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Filing date: **09/27/2017**

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

Proceeding	91225850
Party	Defendant Ideavillage Products Corp.
Correspondence Address	JASON M DRANGEL EPSTEIN DRANGEL LLP 60 E 42ND STREET, SUITE 2520 NEW YORK, NY 10165-0011 UNITED STATES Email: mail@ipcounselors.com
Submission	Testimony For Defendant
Filer's Name	Jason M. Drangel
Filer's email	mail@ipcounselors.com
Signature	/Jason M. Drangel/
Date	09/27/2017
Attachments	Notice of Filing of Deposition of Nick Musteen.pdf(173404 bytes ) Official Transcript_Deposition of Nick Musteen.pdf(158884 bytes ) Musteen Deposition_Exhibit 6.pdf(403363 bytes ) Stipulation to Waiver of Reading and Signature_Musteen Deposition.pdf(112307 bytes )

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

DEXAS INTERNATIONAL, LTD.,

Opposer,

v.

IDEAVILLAGE PRODUCTS CORP.,

Applicant.

**Opposition No.: 91225850**

**Application Ser. No. 86/472355  
[SNACKEEZ DUO]**

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**APPLICANT’S NOTICE OF FILING OF DEPOSITION OF NICK MUSTEEN**

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PLEASE TAKE NOTICE that pursuant to 37 CFR § 2.125(c), Applicant filed a PDF copy of the original certified transcript of the testimony deposition of Nick Musteen, together with copies of the documentary exhibits,<sup>1</sup> with the Trademark Trial and Appeal Board via ESTTA.

Dated: September 27, 2017

Respectfully submitted,

**EPSTEIN DRANGEL, LLP**

By: /s/ Jason M. Drangel  
Jason M. Drangel  
William C. Wright  
Ashly E. Sands  
Kerry B. Brownlee  
60 East 42<sup>nd</sup> Street, Suite 2520  
New York, NY 10165  
Tel: 212-292-5390

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<sup>1</sup> Exhibit 7 is Confidential – Attorney’s Eyes Only, and is being submitted separately using the “Confidential” selection available in ESTTA.

Fax: 212-292-5391  
Email: [mail@ipcounselors.com](mailto:mail@ipcounselors.com)  
*Attorneys for Applicant*

\*\*\*\*\*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing document was emailed on September 27, 2017 to Opposer's attorney of record:

Daniel V. Thompson  
The Law Office of Daniel V. Thompson, P.C.  
9535 Forest Lane, Suite 208  
Dallas, TX 75243  
Email: [dt@dfwpatent.com](mailto:dt@dfwpatent.com)

BY: /s/ Kerry B. Brownlee  
Kerry B. Brownlee

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

-----X

3 DEXAS INTERNATIONAL, LTD.,

4 Opposer,

5 VS.

6 IDEAVILLAGE PRODUCTS CORP.,

7 Applicant.

8 Opposition No.: 91225850  
9 Application Ser. No.: 86/472355  
[SNACKEEZ DUO]

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11 585 South Royal Lane  
12 Coppell, Texas

13 August 21, 2017  
14 11:26 a.m.

15 ORAL DEPOSITION OF NICK MUSTEEN, produced as a  
16 witness at the instance of the Applicant, and duly  
17 sworn, was taken in the above-styled and numbered cause  
18 before STEFANIE COX, CSR in and for the State of  
19 Texas, reported by machine shorthand, at the offices of  
20 Dexas International, Ltd., pursuant to the Federal Rules  
21 of Civil Procedure and the provisions stated on the  
22 record or attached hereto; signature having been waived.

20

21

22

23 ELLEN GRAUER COURT REPORTING CO. LLC  
24 126 East 56th Street, Fifth Floor  
25 New York, New York 10022  
212-750-6434  
REF: 115558C

1    A P P E A R A N C E S :

2

3    FOR THE OPPOSER:

4           Mr. Mark Richmond

5           DEXAS INTERNATIONAL, LTD.

6           585 South Royal Lane

7           Suite 200

8           Coppell, Texas 75019-9478

9           (469) 635-8100

10          (469) 635-8118 Fax

11          Mrichmond@dexas.com

12

13    FOR THE APPLICANT:

14          Mr. Jason M. Drangel

15          EPSTEIN DRANGEL, L.L.P.

16          60 East 42nd Street

17          Suite 2520

18          New York, New York 10165

19          (212) 292-5390

20          (212) 292-5391 Fax

21          Jdrangel@ipcounselors.com

22

23

24

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1 ----- I N D E X -----

2	WITNESS	EXAMINATION BY	PAGE
3	NICK MUSTEEN	MR. DRANGEL	4, 56
4		MR. RICHMOND	55

5

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7 ----- E X H I B I T S -----

8	MUSTEEN	DESCRIPTION	FOR I.D.
9	Exhibit 6	Notice of Deposition	5
10	Exhibit 7	Testimony Declaration of	14
11		Nick Musteen; Exhibit A	
12		Photo Copies Bates-Stamped	
13		DEX00060; Exhibit B Photo	
14		Copy; Exhibit C	
15		DEX00019-DEX00026; Exhibit	
16		D DEX00016-DEX00018;	
17		Exhibit E DEX007-DEX00010;	
18		Exhibit F DEX0004-DEX0006;	
19		Exhibit G DEX0001; Exhibit	
20		H DEX00027, DEX00028;	
21		Exhibit I DEX0002; Exhibit	
22		J; Exhibit K, Purchase	
23		Orders List DEX00101-	
24		DEX00150	

25

(EXHIBITS TO BE PRODUCED)

## P R O C E E D I N G S

(Reporter's time: 11:26 a.m.)

NICK MUSTEEN,

having been first duly sworn, testified as follows:

## EXAMINATION

BY MR. DRANGEL:

Q. Thank you for being here, Mr. Musteen. Have you ever had your deposition taken before?

A. Yes.

Q. Okay. When was that?

A. I can't recall. Mark would know that.

Q. Okay. So it was in connection with a matter for Dexas?

A. Yes.

Q. Okay. Was it a trademark lawsuit?

A. Again, I have to -- I can't remember which one it was on that one.

Q. Okay. How many times have you had your deposition taken?

A. For Dexas?

Q. Yes.

A. Maybe twice.

Q. Okay. And outside of Dexas, you've had your deposition taken?

A. Oh, yes. Previous employers, a couple of

1 MUSTEEN

2 times.

3 Q. Okay.

4 A. And that wasn't patent or anything. That was  
5 something weirdly federal.

6 Q. Okay. So you're an old pro. You understand  
7 the process?

8 A. Yes.

9 Q. Okay.

10 MR. DRANGEL: And, again, we're going to  
11 be ruled by the Federal Rules and the TTAB rules with  
12 regard to objections.

13 MR. RICHMOND: Agreed.

14 MR. DRANGEL: Okay.

15 (Exhibit No. 6 marked.)

16 Q. (BY MR. DRANGEL) I'm going to hand you  
17 Applicant's Exhibit 6, which is a notice of deposition.  
18 I don't know if you've seen this before, but I just want  
19 to confirm that you're here voluntarily, pursuant to the  
20 notice of deposition, and you're here to testify on  
21 behalf of Dexas; is that correct?

22 A. Correct.

23 Q. Okay. That's yours.

24 Okay. Can you just give me your  
25 educational background, starting after high school.



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2           A.    High school, I went to the University of  
3    Arkansas, and have -- and also have continued that  
4    education through -- called online and work-provided  
5    education such as more bottom line buying, Dale  
6    Carnegie -- I'm a Dale Carnegie graduate.

7                        I'm trying to think.  There's been so  
8    many different classes over the last 20-something years.

9           Q.    That's fine.

10                       When did you graduate college?

11          A.    '90- -- I have to think on which kid.  '93.

12          Q.    Okay.  And what was your first job after that?

13          A.    This really, actually, does get complicated.  
14    I got to think back because there was a lot of  
15    job-hopping.

16          Q.    Was it all sales jobs?

17          A.    No.  The first one -- it was K-Mart.  Sorry.  
18    K-Mart store management.

19          Q.    Okay.  When did you have your first sales job?

20          A.    Again, I measure this by kids.  '90- --

21          Q.    Approximately is fine.

22          A.    1996.

23          Q.    Okay.  And who was that for?

24          A.    That was for Walmart.

25          Q.    Okay.  And what was your position for --

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A. Buyer.

Q. Buyer.

And then what was your job after that,  
next job?

A. Let's see. Walmart to Fleming in 2000 --  
yeah. Walmart to Fleming in 2000.

Q. What's Fleming?

A. Fleming was a -- they own Piggly Wiggly and --

Q. Okay. And so you were a buyer for them, too,  
or --

A. Yeah.

Q. Okay. What type of buyer were you for  
Walmart?

A. Walmart was dry grocery. I started out in  
beverages, soft drinks, ice cream, dairy, and then moved  
into beans, rice, pasta, spices, and eventually dog  
food, back to sodas.

Q. Okay. That's a lot of different specialties.

A. Oh, yeah.

Q. Okay. And then after Fleming?

A. Fleming, this is where I started job-hopping.  
This was fun.

Fleming --

Q. Well, mostly -- you don't even have to --

1 MUSTEEN

2 Was it mostly sales and buyers?

3 A. Everything has been -- well, after Fleming,  
4 that's when I 100 percent went into basic sales.

5 Q. Uh-huh.

6 A. So it was CHEP, and then -- no, I'm sorry.  
7 Fiskars, then CHEP, HOSA, which is a  
8 floral company. Oh, I'm sorry. That was backwards.

9 HOSA, then CHEP, and then I did do  
10 transportation for a while, because I had Bell's palsy,  
11 so I couldn't do anything.

12 And then Philips Electronics, and did  
13 sales to Walmart, ironically. And then came here, left  
14 Philips to come here.

15 Q. Okay. What year did you join Dexas?

16 A. 2006.

17 Q. And what were your job responsibilities when  
18 you joined Dexas?

19 A. When I started, I ran the Walmart account and  
20 did all of our data analyzation.

21 Q. Data what?

22 A. Analyzation.

23 Q. Okay. And what was -- what types of products  
24 were you selling to Walmart in 2006?

25 A. Walmart was cutting boards and office

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supplies.

Q. Okay. And do you still sell to Walmart?

A. I do.

Q. And how has that changed? What types of products?

A. We've added pet supplies.

Q. Okay. So how did your responsibilities change at Dexas since 2006?

A. Wow. So I've added -- well, basically I head up food drug en masse, not just Walmart now. I'm not sure when he left, but when our VP of sales left, three -- three or four years ago, he -- things changed and so I added a lot more account responsibility.

Q. Okay. So how many people -- well, you're director of sales. So you are in charge of sales now, right?

A. For food drug mass, correct.

Q. What are the other sales?

A. We have specialty, which is -- specialty is like Sur La Table, William Sonoma. They're really high end grocery -- or retail stores.

And then we have -- just recently we've just taken pets, and that's -- it's a whole section now that's by mail.

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Q. Someone is in charge of --

A. Yes.

Q. Someone else is in charge of pets?

A. Correct. That's Mel Abernathy.

Q. So you have three different --

A. We have three directors of sales. Yeah.

Q. Okay. When did you break out pets?

A. I want to say July of last year --

Q. Of 2000- --

A. -- if I remember correctly.

Q. '15?

A. '16.

Q. 2016. Sorry.

So before that, were you in charge of  
pets.

A. No. We all at the -- it was just Ellis,  
because we hadn't had Scott on board yet, so we all  
three divided up and conquered everything.

Q. Got it.

So you handled -- you handle sales of --  
well, how do you break down the products that are sold  
by Dexas?

MR. RICHMOND: Objection, form.

Q. (BY MR. DRANGEL) How would you characterize

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them by category? Pet? Consumer? Anything else?

MR. RICHMOND: Objection, form.

A. Pet, specialty, and mass.

Q. (BY MR. DRANGEL) Well, that's who you sell it to you.

How about the products that you sell, you sell pet products, you sell --

A. Pet, housewares, and office.

Q. Okay. Those are the three?

A. Yeah.

Q. Okay. And you're responsible for sale of all three of those?

A. Yes.

Q. Okay.

A. We actually all are, but there's certain divisions that we -- we just don't cross lines.

Q. Okay.

A. For product, like -- I still sell pet to Walmart, but Mel has no input on my pet sales to Walmart.

Q. Okay. And what are your responsibilities with regard to sales? How do you go about, you know, your -- if you're in charge of food, drug, and mass, how do you undertake that process of selling Texas products?

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A. It's a combination of calling on them personally, managing the accounts through reps, and just knowing the business contacts through the -- the last 20 years.

Q. Okay. Are attendance at trade shows an important part of your business?

A. Oh, yes.

Q. Okay. When did you start going to trade shows for Dexas?

A. I want to say nine years ago, eight years. It was when we got back into -- when we got into pets, we started exhibiting. There was a hiatus before I came on for a while. And then we started with pet, which was in San Diego, it launched. And then that following years was housewares. We went back into housewares again.

So it's been, yeah, coming on nine years.

Q. Okay. So in the last four or five years, what shows do you consistently attend?

A. Ambiente in Germany -- Frankfurt, Germany.

Q. What's the purpose of that show?

A. That's housewares.

IHA in Chicago.

Q. That International Housewares Association?

A. International Housewares Association.

## 1 MUSTEEN

2 Global Pet in Orlando, in Florida, and  
3 SuperZoo in -- it's been in Vegas the last couple of  
4 years.

5 Q. Okay. So on a year-to-year basis, those are  
6 the shows that you attend?

7 A. Yeah. Those are must -- must-attends.

8 Q. Okay.

9 A. And there's a bunch of regionals that I don't  
10 attend to, because having the account base I have,  
11 they -- it's not applicable.

12 Q. Okay. And you're responsible for selling all  
13 of the pet products for Dexas?

14 A. If the customer will buy them, yes.

15 Q. Okay. And the same thing for home ware  
16 products?

17 A. Uh-huh. And office.

18 Q. Okay.

19 A. Correct.

20 Q. When did you first learn of a Dexas product  
21 called Snack-DuO?

22 A. Like an exact date?

23 Q. Approximate.

24 A. Oh. The Snack-DuO, not the HDuo. I'm sorry.

25 The Snack-DuO, conceptually, about March



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2 of -- was that the show?

3 We were at Global, and we had launched  
4 the -- we had launched the Snack-Duo for pets. And  
5 that's when Jeff Dennis poured kibble into the one side  
6 and was figuring out how to make a lid. I want to say  
7 that was -- that had to be February or March 20- -- I  
8 think that was 2014.

9 Q. Did the product exist, or that's when you --

10 A. It was --

11 Q. -- decided you needed to --

12 A. -- the product as -- as HDuo existed.

13 Q. Right.

14 A. But then Jeff came up with that idea. And I  
15 can't remember if it was -- if that was Global 2013 or  
16 Global 2014.

17 Q. Okay.

18 A. I'd have to --

19 Q. I'm going to hand you your declaration just so  
20 you --

21 A. I have it.

22 (Exhibit No. 7 marked.)

23 Q. Let me give you a copy. We're going to  
24 designate this one as A -- Applicant 7.

25 Okay. Are you familiar with this

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document?

A. Yes.

Q. Okay. And you viewed it before signing it?

A. Yes.

Q. And this is your signature page 3?

A. Correct.

Q. Okay. And it's accurate, as far as you're concerned?

A. Yes.

Q. Anything you would change in this declaration?

A. No.

Q. Okay. So this is -- looking at this document, does it refresh your recollection as to which Global --

A. Yes. So we -- the -- in the July 2014 show in Vegas, that's when we unveiled it. So Jeff would have had conceptualized it at the -- HDuo in -- depending on when the show was, because sometimes they alternate, it was either February or March of 2013.

Q. Okay.

A. Because that was Global.

Q. Are you involved with the process of developing products?

A. Yes.

Q. How are you --

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A. We do so much on -- to a limited aspect. We give our input. Like if I said, hey, this would be great, clear on one-half and blue solid on the top, then we start that process. And then we get with -- at the time, we only had Tom. Now we get with Lawrence, and then Tom engineers it.

Q. Okay. You mentioned an HDuo product. What is that product?

A. The HDuo is the dual chamber hydration product. As an aspect, you can put one beverage on one side, one beverage on the other.

Q. Was that just for pets?

A. No. That was both human and pet. We launched both about the same time.

Q. Okay. They were both called HDuo?

A. Yes. One was -- we just designated HDuo pet, and HDuo human.

Q. Okay. And do you recall when you released that product, approximately?

A. Approximately, I want to say 20- -- I remember showing it to Walmart in 2011, but I -- but that -- I'm thinking that was the -- yeah. It would have been about 2011.

Q. Okay.

1 MUSTEEN

2 A. I think. Pretty sure.

3 Q. And what's the difference between the HDuo and  
4 the Snack-DuO products?

5 A. The Snack-DuO has the lid that opens up on one  
6 side, and the HduO has two caps on -- liquid lids.

7 Q. Do you think it's a better product?

8 A. The Snack-DuO?

9 MR. RICHMOND: Objection to form.

10 Q. (BY MR. DRANGEL) Yeah.

11 A. Oh. The Snack-DuO, hands-down, is an awesome  
12 product, yes.

13 Q. Were you involved with selecting the  
14 "Snack-DuO" name?

15 A. No.

16 Q. Are you involved with -- were you involved  
17 with the developing the advertisements for the Snack-DuO  
18 product?

19 A. No.

20 Q. Okay. So your declaration indicates that the  
21 Snack-DuO product was first exhibited at the 2014  
22 SuperZoo show; is that correct?

23 A. Correct.

24 Q. Okay. And you were at that show, correct?

25 A. Oh, yes.

## MUSTEEN

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2 Q. Okay. And were there other salespeople at  
3 that show?

4 A. Yes. That would have been Mel, John, possibly  
5 Jeff Dennis. He -- he's not on schedule like we are. I  
6 mean, we are setup, teardown, sale.

7 And so I can't recall if Jeff was there  
8 before or after, because one of the shows he, kind of --  
9 he comes and tears down one and he sets up.

10 Q. Right.

11 How important are attending these trade  
12 shows to Dexas?

13 A. Oh, extremely.

14 Q. And how much of your business, do you think,  
15 comes out of -- out of sales or showing products at  
16 trade shows?

17 A. For my account base, I honestly couldn't tell  
18 you. It's a mix. It truly is. Percentage-wise, I just  
19 really couldn't tell you.

20 Q. I mean, is that because you have an exist --  
21 you have an existing customer base, so you don't  
22 necessarily need to show them at the trade show --

23 A. Right. For me, it's to get -- to make sure  
24 that my buyers are there, seeing the product altogether  
25 as a family.

1 MUSTEEN

2 Q. Uh-huh.

3 A. Whereas it -- because more than likely, I'll  
4 have either mentioned it on a phone call, saying, Hey,  
5 make sure you're going to be at -- or are you going to  
6 be at, we're going to have X, Y, or Z, just to see if --  
7 you know, make sure it's in the back of their mind,  
8 gauging that reaction, making sure they're actually  
9 attending. Sometimes they don't attend.

10 Q. Okay. And just in general, how much business  
11 do you actually think is completed at trade shows, like  
12 purchase orders?

13 MR. RICHMOND: Objection to form.

14 A. Yeah. I mean, we write orders. I couldn't  
15 tell you how much. We just write the forms up, file  
16 them and --

17 Q. (BY MR. DRANGEL) Is it a fair amount?

18 A. Yeah. Depending on the day, it could take  
19 up -- I always thought we should just have one person  
20 sitting in the booth, writing orders, and you just form  
21 a line, but, yeah.

22 Q. So it's common practice to close sales at  
23 trade shows?

24 A. It's required practice, yes.

25 Q. And it's an important part of your business, I

1 MUSTEEN

2 take it?

3 A. Oh, yes.

4 Q. Okay. Okay. So your declaration indicates  
5 that you released the -- the Snackeez -- the Snack-DuO  
6 product at the 2014 SuperZoo show.

7 Were you involved in putting together the  
8 booths for that?

9 A. Oh, yes.

10 Q. Okay. What was your involvement in that?

11 A. For -- Jeff, at the time, would allow us sales  
12 guys to -- to look at the booth design computer  
13 drawings. And then if we had to make any changes --  
14 like, when we got to that one, if that's the one I'm  
15 thinking of, I think that's the one where we made  
16 changes when we got there because there was a pole that  
17 showed up in the middle of the booth, so we had to work  
18 around it.

19 But it literally, design -- getting input  
20 on design and then physical putting up of the booth.

21 Q. Okay. There's some photos attached as Exhibit  
22 A and B to your declaration.

23 Could you tell me what those are?

24 A. The -- Exhibit A photo --

25 Q. Uh-huh.

1 MUSTEEN

2 A. -- is the Snack-DuO.

3 I glued all that dog food together. That  
4 was my concept, to have it streaming.

5 Q. Very nice.

6 A. It was 110-degrees in Vegas with the doors  
7 open, and I'm gluing with the hot glue gun, dog food.

8 So, yes, I put that picture -- I  
9 literally took that picture, because I'm like, I can't  
10 believe I'm gluing dog food together in Vegas in  
11 110-degree heat.

12 Q. And that's a Snack-DuO product?

13 A. That's Snack-DuO, yes.

14 Q. Okay. Do you remember how many Snack-DuO  
15 sample products you had at that show?

16 A. No. I don't recall. I mean, we had that  
17 displayed, so it would have been several.

18 Q. Okay. Was the product available for sale at  
19 that time?

20 A. Yes.

21 Q. Do you recall closing any sales at that time?

22 A. All I can say is, I wrote up orders. I just  
23 don't remember -- I mean, if you want to call it a  
24 write-up, then -- of an order, then, yeah, technically  
25 that's a closure, but Heather does all the finishing.



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2                   So realistically, we don't close any  
3 sales there. We -- because we will not process a card.  
4 We prefer all that information, because of security  
5 purposes, we take the order, file it, and submit it to  
6 Heather, because we're not having going to have -- I  
7 don't want to be in Vegas with somebody's credit card  
8 number or cash.

9           Q.    Right.

10          A.    It's bad enough at the end of a show when  
11 we -- we'll sell off a few samples to people that can't  
12 buy our minimum order, and we have to travel with a  
13 couple thousand in cash.

14          Q.    So if there was a purchase that day, the  
15 purchase order would be dated that day?

16          A.    Or with -- within -- we give the show special  
17 of within 30 days.

18          Q.    30 days. Okay.

19                   And you recall closing sales of Snack-DuO  
20 at that show?

21          A.    I can't recall any individual orders. I mean,  
22 that was three years ago. So, no.

23          Q.    But you were able to do so?

24          A.    Yeah. We -- yeah. We always -- I mean, if  
25 it's out there, we're selling it.

1 MUSTEEN

2 Q. Okay.

3 A. I mean --

4 Q. Okay. Do you recall anybody -- any of the  
5 other sales associates who were there that day closing  
6 any sales for Snack-DuO products?

7 A. No. We don't -- we literally -- there's  
8 thousands of people running around and --

9 Q. Okay.

10 A. All I can tell you is, they were there because  
11 they would cover our breaks.

12 Q. Right.

13 Do you -- do you recall having any  
14 conversations with your customers at that show --

15 MR. RICHMOND: Objection to form.

16 Q. (BY MR. DRANGEL) -- or even earlier regarding  
17 the Snack-DuO product and closing -- you know, or  
18 leading to closing of sale of that product?

19 A. That was -- I know I got sample requests  
20 directly from -- as exhibited from Camping World, they  
21 had a request.

22 Q. Was Camping World actually there? Is that  
23 where that happened?

24 A. No. Camping World doesn't -- she doesn't  
25 attend SuperZoo. They go to Global. And they had

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already been on the snack -- I mean, HduO prior to our official launch.

Q. Okay. So she would have -- okay. We'll get to that.

A. Yeah.

Q. Camping World didn't come out of an order at that show, correct, because she wasn't there?

A. She wasn't there, no. It was off of trade publication.

Q. Got it.

Anyone else? Any of your other mass market retail clients?

A. In this exact version, let's see. I'm trying to think who all would have been at that show that came by.

I honestly can't remember three shows ago.

Q. Okay. That's fine.

So the buyers for -- well, there's -- strike that.

You attended different shows. And, I guess, different buyers go to different shows?

A. Correct.

Q. So buyers that go to the SuperZoo show are

1 MUSTEEN

2 probably not the same buyers that go to housewares  
3 shows, right?

4 MR. RICHMOND: Objection to form.

5 A. In -- depending on the company. Some -- I  
6 have one company in particular that all six of their  
7 buyers go to both shows.

8 Q. (BY MR. DRANGEL) Uh-huh.

9 A. I have one company that the buyer has to pick  
10 one or the other. And then I have buyers that  
11 absolutely will not go to either one of these because  
12 their timing says it's too late, we've already launched,  
13 they want to see it first.

14 Q. So most of your clients' contacts, with the  
15 buyers I'm talking about, are they different buyers for  
16 the pet product as opposed to the human product --

17 A. Yeah. I have one -- out of all my customers,  
18 one that's the same buyer.

19 Q. Who's that?

20 A. Bi-Mart.

21 Q. Bi-Mart?

22 A. Uh-huh. Out of -- somewhere in Oregon.

23 Q. Okay.

24 A. 71 stores.

25 Q. Other than that, there's a pet buyer and a --

1 MUSTEEN

2 A. Yeah.

3 Q. Okay.

4 A. Case in point, Walmart, my pet buyer, my  
5 housewares buyer, and my office buyer, they don't even  
6 know who each other are. Two of them don't even sit in  
7 the same building.

8 Q. Do you remember any -- strike that.

9 Do you remember receiving any feedback  
10 from anybody at this show regarding the product and  
11 their interest in buying the product?

12 A. Oh. It was --

13 MR. RICHMOND: Objection, form.

14 A. It was the hit of the show. And mostly the  
15 display is what was great. That was the most talked  
16 about feedback.

17 Q. (BY MR. DRANGEL) And basic -- based on that,  
18 you would expect to have purchase orders?

19 A. Oh, yeah.

20 Q. Okay. Could you tell me what Exhibit C is?

21 A. Oh. Our e-mail conversation between Jannah  
22 Grimes and myself.

23 Q. Okay. Jannah Grimes is --

24 A. She's -- was the buyer at Camping World.

25 Q. Okay. And you had established -- an

1 MUSTEEN

2 established relationship with her?

3 A. Oh, yes.

4 Q. Okay. And what's this correspondence about?

5 A. She was asking for samples, and if -- because  
6 it's a long conversation, spanning from July -- yeah,  
7 from July, asking about the Snack-DuO. And then it --  
8 her initial -- she contacted us because she had seen it,  
9 seen a picture of it, and then she'd asked --

10 Q. Where did she see that? Is that --

11 A. I don't think that's referenced.

12 Q. The first e-mail from her is --

13 A. July 9th.

14 Q. -- July 9th --

15 A. Correct.

16 Q. -- DEXAS00025 (sic).

17 A. So, more than likely, she would have seen that  
18 in the -- in a -- an ad placed in one of the show  
19 magazines because they were already on the HduO, which I  
20 said earlier. So she asked me about that.

21 Q. And, again, she does not attend -- she would  
22 not have seen this at the --

23 A. No, she doesn't.

24 Q. -- trade show?

25 A. They do not go to SuperZoo. I think it's a

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company policy.

Q. Okay. So she was already selling the HduO?

A. Yes.

Q. Okay. And was -- do you know if she was interested in the pet version and the human version?

A. No. Actually, she wanted to discontinue the HduO to go to the Snack-DuO.

Q. No. I'm saying for the --

A. Oh.

Q. -- for the Snack-DuO --

A. She was only buying -- she is one of the buyers that only buys pet.

Q. Okay. Was there any interest from Camping World with regard to the human Snack-DuO?

A. No. We actually never -- I never marketed it towards them in the human version.

Q. Okay. Who do you recall, in 2014, marketing the human version --

A. Walmart, Kroger, HEB, I think that's it for that time being.

Q. Okay. You recall specific conversations with those in 2014 --

A. Definitely with Kroger, yeah.

Q. Any others?

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A. HEB, she wasn't interested at the moment. And Walmart, they put it that's -- well, Walmart ended up getting their own version, so, yes.

Q. When was that?

A. Well, not human. Sorry. It actually changed from human to pet. We ended up -- they used the Made In USA version, so developed one here.

Q. Okay. Was that also called Snack-DuO?

A. Yeah, it is, actually. Snack-DuO Pet, but, yes.

Q. Okay. So it seems like there was a process between July and October, based on this communication in Exhibit C, of getting samples.

Were samples not readily available to you?

A. Not enough.

Q. Okay.

A. Yeah. We had -- we had some -- we had some samples that were still being tweaked. We had some that were already spoken for. And the ones that I had, I had already dropped off with other cust- -- with customers, and I literally didn't have any.

Q. Okay. Who do you --

A. Jannah wants -- she needs -- in reference in



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her e-mail, she needs a specific color, because Camping World likes blue for some reason and not the assorted.

Q. In 2014, who do you recall giving sample Snack-DuO products to?

A. In any form?

Q. Yeah.

A. Three divisions of T.J. Maxx, which would be Marshalls, T.J. Maxx, HomeGoods, HomeSense, Winners, Canadian Marshalls, and T.K. Maxx Europe; Walmart; I think Tar- -- I think I might have still had Target at the time; HEB; Kroger --

Q. These were in 2014?

A. Uh-huh.

Q. So you have evidence of similar to evidence you have here of sending out the samples?

A. No. That would have been when I was there at line reviews, just dropping them off as, hey, by the way, here's our new product.

Q. And what is that?

A. Line reviews.

Q. Oh.

A. When the -- when the companies review their assortments --

Q. Uh-huh.

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A. -- for the year.

Q. Do you -- do you know that that took place in 2014?

A. Uh-huh.

Q. For the specific companies you just mentioned?

A. Yeah. That's -- that's most the companies I pretty much handled that would have been -- I would have -- that I took those to.

Q. Okay.

A. Because I had to pack those in my luggage.

Q. And those products had the -- does the product itself bear the name Snack-DuO on it?

A. Yeah.

Q. On the actual product itself?

A. On the tag.

Q. Okay. You actually had tags at that time?

A. Yeah. We would have had -- by the time I was seeing these customers, we would have had, either the hang-tag or the top -- whatever they want to call that, the -- a really big packaging.

Q. Okay. Do you recall looking at this e-mail chain from Exhibit C, you know, why it took so long to get the actual samples?

A. She had to have blue.

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Q. That was it?

A. (Moving head up and down.)

Q. You had other colors?

A. We had a purple. We did -- we had a lot of purple left. But she specifically needed this -- that blue.

Q. Okay. Looking at that e-mail chain, is that the first real discussion of a potential order that you can recall for the Snack-DuO product?

A. For an immediate order. I was actually hoping to have her faster. The problem was that she was -- she -- we did all -- all this work, and then she ended up putting it in on her modular, but it was for, like, January, February, for spring 2015.

But, yeah. I was -- for her, that was specifically -- I was targeting her because she -- normally Jannah can turn something around in a month until she hit me with the blue.

Q. Okay. But during this time period, up until about October, I guess, the communication there was no -- no other --

A. No.

Q. -- potential sale?

A. I mean, there -- I targeted Walmart. I went

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to -- in fact, I showed it to a buyer at a Made In The USA conference, along with their quality control person.

But even at that time, that was when they first started this -- their Made in the USA initiative. That's pretty public. And our version wasn't made in USA. We were -- and so it was going to take a little longer. So they were targeted, but couldn't do it.

And then Kroger was -- Kroger was, like I said, no -- because they had heavily overbought on Snackeez, the cheaper consumer version, the one from TV they, like, doled it down to almost like a flimsy disposable cup 10-pack. And she had overbought, like, way overbought. So she said, I don't have room for yours.

Q. When was that conversation?

A. That would have been around October, November of 2014.

Q. Okay. What -- when did you first hear of a -- of the Snackeez products?

A. Snackeez, I saw in an -- I guess it was infomercial, the commercials -- I was watching SpongeBob with my youngest kid on a Sunday morning. And I can't recall what date that was, but it was -- it was either in 2013 or 2014, had to be 20- -- she's -- she's turned

1 MUSTEEN

2 11 a couple of days ago so -- so, yeah, about three  
3 years ago. So that was -- I guess it would be 2014.

4 Yeah, so watching SpongeBob on a Sunday.

5 Q. And you had mentioned the Kroger's -- Kroger's  
6 was selling the Snackeez 10-pack.

7 Do you know what that product is called?

8 A. Snackeez.

9 Q. It's actually called Snackeez Duo.

10 MR. RICHMOND: Objection --

11 Q. (BY MR. DRANGEL) Were you familiar -- were  
12 you aware of that?

13 A. Huh-uh.

14 Q. Okay.

15 A. All I know is, it's cheaper, because it's,  
16 like, that kind of cup, not a solid cup. (Indicating.)

17 Q. Okay. When did you become -- first become  
18 aware of the Snackeez Duo product?

19 A. When I came across it in the Fred Meyer while  
20 on a trip to, I guess, Portland.

21 Q. Do you recall when that was?

22 A. No, I really don't. It took me by surprise,  
23 because it had gone from a hard shell to that. When I  
24 saw it, I couldn't tell you.

25 Q. Right.

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2 Were you concerned about the sale of the  
3 Snackeez Duo product in light of your sale of Snack-DuO?

4 A. Oh, no. Totally different. I mean, they --  
5 to use the phrase, they -- they cheapened it, and in --  
6 which bastardizes the value of a product like that.

7 So actually, it was kind of funny to see  
8 that out there, because it went from being this cool  
9 item to you just mass produced and made it -- they took  
10 it down a notch.

11 Q. And you didn't consider it a competitive  
12 product --

13 A. Oh, no.

14 Q. -- to the Snack-DuO product?

15 A. It was actually, kind of, humorous, because  
16 they had it, Walmart had it. And then I started seeing  
17 it at clearance outlets because there was so much of it  
18 on the market. So, yeah. No. Threat, no.

19 Q. Did any of the buyers ever express any  
20 concern -- strike that.

21 Did any of the buyers ever express any  
22 confusion between your Snack-DuO product and  
23 Ideavillage's Snackeez Duo product?

24 A. No.

25 Q. Okay. I'm just going to go to the next

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exhibit, which is D. Can you just tell me what that exhibit is?

A. That one I cannot. I have no knowledge of that one. So John --

Q. Okay. So you weren't CCed, BCCed, so you can't make any representation with regard to anything about --

A. No.

Q. -- this sale or potential sale?

A. Correct.

Q. Okay. And John is one of the other --

A. Sales directors, yes, sir.

Q. Oh. He's in charge of specialty?

A. Correct.

Q. And who is -- what types of -- who would you consider specialty? Like, what are their names?

A. Sur La Table, William Sonoma, Crate and Barrel, Bed Bath, and then mom-and-pop individual stores like the Purple Store -- it's a real store -- the Mitchen Kitchen --

Q. The mom-and-pop stores, you don't deal with?

A. No.

Q. John would have dealt with?

A. Yes.

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Q. Okay. Okay. Okay. Exhibit E.

A. Again, no knowledge on that, because that is Mel's customer.

Q. Okay. And you weren't CCed, BCCed --

A. Uh-huh.

Q. -- on this e-mail communications?

A. I don't even know how to pronounce her name.

Q. Can you explain the -- have you ever seen the product data sheet at the end of Exhibit E, DEXAS10 (sic)?

A. It looks familiar. But I see -- up until I started having my assistant fill out different data sheets, it looks like one that pretty much everybody else uses, really similar to it.

Q. What is the product data sheet?

A. Every customer has a -- has some sort of a form that either has our item number, or they assign us -- in case in point, with HEB, they assign their own -- their item numbers for certain products.

And then so we fill out this sheet that gives weights, dimensions, all the specs on the items. And they upload it in their system, and that's how they -- how -- if you, as a consumer, go in and buy an item and say, hey, you know, do you -- do you have more



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of this, then they can either scan it. And that's all the information on it. It's kind of similar to a -- looks like an MSDS sheet, but it helps them determine their loading factors, logistics, store placement.

Q. Okay. Do you have any -- so there's only one e-mail communication now here with regard to buyers' interest in 2014?

A. Correct. F?

Q. Right.

Do you have any others?

A. From -- no.

Q. You personally?

A. Not in regards to that for Snack-DuO.

Q. Okay.

A. And I was on this one, because it went to the sales team.

Q. Which one is that?

A. On that F.

Q. Okay. Can you tell me what that is?

A. That is -- that would have been Jeff getting -- at the time, the e-mail -- the e-mails that come in generically, Jeff would occasionally review them or see them. I think we might have been in transition with people at that time. And he would get these, and

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he would just make sure that we got our sales lead, if there were any that came through -- that came to that sales or -- because we have sales at Dexas, and Jeff would see those. And then he would gauge the -- I guess the ad feedback, because they -- that's -- he and Logan doing that.

Q. So are you involved with this process, or would you review this report when it came in?

A. I would open it and review it, but realistically, it didn't really pertain to my customers.

Q. The big -- the big buyers would not typically use this means to --

A. They -- no. They would send me a note or call me.

Q. Okay. Who would use this sort of way of --

A. For this --

Q. -- interest --

A. -- it would be, I mean, companies like -- oh, what is the name of that -- my favorite little company that comes by?

Doggie Style; not kidding, because it's such a fun name.

Q. Uh-huh.

A. They have two locations. They would use this.

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Just small companies, little one and two shop, maybe up to, you know, five or six before they start buying in bulk.

Q. And this is -- these are direct communications from people who saw the ads in -- in Pet Product News; is that correct?

A. If that -- I'm trying to see if that's what this is.

Yes. This would be something that Jeff uses to track ad, like, advertisement codes.

Q. And --

A. I'd review it, but I have no knowledge of how it works and what to do with it.

Q. Okay. And what's your feeling about use of the magazine communications as a way to generate sales for Dexas?

MR. RICHMOND: Objection, form.

Q. (BY MR. DRANGEL) And I'm specifically talking about Pet Product News and HomeWorld.

A. It's necessary.

Q. Why is that?

A. Case in point, referring back to B, that's how we get the word out to -- on new products. That's how we won the award. You know, people see that, then

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they -- they see the ad, they go to the show, and they pick out new products for their upcoming year, sales year.

Q. And do you -- do you believe that that actually generates business?

A. Oh, yes. Absolutely.

Q. In this case, did it generate business at the show?

A. Oh. I mean, that's proven by Jannah's e-mail.

Q. She didn't go to the show?

A. No. But she saw in the trade mag.

Q. Right.

A. So, yeah.

Q. Any others, specifically, as a result of those ads that you are aware of that were generated?

A. Just the -- not sales, just a lot of congratulations, especially when -- because we will usually tout after we win an award. We will put that out there as well. Not that photo of me because that was hideously bad, but --

Q. Okay. And Exhibit G and H, just tell me what those are.

A. G would have been the first samples I sent out to her. I do not know the color. More than likely, it

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was whatever we had in stock. I was thinking of -- it was a Snack-DuO sample I sent to her, probably purple, because, at the time, I liked purple.

And then H would have been her requested blue samples. Oh, yeah. Because it said "blue Snack-DuO" on it.

Q. Okay. Okay. The last page of Exhibit H, DEXAS00028 (sic), what does that show?

A. I couldn't tell you what this is. If this is -- I don't know what system that's out of, other than they've got my name spelled wrong.

Q. Okay.

A. Oh. This must be our -- educated guess, this is our shipping calculator -- shipping recap.

So that's just showing where I sent a sample, \$36.34.

Q. Right.

A. Yeah. Because I think I overnighted it. Oh, I did. I got it for first overnight.

So, yeah. She requested it on -- she would have requested it on 11/19, and we got it there on 11/20.

Q. Okay. And then the next exhibit is I, can you tell me what that is?

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A. This would be their standard purchase order that they -- they rule -- they would, at the time, fax to us. Sometimes e-mail, depending on her assistant.

Q. Okay. And as far as you're -- you're aware, this was the first purchase that you received for a client of yours?

A. For -- yes. For Snack-DuO, yes.

Q. Okay. What about any of the other salespeople at Dexas, do you know what they received earlier?

A. I couldn't tell you.

Q. Okay.

A. This was just -- just for me, because that was my -- I thought there was going to be a lot bigger.

Q. Okay. And the next exhibit, J, can you tell me what that is?

A. No knowledge. Equine Feed is Mel.

Q. Okay. So you wouldn't have been involved --

A. Huh-uh.

Q. -- with the sale of this product?

A. No.

Q. This transaction?

A. Correct.

Q. Okay.

A. And if my name is associated with it, the only

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2 thing is, possibly, that it was taken at one of the  
3 shows, because when -- if we write our name on the top  
4 of an order, we get credit.

5 Q. So is your name -- your name is not on this,  
6 though, is it?

7 A. No.

8 Q. Okay. Where would that appear here?

9 A. You know, I've never seen our names appear on  
10 these, so I couldn't tell you.

11 Q. Okay.

12 A. Just in our internal system. But I don't  
13 remember ever having any kind of dealing with Moore  
14 Equine Feed and Supply.

15 Q. Okay. Can you tell me what the next exhibit,  
16 K, is?

17 A. That's a list of the Snack-DuO purchase orders  
18 that goes on forever.

19 Q. Okay. And this is -- this -- this runs across  
20 the entire Snack-DuO product line for all salespeople?

21 A. Yes.

22 Q. Okay. Not just yours?

23 A. Not just mine, correct.

24 Q. So any purchase order that was issued for the  
25 sale of a Snack-DuO product would appear in this

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2 document?

3 A. Correct.

4 Q. Is this a standard form, or did someone put  
5 this together for somewhere else? How was this  
6 generated?

7 A. That's a question for somebody else. I  
8 couldn't tell you.

9 Q. You've never seen it --

10 A. I mean, I can -- I can generate this right out  
11 of -- our system has this capability, but I always do my  
12 stuff in PDF so I -- if it's like this.

13 Q. Have you ever seen this purchase order layout  
14 like this before?

15 A. Here, never printed out that much before, but  
16 for a specific -- normally mine are just for specific  
17 customers, not for going into Snack-DuO like that, going  
18 into item numbers.

19 Q. Okay. So -- so what does this show us with  
20 the first -- the first reference?

21 A. Order number is -- that's either our order  
22 number or their order number -- oh, that would be our  
23 order number, then that would be the order date, the PO  
24 number that they issue. The customer number is their  
25 customer number we assign to them; obviously Ship To



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2 name was them; the item number; and then the  
3 description.

4 Q. Okay. Do you know who generated this  
5 report --

6 A. No.

7 Q. -- at Dexas?

8 Okay. And as far as -- okay.

9 So does this show -- and this goes in  
10 date order of -- by purchase order, as far as you can  
11 tell?

12 A. As far as I can tell, it looks like it's  
13 sorted by date ordered, yes.

14 Q. Okay. So if there were purchases made at  
15 SuperZoo 2014, in July, they would be on this?

16 A. I don't know, because that is -- that --  
17 manual orders, I'm not sure how they're handled. I've  
18 never input our orders. That's a order-input question.

19 Q. Are you surprised that there are no -- well,  
20 let me -- let's go -- let's actually take a look.

21 If you go to the third page of this  
22 document, DEXAS00103 (sic), there's actually references  
23 to SuperZoo 2015.

24 Do you see those?

25 A. Not yet -- oh. There we go. Okay.

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2 All right.

3 Q. Okay. So does that make you think that, if  
4 there was a transaction at a SuperZoo show for purchase  
5 order that it would be included in this document, right?  
6 Around that time of that show, because this is July --

7 A. July the 2015.

8 Q. -- is that right?

9 A. Could be.

10 Q. Are any of these your transactions?

11 A. On the SuperZoo?

12 Q. Yeah.

13 A. At one time, I had Three Dog Bakery, but I'm  
14 not sure when I -- when I gave them up.

15 Q. Okay. So there -- there were purchase orders  
16 in July of 2014 at SuperZoo, it probably should be in a  
17 similar format on this document, correct?

18 A. I would not venture to guess on that.

19 Q. Okay.

20 A. We -- that would be -- honestly, that's a --  
21 that's a Heather question.

22 Q. Okay. Well, actually, if you look at the doc-  
23 -- if you go through the document further, you can see  
24 references on later dates to SuperZoo 2015, such as  
25 DEXAS00104 (sic), and DEXAS00105 (sic), which, you know,

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2 are later dates after the show.

3 A. Well, I can only offer you that we --

4 Q. Even a few months after. So --

5 A. At that 2014 --

6 Q. That's where the purchase order was --

7 A. All I can tell you is, we had Snack-DuO at  
8 2014. And HduO had such a huge -- because the displays,  
9 people coming in, we -- I know that Jeff and Heather and  
10 somebody else probably could -- I know we got in trouble  
11 once for having too much -- we didn't know how to handle  
12 sales that -- that quickly. We were inundated.

13 So there's probably some procedure that  
14 was done, because I know that none of my stuff was  
15 showing up -- has ever showed up for housewares before  
16 when I've written POs there. But, again, those are for  
17 larger companies.

18 So that's definitely -- I mean, honestly,  
19 that's a Heather question.

20 Q. What's Heather's name?

21 A. Heather Hackler.

22 Q. What's her position?

23 A. She is our customer service manager, slash,  
24 head of EDI. She orders -- does order entry.

25 Q. Okay. There's also -- as you go through this,

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you'll see some references to some of the other shows;  
Dallas show, Chicago show, on DEXAS00107 (sic).

Does that lead you to believe that that's  
a way to tell where the purchase order was actually  
issued?

A. 1007 (sic)?

Q. Yeah.

A. Just going off of what I'm seeing here, yeah.  
I don't attend the Dallas shows, so I couldn't tell you.

Q. Okay. Can you tell -- how can I tell the  
difference between -- from looking at this document,  
what is a Snack-DuO pet product and Snack-DuO human  
consumer product?

I mean, I know one of them -- some of  
them clearly say "pet," but some of them don't say  
"pet," and I'm not sure. Does that mean that it's the  
human product?

A. You'd have to -- going off the item number --

Q. Yeah.

A. -- PW450 would be our -- that's our  
designator.

Q. Yeah.

A. So 450 means that's a pet -- "P" -- the "P"  
stands for pet.

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Q. Oh, okay.

A. Petware.

Q. Got it.

A. So more than likely, this was a query asking for just for -- I'm going to assume it had, like, 450 here or something. Although, I do see an "SD," for -- which means Snack-DuO.

Q. So that would be --

A. That's SD --

Q. Would be the consumer product?

A. I might be speaking out of -- without knowing, but "SD" means Snack-DuO.

Q. I see some "SDs" also.

You don't know what that stands for?

A. No. I don't know if that's human or pet.

Q. Well, why would it be "SD," just because it means Snack-DuO?

A. Snack-DuO, yeah. But it's the clear version. Theirs -- I wasn't involved with the clear version. That was a customer change or something that had to do with Mel, customer requested it or something.

Q. Well, have you ever sold the Snack-DuO human product to any of your customers?

A. To human, no. It's all been pet. I focused

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2 mostly on the pet.

3 Q. Do you know if anyone's ever sold Snack-DuO  
4 human products?

5 A. John, I'm pretty sure, did to -- either John  
6 or Mel did to -- I'm not sure who had Bed Bath at the  
7 time. I think that John did. And Mel did -- pretty  
8 sure Mel did to Target. I think it was -- that might  
9 have been the clear, where we came out with the clear.

10 Q. But other than that, you think -- can you say  
11 the majority of the sales of the Snack-DuO product are  
12 the pet product sold?

13 A. I would just say, judging off of this, yes. I  
14 haven't concentrated on -- on anything but Snack-DuO,  
15 purely because the other market is so convoluted with  
16 competition.

17 MR. RICHMOND: For the record, just for  
18 clarification, are we talking about just 2014 period or  
19 sales --

20 MR. DRANGEL: I'm looking -- I'm looking  
21 at the whole document here --

22 MR. RICHMOND: Okay.

23 MR. DRANGEL: -- just so I can get some  
24 clarity.

25 MR. RICHMOND: Okay.

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Q. (BY MR. DRANGEL) Why did you not -- oh.  
You -- sorry.

A. Yeah. There's too much competition in the  
human.

Q. So you don't consider that an important market  
or worth pursuing?

A. No. Those are -- the Walmart market, for  
example, was -- is led by Aladdin. And that's a -- you  
know, you walk into a Walmart store, and there's 10 feet  
of Aladdin products.

And then Kroger had -- Kroger, Fred  
Meyers (sic) where somebody else -- I forgot the name of  
that Fort Worth company, like Bubba brands-type stuff.

And then Target, thank God, I gave them  
up, because they were -- they had everything. They had  
CAMELBAK, and they had their own version, and they had  
-- I mean, it was just -- and I had one.

Q. Okay. So that's why, also, I guess, you don't  
consider the Ideavillage's Snackeez Duo or Snackeez  
product to be comparable?

A. Ours is marketed towards adults. Snackeez  
is -- I mean, I bought my Snackeez for my kids off an  
infomercial.

Q. When did you do that?

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2           A.    That would have been that -- that SpongeBob  
3 episode.

4           Q.    You were convinced to buy it?

5           A.    I was told to buy it by a seven-year-old.  
6 She'd never asked for anything on TV before.

7                        Plus, the idea of chicken McNuggets in  
8 the top of the drink really appealed to me. She's one  
9 of five, so keeping them quiet in the car is priority.

10          Q.    Did you go to the 2015 housewares show?

11          A.    Yeah.

12          Q.    Was the pet product exhibit -- the Snackeez --  
13 the Snack-DuO pet product exhibited there?

14          A.    I honestly couldn't -- I couldn't recall.

15          Q.    Do you know if Dexas was selling pet products  
16 at the houseware show then?

17          A.    2015, it just -- I couldn't tell you. It just  
18 seems like we've been selling pet products for so long.  
19 We always have some sort of a display of all of our  
20 categories. Nobody ever pays attention to office.

21                        So I'm pretty I sure -- in fact, I would  
22 pretty much guarantee that we had a -- probably between  
23 a 3- and 5-foot wall of pet products at that time,  
24 because this last year we -- we showed twice as much as  
25 normal, and we ended up winning an award at IHA for pet



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2 products, ironically.

3 Q. All of the sales of Snackeez Duo products to  
4 your clients, I guess, should be on this document,  
5 right --

6 A. More than likely, yes.

7 Q. -- Exhibit K?

8 Okay.

9 A. I mean, Camping World, definitely mine, and  
10 that was the very first one.

11 Q. And what does "Internet" mean? That means it  
12 was a sale through --

13 MR. RICHMOND: Objection --

14 Q. (BY MR. DRANGEL) -- through an individual  
15 through -- through your website, your Texas website?

16 A. I honestly have no idea. Again, that's --  
17 that would be -- that's a Jeff Dennis question.

18 Q. Okay. The last page, DEXAS150 (sic), has a  
19 breakdown, I guess, by item number.

20 Does that make it clear to you which ones  
21 were pet products and which ones weren't, at all?

22 A. Everything with the "PW" would be pet. I'm  
23 just going to plead ignorant and unknown on the "SD,"  
24 the three bottom lines, because I'd honestly have to  
25 look it up to see what it is.

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Okay. In all honesty, I'd call Gabe downstairs and say, is this human or pet, because I honestly don't know.

MR. DRANGEL: Okay. Okay. I think we're done.

MR. RICHMOND: I just have one -- one question on redirect.

(Reporter's time: 12:29 p.m.)

EXAMINATION

BY MR. RICHMOND:

Q. Do you know, if a product has a product number and that product starts out as a pet product and then transitions to a non-pet product, or vice versa, is it possible that it could still have the original item number?

A. Yes, for inventory purposes.

Q. Do you know if that could be the case with the PW numbers listed on Exhibit K?

A. There's a chance. If nothing changed, if we had inventory that we -- that was a snack -- let's say it was a Snack-DuO pet and we needed to change it to a Snack-DuO human, which means just deleting the -- changing the packaging, deleting the bowl that it comes with, there's a chance that, just for inventory

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2 purposes, we would leave it the same. And the customer  
3 would just -- we would note that to that customer.

4 Q. So just --

5 A. Like a substitution.

6 Q. Just to clarify, it's possible some of these  
7 PW listings here could be for human Snack-DuO?

8 A. Because we -- in non-Snack-DuO items, in -- I  
9 have a customer that does hang-tags -- or not hang-tags,  
10 clip strips in the stores. And if we run out of a  
11 color, we send them a different version -- the same  
12 product, but it's a different -- they let us substitute  
13 different colors.

14 But we send it out the same -- under the  
15 same item number, just for a -- which, at the time, some  
16 of these -- during launch, we would -- we were short a  
17 lot. Camping World, for example, I airfreighted in her  
18 first order from the factory, because it -- I needed it  
19 a lot faster than I anticipated.

20 MR. DRANGEL: Just, then, to follow-up on  
21 that.

22 (Reporter's time: 12:31 p.m.)

23 EXAMINATION

24 BY MR. DRANGEL:

25 Q. The -- the products are different, though,

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aren't they? Is the Snackeez human product different?

A. (Moving head back and forth.)

Q. It's the same exact product?

A. Oh. You mean -- the Snackeez is different from the --

Q. Sorry. The Snack-DuO human product --

A. Just the lid. They --

Q. Is different than the Snack-DuO --

A. Yeah.

Q. -- pet product?

A. The -- no. The bottles, the rings -- in fact, the whole thing is the same, but the only -- the only difference is either, A, a color --

Q. Uh-huh.

A. -- or, B, the Snack-DuO pet comes with the collapsible bowl.

Q. Right. So --

A. So it's exactly --

Q. -- shouldn't that have a different product ID number?

A. Unless we're running short. I mean, that would be the substitution, because if they were running short --

Q. Okay. Okay.

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MR. RICHMOND: And that's all I've got.  
MR. DRANGEL: Okay. Thank you.  
(Deposition concludes at 12:32 p.m.)

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A C K N O W L E D G M E N T

STATE OF )  
 ) ss.:  
COUNTY OF )

I, NICK MUSTEEN, hereby  
certify that I have read the transcript of my  
testimony taken under oath in my deposition;  
that the transcript is a true, complete and  
correct record of my testimony, and that the  
answers on the record as given by me are true  
and correct.

\_\_\_\_\_

NICK MUSTEEN

Signed and subscribed to before  
me, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

Notary Public, State of \_\_\_\_\_

## C E R T I F I C A T E

STATE OF TEXAS )

I, Stefanie Cox, Certified Shorthand Reporter in  
and for the State of Texas, hereby certify to the  
following:

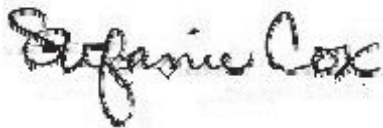
That the witness, NICK MUSTEEN, was duly sworn and  
that the transcript accurately records the witnesses'  
testimony;

That examination and signature was waived;

That the original deposition was delivered to  
Mr. Jason M. Drangel, Counsel for Applicant;

I further certify that I am neither counsel for,  
related to, nor employed by any of the parties or  
attorneys in the action in which this proceeding was  
taken, and further that I have no interest in the  
outcome.

Certified to by me this 29th of August, 2017.



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STEFANIE COX, CSR NO. 5384

Expiration Date: 12/31/17





	<b>alternate (1)</b> 15:18	<b>24:22</b>	<b>7:16</b>	<b>40:3</b>
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<b>A</b>	<b>always (4)</b> 19:19;22:24;45:11; 53:19	<b>available (2)</b> 21:18;29:15	<b>Bi-Mart (2)</b> 25:20,21	<b>calculator (1)</b> 42:15
<b>Abernathy (1)</b> 10:5	<b>Ambiente (1)</b> 12:20	<b>award (3)</b> 40:25;41:19;53:25	<b>blue (7)</b> 16:4;30:3;31:25; 32:7,19;42:6,6	<b>call (5)</b> 19:4;21:23;31:20; 39:14;55:2
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<b>accurate (1)</b> 15:8	<b>appear (3)</b> 44:8,9,25	<b>background (1)</b> 5:25	<b>both (4)</b> 16:14,15,16;25:7	<b>Camping (9)</b> 23:20,22,24;24:7; 26:24;28:14;30:2; 54:9;56:17
<b>across (2)</b> 34:19;44:19	<b>applicable (1)</b> 13:11	<b>backwards (1)</b> 8:8	<b>bottles (1)</b> 57:12	<b>Can (24)</b> 5:24;16:11;21:22; 23:10;32:10,18;36:2; 37:9;38:2,20;42:24; 43:15;44:15;45:10, 10;46:10,12;47:23; 48:3,7;49:11,11; 51:10,23
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<b>adults (1)</b> 52:22	<b>around (5)</b> 20:18;23:8;32:18; 33:17;47:6	<b>bastardizes (1)</b> 35:6	<b>breakdown (1)</b> 54:19	<b>Carnegie (2)</b> 6:6,6
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

DEXAS INTERNATIONAL, LTD.,

Opposer,

v.

IDEAVILLAGE PRODUCTS CORP.,

Applicant.

**Opposition No.: 91225850**

**Application Ser. No. 86/472355  
[SNACKEEZ DUO]**

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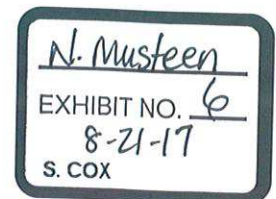
**NOTICE OF DEPOSITION UPON ORAL CROSS-EXAMINATION  
OF DECLARANT NICK MUSTEEN**

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PLEASE TAKE NOTICE THAT pursuant to Rule 30 of the Federal Rules of Civil Procedure and 37 CFR § 2.123 (c), Applicant Ideavillage Products Corp. (“Applicant”), by its undersigned counsel, will take the deposition upon oral cross-examination of Declarant Nick Musteen (hereinafter, “Declarant”), Sales Director of Opposer Dexas International, Ltd. (“Opposer” or “Dexas”), with respect to Declarant’s Testimony Declaration submitted in the above-referenced proceeding, at The Law Office of Daniel V. Thompson, P.C., 9535 Forest Lane, Suite 208, Dallas, TX 75243 on **Thursday, August 3, 2017 beginning at 2:00 p.m. and continuing until completed.**

The testimony will be taken before an officer duly authorized by the laws of the United States to administer oaths and will be recorded by stenographic means as well as by video.



**EPSTEIN DRANGEL, LLP**  
*Attorneys for Applicant*

Dated: July 5, 2017

By: /s/ Jason M. Drangel  
Jason M. Drangel  
William C. Wright  
Ashly E. Sands  
Jennette Wiser  
60 East 42<sup>nd</sup> Street, Suite 2520  
New York, NY 10165  
Tel: 212-292-5390  
Fax: 212-292-5391

\*\*\*\*\*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of this Notice of Deposition Upon Oral Cross-Examination of Declarant was served by e-mail on this 5th day of July, 2017, upon Opposer attorney of record:

Daniel V. Thompson  
The Law Office of Daniel V. Thompson, P.C.  
9535 Forest Lane, Suite 208  
Dallas, TX 75243  
Email: dt@dfwpatent.com

BY: /s/ Jennette Wiser  
Jennette Wiser

\*\*\*\*\*

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

DEXAS INTERNATIONAL, LTD.,

Opposer,

v.

IDEAVILLAGE PRODUCTS CORP.,

Applicant.

**Opposition No.: 91225850**

**Application Ser. No. 86/472355  
[SNACKEEZ DUO]**

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**STIPULATION TO WAIVER OF READING AND SIGNATURE, NICK MUSTEEN  
TESTIMONY DEPOSITION**

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PLEASE TAKE NOTICE that the parties stipulate and agree to waive the reading and signature by witness of the transcript of the Testimony Deposition of Nick Musteen, taken on August 21, 2017.

Dated: September 27, 2017

**EPSTEIN DRANGEL, LLP**

By: /s/ Jason M. Drangel

Jason M. Drangel

William C. Wright

Ashly E. Sands

Kerry B. Brownlee

60 East 42<sup>nd</sup> Street, Suite 2520

New York, NY 10165

Tel: 212-292-5390

Fax: 212-292-5391

Email: [mail@ipcounselors.com](mailto:mail@ipcounselors.com)

*Attorneys for Applicant*

**THE LAW OFFICE OF DANIEL V. THOMPSON, P.C.**

By: /s/ Daniel V. Thompson  
Daniel V. Thompson  
9535 Forest Lane, Suite 208  
Dallas, TX 75243  
Tel: 972-479-0900  
Fax: 972-852-1699  
Email: [dt@dfwpatent.com](mailto:dt@dfwpatent.com)  
*Attorney for Opposer*

\*\*\*\*\*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing document was emailed on September 27, 2017 to Opposer's attorney of record:

Daniel V. Thompson  
The Law Office of Daniel V. Thompson, P.C.  
9535 Forest Lane, Suite 208  
Dallas, TX 75243  
Email: [dt@dfwpatent.com](mailto:dt@dfwpatent.com)

BY: /s/ Kerry B. Brownlee  
Kerry B. Brownlee

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**STIPULATION TO WAIVER OF READING AND SIGNATURE, NICK MUSTEEN  
TESTIMONY DEPOSITION**