buyer").

ES DS

RECITALS

A. Seller is the owner of certain assets, both tangible and intangible which are used in Seller's construction business (hereinafter the "Business").

B. Seller desires to sell and Buyer desires to purchase those specific tangible and intangible business assets of Seller listed on the attached Schedule A (hereinafter collectively referred to as the "Assets") for a purchase price and upon the terms and conditions as set forth in this Agreement.

AGREEMENT

In consideration of the promises and mutual covenants contained herein, the parties agree as follows:

1. Purchase and Sale.

a. On the terms and subject to the conditions set forth in this Agreement, Seller hereby agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller the Assets. All Assets are purchased free of all lien and encumbrances.

b. Assets do not include the Accounts Receivable of Seller for work, materials or services provided on or before October 28, 2002. Any Accounts Receivable of Seller received by Buyer for work materials or services to customers on or before October 28, 2002, shall be forwarded on the day received to Seller at Seller's address as set forth in Paragraph 18 below. Any Accounts Receivable received by either Buyer or Seller after the Closing Date, for work, services, or materials to a customer provided both before and after October 28, 2002, shall be prorated between Seller and Buyer based upon respective materials and labor, and expenses performed by each party on the specific customer contract.

2. Purchase Price. The Purchase Price (hereinafter "Purchase Price") paid by Buyer for the Assets shall be One Hundred and Forty-Five Thousand, One Hundred Thirty One and 00/100 Dollars (\$145,131.00) plus applicable sales tax.

a. Means of Payment; Taxes. The entire Purchase Price shall be in cash at Closing. The applicable sales tax shall be equal to the sales tax for the purchase of the Assets minus: (1) any inventory (as allocated for on Schedule A) for which Buyer will provide Seller with a resale certificate; (2) any manufacturing equipment (as allocated for

on Schedule A) exempt from sales or use tax under Washington law; and (3) any other Assets that are exempt from sales tax.

b. **Allocation of Purchase Price.** The Purchase Price shall be allocated as set forth on Schedule A.

c. **Adjustments to Purchase Price/Payments Outside of Escrow.** Buyer and Seller agree to cooperate in executing an Advance Tax Request form or such other documents to facilitate acceleration of personal property taxes payable to King and Snohomish Counties. Seller shall be responsible for 2001 property taxes due 2002; 2002 property taxes due in 2003 shall be prorated between Buyer and Seller of October 28, 2002; Buyer shall be responsible for 2003 property taxes due in 2004. Seller shall be responsible for penalties or late fees associated with taxes due through December 31, 2002.

d. **Lease Payment.** Buyer has leased from Seller certain commercial property located at 11110 Mukilteo Speedway, Mukilteo, WA 98275-5401 (the "Property"). Buyer agrees to pay Seller an additional sum of \$4,331.00 at closing to reimburse Seller for utilities incurred by Seller from Buyer's use of the Property. Seller hereby waives all other claims against Buyer arising out of use of the Property.

3. **Assumption of Liabilities.** Buyer is purchasing only the Assets of the Business and assumes no liabilities of Seller except as specifically provided in this Agreement.

4. **Closing.** The purchase and sale provided for in this Agreement (the "Closing") shall occur on or before November 14, 2003 or at such other time, date or place as the parties shall mutually agree upon (hereinafter the "Closing Date").

5. **Representations of Seller.** Seller represents warrants and agrees as follows:

a. Seller is a corporation duly organized, validly existing, and in good standing under the laws of the state of Washington.

b. Seller has the full power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by Seller's board of directors and shareholders and no other corporate proceeding on the part of Seller is necessary to authorize its officers to perform this Agreement and the transactions contemplated herein.

c. The execution and performance of this Agreement by Seller does not violate or result in a breach of or constitute a default under any judgment, order or decree to which it may be subject, nor does execution or performance constitute a violation of or a conflict with any duty which is subject to any provision of Seller's Articles of Incorporation or Bylaws.

d. Except as set forth on Schedule 5, there are no actions, suits, claims, proceedings or investigations pending or to the knowledge of Seller threatened against or affecting title to the Assets as are in equity on or before or by any state, municipal or other government court, department, commission, board, bureau, agency, or instrumentality, domestic or foreign.

e. Except as set forth on Schedule 5, Seller has filed with the appropriate governmental authorities all tax and related returns required to be filed by it, including a personal property tax affidavit for tax year 2003, and such returns accurately reflect the taxes payable. All have been duly paid except those being contested in good faith and no reserves for unpaid taxes have been set up or are required on the basis of the facts and in accordance with generally accepted accounting principles.

f. Seller has, or will have at Closing, good and marketable title to all the Assets, free and clear of any and all liens or encumbrances.

g. Neither the trade name "Economy Fence Center" nor the logo used by Seller's Company are subject to any known claim of a third party within the state of Washington.

h. Seller conducted its business in the ordinary and usual manner up through October 29, 2002. Seller has not conducted business since October 29, 2002.

6. **Representations of Buyer.** Buyer represents warrants and agrees as follows:

a. Buyer is a corporation duly organized and existing and in good standing under the laws of the state of Washington.

b. Buyer has full power and authority to enter into this Agreement and to carry on its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by Buyer's board of directors and shareholders and no other corporate proceedings on the part of Buyer are necessary to authorize its officers to perform this Agreement and the transactions contemplated herein.

c. Buyer has conducted its business including use and enjoyment of the Assets, in the ordinary course of business since October 29, 2002.

7. **Conditions to Closing - Buyer.** The obligations of Buyer under this Agreement are subject to the following conditions:

a. The representations and the warranties made by Seller herein shall be correct, and Seller shall deliver to Buyer such documentation as is necessary to deliver clear title to the Assets, including UCC-3 termination statements from Seller's bank and certificates of title for all of the vehicles;

b. Seller shall execute and deliver to Buyer a "Bill of Sale" in the form attached as Exhibit B, covering all of the Assets;

c. Seller shall execute and file with the Washington Secretary of State all documents necessary to change the name of Seller corporation "Economy Fence Center, Inc." and take any action necessary to transfer to Buyer the trade name "Economy Fence Center";

d. Seller has paid \$12,900.00 towards obligations to Verizon, Qwestdex, and all other yellow pages in which Seller has placed ads associated with Seller's phone numbers and obtained a release as to such amounts. Seller is not obligated to Buyer to pay any more than the sum stated in this Paragraph, and shall have no obligation to Buyer, indemnity or otherwise to pay any additional sums.

e. Seller shall pay at Closing all of its obligations to the creditors listed on Schedule 7. Such payments shall in no way compromise any further indemnification obligations Seller may have under this Agreement.

8. **Conditions of Closing - Seller.** The obligations of Seller under the Agreement are subject to the condition that on or before the Closing Date:

a. All the terms, covenants and conditions of this Agreement to be complied with and performed by Buyer at or before the Closing Date shall have been duly complied with and performed;

b. The representations and warranties made by Buyer herein shall be correct; and

c. Payment to Seller of the Purchase Price as set forth in Paragraph 2. and the Lease payment set forth in Paragraph 2(d) above.

9. **Instruments of Transfer.** Seller agrees that the transfer of Assets under this Agreement shall be made by bill of sale, assignments or other instruments of transfers that shall be appropriate to carry out the intent of this Agreement and that shall be sufficient to vest in Buyer all the title of Seller to the Assets.

10. **Indemnification.**

a. **Seller's Indemnity.** Seller shall indemnify, defend and hold harmless Buyer and Buyer's successors and assigns against any and all damages, loss, expenses, obligations and liabilities (including reasonable attorneys' fees and costs) resulting from: (i) any breach of Seller's representations or warranties set forth in this Agreement; (ii) all liabilities against the Assets existing on or before October 28, 2002; any and all hazardous waste claims, whether brought by any governmental agency or third party pertaining to any personal or real property, owned by Seller on or before the date of October 28, 2002; (iv) any act or omission of Seller which constitutes a breach hereunder; (v) any and all debts, liabilities or claims, or judgments, past, present or future, arising out

of Seller's ownership and operation of the Business, including without limitation, creditors of Seller, and any and all liabilities, federal income tax, excise taxes, or state and municipal taxes of any nature, provided, however, Seller's indemnification obligation shall not apply to claims resulting from Buyer's use of the Assets on or after October 29, 2002. This indemnity shall survive the Closing Date.

b. **Buyer's Indemnity.** Buyer shall indemnify, defend and hold harmless Seller and Seller's successors and assigns against any and all damages, loss, expenses, obligations and liabilities (including reasonable attorneys' fees and costs) resulting from: (i) any breach of Buyer's representations or warranties set forth in this Agreement; (ii) any act or omission of Buyer which constitutes a breach hereunder; (iii) any and all hazardous waste claims, whether brought by any governmental agency or third party pertaining to any personal or real property, owned by Buyer after the date of October 28, 2002; and (iv) any and all debts, liabilities or claims, or judgments, past, present or future, arising out of Buyer's use of the Assets after October 28, 2002, including without limitation, creditors of Buyer, and any and all liabilities, federal income tax, excise taxes, or state and municipal taxes of any nature arising after October 28, 2002. This indemnity shall survive the Closing Date.

c. **Procedures Regarding Indemnity.** Each party requesting indemnity under this paragraph 10 shall promptly give written notice to the other party after obtaining notice of any claim. After providing such notice the party requesting indemnity shall then permit the other party to assume the defense of such claim or any litigation resulting from such claim, counterclaim or defense. If the defense of such claim is not provided within seven business days of receiving notice of the claim then the party requesting indemnity may defend or settle such claim or litigation in such manner as it may deem appropriate.

11. **Guarantee of Seller's and Buyer's Shareholders.** Seller's shareholders, Scott Strong and Vicki Strong, husband and wife, hereby personally guarantee all of Seller's indemnity obligations under this Agreement. Buyer's shareholders, Derek Smith and Kara Smith, husband and wife, personally guarantee all of the Buyer's indemnity obligations under this Agreement. These guarantees shall survive the Closing Date.

12. **Risk of Loss.** The risk of loss or destruction of Assets shall be on Buyer at all times through the Closing Date.

13. **Survival of Representations.** Seller and Buyer agree that the representations, warranties and covenants contained in this Agreement shall survive the Closing Date.

14. **Expenses.** Buyer shall pay all excise taxes in connection with the transfer. Buyer will execute a Resale Certificate to the extent requested by Seller. Except as provided for in the preceding sentence, Seller and Buyer shall each pay its own expenses in connection with this Agreement, and the parties shall evenly split the costs of escrow.

Nothing herein shall limit the liability of one party to the other for its default in complying with this Agreement.

15. **Covenants of Further Assurance.** The parties agree to execute any additional instruments, documents and certificates, and to take any and all further actions necessary to affect the transfer of assets set forth in this Agreement.

16. **No Broker or Agent.** Each party hereto represents and warrants to the other that there are no claims or rights for brokerage commissions or finder fees in connection with the transactions contemplated by this Agreement, and each party shall indemnify the other for any claims for a broker/agent commission or fee.

17. **Benefit of Assignees.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns provided that neither party shall assign any of its rights or privileges hereunder without the prior written consent of the other.

18. **Notice.** Any notice, request, instruction or other document to be given hereunder to either of the parties by the other shall be in writing and delivered personally or sent by mail, postage prepaid, as follows:

TO SELLER:	Scott Strong _____ _____
TO BUYER:	Fence System NW, Inc. _____ _____

Either party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other party.

19. **Entire Agreement.** This instrument contains the entire agreement between the parties hereto with respect to the purchase and sale and other transactions contemplated herein and supersedes and replaces all prior written or oral agreements, negotiations or understandings with respect thereto. This Agreement shall not be altered or otherwise amended, except pursuant to a writing executed by all of the parties thereto.

20. **Choice of Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state of Washington, and venue for any dispute shall be in King County, Washington.

21. **Attorneys' Fees.** If any party to this Agreement brings suit to enforce any of its rights hereunder, the prevailing party in such action, in addition to any other relief, shall be entitled to recover its reasonable attorneys' fees and costs, including any of such on appeal or incurred in enforcing any indemnity obligations set forth herein.

22. **Counterparts.** This Agreement may be signed in one or more counterparts which, when taken together, will constitute a single agreement.

23. **Severability.** If any provision or provisions of this Agreement or of any of the documents or instruments delivered pursuant hereto, or any portion of any provision hereof or thereof, shall be deemed invalid or unenforceable pursuant to a final determination of any court of competent jurisdiction or as a result of future legislative action, such determination or action shall be construed so as not to affect the validity or enforceability hereof or thereof and shall not affect the validity or effect of any other portion hereof or thereof, and such affected portion shall be deemed to be amended by the parties hereto to the minimum extent necessary to cause the amended portion to be valid and enforceable.

24. **Interpretation and Fair Consideration.** This Agreement has been reviewed and approved by each of the parties who have had access and the benefit of consultation with independent legal counsel. In the event it shall be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly construed or against either party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

SELLER:

ECONOMY FENCE CENTER INC.,
a Washington corporation

By: _____
Scott Strong, President

Individuals as to Paragraph 11 Only:

Scott Strong

Vicki Strong

BUYER:

FENCE SYSTEM NW, INC.,
a Washington corporation

By: _____
Derek Smith, President

Individuals as to Paragraph 11 Only:

Derek Smith

Kara Smith

SCHEDULE A

<u>Item</u>	<u>Purchase Price</u>
Trucks/Heavy Equipment	\$59,300.00
Equipment/Tools	\$4,000.00
Office Equipment	\$1,000.00
Inventory	\$79,831.00
Goodwill/Trade Name/Logo/Customer Lists	<u>\$1,000.00</u>
Total	\$145,131.00

<u>Truck/Heavy Equipment</u>	<u>VIN</u>	<u>Purchase Price</u>
International Flatbed - 1982	1HTAA17B4CHB24394	\$4,000.00
Chevrolet Flatbed - 1985	1GBHC34WIFJ182583	\$2,000.00
Jeep Pickup - 1991	1J7FT26SXML622922	\$1,300.00
Ford Super Duty - 1991	2FDLF47M9MCA67279	\$2,000.00
Ford Super Duty - 1991	2FDLF47M5MCA67280	\$5,000.00
Isuzu Flatbed - 1993	JALE5B1U2P3001517	\$5,000.00
Isuzu Flatbed - 1993	JALE5B1U2P3001551	\$5,000.00
Dandy Digger - 1993	ID9TO2328PC155004	\$14,000.00
Chevrolet Pickup - 1997	1GCCS144XVK190959	\$2,000.00
Chevrolet Pickup - 1997	1GCCS1443VK187871	\$2,000.00
Isuzu Flatbed - 1997	JALF5A127V3700717	\$8,000.00
Isuzu flatbed - 1999	JALC4B145X7010473	<u>\$9,000.00</u>
Total		\$59,300.00

SCHEDULE 5
EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES

- b. The IRS, Washington State Department of Employment Security, and the Snohomish County Assessor have all notified Seller of various delinquencies and in some cases filed liens against some of the Assets. TMC Sales, Inc. has filed a garnishment action against Buyer seeking compensation for a debt of seller.

- e. Seller has not paid Snohomish County personal property taxes for 2000 due in 2001, 2001 taxes due in 2002, or 2002 taxes due in 2003. Seller has in some instances not withheld income tax from employees or filed form 941 with the IRS, and the IRS has filed a notice of federal tax lien. Seller has not paid certain premiums to Washington State Department of Employment Security.

**SCHEDULE 7
CREDITORS TO BE PAID AT CLOSING**

Creditor

Internal Revenue Service

Snohomish County Assessor

Aurora Rents

Isuzu

Washington State Department of Empl. Sec.

TMC Sales, Inc.

City Bank

Pacific Art Press

Exhibit H

"AGREEMENT OF PURCHASE OF SALE"

Jerry M. Sturlaugson, hereafter known as the Purchaser, makes the following offer to Chainlink Specialties Fence Co. Inc. hereafter known as C.L.S.

The Purchaser has the desire to purchase the Economy Fence Center business located at 2201 Riverside Dr. Mt. Vernon, Wa., located in Skagit County, under the terms and conditions which follow:

A. The purchase price is "COST" of inventory at the close of this transaction. The Big Toy model BY-3 is not included in this transaction. It is also to be free and clear of all liens and encumbrances at the time of this transaction.

B. The offer is to be under the following terms and conditions:

a.) The Purchaser has the right to continue to do business under the name of ECONOMY FENCE CENTER at the address of 2201 Riverside Dr. Mt. Vernon, Wa.

b.) The offer includes the telephones and the #428-2900. The Purchaser will receive and assume the existing contract with Continental and Pacific Northwest Bell yellow page advertising. The Purchaser acknowledges the fact there are back payment obligations on the above mentioned telephone contracts.

c.) Also for the sum of \$3000.00 this sale includes all office equipment, goodwill, forklift (Toyota SN. F620 13013), displays, any material left on above said location.

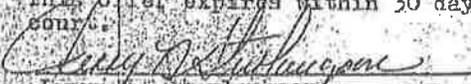
d.) The Purchaser will take over the lease agreement with A. Elliot Johnson, landlord. There are also 2 months back rent on which the Purchaser agrees to pay.

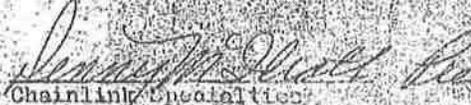
e.) The Purchaser is also to assume the lease of 1981 Ford F150 pickup license #ML-7235. Lease is with AAA Lease in Lynnwood, Wa. The lease is paid up to date and no back payments are due.

f.) There are to be no accounts receivable included in this transaction, nor are any accounts payable, except for those described in above mentioned sections.

C. C.L.S. shall pay all costs and expenses of obtaining any necessary approval of bankruptcy court, and any legal fees incurred by it.

This offer expires within 30 days if not accepted by the bankruptcy court.


Jerry M. Sturlaugson
4518 Q 1st Ave. S.E.
Everett, Wa. 98205


Chainlink Specialties
Fence Co. Inc.
P.O. Box 39
Lynnwood, Wa. 98036

EX
10

"AGREEMENT OF PURCHASE OF SALE"

Jerry N. Sturlaugson, hereafter known as the Purchaser, makes the following offer to Chainlink Specialties Fence Co., Inc., hereafter known as C.L.S.

The Purchaser has the desire to purchase the Economy Fence Center business located at 2201 Riverside Dr. Mt. Vernon, Wa., located in Skagit County, under the terms and conditions which follow:

A. The purchase price is "COST" of inventory at the close of this transaction. The Big Toy model BY-3 is not included in this transaction. It is also to be free and clear of all liens and encumbrances at the time of this transaction.

B. The offer is to be under the following terms and conditions:

a.) The Purchaser has the right to continue to do business under the name of ECONOMY FENCE CENTER at the address of 2201 Riverside Dr. Mt. Vernon, Wa.

b.) The offer includes the telephone and the #428-2900. The Purchaser will receive and assume the existing contract with Continental and Pacific Northwest Bell yellow page advertising. The Purchaser acknowledges the fact there are back payment obligations on the above mentioned telephone contracts.

c.) Also for the sum of \$3000.00 this sale includes all office equipment, goodwill, forklift (Toyota SN: F620 13013), displays, any material left on above said location.

d.) The Purchaser will take over the lease agreement with A. Elliot Johnson, landlord. There are also 2 months back rent on which the Purchaser agrees to pay.

e.) The Purchaser is also to assume the lease of 1981 Ford F150 pickup license #HL-7225. Lease is with AAA Lease in Lynnwood, Wa. The lease is paid up to date and no back payments are due.

f.) There are to be no accounts receivable, included in this transaction, nor are any accounts payable, except for those described in above mentioned

STATE OF WASHINGTON, }
County of Snohomish } ss.

On this day personally appeared before me Denny McIlrath and Jerry N. Sturlaugson

to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 2nd day of February, 1984

Denny McIlrath
Notary Public in and for the State of Washington
residing at Lynnwood

ACKNOWLEDGMENT, INDIVIDUAL

Exhibit I

**Washington State Department of Revenue
State Business Records Database Detail**

TAX REGISTRATION NO: 600515341 ACCOUNT OPENED: 01/15/1984
UBI: 600515341 ACCOUNT CLOSED: 12/31/1993
ENTITY NAME: STURLAUGSON JERRY N & KATHLEEN M
BUSINESS NAME: ECONOMY FENCE CENTER OF MOUNT VERNON

MAILING ADDRESS: BUSINESS LOCATION:
1580 DUNBAR RD 1580 DUNBAR RD
MOUNT VERNON, WA 98273-9765 MOUNT VERNON, WA 98273-9765

ENTITY TYPE: SOLE PROPRIETOR RESELLER PERMIT NO: N/A
PERMIT EFFECTIVE: N/A
NAICS CODE: 238990 PERMIT EXPIRES: N/A
NAICS DEFINITION: ALL OTHER SPECIALTY TRADE
CONTRACTORS (PT)

FOR NON-COMMERCIAL USE ONLY

10/24/2013 4:24 PM

**Washington State Department of Revenue
State Business Records Database Detail**

TAX REGISTRATION NO: 600516789 ACCOUNT OPENED: 01/23/1984
UBI: 600516789 ACCOUNT CLOSED: 12/31/1985
ENTITY NAME: ECONOMY FENCE CENTER OF WENATCHEE
BUSINESS NAME:

MAILING ADDRESS: BUSINESS LOCATION:
2743 ROCK ISLAND RD 2743 ROCK ISLAND RD
EAST WENATCHEE, WA 98801-0000 EAST WENATCHEE, WA 98801-0000

ENTITY TYPE: SOLE PROPRIETOR RESELLER PERMIT NO: N/A
PERMIT EFFECTIVE: N/A
NAICS CODE: 999990 PERMIT EXPIRES: N/A
NAICS DEFINITION: N/A

FOR NON-COMMERCIAL USE ONLY

10/24/2013 4:25 PM

Ex 30

JKS000101

Exhibit J

Department of Labor and Industries
PO Box 44450
Olympia, WA 98504-4450

STATE ECONOMY FENCE CENTER MT VERNON

Reg. CC ECON OFC 166BP
UBI 601-513-526

Registered as provided by Law as:
Construction Contractor
(CCBN) - FENCING

Effective Date: 1/17/1984
Expiration Date: 6/10/2015

ECONOMY FENCE CENTER MT VERNON
17793 STATE RT 536
MOUNT VERNON WA 98278

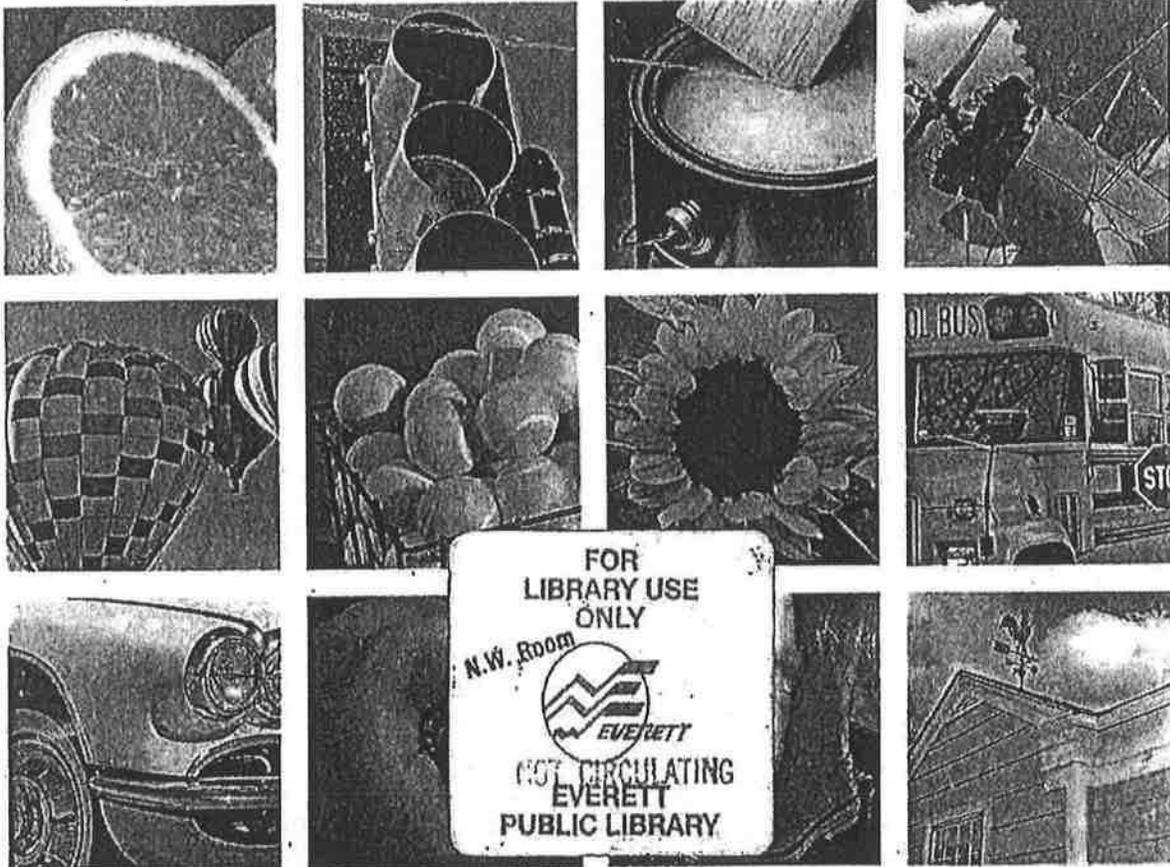
FX 32

Exhibit K

DECEMBER 1996

SNOHOMISH COUNTY

KEEP ME UNTIL WINTER 1997



FOR
LIBRARY USE
ONLY

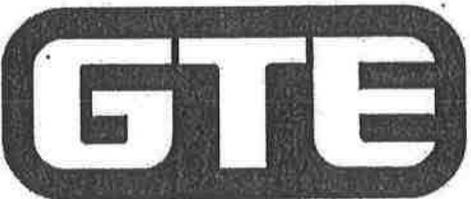
N.W. Room

EVERETT

NOT CIRCULATING

EVERETT
PUBLIC LIBRARY

THE EVERYTHING PAGES
INSIDE LOOK® MAGAZINE • COUPONS • QUICK TIPS®



ARLINGTON • CAMANO ISLAND • DARRINGTON • EVERETT • GOLD BAR • GRANITE FALLS
INDEX • LAKE STEVENS • LAKEWOOD • MARYSVILLE • MILL CREEK • MONROE • MUKILTEO
SILVANA • SKYKOMISH • SNOHOMISH • STANWOOD • STARTUP • STEVENS PASS • SULTAN

AREA CODES 206 & 360 • GTE NORTHWEST • <http://superpages.GTE.net>

® THE UNITS A Yellow Pages are printed on paper containing 35% minimum post consumer recycled fiber. © 1996 GTE Diverseco Corporation

JKS000365 39

Exhibit L

JKS ENTERPRISES, INC. d.b.a. Economy Fence Center of Mount Vernon

7001
3

*Ordered 2 AT
1/6/98
\$218.00
+ shipping*

JKS ENTERPRISES, INC.
d.b.a.

Economy Fence Center

of Mount Vernon
Corporate Office 1580 Dumbor Road • Mount Vernon, WA 98273
Mount Vernon 428-2900 • Bellingham 671-7225
Camano Island 387-1425 • Everett 335-3327
Fax 428-4223

Stagit State Bank West Mount Vernon Office
P.O. Box 548 Phone 424-1011
1301 Memorial Hwy, Mount Vernon, WA 98273

7001

98-563/1251

CHECK NO.

VOID
DATE

AMOUNT

**USE THIS SAMPLE
TO REORDER**

Attach it To The Enclosed Reorder Form,
Start Consecutive Numbering at

VOID

PAY
TO THE
ORDER
OF

AUTHORIZED SIGNATURE

JKS000185

Ex 33

Exhibit M

1998

City of Stanwood
CITY CLERK'S OFFICE

BUSINESS LICENSE

JERRY STURLANSON
IS HEREBY LICENSED TO OPERATE

ECONOMY FENCE CENTER
1580 DUNBAR RD
MT VERNON WA
AT MT VERNON WA



98273

98-009800

This license must be posted in a conspicuous place at the location.

LICENSE NUMBER

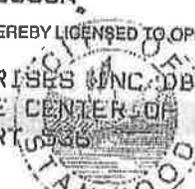
2002

City of Stanwood
CITY CLERK'S OFFICE

BUSINESS LICENSE

JERRY STURLAUBSON
IS HEREBY LICENSED TO OPERATE

J K S ENTERPRISES INC. DBA
ECONOMY FENCE CENTER OF MT VERNON
17793 STATE RT
MT VERNON WA



98273

98-009800

This license must be posted in a conspicuous place at the location.

LICENSE NUMBER

39

JKS000172

Exhibit N

362 FENCE Verizon Snohomish County April 2006

Quality is Our Priority.



FREE ESTIMATES

LICENSED
BONDED
INSURED

Cont. No. 190UNFL98EG

www.roundhillfence.com
RESIDENTIAL & COMMERCIAL FENCING

Cedar • Chain Link • Colored Vinyl Wire • Dog Kennels • Trellis Work • Custom Arbors • Insurance Repair Work

Prompt Service • Quality Materials • Competitive Prices • Open Saturdays
Over 15 Years Experience • Aluminum Ornamental Fence • Tear Out & Reinstall • Full Color Chain Link Systems

866-459-9443

425-329-6897

©2005 VERNON DIRECTORS CO. ALL RIGHTS RESERVED.

verizon

BC Construction Co. L.L.C. 360 397-3111
Berger Fence Co. L.L.C. 360 397-3111
Carlos Fence Co. B.H.L. 425 481-3400
8310 76th Ave. NE Marysville, WA 98270
425 350-8100

CASCADE FENCE COMPANY INC
1209 Ferguson Park, NE Snohomish, WA 98297
(See Advertisement On Page 361)

CITY WIDE FENCE CO
Lynnwood, WA 425 355-4200
Berthel, WA 425 745-6800
425 481-2000

Coastal Fence Co. Everett, WA 425 487-7200
8339 219th St Everett, WA 425 488-0900
Coastal Fence Company, Wainwright, WA 425 488-0900
Don Guard Northwest, South 360 666-8172

EAGLE FENCE CONSTRUCTION
15310 Smokey Point Blvd N.W., Everett, WA 425 252-1187
(See Advertisement On Page 359)

Eagle Fence Construction
15310 Smokey Point Blvd N.W., Everett, WA 425 252-1187

ECONOMY FENCE CENTER
SERVING THE NORTHWEST SINCE 1982
For All Your Fencing Needs



• Vinyl • Cedar • Chainlink • Iron Fence
www.economyfence.com
Licensed • Bonded • Insured FENCEWORKS WA Inc
Everett 425-347-1315
Redmond 425 881-0814

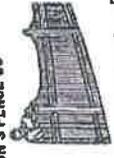
Economy Fence Center
1036 E. Alameda Street, Everett, WA 425 347-1315
ECONOMY FENCE CENTER OF MOUNT VERNON
Everett 425 345-3377
Evergreen Fence Inc. Babbitt 425 482-2345

FENCE DOCTORS



CEDAR FENCE & DECK CLEAR SEALING
877-406-6568
360 568-3911

GROW & SON'S FENCE CO



"We Stand Behind Our Fences"
• Wood • Chainlink • Decks
• Barbwire • Rail Fence

ATLAS FENCE

CHAIN LINK SPECIALISTS

SERVING Snohomish County With Over 35 Years Experience

RESIDENTIAL/COMMERCIAL Galvanized & Vinyl Chain Link



COMPLETE INSTALLATION AND DEMO

42 TRS 100 286

Eaton William Snoh	360 668-6728	Echols Kevin & Diane Snoh	425 337-3185	Eddy George & Angela Lk Stevens	425 397
Eav Bunthan 814 - 172nd St SW Lynwd	425 742-7805	Echols Neil & Sharon Evt	425 377-9772	Eddy Jim & Deann Evt	425 513
Eaves Boyd C & Sylvia		Echols William C & Bonnie Lynwd	425 743-9801	Eddy Michelle 6310 Cady Rd Evt	425 789
3422 - 110th St SE Evt	425 316-3416	Echospace Inc 19707 - 44th Ave W #101 Lynwd	425 697-4991	Eddy P 906 E Marine View Evt	425 374
Eaves Jeffrey 5904 Lombard Ave Evt	425 290-9857	Echotec Inc Bothel	425 487-2450	Eddy Phillip L 2026 - 140th PI SE Bothel	425 338
eBallot.net		Echlering Dennis & Jerrilee	360 794-5900	Eddy Phillip Evt	425 317
19125 Northcreek Pkwy #120 Bothel	425 488-5002	Echlerkamp Scott 115 - 107th St SE Evt	425 710-9488	Eddy Rebeliah Joan 13928 - 23rd Dr Bothel	425 357
Ebata M & L	425 348-8264	Echler Jack & Martina Lynwd	425 745-9488	Eddy Robert F 13810 - 127th Ave SE Snoh	360 568
Ebel Chuck 23601 - 76th Edmonds	425 670-8162	Eck James W 15708 - 48th Ave W Edmonds	425 743-5996	Eddy S 5219 - 133rd SE	425 337
Ebel Dale & Gerri 6705 Fisher Rd Edmonds	425 745-3208	Eckard Charles J 5823 - 200th St SW Lynwd	425 744-1085	Eddy W	425 334
Ebel Susan & Russ 11719 - 35th Ave SE	425 338-0740	Eckardt A L 13320 Hwy 99	425 742-1143	Eddy Warren Edmonds	425 743
Ebel Ulrich & Karen 603 - 116th SW	425 355-9593	Eckberg D 2525 State	425 252-7380	Edeen Chas 6095 - 95th Dr SE Snoh	360 568
Ebeling Brett 4812 pointas dr Mtko	425 493-1958	Eckenberg Cindy 18510 Pales Rd Snoh	360 668-5028	Edeen Robt 628 Rhodora Hgls Lk Stevens	425 334
Ebenezer Lutheran Church		Eckenberg Thos J Evt	425 355-5619	Edelbrock J Evt	425 334
2111 - 117th Av NE Lk Stevens	425 334-0421	Eckenberg Tom 8004 Broadway	425 353-2898	Edelbrock Joni 13065 Tonga Ridge Monro	360 863
Ebensteler Keith & Cndie		Or	425 353-7747	Edelbrock Julie 22219 Dubuque Rd Snoh	360 568
2611 51k Stevens Rd Evt	425 334-3509	Ecker Danl 12804 - 45th Ave SE	425 338-3649	Edelbrock Lois 8601 - 184th Dr SE Snoh	360 568
Eberhard Lawrence Mtko	425 349-1589	Eckerson C	425 353-8616	Edelbrock Wade	
Eberhardt Maria Evt	425 438-4380	Eckerson Construction Mysvl	360 658-9731	1811 - 112th Ave SE Lk Stevens	425 335
Eberharter David & Jan Snoh	425 397-8656	Eckerson Matt & Karen Mysvl	360 658-9731	Eden Advanced Pest Technologies Evt	425 354
Eberharter M Lk Stevens	425 335-1895	Eckert Edward R 2004 Columbia Ave Evt	425 353-9169	Bothel	425 485
Eberharter Matt 1007 - 96th Lk Stevens	425 397-0459	Eckert Mark & Tracy Evt	425 334-6118	Eden Enterprises Inc	
Eberle Chiropractic Clinic		Eckhardt Don 9405 - 171st Ave SE Snoh	360 805-8677	22727 Hwy 99 #207 Edmonds	425 774
1603 - 3rd Mysvl	360 653-7333	Eckhardt Michael & Kristen Monro	360 794-7819	Eden Erin E 6421 - 130th St SE Snoh	425 379
Eberle Michael DC CNT 1603 - 3rd Mysvl	360 653-7333	Eckhardt R & J Monro	360 805-0313	Eden Farms Stables 9225 - 72nd St SE Snoh	360 568
Eberle Norm 2602 - 100th SE	425 337-6561	Eckhart Michelle Edmonds	425 744-1856	Eden Guy Snoh	360 863
Eberle Peter 2423 Chestnut St Evt	425 339-5523	Eckhouse John Edmonds	425 743-4154	Eden Kelly & Shawna	425 743
Eberli T & L Evt	425 337-5095	Eckland Daryl B 10710 - 196th SE Snoh	360 668-5046	Eden M A 4331 - 125th PI SE Evt	425 338
Eberspacher Thomas W & Misty		Eckland Daryl B DDS		Eden Organic Salon LLC	
17021 SE Wales St Monro	360 863-8306	17320 - 135th Ave NE Wndw	425 481-0755	11517 4 W Main Monro	360 863
Ebert Alex 16924 - 5th Ave SE Bothel	425 742-1540	Ras Bothel	425 481-0761	Eden Ryan 19120 - 6th PI W Lynwd	425 711
Ebert B Evt	425 257-9302	Eckley Michael Evt	425 353-3753	Edenfeld L Snoh	425 338
Ebert C J 29111 1/2 Hewitt Ave	425 258-9366	Eckley S J Monro	360 794-9564	Edler D Evt	425 281
Ebert C J 29111 1/2 Hewitt Ave	425 258-9366	Eckley Sarah	425 290-1978	Edler Frank M 4414 Ridgemont Dr	425 281
Ebert James 1415 - 84th SE Evt	425 355-8678	Ecklund Jeff & Renee Brie	425 670-2510	Edgar Bill 15933 - 60th Snoh	425 338
Ebert James 1624 - 93rd Dr SE Evt	425 397-9901	Ecklund Lisa Monro	360 794-6199	Edgar Gordon E Dr	
Ebert James & Susan Evt	425 335-4465	Eckman Steven 8923 - 49th Mtko	425 374-2717	6526 Chennault Boh Dr Mtko	425 397
Ebert L Snoh	360 794-3426	Ecko 10600 Qui Cede Blvd Mysvl	360 659-4443	Edgar Russell 3711 - 164th St SW Lynwd	425 743
Ebert M 16031 - 75th Edmonds	425 743-1726	Eckore Edna 1480 S Fairway Dr Camano Is	425 493-2841	Edgar Stephanie 2001 - 120th PI SE Evt	425 338
Ebert M W 1822 Rucker Ave	425 252-0293	Eckrem Kurt & Nancy Mtko	425 347-4642	Edgar D Lk Stevens	425 397
Ebert Matthew & Cheryl 12016 - 29th Ave SE	425 337-2293	Eckrem Peter Evt	425 355-2145	Edge Concrete 16404 Snokey Pl Blvd #202 Arl	360 668
Ebert T L M Crk	425 379-2685	Eckrom Sofus P 5401 Sunset Ln	425 353-0623	Edge Expressions	
Ebey Arms Apartments		Eckroth Amy 11622 - 36th Ave SE Evt	425 379-5444	12300 Woodville Dr NE Wndw	425 397
915 Columbia Ave Mysvl	360 653-6937	Eckroth David & Mona Evt	425 317-9507	Edge Of The World Theater Edmonds	260 658
Ebey Enterprises Mysvl	360 659-2410	Eckstrom Industries Inc		Edge Pete K 9431 - 59th Ave W Mtko	425 338
Ebey Island Gardens 5518 - 41st Dr SE Evt	425 252-1910	2803 Hewitt Ave Evt	425 258-4614	Edge Salon & Spa Inc The	
Eble Brent Snoh	425 337-7085	Eclstrom J Evt	425 438-8943	13000 Beverly Park Rd #H Mtko	425 397
Eblen W Lance DC 12617 - 164th Cl NE Wndw	425 488-1409	Eckstrom Mike Mtko	425 742-4330	Edgcomb Jonny L 124 - 150th PI SE Lynwd	425 338
Ebling Tim Snoh	360 668-6817	Eckstrom Randy & Jane		Edgcomb M Evt	425 338
Ebner Christopher & Eric 5102 - 149th SE	425 338-9221	4319 - 135th Ave SE Snoh	425 377-9157	Edgeman Karen 12402 Admiralty Way Evt	425 338
Ebner James & Cheryl		Eckstrom Thomas S 404 Crown Dr	425 259-3902	Edgerton David Edmonds	425 338
11829 - 5th PINE Lk Stevens	425 397-3521	Eclipse Inc Lk Stevens	425 335-4688	Edgewood Baptist Church	
Ebner Matthew Snoh	425 338-4870	Eclpso Loudspeaker Systems Mysvl	360 651-8992	29406 - 76th Ave W Edmonds	425 397
Ebner Phillip W 1007 - 130th St SW Evt	425 353-9841	Eclipse Plastic Snoh	360 863-9213	Edgewood Dental Lab 8221 - 44th Ave W Mtko	425 338
Ebony & Ivory 2812 Cedar St Evt	425 252-0237	Eco Health Intl 3918 - 148th St SW Lynwd	425 743-9798	Or	425 338
Ebony & Ivory 3609 - 164th St SW Lynwd	425 776-6095	Eco Supply 19409 - 144th Av Wndw	425 806-0711	Edgewood North Apts 7221 - 196th SW Lynwd	425 338
Eborall Stephen & Rebecca Lynwd	425 743-1143	Ecodry Northwest Bothel	425 743-5152	Edgington John & Angie	
Eby Arnold & Sharon 18623 - 126th SE Snoh	360 794-4382	Ecoplano Edward 6627 Beverly Blvd Evt	425 348-0773	15024 - 46th Ave SE Evt	425 338
Eby P Monro	360 794-5939	Econo Lube N' Tune 9424 Evergreen Way Evt	425 514-5554	Edgington Leslie N 3807 Lincoln Wy Lynwd	425 338
Ecbarger Steve Snoh	360 568-1536	Econmark 710 - 228th St SW #201 Bothel	425 482-6605	Edginton Brad & Patil Evt	425 338
Ecash Technologies Inc		Economic Auto Glass Evt	425 257-9276	Edgman Oren 419 S Blakely St Monro	360 668
19015 N Creek Pkwy Bothel	425 415-1050	Economic Development Council		Edie Arrangements 15021 Main St Mtko Crk	425 338
Eccles Diana 8600 - 18th Evt	425 374-3795	Of Snohomish County		Edie K J Evt	425 338
Eccleston Larry E Evt	425 259-4924	728 - 134th St SW #103 Evt	425 743-4567	Edie's Bookkeeping Bothel	425 338
Eccletic Products Inc Lynwd	425 778-7680	Or	425 348-4636	Edinger B Edmonds	425 338
Echebarger Al & Willa		Economy Fence Center		Edinger G 3915 Coby Ave Evt	425 338
620 - 112th St SE Evt	425 438-2344	1616 E Marine View Dr Evt	425 347-1355	Edinger S Evt	425 338
Echebarger Company Inc		Economy Fence Center Of Mount Vernon Evt	425 335-3327	Edinger Sherry Evt	425 338
22833 Blvd Evt Hwy #207 Bothel	425 774-0205	Economy Glass Lynwd	425 774-8555	Edington Kenneth L 22 - 140th St SE Evt	425 338
Echebarger Development LLC		Bothel	425 402-9549	Edington W & M 4902 - 145th PI SW Edmonds	425 338
16108 Ash Way Lynwd	425 787-6010	Everett	425 258-9749	Edison Kathleen 15914 - 44th Ave W Lynwd	425 338
Echebarger James R 3315 Lombard Ave Evt	425 252-5662	Economy Self Storage 218 Maple Ave Snoh	360 568-1494	Edison Upholstery	425 338
Echebarger Land PO Box 30 Lynwd	425 487-6770	Ed Wyse Beauty Supply 4201 - 196th SW Lynwd	425 771-3733	Edlebrock Chuck & Debbie Snoh	425 338
Echebarger Louie F		530 SW Everett Mill Way Evt	425 355-8323	Edlin Ed & Connie Evt	425 338
1220 S Lake Stickney Dr Lynwd	425 743-2640	Edlie Bauer Tubis	360 654-2714	Edlin James N 8020 - 226th St SE Edmonds	425 338
Echebarger M Evt	425 353-0604	Eddie Bauer Home 3000 - 184th St SW Lynwd	425 775-8121	Edlund Charles 9715 - 49th Mtko	425 338
Echebarger M & S 16304 Broadway Ave Snoh	360 668-2790	Eddies Tracside Bar & Grill		Edmark Chiropractic	
Echebarger Michael Lynwd	425 741-8911	214 N Lewis Monro	360 805-5305	520 - 128th St SW #A7 Evt	425 338
Echebarger P 15419 Hwy 99 Lynwd	425 743-7300	Eddings Brent 14007 - 69th Dr SE Snoh	425 337-8803	Or	425 338
Echebarger P & M Mtko	425 355-3300	Edgington Charles Mysvl	425 397-7477	Edmark Kurt & Julie 16222 - 29th PINE Snoh	425 338
Echebarger Properties Inc		Edgington Darron & Alison Bothel	425 745-5224	Edmark Reger 4421 - 145th PI SW Lynwd	425 338
16108 Ash Way Lynwd	425 741-3535	Edgington James Jr 131 Dom Ave Evt	425 789-1437	Edminster Carl & Shirley Evt	425 338
Echebarger Tyler Lynwd	425 712-0239	Edgington Patricia		Edmisten Patricia L 16605 - 6th Ave W Lynwd	425 338
Echelon Engineering Inc		505 - 166th PI SE Bothel	425 741-9879	Edmonds Anytime Fast Locksmith Edmonds	425 338
21027 - 61st Ave W Lynwd	425 672-8924	Ederman Allen 6101 - 61st Ave SE	425 334-6684	Edmonds Art Festival Edmonds	425 338
Echert Bill & Diana Monro	360 794-8411	Eddy Aileen 811 - 112th St SW Evt	425 265-9625	Edmonds Arts Festival Halls Lake	425 338
Echigo Teriyaki 520 - 128th St SW Evt	425 348-9490	Eddy Belinda DC 125 - 164th St SE Bothel	425 745-2311	200 Dayton Edmonds	425 338
Echo Community Church Evt	425 379-8334	Eddy Christina 12806 - 69th Dr SE Snoh	425 379-7675	700 Mah Edmonds	425 338
Echo Lake Community Church		Eddy Dan	425 377-1252	Edmonds Associates	425 338
13306 Lost Lk Rd Snoh	360 668-5528	Eddy Diana	425 355-9674	2310 - 7th Ave W Edmonds	425 338
Echols C Evt	425 355-6559	Eddy Donald & Ginger			
Echols Jon & Kim 3203 - 102nd PI SE Evt	425 338-0378	13708 - 127th Ave SE Snoh	360 568-6149		

Eckland Darryl B DDS
 17324-135th Av NE Wnd 98072 425 481-0755
 Res 425 481-0761
 Eckley Brenda 14716 130th Av 98223 360 691-9194
 Jeff & Boppla Met 98270 360 652-0675
 Michael Everett 98208 425 353-3753
 S J Mrs 360 794-9564
 Sarah 425 290-1978
 Thomas & Maria
 14704 135th Av NE Ad 98223 360 403-7106
 Ecklund Lisa Mrs 98272 360 794-6199
 Eckman Ed 20012 SW Rd Ad 98223 360 652-4992
 Steven 0923 49th Midtown 98275 425 374-2717
 Eckro 10600 Old Cole Blvd Met 98271 360 659-4443
 Eckron Anna 3416 Rockefor Everett 425 322-5227
 Edna 1480 S Farway Dr Co Is 98275 425 493-2841
 Kurt & Nancy Mrs 425 347-4642
 Peter Everett 98204 425 355-2143
 Sofus P 5401 Sunset Ln 98203 425 353-0265
 Eckroth Amy
 11622 36th Ave SE Everett 98208 425 379-5444
 David & Mona Owen 425 317-9507
 Eckstine R 13804 310th Av SE Siln 98294 360 793-7510
 Eckstrom Howard
 425-1246 N NE Met 98271 360 653-9789
 Eckstrom Industries Inc
 2803 Heron Av Everett 98201 425 259-4614
 Eckstrom J Everett 98204 425 438-8943
 Mike 425 742-4338
 Randy & Jane
 4319 135th Ave SE South 98290 425 377-9157
 Thomas S 484 Crown Dr 98203 425 259-3902
 Eclipse Inc Lk S 98258 425 335-4688
 Eclipse Loudspeaker Systems
 Met 98270 360 651-8992
 Eco Plastic Shop 98290 360 863-9213
 Eco Health Int'l
 3918 149th St SW Ljn 98037 425 743-9798
 Eco Supply 19499 144th Av Wnd 98072 425 806-0711
 EcoDry Northwest WOI 98037 425 743-5152
 Ecolango Edward
 4427 Beverly Blvd Everett 98203 425 348-0773
 Eddy Lubo M Tuna
 9474 Evergreen Way Everett 98204 425 514-5554
 Economark
 710 128th St SW Suite 203 Met 98021 425 482-6605
 Economic Auto Glass Everett 98201 425 257-9276
 Economic Development Council of Snohomish
 County
 718-134th St SW Suite 103 Everett 98204 425 743-4567
 425 348-4636
 Economy Fence Of Mt Vernon
 425 335-3327
 Economy Fence Of Mt Vernon
 425 335-3327
 Economy Glass Everett 98201 360 387-1425
 Economy Glass Everett 98201 425 259-9749
 Economy Glass Mt 98021 425 402-9549
 Economy Glass Ljn 98036 425 774-8555
 Economy Self Storage
 218 Maple Av South 98290 360 568-1494
 Eder J & B Maryville 98270 360 651-8324
 Ed Wya Beauty Supply
 4231-194th SW Ljn 98036 425 771-3733
 Ed Wya Beauty Supply
 530 SW Everett Met Way Everett 98204 425 355-6323
 Eddlad Gladys P
 9501 27th St NW Shad 98292 360 629-4430
 Eddie Bauer Home
 Greenwood Met
 3000 164th St SW Ljn 98037 425 775-8121
 Eddies Truckside Bar & Grill
 214 N Lewis Mrs 98272 360 805-5305
 Eddings Brent
 14007 49th Dr SE Snohomish 98296 425 337-8803
 Eddington Charles Met 98270 425 397-7477
 Eddins Roger 2270 Wagner Rd Co Is 98282 360 387-3076
 Eddleman Allen 4101-41st Av SE 425 334-6694
 Donald 9603 48th Met 98270 360 572-0102
 Mary Shad 98292 360 652-0257
 Eddy Aileen 811 112th St SW Everett 98204 425 265-9625
 Eddy Belinda DC 425 745-2311
 Eddy Brian & Amanda Met 98270 360 653-2730
 Christina
 12806 69th Dr SE Snohomish 98294 425 379-7675
 D J Maryville 98270 360 659-2013
 Dan 425 377-1252
 Diana 425 355-9674
 Donald & Ginger
 13708 127th Ave SE South 98290 360 568-6149
 George & Angela Lk S 98258 425 397-4657
 Jim & Deann Everett 98208 425 513-0953
 Michael Ink 98256 360 793-1601
 Michelle 6319 Cady Rd Everett 425 789-1238

Eddy P 906 E Main View Dr Everett 98201 425 374-2676
 Phillip L 2824 240th Pl SE Bethel 98012 425 338-4732
 Phillip 360 386-8718
 Phillip Everett 98203 425 317-8321
 Phillip 906 E Main View Dr Everett 425 374-7491
 R H 44104 Fr Rd G & R 98231 360 793-8823
 Randy & Lynn Shad 98292 360 652-0719
 Rebekah Joan
 13928 23rd Dr Bethel 98012 425 357-8249
 Rhoda 4219 S 3rd Ave Everett 98203 425 259-0933
 Robert F 13810 127th Ave SE South 98290 360 568-4900
 Rod At 98232 360 403-4961
 Roland W 7826-48th Av NE Met 98270 360 653-7173
 Ross 3530 98th NE Met 98270 360 659-6528
 Ryan At 98232 360 474-9714
 S 5218-13rd SE 98208 425 337-8184
 T & S Shad 98292 360 797-7945
 Thomas 3304 284th St NW Shad 98292 360 689-2212
 Troy 5029 24th NW Shad 98292 360 689-4228
 W 425 334-2822
 William & Patricia 360 652-6085
 Edeon B & J At 98232 360 659-7133
 Carol Co Is 98282 360 387-7945
 Chas 6005-95th Dr SE South 98290 360 568-7021
 Curt 4919 139th Pl NE Met 98271 360 659-4094
 Robt 818 Midway Hgts Lk S 98258 425 334-3392
 Edelbrock J Everett 98201 425 353-3392
 Joni 13045 Tonga Ridge Mtns 98272 360 863-0457
 Julie 22219 Duquesne Rd Snohomish 98290 360 568-6898
 Lois 8601 104th Dr SE Snohomish 98290 360 568-8321
 Wada
 1811 112th Ave SE Lake Stevens 98258 425 335-5869
 Edelen Nancy Maryville 98270 360 651-0850
 Eden Advanced Past Technologies
 Bethel 98012 425 485-2357
 Eden Advanced Past Technologies
 Everett 98208 425 357-8282
 Eden Enterprises Inc
 22727 Hwy 99 Ste 207 Edm 98026 425 774-7675
 Eden Farms Stables
 9225 72nd St SE South 98290 360 568-4000
 Eden Guy Snohomish 98290 360 805-9482
 Jennifer
 3408 South Camino Dr Co Is 98282 360 397-6494
 M A 4331 125th Pl SE Everett 98208 425 338-4794
 Eden Organic Salon LLC
 115 W Main Mrs 98272 360 863-1565
 Eden S L Mt Creek 98012 425 486-1930
 Edenfield L South 98290 425 338-9297
 Edenhorn M Maryville 98270 360 653-8555
 Edens Gerald D 7005 49th NE Met 98270 360 653-9455
 Jennifer 4515 State Maryville 98270 360 572-0767
 R Met 98271 360 657-3444
 Randall & Kim
 802 N Granite Ave G Fr 98252 360 691-4573
 Edeon Allen C
 443 Leaning Spr Ln Co Is 98282 360 387-8612
 Eder Bob 7 75th SW Everett 425 374-2680
 D Ent 425 259-4645
 Frank M 4414 Midpoint Dr 98203 425 252-0418
 Edgar Bill 15923 60th Snohomish 98296 425 338-9612
 Gordon E Dr
 4524 Overlook Rd Dr Mt 98275 425 349-3789
 James F Met 98270 360 659-2557
 John Met 98270 360 658-8482
 Robyn 101 Willow Ave Edm 98294 360 799-0537
 Edgbert D Lk S 98258 425 397-8049
 Edge B P Co Is 360 387-6818
 Bernie Ink 360 658-7930
 Edge Concrete LLC
 18740 144th Ave NE Wnd 98072 425 482-3343
 Edge Expressions
 12340 NE Woodlands Dr Wnd 98072 425 488-5708
 Edge Jennifer Steamwood 98292 360 939-2068
 Peta K 9431 59th Ave W Wnd 98275 425 355-9195
 Edge Salon & Spa Inc The
 13000 Beverly Park Rd Ste H Mt 98275 425 356-3343
 Edge Sheryl 403 5th Sdian 98294 360 799-0019
 Edgeward M Everett 98204 425 353-0809
 Edgekoshi Donald Met 98271 360 652-4930
 R At 98232 360 435-5079
 Robt A 10317 Jordan Rd At 98223 360 435-4489
 Edgel D K & B 360 799-1043
 Edgeman Karen
 12402 Admiralty Way Everett 98204 425 355-6528
 Edgerton B E Met 360 659-9011
 Bradford Met 360 659-5713
 C & N 360 659-9059
 George 5034 1336th Pl NE Met 98271 360 653-0365
 Edgewood Baptist Church
 20486 74th Ave W Edm 98026 425 776-5104
 Edgewood Dental Lab
 8221 44th Av W Wnd 98275 425 743-2210

EDGEWOOD DENTAL LAB
 8221 44th Av W Wnd 98275 425 348-8848
 Edgewood North Apts
 7221 190th SW Ljn 98036 425 776-0310
 Edgington Brad
 2125 Lake Heights Everett 98208 425 338-2776
 John 425 337-3791
 Edman Oren 419 S Broadway St Mrs 98272 360 805-5017
 Edmond Judy & Michael
 11405 4th Av NE Maryville 98271 360 657-5017
 Edmon Wanda At
 Edholm Hazel & E G
 8976 Mrs Co Is 98292 360 387-2278
 Eddie Arrangements
 15011 W 5th St Mt Crnk 98012 425 337-0137
 Edie M J Everett 425 337-0528
 Edie's Bookkeeping Bus
 Edina Susan
 19778 44th Ave W Ste A Ljn 98036 425 776-8058
 Edinger G 3915 Cedar Ave Everett 98201 425 259-5043
 S Everett 98201 425 259-4497
 Sherry Everett 98205 425 397-4915
 Edison John
 563 Wynne Hgts Dr Co Is 98282 360 387-7024
 Edison Upholstery 425 776-6763
 Ediebrook Chuck & Debbie South 98270 360 658-3519
 Eden D H & Louise 360 483-3304
 Edlin Brianne
 4728 97th Pl NE Maryville 98270 360 657-1444
 Ed & Connie Everett 98208 425 379-8862
 Ronald J & Coon
 14424 Market Dr SW Shad 98292 360 652-3604
 Edin-Hayes Shannon & Rick
 Shad 98292 360 659-9126
 Edmund Charles 9215 49th Midtown 98275 425 315-0353
 Christina 14609 25th Av NE Ad 98223 360 652-2062
 E Ad 98223 360 691-7087
 Lyle 8124-143rd Av NE Lk S 98258 360 691-6913
 Maurice Shad 98292 360 629-2876
 Steve 5402 261st NW Shad 98292 360 629-4019
 Edmark Chiropractic
 520 128th St SW Everett 98204 425 347-0631
 Edmark Chiropractic
 520 128th St SW Suite A7 Everett 98204 425 348-5646
 Edmark Kurt & Julie
 14222 29th Pl SE South 98292 425 334-4811
 Edminster Carl & Shirley Everett 98208 425 357-0687
 Howard D At 98223 360 691-6601
 Edmon Michael
 1425 Baker Everett 98201 425 322-4075
 Edmon Construction Home 98028 425 482-6188
 Edmonds Anyline Fast Locksmith
 Edm 98037 425 742-1820
 Edmonds Art Festival Edm 98201 425 640-2435
 Edmonds Arts Festival Hgts Lk 98036 425 771-6412
 Edmonds Arts Festival
 309 Dayton Edm 98020 425 774-6049
 Edmonds Arts Festival
 700 Main Edm 98020 425 778-3705
 Edmonds Associates
 21414-74th Av W Edm 98024 425 775-4829
 Edmonds Athletic Supply Co
 30815 47th Ave W Ljn 98036 425 778-7322
 Edmonds Auto License
 558 Edm Ave S Edm 98020 425 774-6657
 Edmonds Auto Parts
 636 Edmonds Way Edm 98020 425 776-9116
 Edmonds Automotive Service Inc
 218 2nd Ave N Edm 98020 425 778-1467
 Edmonds Bakery 418 Main Edm 98020 425 778-6811
 Edmonds Barber Shop
 224 Main Edm 98020 425 775-5490
 Edmonds Bay Dental
 51 W Dayton Edm 98020 425 775-5162
 Edmonds Bay Dental
 51 W Dayton Edm 98020 425 776-7069
 Edmonds Beacon 806 5th St Wnd 98275 425 347-1711
 Edmonds Bookshop
 111 5th Av S Edm 98020 425 775-2789
 Edmonds Boys & Girls Club
 310-4th Av N Edm 98020 425 774-0630
 Edmonds Car & Truck Center
 Ljn 98037 425 742-4895
 Edmonds Chiropractic Laser Clinic
 420 5th Ave S Edm 98020 425 776-8657
 Edmonds Christian Church
 2301-84th Av W Edm 98026 425 775-5212
 Edmonds Church Of God
 8224-220th SW Edm 98026 425 774-8836
 Edmonds Citywide Locksmith
 180 2nd Ave S Edm 98020 425 776-4416
 Edmonds Community College See Government Pages
 Preceding The White Pages Listings
 Edmonds Cyclones Junior Football
 7907 212th St SW Edm 98026 425 673-1924

Edmonds D Met.....
 Edmonds Dan
 1065 Beach Av Mrs 98270
 Edmonds Daniel
 6324 91st Pl NE Mrs
 David C At 98223
 Edmonds Dental C
 651 Edmonds Way Edm
 102 2nd Av S Edm 980
EDMONDS I & THROAT
 21614 76th Ave W Sd
 Edm 98026
 Edmonds Educac
 10745-44th Av W Ljn
 Edmonds Electric
 Edmonds Dry Clean
 915 74th Dr 98202
 Edmonds Eye MD
 7320 216th St SW Sd
EDMONDS I ASSOCIATI
 7115 212th SW Sd
 Edm 98026
 Edmonds Family C
 21906 74th Ave W F6
 Edmonds Family W
 7315 212th St SW Sd
 Bookkeeping Des
EDMONDS CLINIC PS
 Edm 98026
 Edmonds 1st LDS
 Edmonds Flower S
 401 Main Edm 98020
 Edmonds Foot anc
 21229 14th Ave W Ed
 Edmonds Frame D
 514-C 5th Ave S Edm
 Edmonds Furniture
 21211 Hwy 99 Edm P
 Edmonds Gary & J
 Edmonds Gateway
 8610 24th St SW Ed
 Edmonds Group H
 21110 40th W Edm
 Edmonds Harbor H
 1309 Main Edm 98
 Edmonds Highlanc
 23216 Edmonds Way
 Edmonds Hobby S
 320-45 S Edm 98020
 Edmonds Home &
 1233 Olympic View Dr
 Edmonds Hypoth
 Hgts Lk 98036
 Edmonds in Bloom
 709 Main Av 118 Edm
 Edmonds Insuranc
 120 W Dayton Edm P
 Edmonds Internal
 Stevens Professional C
 21616 76th Av W Sd
 Edmonds Internal
 21616 76th Av W Ed
 Edmonds Irrigatio
 Edmonds Irrigatio
 Edmonds Irrigatio
 7th Free-Pl "1" & Tom
 Edmonds J
 5504 216th St NW Sr
 J & D At
 Joel & Tammy
 5504 216th St NW S
 Edmonds Kwik'n
 9715 Edmonds Way Edm
 Edmonds Landng
 180 2nd Ave S Edm 98
 Edmonds Landscap
 23221 76th Ave W Ed
 Edmonds Lutheran
 23522 84th Ave W Ed

BUSINESS & RESIDENTIAL WHITE PAGES

Over 22 Years Experience

Brian's Heating and Air Conditioning

Heating • Heat Pumps • Air Conditioning • Water Heaters

Sales • Service • Installation 360-691-3754 cell 425-343

JKS000289

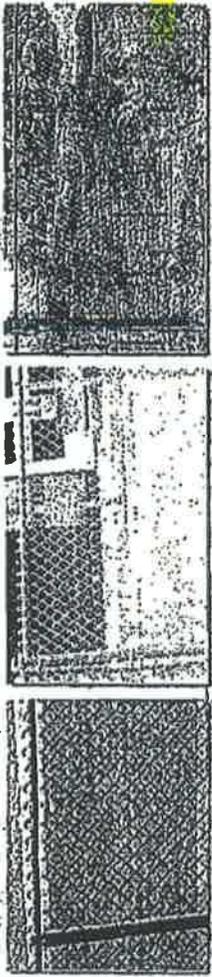
Verizon/ Verizon Yellow Pages
Snohomish County April 2007

386 FENCE

ATLAS FENCE

CHAIN LINK SPECIALISTS

SERVING Snohomish County With Over 35 Years Experience
RESIDENTIAL/COMMERCIAL
Galvanized & Vinyl Chain Link



COMPLETE INSTALLATION and REPAIR

- Dog Runs
- Custom Gates
- Repairs
- Field Fences
- Colored Fence
- Vinyl Slats
- Tennis Courts
- Split Rails
- Miscorials

(360) 659-1329 (425) 259-5200

FREE Estimates

Go To Our Website For Monthly SPECIALS & See Our Page On
DO-IT-YOURSELF MATERIALS

www.atlasfences.com



We Offer Custom Fence Design
For Samples of Our Work
Visit Us @
www.WestCoastFenceGo.com

Or For Free Estimate Call Us **206-714-2897**

Over 16 Years of Quality Service

- Specializing In:
- Cedar Fence
 - Chain Link
 - Trellis
 - Ornamental Iron
 - Dog Kennels
 - Horse Rail

Installation Usually Within

TOP QUALITY FENCING AT LOWEST PRICES

Fence Contractors (cont'd)
Eagle Fence Construction
15310 Smokey Point Blvd. N.W. 360 653-8749

ECONOMY FENCE CENTER



SERVING THE NORTHWEST SINCE 1982
For All Your Fencing Needs

- Vinyl • Cedar • Chainlink • Iron Fence
- www.economyfence.com
- Licensed • Insured • Bonded FENCE CONTRACTORS • Nupac
- Everett 425-347-1355
- Redmond 425 881-0884

ECONOMY FENCE CENTER OF MOUNT VERNON
3016 E Marlow View Dr. Everett 425 347-1355

Everything in Fencing Residential & Commercial
• Free Estimates
Everett 425 335-3327

EMERALD CITY FENCE COMPANY INC. 425 488-2696
(See Advertisement on This Page)

Everett Fence Co. Warrl. 425 482-2545



CEDAR FENCE & DECK CLEAR SEALING
877-406-6568
Snoh. 360 568-3991

GARANT FENCE
Quality Fence Construction
Serving the Greater Puget Sound
Who specialize in a large variety of fences to meet any need.
Free Estimates
Residential 425 349-3980
Commercial

(CONTINUED NEXT PAGE)

Buy the easy way -- use
Verizon Yellow Pages.

SUPERPAGE

GROW & SON'S FENCE CO.
Fence Contractors (cont'd)



• 1/2" Slant Behind
• Wood • Chainlink
• Barbwire • Rail
• Arbors • Farm
Family owned and
Since 19
Serving All of Snohm
Free Estim
Everett
5530 Cemetery Rd. Arl.
Grow & Son's Fence Co. Everett.
Guardian Fence Company.

HOME DEPOT HOME SERVICES
• Quality
• Products
• Professional
• Installation
• Financing Available
• Quality Service Guar
• Call For a Free Estim
• Se Habla Espanol
• License No. HOMED

• INSTALLATION CIVIL

HOME DEPOT THE
Tel Free-Dial 1 & Then...

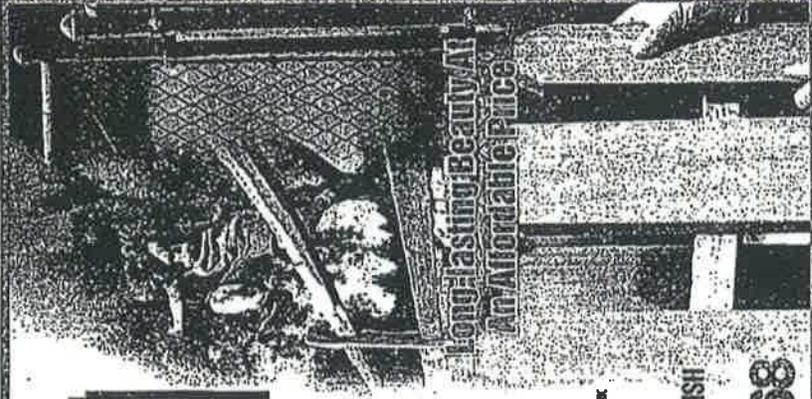
Find it online-Super

T

VERIZON Buyer's Guide 08/07/2003 Snoh County

Fence 425

businesses nationwide at SuperPages.com



ALL TYPES OF VINYL, WOOD & METAL FENCES

- Ornamental Iron
- Outdoor Wood Construction
- Colonial Archés
- Arbors
- Barbed Wire & Electric
- Picket
- Sports & Tennis Courts
- Dog Kennels
- Posts Set
- Lattice Fencing
- Estate
- Vinyl Coated Chain Link
- Post & Rail
- Security Fences
- Drilled & Doweled

RESIDENTIAL • COMMERCIAL
Free Estimates

Lifetime Warranty
MAINTENANCE-FREE VINYL
FENCING FOR
No Painting - No Rotting



Horse Rail Fence

MARYSVILLE • LAKE STEVENS • ARLINGTON • SNOHOMISH
FOR A FREE ESTIMATE CALL:
425 335-1117 360 652-0768

Long-Lasting Beautiful
An Affordable Price

FENCE CONSTRUCTION
Point Blvd Mvrl
425 252-1857
Remnant On Page 419

FENCE CENTER OF VERNON
425 335-1322

FENCE RENTALS LLC
425 482-2545

Fence Rentals
See Our Ad Under Gates
19413 SE 243rd Kent
360 568-3991

Fence Contractors
425 482-2545

Fence & Deck Clear Sealing
360 568-3991

ARDNER
360 653-0968

BC CONSTRUCTION
Fence and Deck Special
FREE ESTIMATE
No Project Too Big, No Problem Too Small
Handcrafted Fences & Decks
Multi-Level Fences • Long Lasting
Designer Fencing • Walkways
Large Monolithic Decks
Designer Railing and Stairs
425-327-0507 • 360-652-1160
www.fencesanddecks.com

CASCADE DECK & FENCE
8310 76th Ave NE Marysville
360 465-2570

GUARDIAN FENCE CO.

it yourself
CHAINLINK INSTALLATION

Everything You Need!
Colored Systems
Save Money
Easy Installation

5-743-0408
5-745-5484
owned and operated
all of Snohomish County

AUTOMATED GATES BY POST
INC
See Our Ad Under Gates
19413 SE 243rd Kent
360 568-3991

CASCADE FENCE
Berger Fence, Cm Is
CWS Construction
CWS Construction
Carlos Fence Co
8310 76th Ave NE Marysville
360 465-2570

PET STOP.
UNDERGROUND FENCING
(425) 513-2185
www.petstopnw.com

- 100% Money Back Guarantee
- Lifetime Factory Warranty
- Veterinarian Preferred
- Professional Training Included

Featuring the **Pat's** Receive the **Pat's** and **Pat's** Fully Customizable Available

INLINE FENCE CO
CHAIN LINK • CEDAR • REPAIRS
"NO JOB TOO SMALL"
24 Years Experience
Licensed • Insured • Bonded
Contractor's License # RLIN0077KL
Everett..... 425 438-8667

Dog FENCE!
of North America
Easily the Best!
A better value in electronic, non-VISIBLE fencing
Full money back, satisfaction Guarantee!
Guaranteed Phone Estimates
866-465-2570
Over 30 yrs. exp. Local Professional
Toll Free-Dial 1 & Then... 866 465-2570
(CONTINUED NEXT PAGE)

BC CONSTRUCTION
FENCE AND DECK SPECIAL
FREE ESTIMATE
No Project Too Big, No Problem Too Small
Handcrafted Fences & Decks
Multi-Level Fences • Long Lasting
Designer Fencing • Walkways
Large Monolithic Decks
Designer Railing and Stairs
425-327-0507 • 360-652-1160
www.fencesanddecks.com

DIY/ENR/ENR

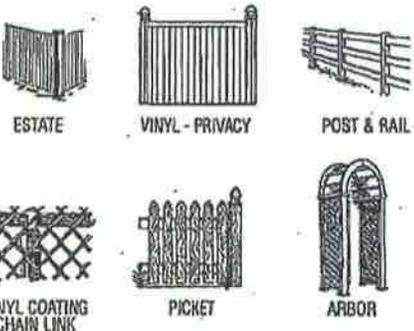
Available nationwide at SuperPages.com

Fence 341

ESTABLISHED IN 1989
Locally Owned

RESIDENTIAL

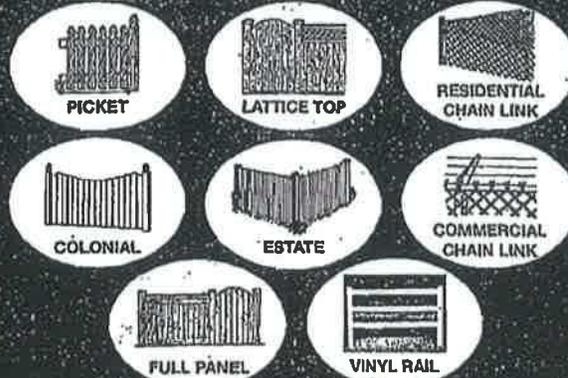
Expert Installation
Vinyl, Wood & Metal Fences
New Home & Real Estate
Agent Programs
Competitive Pricing
Free Estimates



-335-1117

"A" U.S. Fence Co.
ALL TYPES OF FENCING

Family Owned Business With Over 30 Years Experience.
King, Snohomish, Skagit



Custom Cedar Fences - All Styles

- Dog Runs • Fence Repairs
- Hog Wire & T Posts

FREE ESTIMATES

425 334-4209 360 568-5300

LIC. - BONDED - INSURED

ST. LIC. # USFENC*093N6

(Cont'd)

Deck Crafters
2030 164th St SW Lynn 425 771-3325

EAGLE FENCE CONSTRUCTION

15310 Smokey Point Blvd Msvl

..... 425 252-1557

(See Advertisement On Page 339)

Eagle Fence Construction

15310 Smokey Point Blvd Msvl

..... 360 653-8749

Economy Fence Center

11110 Mukilteo Spedway Mktg

..... 425 347-1355

ECONOMY FENCE CENTER OF MOUNT VERNON

Everett 425 335-3327

EMERALD CITY FENCE RENTALS LLC

FENCE RENTALS

www.ecfencorentals.com

Long & Short Term / Competitive Prices

Chain Link Fence • Picket Fence Avail.

Weekend & Holiday Events

PO Box 2604 Renton 425 271-0138

FENCE DOCTORS



CEDAR FENCE & DECK

CLEAR SEALING

877-406-6568

Snoh. 360 568-3991

First Rate Fence Lx S 360 653-0968

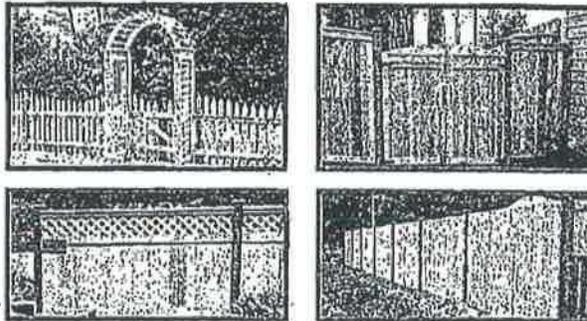
(CONTINUED NEXT PAGE)

Find great shopping ideas

at SuperPages.com.

R & R FENCE CO.

Quality at Competitive Prices
All Fences Guaranteed



CHAIN LINK FREE CUSTOM CEDAR

Commercial • Residential ESTIMATES All styles • 1 # Grade Cedar

Vinyl Coated Jumbo 4 1/8 X 4 1/8 Posts

Serving Snohomish & King Counties Since 1973

SNOHOMISH COUNTY

(425) 259-8102 (360) 652-8195

1512 BROADWAY • EVERETT

LICENSED • BONDED • INSURED #RANDRC 1950 M

Exhibit O



BUSINESS LICENSE

No. 1845

TOWN OF CONCRETE

Authorized by Ordinances, License must be renewed annually by January 31st to avoid penalty.

Date Issued: 11/04/09

Date Expires: 01/01/10

Name: JKS Enterprises DBA
Address: Economy Fence Center of Mt. Vernon
Town Limits
Type of Business: Fence

Town Clerk

Fence Installation & Sales
This license must be posted in a conspicuous place and is not transferable or assignable.



BUSINESS LICENSE

No. 0469

TOWN OF CONCRETE

Authorized by Ordinances, License must be renewed annually by January 31st to avoid penalty.

Date Issued: 1/2/2013

Date Expires: 12/31/2013

Name: JKS Enterprises, Inc
Address: Town Limits
Type of Business: Fence Install/Sales

Town Clerk

This license must be posted in a conspicuous place and is not transferable or assignable.

EX 34

JKS000173

Exhibit P

Economy

FENCE CENTER

MOUNT VERNON

EC-ON-OF-C166BP

335-3327 387-1425

MAY ADVERTISING • BOX 15789 • FT. WORTH, TX 76181 2000

Consent

Ex 26

Exhibit Q

ELLIS, LI & MCKINSTRY PLLC

ATTORNEYS AT LAW

January 23, 2012

Market Place Tower
2025 First Avenue, Penthouse A
Seattle, WA 98121-3125
Phone: 206-682-0565
Fax: 206-625-1052
www.elmlaw.com

VIA FEDEX
TRACKING NUMBER 797972153594

Mr. Jerry Sturlaugson
JKS Enterprises, Inc.
17793 State Route 536
Mount Vernon, WA, 98273-4788

Chi-Doo Li
Michael R. McKinstry
Jan P. Olson

Re: Trademark Infringement – Economy Fence Center

Daniel J. Ichinaga
Steven T. O'Ban*
Keith A. Kemper
Andrew J. Toles
Kyle D. Netterfield
Nathaniel L. Taylor
Kristen K. Waggoner*

Dear Mr. Sturlaugson:

This firm represents Fence Systems NW, Inc. ("Fence Systems") the owner of the trademark Economy Fence Center (the "Trademark"). The Trademark was first used in the 1970s and is registered with the U.S. Patent and Trademark Office under registration number 3582510 with a first use in interstate commerce of 1981 (see enclosed).

Lana M. Floyd
A. Chad Allred
Lisa N. Ellis
Thomas J. Rodda
Geoffrey A. Enns
Katherine L. Anderson

My client recently discovered several instances where you have infringed on the Trademark. There is an advertisement in the Frontier Snohomish County Yellow pages (copy enclosed) listing your business with an Everett address under the name "Economy Fence." And you appear to have recently registered the URL economyfencecenter.com and advertised on the associated website as doing business in Snohomish County (copy of web page enclosed).

Of Counsel
Gregory D. Esau

My client and its predecessors have spent over three decades establishing the brand name "Economy Fence Center" and your advertisements, domain name registration, and web page presence are creating confusion in the marketplace and costing my client thousands of dollars in lost business.

Emeritus
Ronald E. McKinstry

Fence Systems recognizes that its predecessor, from whom it bought the Trademark, may have given tacit approval for you to use the name Economy Fence Center when always attached to the description "of Mt. Vernon" and when limited to business in Skagit County. Had you continued the use of Economy Fence Center with such restrictions, my client would likely have continued to ignore this infringement.

William H. Ellis
(1932-1994)

The present expanded infringement, however, requires me to order you to cease and desist using the Trademark outside of Skagit County or separate from "of Mt. Vernon." Within 10 days of receipt of this letter you must:

*Licensed to also
practice in Oregon

1. Immediately cease and desist using the Trademark in any advertising or communication unless limited to Skagit County AND the restriction "of Mt. Vernon" is always attached to the communication;
2. Arrange for transfer of the URL economyfencecenter.com to Fence Systems by contacting Chad Morgan at chad@economyfence.com.

ELLIS, LI & MCKINSTRY PLLC

ATTORNEYS AT LAW

January 23, 2012

Page 2

If you fail to comply with the above, my client will have no choice but to bring a claim for infringement and/or an action for return of the domain name under the Uniform Domain Name Dispute Resolution Policy and seek damages and attorneys' fees. As a fellow small, family-owned business, Fence Systems would prefer to avoid this route by simply having you cease and desist and transfer registration of the domain name. However, that preference will not get in the way of my client taking whatever means necessary to protect its business and enforce its intellectual property rights should you fail to comply. If you or your attorney have any questions, feel free to contact me at (206) 682-0565 or ntaylor@elmlaw.com.

Very truly yours,

ELLIS, LI & MCKINSTRY PLLC



Nathaniel L. Taylor

cc: Fence Systems NW, Inc.

1/20/12

Trademark Electronic Search System (TESS)

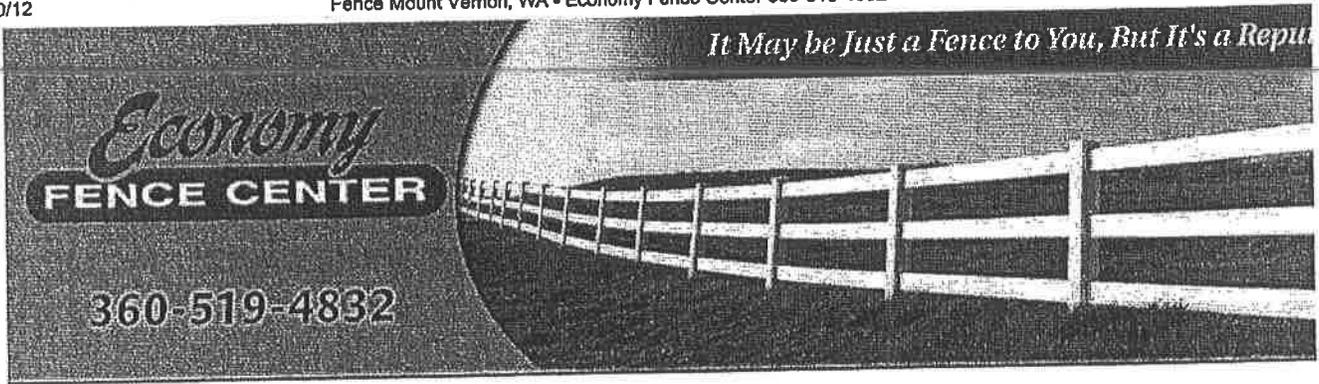
Type of Mark **THE MARK AS SHOWN**
SERVICE MARK

Register **PRINCIPAL-2(F)**

Live/Dead Indicator **LIVE**

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DOC	SEARCH OQ	TOP	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

[| HOME](#) | [| SITE INDEX](#) | [| SEARCH](#) | [| BUSINESS](#) | [| HELP](#) | [| PRIVACY POLICY](#)

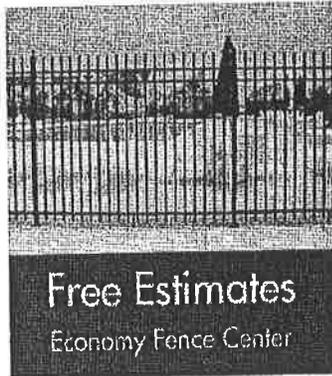


Mount Vernon, WA Fence

Whatcom County 360-671-7225
 Skagit County 360-428-2900
 North Snohomish County 425-335-3327
 Whidbey Island 360-240-9780

Economy Fence Center

Economy Fence Center provides all kinds of fences for homes and businesses. We are a division of JKS Enterprises, Inc. serving Snohomish, Skagit, Whatcom, and Island counties since 1982. We sell and install chain link, wood, split rail, and more.



Learn More About Economy Fence Center:

- Sales and Installation
- Chain link fence
- Wood fence
- Split rail fence
- Vinyl fence
- Ornamental
- Iron fence
- Posts and fittings
- Dog runs
- Gates
- Fence repairs
- Residential and commercial

We operate under Lic # EC-ON-OF C166BP.

Contact Economy Fence Center today at 360-519-4832 for your fence needs. Also contact us at 360-671-7225.

Contact Information

360-519-4832

Methods of Payment:
 Cash and Checks



superguarantee ads feature an orange/black border

3RESH
 1IES •
 1ick
 1Season
 659-3875
 1403-0350
 1435-6516
 1794-5076
 1435-0945
 568-5665
 629-6455
 403-0450
 rket
 568-7391
 334-4124
 307-1191
 436-1951
 136-0727
 186-9562
 PLY
 19-2632
 52-7219
 03-6939
 44-1254
 39-3460
 15-9202
 1-9356
 15-0200
 :TS
 1-5448
 3-3601
 3-2806
 1-7992
 1-1162

SNOHOMISH COUNTY OF
 Auditor
 Licenses
 Vehicle & Vessel Title & Registration
 Subagencies Vehicle & Vessel Title
 & Registration
 Mountlake Terrace
 22911 56th Av W M Tar
 425 670-3874
 Snohomish Mini-Storage
 602 Maple Ave Snoh..... 360 568-0333


superguarantee
 businesses feature
 orange/black
 diagonal lines
 around their ads.

Pacific Coast Feather Co
 14524 40th Av NE Msvl... 360 653-3696
Bothell Feed Center
 20809 Bthl-Evrt Hwy Bthl. 425 481-8882
CLEARVIEW FEED STORE
 16510 SR 9 SE Snoh..... 360 668-6363
 Co-Op Supply
 Arlington
 121 S Olympic Ave Arl... 360 435-3213
 Lake Stevens
 8329 SR 92..... 360 691-1813

See Alan Gates
A US FENCE CO
 Snoh..... 425 334-4209
 (See Advertisement On Page 272)
 A US Fence Co Snoh..... 360 568-5300
ALLIED CONSTRUCTION INC
 Redmond..... 425 869-7663
 Atlas Fence
 2604 Rockefeller Ave Everett
 425 259-5200

CORWAY FEED INC
 EASTERN WASHINGTON ALFALFA
 DAIRY • HORSE FEEDS • FARM SUPPLIES
 • PET FOOD • SPECIALTY FEED
 WHOLESALE / RETAIL
COMPUTER FEED FORMULATION
 Conway..... 360 445-5211

ATLAS FENCE COMPANY
 610 Cedar Ave Msvl... 360 659-1329
 Berger Fence Cn Is..... 360 387-2663
CASCADE FENCE COMPANY
 INC
 1209 Ferguson Park Rd Snoh
 360 568-3571
 (See Advertisement On Page 270)

COUNTRY FEED-STROTZ
 21713 27th Ave NE Arl. 360 652-6064
FRONT PORCH FEED & MERCANTILE
 Livestock & Farm Supplies • Hay Straw
 Alfalfa • Alegria • Purina • LMF • Mazuri
 Garden Supplies • Hardware • Gifts
 Quality Pet Food & Supplies
 360-793-2372
 207 State Route 2 Sth... 360 793-2372

CITY WIDE FENCE CO
 Lynnwood..... 425 745-8645
 (See Advertisement On Page 270)
 City Wide Fence Co Bthl... 425 481-2074
 City Wide Fence Co
 16923 48th Av W Lyn... 425 355-4302
 Construction Rsg
 21 154th Dr SE Snoh..... 425 322-3219
 Contour Fence Co
 8329 219th SE Wdavl... 425 481-7128
 Eagle Fence Construction
 15310 Smokey Point Blvd Msvl
 360 653-8749
 Eagle Fence Construction
 15310 Smokey Point Blvd Msvl
 425 252-1557

MONROE FARM & FEED CORP
 18422 Cascade View Dr Mnro
 360 794-4663
SNOHOMISH CO-OP & TRUE
VALUE
 168 Lincoln Av Snoh... 360 568-2104

ECONOMY FENCE
 Residential & Commercial
 Chain Link • Cedar
 Vinyl • Ornamental
 Locally Owned & Operated
 Since 1982
 4518 83rd Av SE
 Everett..... 425 335-3327

Buy the Easy Way--
 Use the Yellow Pages

The Yellow Pages
 is the place
 to see...and be seen.


superguarantee
 Get the job done right, or we'll step in and
 make it right.
 Look for specially marked businesses in this book
 For information, visit [superguarantee.com](http://www.superguarantee.com)
Complete details of participation in the guaranteed program
 can be found online at www.superguarantee.com

ECON
 EYE
 ENO
 720
 FENCE

Exhibit R

Page	Year	Book	Name Used
1	1993	GTE	Economy Fence Center of Mt Vernon
2	1993	GTE white pages	Economy Fence Center of Mount Vernon
2	1993	GTE white pages	Economy Fence Center of Mt Vernon
3	1994	GTE white pages	Economy Fence Center of Mount Vernon
4	1994	GTE	JKS Enterprises Inc. DBA Economy Fence Center of Mt Vernon
5	1996	GTE	Economy Fence Center of Mount Vernon
5	1996	GTE	Economy Fence Center of Mt Vernon
6	1996	Snohomish County - GTE	Economy Fence Center of Mount Vernon
7	1997	Snohomish County - GTE	Economy Fence Center of Mount Vernon
7	1997	Snohomish County - GTE	Economy Fence Center of Mt Vernon
8	1999	GTE white pages	Economy Fence Center of Mount Vernon
8	1999	GTE white pages	Economy Fence Center of Mt Vernon
9	1999	Snohomish County - GTE	Economy Fence Center of Mount Vernon
10	2001	Snohomish County - Verizon	Economy Fence Center of Mount Vernon
11	2001	Verizon white pages	Economy Fence Center of Mount Vernon
11	2001	Verizon white pages	Economy Fence Center of Mt Vernon
12	2002	Snohomish County - Verizon	Economy Fence Center of Mount Vernon
13	2004	Snohomish County - Verizon	Economy Fence Center of Mount Vernon
14	2004	Verizon white pages	Economy Fence Center of Mount Vernon
14	2004	Verizon white pages	Economy Fence Center of Mt Vernon
15	2006	Snohomish County - Verizon	Economy Fence Center of Mount Vernon
16	2006	Verizon white pages	Economy Fence Center of Mount Vernon
16	2006	Verizon white pages	Economy Fence Center of Mt Vernon
17	2007	Snohomish County - Verizon	Economy Fence Center of Mount Vernon
18	2007	Verizon white pages	Economy Fence Center of Mount Vernon
18	2007	Verizon white pages	Economy Fence Center of Mt Vernon
19	2008	Snohomish County - Verizon	Economy Fence Center of Mount Vernon
20	2008	Verizon white pages	Economy Fence Center of Mount Vernon
20	2008	Verizon white pages	Economy Fence Center of Mt Vernon
21	2009	Snohomish County - Verizon	Economy Fence Center of Mount Vernon
21	2009	Snohomish County - Verizon	Economy Fence of Mt Vernon
22	2009	Snohomish County - Verizon	Economy Fence Center of Mount Vernon
23	2009	Greater Snohomish County - Dex	Economy Fence Center of Mount Vernon - A Division of JKS Enterprises Inc.
24	2009	Dex white pages	Economy Fence Center of Mount Vernon
24	2009	Dex white pages	Economy Fence Center of Mt Vernon
25	2010	Snohomish County - Verizon	Economy Fence Center of Mount Vernon
26	2010	Greater Snohomish County - Dex	Economy Fence Center of Mount Vernon - A Division of JKS Enterprises Inc.
27	2010	Verizon white pages	Economy Fence Center of Mount Vernon
27	2010	Verizon white pages	Economy Fence Center of Mt Vernon
28	2011	Snohomish County - Frontier	Economy Fence
29	2011	Snohomish County - Frontier little book	Economy Fence
29	2011	Snohomish County - Frontier little book	Economy Fence Center of Mount Vernon
30	2012	Frontier white pages	Economy Fence Center of Mount Vernon
30	2012	Frontier white pages	Economy Fence Center of Mt Vernon
30	2012	Frontier white pages	Economy Fence
31	2012	Dex white pages	Economy Fence Center of Mt Vernon - A Division of JKS Enterprises, Inc.
32	2012	Frontier white pages	Economy Fence Center of Mount Vernon
32	2012	Frontier white pages	Economy Fence Center of Mt Vernon
32	2012	Frontier white pages	Economy Fence
33	2012	Snohomish County - Frontier	Economy Fence
34	2012	Greater Snohomish County - Dex	Economy Fence Center A Division of JKS Enterprises, Inc.
35	2013	Snohomish County - Frontier	Economy Fence
36	2013	Snohomish County - Frontier	Economy Fence of Mt Vernon
36	2013	Snohomish County - Frontier	Economy Fence Center of Mount Vernon
37	2014	Snohomish County - Frontier	Economy Fence
38	2014	Snohomish County - Frontier	Economy Fence of Mt Vernon
38	2014	Snohomish County - Frontier	Economy Fence Center of Mount Vernon

Ex 12

1 Center.” I was employed at the Economy Fence Center location at 11918 Airport Road,
2 Everett, Washington and became the Store Manager at that location.

3 3. In late 1983, Chain Link Specialties filed for bankruptcy in the United States
4 Bankruptcy Court for the Western District of Washington. In order to keep the retail centers
5 operating and keep themselves employed managing those outlets, the managers of each
6 location – myself at Economy Fence Center, Everett; Jerry Sturlaugson at Economy Fence
7 Center, Mt. Vernon; and Mike Mulligan and Gary Welborn at Economy Fence Center in
8 Wenatchee – approached the owners of Chain Link Specialties to buy their respective stores.
9 I recall that the idea originated with Jerry Sturlaugson. Each of the three locations’ managers
10 negotiated individually with Chain Link Specialties, but it was a coordinated plan by all of us
11 to keep all three stores operating.

12 4. Following approval of the sale by the bankruptcy court, each of us purchased
13 the Economy Fence Center property at our location. On January 13, 1984, I signed and
14 delivered to Dennis McIlrath, President of Chain Link Specialties, an Offer of Purchase. A
15 true and correct copy of the Offer to Purchase is attached to this declaration as Exhibit 1. Mr.
16 McIlrath accepted and approved the offer, as evidenced by his signature, but I do not recall
17 either the date that he signed or whether, at the time, I actually knew what date he signed the
18 offer. The offer was contingent on approval of the sale by the bankruptcy court within 30
19 days of the January 13, 1984 date that I signed the offer.

20 5. I signed the Offer of Purchase on my own behalf as an individual. A few days
21 later, on January 16, 1984, I formed a corporation, Economy Fence Center, Inc., as the means
22 under which I would operate the business that I purchased. Before the corporation was
23 formed, I asked my attorney whether there would be a problem incorporating under the name
24 “Economy Fence Center,” because there were the two other businesses that would conduct

1 business under that name, and because I had also become aware that there were other
2 businesses in the U.S. that were named "Economy Fence" with or without some other word
3 (like "Center") attached. My attorney advised me that as long as the specific name was
4 distinguishable from any other existing Washington corporation (this was before Washington
5 allowed limited liability companies), the Washington Secretary of State would permit me to
6 form the corporation under that name.

7 6. It is my understanding that after he purchased the Economy Fence Center
8 property in Mount Vernon, Jerry Sturlaugson did not immediately incorporate, but operated
9 the business as a sole proprietorship for some time, and then incorporated under the name
10 JKS Enterprises, Inc. some years later. I do not recall if and when the owners of the Economy
11 Fence Center property in Wenatchee incorporated their business.

12 7. Paragraph 2.a of the Offer of Purchase that I signed stated: "Strong is to
13 acquire the right to do business at 11918 Airport Road, Everett, WA, as Economy Fence
14 Center." It was my understanding at the time that both Jerry Sturlaugson and Mike
15 Mulligan/Gary Welborn had acquired a similar right to do business as "Economy Fence
16 Center" as part of purchasing the business properties in Mount Vernon and Wenatchee,
17 respectively. From my perspective, this was attractive to me, because Chain Link Specialties
18 had established a good brand name in "Economy Fence Center," and it wasn't associated
19 with the name of the company in bankruptcy. It was also attractive to me that the name
20 Economy Fence Center had the identity of a larger business with multiple locations, so it
21 would be good for all three of us (Everett, Mount Vernon, and Wenatchee) to use the same
22 name going forward.

23 8. Although the three managers had purchased outlets in different locations,
24 there was no understanding among us that we were limited to serving customers or doing

1 fencing projects in any geographic territory. My understanding was that we would pursue
2 whatever business we could in whatever territory we could service.

3 9. There also was no expectation, speaking for myself and to the best of my
4 knowledge concerning the other owners, that any of us owned the name “Economy Fence
5 Center” exclusively, only that we had purchased from the prior owner (and with permission
6 from Bankruptcy Judge Steiner) the right to use the name in conjunction with buying the
7 business. In the conversations I had with the other location owners, it was a conscious
8 discussion that “Economy Fence Center” was not a trademark, but a name we could use for
9 continuing with our own efforts at our different locations within the state, without exclusivity
10 at to the name, customers, or job locations.

11 10. At no time did I ever have the understanding that Jerry Sturlaugson or his
12 corporation, JKS Enterprises, Inc. had to use the words “of Mount Vernon” when it did
13 business as “Economy Fence Center.” I was aware that Mr. Sturlaugson and JKS Enterprises,
14 Inc. used “of Mount Vernon” in some contexts, when they wanted to say where the business
15 location was. This was not anything that concerned me.

16 11. I was aware that fairly soon after acquiring his business, Mr. Sturlaugson
17 adopted a distinctive font and dark blue color for the word “Economy” in signage and other
18 displays of the business name. I also adopted a logo for my business to display “Economy
19 Fence Center” in stylized lettering within a design that included a circle with a bar across it
20 in which the word “Economy” was highlighted, usually displayed in red. I do not remember
21 and I do not have records that would help me recall exactly when we first used that design. I
22 only recollect that we did a fencing job for a customer who was a graphic designer, and we
23 gave her a discount for creating the design for us.

1 12. On July 8 of this year, I received an email from Derek Smith asking if I
2 recalled when the new Economy Fence Center logo started being used. Mr. Smith wrote that
3 he had narrowed it down to sometime between 1985 and 1993, based on the business cards
4 he had from his time as my employee. I responded to Mr. Smith's email the same day, stating
5 that I could not put a date on it, only that we did a job near Green Lake in Seattle for a
6 graphic artist and gave her a discount on her fence in return for her designing our new logo.

7 13. On December 5, 2003, I sold the assets of Economy Fence Center, Inc. to
8 Fence Systems NW, Inc., and since then I have not worked in the fencing field. Counsel for
9 JKS Enterprises, Inc. has shown me a copy of a Bill of Sale for that transaction, which I
10 signed on December 4, 2003. A true and correct copy of that document is attached to this
11 declaration as Exhibit 2. The Bill of Sale states that the assets being transferred by the
12 "grantor" (Economy Fence Center, Inc.) included "all of the grantor's right, title and interest
13 in and to the following assets owned and used by grantor in connection with their business
14 commonly known as Economy Fence Center ('business')." Paragraph 3 of the list of assets
15 reads: "3. The trade name Economy Fence Center or any variance thereof, together with any
16 and all trade names, trademarks, trade secrets, and other intangibles of any kind used by
17 grantor in the operation of the business." When I signed this Bill of Sale, I did not have the
18 understanding or intention that I was granting the purchaser an exclusive right to the name
19 "Economy Fence Center." I never made any representations or even casual statements to
20 Derek Smith or any other representative of Fence Systems NW, Inc. that Economy Fence
21 Center, Inc. had an exclusive right to the name. The situation was very different. We were
22 granting the purchaser the same right that I had acquired originally from Chain Link
23 Specialties, the right to do business under a trade name that others were using as well.

1 14. Derek Smith worked as an employee of Economy Fence Center, Inc. off and
2 on from about 1985 to 1993, under my management and supervision. During that time, our
3 company had numerous dealings with Jerry Sturlaugson and JKS Enterprises, Inc., often
4 cooperative dealing with equipment, supplies, customers, and the like. We often also used the
5 same materials suppliers. During that time, I knew that Mr. Sturlaugson's business used the
6 trade name "Economy Fence Center." As a result of these numerous dealings between the
7 companies, I'm positive that Derek Smith and virtually every employee of my business also
8 knew this.

9 15. Counsel for JKS Enterprises, Inc. has shown me a copy of a letter dated
10 January 23, 2012 to Jerry Sturlaugson, JKS Enterprises, Inc. from Nathaniel Taylor, lawyer
11 for Fence Systems NW, Inc. A true and correct copy of that letter is attached as Exhibit 3 to
12 this declaration. I have reviewed the letter and can decisively state that a number of facts
13 alleged in the letter are partly or completely incorrect. They include, but are not necessarily
14 limited to these:

15 a. *The statement that "Economy Fence Center" is a trademark that was*
16 *first used in the 1970's.* As a non-lawyer, I am speaking in business terminology, but in the
17 years that I owned and operated Economy Fence Center, Inc., I never considered "Economy
18 Fence Center" to be our trademark. It was a name that we acquired the right to use as a
19 business name, in common with the two other businesses that purchased the Economy Fence
20 Center properties at other locations from Chain Link Specialties. I also do not believe that
21 Chain Link Specialties ever used it in the 1970's. I believe Chain Link Specialties first
22 opened an Economy Fence Center location in 1982 or 1983 (my best estimate is 1983).

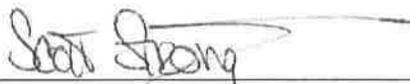
23 b. *The statement that Fence Systems NW, Inc. had recently discovered*
24 *several instances in which JKS Enterprises, Inc. had infringed the trademark "Economy*

1 Fence Center" by listing its business with an Everett address under the name "Economy
2 Fence Center." Both Derek Smith and I were aware for many years before I sold him the
3 business in 2003 that JKS Enterprises, Inc. had frequently listed its business under the name
4 "Economy Fence Center," although I do not recall whether JKS Enterprises had done so
5 before in a listing with an Everett address.

6 c. The statement that Fence Systems NW's predecessor (my company,
7 Economy Fence Center, Inc.) had given "tacit approval" for JKS Enterprises to use the
8 name "Economy Fence Center" when always attached to the description "of Mount
9 Vernon." My company did not have to give approval, and we did not have any authority to
10 give approval, to JKS Enterprises to use the name "Economy Fence Center." Mr. Sturlaugson
11 had acquired the right to use "Economy Fence Center" in the same way that I did, in the
12 course of purchasing his Economy Fence Center property from Chain Link Specialties. My
13 company also had never exacted a condition from Mr. Sturlaugson or JKS Enterprises that
14 they always attach the description "of Mount Vernon," and we knew that in practice they
15 regularly advertised and did business as "Economy Fence Center" without the geographic
16 description.

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

19 Executed August ¹⁵~~8~~, 2014 at Seattle, Washington.

20
21 
22 Scott Strong
23
24

1

2

3

4

EXHIBIT 1

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

OFFER OF PURCHASE

Scott O. Strong, hereinafter referred to as Strong, herein makes the following offer of purchase to Chainlink Specialties Fence Co., Inc., hereinafter referred to as Chainlink.

Strong is desirous of purchasing the Economy Fence Center business located at 11918 Airport Road, Everett, Washington, Snohomish County, under the following terms and conditions:

1. The purchase price is the sum of \$ 5,000.00 free and clear of all liens and encumbrances, ~~plus~~ plus the "cost" price of the inventory on date of closing this transaction.
2. The offer is under the following terms and conditions:
 - a. Strong is to acquire the right to do business at 11918 Airport Road, Everett, WA as Economy Fence Center;
 - b. The offer includes the telephone number 347-1355 and also with the option of acquisition of telephone number 881-0884 and/or telephone number 774-9893. Strong will receive and assume the existing contract with G.T.E., relative to Yellow Pages advertising. Strong recognizes that assumption of this contract requires payment of telephone obligations.
 - c. Chainlink will assign to Strong all leasehold rights in aforesaid premises, including the last month's rent. Strong recognizes that assumption of aforesaid leasehold rights is subject to approval of the landlord, and closing of this transaction shall be subject to such approval.
 - d. This sale shall include those items of equipment, furniture, inventory and leasehold improvements at the aforesaid premises, and any goodwill incidental to the above location.
 - e. No accounts receivable are included in this said sale, nor are any accounts payable, excepting that described in item "b" above.
3. This offer shall expire if it is not approved by the Bankruptcy Court within thirty (30) days.

This document is submitted in good faith this 13th. day of January, 1984.

Scott O. Strong
Scott O. Strong
1926 W. Casino Road #K-105
Everett, Washington 98204

Approved and accepted:

Chainlink Specialties Fence Co., Inc.

Dennis McIlrath
Dennis McIlrath, President
P. O. Box 329
Lynnwood, Washington 98036

1

2

3

4

EXHIBIT 2

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

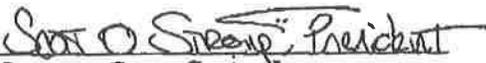
BILL OF SALE
(Economy Fence Center)

The undersigned Economy Fence Center, Inc., a Washington Corporation, ("grantor"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby transfers to Fence Systems NW, Inc. a Washington Corporation ("grantee") all of grantor's right title and interest in and to the following assets owned and used by grantor in connection with their business commonly known as Economy Fence Center ("business"):

1. All of the equipment [used in the operation of the business][~~on the attached equipment list~~], together with all fixtures, goodwill, inventory, trademarks, tradenames, and all other intangible assets, including without limitation sellers rights to the telephone numbers (206) 447-1536, (425) 881-0884, (425) 347-1355, and (425) 347-1357
2. All work in progress and supplies used or to be used in connection with the business.
3. The trade name Economy Fence Center or any variance thereof, together with any and all trade names, trademarks, tradenames, and other intangibles of any kind used by grantor in the operation of the business
4. All documents, Records, and files connected with the business, operations, or assets of grantor, including, without limitation, customer lists, supplier lists.
5. All manufacturers', Vendors' and suppliers' warranties to the extent assignable, in respect to each item of property included in the above described assets transferred by grantor to grantee.

Grantor warrants to grantee that they have good and marketable title to all of the above described assets. Grantor will indemnify grantee and hold them harmless from, and defend them against any claims, demands, damages, or judgments which challenge or affect title to the above assets.

IN WITNESS WHEREOF, grantor has executed this bill of sale this 4th day of December, 2003.


Economy Fence Center, Inc.
By: Scott O. Strong, President

STATE OF WASHINGTON)
)ss
COUNTY OF KING)

On this 4th day of December, 2003, before me, the undersigned, a Notary public for the State of Washington, duly commissioned and sworn, personally appeared Scott O. Strong to me known to be the president of Economy Fence Center, Inc., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

David W. Bever
Notary Public for the State of
Washington residing at Seattle
My commission expires 5/01/06



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

EXHIBIT 3

ELLIS, LI & MCKINSTRY PLLC
ATTORNEYS AT LAW

January 23, 2012

Market Place Tower
2025 First Avenue, Penthouse A
Seattle, WA 98121-3125
Phone: 206-682-0565
Fax: 206-625-1052
www.elmlaw.com

VIA FEDEX
TRACKING NUMBER 797972153594

Mr. Jerry Sturlaugson
JKS Enterprises, Inc.
17793 State Route 536
Mount Vernon, WA, 98273-4788

Chi-Dook Li
Michael R. McKinstry
Jan P. Olson
Daniel J. Ichinaga
Steven T. O'Ban*
Keith A. Kemper
Andrew J. Tols
Kyle D. Neuenfeldt
Nathaniel L. Taylor
Kristen K. Waggoner*
Lara M. Floyd
A. Chad Alfred
Lisa N. Ellis
Thomas J. Rodda
Geoffrey A. Enns
Katherine L. Anderson

Of Counsel
Gregory D. Esou

Emeritus
Ronald E. McKinstry

William H. Ellis
(1932-1994)

*Licensed to also
practice in Oregon

Re: Trademark Infringement – Economy Fence Center

Dear Mr. Sturlaugson:

This firm represents Fence Systems NW, Inc. ("Fence Systems") the owner of the trademark Economy Fence Center (the "Trademark"). The Trademark was first used in the 1970s and is registered with the U.S. Patent and Trademark Office under registration number 3582510 with a first use in interstate commerce of 1981 (see enclosed).

My client recently discovered several instances where you have infringed on the Trademark. There is an advertisement in the Frontier Snohomish County Yellow pages (copy enclosed) listing your business with an Everett address under the name "Economy Fence." And you appear to have recently registered the URL economyfencecenter.com and advertised on the associated website as doing business in Snohomish County (copy of web page enclosed).

My client and its predecessors have spent over three decades establishing the brand name "Economy Fence Center" and your advertisements, domain name registration, and web page presence are creating confusion in the marketplace and costing my client thousands of dollars in lost business.

Fence Systems recognizes that its predecessor, from whom it bought the Trademark, may have given tacit approval for you to use the name Economy Fence Center when always attached to the description "of Mt. Vernon" and when limited to business in Skagit County. Had you continued the use of Economy Fence Center with such restrictions, my client would likely have continued to ignore this infringement.

The present expanded infringement, however, requires me to order you to cease and desist using the Trademark outside of Skagit County or separate from "of Mt. Vernon." Within 10 days of receipt of this letter you must:

1. Immediately cease and desist using the Trademark in any advertising or communication unless limited to Skagit County AND the restriction "of Mt. Vernon" is always attached to the communication;
2. Arrange for transfer of the URL economyfencecenter.com to Fence Systems by contacting Chad Morgan at chad@economyfence.com.

ELLIS, LI & MCKINSTRY PLLC
ATTORNEYS AT LAW

January 23, 2012
Page 2

If you fail to comply with the above, my client will have no choice but to bring a claim for infringement and/or an action for return of the domain name under the Uniform Domain Name Dispute Resolution Policy and seek damages and attorneys' fees. As a fellow small, family-owned business, Fence Systems would prefer to avoid this route by simply having you cease and desist and transfer registration of the domain name. However, that preference will not get in the way of my client taking whatever means necessary to protect its business and enforce its intellectual property rights should you fail to comply. If you or your attorney have any questions, feel free to contact me at (206) 682-0565 or ntaylor@elmlaw.com.

Very truly yours,

ELLIS, LI & MCKINSTRY PLLC



Nathaniel L. Taylor

cc: Fence Systems NW, Inc.