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

Proceeding	91121980
Party	Defendant ROBERT NOBLE & BONGO, S.A., DE C.V. ROBERT NOBLE & BONGO, S.A., DE C.V. ,
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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ESTEFAN ENTERPRISES, INC.

Petitioner/Opposer,	Opposition No.:	91121980
vs.	Cancellation No.:	92042251
	Registration No.:	2,347,247
	Application No.:	75/767,732

BONGO, S.A. de C.V. and ROBERTO NOBLE,

Registrants/Applicants.

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**SUPPLEMENT TO PETITIONER/OPPOSER'S MOTION FOR SANCTIONS AS TO  
DEPOSITION CONDUCT**

Registrant/Applicant ROBERTO NOBLE, as successor-in-interest to BONGO, S.A. de C.V., by and through undersigned counsel hereby file the herein Supplement to Registrant/Applicant's Motion for Sanctions pursuant to TBMP §411.04, filed on or about September 1, 2006 (*Docket #89*), for Petitioner/Opposer's failure to provide discovery, and further state:

**INTRODUCTION**

In his motion, at Paragraph 21, Registrant/Applicant reserved the right to supplement his Motion for Sanctions with further argument, and deposition transcripts of Raul Matias and Petitioner/Opposer's Rule 30(b)(6) corporate representative and President, Frank Amadeo identifying specific questions and issues upon which the witness failed or refused to answer, or was instructed not to answer. As of the time of filing of the Motion for Sanctions, all of the subject deposition transcripts had not yet been received.

Counsel for Petitioner/Opposer provided her consent to the filing of the herein Supplement. This consent is further evidenced in its Motion for Enlargement of Time to Respond to the Motion for Sanctions (*Docket #95* "Stipulation for an Extension of Time) by stating that

Registrant/Applicant consented to the enlargement "...subject to his ability to supplement the Motion for Sanctions on or before September 27, 2006." *Id.* at ¶ 6.

### **APPLICABLE LAW**

#### **General:**

A discovery deposition is a broad discovery device used by a party to obtain from an adversary information about the adversary's case, or to obtain from a nonparty information that may be helpful to the deposing party's case. TBMP §404.09. In a discovery deposition, a party may seek information that would be inadmissible at trial, provided that the information sought appears reasonably calculated to lead to the discovery of admissible evidence. *Id.* *See also* Fed. R. Civ. P. 26(b)(1). For the purpose of discovery, relevancy will be construed broadly to encompass "any matter that bears on, or that reasonably could lead to other matter[s] that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351(1978)).

If the deponent refuses to respond to questions that the deposing party believes are proper, the deposing party should make it very clear to the deponent and its attorney that it will be moving for an order to compel and for sanctions for the deponent's unwarranted refusal to respond. *Trademark Trial & App. Board Prac. & Proc.* § 3:80. (*See*, Transcript of Deposition of Raul Matias, Pg. 44, Lines 16-17, Quoting: "And, again, we'll take that up on a motion to compel.")(*Exhibit "1" hereto*).

Counsel defending a deposition cannot by her conduct and objections prevent the elicitation of meaningful testimony from the witness. *Augusto Odone v. Croda International PLC*, 170 Fed. R. Serv. 3d 157 (D.C. Dist. 1997). The attorney also may not object to questions in such a way as to "coach" the witness or suggest an answer. *Id.* Standards for deposition conduct in the TTAB follow these same principles. *See, Johnston Pump/General Valve, Inc. V. Chromalloy American Corp.*, 13 U.S.P.Q.2d 1719 (TTAB 1989), Opposition No. 76,991, 1989

WL 274413 (Acknowledging that instruction to a witness to not answer questions is improper conduct).

Law on Instructions Not To Answer Based On Scope of Notice Of Deposition

The notice of a deposition of an entity must describe, with reasonable particularity, the matters on which the examination is requested. *Id.* at §30.25[2]. See also, *Alexander v. FBI*, 186 F.R.D. 137, 140 (D.D.C. 1998) (notice, which contained a general description of subject matter of deposition accompanied by a letter specifically delineating seven areas of testimony on which witness would be expected to testify, met notice requirements of Rule 30(b)(6). The entity must designate persons knowledgeable in the areas of inquiry listed in the notice. *Moore's* at §30.25[2]. The entity must prepare the witness to testify not only on matters known to the deponent, but those matters that should be known by the entity as the designating party. *Moore's* at §30.25[3]. The “reasonable particularity” language of Rule 30(b)(6) does not limit the scope of the examination of a designated representative, but rather informs the entity of the information designated deponent must be able to supply. *Id.* at §30.25[4]. The majority view under the Federal Rules of Civil Procedure is that a designated deponent may be questioned as broadly as any other deponent. *Id.* See also, *King v. Pratt & Whitney*, 161 F.R.D. 475, 476 (S.D. Fla. 1999). The minority view is that the notice of subject areas on a 30(b)(6) notice operates as a restriction of scope of what the deponent is required to testify about. *Id.* Even under the minority view, the subject areas are to be read very broadly to allow full and fair inquiry, so that it is not used as a technicality for the designated deponent to avoid reasonable testimony. *Id.* As long as there is no unfair surprise, even under the minority view, the designated deponent must respond to all reasonable inquiries on knowledge which they possess. *Id.* However, instructions to the witness not to answer in these situations are simply not proper unless the questions

clearly would entitle the objecting party to a protective order. See, *Johnston Pump/General Valve, Inc. V. Chromalloy American Corp.*, 13 U.S.P.Q.2d 1719 (TTAB 1989), Opposition No. 76,991, 1989 WL 274413 (Acknowledging that instruction to a witness to not answer questions is improper conduct); Also see, *Collins V. Intern'l Dairy Queen, Inc.* 1998 WL 293314 (M.D.Ga. 1998).

### **SPECIFIC QUESTIONS WHICH THE WITNESSES REFUSED TO ANSWER**

Instead of permitting Petitioner's/Opposer's president and designated corporate representative and its General Manager Raul Matias to answer the undersigned's questions, subject to a stated objection, counsel for Petitioner/Opposer unilaterally decided that various broad subject matter areas "have no bearing on this matter," and instructed said witnesses not to answer, or in many cases, prevented them from answering, or finishing their answers by interrupting and filibustering. The work-product privilege was asserted by Petitioner's/Opposer's counsel only as to a scarce number of questions – perhaps one. The attorney-client privilege was not asserted at all. In numerous instances, counsel for Petitioner/Opposer instructed the witnesses not to answer questions that were highly relevant to these proceedings and either asserted no grounds for her objections, asserted improper grounds to justify instructions not to answer, and otherwise would not entitle Petitioner/Opposer to a protective order.

### **Excerpts from the Deposition of Raul Matias, May 11, 2006 (Exhibit "I" hereto):**

Matias, 42:3-11:

Q. And with these promotions—really my ultimate question, and then I'm going to go into some more detailed questions, is – what is the demographic that Bongo's and jointly with Walt Disney World are seeking when they engage in all these forms of advertising. Describe for me the—

MS. STETSON: You know what? I'm just not letting him answer anymore of these questions. I'm not you know.

Matias, 42:25-43:1-9:

Q. In the spirit of getting through this quickly, I'm not going to argue back with you, but I'm going to ask you to make a decision right now as to whether or not you're going to ask him to not answer the question I just –

MS. STETSON: I am. He's not our corporate representative for that purpose. We have the designated corporate representative for that purpose, and when that deposition is rescheduled that person will be prepared to answer these questions.

Matias, 65:10-20:

Q. What are the differences between the two restaurants that you can point out, the major differences.

A. The one at the American Airlines Arena or South Beach?

Q. Good question. Tell me about both. How do they differ from your restaurant?

A. They don't.

MS. STETSON: Again, this is not appropriate for him. I'm not going to let him answer it. You can go over it.

Matias, 67:14-25:

Q. Were you told that you might be involved in some future training of staff for any new Bongo's Cuban Cafes that are opening up?

A. No.

Q. Do you know what your company is working on in terms of new locations or new restaurants?

MS. STETSON: You know, that's enough on that. It's already asked and answered. Don't answer.

Q. Do you know?

MS. STETSON: He's not answering that.

THE WITNESS: I don't have that information. I don't know.

Matias, 69:5-18:

Q. What is the average age of the patrons that you see coming into your restaurants?

A. Paying patrons or –

MS. STETSON: I'm instructing him not to answer, you know.

MR. SANTUCCI: Will you allow him to answer any questions about the demographics of the people coming into the restaurant –

MS. STETSON: No.

MR. SANTUCCI: -- or the demographics of people that are the target for the promotions and advertising?

MS. STETSON: No, because that will be covered by the president of the company.

As illustrated above, the counsel for the Petitioner/Opposer refused to allow the witness Raul Matias to answer any specific question about any fact other than those fitting into her own narrow and limited view of the single issue on which it claims it was offering him to testify (namely, instances of actual confusion). Nonetheless, this particular witness, Raul Matias is, and has been for years, the General Manager of one of the only two restaurants Petitioner/Opposer owns or operates which bear its alleged **BONGO'S CUBAN CAFÉ** mark.

The above questions were fair game. Registrant/Applicant has every right to inquire as to facts within the General Manager's knowledge as to issues involving: 1) the marks used by Petitioner/Opposer; 2) promotional and advertising activities; 3) the demographic of Petitioner's/Opposer's target market; 4) whether there are plans for any new restaurants bearing its alleged mark. Petitioner's/Opposer's counsel's argument to the effect that these issues will be: "...covered by the president of the company..." do not warrant instructions not to answer directed

to perhaps the single witness with the most personal knowledge of these highly relevant issues. Registrant/Applicant is entitled to candid, spontaneous and truthful answers to questions of any witness Petitioner/Opposer offers for deposition or trial. It should not be permitted to restrict proper questioning of witnesses as to relevant issues, and simply coach and prepare one single witness who it would believe would perform the best. The fact that Petitioner/Opposer informally stated an intention to only offer testimony from witness Raul Matias to demonstrate actual confusion is of no consequence. In a discover deposition, the deposing party is entitled to ask any questions which are reasonably calculated to lead to the discovery of admissible evidence. This is true regardless of the extent to which the witness was prepared, or not prepared, by opposing counsel.

Counsel's desire and obvious attempts to "coach" and "prepare" her witness for every specific subject area inquired about prior to permitting testimony is clear. Any claim of unfair surprise with regard to these highly relevant issues, which are commonplace in any trademark-related action, would be preposterous. Petitioner/Opposer would not be entitled to a protective order as to such questions, and its counsel therefore had no right to obstruct the deposition by instructing this witness not to answer questions.

**Excerpts from the Deposition of Petitioner/Opposer Estefan Enterprises, Inc.'s Designated Corporate Representative and President Frank Amadeo (*Exhibit "2" hereto*):**

By reference alone to the Word Index of the transcript of the deposition of Frank Amadeo, it becomes apparent that something went terribly wrong with this deposition. There are almost as many references to Petitioner's/Opposer's counsel, who was merely defending the deposition, as there was to the undersigned who was actually asking the questions. See, Amadeo, Word Index pp. 22-25 (attached hereto as part of *Exhibit "2"*). The transcript contains hundreds of references to Petitioner's/Opposer's counsel speaking during the deposition in less than a day of deposition. Id. Rarely were the references to valid objections to form or privilege. Most were



long-winded soliloquies, speaking objections, verbal cues, instructions not to answer, argument, filibusters and other obstructions.

For example, the deposition began with instructions not to answer the most basic and fundamental questions intended to inquire as to whether the witness had knowledge of all of the subject matter areas in the notice. Counsel's strategy for limiting and obstructing the deposition can be seen below:

Amadeo, 20:9-22:25 and 24:2-25:13:

1 Q. Have you seen a copy of the notice of  
2 deposition for today?

3 A. I believe I did, yes.

4 Q. I'm going to show you what is titled "Third  
5 Re-Notice of Taking Deposition."

6 A. Yes.

7 Q. Have you seen that?

8 A. Yes, I did see this.

9 Q. Can you just take a moment, and it may take a  
10 few minutes, to look at the subject matter areas that  
11 are listed as Paragraphs 1 through 36? Can you go  
12 through that and circle perhaps any paragraph numbers  
13 which represent subject matters where you feel you  
14 don't have knowledge of or cannot testify as to?

15 MS. STETSON: Hold on a second because  
16 I'm reasserting the objections that we've made  
17 repeatedly to this notice of depo and particularly  
18 with respect to the items listed in Paragraphs 14, 16,  
19 18, 20, 22, 24, 26, 28, 30, 32, 34 and 36.

20 Mr. Amadeo will not be testifying as to those  
21 subject matters. Those objections have been made a  
22 long time ago, and, you know, if you want to take up  
23 those objections to the trademark board you're free to  
24 do that.

25 MR. SANTUCCI: And why is he not

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1 testifying as to these matters?

2 MS. STETSON: Because it has to do with  
3 marks and activities that are beyond the scope of  
4 these proceedings and more particularly sets forth my  
5 objections. So with that caveat in mind, do you want  
6 me to mark on here? I mean, is this your copy?

7 MR. SANTUCCI: Well, if you want to  
8 start with that and just write "O" next to them --

9 MS. STETSON: Yeah.

10 MR. SANTUCCI: -- as objection.

11 MS. STETSON: Yeah.

12 MR. SANTUCCI: But I want him to also  
13 go through it including those and let me know what  
14 areas he has knowledge or doesn't have knowledge of.

15 THE WITNESS: Areas that I do not have  
16 knowledge of?

17 BY MR. SANTUCCI:

18 Q. Where you feel you don't have knowledge of

19 certain -- I want you to circle the numbers of the  
20 paragraphs where you feel those are subject matters  
21 that you don't have knowledge or can't testify as to  
22 despite objections.

23 MS. STETSON: Hold on. Now, do you  
24 mean personal knowledge or that he's not prepared  
25 today to testify to? Because he's here as our

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1 designated corporate rep., so you're really kind of  
2 confusing me. He's here to testify --

3 MR. SANTUCCI: I can short-circuit  
4 this. I want to know if I have the right witness for  
5 all of these subject matters --

6 MS. STETSON: No, no.

7 MR. SANTUCCI: -- including the ones  
8 you're objecting to because if we do call somebody  
9 back to answer those questions after a motion to  
10 compel --

11 MS. STETSON: Right.

12 MR. SANTUCCI: -- then I want to know  
13 whether it's going to be him or someone else.

14 MS. STETSON: Right. We're not going  
15 to answer any questions about the ones that I've  
16 talked about. And if there is a motion to compel,  
17 then we'll designate the most appropriate person at  
18 that time. So let's not even get into that or waste

19 anybody's time on that.

20 As far as the remaining subject matters,

21 Mr. Amadeo is prepared as a corporate rep. designee to

22 testify on all of the other matters except that

23 Ms. Abad is going to be our designated corporate rep.

24 on the areas of the merchandise of Coco Bongos that

25 was purchased in Cancun. I don't remember.

...

2 MS. STETSON: Well, I'm just going to

3 read out my objections, and he's here for most of the

4 subject matters. If we come to a subject matter that

5 he's not the proper person, I'll tell you.

6 MR. SANTUCCI: Well, I'd rather he tell

7 me. The only way he would not be the proper person is

8 if he has no knowledge.

9 MS. STETSON: Right. Well, no. We

10 have the right to designate whoever we want on a

11 particular subject. So if you get to a subject matter

12 that we are designating someone other than Mr. Amadeo,

13 I'll tell you.

14 MR. SANTUCCI: Okay. Well, the list on

15 the notice was for that purpose so I know how many

16 people I'm deposing.

17 MS. STETSON: It's two.

18 MR. SANTUCCI: I don't mind us going

19 into more than one day. It's not that big a deal.

20 MS. STETSON: We're definitely not

21 going to go more than one day.

22 MR. SANTUCCI: That's one of the

23 reasons why I do this. We will go more than one day

24 if we need to. If I can summarize the objections,

25 you're instructing him not to answer as to any --

25

1 MS. STETSON: Correct.

2 MR. SANTUCCI: -- questions regarding

3 the new Bongos Cuban Cafe in Mexico City?

4 MS. STETSON: Anything that has to do

5 with any mark that's not at issue in this case.

6 MR. SANTUCCI: And you don't think that

7 your client's use of the same mark in Mexico has any

8 bearing on this case?

9 MS. STETSON: We're not using the same

10 mark in Mexico, and I've already -- I don't want to

11 waste time on this. I've made my objections and you

12 can take them up to the board. There's no point in us

13 debating it now.

Instructions not to Answer Based on Scope of the Notice of Deposition.

Counsel's direct verbal instructions to the witness not to answer questions based upon her arguments as to the scope of the Notice of Deposition can be found at: Amadeo, 44:23-53:15, 63:23-66:20, 166, 167, 181-184, 191:20-192:20. Basically, counsel for Petitioner/Opposer believes that a deposition of a party is strictly limited to the specific categories of issues or

subject matter contained in the Notice of Deposition, and throughout the deposition appears to take the position that specific questions are required to be listed on the Notice, to which the deposition would be limited. Registrant's/Applicant's counsel however was operating under the majority view in this country in asking the deposition questions, namely that the designated deponent may be questioned as broadly as any other deponent and is required to answer all reasonable inquiries on knowledge which he at the time possessed.<sup>1</sup>

The problem with Petitioner's/Opposer's view of Rule 30(b)(6), Fed.R.Civ.P.'s notice requirement, even if it were consistent with the prevailing law, is that counsel instructed her witness not to answer questions which she believed were outside of the scope of the notice *even as to matters which the witness was shown to, and testified that he did in fact, have knowledge*. This was similar to counsel's tactics to obstruct questioning in the deposition of Raul Matias described above (which was not even a set as a Rule 30(b)(6) deposition). In other instances, counsel did not even permit her witness to testify as to whether he had knowledge of certain subjects. See, Amadeo, 20:9-22:25 and 24:2-25:13. She instead chose to prevent questioning on those matters because she did not "prepare" her witness to her satisfaction, in the hopes of buying more time to "prepare" answers for him.

Instructions Not to Answer Questions Regarding Petitioner's/Opposer's Use of the BONGO'S CUBAN CAFÉ mark in Registrant's/Applicant's Home Country of Mexico.

Counsel for Petitioner/Opposer exerted extraordinary effort to prevent both Messrs Matias and Amadeo from testifying about the Mexico City restaurant, which at least at one time exhibited a large sign at the front entrance indicating that its name was "**BONGO'S CUBAN CAFÉ**," and which was in some way affiliated with Petitioner/Opposer. (See, photograph attached as *Exhibit "3"* hereto). This restaurant using Petitioner's/Opposer's mark and logo was opened in Registrant/Applicant's own back yard. Counsel took such extraordinary effort to

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<sup>1</sup> See, *Moore's*, supra at §30.25. See also, *King v. Pratt & Whitney*, 161 F.R.D. 475, 476 (S.D. Fla. 1999).

obstruct questioning on this issue, and even attempted to testify herself on the record to deny such facts, presumably because of the estoppel effect such an act would have on its likelihood of confusion claims herein as asserted by Registrant/Petitioner.<sup>2</sup> See, Amadeo, 24:22-25:13, 30:1-13 and 139:1-143:14. Counsel even instructed her client not to testify simply as to whether he had knowledge of any actual or proposed restaurant in Mexico City relative to the **BONGO'S CUBAN CAFÉ** mark.

See, Amadeo, 31:3-8

3 Q. Do you know who has knowledge of those areas?

4 MS. STETSON: Don't answer.

5 BY MR. SANTUCCI:

6 Q. And by "those areas" I mean your client's new

7 or proposed restaurant in Mexico City.

8 MS. STETSON: Don't answer.

Instructions not to Answer Questions Regarding Third Party Use and Litigation Concerning the BONGO'S CUBAN CAFÉ Mark.

Petitioner's/Opposer's counsel again instructed her client not to answer various questions regarding third party use of its mark, and related marks, and pending or prior litigation concerning same. These issues were clearly raised as affirmative defenses by Registrant/Applicant in these proceedings, and were extensively argued during the summary judgment phase, and Petitioner/Opposer was therefore not a victim of unfair surprise. See, Amadeo, 42:17-44:21; 190:24-193:12. For example:

See, Amadeo, 190:16-192:6:

16 Q. And we're going to revisit the issue of some

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<sup>2</sup> i.e. – If Petitioner/Opposer truly believes that a likelihood of confusion exists as to the respective marks at issue herein, they why would it, more than a decade after Registrant commenced use of the **COCO BONGO** mark in Mexico, open or license a restaurant to use the **BONGO'S CUBAN CAFÉ** mark in Mexico in the same city as Registrant's/Applicant's first **COCO BONGO** establishment?

17 questions, but your attorney mentioned that she would  
18 bring you back for deposition. I don't like it that  
19 way. I'd like the answers now. But just as a  
20 predicate to that I'd like to ask you, do you have  
21 knowledge of --

22 MS. STETSON: No, we're not doing that.

23 MR. SANTUCCI: Let me ask my question.

24 BY MR. SANTUCCI:

25 Q. Do you have knowledge of any third party's

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1 use of the Coco Bongo mark? And by "third party" I  
2 mean anyone other than my client anywhere in the  
3 world.

4 MS. STETSON: I'm instructing him not  
5 to answer because it won't stop there. I already told  
6 you on that subject we'll set it forth in a notice and  
7 we'll figure out who we're going to designate.

8 MR. SANTUCCI: If he has knowledge  
9 there's no basis for your objection.

10 MS. STETSON: Michael, I've already  
11 said what I'm going to say on it. He's not answering  
12 those questions.

13 BY MR. SANTUCCI:

14 Q. And do you have --

15 MS. STETSON: He's not answering any



16 questions on that.

17 MR. SANTUCCI: I want each one on the

18 record.

19 BY MR. SANTUCCI:

20 Q. Do you have knowledge of any pending

21 litigation involving any of your companies?

22 MS. STETSON: I'm instructing him not

23 to answer.

24 MR. SANTUCCI: And just to be clear --

25 MS. STETSON: Michael --

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1 MR. SANTUCCI: Just to be clear, I'm

2 trying to create a record and get out of here; okay?

3 Just to be clear, you're not letting him answer the

4 question as to whether he has knowledge of that issue?

5 MS. STETSON: You have as much of a

6 record as you need.

Instructions Not to Answer Questions Regarding the Terms of Settlement With Prior Litigants Regarding Use of the **BONGO'S CUBAN CAFÉ** mark.

Despite the fact that the witness Frank Amadeo, as president of Petitioner/Opposer provided in his sworn answer to Interrogatory Number 19 that, in lieu of answering, his company would produce a settlement agreement with Carusso & Co., Inc. regarding use of the **BONGO'S CUBAN CAFÉ** mark (following the U.S. District Court claim of infringement against Petitioner/Opposer), the alleged agreement has still not been produced. (*Caruso & Co., Inc. v. Estefan Enterprises, Inc.*, 994 F.Supp. 1454 (S.D. Fla. 1998). Nonetheless, counsel for Petitioner/Opposer instructed this same witness, Frank Amadeo, not to answer questions

regarding the terms or production of this agreement. Counsel's asserted reasons for the instruction not to answer were that: 1) she had not seen the agreement; and 2) that it may be confidential. See, Amadeo, 176:14, 177:16. Petitioner's/Opposer's lack of diligence in this regard, after nearly six (6) years of litigation is no excuse to further obstruct this deposition – especially given that fact that this very witness promised to produce the agreement long ago in lieu of answering interrogatories covering it, thereby waiving any objection based on confidentiality. The majority of the defenses asserted by Petitioner/Opposer Estefan Enterprises, Inc. in the *Caruso* case are identical to those asserted by Registrant/Applicant ROBERTO NOBLE herein. The U.S. District Court's opinion might ultimately be found to have a collateral estoppel effect in this case, or at least be highly persuasive due to the similarity in issues and facts – namely the weakness of the terms BONGO'S and BONGO, and the dissimilarity of the subject marks. Petitioner's/Opposer's agreement with this Plaintiff as to use of those respective litigants' marks is highly relevant to these proceedings, and Petitioner/Opposer would not have grounds for a protective order relative to these issues. This instruction not to answer was clearly improper.

#### Instructions Not To Answer Regarding the Production of Documents

On a related issue, counsel felt such a need to protect her client from direct questions, that she even instructed him not to answer questions regarding his own company's production of documents in this case. These strict instructions were given despite the fact that documents promised to be produced by this very witness were found to still have not been produced.

See, Amadeo, 166:18-167:14:

18 BY MR. SANTUCCI:

19 Q. Well, is your production of documents for  
20 that category complete in this case?

21 MS. STETSON: He wouldn't have any  
22 ability -- I'm going to instruct him not to answer.

23 Again, it's beyond the scope of the notice.

24 MR. SANTUCCI: How do I know if there  
25 are any other documents that you guys are withholding

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1 that I asked for? Because we've already identified  
2 some.

3 MS. STETSON: I don't know. Maybe you  
4 could have put on your notice the completion of the  
5 document production if you wanted to go over all the  
6 document production with him. We certainly didn't  
7 prepare to do that today.

8 MR. SANTUCCI: I think it's within the  
9 scope of my notice.

10 MS. STETSON: Well, I don't think it is  
11 and I'm instructing him not to answer. Again, it's  
12 something that we would need to prepare for. He's not  
13 going to know off the top of his head. There's no  
14 pending question, Frank. Let's go on.

Given the fact that this deposition was taken just a few days prior to the close of the discovery period, these questions regarding the status of Petitioner's/Opposer's production of documents were wholly appropriate, and certainly not the subject of a possible protective order. Who better to ask such questions than the corporate representative designated under Rule 30(b)(6), *Fed.R.Civ.P.* by Petitioner/Opposer itself?

Various Examples of Counsel Coaching the Witness and Substantively Answering Questions Before the Witness Had an Opportunity to Answer

There are many examples of counsel's attempts to coach the witness, imply an answer and offer her own answer. See, Amadeo, pp. 63-66, 75, 76, 101, 123-126, 130, 131, 156 and 157. When those techniques would fail, she reverted simply to boldly instructing the witness not to answer. For example:

5 BY MR. SANTUCCI:

6 Q. The question is, are there any others during  
7 those time periods that you advertised in?

8 MS. STETSON: No, that's not the  
9 question. The question --

10 MR. SANTUCCI: I'll reask it, then.  
11 I'll ask this.

12 BY MR. SANTUCCI:

13 Q. Are there any other Ocean Drive magazines  
14 during that time period that you know of that you ran  
15 Bongos Cuban Cafe ads in?

16 A. We --

17 MS. STETSON: Could you possibly know  
18 that?

19 MR. SANTUCCI: Please stop talking,  
20 Ms. Stetson.

21 MS. STETSON: Michael --

22 MR. SANTUCCI: This is the 20th time  
23 you've coached this witness.

24 MS. STETSON: You can yell all you  
25 want. I'm going to do whatever I think is necessary  
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1 to protect my client; all right?

2 MR. SANTUCCI: Making speaking  
3 objections and coaching is not permitted as you know.

4 MS. STETSON: I'm asking him if there's  
5 any possible way he could know the answer to that  
6 question without researching it.

7 MR. SANTUCCI: [You] didn't need to ask  
8 that question.

9 BY MR. SANTUCCI:

10 Q. Can you answer the question?

11 A. You're asking me if --

12 Q. If there were any other Ocean Drive magazines  
13 during that time period --

14 A. So you're asking for the period of 2003 to  
15 the period of 200 -- well, no, these aren't --

16 Q. I'll give the date.

17 MS. STETSON: I'm instructing him not  
18 to answer, so that's it on that. Thank you. You had  
19 another question that you never got the answer to, but  
20 I guess you don't want that one, and that's fine.

21 MR. SANTUCCI: What will you let him  
22 answer?

23 MS. STETSON: Something about

24 targeting, was there a conscious effort to, you know,  
25 only run ads where there was a female Latin on the

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1 cover or something like that. I don't think he  
2 answered that question. I think that would be all  
3 right to ask --

4 MR. SANTUCCI: Why don't you just keep  
5 testifying.

6 MS. STETSON: -- because that would be  
7 marketing.

8 MR. SANTUCCI: No. You just keep  
9 testifying for him.

10 MS. STETSON: Because that would be  
11 marketing.

12 MR. SANTUCCI: Again, we'll resolve  
13 this on our motion to compel, but you still don't  
14 agree that you're not allowed to instruct your client  
15 not to answer?

16 MS. STETSON: I'm not going to argue  
17 with you.

In many instances, counsel was either trying to coach or indicate through her obstructive speeches that the witness should answer either that he did not know the answer, or that he did not recall. In many instances, the witness changed his answer to actually comply with counsel's instructions and coaching, and ultimately answered to the effect that he did not know. For example: Amadeo, 156:6-157:2:

Q. This is a document you produced in this case or your company produced, and I'll just pull it out.

MS. STETSON: It's a public decision. Isn't it like a reported decision?

MR. SANTUCCI: You guys produced it.

BY MR. SANTUCCI:

Q. I'm going to show you what's Bates marked as EEI, Estefan Enterprises, Inc., 0474. Was that the decision in your case?

MS. STETSON: He's not a lawyer.

MR. SANTUCCI: Ms. Abad is, so I'll have these questions for her, too, then.

MS. STETSON: She's not our witness on that. Do you know if that's the decision?

THE WITNESS: If you're telling me it is, I guess it is.

MS. STETSON: No, that's not the question.

THE WITNESS: I don't know.

MS. STETSON: Don't just agree with

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anything he says, just if you know it.

THE WITNESS: I don't know it.

Note that the witness made very little attempt at all to even inspect the multi-page order his company produced before answering that he did not know. Such a quick, non-substantive answer, was the direct result of counsel's coaching, cues and obstruction.

Also see, Amadeo, 183:12-184:11:

11 BY MR. SANTUCCI:

12 Q. Now, I'm not trying to categorize it as

13 merchandise promotional or any sort. I'm just asking

14 whether or not your company claims any exclusive

15 rights whatsoever to use its mark in connection with  
16 the sale of any sort of clothing?

17 MS. STETSON: Objection. Calls for a  
18 legal conclusion.

19 BY MR. SANTUCCI:

20 Q. You can answer if you can. It's just a  
21 matter of what your company wants and doesn't want or  
22 objects to or doesn't object to.

23 THE WITNESS: Well, she's objecting to  
24 me answering.

25 MS. STETSON: No. I'm not instructing  
184

1 you not to answer, but I'm saying that it's an  
2 inappropriate question because it calls for a legal  
3 conclusion.

4 BY MR. SANTUCCI:

5 Q. You can answer it --

6 MS. STETSON: That's an objection for  
7 the record.

8 BY MR. SANTUCCI:

9 Q. -- if you have the knowledge.

10 MS. ABAD: If you have the knowledge.

11 THE WITNESS: I don't know for sure.

It is of particular note that not only did litigation counsel provide cues to answer to the effect that he had no knowledge, but so did the other corporate representative designated by



Petitioner/Opposer, Jessie Abad, who also happens to be an attorney, and who stayed in the examination room despite the undersigned's invocation of the Rule of Sequestration.

As stated above, at times, counsel would simply provide her own answers to substantive questions on the record, with which the witness would often concur, or would be signaled to answer to the effect that he did not know, or was not sure. For example:

Amadeo, 28:11-22.

11 Q. Did you testify at trial in that case?

12 A. No.

13 Q. And what was the outcome?

14 MS. STETSON: It was settled.

15 THE WITNESS: Yeah. It was settled?

16 MS. STETSON: Yeah.

17 MR. SANTUCCI: I'd rather he say "I

18 don't know" rather than --

19 MS. STETSON: Let's get beyond this

20 stuff.

21 THE WITNESS: I wasn't sure. I wasn't

22 recalling if we settled or if they just dropped it.

Also see, Amadeo, 37:4-38:10(another example of counsel providing a substantive verbal answer to a question before the witness has an opportunity to provide his own answer).

#### Counsel Signaling the Witness with a Nod of the Head to Answer "No"

Although she later denied it, counsel even went so far as to signal the witness to answer "no" with an obvious nod of her head while facing the witness. The witness complied, and answered in accordance with his counsel's signal with a simple "no."

See, Amadeo, 38:22-39:21:

22 Q. Do you know who the attorney for Lloyd's of

23 London was?

24 A. No.

25 MR. SANTUCCI: Karen, please stop  
39

1 signaling him.

2 MS. STETSON: I'm not signaling. I'm  
3 shaking my head that you're spending this much time on  
4 some --

5 MR. SANTUCCI: You said "No." You  
6 shook your head "No."

7 MS. STETSON: I'm shaking my head. I  
8 cannot believe that you're spending this much time on  
9 this preliminary stuff.

10 MR. SANTUCCI: That's my option.

11 MS. STETSON: I just can't believe it.  
12 It has nothing to do with this.

13 MR. SANTUCCI: Well, if anything can be  
14 seen as a signal to the witness, I would ask you to  
15 refrain from doing that.

16 MS. STETSON: Well, it wasn't a signal.  
17 It was disgust actually.

18 MR. SANTUCCI: It was just a  
19 coincidence that you shook your head "No" and he  
20 answered "No"?

21 MS. STETSON: Come on, just go.

## REMEDY / CONCLUSION

As stated in the Motion for Sanctions (*Docket #89*), such a remedy of ordering a continuation of these two depositions would be inadequate since the deponents have already had the opportunity of a preview of the questions, and its counsel's stated intention all along was to be sure the witness was "prepared" to answer every question. Now, Petitioner/Opposer and its witnesses have had several months to "prepare" themselves for the questions. Registrant/Applicant believes that such a remedy would actually reward Petitioner/Opposer for its conduct by providing it an unfair additional opportunity to preview deposition questions and again prepare answers, after nearly six (6) years of litigation of this matter.

Registrant/Applicant believes that the harm is already done, and that the veracity and integrity of these witnesses has thereby been irreparably compromised. The only proper and fair remedy would be to strike their deposition testimony, and exclude any testimony offered by said witnesses during the trial periods. In the alternative, the deponents' refusals to answer should be construed in the light most favorable to Registrant/Applicant and that this Board presume that the true answers to the obstructed questions be adverse to Petitioner/Opposer. Both of the above remedies are contemplated and permitted by *Trademark Trial & App. Board Prac. & Proc.* § 3:80(Not unreasonable to preclude party refusing to answer from introducing any evidence on the matter raised by the unanswered questions or for the answer to be construed in a light unfavorable to the non-responding party). Also see, *Health-Tex Inc. v. Okabashi (U.S.) Corp.*, 18 USPQ2d 1409 (TTAB 1990)(In TTAB matters, a refusal to answer may be construed against the non-answering party).

WHEREFORE, ROBERTO NOBLE respectfully requests this Board to sanction the Petitioner/Opposer for its failure to provide discovery, by striking pleadings, excluding any deposition or testimony by any corporate representative for Petitioner/Opposer, and witness Raul

Matias, and/or construe the facts relative to questions which such witnesses failed, refused, or were instructed to, or obstructed from answering against Petitioner/Opposer. ROBERTO NOBLE also requests that the Board in its order set forth strict instructions not to engage in any of the above conduct during the trial periods or otherwise, or risk further sanction.

**CERTIFICATE OF GOOD FAITH**

Pursuant to 37 C.F.R. §2.120 (e), counsel for Registrant/Applicant has conferred with counsel for all Petitioner/Opposer in a good faith effort to resolve the issues raised in the Motion for Sanctions and the herein Supplement, and has been unable to do so.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served on this 28th day of September, 2006, by first class mail to Karen Stetson, Esq.,  
P.O. Box 403023, Miami, Florida 33140.

Respectfully submitted,

SILVERMAN SANTUCCI, LLP  
Attorneys for Respondent  
500 West Cypress Creek Road  
Suite 500  
Fort Lauderdale, Florida 33309  
(954) 351-7474/*telephone*  
(954) 351-7475/*facsimile*

BY: /s/Michael I. Santucci  
Michael I. Santucci, Esq.  
Florida Bar Number: 0105260

**Exhibits:**

1. Excerpts from the transcript of the Deposition of Raul Matias
2. Excerpts from the transcript of the Deposition of Estefan Enterprises, Inc./Frank Amadeo
3. Photograph of use of the **BONGO's CUBAN CAFÉ** mark in a restaurant in the Mexico City International Airport in Mexico City, Mexico

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

In the matter of Trademark Registration No. 2347247

For the mark: Coco Bongo

Date Registered: May 2, 2002

Opposition No.: 91121980

ESTEFAN ENTERPRISES, INC.,  
a Florida corporation,

Petitioner,

vs.

BONGO, S.A. de C.V.,

Registrant.

---

ESTEFAN ENTERPRISES  
420 Jefferson Avenue  
Miami Beach, Florida 33139  
May 11, 2006  
12:30 p.m.

DEPOSITION OF RAUL MATIAS  
Taken before Brent Sturgess, CSR and  
Notary Public in and for the State of  
Florida at Large pursuant to Notice of  
Taking Deposition in the above cause.

A P P E A R A N C E S

On behalf of Petitioner:

LAW OFFICES OF KAREN STETSON

P.O. Box 403023

Miami, Florida 33140

BY: KAREN STETSON, ESQ.

On behalf of Registrant:

SILVERMAN SANTUCCI, LLP

500 West Cypress Creek Road, Suite 500

Fort Lauderdale, Florida 33309

BY: MICHAEL I. SANTUCCI, ESQ.

WITNESS: RAUL MATIAS

ALSO PRESENT: MEREDITH FRANK  
JESSIE ABAD

COURT REPORTER: BRENT STURGESS

1 Q. Anything else?

2 A. That's a pretty wide genre there.

3 Q. And with these promotions -- really my  
4 ultimate question, and then I'm going to go into some  
5 more detailed questions, is -- one is the demographic  
6 that Bongo's and jointly with Walt Disney World are  
7 seeking when they engage in all these forms of  
8 advertising. Describe for me the --

9 MS. STETSON: You know what? I'm just  
10 not letting him answer anymore of these questions.  
11 I'm not, you know.

12 MR. SANTUCCI: Okay.

13 MS. STETSON: I really think this is  
14 unfair, you know. We had the corporate rep. depo  
15 scheduled for yesterday. You delineated all the  
16 subject matters, you cancelled, I accommodated that,  
17 you said, "Let's go ahead with the actual confusion  
18 witness since he's coming down from Orlando."

19 That was my understanding of the purpose of  
20 today's deposition. That's what we discussed, that's  
21 what we prepared on, and now you're just covering the  
22 waterfront. You're covering basically every subject  
23 matter that's on your corporate rep. notice, and I  
24 don't think that's appropriate.

25 MR. SANTUCCI: In the spirit of getting

1 through this quickly I'm not going to argue back with  
2 you, but I'm going to ask you to make a decision right  
3 now as to whether or not you're going to ask him to  
4 not answer the question I just --

5 MS. STETSON: I am. He's not our  
6 corporate representative for that purpose. We have  
7 the designated corporate representative for that  
8 purpose, and when that deposition is rescheduled that  
9 person will be prepared to answer these questions.

10 BY MR. SANTUCCI:

11 Q. That question was about your efforts and Walt  
12 Disney's efforts to promote and bring what kinds of --  
13 you know, what is the demographic of the customer.

14 Now what I'm going to ask you is, what is the  
15 demographic, and there could be many, of the customary  
16 clientele that you actually see coming into your  
17 restaurant?

18 MS. STETSON: You know, Michael, why  
19 are you doing this? This is very unfair.

20 MR. SANTUCCI: I could have taken 10  
21 depositions on the same issue if I wanted to. Let's  
22 don't argue because we're wasting time.

23 MS. STETSON: Right. You misled me  
24 into believing that this deposition today was for the  
25 limited purpose of getting evidence of actual



1 confusion. That is what you told me.

2 If you simply had said to me, "I want the  
3 general manager of, you know, Orlando, I want the  
4 general manager of Miami," then I would have to agree  
5 with you, but that was not how it was posed to me, and  
6 I really think that particularly in light of the broad  
7 scope of the corporate rep. designation and subject  
8 matters and all that and that we're going to be giving  
9 you someone on that, I think it's very un -- it's just  
10 like a surprise, you know, deposition of, "This is  
11 what we're going to be covering today."

12 I don't think it's fair and I'm not going to  
13 let him answer anymore questions. Let's get to actual  
14 confusion. I've really tried to give you a lot of  
15 leeway on this.

16 MR. SANTUCCI: I think it's fair game.  
17 And, again, we'll take that up on a motion to compel.

18 MS. STETSON: That's fine.

19 BY MR. SANTUCCI:

20 Q. Just one more background question before I go  
21 into actual confusion. How did you originally get the  
22 job with Estefan Enterprises? How did you hear about  
23 it or did you know someone?

24 A. Ad in the newspaper.

25 Q. Did you ever know anyone at Estefan

*Related to Estefan?*

Q. So that was written by a local?

A. Or, somebody comes from Miami who's used to paying \$5.00 for a bottle of Martini & Rossi. Now you go to Disney and you're paying \$15.00, so I don't agree with that at all.

Q. Which leads me to my next question. You've been to the restaurant Bongo's Cuban Cafe in Miami; correct, your company's restaurant?

A. Yes. *Both*

Q. What are the differences between the two restaurants that you can point out, the major differences?

A. The one at the American Airlines Arena or South Beach?

Q. Good question. Tell me about both. How do they differ from your restaurant?

A. They don't.

MS. STETSON: Again, this is not appropriate for him. I'm not going to let him answer it. You can go over it.

MR. SANTUCCI: And I'm just going to ask broad categories of questions that I think you're going to instruct him not to answer just so I can create a record and then we're out of here.

BY MR. SANTUCCI:

1 are directed to people not in Florida --

2 A. Yes.

3 Q. -- or exist outside of Florida?

4 A. Through Walt Disney World.

5 Q. How many Bongo's Cuban Cafe locations are  
6 there that are run by your company?

7 A. Bongo's Cuban Cafe?

8 Q. Correct.

9 A. Well, the one in Orlando, the one in Miami,  
10 American Airlines Arena, and I don't know if the South  
11 Beach one would be considered a Bongo's Cuban Cafe or  
12 Larry's on the Beach. I'm still in confusion about  
13 that.

14 Q. Do you know about any other new Bongo's Cuban  
15 Cafes that are opening up?

16 A. I don't have any information on that.

17 Q. Were you told that you might be involved in  
18 some future training of staff for any new Bongo's  
19 Cuban Cafes that are opening up?

20 A. No.

21 Q. Do you know what your company is working on  
22 in terms of new locations or new restaurants?

23 MS. STETSON: You know,<sup>F</sup> that's enough  
24 on that. It's already asked and answered. Don't  
25 answer.

1 BY MR. SANTUCCI:

2 Q. Do you know?

3 MS. STETSON: He's not answering.

4 THE WITNESS: I don't have that  
5 information. I don't know.

6 BY MR. SANTUCCI:

7 Q. Do you know who does have that information?

8 A. No.

9 Q. No? Okay.

10 MS. STETSON: Again, that's covered on  
11 your corporate rep. notice and I'm sure it will be  
12 covered by a corporate rep. when we have that  
13 deposition.

14 MR. SANTUCCI: Like I said, you're  
15 making my job easier. You can instruct him not to  
16 answer if you want.

17 BY MR. SANTUCCI:

18 Q. Is there someone within the company that is  
19 in charge of future development or new locations?

20 A. I don't have that information. That's stuff  
21 that's beyond me.

22 Q. Do you know who is responsible for that sort  
23 of thing?

24 A. Probably the president of the company and the  
25 owners, I would assume.

1 MS. STETSON: You're going to get the  
2 president of the company. I don't know what else you  
3 want.

4 BY MR. SANTUCCI:

5 Q. What is the average age of the patrons that  
6 you see coming into your restaurant?

7 A. Paying patrons or --

8 MS. STETSON: I'm instructing him not  
9 to answer, you know.

10 MR. SANTUCCI: Will you allow him to  
11 answer any questions about the demographics of the  
12 people coming into the restaurant --

13 MS. STETSON: No.

14 MR. SANTUCCI: -- or the demographics  
15 of the people that are the target for the promotions  
16 and advertising?

17 MS. STETSON: No, because that will be  
18 covered by the president of the company.

19 MR. SANTUCCI: I think I might be done.  
20 Just give me two more minutes to review. One more  
21 follow-up series of questions.

22 BY MR. SANTUCCI:

23 Q. When you've become aware through your servers  
24 or whomever about the calls from customers or comments  
25 from customers confusing your restaurant with Coco

1 KLEIN BURY & ASSOCIATES  
2 1 SE 3RD AVENUE, SUITE 1250  
3 MIAMI, FLORIDA 33131  
4 (305) 373-8404

5 MAY 30, 2006

6 Re: ESTEFAN ENTERPRISES, INC., a Florida corporation,  
7 (vs.) BONGO, S.A. de C.V.

8 To: Raul Matias

9 With reference to your deposition being taken on  
10 May 11, 2006, in connection with the above-captioned  
11 case, please be advised that the transcript of the  
12 deposition has been completed and is awaiting  
13 signature.

14 Please arrange to stop by our office for the  
15 purpose of reading and signing your deposition. Our  
16 office hours are 9:00 a.m. to 5:00 p.m. Monday through  
17 Friday. Please telephone 24 hours in advance.

18 You may read a copy of the transcript. However,  
19 denoting any corrections by page and line number must  
20 be on a separate sheet of paper. This correction page  
21 must be signed by you and notarized and returned to us  
22 for filing with the original.

23 If this has not been taken care of within the  
24 next 10 days or by the time of trial, whichever comes  
25 first, I shall then conclude that the reading, signing  
and notice of filing have been waived and shall then  
proceed to file the original with the Clerk of the  
Court without further notice.

Sincerely yours,

21 BRENT STURGESS, CSR

22 CC: ALL COUNSEL

23 **EXHIBIT** 1

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

In the matter of Trademark Registration No. 2347247  
For the mark: Coco Bongo  
Date Registered: May 2, 2002  
Opposition No.: 91121980  
ESTEFAN ENTERPRISES, INC.,  
a Florida corporation,

Petitioner,

vs.

BONGO, S.A. de C.V.,

Registrant.

---

ESTEFAN ENTERPRISES  
420 Jefferson Avenue  
Miami Beach, Florida 33139  
August 21, 2006  
10:30 a.m.

DEPOSITION OF FRANK AMADEO  
Taken before Brent Sturgess, CSR and  
Notary Public in and for the State of  
Florida at Large pursuant to Notice of  
Taking Deposition in the above cause.

## A P P E A R A N C E S

On behalf of Petitioner:

LAW OFFICES OF KAREN STETSON

P.O. Box 403023

Miami, Florida 33140

BY: KAREN STETSON, ESQ.

On behalf of Registrant:

SILVERMAN SANTUCCI, LLP

500 West Cypress Creek Road, Suite 500

Fort Lauderdale, Florida 33309

BY: MICHAEL I. SANTUCCI, ESQ.

WITNESS: FRANK AMADEO

ALSO PRESENT: MEREDITH FRANK  
JESSIE ABAD

COURT REPORTER: BRENT STURGESS



1     testifying as to these matters?

2                   MS. STETSON:   Because it has to do with  
3     marks and activities that are beyond the scope of  
4     these proceedings and more particularly sets forth my  
5     objections.   So with that caveat in mind, do you want  
6     me to mark on here?   I mean, is this your copy?

7                   MR. SANTUCCI:   Well, if you want to  
8     start with that and just write "O" next to them --

9                   MS. STETSON:   Yeah.

10                  MR. SANTUCCI:   -- as objection.

11                  MS. STETSON:   Yeah.

12                  MR. SANTUCCI:   But I want him to also  
13     go through it including those and let me know what  
14     areas he has knowledge or doesn't have knowledge of.

15                  THE WITNESS:   Areas that I do not have  
16     knowledge of?

17     BY MR. SANTUCCI:

18                  **Q.     Where you feel you don't have knowledge of**  
19     **certain -- I want you to circle the numbers of the**  
20     **paragraphs where you feel those are subject matters**  
21     **that you don't have knowledge or can't testify as to**  
22     **despite objections.**

23                  MS. STETSON:   Hold on.   Now, do you  
24     mean personal knowledge or that he's not prepared  
25     today to testify to?   Because he's here as our

1 designated corporate rep., so you're really kind of  
2 confusing me. He's here to testify --

3 MR. SANTUCCI: I can short-circuit  
4 this. I want to know if I have the right witness for  
5 all of these subject matters --

6 MS. STETSON: No, no.

7 MR. SANTUCCI: -- including the ones  
8 you're objecting to because if we do call somebody  
9 back to answer those questions after a motion to  
10 compel --

11 MS. STETSON: Right.

12 MR. SANTUCCI: -- then I want to know  
13 whether it's going to be him or someone else.

14 MS. STETSON: Right. We're not going  
15 to answer any questions about the ones that I've  
16 talked about. And if there is a motion to compel,  
17 then we'll designate the most appropriate person at  
18 that time. So let's not even get into that or waste  
19 anybody's time on that.

20 As far as the remaining subject matters,  
21 Mr. Amadeo is prepared as a corporate rep. designee to  
22 testify on all of the other matters except that  
23 Ms. Abad is going to be our designated corporate rep.  
24 on the areas of the merchandise of Coco Bongos that  
25 was purchased in Cancun. I don't remember.

1 MS. FRANK: I don't.

2 MS. STETSON: Well, I'm just going to  
3 read out my objections, and he's here for most of the  
4 subject matters. If we come to a subject matter that  
5 he's not the proper person, I'll tell you.

6 MR. SANTUCCI: Well, I'd rather he tell  
7 me. The only way he would not be the proper person is  
8 if he has no knowledge.

9 MS. STETSON: Right. Well, no. We  
10 have the right to designate whoever we want on a  
11 particular subject. So if you get to a subject matter  
12 that we are designating someone other than Mr. Amadeo,  
13 I'll tell you.

14 MR. SANTUCCI: Okay. Well, the list on  
15 the notice was for that purpose so I know how many  
16 people I'm deposing.

17 MS. STETSON: It's two.

18 MR. SANTUCCI: I don't mind us going  
19 into more than one day. It's not that big a deal.

20 MS. STETSON: We're definitely not  
21 going to go more than one day.

22 MR. SANTUCCI: That's one of the  
23 reasons why I do this. We will go more than one day  
24 if we need to. If I can summarize the objections,  
25 you're instructing him not to answer as to any --

1 MS. STETSON: Correct.

2 MR. SANTUCCI: -- questions regarding  
3 the new Bongos Cuban Cafe in Mexico City?

4 MS. STETSON: Anything that has to do  
5 with any mark that's not at issue in this case.

6 MR. SANTUCCI: And you don't think that  
7 your client's use of the same mark in Mexico has any  
8 bearing on this case?

9 MS. STETSON: We're not using the same  
10 mark in Mexico, and I've already -- I don't want to  
11 waste time on this. I've made my objections and you  
12 can take them up to the board. There's no point in us  
13 debating it now.

14 BY MR. SANTUCCI:

15 Q. You mentioned that you've had your deposition  
16 taken before.

17 A. Yes.

18 Q. Can you tell me when? And if there's more  
19 than once, let me know.

20 A. When you say "when," like what time period --

21 Q. Yes.

22 A. -- or on what kind of a case?

23 Q. First, let's start, yeah, with the time  
24 period.

25 A. When?

1 the company.

2 BY MR. SANTUCCI:

3 Q. And who was the defendant in that case?

4 A. Estefan Enterprises.

5 Q. And what were the general allegations in that  
6 case? Who were the plaintiffs?

7 A. It was just a contract dispute.

8 Q. Do you remember who the attorney was for  
9 Charles Cobbleman, CAK?

10 A. No.

11 Q. Did you testify at trial in that case?

12 A. No.

13 Q. And what was the outcome?

14 MS. STETSON: It was settled.

15 THE WITNESS: Yeah. It was settled?

16 MS. STETSON: Yeah.

17 MR. SANTUCCI: I'd rather he say "I  
18 don't know" rather than --

19 MS. STETSON: Let's get beyond this  
20 stuff.

21 THE WITNESS: I wasn't sure. I wasn't  
22 recalling if we settled or if they just dropped it.

23 BY MR. SANTUCCI:

24 Q. And what was the year of that? You said  
25 1997; right?

1           A.     Yes.

2           **Q.     -- Coco Bongo marks?**

3           A.     Yes, and one in St. Petersburg.

4           **Q.     Let's start with the Orlando one.**

5                   MS. STETSON:  Is this on the subject  
6 matter?  I don't know that this is on the notice.  
7 Where is it?  Can you tell me what number it is?  I  
8 know that we haven't prepared for this, Michael, and  
9 I'm just trying to find out whether we were remiss in  
10 not preparing for it because I don't recall it being  
11 on the notice.

12                   MR. SANTUCCI:  It's not specifically  
13 listed.  It's fair game.  It's a trademark  
14 infringement action.

15                   MS. STETSON:  When it's a corporate  
16 rep. notice, I think that we're entitled to prepare  
17 for what's on there.  So, again, I just don't want to  
18 be sort of, you know, ambushed.  We really haven't  
19 prepared for this subject matter.

20 BY MR. SANTUCCI:

21           **Q.     Who are the people or persons within your**  
22 **company that make litigation decisions?**

23           A.     Well, we have attorneys that work with Emilio  
24 and myself on advising on litigation matters.

25           **Q.     Who interacts with the attorneys?  Do you**

1 have any interaction with litigation attorneys?

2 A. Yes.

3 Q. Are there any settlement negotiations  
4 currently --

5 MS. STETSON: I'm instructing him not  
6 to answer that.

7 MR. SANTUCCI: Do you want to hear my  
8 whole question and then instruct him?

9 MS. STETSON: Sure.

10 BY MR. SANTUCCI:

11 Q. Are you having any settlement discussions --  
12 have you had any settlement discussions with the  
13 Orlando Coco Bongo?

14 MS. STETSON: I'm instructing him not  
15 to answer.

16 BY MR. SANTUCCI:

17 Q. Do you know when the company in Orlando first  
18 began using the Coco Bongo mark?

19 MS. STETSON: Michael, I'm telling you  
20 right now I don't think it's fair to be asking on  
21 subject matters that aren't on your notice. The whole  
22 purpose of the notice is so that we can be prepared.

23 This is similar to what you did with Raul  
24 Matias where you indicated it was going to be about  
25 actual confusion and then it was much broader than

1 that, and it's not fair because we spent all this time  
2 preparing for specifically what's on the notice, and  
3 now you're just ambushing us and you're asking him to  
4 talk about things that we've not been able -- he's not  
5 had the benefit of counsel to prepare on, and I just  
6 don't think it's right.

7 MR. SANTUCCI: I disagree and I'm going  
8 to ask you to stop making speaking objections for the  
9 rest of the deposition.

10 MS. STETSON: It's not a speaking  
11 objection.

12 MR. SANTUCCI: Yes, it is.

13 MS. STETSON: It's a substantive  
14 objection.

15 MR. SANTUCCI: You're entitled to say  
16 "Objection to form" --

17 MS. STETSON: No.

18 MR. SANTUCCI: -- and you're entitled  
19 to say "Objection, privilege."

20 MS. STETSON: No.

21 MR. SANTUCCI: And you're not entitled  
22 to instruct your witness not to answer either, but  
23 we'll take it up in court.

24 MS. STETSON: Michael, I'm telling you  
25 it's a substantive objection to going beyond the scope



1 of the notice because my client has not had the  
2 benefit of counsel to be able to prepare beyond the  
3 scope of the notice. So I'm instructing him not to  
4 answer anything beyond the scope of the notice.  
5 That's the purpose of the notice.

6 MR. SANTUCCI: You had fair disclosure  
7 of that.

8 MS. STETSON: You know what? We're  
9 going to take a five-minute break. I want to talk to  
10 my client.

11 MR. SANTUCCI: There's a question  
12 pending, though. Can we finish that question?

13 MS. STETSON: I think I instructed him  
14 not to answer the pending question, but let me hear  
15 what it was.

16 BY MR. SANTUCCI:

17 **Q. Do you know the Orlando company's date that**  
18 **they first used the Coco Bongo mark?**

19 MS. STETSON: I'm instructing him not  
20 to answer and I want a two-minute break to talk to my  
21 client.

22 (Break.)

23 MS. STETSON: Michael, we're prepared  
24 to testify what Mr. Amadeo is prepared and has been  
25 prepared to testify with him in conjunction with

1 Ms. Abad, who's also here today, are prepared to cover  
2 all of the categories on your notice as to which we  
3 have not previously interposed formal objections.

4 I'm going to ask you for today to please  
5 stick to those subject matters because every other  
6 subject matter is going to be an instruction not to  
7 answer, so you don't need to make a record in advance.

8 We're here today on the subject matters of  
9 the notice. If there are other subject matters that  
10 you want to depose a corporate rep. on, then it will  
11 have to be some other time and possibly after a ruling  
12 by the board, but I don't want to waste today going  
13 over a bunch of subject matters that aren't on the  
14 notice and every time me having to instruct him not to  
15 answer.

16 I'm just telling you in advance I'm  
17 instructing him not to answer as to anything that's  
18 not on your notice. So can we please stick to the  
19 notice today and then we'll deal with everything else  
20 another day?

21 MR. SANTUCCI: I disagree that the  
22 notice is supposed to be a list of questions. It's  
23 not. These are general subject matter areas. They're  
24 intended to be general so we have the right witness,  
25 and that's all. Now, if he has knowledge of those

1 areas, which I'm asking him if he does -- I would be  
2 amazed if he didn't -- then they're proper questions  
3 for him.

4 So if you disagree -- and I'm also asking  
5 that if Ms. Abad is going to be a witness in this  
6 deposition today that I'd like to invoke the rule. I  
7 don't think it's fair for her to get a preview of the  
8 questions if she's the next witness today.

9 MS. STETSON: She's also the party.

10 MR. SANTUCCI: He's the party. You're  
11 entitled to one.

12 MS. STETSON: No. He is the witness.  
13 In this particular instance he's the witness and she's  
14 the client.

15 MR. SANTUCCI: He's the corporate rep.

16 MS. STETSON: I know.

17 MR. SANTUCCI: Well, I object. You can  
18 do what you want.

19 MS. STETSON: Okay.

20 MR. SANTUCCI: But it might compromise  
21 your testimony if my objection is found to be valid.

22 MS. STETSON: Here's an idea. Don't go  
23 over with Mr. Amadeo the subject matters that I've  
24 already told you that she's going to testify, and then  
25 she doesn't have to have a preview of any questions.

1 MR. SANTUCCI: Well, you've already  
2 instructed him not to answer as to whether he even has  
3 knowledge of those areas, so I can't go into anything  
4 past that.

5 MS. STETSON: Are you going to take the  
6 deposition? Just take your deposition. Stop  
7 interrupting my deposition, please.

8 MS. STETSON: It's 12:10 and I'm not  
9 sure if you've covered one subject matter yet on your  
10 actual notice.

11 MR. SANTUCCI: Are you going to let him  
12 answer any questions about the Orlando litigation?

13 MS. STETSON: No.

14 MR. SANTUCCI: Are you going to let him  
15 answer any questions about any other pending  
16 litigation?

17 MS. STETSON: No. Stick to what's on  
18 your notice and we'll deal with all other issues  
19 another day.

20 MR. SANTUCCI: Will you let him answer  
21 questions about not the litigation, but any use --

22 MS. STETSON: Michael, why don't you go  
23 through your notice and ask him the questions and then  
24 we'll see where we are after that.

25 MR. SANTUCCI: Are you going to let him

1 answer any questions --

2 MS. STETSON: This is unbelievable.

3 MR. SANTUCCI: -- about any of the  
4 activities --

5 MS. STETSON: You are wasting our time.

6 MR. SANTUCCI: Are you going to let him  
7 answer any questions about the activities of the  
8 Orlando Coco Bongo?

9 MS. STETSON: Can you tell me what it  
10 might relate to on the notice?

11 MR. SANTUCCI: Let me ask my question,  
12 then.

13 BY MR. SANTUCCI:

14 **Q. Do you know when the Orlando Coco Bongo first**  
15 **began using that mark?**

16 MS. STETSON: You already asked that  
17 and I already said we're not answering that.

18 BY MR. SANTUCCI:

19 **Q. Do you know when they opened for business?**

20 MS. STETSON: You know what? If you  
21 don't get on the notice we're terminating it and we'll  
22 just get a ruling before we answer anymore questions.  
23 I'm giving you an opportunity today to go over every  
24 single one of the subject matters that are on your  
25 notice except for the ones that I formerly objected

1 to.

2 MR. SANTUCCI: I have another question  
3 on this.

4 MS. STETSON: And if you don't  
5 immediately proceed to what's on the notice I'm  
6 terminating the deposition because you're wasting our  
7 time.

8 MR. SANTUCCI: I have another question  
9 on this.

10 BY MR. SANTUCCI:

11 Q. When did your company first become aware of  
12 the Orlando company's use of the Coco Bongo trademark?

13 MS. STETSON: Tell me what subject  
14 matter on your notice that relates to.

15 MR. SANTUCCI: I'm asking the  
16 questions.

17 MS. STETSON: We're terminating.  
18 That's it. We're out of here. Sorry. You wasted our  
19 time today. That's it.

20 MR. SANTUCCI: You're not going to let  
21 him sit for any other questions?

22 MS. STETSON: Yes. I am going to let  
23 him sit for every question that is on your notice that  
24 I have not interposed an objection.

25 MR. SANTUCCI: And we're going to let

1 you be the judge as to what's related to those subject  
2 matter areas or not?

3 MS. STETSON: Michael, I suggest you  
4 take a minute because you're getting all huffy. Take  
5 a minute and think about whether you want to proceed  
6 on the subject matters that are on the notice because  
7 that's what we're prepared for today.

8 MR. SANTUCCI: Karen, this stuff is  
9 fair game. If you didn't see it coming --

10 MS. STETSON: Bye.

11 MR. SANTUCCI: -- with three attorneys  
12 sitting here, I'm very surprised. I have other  
13 questions that don't relate to the litigation. So if  
14 you want to use this day productively we can, but you  
15 just told me how you're limiting yourself.

16 MS. STETSON: Michael, if you want to  
17 go through your notice, then ask him about those.

18 MR. SANTUCCI: I'm going to ask him  
19 other questions. If you're telling me you're not  
20 going to let him answer any questions about any other  
21 party's use of the mark, then so be it, but I have  
22 other questions that are not related to that.

23 MS. STETSON: We're prepared for what's  
24 on the notice. Do you want to go through those or  
25 not? It's up to you.

1 MR. SANTUCCI: I have other areas I'd  
2 like to go into that don't relate to litigation or  
3 third-party use of the Coco Bongo mark. Yes, I'd be  
4 willing to go into those.

5 MS. STETSON: All right. We're  
6 terminating. I've given you every opportunity. I  
7 don't know what else to do.

8 MR. SANTUCCI: I have other questions  
9 that don't relate to those issues, to the issues of  
10 other litigation and as to issues not involving  
11 third-party use. I'll ask those if you want to make  
12 productive use of today.

13 MS. STETSON: I do want to make  
14 productive use of today.

15 MR. SANTUCCI: Let's do it, then.

16 MS. STETSON: I want you to ask the  
17 questions that are on your notice, the subject matter.

18 MR. SANTUCCI: There are no questions  
19 on my notice, Karen.

20 MS. STETSON: Oh, God, this is so  
21 irritating. I think you understand my position. So  
22 why don't you simply go through your notice and go  
23 over those subject matters and we'll deal with these  
24 other things another day. It's real simple.

25 We're prepared today on those subject



1 matters, so let's go over those so we're not wasting  
2 everybody's time. Let's get through that and then  
3 we'll deal with these objections and all these other  
4 issues another day.

5 MR. SANTUCCI: I am going over them.  
6 You told me where you're placing the limitations. I  
7 disagree and I'm moving on to other areas.

8 MS. STETSON: Okay.

9 BY MR. SANTUCCI:

10 Q. What parties does your company license the  
11 Bongos Cuban Cafe mark to?

12 A. What parties?

13 Q. Yes. Parties? Companies?

14 MS. STETSON: Is that on here?

15 MR. SANTUCCI: Karen, are you going to  
16 let him answer the question or not? We'll go one by  
17 one. It's a lot quicker.

18 MS. STETSON: I've already explained to  
19 you our position on this. I don't think it's fair to  
20 ask him questions on things that are not on the notice  
21 because we've not had the opportunity to prepare on  
22 that.

23 MR. SANTUCCI: I'll ask him a similar  
24 question.

25 BY MR. SANTUCCI:

1           Q.    Has your company, Estefan Enterprises, Inc.,  
2 always directly operated the restaurant?

3           A.    Yes.

4           Q.    Are there any licensees of the mark?

5           A.    No.

6           Q.    No?

7           A.    (Witness shakes head.)

8           Q.    Is Estefan Enterprises party --

9                   MS. STETSON: I'm having a problem with  
10 this.

11                   MR. SANTUCCI: Excuse me. Let me  
12 finish my question, Karen, and stop making speaking  
13 objections.

14                   MS. STETSON: No, because all you're  
15 doing is making a bad record, Michael.

16                   MR. SANTUCCI: Instruct him not to  
17 answer if you want to.

18 BY MR. SANTUCCI:

19           Q.    Is Estefan Enterprises party to any trademark  
20 license agreement regarding the Bongos Cuban Cafe  
21 mark?

22           A.    No. I'm sorry. I'm not really understanding  
23 where you're going.

24           Q.    Is Estefan Enterprises, Inc. -- does your  
25 company claim to be the owner of the Bongos Cuban Cafe

1 mark?

2 A. Yes.

3 Q. And as the owner, does it license or give  
4 permission to any other companies or people to use the  
5 Bongos Cuban Cafe mark?

6 A. Not Bongos Cuban Cafe, no.

7 Q. Does Bongos Cuban Cafe, Inc., use the Bongos  
8 Cuban Cafe mark?

9 A. Yes.

10 Q. And is it by permission from Estefan  
11 Enterprises, Inc.?

12 A. Yes.

13 Q. So that's --

14 A. Yes.

15 Q. -- more what I meant by "license."

16 MS. STETSON: And, once again, if that  
17 had been on the notice we would have had an  
18 opportunity to explore that.

19 MR. SANTUCCI: It's related to use of  
20 the mark, Karen.

21 MS. STETSON: Go ahead.

22 MR. SANTUCCI: The use is through  
23 licenses.

24 MS. STETSON: Go ahead, go ahead.

25 BY MR. SANTUCCI:

1           Q.    Is there an agreement between Estefan  
2           Enterprises, Inc., and Bongos Cuban Cafe, Inc.,  
3           regarding the use of that mark?

4           A.    Yes.

5           Q.    And is there one agreement or are there a  
6           series of agreements? Modifications? Can you let me  
7           know?

8           A.    It's just one agreement.

9           Q.    Is there a similar agreement with Bongos  
10          Cuban Cafe Miami, Inc.?

11          A.    Yes.

12          Q.    Is there a separate company that runs or ran  
13          the other Miami location, the SoBe Cuban Cafe -- SoBe  
14          Bongos Cuban Cafe?

15                   MS. STETSON: I'm sorry. What? I  
16          didn't hear the question. I want to hear the  
17          question.

18          BY MR. SANTUCCI:

19          Q.    Is there another company that operates the  
20          SoBe or operated the SoBe Bongos Cuban Cafe  
21          restaurant?

22          A.    There was at one point, but if I recall  
23          correctly it was before it was a Bongos Cuban Cafe  
24          restaurant. It was when it was just solely Larios on  
25          the Beach.

1 the restaurant/bar category?

2 BY MR. SANTUCCI:

3 Q. Correct.

4 A. Not reference to Jeans?

5 Q. Right. The restaurant and bar I'm talking  
6 about.

7 A. Right.

8 Q. And let me just ask you a different way in  
9 case you didn't understand what I meant by  
10 "Bongo-related." Were you aware of any other parties  
11 in September of '97 that were already using any mark  
12 incorporating the term "Bongo" in the restaurant, bar  
13 or nightclub?

14 A. No.

15 Q. How about any other industries?

16 A. Yes.

17 Q. And who are they? Who are those parties?

18 A. Bongo Jeans.

19 Q. Is that the Michael Caruso & Company?

20 A. Yes.

21 Q. Any other parties?

22 A. No.

23 Q. So it's your testimony that at the time your  
24 company began using the Bongos Cuban Cafe mark you had  
25 no knowledge of any other companies or parties who

1 were using marks containing the word "Bongo" in them  
2 in the restaurant, nightclub or bar industry?

3 MS. STETSON: This is also subject  
4 matter that's not on the notice and that we've not  
5 gone over.

6 MR. SANTUCCI: Date of first use is not  
7 on my notice?

8 MS. STETSON: Yeah. Other users at the  
9 time of date of first use isn't on your notice.

10 MR. SANTUCCI: Karen, I don't have to  
11 give you my exact questions.

12 MS. STETSON: Michael, I'm telling  
13 you -- I'm going to caution the witness not to guess  
14 because it wasn't on the notice. I don't think he's  
15 prepared for that.

16 MR. SANTUCCI: Okay.

17 MS. STETSON: I'm just really concerned  
18 that, you know, you're taking advantage of going  
19 beyond the scope of the notice and getting the witness  
20 to make statements that, you know, he doesn't  
21 particularly know, he's not prepared on.

22 MR. SANTUCCI: You're coaching the  
23 witness now by telling him he doesn't know. Please  
24 stop making speaking objections.

25 MS. STETSON: It's the same objection.

1 MR. SANTUCCI: Can you stop talking and  
2 let him read back my last question so I can get an  
3 answer?

4 (Record read.)

5 MS. STETSON: You're asking him to  
6 testify as a representative --

7 MR. SANTUCCI: Make an objection.  
8 Don't speak.

9 MS. STETSON: Michael, don't try to  
10 shush me; all right?

11 MR. SANTUCCI: I can shush you. This  
12 is my deposition. I ask the questions, Karen. You're  
13 interrupting and blocking my ability to ask this  
14 witness questions. Make a valid objection or please  
15 don't talk.

16 MS. STETSON: You're specifically  
17 asking him to answer on behalf of the corporation, and  
18 it's not contained in the notice that asks on behalf  
19 of the corporation.

20 If you want to ask him if he has personal  
21 knowledge, that's fine, but don't ask him on behalf of  
22 the corporation whether the corporation had knowledge  
23 of that because he doesn't -- he would have no way of  
24 knowing that without preparing.

25 MR. SANTUCCI: I'm going to ask him

1 nightclub and show in Mexico City prior to the opening  
2 of the Cancun club?

3 MS. STETSON: Is the company aware now?  
4 What is your question?

5 MR. SANTUCCI: Yeah.

6 THE WITNESS: I'm sorry. Can you ask  
7 it again?

8 BY MR. SANTUCCI:

9 Q. Are you aware of the fact that our client had  
10 a nightclub and show in Mexico City prior to the  
11 opening of the Cancun club under the name Coco Bongo?

12 A. No.

13 Q. I have no further questions on that issue,  
14 then. What role did you play in connection with the  
15 selection of the Bongos Cuban Cafe mark?

16 A. The name itself?

17 Q. Yes.

18 A. Personally or -- I mean, very little. It was  
19 really the decision of Gloria and Emilio who came up  
20 with the name.

21 Q. Did you take any part in approving it?

22 A. Well, I mean, they discussed it with me. We  
23 talked about it, but at the end of the day it was, you  
24 know, their decision as to what the final name of the  
25 mark would be.



1           Q.     During those discussions, did you have any  
2 objection or reservations in connection with --

3           A.     No.

4           Q.     -- the consideration of that mark?

5           A.     No. It was a name that had, you know, some  
6 sentimental value to them. It was the name of one of  
7 her pets.

8           Q.     What other reasons other than the name of the  
9 pet did you adopt the mark Bongos Cuban Cafe?

10          A.     That was actually the primary reason for the  
11 name. It was named after one of her pets. And,  
12 again, it had some sentimental value in that, you  
13 know, it was a musical instrument that Emilio first  
14 played in the band that made them famous.

15          Q.     So what is a bongo?

16          A.     What is a bongo as far as --

17          Q.     Yeah.

18          A.     Well, it's a musical instrument, percussion,  
19 musical instrument.

20          Q.     Does it have any other meanings that you know  
21 about?

22          A.     No.

23          Q.     So bongos, the plural, would mean two drums  
24 or two percussion instruments?

25          A.     Correct.

1           Q.    And are bongo drums incorporated in any way  
2 in any of the logos or graphics your client uses with  
3 the Bongos Cuban Cafe mark?

4           A.    Yes.

5           Q.    Is it safe to say that it's used almost all  
6 the time, the pictures of bongo drums with the mark?

7           A.    Yes, yeah.

8           Q.    Are there pictures of bongo drums in the tile  
9 of the floor of your Orlando location?

10          A.    Yes.

11          Q.    Are they also in the Miami location?

12          A.    Yes.

13          Q.    Since the date of first use, September '97,  
14 have there been any changes in the mark or the logo  
15 for Bongos Cuban Cafe?

16          A.    When we first opened in '97 there were three  
17 different logos that we were originally using. We  
18 focused primarily on the one, but there were two other  
19 specific logos that we used and eventually phased out.

20          Q.    And were the words "Bongos Cuban Cafe"  
21 different from now or were just the graphics?

22          A.    Yeah. It was just the graphics or the design  
23 around the actual name, but the name itself was always  
24 used in the same context.

25          Q.    When did your company begin using the current

1 MS. STETSON: Michael, all these  
2 questions have been about the logos; right? Not just  
3 the name?

4 MR. SANTUCCI: Yes, because he said the  
5 words have always been the same, so I'm really just  
6 asking him -- he said there was only changes in the  
7 logo, not the words.

8 MS. STETSON: Okay.

9 BY MR. SANTUCCI:

10 Q. So your current logo was in actual use in  
11 advertising and promotions in September of '97?

12 A. Yes.

13 Q. And that current logo, is it always used with  
14 the words with the mark or is the mark ever used  
15 without the logo?

16 A. No. The mark and the logo are always used  
17 together.

18 MS. STETSON: I'm sorry. Did you ask  
19 him, is the art thing used without the name -- I  
20 missed the question -- or did you say it the other way  
21 around?

22 MR. SANTUCCI: The other way around.

23 MS. STETSON: Is the name ever used  
24 without the art?

25 MR. SANTUCCI: Right.

1 MS. STETSON: I thought I heard it the  
2 other way around.

3 BY MR. SANTUCCI:

4 Q. Has that practice ever changed over time?  
5 You said "always."

6 A. Yeah. I mean, we try to always incorporate  
7 our logo into every, you know, advertising or  
8 marketing element that we place.

9 Q. Now I'm going to talk about just the words,  
10 "Bongos Cuban Cafe." In any advertisements or any  
11 other commercial use of the mark, does your company  
12 ever refer to it as just Bongos or just Bongo?

13 A. No.

14 Q. So always the entire word mark is used?

15 A. Correct, yeah. It's always Bongos Cuban  
16 Cafe.

17 Q. Is there any reason that you know of that  
18 your company would need to use just the term "Bongo"  
19 or "Bongos" and not its whole word mark?

20 A. No.

21 Q. Living with this for years and years, I know  
22 the answers to all these questions and they seem very  
23 simple, but I'm going to try to create a record here.

24 Can you describe the theme of both of the  
25 restaurants?

1           A.    Well, it's a bar/restaurant/nightclub that  
2 features live entertainment. You know, we believe  
3 that the entertainment aspect of our properties and  
4 our restaurants are a very big part of what we do.

5           We obviously specialize in Cuban cuisine, the  
6 thought process being that you can get black beans and  
7 rice in a number of Latin restaurants, but that the  
8 Estefan name is known for its entertainment value. So  
9 the entertainment aspect of our properties is, you  
10 know, very prominent in what we do in all of our  
11 locations.

12           **Q.    So you're saying the theme -- you described**  
13 **the theme as entertainment-related; is that fair?**

14           A.    Well, I mean, again, it focuses on bars and  
15 nightclubs and along with that, you know, the theme  
16 would be live music, live entertainment, dancers, you  
17 know.

18           **Q.    I'll go into the kinds of entertainment in a**  
19 **second.**

20           A.    Sure.

21           **Q.    Would you say it's accurate to say that one**  
22 **of the themes of the restaurants is Cuba or Cuban**  
23 **Americans or Cuban?**

24           A.    Yeah.

25           **Q.    Yeah?**

1           A.     Absolutely. I mean, obviously by the name  
2 "Cuban Cafe," that's definitely implied.

3           **Q.     And the cuisine, would you describe that as**  
4 **Cuban?**

5           A.     Absolutely, yes.

6           **Q.     How about the decor?**

7           A.     Yes.

8           **Q.     How about the music?**

9           A.     Not entirely. I mean, it certainly does, you  
10 know, lean towards Latin music because of the  
11 Estefans. I mean, that's what they do, but it's not  
12 exclusively Latin from a musical standpoint.

13          **Q.     What other kinds of music would you say?**

14          A.     I mean, you know, pop, you know, general  
15 dance music. You know, our nightclub here in Miami,  
16 again, while it does certainly evoke the Latin style  
17 of music, but it plays a broad range of music from,  
18 you know, all kinds of pop contemporary artists'  
19 music.

20          **Q.     I'm just asking you to estimate. Can you**  
21 **estimate the amount of pop music that is not what you**  
22 **would call Latin music?**

23          A.     It's hard to say.

24                   MS. STETSON: I mean, he did, again,  
25 bring another exhibit. I don't know if it's

1 permissible for him to refer to that, but go ahead.  
2 Answer to the best of your ability.

3 THE WITNESS: From a musical standpoint  
4 I would say it's hard to say because those lines blur  
5 a lot.

6 BY MR. SANTUCCI:

7 Q. Exactly.

8 A. I mean, a lot of straight-ahead pure pop  
9 artists have Latin remixes and, you know, Latin  
10 leaning towards their music, you know, everybody from  
11 Ricky Martin to Jennifer Lopez and Madonna.

12 Q. Would you say there's an intention within  
13 your company to exhibit predominantly Latin music or  
14 Latin-flavored music?

15 A. Again, based on the history of the Estefans  
16 and what we do, a lot of what we do incorporates the  
17 Latin them or the Latin flavor, yes.

18 Q. Would you say most of it or more than half?

19 A. Again, I think it's kind of hard to draw that  
20 line between, you know, what you consider mainstream  
21 or what you consider Latin because those lines have  
22 been blurred so much over the years with so many  
23 mainstream artists crossing into the Latin arena.

24 Q. What was I going to say? Cuisine, music.  
25 The employee uniforms, would you say they go with the

1 **Cuban theme?**

2 A. Yes.

3 **Q. How about the souvenirs and merchandise?**

4 A. Some of them do. I mean, we certainly sell  
5 Guayabera, which are, you know, Latin shirts, but we  
6 sell, you know, general T-shirts, hats, mugs which you  
7 certainly couldn't categorize as Latin. A T-shirt's a  
8 T-shirt.

9 **Q. But are there some souvenirs that you would**  
10 **categorize as Latin?**

11 A. Yes, there are, absolutely.

12 **Q. And how about the advertising? Does that**  
13 **follow the similar theme?**

14 MS. STETSON: What do you mean by that?

15 MR. SANTUCCI: We went through all the  
16 different aspects of the business that followed a  
17 Cuban theme. I'm asking if the advertisements are  
18 also consistent with those.

19 THE WITNESS: I mean, there are certain  
20 Latin elements to the design and, you know, layouts of  
21 our advertising, but it's certainly not strictly  
22 Latin. I mean, again, we attempt in our advertising  
23 to appeal to a broad range of our audience.

24 BY MR. SANTUCCI:

25 **Q. Of the services offered, are they pretty much**



1     **the same in both restaurants?**

2         A.     Pretty much, yes.

3         **Q.     This is where I'll get into more detail.**

4     **What kind of entertainment services or entertainment**  
5     **is featured at both of the restaurants?**

6         A.     Specific?

7         **Q.     Uh-huh.**

8         A.     I mean, again, you know, they are different  
9     in one sense, but we have live bands, we have live  
10    DJ's, we have dancers, we have impersonators. In  
11    Miami particularly we have a large video screen that  
12    shows all kinds of visual art. You know, our wait  
13    staff in Orlando dances. Our bartenders, you know,  
14    put on a bit of a show here in Miami more so than  
15    Orlando.

16         **Q.     Any other entertainment services or**  
17     **entertainment that's featured at either of those**  
18     **restaurants?**

19         A.     Like I said, the live bands. I mean, in  
20    Miami particularly we do a lot of showcases with, you  
21    know, very well-known international artists, more so  
22    in Miami than Orlando, but, again, the live music  
23    element is a big part of both places.

24         **Q.     Would you say that's the majority or the**  
25     **feature entertainment aspect?**

1           A.    I wouldn't say the majority. I mean, like I  
2 said, on any given week we try to freshen it up  
3 consistently.

4           Q.    But I'm saying, the live music, is that  
5 pretty much what the restaurants are known for or try  
6 to feature?

7           A.    Well, I mean, again, the live music is an  
8 element of it, but we combined it with bongo players  
9 and DJ's and dancers, and so it's not a live music  
10 venue. We do feature live music, but it's certainly  
11 not just solely live music.

12          Q.    Do you have dancers as often as you have live  
13 music?

14          A.    Yes.

15          Q.    You do?

16          A.    Yes.

17          Q.    Do you have impersonators as often as you  
18 have live music?

19          A.    No. I mean, we do impersonators from time to  
20 time, you know, but the live music and the dancers are  
21 probably more of a staple of the entertainment.

22          Q.    Can you tell me what impersonators you've  
23 had?

24          A.    In Orlando we had for awhile -- the band  
25 leader did a Ricky Ricardo impersonation, and as a

1 part of that whole show that we did in the restaurant  
2 daily there was a Lucille Ball character.

3 Here in Miami recently we did a Madonna  
4 impersonation, a show that ran for a couple of  
5 weekends when she was in town, and we do that same  
6 sort of thing with, you know, Carmen Miranda and  
7 dancers of that nature.

8 **Q. Any other that you can think of?**

9 A. Not off the top of my head, no.

10 **Q. If any come up, can you just throughout the**  
11 **depo -- when did you have your Ricky Ricardo**  
12 **impersonator?**

13 A. We had him when we first opened.

14 **Q. How often did he perform?**

15 A. He performed probably five nights a week.

16 **Q. For how long?**

17 A. Several years.

18 **Q. Can you be more specific as to when he**  
19 **stopped?**

20 A. I'd have to look back for sure, but he was  
21 the performer there for probably four or five years,  
22 so it may have stopped four years ago or so.

23 **Q. Why did you guys stop with him?**

24 A. It was just time for a change.

25 **Q. Can you tell me what his name was?**

1           A.    His real name?

2           **Q.    Yeah.**

3           A.    I can let you know.  I don't know off the top  
4 of my head.

5           **Q.    If it comes to you, let me know.  How about**  
6 **Lucille Ball?**

7           A.    She performed with him.

8           **Q.    And did she also perform five nights a week**  
9 **for four to five years?**

10          A.    She was not there in every show.  I don't  
11 know.  I couldn't tell you -- I believe at the time  
12 she performed more on the weekends than every night  
13 with him.

14          **Q.    And how long was the duration of her weekend**  
15 **performances?**

16          A.    I don't know off the top of my head.  I'd  
17 have to go back, but she performed with him for quite  
18 awhile, yes.  I mean, she was part of that whole act  
19 and that whole show with the live band.

20          **Q.    What was their act?**

21          A.    Their act was -- well, he performed with a  
22 live band.  He performed the -- you know, what Desi  
23 Arnaz and what Ricky Ricardo, the band leader, the  
24 performer, and then she came in at times and they had  
25 the little, you know, comedy routine between the two

1           A.     Yes.

2           Q.     When was the period -- you said recently.  
3     When did the Madonna impersonator perform?

4           A.     About a month ago, two different shows. It  
5     coincided with Madonna's tour here in Miami.

6           Q.     And that's not being shown anymore?

7           A.     No. That was just done for that weekend that  
8     she was here.

9           Q.     What is her name in, the impersonator?

10          A.     I don't know. It's something that we can  
11     provide for you, but I don't know.

12          Q.     Do you remember the name of the Lucille Ball  
13     impersonator?

14          A.     I don't know, no. I'm sorry.

15          Q.     Were Lucy and Ricky under the same contract  
16     or did they have separate contracts?

17          A.     I believe it was all under one contract for  
18     his services. It was his company. It was through his  
19     company.

20          Q.     And the payment was made to the company, not  
21     to either of the individuals?

22          A.     You know what? I would have to check that.  
23     I don't know for sure. It was so long ago, but I  
24     believe that it was through an entity that the  
25     gentleman had, and I should know his name, but it's

1 escaped me at the moment. I can see him, but I  
2 can't --

3 Q. How about Carmen Miranda? Is she still an  
4 impersonator at the restaurant?

5 A. Well, again, a lot of the dancers that we  
6 have are of that style, that rumba, you know. I  
7 wouldn't say it's definitely -- you'd look at her and  
8 say, "She's Carmen Miranda," but that whole concept of  
9 the look and the dance.

10 Q. But it wasn't her act to really impersonate  
11 Carmen Miranda?

12 A. No, that wasn't, no. But, again, a lot of  
13 those dancers just by association follow along that  
14 look and that line.

15 Q. Are there any other celebrity impersonators  
16 that you can think of that have ever performed at  
17 either of the restaurants?

18 A. No.

19 Q. How about comedians? Have the restaurants  
20 ever had any comedians as a part of the entertainment?

21 A. We actually at one point here in Miami did a  
22 comedy -- it was like a comedy search. It was through  
23 a promoter, but it wasn't anything we did on a regular  
24 basis. It was just a one-time event.

25 Q. So you wouldn't say that comedy is one of the

1           A.    Everyone from Gloria to Mariah to Jennifer  
2 Lopez, Marc Anthony.  You know, it's a wide variety of  
3 Latin and pop stars.

4           Q.    Are there license agreements for the use of  
5 those videos?

6           A.    No.  It's promotional purposes.

7           Q.    By "license" I mean permission or anything.  
8 It doesn't have to be fee-based.  Does your company  
9 have permission to use -- to replay those videos?

10          A.    Well, some of them.  Some of the material we  
11 own outright and other ones we obtain through record  
12 companies.  So, again, you know, for promotional  
13 purposes.

14          Q.    The ones you obtain that are not owned by  
15 your company, the ones that are obtained from other  
16 record companies, how often does that happen?  Is that  
17 a regular thing where you --

18          A.    We update them regularly.  You know,  
19 obviously as the new ones come in we have a video DJ  
20 on Saturday nights that spins videos to the music.  
21 So, again, they're constantly updated and played in  
22 accordance with the music that's being played that  
23 night.

24          Q.    So they could change on a nightly basis?

25          A.    Sure, absolutely.

1           Q.     How many of those videos are from artists  
2     that are not under the Estefan Enterprise heading,  
3     meaning, you don't own the videos?

4           A.     Oh, I'm sure there are a lot of them. The DJ  
5     plays the videos a lot of times in sync with what the  
6     DJ is playing.

7           Q.     Does your company regularly pay any sort of  
8     fees to ASCAP or BMI?

9           A.     Regularly, yes.

10          Q.     Does the restaurant feature any music,  
11     prerecorded music, like a CD that's just put in and  
12     plays all night?

13          A.     Yes.

14          Q.     In addition to live music and DJ music?

15          A.     That's correct, yeah. On the nights that we  
16     don't have DJ's we have prerecorded music.

17          Q.     What nights do you have DJ's? Is there a  
18     regular pattern to that?

19          A.     Regularly we have them on Friday and  
20     Saturdays. We have them on days where there would be  
21     an event -- say, in Miami here particularly, if  
22     there's an event at the arena, a concert, a basketball  
23     game, any sort of event that's taking place, we bring  
24     in a live DJ or live music, band, live performance.

25          Q.     And that was my next question. How often are



1 I want to say at least over a year and probably even  
2 longer.

3 Q. The band before that that played weekends in  
4 Orlando, how often did they --

5 A. See, well, the band in Orlando plays more  
6 than just the weekend. They play -- I believe it's  
7 Thursday, Friday, Saturday, Sunday.

8 Q. So that's what you meant by "weekly basis"?

9 A. Right.

10 Q. Before that band, how long was the span of  
11 the other band?

12 A. You know what? I don't know for sure, but  
13 the bands there have stayed -- they stay for longer  
14 periods of time on a consistent basis than they do  
15 here.

16 Q. Do they play the same exact songs every  
17 night?

18 A. No. They change their set.

19 Q. Do the restaurants ever have any sort of  
20 sketch comedy that goes on as part of the  
21 entertainment?

22 A. No.

23 Q. Do you have anything like -- do you have  
24 acrobats?

25 A. No.

1           Q.    Have you ever had -- I guess it falls under  
2 acrobats -- Super Heroes flying through the air?

3           A.    No.

4           Q.    Do the musical artists, the live musical  
5 artists, take requests from the customers?

6           A.    The bands?

7           Q.    Yes.

8           A.    Yes.

9           Q.    How about the DJ's? Do they take requests?

10          A.    I can't say for sure, but I'm sure that if,  
11 you know, a patron asks for a particular song or, you  
12 know, something specific that they'll accommodate it.

13          Q.    You did mention that sometimes there are  
14 no -- on some nights there are no DJ's or live bands.  
15 What nights are they? Is there any consistency to  
16 that?

17          A.    Again, in Orlando it might be a little bit  
18 more consistent as far as -- you know, because we do  
19 have the bands Thursdays through Sundays. In Miami it  
20 really does fluctuate on a week-to-week basis  
21 depending on, again, what events are taking place and  
22 so forth.

23          Q.    And what is the music played during that time  
24 if any?

25          A.    During?

1           Q.    During the times when there's no DJ's and  
2 there's no live bands?

3           A.    That would be prerecorded music. We have  
4 satellite radio in both places and they play  
5 compilation CD's, compilation videos. It's a variety.

6           Q.    Is there any regularity to that or is it just  
7 constantly changing?

8           A.    It changes. I mean, they mix it up.

9           Q.    Can you tell me, then, just to clarify your  
10 answer, is there any regularity to when satellite  
11 radio is played as opposed to when prerecorded mixed  
12 CD's are played?

13          A.    No. It's pretty much at the manager's  
14 discretion.

15          Q.    When did you begin with satellite radio?

16          A.    Probably last year.

17          Q.    And all these questions about the music being  
18 played, has that ever changed? Is that any different  
19 now than it was back in September of '97 or has that  
20 been the pattern and schedule pretty much?

21          A.    It's pretty much been the pattern. Again, it  
22 does change between DJ's and live music and  
23 prerecorded music.

24          Q.    But have there been any fundamental changes  
25 to the format and schedule of the musicians and music

1 played since September '97?

2 A. No.

3 Q. What is the layout of Coco Bongos Cuban Cafe?  
4 Is it laid out like a concert venue?

5 A. No. Well, I mean, you want to talk  
6 specifically? The layout is a little bit different in  
7 Orlando than in Miami.

8 Q. Please.

9 A. In Orlando we have a designated area for a  
10 stage. It's a permanent stage inside the  
11 bar/restaurant. In Miami it changes. We don't have a  
12 permanent stage because sometimes we do the live  
13 performances outside on the terrace, sometimes inside  
14 the restaurant. So especially here in Miami it's set  
15 up to accommodate different types of events and setups  
16 and it's more fluid that way.

17 We have a permanent DJ booth in both  
18 locations, permanent video screens. And, again, in  
19 Miami we have a large oversized screen that is over  
20 the dance floor. In Orlando it's more TV monitors  
21 placed around the bar and restaurant.

22 Q. I'm really asking about, you know, like the  
23 floor plan. Is it laid out like a restaurant? And if  
24 there's differences between the two, let me know.

25 A. Yeah. It's laid out like a restaurant/bar.

1 You know, the bar is a prominent part of both  
2 locations. Miami has -- where Orlando has more of a  
3 distinctive live music area, Miami has more of a  
4 distinctive dance floor area, circular, huge dance  
5 floor in the middle of the property, and tables and so  
6 forth for dining purposes are located around the dance  
7 floor.

8 **Q. In the Orlando club where there's a sort of**  
9 **fixed stage area, is there a separate or special**  
10 **seating for people to watch the band or is it**  
11 **incorporated in the restaurant?**

12 A. It's incorporated in the restaurant seating  
13 downstairs. There's a second level that is used a lot  
14 of times for people to sit and drink and look down on  
15 the band, and then there's a dance floor area right in  
16 front of the stage for dancing purposes.

17 **Q. But there's no seating near the stage or**  
18 **specifically designated for the stage?**

19 A. I don't believe so, no. I don't think they  
20 seat people there. Well, I guess that's certain parts  
21 of the evening. I mean, after the dinner hour is  
22 finished and it does turn in more into a, you know,  
23 night life and we're not serving food, then it would  
24 be designated --

25 **Q. People could move their chairs if they wanted**

1 we were going to have a problem with it.

2 Q. I'll go on to something else for now. This  
3 is the document that I asked you to look at this  
4 morning. Hopefully we've had sufficient time, but  
5 we'll go through it a little more right now. Have you  
6 seen this before?

7 A. Yes.

8 Q. And what is this?

9 A. This is the motion for summary judgment in  
10 the case of Bongo Jeans and Estefan Enterprises.

11 Q. Just based on the title I would think that  
12 this is sort of a document that was filed with the  
13 motion for summary judgment; is that accurate?

14 MS. STETSON: If you know.

15 THE WITNESS: Right.

16 MS. STETSON: You know he's not a  
17 lawyer.

18 THE WITNESS: I don't know.

19 BY MR. SANTUCCI:

20 Q. I just didn't want to be mistaken. Can you  
21 read the title? And that will satisfy me.

22 A. "Defendants' Statement of Undisputed Material  
23 Facts in Support of Defendants' Motion for Summary  
24 Judgment."

25 Q. After taking a look at this, can you tell me

1           A.     Yeah.   Like for liquor sales in 2003  
2 represents \$1,787,980.

3           Q.     Thank you.   I may have some other questions  
4 for you on 7 and 8 either now or at another time.

5           A.     Okay.

6           Q.     Let's get back to Exhibit 6.   We were at  
7 Paragraph 24.   Is there anything else that needs to be  
8 revised in this statement?

9           A.     Not in 24, no.

10                   MS. STETSON:   What paragraph are we up  
11 to?

12                   THE WITNESS:   25, 26, 27.

13                   MS. STETSON:   All this stuff about the  
14 plaintiff we don't care about; right?   So that would  
15 be 25 through 30.

16                   MR. SANTUCCI:   Not necessarily.

17                   MS. STETSON:   Do you need him to  
18 comment on what the plaintiff in this case is doing,  
19 Bongo Jeans?

20                   MR. SANTUCCI:   Well, some of these  
21 paragraphs involve more than just the plaintiff, so to  
22 some extent some of this would be helpful.

23 BY MR. SANTUCCI:

24           Q.     Not all of it is, but to the extent you  
25 know --

1 MS. STETSON: I don't really want him  
2 commenting on what the plaintiff, jean company, is  
3 doing. I mean, you know, we certainly didn't prepare  
4 on that.

5 MR. SANTUCCI: If he doesn't know,  
6 then --

7 MS. STETSON: Do you have any idea what  
8 the Bongo Jeans company is doing since your  
9 litigation?

10 THE WITNESS: I was going to say, I  
11 don't know. I can't say.

12 MS. STETSON: Right. That's stupid.

13 MR. SANTUCCI: Karen, let me ask the  
14 questions.

15 THE WITNESS: So as far as what --  
16 BY MR. SANTUCCI:

17 **Q. What were you up to?**

18 A. 25, 26, 27, 28. I mean, as an example, on 28  
19 if they're no longer selling in these stores I  
20 wouldn't have any knowledge of that. 29, I don't know  
21 whether or not --

22 MS. STETSON: Frank, do you have any  
23 information on what the Bongo Jeans company is doing  
24 today, period?

25 MR. SANTUCCI: Karen, I'll ask the



1 questions.

2 MS. STETSON: No, because I'm about to  
3 instruct him not to answer.

4 MR. SANTUCCI: You can cross, you can  
5 cross.

6 MS. STETSON: Michael --

7 MR. SANTUCCI: If he doesn't know,  
8 he'll tell me he doesn't know. He's a very  
9 intelligent guy.

10 MS. STETSON: It has nothing to do with  
11 intelligence, so don't even put it that way. It has  
12 nothing to do with intelligence. It has to do with,  
13 you know, asking about stuff that he clearly wouldn't  
14 have any knowledge on.

15 MR. SANTUCCI: I'm willing to say that  
16 I'm not interested in 25 through 29.

17 MS. STETSON: Thank you.

18 MR. SANTUCCI: But we're going through  
19 one by one. That's why I gave you this document in  
20 the morning so we didn't have to spend the time going  
21 through it one by one.

22 MS. STETSON: 25 through 30 don't have  
23 to do with us, so if we can do anything to save time  
24 here would be nice.

25 MR. SANTUCCI: I don't care about 30.

1 contacts he's been actually in the past working with  
2 us in looking to open a Bongos in Vegas.

3 Q. I'm just going to stop you right there.  
4 Remember what you were going to say. Just for our  
5 purposes, Bernie Yuman, you said?

6 A. Y-u-m-a-n.

7 Q. Thank you.

8 A. And the last conversation was about a year  
9 ago with the owners of -- a resort called Las Ramblas,  
10 R-a-m-b-l-a-s, a gentleman by the name of Jorge Perez,  
11 and we actually also had a couple of meetings and  
12 discussions with Steve Wynn when he was opening the  
13 Wynn Resort.

14 Q. Anyone else you can think of?

15 A. Pretty much those are the ones.

16 Q. Are there any contracts of any sort or  
17 agreements in place with any of the people or  
18 companies you've mentioned?

19 A. No.

20 Q. Are there any letters of intent?

21 A. No.

22 Q. And I'll go through each one to refresh your  
23 recollection. When did the discussions with Caesars  
24 begin and end? I'll give you a little memory test  
25 here.

1           A.     I'm trying to think.

2                     MS. STETSON:   Only if you remember.  
3     That's all I can say.

4                     MR. SANTUCCI:   Obviously.

5                     MS. STETSON:   No, I don't think it's  
6     obvious.

7                     MR. SANTUCCI:   Are you trying to tell  
8     him that he doesn't remember?

9                     MS. STETSON:   No.   I'm trying to say  
10    that you're asking him about a lot of things that had  
11    we known you were going to ask about we could have  
12    prepared ourselves, and now he's in a situation where  
13    you're basically trying to get him to guess on a lot  
14    of things.

15                    MR. SANTUCCI:   Please don't make  
16    speaking objections, then.   If you have an objection,  
17    please make it.

18                    THE WITNESS:   I'm trying to recall the  
19    year, but it was in or around the time that Gloria  
20    performed at Caesars Palace for a run of shows.  
21    Shortly after the new theater the coliseum opened.  
22    BY MR. SANTUCCI:

23            **Q.     I know exactly when that was.**

24            A.     It was around 2003, 2002, somewhere in  
25    that --

1           Q.    Do you know of any customers that have ever  
2           inquired as to whether or not your company's Mexico  
3           City location has any affiliation with the Coco Bongo  
4           in Cancun?

5                       MS. STETSON:  I'm instructing him not  
6           to answer.

7                       MR. SANTUCCI:  That's not relevant to  
8           confusion?

9                       MS. STETSON:  You know, I'm letting you  
10          go on this confusion even though we've already  
11          designated somebody else for confusion and made them  
12          available and even though it's not on this list of  
13          what Frank is supposed to be here testifying about,  
14          you know, and so I'm not letting you go beyond what  
15          you've already gone over.  He's not here to testify on  
16          behalf of the company on instances of actual  
17          confusion, but beyond that I've already made my  
18          objection on, you know, Mexico.

19                      MR. SANTUCCI:  Can you stipulate that  
20          there'll be no other testimony by this particular  
21          witness on the issue of confusion?

22                      MS. STETSON:  Yeah.  He's not our  
23          confusion witness.

24                      MR. SANTUCCI:  I don't know how you're  
25          going to react, but pay attention.

1 MS. STETSON: I think you do. I think  
2 just by that preface you know how I'm going to react,  
3 but go ahead.

4 BY MR. SANTUCCI:

5 Q. Paragraph 2 of the notice of deposition says  
6 "Plans to open future restaurants, nightclubs, bars or  
7 entertainment venues associated with the marks Bongos  
8 Cuban Cafe (and design) or Bongos Cuban Cafe."

9 Do any of your companies have any plans to  
10 open or license any restaurants, nightclubs, bars,  
11 entertainment venues of any kind associated with the  
12 mark Bongos Cuban Cafe in Mexico?

13 MS. STETSON: Asked and answered. He's  
14 already told you all of the future plans that they  
15 have as far as the Bongos mark. It's been asked and  
16 answered.

17 MR. SANTUCCI: Does your client not  
18 have any intention to open or license an establishment  
19 in Mexico?

20 MS. STETSON: Under the Bongos name?

21 MR. SANTUCCI: If it's asked and  
22 answered I can ask him again.

23 BY MR. SANTUCCI:

24 Q. Can you answer either one of those questions?

25 A. No. The answer is, no, we don't.

1           Q.    You have no intention to open an  
2 establishment under the name Bongos Cuban Cafe in  
3 Mexico City?

4           A.    No.

5           Q.    Are you aware of anyone that has opened an  
6 establishment or plan to open an establishment in  
7 Mexico called Bongos Cuban Cafe?

8           A.    No.

9           Q.    Have you ever seen this photograph?

10                   MS. STETSON:  We're not going to do  
11 this.  I don't understand what you're doing.

12                   MR. SANTUCCI:  I'm going to show him a  
13 photograph --

14                   MS. STETSON:  All right, fine.

15                   MR. SANTUCCI:  -- that was filed in  
16 this case.  It's not a surprise.  I won't be long.

17                   THE WITNESS:  I can come over to you.

18                   MR. SANTUCCI:  Thank you.  This is just  
19 going to take a second to open.  Does this photograph  
20 refresh your recollection in any way.

21                   MS. STETSON:  Maybe you should ask him  
22 if he's ever seen that.  That would be the starting  
23 point.

24                   THE WITNESS:  I have seen that, yes.

25 BY MR. SANTUCCI:

1           Q.     Where is this?

2           A.     That is in the Mexico airport.

3           Q.     What is the trademark being used here?

4           A.     Bongos Cuban --

5                     MS. STETSON:  Objection to form.

6     There's not a trademark being used.

7     BY MR. SANTUCCI:

8           Q.     What does that sign say?

9           A.     The sign says "Bongos Cuban Cafe."

10          Q.     What is this?  Is this a business of any  
11     sort?

12          A.     Yes.

13          Q.     Is it operating?

14          A.     It currently is operating, yes, but not under  
15     that name.

16          Q.     Was the name changed since this picture was  
17     taken, then?

18          A.     Do I need to still look at it?

19                     MS. STETSON:  No.

20                     THE WITNESS:  I got it.

21     BY MR. SANTUCCI:

22          Q.     I think you know what I'm talking about,  
23     don't you?

24          A.     Yeah.

25                     MS. STETSON:  Objection to form.

1 BY MR. SANTUCCI:

2 Q. Was there ever a business that used the mark  
3 Bongos Cuban Cafe in the airport in Mexico City?

4 A. No.

5 Q. Was there one proposed?

6 A. No.

7 Q. Who put this sign up or who authorized it to  
8 be put up?

9 A. The company that operates our establishment  
10 in the airport called Bonguitos Cuban Cafe.

11 Q. How long has that been operating?

12 A. It opened in December of last year.

13 MS. STETSON: That's all that we're  
14 going to talk about it.

15 BY MR. SANTUCCI:

16 Q. Do you think people would be confused by our  
17 client's use --

18 MS. STETSON: Don't answer.

19 BY MR. SANTUCCI:

20 Q. -- of the Coco Bongo mark in the U.S. given  
21 your client's use of their mark in the U.S.?

22 MS. STETSON: What? I want to hear the  
23 question back.

24 (Record read.)

25 MS. STETSON: Could you be more



1 specific? I really don't understand the question.  
2 I'm not going to let him answer in that form.

3 BY MR. SANTUCCI:

4 **Q. More importantly, do you understand the**  
5 **question?**

6 A. No. I'm sorry. I thought I did until he  
7 reread it.

8 MS. STETSON: Yeah. Why don't you say  
9 what marks you're talking about because I'm really  
10 confused what you're saying.

11 BY MR. SANTUCCI:

12 **Q. Do you think that people would be confused by**  
13 **our client's use or continued use of the Coco Bongo**  
14 **mark in the U.S. given your client's use of their**  
15 **mark, Bongos Cuban Cafe, in the U.S.?**

16 MS. STETSON: In the U.S.? Are you  
17 just asking him whether it's likely that those marks  
18 would be confused?

19 BY MR. SANTUCCI:

20 **Q. Do you understand my question?**

21 A. No. I'm sorry.

22 MS. STETSON: I'm a lawyer and I don't  
23 understand it.

24 THE WITNESS: I was expecting your last  
25 part of it to say in Mexico. No, I don't understand

1 it. I'm sorry.

2 MS. STETSON: If you could say it a  
3 little more simply maybe.

4 BY MR. SANTUCCI:

5 Q. Do you think customers would be confused by  
6 our client's use of the Coco Bongo mark in the U.S.  
7 given that your company is using the Bongos Cuban Cafe  
8 mark in the U.S.?

9 MS. STETSON: Are you just asking him  
10 if he thinks those two marks would cause confusion?

11 MR. SANTUCCI: I'm not going to explain  
12 my question to you. I think he understood every time  
13 I said it and you're just interrupting.

14 MS. STETSON: Oh, that's very unfair.  
15 I don't even understand.

16 THE WITNESS: Is it okay for me to  
17 answer?

18 MS. STETSON: If you know what he's  
19 saying, if you're sure you know what he's saying.

20 THE WITNESS: Yes. I do believe that  
21 there would be confusion on the part -- on behalf of  
22 customers by the use of the Bongos -- Coco Bongos mark  
23 in the U.S. because of the strength of what Bongos  
24 Cuban Cafe represents in the United States.

25 BY MR. SANTUCCI:

1           Q.    And "strength" meaning what or how is that  
2           strength acquired?

3           A.    The fact that we've heavily advertised and  
4           marketed the association of the Bongos Cuban Cafe mark  
5           with its owners. You know, there's been over the  
6           eight-plus years, nine-plus years that we've been  
7           operating under the Bongos Cuban Cafe mark, we've done  
8           a lot of work in promoting that logo and that brand.

9           Q.    Any other reasons why you think customers  
10          would be confused?

11          A.    Well, I think that what Coco Bongo represents  
12          and what Coco Bongo does in its property in Mexico is  
13          very similar to what we do here in the United States.

14          Q.    Are there any other reasons why you think  
15          that customers would be confused?

16          A.    I think that summarizes it.

17          Q.    If anything else comes up, just let me know.

18          A.    Okay.

19          Q.    Do you think that people would be confused by  
20          our client's use of the Coco Bongo mark anywhere given  
21          your client's use -- given the fact that that sign was  
22          up saying "Bongos Cuban Cafe" in Mexico?

23                       MS. STETSON: Wait. I want to hear  
24          that again.

25          BY MR. SANTUCCI:

1           Q.    Do you think that people would be confused by  
2 your mark -- let me make this very simple. Do you  
3 think customers would be confused by a Bongos Cuban  
4 Cafe sign up in the Mexico City airport given our  
5 client's use of its Coco Bongo mark in Mexico and the  
6 U.S.?

7                   MS. STETSON:  Objection to form.

8                   THE WITNESS:  I'm sorry. I'm not  
9 really understanding -- that one I apologize on. This  
10 time I'm not getting it.

11 BY MR. SANTUCCI:

12           Q.    You told me that you think customers would be  
13 confused by our client's use of the Coco Bongo mark  
14 because of your client's use. Do you think the  
15 reverse is true? Do you think that --

16           A.    But we're not using that mark in Mexico.

17           Q.    Can you explain to me why that sign was up?

18                   MS. STETSON:  Asked and answered. Go  
19 ahead.

20 BY MR. SANTUCCI:

21           Q.    What is the name of the business that put  
22 that sign up?

23           A.    The name of the company that --

24           Q.    Yes.

25           A.    R-e-s A-r-e-o-s Comidas.

1 Q. O-s?

2 A. It's A-e-r-o-s C-o-m-i-d-a-s.

3 Q. Are they a Mexican corporation?

4 A. I don't know.

5 Q. And how long did they have that sign up if  
6 you know?

7 A. Not long.

8 Q. Did your company ask them to take it down?

9 A. Absolutely. They put that sign up without  
10 our permission or our knowledge.

11 Q. And do you know approximately how long the  
12 sign was up?

13 A. As soon as we became aware that the sign had  
14 been put up we immediately had them take it down.

15 Q. Did your company have any prior business  
16 relationship with Aeros Comidas?

17 A. No.

18 MS. STETSON: I'm sorry. Prior to  
19 what?

20 MR. SANTUCCI: Prior to that sign going  
21 up.

22 THE WITNESS: No. Well, we had an  
23 agreement in place with them, but our location in the  
24 Mexico City airport under the Bonguitos name was our  
25 first property that we were in business with them on.

1 MS. STETSON: You're just asking him if  
2 there was a pre-existing relationship prior to the  
3 sign going up?

4 MR. SANTUCCI: Yes.

5 THE WITNESS: Yes.

6 BY MR. SANTUCCI:

7 Q. And what was the agreement for? What were  
8 they doing?

9 A. They were going to operate airport  
10 concessions.

11 MS. STETSON: I don't want you to get  
12 into more than that.

13 THE WITNESS: Okay.

14 MS. STETSON: That's enough for his  
15 purposes.

16 BY MR. SANTUCCI:

17 Q. I'd like you to continue your answer.

18 MS. STETSON: I'm instructing him not  
19 to answer.

20 MR. SANTUCCI: Thank you.

21 BY MR. SANTUCCI:

22 Q. Have you ever seen any publicity or newspaper  
23 articles of any sort or magazine articles, publicity  
24 or media, in which the Coco Bongo mark was being  
25 confused with the Bongos Cuban Cafe mark?

1 of the fact that the court in your case found in your  
2 favor and said that they're not similar?

3 A. Again, I'd have to refer back to it just  
4 to -- if I can see it and look at it because I don't  
5 remember specifically.

6 Q. This is a document you produced in this case  
7 or your company produced, and I'll just pull it out.

8 MS. STETSON: It's a public decision.  
9 Isn't it like a reported decision?

10 MR. SANTUCCI: You guys produced it.  
11 BY MR. SANTUCCI:

12 Q. I'm going to show you what's Bates marked as  
13 EEI, Estefan Enterprises, Inc., 0474. Was that the  
14 decision in your case?

15 MS. STETSON: He's not a lawyer.

16 MR. SANTUCCI: Ms. Abad is, so I'll  
17 have these questions for her, too, then.

18 MS. STETSON: She's not our witness on  
19 that. Do you know if that's the decision?

20 THE WITNESS: If you're telling me it  
21 is, I guess it is.

22 MS. STETSON: No, that's not the  
23 question.

24 THE WITNESS: I don't know.

25 MS. STETSON: Don't just agree with

1 anything he says, just if you know it.

2 THE WITNESS: I don't know it.

3 BY MR. SANTUCCI:

4 Q. I'll take that back.

5 A. Sorry.

6 Q. That's okay.

7 A. If I read it I suppose I can --

8 (Exhibit No. 9 marked.)

9 BY MR. SANTUCCI:

10 Q. Let me show you what we've marked as  
11 Deposition Exhibit No. 9. These are just my  
12 handwritten notes as an example. In Example 1, do you  
13 think those marks are similar in sight or appearance  
14 or meaning?

15 A. Yes.

16 Q. You do. But in the Caruso litigation you  
17 said -- you took the position they weren't.

18 A. Well, but, again, you're talking about --

19 Q. I'm just talking about the sight, sound and  
20 meaning --

21 A. Right.

22 Q. -- having nothing to do with the goods --

23 A. Right.

24 Q. -- just in a vacuum.

25 A. Right. But what I'm saying, when you're



1 MR. SANTUCCI: The witness said there  
2 were none, but the interrogatories say there are. I  
3 don't want to make a big deal of it.

4 MS. STETSON: Yeah, I know. I mean,  
5 I'm sure we probably did have a trademark search.

6 MR. SANTUCCI: I haven't seen them  
7 produced.

8 MS. STETSON: Okay.  
9 BY MR. SANTUCCI:

10 Q. Can you look at Interrogatory No. 9 in your  
11 answer?

12 A. Yes.

13 Q. Can you tell me, are there any other people  
14 that you intend to call during the testimony phase of  
15 this proceeding?

16 MS. STETSON: Objection. You know,  
17 he's not in a position to answer that. It's beyond  
18 the scope of the notice. We have absolutely no way  
19 of, you know, knowing that, and I'm objecting to the  
20 extent it's work product.

21 MR. SANTUCCI: I have a right to know,  
22 especially at this late date.

23 MS. STETSON: To the extent that it is.  
24 But, in any event, you know, it's beyond the scope of  
25 the notice and, you know, he wouldn't know. He can't

1 answer the question. He can't answer that question on  
2 behalf of the company.

3 MR. SANTUCCI: He answered it the first  
4 time. Why can't he tell me if it's complete?

5 MS. STETSON: He's not prepared today  
6 to say whether there's anybody else other than what  
7 was decided at that time that's going to be  
8 testifying.

9 MR. SANTUCCI: Let him say that.  
10 You're testifying for him once again.

11 MS. STETSON: Michael, it's the same  
12 objection. I'm not letting him answer.

13 BY MR. SANTUCCI:

14 Q. Sir, do you know of any other witnesses -- do  
15 you know of any way in which this interrogatory answer  
16 should be modified?

17 MS. STETSON: I'm going to instruct him  
18 not to answer. There's no way to answer that.

19 MR. SANTUCCI: You're going to get your  
20 witnesses stricken.

21 MS. STETSON: Really?  
22 BY MR. SANTUCCI:

23 Q. No. 16. Can you read the question and the  
24 answer, please?

25 A. 16, you said?

1 Drive magazine cover.

2 BY MR. SANTUCCI:

3 Q. Can you tell me what those are?

4 A. Ocean Drive magazine covers.

5 Q. And I'll also submit to you that that was  
6 produced in response to a request to produce magazines  
7 or other print media advertisement using the Bongos  
8 Cuban Cafe mark.

9 A. Okay.

10 Q. When you're looking through them, can you pay  
11 particular attention to the dates on the covers and  
12 the cover models or people shown?

13 A. All right, okay.

14 Q. During those time periods, were there any  
15 other Ocean Drive magazine advertisements?

16 MS. STETSON: You're asking him to  
17 answer that question?

18 BY MR. SANTUCCI:

19 Q. Well, is your production of documents for  
20 that category complete in this case?

21 MS. STETSON: He wouldn't have any  
22 ability -- I'm going to instruct him not to answer.  
23 Again, it's beyond the scope of the notice.

24 MR. SANTUCCI: How do I know if there  
25 are any other documents that you guys are withholding

1 that I asked for? Because we've already identified  
2 some.

3 MS. STETSON: I don't know. Maybe you  
4 could have put on your notice the completion of the  
5 document production if you wanted to go over all the  
6 document production with him. We certainly didn't  
7 prepare to do that today.

8 MR. SANTUCCI: I think it's within the  
9 scope of my notice.

10 MS. STETSON: Well, I don't think it is  
11 and I'm instructing him not to answer. Again, it's  
12 something that we would need to prepare for. He's not  
13 going to know off the top of his head. There's no  
14 pending question, Frank. Let's go on.

15 BY MR. SANTUCCI:

16 Q. Can you tell me whether you recognize the  
17 people on the covers of those magazines?

18 A. Certainly, yes.

19 Q. Would you agree that they're all  
20 Latin-American females?

21 A. Yes.

22 Q. Was there any intent on the part of your  
23 company to advertise in Ocean Drive magazine issues  
24 that had beautiful Latin-American women and  
25 celebrities on the cover?

1           A.     Well, we are the co-publisher of that  
2 magazine.

3                   MS. STETSON:   What is the question,  
4 though?

5 BY MR. SANTUCCI:

6           **Q.     The question is, are there any others during**  
7 **those time periods that you advertised in?**

8                   MS. STETSON:   No, that's not the  
9 question.   The question --

10                  MR. SANTUCCI:   I'll reask it, then.  
11 I'll ask this.

12 BY MR. SANTUCCI:

13           **Q.     Are there any other Ocean Drive magazines**  
14 **during that time period that you know of that you ran**  
15 **Bongos Cuban Cafe ads in?**

16           A.     We --

17                  MS. STETSON:   Could you possibly know  
18 that?

19                  MR. SANTUCCI:   Please stop talking,  
20 Ms. Stetson.

21                  MS. STETSON:   Michael --

22                  MR. SANTUCCI:   This is the 20th time  
23 you've coached this witness.

24                  MS. STETSON:   You can yell all you  
25 want.   I'm going to do whatever I think is necessary

1 to protect my client; all right?

2 MR. SANTUCCI: Making speaking  
3 objections and coaching is not permitted as you know.

4 MS. STETSON: I'm asking him if there's  
5 any possible way he could know the answer to that  
6 question without researching it.

7 MR. SANTUCCI: I didn't need to ask  
8 that question.

9 BY MR. SANTUCCI:

10 Q. Can you answer the question?

11 A. You're asking me if --

12 Q. If there were any other Ocean Drive magazines  
13 during that time period --

14 A. So you're asking for the period of 2003 to  
15 the period of 200 -- well, no, these aren't --

16 Q. I'll give the date.

17 MS. STETSON: I'm instructing him not  
18 to answer, so that's it on that. Thank you. You had  
19 another question that you never got the answer to, but  
20 I guess you don't want that one, and that's fine.

21 MR. SANTUCCI: What will you let him  
22 answer?

23 MS. STETSON: Something about  
24 targeting, was there a conscious effort to, you know,  
25 only run ads where there was a female Latin on the

1 cover or something like that. I don't think he  
2 answered that question. I think that would be all  
3 right to ask --

4 MR. SANTUCCI: Why don't you just keep  
5 testifying.

6 MS. STETSON: -- because that would be  
7 marketing.

8 MR. SANTUCCI: No. You just keep  
9 testifying for him.

10 MS. STETSON: Because that would be  
11 marketing.

12 MR. SANTUCCI: Again, we'll resolve  
13 this on our motion to compel, but you still don't  
14 agree that you're not allowed to instruct your client  
15 not to answer?

16 MS. STETSON: I'm not going to argue  
17 with you.

18 BY MR. SANTUCCI:

19 Q. I'm going to show you what was produced by  
20 your company and Bates stamped 0005 through 0014, if  
21 you can take a look at that. Have you ever seen that  
22 document before?

23 MS. STETSON: What have we here? Is  
24 this also something that you don't have another copy  
25 of?

1 MR. SANTUCCI: Right.

2 MS. STETSON: Well, it depends on what  
3 it is, so I'm not letting him answer that question.

4 MR. SANTUCCI: Okay.

5 MS. STETSON: It could be covered by  
6 privilege or who knows.

7 BY MR. SANTUCCI:

8 Q. Can you look at No. 19 and your answer there,  
9 too?

10 MS. STETSON: What is the question?

11 MR. SANTUCCI: I'm waiting until he's  
12 done reading it.

13 THE WITNESS: Okay.

14 BY MR. SANTUCCI:

15 Q. Is there a settlement agreement that exists  
16 with Michael Caruso & Company and one of your  
17 companies?

18 A. I believe so, yes.

19 Q. Do you know whether or not your company  
20 produced it in this case?

21 A. I'm not aware.

22 Q. I'm just curious. Why was there a need for a  
23 settlement agreement if you guys won the case?

24 A. Again, you're asking me to recall something  
25 that was 10 years ago. So if I could review the



1 settlement agreement I could better answer that  
2 question for you.

3 Q. Do you know what any of the terms are in the  
4 settlement agreement?

5 MS. STETSON: I'm going to instruct him  
6 not to answer because I've not seen the document.

7 MR. SANTUCCI: Don't give me a reason.

8 MS. STETSON: Why not? I am going to  
9 give you a reason.

10 MR. SANTUCCI: You're not allowed to  
11 instruct him not to answer, so that's enough for me  
12 for my motion to compel.

13 MS. STETSON: Fine. It may be  
14 confidential. So the fact that we have not seen it --  
15 we'd need to see it before we could answer questions  
16 about it.

17 BY MR. SANTUCCI:

18 Q. Take a look at Interrogatory No. 20, please,  
19 and your answer. You know what? You answered this  
20 already. We'll skip that. Go to No. 23. Basically  
21 it asks whether there have been any experts that have  
22 been retained by your company in this case. The  
23 answer was "None retained at this time."

24 Have there been any retained since you signed  
25 these interrogatories?

1 litigation?

2 A. I would not be able to answer that.

3 Q. And is that your signature on Page 10?

4 A. Yes.

5 Q. Did the court in this case render any sort of  
6 decision or opinion that you know of?

7 A. I don't recall.

8 Q. Is there any sort of organizational chart  
9 that exists which shows the relationships between  
10 Estefan Enterprises, Inc., Bongos Cuban Cafe, Inc., or  
11 Bongos Cuban Cafe Miami, Inc.? Any document that's  
12 somewhat like an organizational chart or explains the  
13 relationships between those companies?

14 A. That currently exists? I don't think there  
15 is.

16 Q. Or that's kept in a file somewhere?

17 A. I don't think so.

18 Q. Does your company claim any exclusive right  
19 to use the term "Bongos Cuban Cafe" in connection with  
20 the sale of any sort of clothing items?

21 A. The exclusive right using our trademark  
22 Bongos Cuban Cafe?

23 Q. Yes.

24 A. Well, we have the exclusive right to the  
25 trademark.

1 MS. STETSON: What item does this  
2 relate to? I'm going to instruct him not to answer  
3 unless you can tell me what it relates to on the  
4 notice. Michael?

5 MR. SANTUCCI: I'm looking at the  
6 notice.

7 MS. STETSON: All right.

8 MR. SANTUCCI: I don't think I have to  
9 show you that.

10 MS. STETSON: I understand your  
11 position.

12 MR. SANTUCCI: But this is a general  
13 list of subject matter areas.

14 MS. STETSON: I understand your  
15 position.

16 MR. SANTUCCI: No. 12.

17 MS. STETSON: No. 12 we've objected to.

18 MR. SANTUCCI: 25, 27, 33.

19 BY MR. SANTUCCI:

20 Q. Again, if you can answer, does your company  
21 claim any exclusive rights to use the mark Bongos  
22 Cuban Cafe in connection with any clothing items  
23 whatsoever?

24 MS. STETSON: That's a fair question.

25 THE WITNESS: For merchandise, you're

1 asking, that we sell in the restaurants?

2 BY MR. SANTUCCI:

3 Q. Well, for any sort of clothing?

4 A. Well, yeah. For the merchandise that we sell  
5 inside the restaurants, yes.

6 Q. So the only way you would object is if  
7 someone was selling the same merchandise that you sell  
8 in the restaurant?

9 MS. STETSON: Calls for a legal  
10 conclusion.

11 BY MR. SANTUCCI:

12 Q. Now, I'm not trying to categorize it as  
13 merchandise promotional or any sort. I'm just asking  
14 whether or not your company claims any exclusive  
15 rights whatsoever to use its mark in connection with  
16 the sale of any sort of clothing?

17 MS. STETSON: Objection. Calls for a  
18 legal conclusion.

19 BY MR. SANTUCCI:

20 Q. You can answer if you can. It's just a  
21 matter of what your company wants and doesn't want or  
22 objects to or doesn't object to.

23 THE WITNESS: Well, she's objecting to  
24 me answering.

25 MS. STETSON: No. I'm not instructing

1 you not to answer, but I'm saying that it's an  
2 inappropriate question because it calls for a legal  
3 conclusion.

4 BY MR. SANTUCCI:

5 Q. You can answer it --

6 MS. STETSON: That's an objection for  
7 the record.

8 BY MR. SANTUCCI:

9 Q. -- if you have the knowledge.

10 MS. ABAD: If you have the knowledge.

11 THE WITNESS: I don't know for sure.

12 BY MR. SANTUCCI:

13 Q. Who would know that?

14 A. Whether we have the exclusive right?

15 Q. Whether you're claiming the exclusive right,  
16 any exclusive rights to use the mark Bongos Cuban Cafe  
17 in connection with the sale of any kind of clothing?

18 A. Who would know that?

19 Q. Yes.

20 A. I'll have to defer to our attorneys.

21 Q. Does your company object to our client's use  
22 of its mark Coco Bongo in connection with the sale of  
23 any sort of clothing?

24 MS. STETSON: I'm sorry. I didn't get  
25 the question.

1 BY MR. SANTUCCI:

2 Q. I asked you about some surveys before, but  
3 I'm just going to get more detailed and be specific.  
4 Has your company conducted any surveys relative to the  
5 issue of the likelihood of confusion between our  
6 client's mark and your mark?

7 A. No.

8 Q. Has your company conducted any surveys  
9 relative to the strength or consumer impression of its  
10 own mark?

11 A. No.

12 MS. STETSON: Aren't these all like  
13 lesser included to the answer that we haven't --

14 MR. SANTUCCI: Please.

15 BY MR. SANTUCCI:

16 Q. And we're going to revisit the issue of some  
17 questions, but your attorney mentioned that she would  
18 bring you back for deposition. I don't like it that  
19 way. I'd like the answers now. But just as a  
20 predicate to that I'd like to ask you, do you have  
21 knowledge of --

22 MS. STETSON: No, we're not doing that.

23 MR. SANTUCCI: Let me ask my question.

24 BY MR. SANTUCCI:

25 Q. Do you have knowledge of any third party's

1 use of the Coco Bongo mark? And by "third party" I  
2 mean anyone other than my client anywhere in the  
3 world.

4 MS. STETSON: I'm instructing him not  
5 to answer because it won't stop there. I already told  
6 you on that subject we'll set it forth in a notice and  
7 we'll figure out who we're going to designate.

8 MR. SANTUCCI: If he has knowledge  
9 there's no basis for your objection.

10 MS. STETSON: Michael, I've already  
11 said what I'm going to say on it. He's not answering  
12 those questions.

13 BY MR. SANTUCCI:

14 Q. And do you have --

15 MS. STETSON: He's not answering any  
16 questions on that.

17 MR. SANTUCCI: I want each one on the  
18 record.

19 BY MR. SANTUCCI:

20 Q. Do you have knowledge of any pending  
21 litigation involving any of your companies?

22 MS. STETSON: I'm instructing him not  
23 to answer.

24 MR. SANTUCCI: And just to be clear --

25 MS. STETSON: Michael --

1 MR. SANTUCCI: Just to be clear, I'm  
2 trying to create a record and get out of here; okay?  
3 Just to be clear, you're not letting him answer the  
4 question as to whether he has knowledge of that issue?

5 MS. STETSON: You have as much of a  
6 record as you need.

7 MR. SANTUCCI: Karen, please be sure,  
8 certain about -- please be clear about your  
9 instruction.

10 MS. STETSON: I'm not letting him  
11 answer questions that aren't on the notice. It  
12 doesn't have to do with whether he has knowledge or  
13 not. Do you understand? It has to do with the fact  
14 that for the 30(b)(6) notice we have the right to know  
15 in advance the subject matter so that we can properly  
16 prepare. Whether he has any knowledge or not, he has  
17 a right to prepare.

18 MR. SANTUCCI: I disagree with you.  
19 Let me move on.

20 MS. STETSON: Okay.  
21 BY MR. SANTUCCI:

22 Q. Do you have any knowledge of any other users  
23 of the Bongos Cuban Cafe mark other than your  
24 company's?

25 MS. STETSON: Instruct him not to



1 answer. It's the same issue.

2 BY MR. SANTUCCI:

3 Q. Do you have any knowledge of any third-party  
4 use of any Bongo-related marks other than your  
5 company?

6 MS. STETSON: Instruct him not to  
7 answer. You have enough of a record here, Michael.  
8 It's absurd. I don't know how it can be any clearer.

9 MR. SANTUCCI: I'll terminate the  
10 deposition, we'll take up our issues, and hopefully  
11 I'll see you again. You've been a complete gentleman.  
12 Thank you.

13 THE REPORTER: Michael, are you  
14 ordering the deposition?

15 MR. SANTUCCI: Yes.

16 MS. STETSON: Let me just make one  
17 statement.

18 MR. SANTUCCI: Do you want to stay on  
19 the record?

20 MS. STETSON: Yeah, for a minute. So  
21 you're concluding today's deposition on the subject  
22 matters that are in your notice; correct?

23 MR. SANTUCCI: I'm terminating my  
24 deposition because -- terminating the deposition  
25 because of all of the instructions not to answer.

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