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

Proceeding	92045000
Party	Plaintiff Bass Pro Trademarks, L.L.C.Bass Pro Trademarks, L.L.C. Bass Pro Trademarks, L.L.C. Bass Pro Trademarks, L.L.C. Bass Pro Trademarks, L.L.C. 2500 East Kearney Springfield, MO 65898 UNITED STATES
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Date	01/23/2007
Attachments	ST_LOUIS-2571473-v1-BPS v SWI - 2007-01-22 P's Offer of Depo Desigs Into Evid.pdf (170 pages)(8841235 bytes)

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

In the matter of Trademark Registration No. 2,390,988

For the mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR and Design

Date registered: October 3, 2000

Bass Pro Trademarks, L.L.C., PETITIONER, v. Sportsman's Warehouse, Inc., RESPONDENT	CANCELLATION NO. 92045000

PETITIONER'S OFFER OF DEPOSITION DESIGNATIONS INTO EVIDENCE

Pursuant to 37 C.F.R. §2.120(j)(3) and the stipulation of the parties in this matter, Petitioner, Bass Pro Trademarks, LLC, hereby submits its designation of discovery deposition portions to be offered into evidence as trial testimony in the above captioned proceeding. Petitioner submits herewith copies of the deposition transcript pages listed herein, including all exhibits referenced in those page.

1. Deposition of William Bome Taken May 16, 2006:

   Page 12, line 16 to page 18, line 24

   Page 32, line 15 to page 35, line 16

   Page 50, line 11 to page 54, line 15

2. Deposition of Joel Michael McRae Taken May 16, 2006:

   Page 9, line 14 to page 13, line 17

Page 27, line 16 to page 28, line 16

Page 33, line 18 to page 36, line 5

3. Deposition of Jason Perez Taken may 16, 2006:

Page 13, line 13 to page 18, line 6

Page 25, line 23 to page 26, line 25

Page 29, line 2 to page 30, line 15

Page 36, line 12 to page to page 38, line 11

Page 41, line 14 to page 42, line 5

Page 46, line 10 to page 50, line 5

Page 54, line 23 to page 59, line 3

4 Deposition of Dale Smith Taken May 10, 2006:

Page 3, line 8 to page 5, line 9

Page 10, line 6 to page 19, line9

Page 22, line 16 to page 27, line 15

Page 35, line 16 to page 41, line 16

5. Deposition of Stuart Utgaard Taken May 11, 2006:

Page 10, line 14 to page 13, line 24

Page 18, lines 2 – 25

Page 23, line 23 to page 28, line 15

Page 52, lines 2 – 7

Page 54, line 3 to page 62, line 17

Page 66, line 6 to page 68, line 22

6. Deposition of Jamison Bryan Hensley Taken June 1, 2006:

Page 11, line 16 to page 14, line 8

Page 16, line 20 to page 18, line 9

Page 28, line 14 to page 29, line 15

Page 30, line 5 to page 32, line 1

7. Deposition of James Osborne Taken June 1, 2006:

Page 26, line 1 to page 29, line 1

Page 40, line 8 to page 41, line 11

Page 43, lines 6 to 23

8. Deposition of Paul Otte Taken June 2, 2006:

Page 6, line 23 to page 8, line 9

Page 27, line 20 to page 29, line 2

Page 41, line 3 to page 42, line 5

Page 59, line 13 to page 60, line 11

9. Deposition of Jim Hagale Taken June 7, 2006:

Page 13, lines 19 to 25

Page 16, line 20 to page 18, line 20

Page 26, line 8 to page 27, line 8

Page 33, line 24 to page 36, line 1

10. Deposition of Ken Burroughs Taken June 7, 2006:

Page 27, line 11 to page 28, line 9

11. Deposition of Bruce Little Taken July 19, 2006:

Page 10, line 2 to page 15, line 25

Dated: January 22, 2007

Respectfully submitted,

HUSCH & EPPENBERGER, LLC

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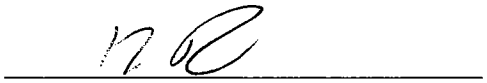
CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing document was served by first class mail, postage prepaid, on Christopher R. Smith, Lindquist & Vennum, PLLP, 80 South 8th Street, 4200 IDS Center, Minneapolis, MN 55402-2205, the attorney for Respondent, on this 22nd day of January, 2007.



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

3

4 In the Matter of Trademark Registration No. 2,390,988

5 For the Mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR and Design

6

Date Registered: October 3, 2000

7

8 Bass Pro Trademarks, L.L.C.,

9 PETITIONER,

10 vs.

11 Sportsman's Warehouse, Inc.,

12 RESPONDENT.

13

14 DEPOSITION OF WILLIAM BOME

15 May 16, 2006

16 Pursuant to Notice taken on behalf of the Petitioner, at 600 17th Street, Suite 1800, Denver, Colorado 80202, at
17 10:00 a.m., before Kelli J. Wessels, Registered Professional Reporter and Notary Public within Colorado.

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1 A. Thirteen years.
2 Q. What kind of business did you run?
3 A. Floor covering business. Everything to do with
4 floors; hardwoods, carpet, vinyl, tile, VCT, ACT, inlays.
5 Q. Were you the owner of the company?
6 A. Yes.
7 Q. Other than running the company, did you also
8 perform the floor covering work?
9 A. Yes.
10 Q. Did your company sell any product or did it only
11 provide the service?
12 A. Oh, just service, installation.
13 Q. And then what did you do after your time running
14 the floor covering business?
15 A. Started working for Sportsman's Warehouse.
16 Q. Do you recall what year you started with
17 Sportsman's Warehouse?
18 A. I want to say 2003 of July.
19 Q. When you started with Sportsman's Warehouse
20 initially, were you still running your floor covering
21 business?
22 A. It was a mix, yes, between the two.
23 Q. Are you still running the floor covering
24 business?
25 A. No.

1 Q. Do you recall roughly when you ended that
2 business?
3 A. I want to say I worked another year, about a year
4 and a half underneath that business.
5 Q. Do you ever take any college courses at all?
6 A. No.
7 Q. When you were in your floor covering business,
8 did you use any advertising for that business?
9 A. Other than business cards, no.
10 Q. You didn't run any print ads?
11 A. No.
12 Q. Do you know whether you used any trademarks in
13 conjunction with the floor covering business?
14 A. No.
15 Q. What was your job title when you first began with
16 Sportsman's Warehouse?
17 A. Sales associate on the floor in fishing.
18 Q. Was there a particular location where you worked
19 at that time?
20 A. Clackamas, Oregon.
21 Q. How do you spell that?
22 A. C-l-a-c-k-a-m-a-s.
23 Q. Do you know how long the Clackamas, Oregon,
24 Sportsman's Warehouse was in existence prior to your time
25 joining them?

1 A. I helped set the store from start.
2 Q. What exactly were your responsibilities with
3 respect to setting up the store, your own personal
4 responsibilities?
5 A. Pricing and stocking shelves.
6 Q. How did you hear of Sportsman's Warehouse for the
7 first time, do you recall?
8 A. From a fellow acquaintance that was into hunting
9 and fishing.
10 Q. Do you recall the name of this acquaintance?
11 A. Glenn White.
12 Q. Prior to Mr. White introducing you to the concept
13 of a Sportsman's Warehouse, had you ever heard of
14 Sportsman's Warehouse otherwise?
15 A. Never.
16 Q. Did you have any involvement in the setting up
17 the signage for that store?
18 A. No.
19 Q. Do you know who would have been responsible for
20 that at the time?
21 A. As far as I know probably Stu.
22 Q. Do you know what his position was at that time
23 with the company?
24 A. Stu?
25 Q. Yes.

1 A. Owner.
2 Q. At that time, do you know how many Sportsman's
3 Warehouse retail outlets were in existence?
4 A. I don't think they skipped any numbers, but I
5 believe that was Store 16. It could be 15, because I
6 think the head office is labeled as No. 1, so 15 or 16.
7 Q. Do you know if there were other Sportsman's
8 Warehouse retail outlets in Oregon prior to the
9 establishment of the --
10 A. Clackamas.
11 Q. -- the Clackamas store?
12 A. Salem.
13 Q. Do you know how long that one was in existence
14 prior to the Clackamas location?
15 A. I'll say one year.
16 Q. Okay. You said your initial job was -- what was
17 it again, I'm sorry?
18 A. Sales associate in fishing.
19 Q. How long did you hold that title?
20 A. About four months.
21 Q. Okay. What did you do after sales associate?
22 A. Assistant fishing manager.
23 Q. What were your general job duties as assistant
24 fishing manager?
25 A. The running and operations of the fishing floor,

1 pricing, stocking, making sure that the fishing manager
2 knew what orders needed to be filled, lunches for the
3 employees.
4 Q. Were there any employees that reported directly
5 to you at that time?
6 A. All the fishing employees at that store reported
7 to me.
8 Q. Okay. And how long did you serve as the
9 assistant fishing manager?
10 A. I want to say a year, like a year and six months.
11 Q. Okay. What was your next title?
12 A. Fishing manager.
13 Q. How did your job duties change, if they did, when
14 you became fishing manager?
15 A. As fishing manager I was responsible for all the
16 ordering in the department, counts on inventory, making
17 sure that the assistant fishing manager was doing his
18 duties.
19 Q. And who did you directly report to at that time?
20 A. Ken Palmer.
21 Q. Is he the store manager?
22 A. Yes.
23 Q. Do you know at the -- at that particular
24 Sportsman's Warehouse, was there a department that handled
25 customer relations issues?

1 A. Customer service.
2 Q. Okay. Did your duties as the assistant fishing
3 manager or as the fishing manager require you to work with
4 customer service?
5 A. Yes.
6 Q. And in what respect did you work with customer
7 service?
8 A. Opening and closing procedures for the store were
9 all done in customer service and any problems with
10 customers and being called to the front to deal with those
11 customers.
12 Q. And how long did you serve as the fishing
13 manager?
14 A. From about -- I took over in February, about a
15 year, year and a half.
16 Q. Okay. And after the fishing manager job, what
17 did you do next?
18 A. I was transferred to Colorado Springs as the
19 fishing manager.
20 Q. Were your job duties any different --
21 A. Same.
22 Q. -- as the fishing manager?
23 A. Same.
24 Q. They were the same in Colorado Springs as they
25 were in Clackamas, Oregon?

1 A. Yes.
2 Q. How long were you with the Colorado Springs
3 store?
4 A. Since November of 2005 till February, I think
5 February of 2006.
6 Q. Where did you go in February of 2006?
7 A. To Aurora.
8 Q. And what was your position initially when you
9 were transferred to Aurora?
10 A. Store manager.
11 Q. And that's your current position?
12 A. Yes.
13 Q. As of today, correct?
14 A. Yes.
15 Q. Can you describe for me your job duties as the
16 store manager of the Aurora location?
17 A. Opening and closing procedures for the front end,
18 inventory levels, a thing we call negatives.
19 Q. What are negatives?
20 A. Negatives that have to do with inventory.
21 Customer complaints, making sure my department managers
22 are doing their jobs.
23 Q. How many department managers do you supervise?
24 A. Ten. Ten total managers.
25 Q. And who do you report directly to?

1 return it for cash, did not have a receipt and was angry
2 that I would not give him cash for the product.
3 Q. All right.
4 A. He could have bought it someplace else. I
5 offered actually to take the product back because it was
6 in packages. It was all scanned. It was all in our
7 system, and we would have given him an in-house credit,
8 but he wanted cash for it.
9 Q. So how was that complaint ultimately resolved?
10 A. It wasn't resolved. He ended up leaving upset
11 because we wouldn't take the product back without a
12 receipt.
13 Q. Okay.
14 A. Which is, again, the policy.
15 Q. Okay. Are you familiar with the business known
16 as Pacific Flyway Wholesale?
17 A. Yes.
18 Q. What's your understanding of what that business
19 is?
20 A. A distribution center. Actually, we refer to it
21 as DC.
22 Q. What is it a distribution center of?
23 A. Product.
24 Q. What type of product?
25 A. Everything from amos to weights. Anything to do

1 with sporting goods.
2 Q. Okay. Would it be fair to say that Pacific
3 Flyway Sale is a wholesaler?
4 A. That I don't know.
5 Q. Do you have any understanding of the difference
6 between a wholesaler and a retailer?
7 A. Yes.
8 Q. What is your understanding of that distinction?
9 A. A wholesaler is a middle man between a
10 manufacturer and a retailer.
11 Q. Would it be fair to say that the customer of the
12 wholesaler are retailers?
13 A. Yes.
14 Q. The wholesalers sell to the end user?
15 A. To the retailer? To the consumer?
16 Q. Yes.
17 A. No. That's not to say there is not out --
18 wholesale outlets like the outlet stores.
19 Q. Right.
20 A. But I don't think that those places are actually
21 -- they call themselves wholesalers. It doesn't seem like
22 their product is that much cheaper or their prices are
23 that much cheaper.
24 Q. And with using your definition of a middleman
25 between the manufacturer and retailer, those types of

1 outlets that you just described, would you consider those
2 to be wholesalers within your definition?
3 A. The outlet stores being a wholesaler?
4 Q. Yes.
5 A. In my definition, no.
6 Q. Is Pacific Flyway wholesale in any way related to
7 Sportsman's Warehouse?
8 A. As far as they're owned by the same individual.
9 Q. Okay. Are they?
10 A. Yes.
11 Q. Other than the fact that they're owned by the
12 same individual, is there any kind of business interaction
13 between Pacific Flyway Wholesale and Sportsman's
14 Warehouse?
15 A. Yes.
16 Q. Okay. What is that? How do those businesses
17 interact?
18 A. One ships to the other.
19 Q. Okay. Which one ships to whom?
20 A. Pack Fly ships to Sportsman's Warehouse.
21 Q. When you say Pack Fly I assume that is short for
22 Pacific Flyway?
23 A. Yes.
24 Q. Does Pacific Flyway Wholesale ship merchandise to
25 Sportsman's Warehouse as a wholesaler?

1 A. Sportsman's Warehouse buys product in large
2 quantities that is sent to Pack Fly that is distributed,
3 DC center, between all the Sportsman's Warehouse stores.
4 Q. Do you have an understanding of -- we had just a
5 minute ago made a reference to the term retailer.
6 A. Okay.
7 Q. Do you have an understanding of what a retailer
8 is as opposed to a wholesaler?
9 A. Yes, a retailer is someone that sells to the
10 public at full retail prices.
11 Q. And Sportsman's Warehouse is a retailer; is that
12 correct?
13 A. Yes.
14 Q. Sportsman's Warehouse isn't a wholesaler,
15 correct?
16 A. No.
17 Q. Other than Pacific Flyway Wholesale, are there
18 any other wholesalers from whom Sportsman's Warehouse
19 purchases product?
20 A. Yes.
21 Q. Can you name some of the other wholesalers?
22 A. Gun-a-Rama, All Sports. There's a couple others
23 also.
24 Q. Okay. Just using those two examples, Gun-a-Rama
25 and All Sports, is it your understanding that those

1 policy.
2 Q. Is that a written policy?
3 A. No.
4 Q. Do you know how the policy is communicated to the
5 employees?
6 A. From the store managers.
7 Q. So the store manager prior to your arrival at
8 Aurora communicated this policy to the store employees; is
9 that your understanding?
10 A. Yes.
11 Q. Have you ever heard of any customers trying to
12 redeem coupons or gift cards from other retailers at any
13 other Sportsman's Warehouse location?
14 A. Could you state that again, please.
15 Q. I'm sorry, it is kind of confusing. Let me split
16 it up. I asked you a question about the Aurora store and
17 whether or not any customer ever tried to redeem another
18 retailer's coupon?
19 A. Right.
20 Q. At that particular location you said you weren't
21 aware of any instances, right?
22 A. Right.
23 Q. I'm just asking not specifically with respect to
24 the Aurora location but with respect to any other
25 Sportsman's Warehouse location, do you have any knowledge

1 of a customer attempting to redeem a coupon of another
2 store or retail outlet?
3 A. I know of other stores that have had coupons
4 brought to that -- or a card brought to that store trying
5 to be redeemed saying it said Sportsman's Warehouse.
6 Q. Okay. So you are saying at other Sportsman's
7 Warehouse locations other than the Aurora location
8 customers have brought in a third-party gift card and
9 tried to redeem that at a Sportsman's Warehouse location,
10 right?
11 A. Yes.
12 Q. How did you know about that?
13 A. From talking to other store managers.
14 Q. What other store managers told you that they've
15 experienced that?
16 A. Jason from the Thornton store here in Colorado
17 and Joel from the Littleton store. And Darren McDaniel
18 from the Colorado Springs store.
19 Q. Were there any particular circumstances that led
20 to you having those type of discussions with these three
21 other store managers?
22 A. Just talking about the Sportsman's Warehouse --
23 being associated with Bass Pro having, you know, Bass Pro
24 and then having, hey, did you know that Bass Pro was owned
25 by Sportsman's Warehouse, those type of conversations.

1 Oh, no, it is on the verbiage of this card that kind of
2 conversation.
3 Q. These conversations that you had were they
4 separate conversations with each of these store managers?
5 A. Two were with -- one was with both Jason and Joel
6 and one was separate with Darren in the Springs.
7 Q. Okay on. When did the conversation with the
8 Thornton manager and the Littleton manager take place?
9 A. Yesterday.
10 Q. Did you have this discussion with them in person?
11 A. Yes.
12 Q. Was your counsel present during that discussion?
13 A. Yes.
14 Q. I won't ask you any more questions about that.
15 The conversation you had with Darren, was that
16 also a conversation you had yesterday?
17 A. Yesterday.
18 Q. Prior to that time, did you ever have any similar
19 conversations with these store managers?
20 A. No.
21 Q. Prior to yesterday, did you have any knowledge of
22 this confusion caused by the Bass Pro gift cards?
23 A. One occurrence while fishing in Oregon. I had
24 started working for Sportsman's Warehouse, proudly wore
25 the Sportsman's Warehouse shirt and somebody comes up to

1 me and was, oh, Sportsman's Warehouse, started talking
2 about it. Did you know it is owned by Bass Pro? No, it
3 is not.
4 Argument ensues and the gentleman got out a card
5 that had on the very back of the card, can be redeemed at
6 Outdoor World, Bass Pro Shops and then on a separate line
7 Sportsman's Warehouse.
8 Q. So if my understanding is correct you had a
9 Sportsman's Warehouse shirt on?
10 A. Right.
11 Q. A gentleman thought the Sportsman's Warehouse
12 displayed on your shirt was in fact the Sportsman's
13 Warehouse in fact owned by Bass Pro; is that correct?
14 A. And it brought up a conversation of, did you know
15 Sportsman's Warehouse was owned by Bass Pro.
16 Q. That was the statement that the gentleman made to
17 you?
18 A. Yes.
19 Q. Do you recall roughly when that conversation
20 occurred?
21 A. It was in the winter of 2003.
22 Q. And what was your position with Sportsman's
23 Warehouse at that time?
24 A. I was a fishing associate.
25 Q. Did you ever report the substance of this

1 conversation you had to anyone at else at Sportsman's
2 Warehouse?
3 A. I brought it to the attention of my store
4 manager.
5 Q. Who was your store manager at that time?
6 A. Ken Palmer.
7 Q. Do you know if Mr. Palmer is still with
8 Sportsman's Warehouse?
9 A. Still in the Portland store, the Clackamas store.
10 Q. He is still the manager there?
11 A. Yes.
12 Q. What was his response to your story about this
13 conversation?
14 A. That they were not affiliated. Two separate
15 entities.
16 Q. Do you know what he did with the information that
17 you gave him?
18 A. No.
19 Q. Do you know if he reported it to anyone else at
20 Sportsman's Warehouse?
21 A. No.
22 Q. Did he ever indicate to you that he did not
23 report it to anyone else at Sportsman's Warehouse?
24 A. No.
25 Q. Other than the mix-ups at the Littleton store and

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

3

4 In the Matter of Trademark Registration No. 2,390,988

5 For the Mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR and Design

6 Date Registered: October 3, 2000

7

8 Bass Pro Trademarks, L.L.C.,

9 PETITIONER,

10 vs.

11 Sportsman's Warehouse, Inc.,

12 RESPONDENT.

13

14 DEPOSITION OF JOEL MICHAEL McRAE

15 May 16, 2006

16 Pursuant to Notice taken on behalf of the Petitioner, at 600 17th Street, Suite 1800, Denver, Colorado 80202, at
17 2:11 p.m., before Kelli J. Wessels, Registered Professional Reporter and Notary Public within Colorado.

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1 Q. What year?
2 A. 1997.
3 Q. What did you do following Montrose High School?
4 A. Immediately went to Mesa State College, Grand
5 Junction, Colorado.
6 Q. What did you study there?
7 A. Management.
8 Q. How long were you at Mesa State College?
9 A. Four and a half years.
10 Q. Did you graduate with a degree from that school?
11 A. Yes, sir.
12 Q. What was your degree?
13 A. Business management.
14 Q. And what did you do following Mesa State College?
15 A. I started my employment in the Grand Junction
16 Sportsman's Warehouse.
17 Q. If my math is right then would that be 2002 as
18 far as the year you joined Sportsman's Warehouse?
19 A. It was -- I was still in school when I joined
20 Sportsman's Warehouse, which was November of 2001.
21 Graduation was December of that year.
22 Q. What was your first position with Sportsman's
23 Warehouse?
24 A. A hunting department sales associate.
25 Q. Can you give me a brief description of your

1 general duties as a hunting department sales associate?
2 A. Firearms sales, hunting and accessory sales,
3 ammunition sales, cleaning, merchandising, general
4 customer service.
5 Q. Were you in any way responsible for handling
6 customer complaints of any kind at that time?
7 A. Not right away.
8 Q. Okay. When you were in the position of hunting
9 department sales associate at the Grand Junction
10 Sportsman's Warehouse, if a customer voiced a complaint to
11 you, was there any policy or procedure for handling that
12 complaint?
13 A. Typical policy was to take it to either one of
14 the assistant department heads or the assistant department
15 head.
16 Q. So basically you referred it to management; is
17 that right?
18 A. Correct.
19 Q. How long did you work as a hunting department
20 sales associate in Grand Junction?
21 A. Five months.
22 Q. What did you do next?
23 A. At that location I was in sales training to be an
24 assistant hunting manager.
25 Q. And can you describe the specific training that

1 you received at that time?
2 A. That position was a gun room position which is
3 the acquisition and disposition of firearms. Also opening
4 and closing procedures of the store itself.
5 Q. Is there a formal training program or is this
6 something that was just provided to you on somewhat of an
7 informal basis?
8 A. It was formal from the department head and the
9 store manager.
10 Q. Were there any kind of training booklets or
11 training manuals that they provided to you for that type
12 of training?
13 A. For the gun room training, most of that material
14 is provided by the Bureau of Alcohol and Tobacco and
15 Firearm and Explosives. The opening and closing procedure
16 training was provided by the store manager.
17 Q. Is there a written policy or procedure for
18 opening and closing?
19 A. Not -- not really.
20 Q. Okay. How long did this sales training go on?
21 A. Approximately one month.
22 Q. Okay. And after receiving that training, did you
23 then assume the role as assistant hunting manager?
24 A. Not in that store. A different location.
25 Q. All right. Okay. Where were you transferred at

1 that time?
2 A. Salem, Oregon.
3 Q. Okay. And how long were you the assistant
4 hunting manager of the Salem, Oregon, location?
5 A. I left Grand Junction in May and I was there for
6 16 months.
7 Q. Would that have been May 1992?
8 A. 2002.
9 Q. I'm sorry, 2002?
10 A. Correct.
11 Q. Just so the record is clear, you served as the
12 sales -- I'm sorry, as the assistant hunting manager in
13 the Salem, Oregon, location of Sportsman's Warehouse from
14 roughly May of 2002 until October of 2003?
15 A. No, that's not correct. It was until June of
16 2003, I'm sorry.
17 Q. Where did you go in June of 2003?
18 A. Then I was transferred to the Aurora, Colorado,
19 Sportsman's Warehouse.
20 Q. What was your position upon your transfer to
21 Aurora, Colorado?
22 A. Hunting department manager.
23 Q. When you were the hunting department manager in
24 Aurora, who did you directly report to when you assumed
25 that position?

1 A. A gentleman named Gary Watts.
2 Q. Okay. How long were you the hunting department
3 manager in the Aurora location?
4 A. Through July of 2005.
5 Q. Okay. Where did you go in July of 2005?
6 A. Littleton, Colorado, Sportsman's Warehouse.
7 Q. And what position did you assume in Littleton in
8 July of 2005?
9 A. Store manager.
10 Q. And is store manager the Littleton, Colorado,
11 Sportsman's Warehouse your current job?
12 A. Correct.
13 Q. Are there department managers that report
14 directly to you at the Littleton location?
15 A. Yes.
16 Q. How many department store managers report to you?
17 A. Eight.
18 Q. How does the size of the Littleton store compare
19 to the size of the Aurora location, just roughly square
20 footage-wise?
21 A. As far as I know they are the same.
22 Q. Okay.
23 A. I'm not certain.
24 Q. But one is not twice as big as the other, they
25 are pretty close?

1 A. I had not.
2 Q. And you don't recall seeing any Sportsman's
3 Warehouse advertising prior to your time as a Sportsman's
4 Warehouse employee; is that correct?
5 A. That's correct.
6 Q. Prior to that time, had you ever heard of Bass
7 Pro Shops?
8 A. Yes.
9 Q. Had you ever shopped at a Bass Pro Shop prior to
10 your time as a Sportsman's Warehouse employee?
11 A. No.
12 Q. Prior to your time as a Sportsman's Warehouse
13 employee, had you ever heard of Bass Pro Shops Sportsman's
14 Warehouse?
15 A. No.
16 Q. Are you familiar with a business known as Pacific
17 Flyway Wholesale?
18 A. Yes.
19 Q. What is your understanding of what that business
20 is?
21 A. Pacific Flyway provides merchandise to
22 Sportsman's Warehouse on a weekly basis.
23 Q. Is it your understanding that Pacific Flyway is a
24 wholesaler?
25 A. Yes.

1 Q. What is your understanding of what a wholesaler
2 is?
3 A. They sell to businesses rather than on an
4 individual basis.
5 Q. Okay. Is it your understanding that businesses
6 that actually sell to the end users or the customers would
7 be a retailer as opposed to a wholesaler?
8 A. Correct.
9 Q. So Pacific Flyway is not a retailer, right?
10 A. They are not.
11 Q. And Sportsman's Warehouse is a retailer; is that
12 correct?
13 A. That's correct.
14 Q. And Sportsman's Warehouse is not a wholesaler; is
15 that right?
16 A. That's right.
17 Q. At any time, have you ever been provided any
18 instruction regarding the appropriate use of Sportsman's
19 Warehouse logos?
20 A. No.
21 Q. You never received any communications giving you
22 any guidelines in terms of what you can and can't do with
23 respect to the use of Sportsman's logos?
24 A. I have -- I have seen an e-mail.
25 Q. Okay. And was that a recent e-mail that made

1 and hats that your store uses, would they all only use the
2 logo that you referred to as the one with the mountain in
3 the background?
4 A. I would say that they use both of them.
5 Q. Both of them being the new oval shaped design?
6 A. That's correct.
7 Q. Do you know if any T-shirts or hats at your store
8 use the oval design with the little circled R next to it?
9 A. I don't know that.
10 Q. You've never had someone call you and say, quit
11 handing out the T-shirts and hats with the logo with the
12 circled R on it?
13 A. I have not.
14 Q. Have you ever been instructed to change any of
15 the Sportsman's Warehouse logos that are displayed in any
16 of these advertising mediums that we just discussed?
17 A. No.
18 Q. Were you aware of any instances where your
19 store's customers have been mistaken with respect to
20 Sportsman's Warehouse versus Bass Pro Shops Sportsman's
21 Warehouse?
22 A. Yes.
23 Q. How many such instances are you aware of?
24 A. Just one.
25 Q. How did you find out about that instance?

1 A. Woman at the cash register attempting to pay for
2 her merchandise with a Bass Pro gift card.
3 Q. Were you physically present at the time the
4 customer attempted to use the Bass Pro gift card?
5 A. Yes.
6 Q. What exactly did -- did the customer say anything
7 to you at that time?
8 A. She wasn't specific.
9 Q. Actually, can you just explain to me just more
10 specifically what happened in that instance?
11 A. She came to the register with merchandise in a
12 basket. Upon ringing all the merchandise up she pulled a
13 Bass Pro gift card from her wallet to use for purchase. I
14 politely explained to her that we are two different
15 companies and she would have to pay with another means.
16 She said, okay, and pulled a credit card out and paid for
17 it with that.
18 Q. So basically she just said okay and put it away?
19 A. I can't assume what she was thinking but, yeah.
20 Q. I just want to make sure there wasn't anything
21 else that she said?
22 A. I don't remember --
23 Q. Okay.
24 A. -- if there was anything else.
25 Q. She didn't, like, complain about being confused?

1 A. She wasn't unhappy, no.
2 Q. Do you recall roughly when this instance
3 occurred?
4 A. 2004.
5 Q. Where did this occur?
6 A. Aurora.
7 Q. What was your position at that time?
8 A. Hunting department manager.
9 Q. Is this a situation where another employee had to
10 seek you out and ask you to resolve the issue or did you
11 just happen to be there when it all happened?
12 A. I was -- I was asked to come and be of assistance
13 at the register.
14 Q. Do you know if the Aurora store manager was in
15 the store at the time?
16 A. He was not.
17 Q. Would that be a reason why you were consulted
18 about this as opposed to the store manager because he
19 wasn't there?
20 A. That is correct.
21 Q. After you handled the situation, did you
22 ultimately report it to anyone?
23 A. I reported it to the store manager the next day.
24 Q. Who was the store manager at that time?
25 A. Gary Watts.

1 Q. How did he respond to your report of this
2 instance?
3 A. I don't recall.
4 Q. Do you recall whether or not he seemed surprised?
5 A. He didn't seem surprised.
6 Q. Did he indicate to you whether or not that had
7 ever happened before?
8 A. He did not.
9 Q. Are you aware of any other similar instances of
10 confusion at the Aurora store during your time there?
11 A. None that I'm aware of.
12 Q. Is it possible that there could have been other
13 instances but you are just not aware of them?
14 A. It's possible.
15 Q. Are you aware of any instances at the Littleton
16 store where a customer attempted to present a Bass Pro
17 gift card to one of the employees at your store?
18 A. Not that I'm aware of. It hasn't been brought to
19 my attention.
20 Q. Is it possible that a customer may have tried to
21 present a Bass Pro gift card to a cashier at your store
22 and the cashier just explained to that customer that, you
23 know, we're not Bass Pro and that instance was never
24 reported?
25 A. Pretty unlikely.

1 32180BKW

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

3

4 In the Matter of Trademark Registration No. 2,390,988

5 For the Mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR and Design

6

Date Registered: October 3, 2000

7

8 Bass Pro Trademarks, L.L.C.,

9 PETITIONER,

10 vs.

11 Sportsman's Warehouse, Inc.,

12 RESPONDENT.

13

14 DEPOSITION OF JASON PEREZ

15 May 16, 2006

16 Pursuant to Notice taken on behalf of the Petitioner, at 600 17th Street, Suite 1800, Denver, Colorado 80202, at

17 12:39 a.m., before Kelli J. Wessels, Registered Professional Reporter and Notary Public within Colorado.

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1 A. Yes, I was a department manager.
2 Q. And then what did you do when you left K-Mart?
3 A. I left K-Mart and went into business with my
4 father-in-law for two years.
5 Q. What kind of business did you go into with your
6 father-in-law?
7 A. It was called A Sweet Shop. It was more of a
8 candy business.
9 Q. Sweet as in s-w-e-e-t?
10 A. Yeah.
11 Q. Where is that business located?
12 A. That was located in Springville, Utah.
13 Q. Then what did you do after Sweet Shop?
14 A. After the Sweet Shop I went to California for
15 about a year. Went back to school for about a year, I
16 believe, and then interviewed with Sportsman's over the
17 phone from California. They had built a store right next
18 to the K-Mart in East Bay in Provo. That was their store
19 No. 2 in Provo, which when I left I had heard about it. I
20 didn't know anything about their Midville store.
21 Q. During your time in Utah, before you left
22 California, you were familiar with Sportsman's Warehouse;
23 is that right?
24 A. I knew it was being built next door to the K-Mart
25 there. I didn't know anything about Sportsman's Warehouse

1 at the time since there was just one, the original one,
2 that had been developed.
3 Q. After you interviewed with Sportsman's, did you
4 then actually accept a position with the Provo store?
5 A. No, I accepted one with the Riverdale store,
6 Store No. 3.
7 Q. That was in Utah?
8 A. That was Utah, yeah.
9 Q. Do you know about, roughly, what year that was
10 that you worked --
11 A. 1999.
12 Q. Before being hired at the Sportsman's Warehouse
13 store in 1999, had you ever had an occasion to shop at a
14 Sportsman's Warehouse?
15 A. Before that?
16 Q. Yes.
17 A. No.
18 Q. How did that initial interview you had with
19 Sportsman's come about?
20 A. How did it take place or how did it all start do
21 you mean?
22 Q. Right.
23 A. My brother lived in Utah at the same time and was
24 going to school there, and he actually started working in
25 the No. 2 store in Provo, is how I became somewhat

1 affiliated with them. And as their expansion started
2 that's where I got a phone call.
3 Q. What was your title when you first began at
4 Sportsman's?
5 A. I interviewed for a receiving manager position
6 but went into the camping department instead.
7 Q. Did you have an official title in the camping
8 department?
9 A. I don't know if it is an official title. I was
10 the pre-merchant assistant to Jim Murphy who was the
11 buyer. Other than that, I was a camping associate.
12 Q. You weren't in management originally; is that
13 right?
14 A. Not from the start.
15 Q. How long were you in the camping department
16 before you took on another job?
17 A. Probably just for a year.
18 Q. You've been with Sportsman's Warehouse
19 continually from 1999 to the present; is that right?
20 A. Yes, sir.
21 Q. Can you just kind of take me through the
22 different jobs that you've held after the camping
23 department associate position?
24 A. After the camping department I went to the
25 Meridian store in Boise, and I was the camping manager and

1 assistant store manager to Don Thomas.
2 Q. Okay.
3 A. After Boise I went to Loveland as a store manager
4 for two, two and a half years, somewhere right in there.
5 Q. You were the store manager at that time?
6 A. Yes, sir.
7 Q. It sounded like -- strike that.
8 Do you recall roughly what year you were
9 transferred to the Loveland store?
10 A. Well, I was in Riverdale in 1999. 2000 I was in
11 Boise. 2001, August -- actually, it was just the end of
12 July I moved to Loveland of 2001.
13 Q. How long were you at Loveland?
14 A. Like I said, between two, two and a half years.
15 Just over two years.
16 Q. So that takes us, I think, to mid to late 2003;
17 is that right?
18 A. Yeah.
19 Q. Where did you go at that time?
20 A. After that to the Thornton store.
21 Q. What was your position at the Thornton store?
22 A. Store manager.
23 Q. Is that your current title now?
24 A. Store manager at the Thornton store. Yes, sir.
25 Q. Can you briefly describe your job

1 responsibilities as a store manager of the Thornton store?
2 A. Store manager of the Thornton store
3 responsibilities is basically responsible and in charge of
4 everything that happens inside the box to the total
5 function and operation of the store down to department
6 managers. Do you want me to just specifically break
7 everything down, what I do?
8 Q. I'll ask you some more specific questions.
9 A. Okay.
10 Q. How many department managers do you supervise?
11 A. Thirteen, I believe.
12 Q. Who do you --
13 A. That includes assistants, just so you know. The
14 management teams.
15 Q. Thank you. To whom do you directly report?
16 A. I directly report to -- now they call it an area
17 manager who used to be the district manager.
18 Q. Who's the area manager that you report to?
19 A. Brian Thompson is who I report to directly.
20 Q. Is there a specific office where he's physically
21 located?
22 A. The office at Idaho Falls. He is based out of a
23 store as well.
24 Q. Does he serve as the store manager for Idaho
25 Falls?

1 A. He does. He serves as store manager as well.
2 Q. Do you know when the Thornton store opened?
3 A. Which one?
4 Q. Thornton store.
5 A. We opened in 2003, October. October 2nd, if you
6 want the date.
7 Q. Is it correct that you're the first and only --
8 A. Yeah.
9 Q. -- store manager for the Thornton store?
10 A. Mm-hmm. Yes, sir.
11 Q. I think you are starting to answer before I get
12 my question out, too. If you could just allow me to do
13 that, I would appreciate that.
14 Did you assist in getting the Thornton store
15 started in October of 2003?
16 A. Yes.
17 Q. So the store wasn't up and running before you
18 actually were transferred there; is that right?
19 A. I put it all together from day one.
20 Q. Was there a team that was responsible for
21 actually getting the store up and running?
22 A. Yeah, there was a team.
23 Q. Who was on that team?
24 A. We did the hiring process, obviously, before and
25 upon doing the hiring process, getting everyone hired, we

1 A. No, sir.
2 Q. Do you know where he went?
3 A. Not positive. I heard, but I can't remember.
4 Q. Do you know how long ago, roughly, he left
5 Sportsman's warehouse?
6 A. Seven or eight months ago.
7 Q. Do you know if Sportsman's Warehouse has any
8 formal policies with respect to how signage should look in
9 the retail outlets?
10 A. Can you repeat the question again. I'm sorry.
11 Q. Sure. Do you know if Sportsman's Warehouse has a
12 formal policy with respect to the signage used in the
13 retail locations?
14 A. I mean, they have one in pretty much, you know --
15 they have it planned there as far as what we need to be
16 doing, yeah. They have a set sign program that we should
17 be going by, if that's what you're asking.
18 Q. Is that a program that maintains the consistency
19 of the signage throughout the corporation?
20 A. Exactly. It consists of what signs should go and
21 what they should look like in each department or what
22 product.
23 Q. Are you familiar with the business known as
24 Pacific Flyway Wholesale?
25 A. Yes, sir.

1 Q. What's your understanding of what that business
2 is?
3 A. Pacific Flyway is a wholesale company. Basically
4 that's what Pacific Flyway is.
5 Q. When you say it is a wholesale company, what do
6 you mean by that?
7 A. They buy goods wholesale. So they would
8 basically be able to buy those and then in turn we're able
9 to order them from -- Sportsman's orders the product from
10 Pac Flyway.
11 Q. So is it fair to say that Pacific Flyway
12 Wholesale is a wholesaler that sells product to retailers?
13 A. To retailers, mm-hmm, that is fair to say.
14 Q. Is it your understanding that Sportsman's
15 Warehouse -- the Sportsman's Warehouse locations including
16 the ones where you have worked are retailers as opposed to
17 wholesalers?
18 A. Retailers.
19 Q. Okay. And to the best of your knowledge, have
20 the Sportsman's Warehouse locations, have they been
21 retailers since the start of the first retail location?
22 A. Yes.
23 Q. Sportsman's Warehouse has never been in the
24 business of selling wholesale products, right?
25 A. No.

1 A. Yes.
2 Q. When did you first become aware of Bass Pro Shops
3 Sportsman's Warehouse?
4 A. I want to say it was in 1999. I'm not positive.
5 I think that was the first experience.
6 Q. How did you become aware of Bass Pro Shops
7 Sportsman's Warehouse at that time?
8 A. Magazine. They had an ad.
9 Q. Were you working for Sportsman's Warehouse at
10 that time?
11 A. Yes, sir.
12 Q. When you saw the magazine ad, were you surprised
13 to see that Bass Pro had a business that they referred to
14 as Sportsman's Warehouse?
15 A. Yes.
16 Q. When you first learned of Bass Pro Shops
17 Sportsman's Warehouse, did you report that to anyone at
18 Sportsman's Warehouse?
19 A. I believe it was reported to the store manager.
20 I believe it arrived and probably before I even saw it.
21 Q. Which store manager is that?
22 A. Don Thomas.
23 Q. What store was he the manager of at the time, do
24 you recall?
25 A. The Boise store, Meridian.

1 Q. If I understand you correctly, it sounds like
2 what you're saying is someone had reported that fact to
3 Don Thomas but it wasn't you, right?
4 A. They brought it to me. I think it had already
5 been filtered through up to him already somehow. I don't
6 remember if it was me or someone else. I just know that
7 he probably was aware of that before the fact.
8 Q. So someone actually brought this magazine ad to
9 your attention?
10 A. Yes.
11 Q. Okay. I just wasn't sure if you were just paging
12 through like a Field and Stream and saw it or someone
13 brought it to you?
14 A. No, someone brought it and said, hey, look at
15 this. I was kind of caught off like, whoa.
16 Q. When we first started the deposition I had asked
17 you some questions about the two different Sportsman's
18 Warehouse logos that you are aware of, do you recall that?
19 A. Mm-hmm.
20 Q. What's the difference between the two logos in
21 your mind?
22 A. One is just kind of updated and fresh, refreshed,
23 so to speak, more up to date as far as signage goes.
24 Q. Is there a difference between the way the two
25 logos are used? Let me ask you a different question.

1 do this. This is just something corporate says they are
2 more going towards now is that oval logo and being more
3 consistent with that.
4 Q. And this oval logo, in addition to the fact it
5 includes an oval shape, it also includes the verbiage
6 Sportsman's Warehouse; is that correct?
7 A. Mm-hmm. Yes, sir.
8 Q. In the past few weeks you haven't received any
9 calls from corporate regarding any of your signage; is
10 that right?
11 A. I have not received any phone calls, no, sir.
12 Q. Has anyone from corporate given you any
13 instructions with respect to your signage over the course
14 of the last month?
15 A. E-mail. I've had an e-mail that just directed as
16 far as what we're using signage-wise as far as the R
17 versus not the R.
18 Q. Okay. Who did you receive that e-mail from?
19 A. Jeremy Sage.
20 Q. You said he sent an e-mail to you sometime within
21 the past month?
22 A. I would say it was probably within the last
23 month. I don't know the exact date on it but, yeah.
24 Q. Was it an unsolicited e-mail or was it an e-mail
25 in response to something you sent him?

1 A. No, I didn't send him anything. He just sent it
2 out to make sure that everyone understands kind of this,
3 this and this and the layout.
4 Q. What specifically did the e-mail say?
5 A. Boy, I can't remember everything on it. I think
6 it just said basically if we're using -- I can't remember
7 exactly what it said.
8 Q. Okay. Well, you said when we first started
9 talking about it you said something about either using an
10 R with a circle around it or not?
11 A. He talked about the thing we could use has to be
12 with the trademark -- with the R on it. For doing -- I
13 think he kind of broke it down for doing this or for doing
14 certain advertising make sure we are using the right logo,
15 you know what I mean?
16 Q. With the R?
17 A. With the R, with the trademark.
18 Q. The e-mail said there are some things that are
19 appropriate for the circled R and some that are not?
20 A. Something like that. I can't remember, to be
21 honest with you.
22 MR. SMITH: If I can interject here, that was
23 produced just recently.
24 A. I'm just not clear and exact what it said. I
25 can't remember.

1 Q. (BY MR. CAMPBELL) It is unfair for me to ask you
2 without putting the document in front of you and if I had
3 it I would.
4 A. No, that's fine.
5 Q. Do you recall whether that e-mail was sent to you
6 or was it addressed to anyone else?
7 A. It was addressed to all the store managers.
8 Q. Did the e-mail give you any explanation as to why
9 you should use the R one way versus another way?
10 A. I think it basically is just giving a guideline
11 what we use our logo for with our trademark.
12 Q. Okay. What type of advertising does your
13 particular store use?
14 A. What type do we do?
15 Q. Yes.
16 A. We do radio. We've done some television. A lot
17 of newspaper.
18 Q. You said you've done television spots. Do you
19 currently do them or is that something in the past?
20 A. No, we are working on that as well right now.
21 No, but television is the least. Most would be newspaper
22 and radio and television would be last.
23 Q. What kind of newspaper advertisements do you use?
24 A. Full-page ads.
25 Q. Is the full-page ad that you use something that

1 year. It has been at least two years ago, maybe even
2 three. I don't know. It was the first time that we saw
3 those logos.
4 Q. During that meeting that you just referenced, was
5 there any explanation as to why there would be a change
6 from the old logo to the new logo?
7 A. Ryan just came out and just said, hey, what do
8 you think? He said, hey, I thought this Sportsman's
9 Warehouse -- we've had this logo for so long now, just
10 thought it would add a little zip to it. We all agreed we
11 thought the logo was something that was new and fresh.
12 That was basically all he presented in that text -- in
13 that context and wanted the opinion of the store managers.
14 Q. Are you aware of any instances where a customer
15 has come into your store and expressed some confusion
16 between your Sportsman's Warehouse and the Bass Pro Shops
17 Sportsman's Warehouse?
18 A. I've experienced that before, yes.
19 Q. How many times do you recall that that happened?
20 A. Are you talking about a specific place or overall
21 you just want to know?
22 Q. Just overall how many times. And I guess I'm
23 just talking about right now the store you are at, so
24 going back to 2003.
25 A. 2003 at least a handful of times. Five --

1 anywhere from five to ten times that I can recall myself
2 handling something like that.
3 Q. Okay. Five to ten times going back from October
4 of 2003 to the present; is that correct?
5 A. Yes, sir.
6 Q. Actually, let me back up a little bit. Does your
7 store have a policy with respect to handling customer
8 complaints?
9 A. (Deponent nods head.)
10 Q. What's your store's policy for dealing with
11 customer complaints?
12 A. Basically if a complaint arises if I'm present in
13 the store I take care of every one of the complaints,
14 every complaint. If I'm not present the assistant in
15 charge will take care of it on my behalf as far as any
16 complaints that go on. There is always someone in charge
17 that would take care of that in my absence.
18 Q. Okay. If you're not in the store and there's
19 another manager who takes care of a customer complaint,
20 once that complaint is resolved, would the department
21 manager then report that to you?
22 A. Every time.
23 Q. So even if you are not involved in resolving the
24 complaint, someone else takes care of it, they still
25 report each and every complaint to you directly?

1 an actual complaint, a frustration of some sort, unless
2 the customer just leaves and doesn't allow that, I am
3 brought into it unless I am not there and then someone
4 else takes care of that on my behalf.
5 Q. In the instances that I asked you about before
6 where a customer has brought in a Bass Pro Shops gift card
7 and tried to redeem that --
8 A. I was going to say you never asked me that
9 before.
10 Q. I think I asked you whether any customers came
11 into your store and were confused in terms of the
12 relationship between Sportsman's Warehouse versus Bass Pro
13 Shops Sportsman's Warehouse and you said there were five
14 to ten instances where that may have occurred?
15 A. Yes.
16 Q. Did I understand your testimony correctly?
17 A. Mm-hmm.
18 Q. In those instances where a customer has voiced
19 that confusion, is that something that customer service
20 people are required to report to you or is that something
21 they can take care of themselves?
22 A. The first time that it come up or it arose,
23 obviously we had to figure out something in a plan as far
24 as what we want to let the customer know.
25 Q. And what did you decide to do that first time?

1 A. Basically what happened is the customer wanted to
2 redeem the gift card and our employee said we don't accept
3 those cards. That card is not affiliated with our store.
4 And I think the customer just wanted to know a little bit
5 more why because it did say Sportsman's Warehouse on it.
6 And then I just came down and explained to them
7 that we were two different entities. Sportsman's
8 Warehouse and Bass Pro Shop are a separate business. I
9 just simply explained that Bass Pro Shop has Sportsman's
10 Warehouse by Bass Pro Shop and that is to be used at their
11 locations where they are accepted.
12 Q. So you spoke directly with the customer?
13 A. Every one of them if I'm there I speak to them
14 myself.
15 Q. Okay. Do you recall roughly when that first
16 instance occurred, the one you just described?
17 A. I don't remember any dates as far as the first
18 time it happened at the Thornton location, no.
19 Q. Would it have been more than a year ago?
20 A. The first one?
21 Q. Yes.
22 A. Yes.
23 Q. Do you think it would have been more than two
24 years ago?
25 A. At the Thornton location?

1 Q. Yes.
2 A. It would have been probably -- it would have been
3 probably two years ago. Somewhere within that first year.
4 Q. Do you recall specifically what -- well, strike
5 that.
6 Did the customer actually explain the situation
7 to you before you offered a response?
8 A. I don't recall exactly to be honest with you what
9 happened. I just know -- I don't ever recall what the
10 outcome was on that.
11 Q. You don't remember anything specifically that the
12 customer said to you?
13 A. Most of them are the same thing every time. It
14 says Sportsman's Warehouse on here, why can't we use this
15 card here. This is -- you know, it is not.
16 Q. And a moment ago you said that every time you've
17 been present you've personally addressed the customer and
18 explained the situation; is that right?
19 A. Every time I was able to get down there I was
20 always down there to tell them.
21 Q. Are you aware of whether it is possible that
22 there were other similar occurrences of this confusion
23 when you were not present at the store?
24 A. There has been a couple of times.
25 Q. Do you know who handled those situations in your

1 absence?
2 A. I believe it was Jose who is in charge at that
3 time.
4 Q. Is he a department manager?
5 A. He was a footwear department manager, no longer
6 works for Sportsman's Warehouse.
7 Q. Do you know what his last name is?
8 A. Moreno.
9 Q. When did he leave Sportsman's Warehouse?
10 A. He's been gone probably four or five months.
11 Q. Do you know where he went?
12 A. He works for Walgreens.
13 Q. Do you know where at?
14 A. I'm trying to think where that is at. 72nd and
15 Federal.
16 Q. Is it in Thornton?
17 A. I don't know if that is Federal Heights or not.
18 Federal Heights -- I don't know, to be honest with you.
19 Q. It's near Thornton, though; is that right?
20 A. Yeah.
21 Q. Okay. Other than the instances where you were
22 actually present in the store and these couple other times
23 where Jose Moreno resolved the last situation, do you know
24 if there were any other occasions where a customer
25 confused your Sportsman's Warehouse store with a Bass Pro

1 Shops Sportsman's Warehouse?
2 A. No.
3 Q. Is it possible there may have been other
4 instances at your store that you just don't know about?
5 A. Definitely possible.
6 Q. Okay. Do you know if any of these instances were
7 ever recorded on the written sheets that go in the
8 complaint box?
9 A. None of the complaints dealt with that specific
10 subject in the comment box at all.
11 Q. Do you have a practice for the retention of these
12 written complaints at your store?
13 A. For retaining them?
14 Q. Yes.
15 A. After they go through my box into the boxes of
16 the management, to the employees, they usually go into the
17 files if it pertains to a specific employee. If it just
18 pertains to the store as a whole, most of the good
19 comments and there is more -- far more good comments than
20 there are bad comments, I give them to my office manager
21 who keeps all of those. He's making some type of album
22 book for the associates to look at in the break room. As
23 far as the negative ones, I used to retain most of those
24 in a file but haven't kept all of them.
25 Q. Do you still have a file with some of these?

1 happen occasionally. Their question is, why does that say
2 Sportsman's Warehouse on there. So basically it's an
3 explanation that I gave them there and how to handle it if
4 I'm not around.
5 Q. Okay. You gave them instructions in terms of how
6 to handle it with the customers; is that correct?
7 A. Mm-hmm.
8 Q. Did you give them any instructions as to a
9 requirement that they would actually report these types of
10 occurrences directly to you?
11 A. I don't know in that specific meeting I said to
12 report it to me. They usually just report everything to
13 me in general. Any type of customer incident like that I
14 am usually made aware of. It is possible on occasion they
15 don't but, yeah, they are to report all those to me.
16 Q. Has anyone at Sportsman's Warehouse corporate
17 ever contacted you regarding instances of customer
18 confusion between Sportsman's Warehouse and Bass Pro Shops
19 Sportsman's Warehouse?
20 A. Has anyone from corporate contacted me?
21 Q. Yes.
22 A. No.
23 Q. Did you ever report the instances of confusion at
24 your store to anyone at corporate?
25 A. Yes.

1 Q. When did you first report instances of confusion
2 between Sportsman's Warehouse and Bass Pro Shop
3 Sportsman's Warehouse to corporate?
4 A. The first time I reported it was in 2001.
5 Q. And where were you at that time?
6 A. Loveland.
7 Q. And what did you report to corporate in 2001?
8 A. I reported to -- well, I reported to corporate
9 that obviously the Bass Pro Shop card had Sportsman's
10 Warehouse on it and basically just making them aware of
11 that and what we should do in the situation.
12 Q. Back in 2001, did a customer present a Bass Pro
13 Shop gift card at the Loveland Sportsman's Warehouse?
14 A. Yes.
15 Q. And that's when you reported it to corporate,
16 correct?
17 A. Yes, sir.
18 Q. Other than that one instance in 2001, were you
19 aware of any other instances at the Loveland Sportsman's
20 Warehouse where customers have come into the store with a
21 Bass Pro Shops gift card?
22 A. There was a couple of occasions where it
23 happened. Couple two or three, I'm not positive. But
24 there were very few there.
25 Q. And that was during the time that you were at

1 Loveland?
2 A. Yes.
3 Q. How long were you at Loveland?
4 A. I said two -- a little over two years. Two, to
5 two and a half years.
6 Q. Who did you contact at corporate to report this
7 confusion?
8 A. At that time I contacted Dale Smith.
9 Q. What was his position at that time?
10 A. At that time Dale was -- let me think, I can't
11 remember if Dale was actually the president of Sportsman's
12 Warehouse at that time or not.
13 Q. That's okay if you don't remember. How did he
14 respond to the information that you provided to him on
15 this?
16 A. Basically he said that he was going to research
17 that and he'd get back to me. I think at the time he
18 pretty much knew, you know -- knew of it, but I kind of
19 wanted to know what we were going to do as a whole. You
20 know, to be more uniform throughout the entire company of
21 how we respond to it.
22 Q. Do you recall whether or not he actually followed
23 up with you on this issue?
24 A. He got back to me on the matter. Just simply
25 stated, you know, just apologize to the customer. Let

1 them know we are not affiliated with the Bass Pro Shops.
2 We are Sportsman's Warehouse and they are Bass Pro Shops
3 and some of their stores are Sportsman's Warehouse by Bass
4 Pro Shops. We're two different identities, so -- best
5 possible way. Customers obviously -- some might
6 understand, some might not. We just try to be -- we try
7 to present it the same way every time. So basically it
8 was just the presentation I was looking for.
9 Q. Other than the presentation of Bass Pro gift
10 cards at the Loveland store back in 2001 to 2003 time
11 frame, were you aware of any other instances of customer
12 confusion between Sportsman's Warehouse and Bass Pro Shops
13 Warehouse -- Sportsman's Warehouse, excuse me, at the
14 Loveland store?
15 A. No, no other instance.
16 Q. Other than the instances of customer confusion
17 that we discussed with respect to the Loveland store and
18 the Thornton store, are you aware of any other similar
19 instances at any other Sportsman's Warehouse locations?
20 A. Yes. Meridian, Idaho, was the first incident
21 that I was ever aware of.
22 Q. And we talked about that one earlier, correct?
23 That is the one you mentioned earlier?
24 A. That was the magazine.
25 Q. Okay. Is it possible there may have been other

1 instances of customers being confused as to the difference
2 between Sportsman's Warehouse and Bass Pro Shops
3 Sportsman's Warehouse and communicated that to the
4 employees at Loveland but never communicated that to you?
5 A. Possible but there -- there were so few there I
6 don't think that would have been the case at all. I mean,
7 it could be possible, like I said. It came up a couple of
8 times, like I said, that was it. It was never really an
9 issue there other than those times.
10 Q. The instances of confusion that we discussed at
11 the Thornton store, I can't remember if I asked you, but
12 did you report those to anyone specifically at Sportsman's
13 Warehouse corporate?
14 A. Um, I think I mentioned it on one, possibly two
15 different occasions, you know, a conversation with Stu
16 Utgaard on a phone call.
17 Q. What was his response to your reporting of that
18 information?
19 A. Basically he just asked me how it was going since
20 Bass moved in and I said we are having some problems with
21 the gift cards, people coming in and wanting to redeem
22 those gift cards at our location.
23 Q. Did he give you any specific instructions of
24 anything in particular you should do in light of the
25 confusion issue?

1 A. I don't believe in that situation that he said
2 anything instructional-wise because I basically told him
3 what I did and that was the basic format that we use.
4 MR. CAMPBELL: Can we go off the record for a
5 just a second?
6 (Whereupon, a short recess was taken.)
7 Q. (BY MR. CAMPBELL) Mr. Perez, we had talked about
8 an e-mail that you had recently received from corporate
9 regarding the use of the encircled R with the Sportsman's
10 Warehouse logo, do you remember that?
11 A. Yes.
12 Q. Do you recall whether or not any of the signs in
13 your store bearing the new Sportsman's logo, the older
14 shaped logo, had ever used that little encircled R on the
15 sign near the logo?
16 A. Are you asking if there is an incident in my
17 store?
18 Q. Yes.
19 A. No, not in my store with that at all.
20 Q. So there wasn't a situation where you received an
21 e-mail and had to take down signs because it had the
22 encircled R?
23 A. No, no incident at my store or e-mail.
24 MR. CAMPBELL: Okay. I think that's all I have.
25 Thank you very much for your time.

CONDENSED TRANSCRIPT

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

BASS PRO TRADEMARKS, L.L.C.,	)	
	)	Cancellation No. 92045000
Petitioner,	)	
	)	
vs.	)	Deposition of:
	)	**DALE R. SMITH**
SPORTSMAN'S WAREHOUSE, INC.,	)	
	)	
Respondent.	)	

May 10, 2006
10:00 a.m.

Sportsman's Warehouse
7035 High Tech Drive
Midvale, UT 84047

Sharon Morgan, CSR, RPR, CRR
Notary Public in and for the State of Utah

GARCIA & LOVE
COURT REPORTING AND VIDEOGRAPHY

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No. 2	Registration No. 2,390,099	10
No. 3	E-mail String dated 5/9/06	38

P R O C E E D I N G S

DALE R. SMITH,
called as a witness on behalf of the petitioners, being duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. UPCHURCH:

Q. Would you state your name for the record, sir.

A. Dale R. Smith.

Q. Mr. Smith, are you currently employed by Sportsman's Warehouse?

A. Yes.

Q. What's your position with Sportsman's Warehouse?

A. President.

Q. How long have you been with Sportsman's Warehouse?

A. Since 1991, March of '91.

Q. What was the name of the company at that time?

A. Sports Warehouse.

Q. Was the business of Sports Warehouse substantially the same as the business of Sportsman's Warehouse?

A. Pretty much.

Q. Same types of products --

A. Yes.

Q. -- is all I'm getting after.

Have you always been president of Sports Warehouse/Sportsman's Warehouse?

A. No. '91 I was just an employee. My father-in-law was the president and manager. It was a little family business at that time. That's Bill Hayes.

Q. Bill Hayes?

A. Yes.

Q. You're a step ahead of me.

What positions have you held with Sports Warehouse/Sportsman's Warehouse?

A. When I started I was a salesperson. Then I became a camping buyer. Then I took over the footwear also, so camping and footwear, and then I took over clothing and a store manager, and -- I can't remember what year I was made president, but Stu bought it in 1996 and assigned officers shortly thereafter. I would guess it was '98.

Q. And were you the first president?

A. Stu was president when he bought it in '96.

Q. So you became president in '98, you think?

1 **A. It's roughly '98.**
2 Q. Who is Stu?
3 **A. Stu Utgaard is our CEO.**
4 Q. As president, do you have any duties
5 concerning the trademarks of Sportsman's Warehouse?
6 **A. More so lately, I guess.**
7 Q. Is there a person at Sportsman's Warehouse
8 who is responsible for trademarks other than yourself?
9 **A. It would be Stu.**
10 Q. Have you had your deposition taken before?
11 **A. This is a first.**
12 Q. Oh, really? We have to back up, then.
13 MR. ALLGEYER: I thought he was doing pretty
14 good.
15 MR. UPCHURCH: From the way he was answering,
16 I figured he had done this many times.
17 Q. (By Mr. Upchurch) Just so you understand the
18 process, although this is very informal, this
19 testimony can be used in a legal proceeding. In this
20 case, it's a cancellation proceeding in the trademark
21 office. And so it's basically like you were in court
22 and testifying on the stand before Judge Judy.
23 **A. All right.**
24 Q. So any question that I ask that you don't
25 understand, you should let me know that you don't

1 answer.
2 **A. Okay.**
3 Q. And it's just for her. In normal
4 conversation, we don't do that at all. We walk on
5 each other's words all the time and we understand
6 exactly what's going on, but it's very difficult for
7 the reporter if we do that. Okay?
8 **A. Okay.**
9 Q. Thank you.
10 Now, you're aware that there is a proceeding
11 in the trademark office between Bass Pro Shops and
12 Sportsman's Warehouse concerning the Sportsman's
13 Warehouse registration?
14 **A. Yes.**
15 Q. Are you aware that there have been some
16 interrogatory answers that Sportsman's Warehouse has
17 prepared in connection with that proceeding?
18 **A. What do you mean interrogatory?**
19 Q. Well, let me show you.
20 (Exhibit No. 1 marked.)
21 Q. (By Mr. Upchurch) Mr. Smith, I've had the
22 reporter hand you what has been marked as Exhibit 1,
23 which I will represent to you are answers to
24 interrogatories and request for production of
25 documents that we received from Sportsman's Warehouse

1 understand it rather than try to figure out what I
2 meant.
3 **A. All right.**
4 Q. Because being from Missouri, sometimes my
5 syntax gets a little tangled and that sort of thing.
6 So if there's something you don't understand, just ask
7 me to rephrase the question --
8 **A. All right.**
9 Q. -- and we'll go on.
10 If you get tired or you need to take a break,
11 that's fine. I would prefer that, if there's a
12 question pending, that you answer the question before
13 you take a break. But otherwise, if you need to make
14 a phone call or, you know, get water or whatever, you
15 know, we're certainly informal enough to accommodate
16 anything like that.
17 **A. All right.**
18 Q. The reporter takes down everything that we
19 say. It's much more difficult for the reporter to
20 take down head nods, and those can be misinterpreted
21 as well. So please respond verbally. It's also very
22 difficult for the reporter to take down more than one
23 person talking at a time. So wait until I finish
24 asking the question before you answer, and I will try
25 not to ask another question until you finish your

1 in this proceeding.
2 **A. Okay.**
3 Q. Have you seen this document before?
4 THE WITNESS: Is this part of the same that
5 was e-mailed to you?
6 MR. ALLGEYER: I can't really help you. You
7 can only look at it and tell him what you know.
8 You've probably seen a bunch of documents.
9 **A. I think I've probably seen some of this, but**
10 **I've not read them through. So it's possible.**
11 Q. (By Mr. Upchurch) But it's not part of
12 your --
13 **A. I mean, I've received some documents, but -**
14 Q. You haven't been asked to verify that
15 everything in this is correct?
16 **A. Right.**
17 Q. I'm going to turn to page 3 of this document.
18 Interrogatory No. 1 -- the way this works, they set
19 out the interrogatory, which is just a question,
20 basically --
21 **A. Okay.**
22 Q. -- and then they set out the answer. So the
23 top part will be the question, which is what Bass Pro
24 is asking, and then the answer part is what
25 Sportsman's Warehouse, through either Mr. Utgaard or

the attorneys, whoever, and we'll figure that out, responded.
A. Okay.
Q. So the response part is under Answer, which starts at like the middle of this page.
A. Okay.
Q. And if I'm reading this correctly, you show up under B.
A. Yep. Yes.
Q. So if we go up to the top, it says, "Identify the person or persons who are most knowledgeable about (B) the selection and design of respondent's mark."
A. Okay.
Q. Respondent is Sportsman's Warehouse, and the mark is the Sportsman's Warehouse logo with the mountains and there's a registration. In fact, we'll make that an exhibit later on.
A. Okay.
Q. So what I would like to know is what you know about the selection and design of that mark.
A. At the time after Stu bought us, he asked my wife, who happened to do all the advertising at that time, to come up with a logo, basically, with our printer. His name was Dave Egan. He passed away about five years ago, but he was the printer at the

time. They designed it, still using the words and then the departments underneath, hunting, fishing camping, and the mountains in the background. They presented it to Stu, he liked it, and it became the mark.
(Exhibit No. 2 marked.)
Q. (By Mr. Upchurch) I've had the reporter mark U.S. Trademark Registration No. 2,390,988.
A. Okay.
Q. Does that show the mark that we've been talking about?
A. Yes.
Q. So that's the logo? What part did your wife and the printer come up with?
A. Well, we already had the words "Sportsman's Warehouse." They came up with the rest of it.
Q. The rest of it would be --
A. The style of the font and the mountains behind, and then our categories underneath.
Q. You've said several times the categories underneath. Are those the categories of products that were sold in the store?
A. Yes.
Q. And is that still true today --
A. Yes.

Q. -- that those are the categories?
What did you say the name of the printer was, or did you?
A. She would be able to answer that. I remember his name. His name was Dave Egan, just because he was a customer and personal friend a little bit. But I don't remember the name of his company. I think it was Print Press. She would be able to tell you that.
Q. But you think Mr. Egan is probably deceased?
A. He's deceased, definitely, yeah.
Q. Do you recall how long it took your wife and Mr. Egan to come up with the design of the mark that's in Exhibit 2?
A. I don't know the answer to that. It didn't seem like very much time, but --
Q. But it's been several years ago?
A. It was several years ago, yeah.
Q. Are you familiar with trademark registrations at all?
A. A little more so now, yeah.
Q. Well, that's fair.
This particular document, Exhibit 2, shows the mark, and then there are various services that are listed down below.
A. Okay.

Q. There's a reference to first use and in commerce. Do you see that?
A. Uh-huh (affirmative).
Q. Were you involved in providing any information for the application that became this registration --
A. No.
Q. So other than getting the logo prepared, you didn't have any interaction with a lawyer in preparing the actual application?
A. No.
Q. At the very beginning of the description it says "For: Retail and wholesale stores featuring," and then there are various goods.
A. Okay.
Q. Does Sportsman's Warehouse -- or did Sports Warehouse before actually have wholesale stores?
A. They weren't wholesale stores, but we were attached to Pacific Flyway.
Q. What does Pacific Flyway do?
A. They are a wholesaler. They were a wholesaler at that time. There's very little now. It was very common for a customer to come into Pacific Flyway, and if they were out of an item they would walk to the store next door and we would get it out of

1 **our inventory. Pacific Flyway and Sportsman's**
2 **Warehouse were partners.**
3 Q. So Pacific Flyway actually had wholesale
4 stores?
5 **A. They were wholesale. Pacific Flyway existed**
6 **before Sportsman's Warehouse. Scott Nielsen owned**
7 **Pacific Flyway.**
8 Q. Do you know how to spell that?
9 **A. N-i-e-l-s -- I think it' e-n. He'll be here**
10 **later today.**
11 Q. I think so.
12 MR. ALLGEYER: I'm going to ask him that too.
13 We've had that issue.
14 MR. UPCHURCH: Yeah. It seems to differ.
15 Q. (By Mr. Upchurch) Other than the
16 relationship with Pacific Flyway, has Sportsman's
17 Warehouse done any wholesale business under the name
18 Sportsman's Warehouse?
19 **A. Just mainly that incident we just spoke**
20 **about.**
21 Q. What kind of products does Pacific Flyway
22 sell?
23 **A. Hunting, reloading.**
24 Q. What is reloading?
25 **A. Reloading ammo, get the exact amount of grain**

1 **in that bullet so it will shoot just right. It's a**
2 **different breed also of customers.**
3 Q. So you sell the -- I'm sorry. Sportsman's
4 Warehouse sells reloading equipment?
5 **A. Yes.**
6 Q. For both shotgun shells and rifle cartridges?
7 **A. Yes.**
8 Q. Do they sell the powder for reloading?
9 **A. Yes.**
10 Q. Is there a special license that you need to
11 do that, to sell the powder?
12 **A. Just the amount that you carry, yeah.**
13 Q. Are there products other than the loading
14 equipment and the powder that you sell for reloaders?
15 **A. Oh, there's a lot of tools, yeah, tools and**
16 **scales to help you measure the exact amount of grains,**
17 **that sort of thing.**
18 Q. What about the bullets themselves, do you
19 sell those?
20 **A. Yes.**
21 Q. So it's a full line of reloading products?
22 **A. Uh-huh (affirmative), yes.**
23 Q. For hunting products, is that just what you
24 would expect? Do you have a specialty line of hunting
25 products or is it just a broad line of hunting

1 products?
2 **A. We're pretty complete in that category.**
3 Q. What about fishing?
4 **A. We're pretty complete in that category also.**
5 Q. Camping?
6 **A. Complete. I would say those three**
7 **departments are very mature.**
8 Q. Outerwear?
9 **A. Outerwear and clothing.**
10 Q. Is this mainly the kind of outerwear that
11 hunters would --
12 **A. Hunting and fishing related, mainly, but we**
13 **do some sportswear also.**
14 Q. And footwear would be --
15 **A. Same thing. Hunting, fishing related, but**
16 **there's a little bit of casual.**
17 Q. Hiking?
18 **A. Yes. We carry hiking and we carry Crocs.**
19 Q. Do you know how your wife and the printer
20 came up with that particular mountain scene?
21 **A. I think they were looking for something to**
22 **help describe what's inside. We're an outdoor**
23 **company, and -- I'm not sure how many different types**
24 **they played with before they arrived with that.**
25 **That's the only one I remember.**

1 Q. Did Sportsman's Warehouse have a logo before
2 your wife and the printer designed one?
3 **A. No. It was just block lettering.**
4 Q. On the stores, that was also the case?
5 **A. We only had one store.**
6 Q. That was in Midvale?
7 **A. It was right here, yeah, and it was just**
8 **block lettering across.**
9 Q. Are you familiar with the Bass Pro stores?
10 **A. Yes.**
11 Q. How long have you known about Bass Pro, you
12 personally?
13 **A. I would guess mid '90s.**
14 Q. When did you first become aware that they
15 used a tag line that included Sportsman's Warehouse in
16 connection with Bass Pro?
17 **A. My first -- I would say it was mid '90s,**
18 **again, probably '96, '98, somewhere in there.**
19 Q. How did you -- I'm sorry, I told you I would
20 get it mangled. Do you recall how you first became
21 aware of Bass Pro?
22 **A. Probably looking at our competitors in the**
23 **marketplace. And, again, we only had one store at**
24 **that time. My background before I came to Sportsman's**
25 **Warehouse was grocery. I didn't know who Cabela's was**

either when I started in 1991. I certainly do now, though.
Q. Cabela's is big in camping equipment?
A. Hunting.
Q. Do you sell tree stands and that sort of thing?
A. We do.
Q. What about boats? Do you sell boats?
A. We sell canoes and we sell some aluminum boats in fishing, yes, and some inflatables.
Q. Do your product lines differ -- well, not product lines. Do the kinds of products you carry differ significantly from the kinds of products that Bass Pro carries?
MR. ALLGEYER: I'm going to just, for the record, object. Lack of foundation in case the witness doesn't know all of that. If you can answer, please go ahead. I'm not saying you can't answer.
A. I have only been into a Bass Pro one time. I've seen their ads and stuff like that. We do carry a lot of similar products, but we don't carry golf.
Q. (By Mr. Upchurch) Okay. Are you aware of any situations where customers attempted to redeem Bass Pro gift cards in your stores?
A. I've had my store managers call me reporting

Loveland.
Q. What did they say? What did the fellow in Memphis say?
A. He just said at the time that it was causing a little confusion, that they received a gift card. I said, "Don't let the customers go away. Give them a free hat, but we can't accept the gift card." And I had a similar conversation with Brian Mackey in Loveland.
Q. Have you had any other conversations with store managers concerning Bass Pro and customers being confused?
A. No.
Q. If you look on page 5, at the top -- and you're welcome to look on the previous page to see what the interrogatory was, if you want to.
A. Okay.
Q. What I'm interested in is the sentence that starts, "Although Sportsman's Warehouse formally changed the name on the store's sign to Sportsman's Warehouse during 1995, respondent believes it had been using the mark Sportsman's Warehouse prior to 1995." Do you see that statement?
A. Uh-huh (affirmative).
Q. Do you know of any documents that show the

that, yes.
Q. Several of your store managers called you?
A. Not very many, no. Mainly the Denver area and Memphis area.
Q. So how many store managers would that be?
A. One in Memphis and four in Denver.
Q. Okay. So you received these calls from -- did you receive five calls, basically?
A. No, actually, I've only received two.
Q. Okay. One from Memphis?
A. Yes, early on, and one from Loveland, Colorado right after that Bass Pro shop opened.
Q. Were there any other communications in the Denver area with the other store managers concerning these gift cards?
A. Communications as --
Q. I'm trying to figure out if you're making a distinction between telephone calls and other forms of communication.
A. It was just telephone calls to me.
Q. So basically you received two communications concerning these gift cards from store managers?
A. Uh-huh (affirmative). Yes.
Q. Who were the store managers that called?
A. Bob Goodwin in Memphis, and Brian Mackey in

use of the mark Sportsman's Warehouse by your company prior to 1995?
A. Documents, no.
Q. Do you know if Sportsman's Warehouse has looked for such documents?
A. Yes, we have looked.
Q. Do you know what formed the basis of the belief referred to in that sentence that Sportsman's Warehouse had been using that mark prior to 1995?
A. Probably just that it was talked about. I mean, we know it was spring of '95 sometime, but trying to narrow down a date -- but it was talked about prior to '95, yes, on the name change.
Q. Okay. And who would have talked about changing the name prior to 1995?
A. Well, I remember talking with customers about it on the sales floor.
Q. Okay. What did the customers say?
A. They would come in and say, how come you don't carry baseball? That's a sport. How come you don't carry golf? That's a sport. You ought to be called Sportsman's Warehouse. I was very happy when we changed the name.
Q. Because you didn't have to have that conversation again?

A. It was a conversation that happened over and over. It said sports on the building. They thought they were going in to get some golf balls or a catcher's mitt. That was a complaint once they got in there.
Q. Whereas Sportsman's had a different meaning to them?
A. Yes.
Q. So they suggested that, based upon your product line, you ought to be called Sportsman's Warehouse?
A. Yes. And that was with me on the floor from '91 to '95.
Q. So sometime in 1995 somebody finally gave up and changed the name, right?
A. Yes.
Q. Who would that have been?
A. Bill and Scott. I think that application for the name change was dated 2/1/95.
Q. So Mr. Hayes and Mr. Nielsen would have been the decision makers of --
A. They were partners, but Scott ran Pacific Flyway and basically was our accounting, paid all the invoices, but he didn't have a lot to do with the day-to-day operation, just kind of the back end, but

Q. So based upon that, these numbers look like they are in the ballpark?
A. Yes.
Q. And the sales numbers as well, which are on page 7, do those appear to be fairly accurate?
A. Yes.
Q. Does Sportsman's Warehouse do any business other than through its stores? I mean, do you have like a "doing business as" business where you sell product but it's not in a Sportsman's Warehouse store?
A. Gift cards over the Internet would be it.
Q. But those would probably say Sportsman's Warehouse on it?
A. They say Sportsman's Warehouse on it, yes.
Q. So other than this relationship with Pacific Flyway, there are no other relationships with entities --
A. No.
Q. -- that don't use the Sportsman's Warehouse name?
A. No.
Q. So these sales would represent, on page 7 of Exhibit 1, would represent sales through the Sportsman's Warehouse stores?
A. Yes.

he did help make the decisions.
Q. Is he related -- is he in the family as well?
A. No.
Q. Because you had said --
A. He's an acquaintance of Bill's. Bill used to sell to him when he was in the rec industry.
Q. Because you said it was a family business, so I just wondered --
A. It was Bill's idea, the original concept, and he needed a partner and he talked Scott into opening up part of his wholesale into retail.
Q. Good. And it worked out.
A. And the rest is history.
Q. That's the best kind of plan, the kind that works out.
If you'll look at pages 5 through 7, there are advertising expenses and sales figures. All I want to know is if these numbers appear to you to be, you know, fairly accurate.
A. They appear to be accurate, yes.
Q. Did you participate in obtaining these figures --
A. No, but I happen to know the budget on last year's advertising number because we're trying to do better than that this year.

Q. Now, do they also include the sales that -- well, let me go back. In this relationship with Pacific Flyway, does Sportsman's Warehouse sell the product to Pacific Flyway, which then sells it to their customer?
A. No, we would buy it as Pacific Flyway and Pacific Flyway sells it to Sportsman's Warehouse and/or the third party.
Q. Okay.
A. But not all of our inventory comes through Pacific Flyway, mainly just the hunting department.
Q. You had earlier described a situation where if Pacific Flyway was trying to sell certain product at wholesale and they didn't have it in stock, they would come next door to the Sportsman's Warehouse store?
A. Yes.
Q. That's the situation I'm trying to address, and I'm trying to figure out how -- well, number one, I'm trying to figure out if those particular sales show up in any of these figures on page 7.
A. No. Pacific Flyway sales do not show up in that.
Q. If you look at page 8, up at the top, interrogatory No. 8, have you read the interrogatory

1 and the answer?
2 **A. Okay. Yes.**
3 Q. And I guess this relates to what we were just
4 talking about with the Pacific Flyway?
5 **A. Well, those examples I gave you were quite**
6 **some time ago. I mean, these were connected until --**
7 **well, I guess they were connected until '96.**
8 Q. So all of the Pacific Flyway --
9 **A. Pacific Flyway used to be the other side of**
10 **this building. That was a common occurrence when we**
11 **just had one store, and then it was just less and less**
12 **that happened, and it doesn't happen today.**
13 Q. When did it cease happening? Do you know?
14 **A. I don't know exactly, but it didn't happen**
15 **anymore once we separated the two.**
16 Q. Which would have been in --
17 **A. Right after Stu bought it. We needed a**
18 **little bigger store and we relocated Pacific Flyway.**
19 Q. So after '96?
20 **A. Yes.**
21 Q. For example, the Pacific Flyway situation
22 didn't happen anymore?
23 **A. Right. We broke those bad habits.**
24 MR. ALLGEYER: For the record, I think we're
25 going to be amending this to make this all, you know,

1 clear. I think there's been an error here, slight
2 one, but somewhat of an error.
3 Q. (By Mr. Upchurch) Well, you know, I was
4 trying to figure that out. Certainly the answer says
5 "Sportsman's Warehouse responds that it sells goods
6 only at retail and does not sell goods at a wholesale
7 level," and that's literally true because those are
8 both present tense. And you're telling me that you
9 haven't sold anything, even through Pacific Flyway, at
10 wholesale since 1996?
11 **A. No, I didn't say that. We still have a few**
12 **customers --**
13 Q. Wholesale customers?
14 **A. -- for Pacific Flyway, yes.**
15 Q. I didn't understand that at all. What do you
16 do at wholesale?
17 **A. What do we do?**
18 Q. Yes.
19 **A. We have other competitors that still buy a**
20 **few things from Pacific Flyway, but we have no new**
21 **customers. So if somebody wants to get set up, the**
22 **answer is no, we have service in our stores. But**
23 **there's been a few customers that have done business**
24 **with us over a long period of time that still buy**
25 **something once in a while and we haven't turned them**

1 **down.**
2 Q. So do they send the invoice to Sportsman's
3 Warehouse?
4 **A. No. It's all done through Pacific.**
5 Q. So they deal directly with Pacific and
6 Pacific Flyway fills the order?
7 **A. Yes. But that number is very small today**
8 **compared to what it used to be.**
9 Q. How does Sportsman's Warehouse get paid for
10 that?
11 **A. They don't. Pacific Flyway does.**
12 Q. So you generate no revenue based upon
13 those -- Sportsman's Warehouse generates no revenue
14 based upon those sales?
15 **A. Correct.**
16 MR. ALLGEYER: Just so the record is clear,
17 when you say Sportsman's Warehouse, you mean the
18 entity Sportsman's Warehouse?
19 THE WITNESS: That's what I mean, yes.
20 MR. ALLGEYER: There's also a dba Sportsman's
21 Warehouse. So that may be confusing to the witness.
22 MR. UPCHURCH: No, I was talking about --
23 MR. ALLGEYER: It was kind of confusing to
24 me.
25 MR. UPCHURCH: -- the legal entity,

1 Sportsman's Warehouse.
2 Q. (By Mr. Upchurch) Are you aware of this dba
3 Sportsman's Warehouse that your counsel just
4 mentioned?
5 **A. Sports Warehouse dba Sportsman's Warehouse,**
6 **yes.**
7 Q. And is that the previous company that you
8 talked about, the predecessor company, Sports
9 Warehouse?
10 **A. I'm not sure why Stu set it up that way.**
11 Q. But it's all one company?
12 **A. It's all one company, yes. I think that's**
13 **how it was listed when we were incorporated.**
14 Q. Do you own stock in Sportsman's Warehouse?
15 **A. Yes.**
16 Q. Is it publicly traded?
17 **A. No.**
18 Q. On pages 9 and 10 of Exhibit 1, there are a
19 list of stores. Are these all stores that are doing
20 business under the mark or under the name Sportsman's
21 Warehouse?
22 **A. Yes.**
23 MR. ALLGEYER: This is missing a store,
24 right?
25 THE WITNESS: Well, it's been relocated to --

wife, Robyn Smith.
Q. Durfee?
A. D-u-r-f-e-e. And that's R-o-b-y-n.
Q. I just put misses.
A. Okay.
Q. Do you know what procedures the person in charge of advertising uses to ensure that your trademarks are used correctly?
A. I don't, no.
Q. So that's something that's delegated to the director of advertising, to whoever is in charge of advertising?
A. Yes.
Q. I think you said earlier that you were not involved in providing the information for the application that became the registration shown in Exhibit 2. Were you involved subsequently in the give-and-take with the trademark office in obtaining the registration?
A. No.
Q. Who would have been involved in that give-and-take with the trademark office?
A. I would -- I don't know. I would guess Bill or Stu, depending on the date of that.
Q. I believe it was filed in '99.

A. Probably Stu.
Q. That would be your guess, but you don't know?
A. Yeah.
Q. On pages 13 and 14, there's a reference to an entity that was doing business as Sportsman's Warehouse on Ebay.
A. Yes.
Q. Are you familiar with that situation?
A. Yes.
Q. Who brought that situation to your attention?
A. A customer that purchased something that was looking for a warranty, and our IT department got involved and explained that we're not affiliated.
Q. There's also a reference in this answer to an exchange of correspondence with a company that was attempting to file state business and/or corporate names, including the words Sportsman's Warehouse. It's in the paragraph right before interrogatory No. 16.
MR. ALLGEYER: Are you on page 14 now?
MR. UPCHURCH: Yes.
A. I'm sorry, what was the question?
Q. (By Mr. Upchurch) What I want to know is if you're familiar with that particular situation where another company was trying to register the business

name Sportsman's Warehouse.
A. I'm not familiar with that, no.
Q. Do you know if Sportsman's Warehouse has retained any experts to use in this particular trademark proceeding, the one -- the cancellation proceeding that we're here about today?
A. Experts being Lindquist & Vennum, I would guess, but --
MR. ALLGEYER: That's so kind of you to say that.
Q. (By Mr. Upchurch) There will be a 10-percent reduction on your bill just because of that.
But other than expert lawyers, you don't know of any experts that have been retained?
A. No.
Q. On page 15, in response to interrogatory No. 18, it states that "Sportsman's Warehouse does not have a formal written policy concerning the use of its trademarks, but takes all reasonable steps to ensure that its use of the marks is proper." Do you see that answer?
A. Uh-huh (affirmative).
Q. So you agree that there's no formal written policy concerning the use of Sportsman's Warehouse trademarks?

A. Well, in February an e-mail was sent out to all the store managers to make sure they take -- if they are going to use our trademark, to make sure it's on paper correct.
Q. February of 2006?
A. Yes. That was sent out by Jeremy Sage. He's our vice president of operations.
Q. Has that been produced? Do you know?
MR. ALLGEYER: I don't know. I don't think it has been. I think it's going to be.
MR. UPCHURCH: Okay.
MR. ALLGEYER: I think we learned of it just recently. I should be careful because I haven't been that involved in the document production. Now that he's mentioned it, if it hasn't been produced, we'll find it.
MR. UPCHURCH: Yeah, and I would like to say that I've gone through all the documents, but I'm not going to say that because I haven't gone through all the documents. So I'm not saying that you haven't produced it. But if it's available, it would be nice to at least see what his knowledge of it is when we finish up.
MR. ALLGEYER: Sure.
MR. UPCHURCH: So maybe if we could get it

1 over noon or something.
2 MR. ALLGEYER: Yeah, if you have that.
3 THE WITNESS: Okay.
4 Q. (By Mr. Upchurch) I would like to ask you
5 about the phrase "all reasonable steps" in that
6 particular answer. Do you have an understanding of
7 what all reasonable steps are that Sportsman's
8 Warehouse has taken to ensure that its use of its
9 marks is proper?
10 **A. No, I don't have knowledge of that.**
11 Q. Do you know who would know what all
12 reasonable steps are that Sportsman's Warehouse has
13 taken?
14 **A. Where most of the errors occurred was at**
15 **store level on stationery. They are on stationery,**
16 **that sort of thing. So if it didn't come from**
17 **advertising, they made all reasonable steps**
18 **instructing the stores if they duplicate the logo,**
19 **make sure it's in a certain way.**
20 Q. And that's set out in the e-mail that you
21 talked about?
22 **A. Yes.**
23 Q. We'll just come back to that after lunch.
24 **A. Okay.**
25 Q. If you look at the bottom of 15,

1 Q. What is that document?
2 **A. It's an e-mail that we instructed our store**
3 **managers on how to use the Sportsman's Warehouse mark**
4 **on any stationery or -- all the ads come through**
5 **advertising now, so it would mainly just be in-store**
6 **stationery.**
7 Q. Who is responsible for the signage at the
8 stores?
9 **A. At the stores there's now a program that is**
10 **called Sign Maker. It has our logo in the sign**
11 **already.**
12 Q. Okay. And all of the advertising that the
13 stores do comes from Utah, comes from you here?
14 **A. Yes.**
15 Q. Now, there seems to be some attachments to
16 Exhibit 3.
17 **A. Yes. That's these.**
18 Q. Okay. And what do those attachments
19 represent?
20 **A. Our mark used a couple different ways.**
21 Q. Now, the last page of Exhibit 3 doesn't seem
22 to have the oval that the other pages have around the
23 mark; is that correct?
24 **A. Correct. That's our original mark.**
25 Q. I also don't see the R and the circle symbol

1 interrogatory No. 19 and the top of 16, it talks about
2 in-store signage.
3 **A. Okay.**
4 Q. Has Sportsman's Warehouse, to your knowledge,
5 been able to locate documents showing advertising or
6 in-store signage as early as 1994?
7 **A. We have not obtained that, no.**
8 Q. So that's similar to the question I asked you
9 previously about documents that had Sportsman's
10 Warehouse on it?
11 **A. Correct.**
12 Q. Why don't we -- would you mind taking a
13 break, and maybe we could find that and get rid of
14 that one subject?
15 MR. ALLGEYER: Okay.
16 MR. UPCHURCH: Because I'm not sure we're
17 going to go very long after lunch. So maybe it makes
18 sense to do it now.
19 MR. ALLGEYER: Yes, that would be fine.
20 (Recess from 11:09 a.m. to 11:16 a.m.)
21 (Exhibit No. 3 marked.)
22 Q. (By Mr. Upchurch) I'm going to hand you what
23 has been marked as Exhibit 3 and ask if you can
24 identify that, please.
25 **A. Yes.**

1 on the last page.
2 **A. I don't know why it's not there.**
3 Q. Was the purpose of the e-mail to get people
4 to use the R and the circle symbol when they're using
5 the complete mark?
6 **A. The purpose was just to show them, yes, the**
7 **marks that are authorized. I don't know why the R is**
8 **not in that.**
9 Q. But it's your understanding that there should
10 be an R and a circle on this last page as well?
11 **A. I don't know the answer to that, if we have**
12 **that on stationery.**
13 Q. So who would know the answer to that,
14 Mr. Coles?
15 **A. Yeah. Yes.**
16 Q. Now, I notice on the next to the last page of
17 Exhibit 3, the R and a circle in the lower instance of
18 the mark is much fainter than in the example that's
19 above. Do you know why the R and a circle is not as
20 dark in the one down below?
21 **A. That was a color e-mail. It was just two**
22 **different shades.**
23 Q. Okay. So we're looking at it in black and
24 white?
25 **A. Yes.**

1 Q. Has the logo changed as time has gone by?
2 **A. Maybe just with the oval.**
3 Q. When I look at the different samples you have
4 as attachments to Exhibit 3, it looks like there are
5 dots on the mountains in some and then there are lines
6 on others. So that's what makes me ask the question
7 if the logo has changed over time.
8 **A. If it has, it's very slight. Just looks like**
9 **the printing on that, maybe.**
10 Q. But to your recollection, there was no
11 redesign of the mark?
12 **A. Only the oval addition.**
13 Q. Do you know when the oval was added?
14 **A. It's during Ryan's tenure, and the biggest**
15 **reason being it looked a little better on print, on**
16 **ads.**
17 Q. On page 16 of the interrogatory answers in
18 response to interrogatory No. 21, it states that you
19 and Stu Utgaard assisted in gathering the information
20 for these responses. Do you see that?
21 **A. Okay.**
22 Q. What did you do in obtaining information for
23 these responses?
24 **A. The biggest thing, I would guess, is getting**
25 **copies of old advertising ads.**

1 Q. Anything else?
2 **A. Well, it mostly came up empty.**
3 Q. Do you keep that kind of thing? Do you keep
4 old advertising?
5 **A. I know we had a lot, but we have relocated**
6 **several times. So a lot of it got thrown away.**
7 Q. Did you --
8 **A. What we found was on microfiche at the**
9 **library.**
10 Q. Okay. Did you do anything else to gather
11 information to respond to these interrogatories?
12 **A. Well, I did make other contacts, but I wasn't**
13 **able to find an earlier date that I was looking for.**
14 Q. Okay. And so if I'm understanding you
15 correctly, you were looking for material to find an
16 early date --
17 **A. Yes.**
18 Q. -- for the Sportsman's Warehouse mark?
19 **A. Yes.**
20 Q. And in connection with that, did you use
21 anybody here at the company to assist you in finding
22 that kind of material?
23 **A. Mostly advertising. It was the advertising**
24 **department that went to the library and took the time**
25 **to go through the microfiche.**

1 Q. So that would be Rich Coles or someone under
2 his supervision?
3 **A. Yes. Other than that, it was just phone**
4 **calls.**
5 Q. Phone calls to whom?
6 **A. Vendors or sales reps, our old buying group.**
7 Q. Are you aware of any instances of confusion
8 between Bass Pro and Sportsman's Warehouse by
9 potential job applicants?
10 **A. No.**
11 Q. Do you know if there are any documents
12 reflecting the design of the Sportsman's Warehouse
13 logo? You said your wife and Mr. Egan worked on that.
14 Are you aware of a file or other documents that show
15 their work?
16 **A. No, I'm not.**
17 Q. Who is responsible at Sportsman's Warehouse
18 for changing the corporate name, you know, doing those
19 kinds of legalities?
20 **A. Changing the corporate name?**
21 Q. Yes. If you need to file something to change
22 the name or if you need to file something to do
23 business in a particular state, who is responsible for
24 that kind of thing?
25 **A. Stu might delegate it, but none of that would**

1 **happen without his knowledge.**
2 Q. Okay. Who would he delegate that kind of
3 thing to?
4 **A. Probably advertising.**
5 Q. I have a document here concerning changing
6 the name of Sports Warehouse, Inc. to Sportsman's
7 Warehouse, Inc. It's signed by Mr. Utgaard dated
8 February 6th, 2004. Is that consistent with your
9 recollection of when the name was officially changed?
10 **A. I don't know what that is. You'll have to**
11 **ask Stu.**
12 Q. That's why I didn't ask the reporter to mark
13 it, because it didn't sound like you were
14 knowledgeable about this kind of thing.
15 Why don't you give me 10 minutes. I think
16 we're about done.
17 MR. ALLGEYER: Sure.
18 (Recess from 11:30 a.m. to 11:41 a.m.)
19 Q. (By Mr. Upchurch) Do you know Ken Burrows of
20 Tracker Marine?
21 **A. Brief acquaintance. I think I met him one**
22 **time.**
23 Q. Have you discussed this cancellation
24 proceeding with Mr. Burrows?
25 **A. No.**

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,390,988

Registered Oct. 3, 2000

SERVICE MARK
PRINCIPAL REGISTER

SPORTS WAREHOUSE, INC. (UTAH CORPORATION)
7035 SOUTH 185 WEST
MIDVALE, UT 84047

FOR: RETAIL AND WHOLESALE STORES FEATURING HUNTING SUPPLIES, FISHING SUPPLIES, CAMPING SUPPLIES, RELOADING SUPPLIES, OUTERWEAR CLOTHING AND FOOTWEAR, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-16-1995; IN COMMERCE 6-16-1995.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SPORTSMAN'S WAREHOUSE" APART FROM THE MARK AS SHOWN; AND DISCLAIMS THE FOLLOWING INDIVIDUAL WORDS, "HUNTING," "FISHING," "CAMPING," "RELOADING,", "OUTERWEAR," AND "FOOTWEAR" APART FROM THE MARK AS SHOWN.

THE LINING AND STIPPLING SHOWN IN THE DRAWING ARE NOT INTENDED TO INDICATE COLOR.

SER. NO. 75-625,090, FILED 1-22-1999.

LINDA E. BLOHM, EXAMINING ATTORNEY

PENGAD 800-631-6989
DEPOSITION EXHIBIT
2
Smith

RECEIVED
OCT 13 2000

BY:

SP 00288

Dale Smith

From: "Rich Coles" <rich@sportsmanswarehouse.com>
To: "'Dale Smith'" <dale@sportsmanswarehouse.com>
Sent: Tuesday, May 09, 2006 3:34 PM
Subject: FW: Proper display

ere is the email Jeremy sent out to all the store managers back in February.

ank you,

ch Coles
ortsman's Warehouse
arketing/Advertising Manager
)1)304-4385

h@sportsmanswarehouse.com

---

om: Ken Palmer [mailto:kpalmer@sportsmanswarehouse.com]
nt: Tuesday, May 09, 2006 2:32 PM
: Rich Coles
bject: Fw: Proper display

en Palmer
ortsman's Warehouse
rtland, OR
)3)777-8700
almer@sportsmanswarehouse.com

DEPOSITION EXHIBIT 3 Smith
PENGAD 800-631-6989

– Original Message ----
om: Jeremy Sage
: rich@sportsmanswarehouse.com ; 'Blaine Davey' ; 'Bob Goodwin' ; 'Brett Larson' ; 'BRIAN HOWALD' ; 'Brian Nelson' ; 'Brian ompson' ; 'Bruce Gibson' ; 'Bryan Mackey' ; 'Chris LePage' ; 'Chris Robertson' ; 'Clayton Upshaw' ; 'Dan Tracey' ; 'Darin :Daniel' ; 'Darrold Berreau' ; 'Daryl Jarnot' ; 'Dave Nitzel' ; 'Don Thomas' ; 'Doug Mason' ; 'Doug Miller' ; 'Erik Glick' ; 'Gary atts' ; 'Howard Spero' ; 'Jackson Felt' ; 'Jason Perez' ; 'Jerry Thompson' ; 'Joel McRae' ; 'John Howard' ; 'John Powell' ; 'Jon rson' ; 'Ken Palmer' ; 'Kent Stoddard' ; 'Kim Polfus' ; 'Kurt Hintze' ; 'Lee Van Tassell' ; 'Mike Murray' ; 'Pat Nolde' ; 'Paul Neill' ; eagan Cunningham' ; 'Roger Berends' ; 'Sandy Coronado' ; 'Sarge Upchurch' ; 'Steve Collins' ; 'Travis Kingsley' ; 'Travis Mann' : Stu Utgaard ; Dale Smith ; Chris Utgaard
nt: Tuesday, February 07, 2006 5:35 PM
bject: Proper display

ood afternoon,
his e-mail is to clarify how to display our logo properly in regards to Copyright and Trademark. Follow these guidelines with no ceptions at all times.

ou are using the Sw logo with the mountain background and the words Hunting.Fishing.Camping loading.Outerwear.Footwear underneath you must have the Copyright logo displayed. The copyright logo is an R with a circle ound the R.

ou are using the SW logo with the phrase "America's Premier Outfitter" you must have the Trademark logo displayed. The ademark logo is a TM with a circle around it.

ese guidelines apply to both the Oval logo and our standard logo.

ease ensure that you follow these. It is a legal issue that we need to keep straight.

ank you

emy

SPORTSMAN'S®
WAREHOUSE
HUNTING • FISHING • CAMPING • RELOADING • OUTERWEAR • FOOTWEAR
America's Premier Outfitter™

SPORTSMAN'S®
WAREHOUSE
HUNTING • FISHING • CAMPING • RELOADING • OUTERWEAR • FOOTWEAR

SPORTSMAN'S®
WAREHOUSE
HUNTING • FISHING • CAMPING • RELOADING • OUTERWEAR • FOOTWEAR

SPORTSMAN'S WAREHOUSE

HUNTING • FISHING • CAMPING • RELOADING • OUTERWEAR • FOOTWEAR

CONDENSED TRANSCRIPT

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

-ooOoo-

In the matter of Trademark Registration No. 2,390,988

For the mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR and Design

Date registered: October 3, 2000

BASS PRO TRADEMARKS, LLC,	
Petitioner,	DEPOSITION OF:
vs.	**STUART UTGAARD**
SPORTSMAN'S WAREHOUSE, INC.,	Cancellation No. 92045000
Respondent.	

-ooOoo-

May 11, 2006
10:15 a.m.

Location:
Sportsman's Warehouse, Inc.
7035 High Tech Drive
Midvale, Utah

Reporter: Jeanette Lund, CSR, RPR, and Notary Public in and for the State of Utah

GARCIA & LOVE
COURT REPORTING AND VIDEOGRAPHY

36 South State Street • Suite 1220 • Salt Lake City, UT 84111 • 801.538.2333 • Fax 801.538.2334

Q (BY MR. UPCHURCH) So let me ask another question. Since 1996, have you been involved in the selection of trademarks and service marks for Sportsman's Warehouse?
A Yes.
Q And what has been your involvement?
A Usually anything that's prepared by our legal counsel for submission to the US Patent and Trademark Office, you know, I see it before we submit it.
Q Do you do any searching for trademarks before you file for a trademark application?
A I personally do not.
Q Do you have someone at Sportsman's Warehouse that does searching before you file for trademarks?
A Our legal counsel would do searches.
Q So you don't have anyone in-house that does that?
A No.
Q Is there a formal process at Sportsman's Warehouse for selecting marks?
A No.
Q Does -- do you have an advertising department?
A Now we do, yes.
Q Are they involved in the selection of new trademarks and service marks?

A No.
Q Who by title would be involved in the selection of new trademarks or service marks?
A It would depend on what the product was that we're going to do. If it's a corporate matter, I would be, or Dale or both of us. If it's on a product, that would probably -- could originate from a buyer, it could originate from a vice president over that area of operations, anybody.
Q But for something like a store name, that would be you and possibly Mr. Smith?
A All of our store names have always been Sportsman's Warehouse.
Q Right. Except when you -- oh, okay. Let me ask another question. At one point, did you change the corporate name from Sports Warehouse to Sportsman's Warehouse?
A When I acquired the business, it was legally incorporated as Sports Warehouse, but they were planning to change the name to Sportsman's Warehouse. And -- or had changed the name to Sportsman's Warehouse, so that was November 1 of '96. I guess they had already changed it the previous year.
In 1992, they hired me to sell their company and I was unsuccessful in my attempts to do it, but in

the winter I would come out and go skiing and so on, so I knew that they had been talking about changing the name. They changed it, you know, sometime -- they registered to change it on January 1 of -- I think it was 1995.
Q And we have some documents later on that you can look at.
A January -- February 1 of 1995, sorry.
Q Rather than --
A That's when they did it, February 1 of 1995. That's a state filed document, but they had been discussing it, obviously, before that.
Q And when you say "they," you are talking about?
A Scott Nielson and Bill Hayes, primarily, and also Dale Smith.
Q And you said they changed the name in '95. I believe they may have changed the store name but not the corporate name in '95?
A Right. It was always -- it was Sports Warehouse dba Sportsman's Warehouse.
Q Because Exhibit 2, for example, shows that the owner is Sports Warehouse and that was filed some years later?
A Yes. After a while -- I mean, there became --

everybody knew us as Sportsman's Warehouse, so there's no need to have Sports Warehouse as a name. So it was just changed -- the corporate name was changed to Sportsman's Warehouse because that's what we were doing business as.
Q And in connection with the corporate name change, which occurred sometime later, who would be involved in that decision?
A Myself, Dale, the board.
Q Who was on your board at the time?
A I don't know -- what date was the name changed?
Q Well, we have a document later on, so we'll ask that same question again.
A Well, tell me the date and I'll tell you who was on the board.
Q Were you involved in the decision to file for the trademark registration that's shown in Exhibit 2?
A Yes.
Q Was anyone else involved in that decision?
A Yes.
Q Who else was involved in that decision?
A Dale Smith.
Q Anyone else?
A Our law firm, Lindquist & Vennum.

1 Q Did you provide the law firm with the
2 information that's shown on the registration, like the
3 logo itself and the description of the goods and the
4 date of first use?
5 **A Dale Smith designed the logo, and the**
6 **information on here on the date of first use is**
7 **June 16th, 1995. I think at the time that that was the**
8 **only ad that we could find, so that's why -- that is the**
9 **date of first use, although it was obviously used before**
10 **that because right after the first of the year, they**
11 **changed the sign on the building and changed signs in**
12 **the store.**
13 Q Right after the first of 1995?
14 **A Right -- yeah, in January of 1995, and they**
15 **registered their name with the state on February 1 of**
16 **'95.**
17 Q Do you know of any documents that show that
18 the signs were changed in January of 1995?
19 **A Which signs?**
20 Q On the stores.
21 **A I don't believe it was changed in January. I**
22 **think it was probably changed in February or March, to**
23 **my knowledge, and we've been, I guess, trying to find**
24 **out the date, but...**
25 Q Do you know if any searching was done before

1 the filing of the application that became Exhibit 2, any
2 trademark searching?
3 **A I would assume that Lindquist & Vennum did.**
4 MR. ALLGEYER: Just tell him what you know.
5 THE WITNESS: I don't know.
6 Q (BY MR. UPCHURCH) So you don't know of any?
7 **A I don't know personally, no.**
8 Q Prior to this proceeding, did you know
9 anything about Bass Pro Shops? Had you heard of Bass
10 Pro Shops?
11 **A Sure, yes.**
12 Q Do you know when you first heard of Bass Pro
13 Shops?
14 **A I would say in about 1980, '79, '80, '81,**
15 **approximately that time.**
16 Q At some point did you become aware that Bass
17 Pro Shops had a trademark registration that included the
18 phrase "Sportsman's Warehouse" in it?
19 **A I became aware that they had a store in**
20 **Georgia that was going by the name of "Bass Pro Shops**
21 **Sportsman's Warehouse" sometime in probably 1998 or so,**
22 **'99 I would guess, somewhere in there.**
23 Q And was that the first time that you became
24 aware of Bass Pro's use of the phrase "Sportsman's
25 Warehouse"?

1 **A It is, yes.**
2 Q How did you become aware of that store?
3 **A Scott Nielson, who used to own Pacific Flyway**
4 **Wholesale and half of Sports Warehouse, is today a**
5 **professional bass fisherman, and he had been to some**
6 **fishing tournament in Georgia or Florida or someplace**
7 **and he had seen it and called it to my attention after**
8 **he had seen the store, which was -- like I said, I'm not**
9 **sure of the year. It wasn't the first year. It was**
10 **probably in '97, I would guess would probably be the**
11 **year.**
12 Q And once you learned about that store, did you
13 send any letters to Bass Pro asking why they were using
14 Sportsman's Warehouse?
15 **A No, we did not, and the reason we did not**
16 **is --**
17 MR. ALLGEYER: He didn't ask you that, though.
18 He will now, but...
19 Q (BY MR. UPCHURCH) And why didn't you send
20 them a letter?
21 **A Because when we applied for our service mark,**
22 **the words "Sportsman's Warehouse" were, according to the**
23 **US Patent and Trademark Office, were too generic to be,**
24 **at that time, filed as a -- a name.**
25 MR. ALLGEYER: You mean generic or

1 descriptive?
2 THE WITNESS: Descriptive, yeah. And Bass Pro
3 was using theirs with Bass Pro Sportsman's Warehouse and
4 we were just using Sportsman's Warehouse, and the patent
5 office said we couldn't trademark that name because it
6 was too descriptive or generic.
7 Q (BY MR. UPCHURCH) Okay, so --
8 **A So we couldn't stop them from using the name**
9 **apparently and they couldn't stop us from using the name**
10 **at that point in time.**
11 Q But your application wasn't filed until '99,
12 and I thought you said that you became aware in '97 or
13 '98?
14 **A I think it was '97 or '98.**
15 Q So how could you have known what the patent
16 office position was going to be?
17 **A I'm not sure if we had checked earlier, you**
18 **know, with that, as to whether we could file that or**
19 **not, and subsequent -- you know, we've made numerous**
20 **filings relative to our name over the years.**
21 Q So it could have been an earlier application,
22 for example?
23 **A Could have been.**
24 Q Do you know Mr. Ken Burroughs?
25 **A Yes, I do.**

1 Q Is he with Marine Tracker?
2 **A He's president of Tracker Marine.**
3 Q Tracker Marine. I knew that didn't sound
4 exactly right.
5 Okay, how do you know Mr. Burroughs?
6 **A Ken Burroughs made the initial inquiry**
7 **approach to us when Bass Pro first expressed interest in**
8 **acquiring Sportsman's Warehouse.**
9 Q When was that?
10 **A I think it was in September, October 1994, I**
11 **believe was the first time they approached us.**
12 Q 1994?
13 **A Or 2004, sorry.**
14 MR. ALLGEYER: I'm glad to know that I'm not
15 the only one that does that.
16 THE WITNESS: You'll have to excuse my
17 advancing years.
18 MR. ALLGEYER: That will be no problem at this
19 table.
20 MR. UPCHURCH: She has no idea what we're
21 talking about.
22 Q (BY MR. UPCHURCH) Did you ever have a
23 discussion with Mr. Burroughs concerning people trying
24 to redeem Bass Pro gift cards at Sportsman's Warehouse
25 locations?

1 **A I don't recall that.**
2 Q Independent of Mr. Burroughs, do you recall a
3 situation where people were trying to redeem Bass Pro
4 gift cards at Sportsman's Warehouse locations?
5 **A I think it was 2000 we had opened a store in**
6 **Loveland, Colorado, and somewhere around that time Bass**
7 **Pro Shop opened a store in St. Louis, Missouri, and they**
8 **called it Bass Pro Shops Sportsman's Warehouse. And**
9 **when they first opened that store, there were probably**
10 **two or three instances of people that were confused,**
11 **said they thought we had opened a store in St. Louis,**
12 **and a couple had been, you know, into our Loveland store**
13 **and thought they were affiliated and so on. You know,**
14 **that rapidly became known that that was not the case and**
15 **disappeared, so I don't know. But I recall at that time**
16 **that there was very minor confusion in Loveland thinking**
17 **that we owned the store in St. Louis.**
18 Q Do you know if there was also a confusion like
19 that in Memphis?
20 **A I would anticipate that there was some.**
21 **Unfortunately, as you may have heard, Bob Goodwin, our**
22 **store manager there, was killed in a car accident**
23 **Saturday evening, died early Sunday morning, so I**
24 **don't -- he would be more familiar with it than I was,**
25 **but I'm sure there was some.**

1 Q And as I expressed to Mr. Smith yesterday, I
2 was very sorry to hear that. It puts a whole new
3 perspective on what we do, so... It's just there's
4 someone there and then they're gone. Terrible thing.
5 Now, when you acquired the business in
6 November of 1996, how many stores did Sports Warehouse
7 have under the Sportsman's Warehouse name?
8 **A One.**
9 Q And where was that located?
10 **A It was located right here. If you sit out in**
11 **front of this -- where we're sitting now, this was**
12 **parking lot and the tall part of this building has been**
13 **added on, and we added on the loading docks there. So**
14 **that building over there was 42 or 43,000 square feet,**
15 **and about 26,000 square feet of that was devoted toward**
16 **retail space and the adjoining space was wholesale**
17 **space. I think it was 42,000 square feet before we**
18 **added to it.**
19 Q And that location is in Midvale, Utah?
20 **A Yes.**
21 Q Just for the record.
22 **A Yes, that's Midvale, Utah.**
23 Q And at that point in time, where did the
24 customers for this particular store come from? Or do
25 you know where the customers came from for this store?

1 **A I mean, we had customers that came here from**
2 **Texas and Florida and New York and Pennsylvania. The**
3 **majority of the people would come from Utah, but there**
4 **would be customers coming from Wyoming and New Mexico**
5 **and Arizona and California and lots of places. And you**
6 **would know that by the -- all the variety of license**
7 **plates that would be in the parking lot.**
8 Q And do you know why people from those other
9 states would be coming to this particular store?
10 **A Well, I would assume that they were either on**
11 **a hunting or fishing or camping trip and that they**
12 **needed some gear, so they had heard about us, so they**
13 **came here.**
14 Q Does Sportsman's Warehouse sell any product
15 over the Internet?
16 **A Currently, no. Just gift cards.**
17 Q Have you ever sold product over the Internet?
18 **A No.**
19 Q But you do have the gift cards that you
20 mentioned. Do you distribute those over the Internet,
21 the gift cards? I'm trying to figure out why you
22 mentioned the gift cards in connection with the
23 Internet.
24 **A Well, we sell gift cards or distribute them --**
25 **I don't understand the distinction of the wording, but**

1 **we -- customers order gift cards from us and -- for**
2 **their children or friends, whatever, to redeem at our**
3 **stores through the Internet, and they've ordered them in**
4 **all 50 states, and in some foreign countries.**
5 Q If you look at Pages 5 and 6 of Exhibit 1,
6 there's an Interrogatory No. 6 that asks about
7 advertising expenses. And then on Page 6, there are
8 various figures set out, and I noticed that the
9 advertising expenditure figures appear to start in 1997.
10 Do you have any idea why they don't start in '96 or '95?
11 **A The -- I bought the business on November 1,**
12 **1996, so our first fiscal year would end on October 31,**
13 **1997. So this covers the period of time from**
14 **November 1, 1996 through October 31, '97, which was the**
15 **first year of my ownership.**
16 Q If you look over on Page 7 there are similar
17 figures for sales.
18 **A Yes.**
19 Q And those start in '95. Is there a reason why
20 the sales start in '95, but the advertising expenditures
21 don't start until '97?
22 **A No. I mean, we could go back and get earlier**
23 **advertising numbers if you would desire.**
24 Q I'm just trying to figure out why there was
25 different -- there was no reason for the difference that

1 chart we were looking at that starts in '95, it says,
2 "All sales since late 1994 or early 1995 have been made
3 under the Sportsman's Warehouse name."
4 Do you know of any records that show such
5 sales in '94 under the Sportsman's Warehouse name?
6 **A Again, my involvement with the company started**
7 **in 1992. They hired us again to sell the company in**
8 **1994, and I think we started marketing the company in**
9 **like April, May of '95. So somewhere in that period of**
10 **time -- when I say '94, '95 -- as I recall, inside the**
11 **store like on the T-shirt tables, I think they had signs**
12 **that said Sportsman's Warehouse, but I can't reproduce**
13 **those. I don't have photographs of them or anything**
14 **else.**
15 **So somewhere in that period of time. I**
16 **believe they changed the sign on the exterior of the**
17 **building in February or March of '95. I think the**
18 **stores -- above the cash wraps, we have signs between**
19 **one and two, three and four, five and six, and those**
20 **signs used to say Sports Warehouse and they were changed**
21 **to Sportsman's Warehouse right around that period of**
22 **time. I don't know exactly when.**
23 Q If you turn over to the next page, which is
24 Page 8, Interrogatory No. 8 asks about all business
25 retailers or distributors to whom respondent has sold

1 you know of?
2 **A No. I think this might be -- you know, we had**
3 **Sportsman's Warehouse sales here versus Sports Warehouse**
4 **sales, and Sportsman's Warehouse sales started to occur**
5 **in 1995. So I guess if you wanted to know what the**
6 **advertising was in '95, we could get an old financial**
7 **statement and give you that number.**
8 MR. UPCHURCH: I would request those for '95
9 and '96 because I think they're relevant to issues in
10 this proceeding.
11 MR. ALLGEYER: We'll see if we can locate
12 those, although having said that, very often in
13 depositions I agree to things like this that I forget.
14 If you wouldn't mind maybe just putting that in a letter
15 when you get back, that would be helpful.
16 THE WITNESS: And I'm hopeful that we can
17 still find those old financial statements. Usually
18 after ten years we throw stuff out, but we'll have to
19 see if it's there.
20 MR. ALLGEYER: That may be the reason.
21 MR. UPCHURCH: That could be the reason.
22 THE WITNESS: I don't know.
23 MR. ALLGEYER: Off the record.
24 (Off-the-record discussion.)
25 Q (BY MR. UPCHURCH) On Page 7, right above that

1 goods at wholesale under respondent's mark. And the
2 answer ends with "Sportsman's Warehouse responds that it
3 sells goods only at retail and does not sell goods at a
4 wholesale level." Do you see that?
5 **A Yes.**
6 Q Did you provide the information that formed
7 the basis of this answer?
8 **A Yes.**
9 Q Is the answer correct?
10 **A I think it's a question of, again, definition**
11 **of words. It says, "For each year, beginning with the**
12 **date respondent's mark was first used in United States,**
13 **identify any and all businesses, retailers, or**
14 **distributors to whom respondent has sold goods at**
15 **wholesale under respondent's mark."**
16 **Well, we haven't, to my knowledge, sold**
17 **Sportsman's Warehouse logo'd merchandise to any othe**
18 **businesses for sale by them. If that answers the**
19 **question.**
20 Q Okay.
21 **A So, in other words, we do not wholesale logo'd**
22 **product. We would only sell it at retail through our**
23 **own stores.**
24 Q Have you wholesaled non-logo'd product through
25 the Sportsman's Warehouse company?

1 **A Yes, to a small extent. I mean, when the**
2 **businesses were side by side, people used to come in**
3 **sometimes and we discontinued that when we got over**
4 **there at the other location, which was about 15 miles**
5 **from here, because -- I forget what you would call it,**
6 **but people would walk up and place an order and the guy**
7 **would go out in the warehouse and get the product.**
8 **Well, when the store was right next to the**
9 **wholesale company, if they didn't have it at wholesale,**
10 **in the wholesale Pacific Flyway, they might have sent**
11 **the guy over to the retail store to get the product, and**
12 **they did some of that. What dollar wise -- I would say**
13 **at the time, the wholesale business -- I think its peak**
14 **was 17 million or something, and when I bought it, it**
15 **was probably 12, 13 million, and out of that, there was**
16 **probably -- I would be surprised if it was $100,000 a**
17 **year of sales that were made by the retail store to**
18 **third parties, which I define as wholesale.**
19 Q And at some point, did that cease?
20 **A Probably -- I would say it was phased out**
21 **probably in 2001. You know, when we first relocated**
22 **the -- we built the Provo store, expanded this store,**
23 **relocated the wholesale company, and then we -- you**
24 **know, we're 15 miles apart. That was probably -- in**
25 **like 2000, it probably started to dwindle down and, you**

1 customers or is it Sportsman's Warehouse that gets
2 wholesale customers?
3 **A It's Pacific Flyway that has wholesale**
4 **customers today. You know, we might discount a product**
5 **and some people would look at that as wholesale. You**
6 **know, say a guy came in and he wanted to buy 10,000 of**
7 **those red cups, we would give him a better price. Now,**
8 **did he pay the retail price for the cup? No, he paid a**
9 **wholesale price for the cup because it's cheaper, but is**
10 **it still above our costs, et cetera.**
11 Q Right.
12 **A So Sportsman's Warehouse doesn't sell, I would**
13 **say, wholesale to companies. Now, some stores might**
14 **have a guy that comes in that has a competing store**
15 **that's in a remote location and he comes to our store**
16 **and buys product, normally they would buy it at retail.**
17 **But, again, if the guy came in for some reason and**
18 **wanted to buy 10,000 of something, the store manager**
19 **would probably give him a discount.**
20 Q Are you aware of any such instances?
21 **A Yes, we have some customers that they would do**
22 **that to.**
23 Q And are there particular stores that do make
24 sales like that, that you have in mind?
25 **A Not that I'm thinking of specifically, no.**

1 **know, today we don't -- we don't want third-party**
2 **customers, but we still get some.**
3 Q And third-party customers are what?
4 **A We have a warehouse called -- wholesale**
5 **operation called Pacific Flyway Wholesale. It primarily**
6 **sells product to Sportsman's Warehouse, but it also does**
7 **about a million dollars worth of business to third**
8 **parties, which are competitors of Sportsman's Warehouse.**
9 **For example, we would sell to someone like Smith and**
10 **Gallenson's or Intermountain Sports or somebody like**
11 **that.**
12 Q And so --
13 MR. UPCHURCH: Could I have his previous
14 answer?
15 (Whereupon, the record was read as follows:
16 ANSWER: Probably -- I would say it was phased
17 out probably in 2001. You know, when we first relocated
18 the -- we built the Provo store, expanded this store,
19 relocated the wholesale company, and then we -- you
20 know, we're 15 miles apart. That was probably -- in
21 like 2000, it probably started to dwindle down and, you
22 know, today we don't -- we don't want third-party
23 customers, but we still get some.)
24 Q (BY MR. UPCHURCH) When you say, "but we still
25 get some," is it Pacific Flyway that gets wholesale

1 **You know, it would be like -- let me draw an analogy,**
2 **like a Home Depot or a Lowe's, they basically are**
3 **retailing product to consumers, but they also sell to**
4 **some general contractors.**
5 **Now, a general contractor who came in and**
6 **bought a hammer or something, he would probably pay**
7 **retail for it like everybody else, but if he came in and**
8 **he bought all of his lumber to build a house, he would**
9 **be a wholesale customer.**
10 **Our business at Sportsman's Warehouse is**
11 **primarily retail. We do not sell products at -- logo'd**
12 **products to other third parties. I don't know if I'm**
13 **clarifying or just --**
14 Q I think so. It was confusing yesterday and I
15 think it's less confusing today.
16 If you look down at the next interrogatory and
17 answer, Interrogatory No. 9, it asks about Pacific
18 Flyway. And the last sentence of the answer says,
19 "Pacific Flyway also acts as a distributor for goods
20 sold at the retail stores of Sportsman's Warehouse." Is
21 that the relationship you testified to just a few
22 minutes ago?
23 **A Yes. Again, Sports -- Pacific Flyway today**
24 **sells -- probably 99 percent or so of its sales are**
25 **functioning as a distributor, not a wholesaler. It's**

to (b)?
A I guess that would be correct.
Q Are you aware of any other instances where Bass Pro Shops has used Sportsman's Warehouse apart from the mark Bass Pro Shops?
A I am not. Am I supposed to be continuing or --
Q Well, you were reading through to see if you could determine if there was somebody else that you contacted to obtain information that's contained in these answers.
A I believe just our legal counsel again.
Q If you're done reading that answer, could you turn back to Page 12. In Paragraph (a) toward the end of it, there's a phrase -- well, let me read the sentence. "Respondent has disclaimed exclusive rights to the phrase Sportsman's Warehouse apart from the Bass Pro Shops mark, and has not acquired any secondary meaning in that phrase." Do you see that sentence?
A Yes.
Q Do you have an understanding of what "secondary meaning" means?
A Yes.
Q What does secondary meaning mean to you?
A Where the name would be known in the trade or

to the public as what they would associate a company's name to be.
Q And did you make any inquiry as to whether or not Bass Pro Shops had developed secondary meaning in the Sportsman's Warehouse mark? Did you ask anybody?
A Well, to me, I had -- they tried to acquire us twice, so I went through their warehouse twice. They supplied -- 90 plus percent of all the product that's sold in their stores comes from a Bass Pro Shops warehouse in Springfield, Missouri, okay. So the bills that they'll be paying in the trade are on Bass Pro Shops -- that's how they buy stuff, Bass Pro Shops. Sportsman's Warehouse doesn't buy anything.
So in the trade, Bass Pro Shops is known as Bass Pro Shops. We are known as Sportsman's Warehouse.
Q When you say "in the trade," what do you mean by that?
A If you sold me, say, you know, ten semi loads of double A shotgun shells and I were to pay for that, I would pay for it under Sportsman's Warehouse. Bass Pro would pay for it under Bass Pro Shops. They might send -- so in the trade, there's absolutely zero confusion about who is Bass Pro Shops and who is Sportsman's Warehouse.
Q What about with retail customers?

A This year we'll have nine million customers. You might find ten or 20 that are confused.
Q And do you have -- well, does the phrase "secondary meaning" have any meaning to you in connection with the retail trade?
A Yes.
Q So does it have the same meaning as what you said before, only it's the retail customers that identify the company?
A The retail customers know Sportsman's Warehouse and they know Bass Pro Shops. So I would say the vast, vast majority of customers out there would make a distinction between Bass Pro Shops and Sportsman's Warehouse.
Q Based upon -- what would they base that distinction on?
A Their experience, their experience in going to our stores and going possibly to their stores. They're very discernibly different and people -- you know, they look different, they feel different. The merchandise is different. And in Bass Pro Shops stores, they have a lot of merchandise with the Bass Pro Shops' logo on them, even the one in St. Louis.
Q Do they have merchandise that doesn't have the Bass Pro Shops logo on them?

A Yes.
Q Do you consider Bass Pro Shops to be a competitor?
A Yes.
Q Are there similar products sold in your stores and the Bass Pro Shops stores?
A Yes.
Q Are there product types that Bass Pro sells that you don't sell?
A Yes.
Q What are some of those, the big ones?
A Golf equipment.
Q Anything else?
A Boats. Big boats.
Q I was going to say, I could have sworn I saw some boats over there yesterday.
A We sell some v-hauls and kick boats and things like that, but I'm talking about like pontoon boats, Tahoe boats, bass tracker boats. We're selling small boats. They're selling more major boats.
Q Yeah, okay, I understand the distinction now.
Any other products that Bass Pro sells that Sportsman's Warehouse does not, product categories?
A In terms of -- I think they sell fudge, and I don't think we sell fudge. We might sell fudge in one

or two stores and we get it from a local source. I don't know. In terms of big categories, I would say it would be boats and golf equipment would be the only two things that are different.

Q Are you aware of any other companies using the mark Sportsman's Warehouse other than Bass Pro and Sportsman's Warehouse?

A When you say "using the mark," are you talking about the stylized --

Q No. Let me rephrase that. Are you aware of any other company using the phrase "Sportsman's Warehouse" in connection with their business other than your company and Bass Pro?

A I think there's a company in either Africa -- Africa somewhere, South Africa or else in Australia, that there's some small guy over there that does a little stuff on the Internet, but...

Q Anyone else?

A That's all I know.

Q If you look at Interrogatory No. 17, it talks about experts. It asks about whether your company has retained an expert to testify in this matter. Do you know if your company has retained an expert other than your attorneys to testify in this proceeding?

A Not at this time.

capable of filing and prosecuting your own trademark applications. I was really just trying to see, you know, what experience you had in that area.

Well, why don't we look at Exhibit 2, then. Do you recall making the decision to file for this particular trademark?

A Yes.

Q Do you recall when that decision was made?

A Looking at the date on the top of this, I would say sometime in 2000.

Q Well, it was registered in 2000. If you look down on the right-hand column, it was filed in January of 1999.

A So we probably made the decision to do this in 1998, I would say, then, and we were using that mark and Dale had designed it with the mountains and stuff, and so we thought we'll do it.

Q Since about 1995?

A Yes.

Q Based upon --

A We had had it registered in the state, but we decided -- because we started thinking we would do business in more places than just Utah, so we should try to get it in other places.

Q So that was really what I was getting at, was

Q I think we're done with Exhibit 1 for right now.

I'm going to hand you Exhibit 2 -- let's back up a second. Prior to acquiring the company Sports Warehouse, did you have any familiarity with trademarks?

A Yes.

Q And how did you obtain that familiarity?

A Well, I've got Coca-Cola. If you drink that, that's a trademark product and so on.

Q Did you ever own any businesses where trademarks were important prior to acquiring this company?

A I owned other businesses and we had names, but I don't know to the extent they were trademarked or copyrighted.

Q And that's really what I was getting at, was what kind of experience you had in connection with trademarks prior to this company.

A I also previously did merger and acquisition work. I sold 108 companies for a billion seven. I advised many companies on mergers and acquisitions and, of course, service marks, trademarks and so on were many times involved in the deal. So I guess I have a lot of familiarity with it, but not like you.

Q Well, I'm not asking if you're, you know,

what was the impetus, if you waited for three years, why did you wait three years, and so at that point, you were thinking you were going into other states and so you needed better protection?

A Yes.

Q In the left-hand column, there's a description of services. It says, "Retail and wholesale stores featuring hunting supplies, fishing supplies, camping supplies, reloading supplies, outerwear, clothing and footwear." Did you come up with that particular description of the services?

A No.

Q Do you know who did come up with that particular description of the services?

A Whatever legal counsel filed this for us.

Q Does this description accurately describe the services you were providing in 1999?

A I would say so. I'm not sure what Class 35 is, but...

Q I would have to look it up.

MR. ALLGEYER: Maybe I'll make a belated objection, calls for a legal conclusion.

THE WITNESS: Yeah, as far as I can tell, it does.

Q (BY MR. UPCHURCH) At that time, did you have

1 wholesale stores?
2 **A You know, you seem to be talking about**
3 **wholesale stores, and I've tried to clarify that for**
4 **you. I don't know if I'm able to, okay. We sell at**
5 **retail. Sportsman's Warehouse is a retail company,**
6 **Pacific Flyway Wholesale is a wholesale company. To**
7 **date, it's evolved into a distribution center. It still**
8 **has a wholesale component. Up until 1999 we were**
9 **probably wholesaling some product out of Sportsman's**
10 **Warehouse, okay. So how much that was, it would be a**
11 **small amount, but there would be some of it, where**
12 **somebody would walk next door, fill out an order over**
13 **there and go get it next door.**
14 Q So to the extent you had the situation that
15 you described earlier, the same store was functioning as
16 a retail store and a wholesale store?
17 **A Initially that would be true. We opened our**
18 **second store in May of 1998 and our third store not**
19 **until April of 1999, and it was somewhere in that period**
20 **of time when we relocated the wholesale company to South**
21 **Salt Lake City, so -- and we still had a little of that**
22 **then.**
23 Q Right. Okay. Now, are you saying that it was
24 the first location that was doing some of the wholesale
25 selling?

1 **A Yes.**
2 Q But not the second location?
3 **A I am trying to respond to your questions the**
4 **best I can.**
5 Q Right. And I'm trying to understand your
6 answer.
7 **A I don't know if I can make it clearer.**
8 Q Right.
9 **A It all hinges on how you're defining**
10 **wholesale.**
11 Q Okay.
12 **A If you're talking about giving a retail**
13 **customer that buys in bulk a discount and calling that**
14 **wholesale, then that -- we would be doing that at other**
15 **stores as well. If you are talking about a guy coming**
16 **in and buying something at Pacific Flyway Wholesale and**
17 **then picking something else up at a retail store that**
18 **was probably one store, I would say that's**
19 **essentially -- was there ever a sale made at wholesale**
20 **price to somebody else, I don't know.**
21 Q Well, you know, I'm really asking about -- it
22 says retail and wholesale stores.
23 **A I think at the time we were thinking that we**
24 **would expand Pacific Flyway along with the retail so**
25 **that when we built -- say we went to Idaho, we would**

1 **probably have a small wholesale operation with it, and**
2 **when we went to Colorado we would have a wholesale**
3 **operation with it and grow them simultaneously, but as**
4 **time went along, we decided to focus on just retail, so**
5 **that's probably what that alludes to. We wouldn't do**
6 **that in Utah because we had a wholesale company here.**
7 **But when we went to other states -- we opened Meridian**
8 **in 2000, that would have been something we were thinking**
9 **about at the time, in the 1998, '99 time frame.**
10 MR. UPCHURCH: Are we getting close to lunch?
11 MR. ALLGEYER: Pretty close.
12 THE WITNESS: They'll bring it in when it gets
13 here, which won't be much longer.
14 MR. UPCHURCH: That's what I was thinking.
15 Why don't we mark that as Exhibit 4, please.
16 (Whereupon, Exhibit No. 4 was marked for
17 identification.)
18 Q (BY MR. UPCHURCH) I've had the reporter hand
19 you what's been marked as Exhibit 4. Can you identify
20 that?
21 **A It looks like it's an ad from November 1994 in**
22 **The Deseret News showing Sports Warehouse as the name on**
23 **the ad.**
24 Q You earlier made reference to a Christmas ad
25 for '94.

1 **A This would be a Christmas ad.**
2 Q So is this possibly the Christmas ad you were
3 referring to?
4 **A Actually, this is a Thanksgiving Day ad. So**
5 **what I'm saying, the ads we could find -- they didn't do**
6 **much advertising in those days -- it appears as if they**
7 **were using Sports Warehouse in their newsprint**
8 **advertising through the end of '94. And what we could**
9 **find in '95, they were using Sportsman's Warehouse.**
10 Q Now, are you sure that you found a Christmas
11 ad? And the reason I ask is I didn't see one in looking
12 through the documents. I found this.
13 **A Well, change it to Thanksgiving ad if this is**
14 **the ad that we could find, then. There may be an**
15 **additional one. I don't know.**
16 Q There may be one I missed. Do you have a
17 specific recollection of a Christmas ad for '94?
18 **A I don't remember what all we produced. We**
19 **produced everything that we could find to my knowledge.**
20 **So this is a -- I would say a Thanksgiving Day ad. It**
21 **ran prior to Thanksgiving, I would think. I don't know**
22 **when Thanksgiving was in 1994, but...**
23 Q But it looks about right. It looks about
24 right.
25 And the Christmas ad, if there is one, would

be sometime shortly before Christmas; is that correct?
A No, it would have been -- you know, we would be running ads every week in December of 2004, 2005 and so on, normally, I would think. We do it today.
MR. UPCHURCH: And I would request a copy of those if they exist.
MR. ALLGEYER: I think they've been produced.
MR. UPCHURCH: And they may have and I just don't have them.
THE WITNESS: And I think they have been, too. That's why I said Christmas ad earlier.
MR. ALLGEYER: If you'll put that in your letter, we'll check.
MR. UPCHURCH: I just want to make sure we have a complete record.
THE WITNESS: We searched with the newspapers and this is what we found. So you may have another one, a December one. I don't know if you have it or not.
MR. UPCHURCH: And it may have looked so similar that I just overlooked it. That's quite possible.
MR. ALLGEYER: And coming off microfiche, sometimes you have a black smudge where the date should be so you never know. We'll certainly -- put that in a letter and we'll find it if it exists.

Inc. to Sportsman's Warehouse, Inc.
Q Is that your signature on this document?
A Yes.
Q And that occurred in 2004? Right before your signature --
A Yeah, looking at that date I thought it occurred earlier, but apparently not. It must have been then.
Q Do you have any reason to believe that it occurred earlier than February 2004?
A No, no. I just thought it occurred earlier.
MR. UPCHURCH: I'm ready to take a break.
(Break taken.)
MR. UPCHURCH: Would you mark that as Exhibit 7, please.
(Whereupon, Exhibit No. 7 was marked for identification.)
Q (BY MR. UPCHURCH) You've been handed Exhibit 7. Do you recognize this document?
A Not exactly. It looks like something that Bill Hayes in February 1995 applied to have the dba as Sportsman's Warehouse, apparently, is what this docum requests, I guess, with the State of Utah. It wasn't prepared by me, but I think that's what it is.
Q And what did you say the date was?

MR. UPCHURCH: Would you mark that as 5, please.
(Whereupon, Exhibit No. 5 was marked for identification.)
Q (BY MR. UPCHURCH) I've had the reporter hand you what's been marked as Exhibit 5 and ask if you can identify that?
A That's a Sportsman's Warehouse ad, and it's from, I think, November 23rd of 1995, I believe.
Q And this is consistent with your earlier testimony that sometime between 1994 and 1995 there was a name change?
A Yes, we produced earlier ads for you, too. I think there was one from June.
Q And that was the Father's Day ad that you testified about earlier?
A Yes.
MR. UPCHURCH: Could you mark that as Exhibit 6, please.
(Whereupon, Exhibit No. 6 was marked for identification.)
Q (BY MR. UPCHURCH) Could you identify what the reporter has marked as Exhibit 6, please?
A I believe this was an amendment changing the legal name of the corporation from Sports Warehouse,

A February 1, 1995, is when it was filed. Well, that's when it was approved by the State of Utah. I'm not sure when it was applied for. It's probably, I would assume, applied for earlier and it was issued o that date.
Q Is that, in fact, Mr. Hayes' signature?
A Yes.
(Whereupon, Exhibit No. 8 was marked for identification.)
Q (BY MR. UPCHURCH) You've been handed what's been marked as Exhibit 8. Do you recognize this document?
A Yes.
Q And is that your signature on the last page of it?
A Yes.
Q Did you prepare this document?
A I don't think so, because the "none" is not my writing.
Q Which is not your writing?
A The word that says "none" and the "Sportsman Warehouse," the printing is not my printing. So I don think I prepared the document, I just signed the document.
Q Do you know who did prepare the document?

A **I do not.**
Q And if you look at Paragraph 10 of the document, right above your signature it says, "The character of business the foreign corporation initially intends to conduct in Arizona is: Sporting goods retail and wholesale service." Do you see that?
A **Yes.**
Q The -- do you have an understanding of what sporting goods means in that context?
A **I think so.**
Q And what does that mean to you?
A **We're going to sell sporting goods equipment, hunting, fishing, camping.**
Q Baseball bats?
A **We could be selling baseball bats. We could be selling tennis rackets, golf clubs. We're selling sporting goods stuff.**
Q So that was a somewhat broader description than what was in your federal registration that we looked at earlier?
A **Again, you want us to say outdoor goods, do you want -- and that could include golf and tennis because they're outdoor activities -- well, tennis could be indoors. Golf is always outdoors. I don't know.**
Q Was there an intent that the business be

different in Arizona than what you were doing in Utah?
A **No.**
MR. UPCHURCH: Shall we have lunch?
MR. ALLGEYER: Why not.
(Break taken.)
MR. UPCHURCH: Would you mark that as Exhibit 9, please.
(Whereupon, Exhibit No. 9 was marked for identification.)
Q (BY MR. UPCHURCH) You've been handed what's been marked as Exhibit 9. Can you identify that document?
A **It appears to be a trademark-service mark registration with the State of Idaho on 4/15/96 for Sports Warehouse dba as Sportsman's Warehouse.**
Q Right. And it shows a logo down there as well?
A **Yes.**
Q Which is similar to what's in Exhibit 2, but doesn't have the hunting, camping, et cetera underneath it; is that correct?
A **Yes.**
Q And in the middle of this it says, "First use anywhere: 4/15/1996." Do you see that?
A **Yes.**

Q Do you know what the basis of selecting that particular date was?
A **I don't, because obviously we saw an ad earlier that was June 15th, 1995 that was used, so -- it was probably -- April 15, 1995 was probably a mistake.**
Q Could be a typo?
A **Could be a typo because it was obviously used before that. It was exhibit -- what do you have here? Exhibit 5 is earlier.**
Q Right, Exhibit 5 is dated in 1995, right?
A **Yes.**
MR. UPCHURCH: Mark that as Exhibit 10, please.
(Whereupon, Exhibit No. 10 was marked for identification.)
Q (BY MR. UPCHURCH) You have been handed what's been marked as Exhibit 10. Do you recognize that document?
A **Yes.**
Q What is that document?
A **It's an application for registration of trademark-service mark in the State of Idaho for Sportsman's Warehouse, I believe -- yes.**
Q And is that your signature?
A **Yes.**

Q And, again, we have the 4/15/1996 date.
A **Yes, and that is my writing as well.**
Q Do you have any idea why you wrote 4/15/1996?
A **Probably meant 4/15/95, and then it was copied from there onto this other document, and I don't even know what the significance of 4/15/95 is because it was registered earlier.**
Q You say it was registered earlier?
A **Well, in the State of Utah on February 1 of '95, the name was registered.**
Q Okay, as a dba?
A **At the time there was probably some ad or something. I don't know.**
Q You don't have any present recollection as to where that date came from?
A **No, I do not.**
Q Do you have a present recollection as to where the 5/14/1998 date for the first use in Idaho came from?
A **I would say that was the date that we -- let's see. No. It must have been a date that we could identify where we bought something from some vendor in Idaho, is probably what it was.**
MR. ALLGEYER: You don't want to guess. Just tell him the best you know.
THE WITNESS: I don't know what the date comes

DESERET NEWS, Thursday, November 24, 1994

SPORTS WAREHOUSE

Walls SUPER QUILT SUIT $79

Walls TURTLE HOODS $15

BROWNING GOOSE DOWN STUFF JACKET $120

WHITE STAGG FLEECE JACKET $35

Alpen Outech FLEECE VEST $50

Sluskojak FAHRENHEIT SERIES MUMMY BAG $88

Camp Trails "WILDERNESS" INTERNAL FRAME BACKPACK $159

KELTY RED WING BACK PACK $59
KELTY'S #1 SELLING PACK

OUTDOOR H20 FANNY PACK W/ WATTER BOTTLE $15

Sluskojak RECTANGULAR COMPACTIBLE SLEEPING BAG $77

Sunbeam PATIO MASTER PORTABLE GAS GRILL $25

CAMP CHEF COMBO $159

LEATHERMAN POCKET SURVIVAL TOOL $38
THE TOOL FOR THAT - IT'S IN THE PALM OF YOUR HAND

LaCrosse BIG CHIEF HIP BOOT $69

ONEIDA PAC BOOT $55

BUCK NIGHTHAWK $44

PENTAX 10 x 24 WR BINOCULARS $120

Hodgman BRIGHTON NEOPRENE WADERS $65
- 3.5 mm THICKNESS
- REINFORCED KNEES
- TRIPLE REINFORCED SEAMS
- STOCKING FOOT
- 1 YR WARRANTY
- STOUT SIZES $70

BANTAM WEIGHT WADING SHOES $39

MARTIN CLASSIC FLY COMBO $89

WHITE MUZZLELOADING SYSTEMS "SUPER 91" $595

Flambeau CANADA GOOSE FLOATER $40

Remington 670 SYNTHETIC STOCK SHOTGUN $235
- 12 GAUGE - 3" MAG
- 28" BARRELL
- RIM CHOKE MODIFIED
- MATTE FINISH

Flambeau STANDARD MALLARD DECOY $30

RCBS ROCK CHUCKER MASTER RELOADING KIT $229

E.L.K. INC POWER BUGLE $19

NBC SHOT SHELL RELOADER $90
AMERICA'S #1 SHOTSHELL LOADER

EAGLE ACCU NAV SPORT HAND HELD GLOBAL POSITION SYSTEM $499

PRO-LINE FLOAT TUBE $139

Scientific Angler COMPLETE FLY PACKAGE $159

CANNON SPORT-TROLL DOWN RIGGER $99

EAGLE CLAW TROLLING COMBO $59

FRABILL DELUXE ICE EXPLORER 2 PERSON TENT "EXCLUSIVE FABRIC HOUSING" $208

Flambeau SOFT SIDED TACKLE SYSTEM $50

THOUTSMITH ENTERPRISES BASIC FLY TYING KIT $30

GIFT CERTIFICATES AVAILABLE

HUNTING • FISHING • CAMPING • ARCHERY
RELOADING • OUTERWEAR • FOOTWEAR
7035 SOUTH 185 WEST MIDVALE
HOLIDAY HOURS
MON-FRI 9:30-8:00 • SAT 9:30-6:00 • SUNDAY 11-4

Δ π EXHIBIT 4
Deponent Utgaard
Date 5/11/06 Rptr. [illegible]

DESERET NEWS, Thursday, November 23, 1995 D5

SPORTSMAN'S WAREHOUSE

LEATHERMAN — POCKET SURVIVAL TOOL
- 12 TOOLS
- W/LEATHER SHEATH
- LIGHT WEIGHT WEIGHS ONLY 3 OZ.

$33

THE TOOL BOX THAT FITS IN YOUR HAND

KELTY — RED WING INTERNAL FRAME BACK PACK
HOT PRICE
- REG. 2400 C.I. - URG. 2900 C.I.
- TWO FRONT AND TWO LARGE SIDE POCKETS
- ANATOMIC WAIST BELT W/LUMBAR PAD
- TEAL GREEN COLOR

$49

KELTY'S #1 SELLING PACK

PENTAX — 10x24 COMPACT BINOCULARS
- CENTER FOCUS
- PISH DOWN EYECUPS
- ASPHERIC LENSES - EDGE TO EDGE - SHARPNESS
- COMES WITH CASE AND STRAP

$109

PRO LINE — PRO LINE PAC BOOT
- REMOVABLE LINER
- POWER GRIP SOLE
- OILED BROWN SUEDE LEATHER UPPER

SIZES 7-13

$44

Gamehide — WADER JACKET
- BROWN CAMO
- WATER PROOF
- INSULATED
- CANVAS FABRIC

$59

RANGER — HIP BOOTS
- ALL RUBBER
- CALF HARNESS
- CLEATED SOLE
- INSULATED

SIZES 7-13

$29

Wenzel — SUNSHINE MOUNTAIN SLEEPING BAG
OVERSIZED
- 37"X84"
- 6 LBS. HOLLOW FIBER
- COTTON COVER
- FLANNEL LINED
- 0-10 RATING

$39

Johnny Stewart — PORTABLE CASSETTE PREDATOR CALLER
BRING WILDLIFE CLOSER TO YOU
- RECHARGEABLE
- SILENT ON/OFF SWITCH
- LARGE LONG RANGE SPEAKER 25' CORD
- COMPACT
- LIGHTWEIGHT
- DURABLE

$170

CALLER BAG $22 - LARGE SELECTION OF TAPES $3

LEUPOLD — 3X9 RIFLE SCOPE
- LUSTER FINISH
- DUPLEX CROSS HAIR
- FOG PROOF/WATER PROOF
- LIFETIME LIMITED WARRANTY

$199

Hornady — M-3 TUMBLER
HOT DEAL
- LARGE CAPACITY
- 1000 36 gal. CAPACITY 300-30-06
- CLEANS BRASS CASES

$70

Hen Gear — DELUXE RELOADING BENCH
- INDUSTRIAL GRADE STEEL
- "BUTCHER BLOCK" MAPLE WORK SURFACE 1½" THICK
- LARGE STORAGE AREA WITH TWO SHELVES
- FIVE DRAWERS

$250

RCBS — ROCK CHUCKER MASTER RELOADING KIT
INCLUDES ALL OF THE TOOLS AND ACCESSORIES NEEDED TO START RELOADING

$250

Flambeau — "BEST BUY" MALLARD DECOY
- WATER KEEL
- NATURAL COLOR WATER PROOF, NON GLARE PAINT

$33 EA.

FLY TYING STATION
- COMPACT TYING CENTER
- TOOL ORGANIZER
- LEFT OR RIGHT HAND

Made in U.S.A.

$35

RUGER — "STAINLESS" 10/22 RIFLE
HOT DEAL
- 22 LR. CALIBER
- HARDWOOD STOCK
- 10 RD ROTARY MAGAZINE

$185

MITCHELL — 300, 308, 306 EXCELLENCE SPINNING REEL
- TWO PRECISION BALL BEARINGS
- QUICK CHANGE SPOOL
- LIGHTWEIGHT GRAPHITE
- LEFT/RIGHT HAND
- FAST 5.1:1 GEAR RATIO

$30

LEIGH — ALPINE KICK BOAT
- 420 DENIER NYLON
- COMFORTABLE INJECTION MOLDED SEAT
- TRANSPORTING SIZE 10" HIGH, 22" LONG, 24" WIDE
- TWO ACCESSORY POCKETS

IDEAL FOR BACKPACKING AND HIGH MOUNTAIN LAKES

$200

Rubbermaid — PRO SERIES 14" TOP ACCESS TACKLE BOX
"ULTIMATE ORGANIZATION FOR THE SERIOUS FISHERMAN"
- CLEAR VIEW DUAL ACCESS STORAGE LID
- WORM PROOF PLASTIC
- SOFT-GRIP HANDLES

$13

ZEBCO — 202 COMBO
- AMERICA'S #1 SELLING REEL
- SMOOTH-WIDE-RANGE DRAG TACKLER 8#9 FISH
- TOUGH ALL-METAL GEARS ARE SMOOTHER, LAST LONGER
- 10 LB LINE

$14

CADDIS PRO FLOAT TUBE WITH FINS
- TRIPLE STITCHED ON CRITICAL SEAMS
- 420 DENIER NYLON
- 38" TUBE

$140

CANNON — SPORT TROLL DOWN RIGGER
- W/BOB HOLDER SWIVEL HEAD DEPTH COUNTER
- 100 FT. OF 100 LB. TEST STAINLESS STEEL CABLE
- ONE HAND CLUTCH/BRAKE CONTROL
- W/LINE RELEASE

$99

GIFT CERTIFICATES AVAILABLE

HUNTING • FISHING • CAMPING • ARCHERY
RELOADING • OUTERWEAR • FOOTWEAR
7035 SOUTH 185 WEST MIDVALE
HOLIDAY HOURS
MON-FRI 9:30AM-8:00PM • SAT 9:30AM-6:00PM • SUN 11:00PM-4:00PM

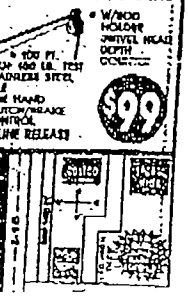

EXHIBIT 5
Deponent Hagaard
Date 5/11/06 Rpt. JK
WWW.DEPOBOOK.COM

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EXPEDITE
File 2nd.

RECEIVED
FEB 11 2004
Utah Div. Of Corp. & Comm. Code

ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
SPORTS WAREHOUSE INC.

I, Stuart B. Utgaard, the Chief Executive Officer of Sports Warehouse Inc., a Utah corporation (the "Corporation"), do hereby certify that the resolution hereinafter set forth was duly adopted effective February 6, 2004, by a unanimous written action of the directors and all of the shareholders, representing all 10,000 shares of common stock outstanding and entitled to vote in accordance with the Utah Revised Business Corporation Act:

RESOLVED, that Article I of the Articles of Incorporation of the Company be deleted in its entirety and replaced with the following:

"The name of this Corporation is Sportsman's Warehouse, Inc."

IN WITNESS WHEREOF, I have hereunto set my hand February 6, 2004.

02-11-04P02:24 RCVD

Stuart B. Utgaard
Stuart B. Utgaard
Chief Executive Officer

State of Utah
Department of Commerce
Division of Corporations and Commercial Code
I hereby certified that the foregoing has been filed
And approved on this 11 day of FEB 2004
In this office of this Division and hereby issued
This certificate thereof.
Examiner Date 03-04-04
Kathy Berg
Kathy Berg
Division Director

Δ π EXHIBIT 6
Deponent Utgaard
Date 5/11/06 Rptr.
WWW.DEPOBOOK.COM

Date: 02/11/2004
Receipt Number: 1061707
Amount Paid: $614.00

Doc# 1851375\1

SP 00280

991589

State of Idaho

Department of State

CERTIFICATE
REGISTRATION OF TRADEMARK-SERVICE MARK
STATE OF IDAHO

I, *Pete T. Cenarrusa*, Secretary of State of Idaho and custodian of the records of Trademarks and Service Marks, do hereby certify to the following Trademark/Service Mark Registration filed on 02/08/1999.

Name of Registrant: SPORTS WAREHOUSE, INC.
Business Address: 218 West 1st Street, P.O. Box 10
Star Prairie WI 54026 0010

File No: 16236 Class: 35 State of Incorporation: Utah

First Use in Idaho: 05/14/1998 First Use Anywhere: 04/15/1996 Expiration Date: 02/08/2009

Goods or Services with which mark is used: ADVERTISING AND BUSINESS OF RETAIL SALES OF SPORTING GOODS AND EQUIPMENT

Registered Trademark-Service Mark: ™ "SPORTSMAN'S WAREHOUSE"

SPORTSMAN'S WAREHOUSE

Δ π EXHIBIT 9
Deponent Utgard
Date 5/11/06 Rptr. DB
WWW.DEPOBOOK.COM

GREAT SEAL OF THE STATE OF IDAHO
ESTO PERPETUA

Pete T. Cenarrusa
SECRETARY OF STATE

By [illegible]

APPLICATION FOR REGISTRATION OF TRADEMARK-SERVICE MARK STATE OF IDAHO

The applicant swears that he has adopted and is now using in the State of Idaho the trademark-service mark identified below, and believes that no other individual, firm, partnership. corporation, association, union, or other organization has the right to use such trademark-service mark in connection with the same or similar goods or services identified below in this State, either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

Complete all items on the application. The application must be signed by an individual, general partner or officer of a corporation. Enclose one specimen of the mark and a $30. filing fee.

Check box ☐ if this is a Union Label.

1. Name of applicant: Sports Warehouse, Inc.
2. Business address: 218 West 1st Street, P.O. Box 10, Star Prairie, WI 54026-0010
3. If applicant is a partnership, name the general partners: N/A
4. If applicant is a corporation, limited liability company or partnership, give state of domestication: Utah
5. Describe in detail the exact mark to be registered: Sportsman'S Warehouse Hunting Fishing Camping Reloading Outerwear Footwear
6. Number of class in which above particular goods or services fall: 35
   ($30.00 filing fee per class code) *Classes listed on backside*
7. Describe the kind(s) of goods or services in the above class which the trademark-service mark is used to identify: advertising and business of retail sales of sporting goods and equipment
8. Date of first use of trademark-service mark anywhere: ~~05/15/98~~ 04/15/96
   MUST BE IN USE PRIOR TO REGISTRATION
9. Date of first use of trademark-service mark in Idaho: ~~04/15/96~~ 05/14/98
   MUST BE IN USE PRIOR TO REGISTRATION
10. State the manner in which the mark will be used (i.e. on the foods, on labels or tags, on displays, on signs, on letterheads, in advertising materials, on business cards, etc.): Displays, signs, advertising materials, television advertising, letterhead, business cards, hats, coffee cups
11. Person and mailing address if different from above: Charles P. Moorse, Esq., Lindquist & Vennum, P.L.L.P. 4200 IDS Center, 80 S. Eighth St., Minneapolis, MN 55402-2205 Phone (612) 371-5771

Stuart B. Utgaard
Applicant

Filing Office Use Only

Submit Application, Specimen and $30.00 filing fee to:

SECRETARY OF STATE
Trademark Division
700 West Jefferson, Room 203
P.O. Box 83720
Boise ID 83720-0080

Δ π EXHIBIT 10
Deponent Utgaard
Date 5/11/06 Rptr. 98
WWW.DEPOBOOK.COM

SP 00357

FILE COPY

MARKSORIGNALPM6

ORIGINAL####

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

BASS PRO TRADEMARKS, L.L.C.,	
PETITIONER,	
VS.	CANCELATION NO. 92045000
SPORTSMAN'S WAREHOUSE, INC.,	
RESPONDENT.	

COPY

DEPOSITION

OF

JAMISON BRYAN HENSLEY

THURSDAY, JUNE 1, 2006

ALPHA REPORTING CORPORATION
236 Adams Avenue
Memphis, TN 38103
901-523-8974
www.alphareporting.com

1 **A. Assistant to the general manager.**
2 Q. And what was that location?
3 **A. That was -- let's see here. Stockbridge,**
4 **Georgia.**
5 Q. What was your duties in that job?
6 **A. Day-to-day operations, like expense leveraging,**
7 **payroll leveraging, budgeting for the store, managing**
8 **175 associates.**
9 Q. And you left Lowes in what date? What's the
10 date?
11 **A. I don't recall. It was in 2001.**
12 Q. Sometime 2001?
13 **A. I don't recall the exact date.**
14 Q. And when you left Lowes, did you go to take
15 another job?
16 **A. Yes, sir.**
17 Q. Where was that?
18 **A. In Target Corporation.**
19 Q. Was that in 2001?
20 **A. Yes, sir.**
21 Q. How long did you work with Target Corporation?
22 **A. Two-and-a-half years.**
23 Q. And what did you do for Target Corporation?
24 **A. I was a logistics manager.**
25 Q. And what were your duties as a logistics

1 manager?
2 **A. Initially I was in-store logistics manager over**
3 **the receiving process, the freight door process. I**
4 **had about 80 to 100 associates underneath me and four**
5 **salaried managers.**
6 Q. And where were you located at Target?
7 **A. Initially I was here in Memphis, and I got**
8 **relocated to the Atlanta market.**
9 Q. When did you relocate to Atlanta?
10 **A. Back in 2002.**
11 Q. Were you a logistics manager in Atlanta as
12 well?
13 **A. Yes.**
14 Q. Did you have any further positions with Target?
15 **A. No.**
16 Q. When did you leave Target?
17 **A. I left Target April 28, of 2003.**
18 Q. Did you take another job at that time?
19 **A. With Bass Pro Shops.**
20 Q. And where did you begin working with Bass Pro
21 Shops?
22 **A. Here in the Memphis market.**
23 Q. And what was your title?
24 **A. I was the assistant store manager.**
25 Q. Did you begin working at Bass Pro Memphis, the

1 Memphis store when it opened, or after?
2 **A. No, sir, after it opened.**
3 Q. How long had it been opened?
4 **A. I believe it had been open about ten months.**
5 Q. What were your duties as assistant store
6 manager?
7 **A. I had four salaried manager -- I'm sorry. At**
8 **the time I started, I had six salaried underneath**
9 **myself, day-to-day operations. I was assistant to**
10 **Jim Osborne.**
11 **I was responsible for budgeting expense**
12 **control, payroll leveraging, payroll management**
13 **throughout the store, all merchandising, and**
14 **operations issues from day to day.**
15 Q. What did you do in terms of merchandising?
16 **A. Day-to-day communication with buyers over each**
17 **area. Adjusting features inside the store. Bringing**
18 **new market-specific product, making sure the store**
19 **was properly merchandised.**
20 Q. Did that include signage?
21 **A. Yes.**
22 Q. How long were you in that position?
23 **A. I'm still in the position right now. They've**
24 **actually changed the name of the position, but I'm**
25 **still in my current position.**

1 Q. And what is the current name of the position?
2 **A. It's the merchandising manager.**
3 Q. Can you describe THE different management
4 positions in the Memphis store currently?
5 **A. The different positions in the store?**
6 Q. Yes.
7 **A. Right now I've four GS's underneath me, group**
8 **sales managers. And they're over several -- over**
9 **four different areas. We've combined departments**
10 **inside of each area.**
11 **We've got a receiving manager, obviously over**
12 **the receiving piece. And we've also got a front-end**
13 **manager that's over the front-end cash office**
14 **day-to-day operations.**
15 Q. And are there other people at the same level as
16 you, other positions?
17 **A. There's an operations manager that's currently**
18 **equal to me.**
19 Q. What are the duties of an operations manager?
20 **A. He's over the receiving manager, and he's also**
21 **over the front-end manager.**
22 Q. Then is there a general manager?
23 **A. Yes, there is.**
24 Q. Who is the general manager?
25 **A. Hayden Holly.**

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1 Q. How long has he been in that position, if you
2 know?
3 **A. He's been in that position, from, I believe it**
4 **was August 11th last year, 2005.**
5 Q. So if my calculations are correct, you've been
6 with Bass Pro for about three years?
7 **A. A little over three years, yes, sir. Three**
8 **years, I believe April 28th.**
9 Q. Are you familiar with the different types of
10 Bass Pro stores across the country?
11 **A. Yes.**
12 Q. What are those types?
13 **A. We've got Worldwide Sportsman. We've got a**
14 **Sportsman's Warehouse. And we've got an Outdoor**
15 **World. And we've got a Sportman's Center in**
16 **Columbia, Missouri.**
17 Q. Can you describe what differentiates each one
18 of those types from one another?
19 **A. The size of the building, A, is going to be one**
20 **thing. And each has got a different theme, so to**
21 **say.**
22 Q. So Worldwide Sportsman for instance?
23 **A. Sure.**
24 Q. What --
25 **A. Saltwater store. Typically located in a**

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1 **coastal area.**
2 Q. Okay. What about Sportsman's Warehouse?
3 **A. Sportsman's Warehouse is typically a smaller**
4 **store with a warehouse-type theme.**
5 Q. Okay. And Outdoor World?
6 **A. And Outdoor World is obviously our flagship**
7 **larger store, typically 120,000-plus square feet.**
8 Q. And Sportman's Center theme?
9 **A. Sportman's Center is a boiled down version of**
10 **the Outdoor World, typically about a 70,000 square**
11 **foot building. It's got all of the bells and**
12 **whistles of the Outdoor World. It does not have a**
13 **warehouse-type theme.**
14 Q. And do you know approximately how many of each
15 of those type stores there are?
16 **A. To my knowledge I believe we have two**
17 **Sportman's Center stores, one in Columbia, Missouri**
18 **and I believe there's one in, I want to say, Auburn,**
19 **New York.**
20 **The Outdoor World I believe we've got 30 to 32**
21 **Outdoor World stores.**
22 **And I believe we have two of the Worldwide**
23 **Sportsman stores. One IN Islamorada, Florida and one**
24 **in Destin, Florida.**
25 **And the Sportsman's Warehouse stores we have**

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1 **two. We have one in Memphis and we have one in**
2 **St. Louis.**
3 Q. How many --
4 MR. CAMPBELL: Can I interupt you Chris
5 for just a little bit?
6 (Addressing the court reporter) I'm
7 sorry. If you could just real quick, can you read
8 back the record, that response?
9 I'm just concerned he said Sportsman's
10 Warehouse earlier when he meant Sportman's Center,
11 unless I didn't hear it properly.
12 (WHEREUPON, THE REQUESTED PORTION OF
13 THE PROCEEDINGS WAS REPEATED BACK.)
14 MR. CAMPBELL: Okay.
15 BY MR. SMITH:
16 Q. How many employees that are hourly, paid
17 hourly, are in the Memphis Bass Pro Store.
18 **A. Roughly 146, 147. It fluctuates obviously from**
19 **month to month.**
20 Q. Is there a company policy about how to answer
21 the telephone, the store telephone?
22 **A. Yes, sir.**
23 Q. What is that policy?
24 **A. Thank you for calling Bass Pro Shops**
25 **Sportsman's Warehouse. Could I help you?**

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1 Q. Okay. If someone were to ask you where you
2 work, what would you tell them?
3 **A. Typically, Sportsman's Warehouse, sometimes**
4 **Bass Pro Shops Sportsman's Warehouse.**
5 Q. Are you aware that there's a similarity between
6 the words used by some of Bass Pro stores and my
7 client's Sportsman's Warehouse stores?
8 **A. Yes.**
9 Q. When did you first become aware of that
10 similarity?
11 **A. Initially when I realized that there was a**
12 **Sportsman's Warehouse coming to the Memphis market,**
13 **another company with the same name as ours.**
14 Q. And when did you realize that?
15 **A. I believe it was in February of last year.**
16 Q. And what was it that brought that to your
17 attention?
18 **A. The fact that our company was Sportsman's**
19 **Warehouse and this other company's name is**
20 **Sportsman's Warehouse.**
21 Q. I mean how did you find out?
22 **A. Oh, on the internet. Yes, sir.**
23 Q. And where on the internet did you find that
24 out.
25 **A. It was on an outdoor-news-type bulletin. I**

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1 **don't remember the exact location.**
2 Q. And what did you do when you read this?
3 **A. I went to Jim Osborne, my boss.**
4 Q. And what did you discuss with him?
5 **A. I explained to him that there was going to be**
6 **mass confusion amongst our customers, because we were**
7 **Sportsman's Warehouse, as clearly stated on our**
8 **building, and this other company was coming into our**
9 **market with the same name.**
10 Q. When did you first become aware of the present
11 dispute, legal dispute, between the two companies?
12 **A. Here recently, two months ago.**
13 Q. And how did you become aware of that?
14 **A. I received an e-mail stating that I would give**
15 **a deposition.**
16 Q. Okay. Have you ever talked to any other Bass
17 Pro employees about the similarity between the two
18 companies' names or this dispute?
19 **A. No, not about the dispute, I have not.**
20 Q. What about the similarities?
21 **A. Oh, of course.**
22 Q. Can you give me an example? Who for instance
23 have you talked to about it?
24 **A. Multiple employees. I can't give you any names**
25 **for instance. Obviously we've got a customer.**

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1 **complaint on the fact that it's very confusing.**
2 **Customers have know us as Sportsman's Warehouse for**
3 **the past almost right at four years.**
4 Q. Okay.
5 **A. And they complain to our employees about it,**
6 **and employees obviously come to me about it.**
7 Q. Have you spoken to this -- to the -- have you
8 spoken to any of your superiors at Bass Pro about the
9 similarity in the names of the two companies?
10 **A. I have spoken to my boss.**
11 Q. And that would be Jim?
12 **A. At the time was Jim, yes.**
13 Q. Anyone else of your superiors?
14 **A. I've got my current boss is Hayden Holly.**
15 Q. Anyone from Bass Pro corporate offices that you
16 spoke to?
17 **A. No, sir. I typically do not deal other that**
18 **with buyers, and I don't discuss, typically,**
19 **competitors with my buyers.**
20 Q. Have you been given any instructions by any
21 superiors at Bass Pro regarding this dispute?
22 **A. No, sir.**
23 Q. Have you been given any instructions from any
24 superiors at Bass Pro regarding trademark usage,
25 generally?

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1 **A. No, sir.**
2 Q. What's the current name of the store that you
3 work in now?
4 **A. Bass Pro Shops Sportsman's Warehouse.**
5 Q. And what does the sign say on the front of the
6 building right now?
7 **A. The sign on the front of the building? Well,**
8 **there's currently a sign that says Bass Pro Shops.**
9 **And then over to the left there's a sign that says**
10 **Sportman's Center.**
11 Q. Okay. Has that always said Sportman's Center?
12 **A. No, sir.**
13 Q. What did it say before it said Sportman's
14 Center?
15 **A. Sportsman's Warehouse.**
16 Q. And when did that change take place?
17 **A. Back in the end of July last year, I believe.**
18 **That's an estimated date. I don't know the exact**
19 **date.**
20 Q. Was more than one sign on the building changed
21 from Sportsman's Warehouse to Sportman's Center?
22 **A. On the building, no, sir.**
23 Q. Just one sign?
24 **A. There was one sign, yes, sir.**
25 Q. Do you have any understanding of why the sign

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1 was changed?
2 **A. My understanding is to differentiate my**
3 **building from the competitor down the road, to our**
4 **customers. You know, we got a bad response.**
5 Q. And you were marketing manager, correct?
6 **A. No, sir.**
7 Q. I mean, I'm sorry, merchandising manager?
8 **A. Yes.**
9 Q. And so part of your duties was to deal with
10 signage?
11 **A. Signage inside is the building, yes, sir.**
12 Q. What is your understanding of the purpose of
13 the signage on the outside of your building?
14 **A. The purpose?**
15 Q. Yes.
16 **A. For customers to locate our building from the**
17 **freeway. You know, if we didn't have signs,**
18 **customers couldn't find us.**
19 Q. Does it serve any other purpose?
20 **A. No.**
21 Q. Do you know who makes final decisions at Bass
22 Pro about outdoor signage?
23 **A. That would be Jim Hagale, our president.**
24 Q. Do you know if he made the decision about the
25 sign change from Sportsman's Warehouse to Sportman's

1 customers?
2 **A. Yes.**
3 Q. Do you keep a record of any of these complaints
4 or concerns?
5 **A. No. Oral complaint or concern? No. We**
6 **address the issues. I don't have a record log for**
7 **those.**
8 Q. Want about the complaints or concerns that are
9 entered in the comment box?
10 **A. My admin manager takes those and transfers them**
11 **over to a spreadsheet. And then typically she shreds**
12 **the customer comment card, to my knowledge.**
13 Q. Can you describe this spreadsheet?
14 **A. No, I can't.**
15 Q. How are you aware that she turns the comments
16 card into a spreadsheet, or puts them on a
17 spreadsheet?
18 **A. Because our company requires that.**
19 Q. Okay. How do you know your company requires
20 that?
21 **A. Because it's something that's part of her job**
22 **description. She does it from month to month.**
23 **I've personally entered them, but I can't**
24 **describe the spreadsheet. It's been two years since**
25 **I've entered them.**

1 Q. What does she -- and who is this by the way?
2 **A. This is my administrative manager.**
3 Q. And what is her name.
4 **A. Her name is Cheryl Vollmer, V-O-L-L-M-E-R.**
5 Q. What does she do with these spreadsheets?
6 **A. Sends them to the corporate office. We've got**
7 **to send them up monthly.**
8 Q. Who does she send them to?
9 **A. I don't recall.**
10 Q. Is anything put in the spreadsheet other than
11 customer comment card information?
12 **A. No.**
13 Q. Do you know what the corporate office does with
14 these spreadsheets when they get them?
15 **A. No. I'm not up there when they receive them.**
16 Q. How many comments in a card form do you
17 estimate you get on a monthly basis?
18 **A. I can't give you a good estimation on that**
19 **anywhere. Just -- you know, I'm not even going to**
20 **guess. I don't know.**
21 Q. You've entered some of these cards on this
22 spreadsheet yourself?
23 **A. It's been several years back, yes, sir. Two**
24 **years ago.**
25 Q. How often did you do that?

1 **A. Well, at the time we didn't have an**
2 **administrative manager, so I did it weekly.**
3 Q. In any given week did you put more than ten
4 comments?
5 **A. Oh, yeah.**
6 Q. On the spreadsheet?
7 **A. Oh, yeah.**
8 Q. More than 20?
9 **A. Most definitely.**
10 Q. More than 100.
11 **A. I'd say, you know, 100 to 200 a month, maybe.**
12 **That's an estimation. I really don't know how many**
13 **she's doing right now.**
14 Q. You mentioned that you'd received complaints
15 and concerns from customers, I assume both orally and
16 in writing, about the similarity between the two
17 companies' names.
18 **A. I didn't receive anything in writing. The**
19 **store did.**
20 Q. Okay. Can you describe some of those concerns
21 and complaints?
22 **A. Oh, I've had multiple complaints where**
23 **customers have come in and they wanted to take the**
24 **receipt from the other Sportsman's Warehouse and add**
25 **their purchase to our reward system, which,**

1 **obviously, we couldn't do.**
2 **I've had people to come in to apply for**
3 **positions at our location asking for a position at**
4 **our Winchester location, which obviously we do not**
5 **have, due to the confusion on the ads they'd put out**
6 **in the newspaper.**
7 **I've had customers come in and try to return**
8 **products with a receipt from the Winchester Road**
9 **location under the impression that they're at the**
10 **same place.**
11 **I have had customers call and complain about**
12 **the service they received at the Winchester Road**
13 **location, thinking that we are the same company.**
14 **I have had customers bring their coupons in out**
15 **of the newspaper.**
16 Q. Any others?
17 **A. That's part much a brief summary.**
18 Q. Could you describe your reward system?
19 **A. The way the reward system works is, the**
20 **customer makes certain purchases depending on the**
21 **time of the month and what we're running, whether**
22 **we're running double awards points or not. And they**
23 **get point on an account under their name and phone**
24 **number, and they're eligible to use those towards**
25 **merchandise in the store, once they've built up $10**

or more in points.
Q. Do they have a -- do the customers receive a card?
A. Yes, sir.
Q. How many complaints on a monthly basis -- before you changed the sign on the front of the building, how many complaints on a monthly basis would you estimate that you received regarding the similarity between the two stores?
A. That I personally received?
Q. That you know about.
A. That I know about? About 30 or 40 complaints, and that's a rough estimate.
Q. And that's per week?
A. Per month.
Q. And how do you know it was 30 or 40 per month?
A. I just told you, it's a rough estimate. I don't.
Q. Are you basing it on anything?
A. I'm basing that on just a generalization.
Q. Now, I assume you didn't handle 30 to 40 customer complaints personally.
A. Correct.
Q. Did you hear about customer complaints from other employees?

A. Oh, yes.
Q. Is there a particular management position that handles these more than others?
A. We run a manager-on-duty program. Whoever is the manager on duty handles the complaints at the time. So it's pretty well evenly spread.
Q. Are all these complaints shared with your general manager?
A. Yes.
Q. Do you have a written company policy about addressing these type of concerns with customers?
A. No.
Q. How do you normally handle, for instance, if a customer comes in and is concerned about one of the instances you mentioned earlier?
For instance, if he wants to use a Sportsman's Warehouse receipt from our client's store.
A. Sure.
Q. How do you handle that?
A. I've got to call and explain to them it's not the same company, to let them know that they did come into the market with the name, Sportsman's Warehouse that we've been using for right now currently almost four years. And explain to them that their receipts and their purchases there are not valid towards our

rewards point system.
Q. Do you ever honor any of the receipts or coupons?
A. I honor every one of their coupons. Not their receipts towards rewards, because I can't.
Q. Does your company keep a record of coupons that are used at the register?
A. It's a generic. It's listed as a competitor's coupon, not as any specific company.
But as far as a record goes, no, not to my knowledge. Is there a paper trail? Most definitely.
Q. You described at the register there's a competitive coupon selection?
A. Correct.
Q. Do you get other coupons? Do you get coupons from other competitors other than Sportsman's Warehouse, my client.
A. Sportsman's Warehouse is our only major competitor here in the market, so, no, I don't receive any other coupons. The small Mom-and-Pop Shops don't send coupons out.
Q. Do you keep track of how many competitor coupons you receive at the store level?
A. No.
Q. Do you have any knowledge of whether your home

office keeps track of how many competitor coupons?
A. Not to my knowledge, no.
Q. But it is recorded through the register system?
A. Like I said, it's just a generalization on there as competitor coupon.
We're not keying in whether it's Sportsman's Warehouse or anyone else's coupon.
Q. Have you ever seen or known about anyone honoring a competitor coupon other than Sportsman's Warehouse, my client?
A. Yes. If Cabella's runs a coupon on the internet, I definitely honor that coupon.
Q. Any others?
A. Those are our major competitors.
Q. What about returning products? Individuals who come into the store who have bought products at my client's Sportsman's Warehouse store, how do you handle those situations when they want to return them at Bass Pro?
A. If they've got a receipt from Sportsman's Warehouse, obviously, we don't return those.
If it is a product they come in with, and it's something that we do carry, and they tell me that they bought it from us, yeah, we would take care of them.

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

BASS PRO TRADEMARKS, L.L.C.,	
PETITIONER,	
VS.	CANCELATION NO. 92045000
SPORTSMAN'S WAREHOUSE, INC.,	
RESPONDENT.	

COPY

DEPOSITION

OF

JAMES OSBORNE

THURSDAY, JUNE 1, 2006

ALPHA REPORTING CORPORATION
236 Adams Avenue
Memphis, TN 38103

901-523-8974

www.alphareporting.com

1 Q. And what did you talk to Pete Perkins about?
2 **A. I told him we had competition coming to the**
3 **market. The company Sportsman's Warehouse, and I was**
4 **concerned of the confusion to our customer.**
5 Q. And what year did the Sportsman's Warehouse in
6 Memphis open?
7 **A. 2002.**
8 Q. February, correct?
9 **A. No. It opened in May. I was on the project in**
10 **February.**
11 Q. And the respondent's Sportsman's Warehouse
12 store opened in Memphis on what date?
13 **A. I don't know specific.**
14 Q. What year was it?
15 **A. It was 2005. I believe it was June.**
16 Q. Did you speak with anyone else about your
17 concerns for respondent's Sportsman's Warehouse
18 coming to Memphis other than Pete Perkins?
19 **A. My associates.**
20 Q. And what did you discuss with your associates?
21 **A. We discussed competition coming to the market,**
22 **how were we going to prepare for the competition to**
23 **make sure that we were, you know, taking care of our**
24 **customer.**
25 Q. When you spoke with Pete Perkins, did you

1 e-mail him?

2 **A. I believe I have e-mailed Pete. I also believe**
3 **I talked to him on the phone and in person concerning**
4 **it.**

5 Q. Did you and Pete Perkins come up with a plan on
6 how to address the fact that competition was coming
7 to town?

8 **A. Well, from a competitor's standpoint, we made**
9 **sure that we're doing our business to the best of our**
10 **ability, and making sure we're taking care of our**
11 **customers?**

12 Q. How did you do that?

13 **A. Well, it's a service industry. Making sure**
14 **that we're not missing sales due to the fact of**
15 **product in stock, position, and standard business**
16 **practices.**

17 Q. Did you come up with any other plans?

18 **A. I communicated to Pete I was concerned about**
19 **the names the confusion of our customers.**

20 Q. And what were you going to try -- were you
21 going to try to do anything about that?

22 **A. I communicated my concerns to him that, you**
23 **know, we were going to do everything possible at a**
24 **store level that we were able to do to take care of**
25 **our customers to differentiate us between the two**

1 **companies.**
2 Q. Okay. Do you recall if Pete Perkins took any
3 actions to address the situation?
4 **A. I don't know exactly what Pete did or didn't**
5 **do.**
6 Q. Did he give you any instructions?
7 **A. Pete informed me to make sure that we were**
8 **taking care of our customers. And that we were, you**
9 **know, if customers had questions concerning the two**
10 **companies, that we were explaining the differences**
11 **between the two companies.**
12 **Once the companies open -- once that store**
13 **opened, we had a lot of confusion with our**
14 **customers. Our customers knew us as Sportsman's**
15 **Warehouse, and would bring in coupons, would come in**
16 **looking with their tabs looking for products.**
17 **We dealt with we have a rewards program, we had**
18 **customers bringing in their receipts to get points.**
19 **Customers taking our ads into their locations looking**
20 **for goods.**
21 **We had customer complaints. We had prior to**
22 **the store opening, customers coming say, oh, I hear**
23 **you're opening another store in the market. Why are**
24 **you opening another store on Winchester? And we had**
25 **to -- obviously that was -- we had to explain to them**

1 **at that point that was not our company.**
2 Q. We'll get into some of that later.
3 **A. Okay.**
4 Q. Did you and Pete Perkins at any point discuss
5 changing the name of the Memphis Bass Pro Store?
6 **A. We discussed changing the sign on the wall of**
7 **the store.**
8 Q. And what was the nature of that discussion?
9 **A. Just what to do to differentiate ourselves for**
10 **our customers because of the confusion.**
11 Q. Did you come up with a plan?
12 **A. I gave information. He obviously took action,**
13 **because the sign was changed. He communicated it to**
14 **the next level, to my understanding.**
15 Q. Who was that? Do you know who he communicated
16 that to?
17 **A. I believe it was the vice president. I'm not**
18 **sure what he communicated and how he communicated it.**
19 Q. Did he copy you on e-mails between corporate
20 individuals?
21 **A. I don't recall what all he copied me on.**
22 Q. You indicated the sign was changed. When was
23 the sign changed?
24 **A. I believe it was in July.**
25 Q. And what was the sign changed to reflect?

1 **A. To my knowledge, Sportsman's Warehouse.**
2 Q. During the time you were at the Memphis store
3 as general manager, did you have customer complaints
4 or concerns about the similarity between your store
5 name and the respondent's Sportsman's Warehouse store
6 name?
7 **A. Yes.**
8 Q. Can you tell me what types of complaints or
9 concerns you had or you heard about?
10 **A. I touched on before. We had complaints from**
11 **advertising confusion. Our customers was bringing in**
12 **their tabs to our store, their coupons into our store**
13 **to be redeemed.**
14 **There was rewards points. We have, like I**
15 **said, a rewards program. The customer wanted to get**
16 **their receipt points from us for their receipts.**
17 **We had confusion from the standpoint of our**
18 **customers would say I was at your other store, and**
19 **they didn't have this, and you have it in your ad.**
20 **Or we would have them bring in the flier, I**
21 **want this product, and we don't carry it. And it was**
22 **Sportsman's Warehouse's ad.**
23 **We had, I was at your other store -- and we had**
24 **confusion prior to opening when Sportsman's Warehouse**
25 **did their mass hire. We had people coming or calling**

1 **us concerning what time the mass hire was. We had**
2 **that confusion.**
3 **We had we would run an ad and we had the people**
4 **call us, I stopped by and put in an application at**
5 **your store on Winchester, why haven't I got a phone**
6 **call back?**
7 **And then we had customer issues where Jim --**
8 **I've had customers come in and tell me that, oh, I**
9 **was at your other store yesterday, and I need, you**
10 **know, I didn't see this. Why aren't you stocking it**
11 **at your other store?**
12 Q. Did you have a policy in place to deal with
13 customer complaints and concerns such as these?
14 **A. We addressed them, you know explained the**
15 **differences between the two organizations, and tried**
16 **to take care of them to the best of our ability.**
17 Q. Did you keep records of these concerns and
18 complaints?
19 **A. I personally did not.**
20 Q. Now, when you say you personally did not, do
21 you mean that someone else might have?
22 **A. I don't know if someone documented when they**
23 **talked to different customers.**
24 **I would be communicated to in usually our**
25 **meetings, in our weekly manager meetings, that, you**

1 **store was -- I was in Sevierville in August, so there**
2 **wasn't much difference. There was less than 45 days,**
3 **my time and -- I believe 45 and 60 days between**
4 **Sportsman's Warehouse opened and I was in**
5 **Sevierville, Tennessee.**
6 Q. During your time as manager at the Memphis
7 store, how many complaints or concerns did you hear
8 about, if you recall?
9 **A. I think it was between 15 and 25 a week that I**
10 **heard about, either personally took care of or was**
11 **communicated to or heard about. But obviously I**
12 **didn't get all the information.**
13 **I got more so the high level ones where the**
14 **customers was very very upset. Then my manager would**
15 **tell me that, you know, from the standpoint of we**
16 **talked to this person, but they're still really**
17 **upset.**
18 **They would either give me a phone number of the**
19 **customer, so I would call and try to smooth things**
20 **over, explain to them the differences and try to make**
21 **them understand the differences between the two**
22 **companies.**
23 **But I didn't get all of them by any means.**
24 Q. How did you come to the number of 15 to 25 a
25 week?

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

3 Bass Pro Trademarks, L.L.C.,
4 PETITIONER,
5 Vs. Cancellation No.
92045000
6
Sportsman's Warehouse, Inc.,
7
RESPONDENT.
8

9 THE DEPOSITION OF PAUL OTTE
June 2, 2006
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full question out, I'll do my best to allow you to give your full answer, okay?

A. Okay.

Q. Another thing, too, is in order for her to take down everything we say, we'll need to have verbal responses to every question, so a yes or no as opposed to a nod of the head would be appreciated.

A. Okay.

Q. Also, if there's a question that I ask you that you don't understand, please ask me to ask it again, ask it a different way, clarify it in any way. I want to make sure that you understand every question that I ask. If you don't ask me to rephrase it or to repeat the question, I'll assume that you understand it; is that okay?

A. Okay.

Q. I don't think we're going to be here very long today, but if you need to take a break, feel free to let me know, and we'll certainly accommodate any break that you need.

Can you tell me if you're familiar with the Bass Pro Shops Sportsman's Warehouse?

A. Yes, I am.

1 Q. And how are you aware of that?
2 A. I have visited the store. I stopped
3 in a couple of times before our Sportsman's
4 Warehouse opened. I -- so I've seen the
5 Sportsman's Warehouse logo on the Bass Pro
6 Shops, and I also seen it with the Sportsman's
7 Center on it.
8 Q. When did you first visit the Bass Pro
9 Shops Sportsman's Warehouse?
10 A. It would have been a couple of weeks
11 before we opened our store, so approximately
12 beginning of May of last year.
13 Q. And what prompted you specifically to
14 visit the Bass Pro Shops Sportsman's Warehouse
15 at that time?
16 A. I -- myself, and some other employees
17 had never been to a Bass Pro Shop before, and
18 we were just checking out some of our
19 competition.
20 Q. And where are you currently employed
21 today?
22 A. I'm employed at Sportsman's Warehouse
23 at our Memphis, Tennessee location.
24 Q. How long has the Memphis location
25 been around?

1 A. We've been open since June 15th of
2 2005.
3 Q. Since your Sportman's Warehouse has
4 been open, last June, are you aware of any
5 instances where customers have been confused
6 as to the relationship of your store versus
7 the Bass Pro Shops Sportsman's Warehouse?
8 A. Yes. The first couple of months
9 while we were open we had some confusion.
10 Q. Did that surprise you?
11 A. It did at first because the building
12 of Bass Pro did have Sportman's Warehouse on
13 it. So some customers were wondering if we
14 were affiliated with them at all, and then as
15 soon as I told them that the Sportsman's
16 Warehouse was separate from Bass Pro, they
17 made a distinguish -- they distinguished
18 the difference. And then when Bass Pro
19 changed the Sportsman's Warehouse sign to
20 Sportsman's Center, the confusion was
21 completely gone.
22 Q. Let's go back to the first couple of
23 months, at the time when you indicated there
24 was confusion. Do you have any idea why there
25 was confusion?

1 A. Yes.
2 Q. They have a specific title?
3 A. Just part-time and full-time
4 footwear.
5 Q. Would it be fair to kind of
6 characterize them as sales associates?
7 A. Yes.
8 Q. When did you first become aware of
9 Sportsman's Warehouse? And I'm talking about
10 the company you work for.
11 A. Back in St. Cloud, Minnesota right
12 before I had started there, when the store was
13 being built, I had driven by it multiple times
14 and noticed that it was a sporting goods
15 store. And that would have been back in 2002.
16 Q. When did that store open in St.
17 Cloud, do you know?
18 A. The end of August, beginning of
19 September in 2002.
20 Q. Are you familiar with the business
21 known as Pacific Flyway Wholesale?
22 A. Yes.
23 Q. What is Pacific Flyway Wholesale?
24 A. To my knowledge, Pacific Flyway ships
25 our merchandise from our warehouse in Salt

1 Lake City to our stores in any given location
2 across the country.
3 Q. Do you understand Pacific Flyway
4 Wholesale to be a wholesaler?
5 A. Not to my knowledge.
6 Q. Do you know what a wholesaler is?
7 A. Yes. I would say I do.
8 Q. What's your understanding of what a
9 wholesaler is?
10 A. Wholesaler: Instead of selling to
11 retail, wholesaler would probably sell to
12 other companies at a different price; then you
13 would sell to a customer at a retail store.
14 Q. Is Sportsman's Warehouse to your
15 knowledge a retailer as opposed to a
16 wholesaler?
17 A. Yes.
18 Q. Have you ever known Sportsman's
19 Warehouse to be a wholesaler as opposed to a
20 retailer?
21 A. I do not.
22 Q. In your time working for Sportsman's
23 Warehouse both in St. Cloud and in Memphis, at
24 all times as far as you know, those locations
25 only provided retail services; is that

1 correct?
2 A. Yes.
3 Q. What kind of training did you receive
4 when you first became footwear manager?
5 A. I was taught how to replenish
6 inventory using our retail net services, our
7 computer systems, and how to count money in
8 the cash room in the morning, and how to count
9 cashiers down at night, along with other
10 relations concerning footwear and product
11 knowledge.
12 Q. Did your training -- and let's start
13 with the training that you received in the St.
14 Cloud location.
15 A. (Nods head affirmatively.)
16 Q. Did that in any way involve the
17 proper usage of Sportsman's Warehouse logos?
18 A. No.
19 Q. Did that in any way involve the
20 proper usage of Sportsman's Warehouse
21 trademarks?
22 A. No.
23 Q. In your responsibilities as a
24 footwear manager, do you have any
25 responsibilities relating in any way to

1 A. I believe it does, but I could be
2 mistaken.
3 Q. When we started the deposition, we
4 talked a little bit about confusion, and you
5 indicated that there were instances where
6 customers were confused as between the Bass
7 Pro Shops Sportsman's Warehouse and your store
8 going back to the first few months after you
9 opened; is that right?
10 A. Yes.
11 Q. How were you made aware of these
12 instances of confusion?
13 A. By customers coming in and telling
14 me.
15 Q. So you have firsthand knowledge of
16 the confusion?
17 A. With customers, yes.
18 Q. Do you have a rough estimate, let's
19 say in the first month that your store opened,
20 about how many customers indicated to you that
21 they were confused?
22 A. In the first month, to my knowledge,
23 approximately five.
24 Q. And what exactly did they say to you
25 to lead you to believe that they were

1 confused?
2 A. They came in and asked if we were
3 part of Bass Pro. And when we said no, they
4 asked why Bass Pro had Sportsman's Warehouse
5 on their building, then.
6 Q. And what was your response to that
7 question?
8 A. My response was we have a plaque on
9 the front of our store with our trademark of
10 the Sportsman's Warehouse. So I told them
11 that Sportsman's Warehouse for our company was
12 trademarked and that we had a plaque showing
13 it and that Bass Pro just used the name
14 Sportsman's Warehouse on their building.
15 Q. So you indicated that Sportsman's
16 Warehouse actually owned the trademark for
17 Sportsman's Warehouse?
18 A. I did because we were aware or told
19 of the plaque that we had that showed us
20 owning the trademark on Sportsman's Warehouse
21 as you see on the front of our building.
22 Q. Who told you that?
23 A. I believe it would have been our
24 store manager, Bob Goodwin, at the time. And
25 then the fact that we had the plaque that

1 A. I did a little bit. When he was
2 looking for his book, I just walked over to
3 the footwear department to see what they had
4 and what kind of prices they had.
5 Q. And was there any other parts of the
6 store that you walked around during that time?
7 A. Was there anything else I did?
8 Q. Were there any other parts of the
9 store other than footwear that you visited at
10 that time?
11 A. Oh, to get the book, we walked back
12 in the fishing department.
13 Q. When you visited the footwear
14 department, did you form in your mind some
15 kind of a comparison between the Bass Pro
16 Shops Sportsman's Warehouse footwear
17 department and your own?
18 A. Comparison, I looked at what their
19 department looked like and then compared to
20 what our store department looks like. I
21 mainly went there to check out what kind of
22 products they offered and what prices they
23 had.
24 Q. Did you conclude that the products
25 were relatively similar?

1 A. The products that they had, we
2 carried. As far as their vendors, Bass Pro
3 Shops carries a lot of RedHead product, we
4 don't. It's just RedHead is just a Bass Pro
5 product. Some styles -- the vendors
6 that weren't RedHead, like Danner or
7 Timberland, Columbia, I did recognize some of
8 the same products that we have, and then I
9 compared the pricings on those.
10 Q. Was the pricing relatively similar?
11 A. Yes.
12 Q. Other than the cashier, was there
13 anyone else at the store that either you or
14 Bob Goodwin had any conversations with?
15 A. Not conversations with. One of the
16 footwear employees asked me if I needed help,
17 and I said no.
18 Q. After obtaining the rewards card and
19 the receipt from the Bass Pro Shops
20 Sportsman's Warehouse, do you know if Bob
21 Goodwin ever reported his findings back to
22 your corporate headquarters?
23 A. I believe he faxed the receipt and
24 the rewards card to corporate. To who at
25 corporate, I'm not aware.

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

In the Matter of Trademark Registration No. 2,390,988
For the mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR and Design

Date Registered: October 3, 2000

Bass Pro Trademarks LLC,	)	
PETITIONER,	)	
v.	)	CANCELLATION NO. 92045000
Sportsman's Warehouse Inc,	)	
RESPONDENT.	)	

COPY

DEPOSITION OF MR. JIM HAGALE

Taken on behalf of the Respondent

June 7, 2006

1 locations.
2 Q. By secondary uses for the Sportsman's
3 Warehouse stores, what do you mean by that?
4 A. They're not intended -- at least at
5 the present time they are not intended to be our
6 large format true destination stores.
7 They're more to support an existing Outdoor
8 World destination store or a future Outdoor World
9 destination store, or for use in more secondary
10 markets where the population base and the tourism and
11 the traffic will not support one of our larger format
12 Outdoor World stores.
13 Q. Okay. How many of the larger format
14 stores are there throughout the -- throughout North
15 America, let's say?
16 A. (No response).
17 Q. Best estimate?
18 A. Okay. We have 27, give or take.
19 Q. Okay. And how many Sportsman's
20 Warehouse format stores?
21 A. There are currently open and operating
22 two.
23 Q. Okay. And that's the store in St.
24 Charles, Missouri?
25 A. And Memphis.

1 Q. Now as to the training programs and
2 the certificates there, those would never go to a
3 customer; those are confined to employees, correct?
4 A. To my knowledge they are displayed in
5 stores. The badges certainly are worn by our
6 associates. So they are visible and exposed to
7 customers.
8 Q. Okay. And let's see, cash register
9 receipts. Are you telling me that there are cash
10 register receipts that just say Sportsman's Warehouse
11 with them that don't say Bass Pro Shops on them?
12 A. I know Sportsman's Warehouse is on
13 there. I'm not sure whether Bass Pro is identified
14 on there or not.
15 Q. Okay. How about on the badges, do you
16 know if Bass Pro is also on the badges?
17 A. I believe not.
18 Q. Okay. And on the certificate?
19 A. I believe not.
20 Q. Is there some reason why Bass Pro
21 would ever not want the public to know that its
22 Sportsman's Warehouse stores are associated with the
23 Bass Pro Shops organization?
24 A. Yes, there could be a reason.
25 Sometimes there is an expectation when Bass Pro is

1 attached, there's an expectation that it is one of
2 our true Outdoor World destination stores.
3 We have had that situation occur with some
4 of our Worldwide Sportsman stores where we've got the
5 Bass Pro logo adjacent to the Worldwide Sportsman
6 signage and logo, and customers come there expecting
7 to find an Outdoor World large format store and are
8 disappointed.
9 Q. Mm-hmm. But in terms of the -- well,
10 so does that mean for the -- I'm sorry, the -- you
11 mentioned the store type and I didn't write it down
12 and I lost it. The Sportsman's --
13 A. Worldwide Sportsman?
14 Q. Yeah, the Worldwide Sportsman. That's
15 the -- as I recall, you said that's the smallest
16 format store?
17 A. That's the smallest, yes.
18 Q. Okay. And are there Worldwide
19 Sportsman stores that also display the Bass Pro logo
20 or have you sort of done away with that?
21 A. There is one.
22 Q. Okay. How many Worldwide Sportsman
23 stores are there?
24 A. Two.
25 Q. Two, okay. And they're located?

A. Islamorada, Florida. And Destin, Florida.

THE REPORTER: Excuse me. What was that first name?

A. Islamorada.

THE REPORTER: Thank you.

MR. ALLGEYER:

Q. Okay. And which one has Bass Pro associated with it and which one doesn't?

A. Destin has Bass Pro associated with it.

Q. And Islamorada doesn't?

A. That's correct.

Q. Okay. And was it once -- was Bass Pro once associated with Islamorada and it was then taken away, or was it from its inception that the decision was made not to associate it?

A. Since I've been with the company, Bass Pro has not been associated with it. Prior to that I don't know.

Q. Okay. How long has that store been open? I guess since before you were with the company. So at least before 2002, right?

A. Right.

Q. How about Destin?

1 attorney's eyes only, and was
2 therefore removed from this
3 transcript by the court reporter,
4 placed into a separate sealed
5 confidential transcript, and
6 designated as Excerpt 2).
7 MR. ALLGEYER:
8 Q. Did you at any time, let's say you
9 personally, become aware of any instances of
10 customers being confused as to whether they were at a
11 Bass Pro Sportsman's Warehouse or a Sportsman's
12 Warehouse store?
13 A. Yes.
14 Q. And when were you aware of that?
15 A. Sometime last year in Memphis we had
16 customers coming in with confusion with regard to
17 ads, coupons, and sale items.
18 Q. Okay. Memphis last year. Okay. And
19 that's -- the Memphis store, that's the store that
20 had said Bass Pro Sportsman's Warehouse and the
21 outdoor signage now says Bass Pro Sportsman's Center,
22 that's the Memphis store, correct?
23 A. Correct.
24 Q. Now I'm gathering that customers
25 didn't come to you as the president of the company,

1 but you learned about these things through your
2 managers or other store employees, true?
3 A. From our store manager and our head of
4 stores, yes.
5 Q. Okay. And who reported this to you?
6 A. At the time I believe it was Pete
7 Perkins, who headed up our stores. And our general
8 manager in the Memphis store was Jim Osborne.
9 Q. Okay. Do you have any documentation
10 available to you about these instances where you say
11 customers were confused?
12 A. I don't have the documentation, no.
13 Q. Okay. Do you know if anyone at Bass
14 Pro does?
15 A. I don't know.
16 Q. Okay. When this situation was
17 reported to you by your store managers and head of
18 stores, I think, did you ever register any
19 complaints with anyone from Sportsman's Warehouse,
20 my client?
21 A. I did not directly, no.
22 Q. Do you know if anyone did?
23 A. I don't know.
24 Q. Did you direct anyone to bring that to
25 their attention?

1 (A recess was taken from 10:08 a.m.
2 to 10:24 a.m.).
3 MR. ALLGEYER:
4 Q. Back on the record. I want to be
5 clear about this.
6 To the best of your knowledge, the only
7 places Bass Pro has used the phrase Sportsman's
8 Warehouse in conjunction with its business is in
9 Lawrenceville, Georgia; Memphis; and St. Charles,
10 Missouri, correct?
11 A. Well, it is -- it's referenced in our
12 catalogs. It's referenced in our retail mailings.
13 Q. Okay.
14 A. It's referenced on our web site.
15 Q. And that was inarticulate of me. In
16 terms of actual signs on stores, those are the three
17 stores that have had that associated with them?
18 A. To my knowledge. I don't know if
19 something else could have been done prior to my
20 joining the company.
21 Q. Okay. That's fair enough. I'm not --
22 you don't have to guess about that, but -- okay. So
23 those are the three for stores.
24 Okay. Now you've said that there are other
25 ways in which Sportsman's Warehouse is used in

1 conjunction with Bass Pro merchandise, let's say.
2 And one is in the Internet, on the Internet?
3 A. On our web site.
4 Q. Okay. And how is that done on the web
5 site?
6 A. Referencing stores.
7 Q. Okay. And you mentioned a couple
8 other things?
9 A. Catalog.
10 Q. Catalog. How is Sportsman's Warehouse
11 referenced in the catalog? I don't remember seeing
12 that though?
13 A. We identify -- we have ads in there
14 for stores. So it would have been used there. And
15 not in every issue.
16 Q. Mm-hmm.
17 A. But it is used in the catalog. It's
18 used to reference store locations. It's also
19 referenced on our retail tabloids that we mail.
20 Q. What's a retail tabloid?
21 A. Oh, that's just one of those little
22 fliers like you see in your Sunday paper, an insert.
23 We mail those as well.
24 Q. Okay. Now is it always referenced in
25 those or just occasionally?

1 A. It's referenced in those stores that
2 are Sportsman's Warehouse.
3 Q. Okay. So I understand it, the retail
4 tabloid, for example, is that pretty much done store
5 by store? In other words --
6 A. Pretty much. There is some overlap,
7 but for the most part it's done store by store,
8 region by region.
9 Q. Okay. So for example, I wouldn't
10 expect the -- reasonably expect the retail tabloid
11 for let's say Springfield, Missouri, to have a
12 reference to a Sportsman's Warehouse, because this is
13 a -- this is an Outdoor World area, right?
14 A. It would not consistently have it. I
15 don't know that it would never have it.
16 Q. Okay. And that's going to be true in
17 other areas, if you're directing yourself to a market
18 where you have an Outdoor World store, it would not
19 -- it certainly would not consistently have
20 Sportsman's Warehouse in it, right?
21 A. The issue -- the issue there would be
22 in a major metropolitan market where we would have a
23 Sportsman's Warehouse and an Outdoor World store,
24 there would be overlapping mailings and
25 advertisements and marketing that would reference

1 both.
2 Q. Okay. I understand. And those areas
3 would be either the Memphis or St. Charles area?
4 A. There would be today.
5 Q. Today.
6 A. But in the future, you know, as we
7 discussed earlier.
8 Q. Mm-hmm. All right. I want to mark
9 this.
10 (Hagale Exhibit 3 was marked for
11 identification by the court
12 reporter and was shown to the
13 witness).
14 THE REPORTER: I've marked Exhibit 3.
15 MR. ALLGEYER:
16 Q. Showing you what's been marked as
17 Hagale Exhibit 3, I will tell you that this is a page
18 from the sports -- I'm sorry, from the Bass Pro
19 sports -- Bass Pro Shops, there we go, web site we
20 printed off the computer on May 22nd.
21 Do you recognize this as a printout from
22 the Bass Pro Shops web site?
23 A. (The witness reviews the document).
24 Well, I do recognize parts of it. Some of this --
25 I'm not familiar with this particular page, but I do

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

In the Matter of Trademark Registration No. 2,390,988
For the mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR and Design

Date Registered: October 3, 2000

Bass Pro Trademarks LLC, PETITIONER, v. Sportsman's Warehouse Inc, RESPONDENT.	CANCELLATION NO. 92045000

COPY

DEPOSITION OF MR. KEN BURROUGHS

Taken on behalf of the Respondent

June 7, 2006

A. Have I heard about any or have I had any confusion?

Q. Let's start -- oh, no, no. Well, let's start with whether you've ever had firsthand knowledge of any such confusion, where a customer said to you, for example, they were confused or you overheard a customer say something like that or exhibited confusion.

A. I'm not at those stores every day, so I wouldn't hear that directly.

Q. Okay. That's what I figured. Have people told you about that?

A. Yes.

Q. What did they tell you?

A. Stu Utgaard called me about it and told me that he had a lot of customers calling his company wanting a special price on a product or to return a product and things like that.

They were confused about -- thought they were calling Bass Pro Sportsman's Warehouse, and they were calling his people instead.

Q. Okay. When did he -- when did you have that call from Stu?

A. Sometime when we were in these discussions back in the first of this year or prior

1 to that, maybe in the fall, late fall.
2 Q. Did he say what store that was?
3 A. No, I don't remember. I don't
4 remember specifically if he was -- which store he was
5 talking about.
6 Q. Did he say anything about it having to
7 do with gift coupons -- or I'm sorry, gift cards?
8 A. He may have mentioned that as well. I
9 don't totally recall that.
10 Q. Are you familiar with the Bass Pro
11 gift coupons, what they look like and so forth?
12 MR. CAMPBELL: Is that like gift cards --
13 or you said coupon.
14 MR. ALLGEYER:
15 Q. I said that wrong twice. I apologize.
16 I mean gift cards.
17 A. Gift cards, yes.
18 Q. Okay. I'm going to show you what
19 we've marked as Hagale Exhibit 8. (Mr. Allgeyer
20 hands a document to the witness).
21 Now recognizing that's a black and white
22 copy, does that appear -- and if you look at this,
23 it's sort of a front and back.
24 Does that appear to be a Bass Pro Shops
25 gift card on the next page, the back of the gift

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
3 In the matter of Trademark Registration No. 2,390,988
4 For the mark SPORTSMAN'S WAREHOUSE HUNTING FISHING
5 CAMPING RELOADING OUTERWEAR FOOTWEAR and Design
6 Date registered: October 3, 2000
7
8 : ORIGINAL
9 Bass Pro Trademarks, L.L.C. : CANCELLATION
10 PETITIONER, : NO. 92045000
11 :
12 v. : CORRECTED
13 :
14 Sportsman's Warehouse, Inc., :
15 RESPONDENT :
16
17 DEPOSITION OF
18 BRUCE LITTLE
19 JULY 19, 2006
20
21
22
23 REPORTED BY: LISA M. TIEDEMAN
ESQUIRE DEPOSITION SERVICES
24 701 4th Avenue South, Suite 500
Minneapolis, MN 55415
25 612-332-4230

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1 Q So you looked but did not find any documents?
2 A Right. And I should supplement that by saying
3 documents had been collected, and I was asked if I
4 could find anything else just in case anything had been
5 missed.
6 MR. UPCHURCH: Okay. Why don't we mark
7 this as Exhibit 2, please.
8 (Whereupon Deposition Exhibit No. 2 was
9 marked for identification.)
10 Q (By Mr. Upchurch) You've been handed Little Exhibit 2,
11 which I will represent to you are documents that were
12 produced to us which appear to relate to the filing of
13 prosecution of the registration and suit. There may be
14 other things in here, I have questions about specific
15 pages, so I'm not asking you to authenticate the
16 documents or anything like that. They came to me as a
17 bundle, so that's the only reason I'm leaving them as a
18 bundle. If you'll turn over to the pages marked SP378
19 and 379, this appears to be the application for the
20 registration, do you know if this is the application
21 which resulted in the registration which is Exhibit 1?
22 A It appears to be.
23 Q Okay. And the Bruce H. Little on the top of SP379 is
24 you?
25 A Yes.

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1 Q Now, do you recall the decision to file this particular
2 application?
3 A No.
4 Q You will note on page SP378 that the applicant is
5 identified as Sports Warehouse, Inc.
6 A Yes.
7 Q Are you familiar with the entity Sports Warehouse, Inc.
8 A Yes.
9 Q Okay. What is Sports Warehouse, Inc.
10 A It is the entity now known as Sportsman's Warehouse.
11 Q And there's a Mr. Stuart Utgaard identified on the next
12 page or at least the signature is on the next page, do
13 you know Mr. Utgaard?
14 A I've spoken to him.
15 Q Do you have a personal relationship with him?
16 A No.
17 Q On page SP378 there's a paragraph labeled "services"?
18 A Yes.
19 Q And the services that are listed read "retail and
20 wholesale stores featuring hunting supplies, fishing
21 supplies, camping supplies, reloading supplies,
22 outerwear clothing and footwear, do you see that?
23 A Yes.
24 Q Do you know who came up with that description of
25 services?

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1 A I think you need to clarify your question, please. The
2 phrase that's troubling me is "came up with."
3 Q Okay. Do you have a practice for determining what the
4 goods or services are that should be listed in an
5 application?
6 A Yes.
7 Q What is that practice?
8 A Either I or someone working with me would discuss that
9 list of goods or services with the client. Typically
10 the practice would be that we would prepare a
11 description of goods or services, we would then forward
12 that description of goods or services to the client,
13 the client would edit it by either adding, subtracting,
14 or changing the wording, and return the information to
15 us. We would make sure that it comported with what the
16 Trademark Office would accept and then send it back to
17 them as part of the application for signature.
18 Q Okay. And it's your practice to normally have the
19 applicant sign an application as opposed to having
20 someone at the law firm sign the application?
21 A In 1999 that was our practice.
22 Q Okay. I think this is 1998.
23 A Our practice even more so in 1998.
24 Q Do you know if that practice was determining the goods
25 and services, or the services in this case was followed

Page 13

1 with this particular application?
2 A I have no reason to doubt that it was.
3 Q Okay. Do you have any personal recollection one way or
4 the other?
5 A I have a vague personal recollection of the term
6 reloading supplies which was unfamiliar to me until the
7 time this application was filed.
8 Q As you know, one of the issues in the cancellation is
9 whether or not the respondent performs wholesale
10 services, wholesale store services. Do you have any
11 recollection of a discussion with anyone at Sports
12 Warehouse concerning wholesale store services at the
13 time or shortly before filing this application?
14 A I will say that I have no recollection, which should
15 not be attributed to me either that it did or didn't
16 happen. I have no recollection eight years later.
17 Q Right. And you know, I guess I should ask you, I've
18 been assuming that you've been deposed before; is that
19 correct?
20 A Yes.
21 Q Okay.
22 A And I sat in your chair a few times too.
23 Q And I'm always surprised that people can remember as
24 much as they can because that's years ago, it's just
25 difficult. Would you turn on over to SP380, there's

Page 14

1 what appears to be a transmittal letter concerning this
2 application, this service mark application. Is that
3 your signature on that page?
4 A Yes.
5 Q Okay. And is this in fact the transmittal letter for
6 the application?
7 A It appears to be.
8 Q Okay.
9 A It appears to be a copy of it.
10 Q Yes. Fair enough. If you turn over to page SP384,
11 there appears to be a response to the trademark office
12 dated February 7, 2000?
13 A Yes.
14 Q Okay. It's probably a four-page response.
15 A Yes.
16 Q Is that your signature on page SP387 of that response?
17 A Yes.
18 Q Okay. Did you prepare this response?
19 A I don't remember.
20 Q Is there someone other than Mr. Weber who would have --
21 or yourself who would have prepared this response?
22 A I don't know.
23 Q Do you have a recollection of anyone other than
24 yourself and Mr. Weber working on the prosecution of
25 the application that became Exhibit 1?

Page 15

1 A Yes.
2 Q Okay. Who else worked on that prosecution?
3 A A paralegal.
4 Q Okay. And does the paralegal -- I'm sorry, do you have
5 a recollection of that paralegal preparing documents
6 for responding to office actions in this prosecution?
7 A No.
8 Q Okay. What's the name of that paralegal?
9 A Susan Lilyquist.
10 Q Do you have some recollection of Ms. Lilyquist
11 preparing any documents in connection with the
12 prosecution of what became Exhibit 1?
13 A Yes.
14 Q Okay. What documents do you remember Ms. Lilyquist
15 preparing?
16 A She had written privileged communications with the
17 client.
18 Q Anything else?
19 A That's it.
20 Q Okay. Do you have any knowledge of any errors in
21 either this application that we looked at a few minutes
22 ago or this particular response that we were just now
23 looking at?
24 A As I sit here today, I do not have any knowledge of
25 errors.

Page 16

1 Q Okay. Do you know if anyone at your firm has a
2 personal relationship with Mr. Utgaard?
3 A What do you mean, personal relationship?
4 Q They go fishing together or hunting together, go to
5 parties together?
6 A I don't know of anyone who goes fishing, hunting, or
7 attends parties with Mr. Utgaard.
8 Q Okay. To your knowledge is anyone at your law firm
9 related to Mr. Utgaard?
10 A No.
11 (Whereupon Deposition Exhibit No. 3 was
12 marked for identification.)
13 Q (By Mr. Upchurch) You've been handed what's been
14 marked as Exhibit 3, and again, this is a group of
15 documents which appear to relate to a single subject,
16 but I'm not sure that they do. They came to me as one
17 document, they appear to relate to that abandoned
18 application that we talked about earlier.
19 A Yes.
20 Q And if you look at page SP740 or SP743, there appears
21 to be a response to an office action on that abandoned
22 application; is that correct?
23 A Yes.
24 Q And you signed that response?
25 A Yes.

Page 17

1 Q Do you know if you prepared this response?
2 A I don't.
3 Q Who could have repaired this response?
4 A Me -- as of February of 1998?
5 Q Yes, sir.
6 A I am not sure of who else might have been involved in
7 the preparation.
8 Q Do you have a specific recollection of anyone else
9 being involved in the preparation of this response?
10 A No. I should add that it's apparent from page 743 that
11 Nancy Nelson typed it, and she is the assistant signed
12 to me and was at the time.
13 Q Okay.
14 A It's not politically correct, but she was my secretary
15 then and still is.
16 Q Was Ms. Nelson -- I'm sorry, was one of the duties of
17 Ms. Nelson to prepare --
18 A No.
19 Q -- responses to trademark --
20 A No, she typed it.
21 Q Do you know why the application for Sportsman's
22 Warehouse that was serial No. 7528550 was abandoned?
23 A No.
24 Q Do you have any current recollection of the prosecution
25 of this abandoned application other than what appears

TRADEMARK

75625090

75625090

New Case

CONTENTS

Law Office 110

	Entry	Date	Initials
1			
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NOP 01
07/11/00

DEPOSITION EXHIBIT

Little 2

See inside of file for additional entries.

SP 00362

5/24/00
FIN

SP 00363

FEB

REG NUM: 2390988
REG DT: 10/03/2000
S/N 75/625090

75-625090

SPORTSMAN'S WAREHOUSE

SPORTSMAN'S WAREHOUSE

LAW OFFICE ~~106~~ 110

PRINCIPAL

BLOHM

ATTORNEY ADVISOR: _____

PUBLISHED
07/11/00

SP 00364

75625090

Just In Time
For Father's
Day

Sportsman's Warehouse opens new store in Provo

Now With Two Great Stores To Serve You!

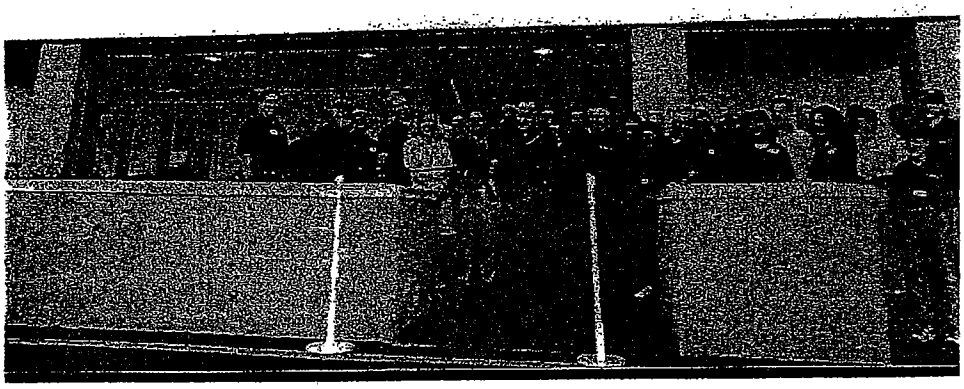
Hodgman • Danner • Hi-Tec • Timberland • Merrell • Lacrosse • Sorel • Columbia • Browning • Wrangler (Rugged Wear) • Carhartt • Nikon • Pentax • Buck • Gurber • Leatherman • Zeiss • Kershaw • Bushnell • Coleman • Slumberjack • Old Town • Lodge • Camp Chef • Wenzel • Remington • Winchester • Ruger • Federal • Smith & Wesson • Bennelli • Casco • Leupold • RCBS • Zebco • Shakesphere • Plano • Lowrance • Minn Kota • Caddis • G. Loomis • Leigh Outdoors • Shimano • Troutsman

SPORTSMAN'S WAREHOUSE

7035 S. 185 West. Midvale • 566-6662
1075 South University Ave. Provo • 818-2000
• Mon-Thurs 9:30-7:00 • Friday 9:30-8:00 •
• Saturday 9:00-6:00 • Closed Sunday •

SP 00365

SPORTSMAN'S WAREHOUSE



75625090

01-22-1999

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #10

DRAWING

35

APPLICANT NAME:	Sports Warehouse, Inc.
APPLICANT ADDRESS:	7035 South 185 West Midvale, Utah 84047
DATE OF FIRST USE:	June 16, 1995
DATE OF FIRST USE IN COMMERCE:	June 16, 1995
GOODS:	Retail and wholesale stores featuring hunting supplies, fishing supplies, camping supplies, reloading supplies, outerwear clothing and footwear.

3311

SPORTSMAN'S WAREHOUSE

HUNTING • FISHING • CAMPING • RELOADING • OUTERWEAR • FOOTWEAR

PUBLISHED
07/11/00

TRADEMARK

75625090

Doc# 1077760\1

SP 00367

*** User: lblohm ***

#	Total Marks	Dead Marks	Live Viewed Documents	Live Viewed Images	Status	Search
01	8	4	3	3		"sports warehouse"[on]
02	13348	N/A	0	0		*sport*[bi,ti]
03	8777	N/A	0	0		(*ware* or *ware*)[bi,ti]
04	10245	N/A	0	0		*hous*[bi,ti]
05	50	29	21	21		2 and (3 or 4)
06	1050	N/A	0	0		3 and 4
07	4747	N/A	0	0		"060104"[dc]
08	667312	N/A	0	0		"035"[cc]
09	1529	N/A	0	0		7 and 8
10	132529	N/A	0	0		("035" or a or b or "200")[ic]
11	259	91	168	168		7 and 10
12	11	7	4	4		6 and (2 or 9)
13	1554	N/A	0	0		7 and (2 or 9)
14	39	18	21	21		7 and (2 or 6)

Session started 8/3/99 10:46:54 AM
Session finished 8/3/99 10:54:04 AM
Duration 8 minutes

Default NEAR limit= 1 ADJ limit= 1

*** User: lblohm *** Serial Number: 75411966 *** 8/3/99 10:48:15 AM ***

[Typed Drawing]

Mark
TENNIS WAREHOUSE

Goods and Services
IC 035. US 100 101 102. G & S: Retail Mail order Store Featuring Tennis Related Equipment. FIRST USE: 19920801. FIRST USE IN COMMERCE: 19920801

Mark Drawing Code
(1) TYPED DRAWING

Serial Number
75411966

Filing Date
December 29, 1997

Supplemental Register Date
July 9, 1999

Owner Name and Address
(APPLICANT) SPORTS WAREHOUSE CORPORATION BY ASSIGNMENT CALIFORNIA 778 HIGUERA SAN LUIS OBIS CALIFORNIA 93401

Assignment Recorded
ASSIGNMENT RECORDED

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TENNIS" APART FROM THE MARK AS SHOWN

Type of Mark
SERVICE MARK

Register
SUPPLEMENTAL

Live Dead Indicator
LIVE

*** Search: 1 *** Document Number: 1 ***

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, Virginia 22202-3513

Jun 9, 2000

NOTICE OF PUBLICATION UNDER 12(a)

1. Serial No.:
75/625,090

2. Mark:
SPORTSMAN'S WAREHOUSE HUNTING FISHING CA
Etc. and design

3. International Class(es):
35

4. Publication Date:
Jul 11, 2000

5. Applicant:
Sports Warehouse, Inc.

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained at $38.00 each for domestic orders, or at $47.50 each for foreign orders from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: (202)512-1800

By direction of the Commissioner.

TRADEMARK EXAMINATION WORKSHEET

☐ AMENDMENT STAGE ☐ NO CHANGE ☐ PUBLICATION/REGISTRATION STAGE

Name: KEISHA HODGE L.O. L06 Date 5-13-00 Serial No 76/625090

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.

Legal Instrument Examiner (LIE)

	Amended	Data Element	
Class Data		☐ Prime/International Class	☐ Goods and Services
		☐ First Use Date	☐ First Use in Commerce Date
		☐ In Another Form	☐ Certification
		☐ 1b	
Mark Data		☐ Word Mark	☐ Pseudo Mark
		☐ Mark Drawing Code	☐ Design Search Code
		☐ Sizing/Lining Code	
Misc. Mark Data		☐ Mark Description	☑ Disclaimer
		☐ Lining/Stippling	☐ Name/Portrait/Consent
		☐ Translation	
Section 2(f)		☐ Section 2(f) Entire Mark	
		☐ Section 2(f) Limitation Statement	☐ Section 2(f) in Part
		☐ Amended Register	☐ Amended Register Date
Foreign Reg. Data		☐ Foreign Country	☐ 44(d)
		☐ Foreign Application Number	☐ Foreign Application Filing Date
		☐ Foreign Registration Number	☐ Foreign Registration Date
		☐ Foreign Registration Expiration Date	☐ Foreign Renewal Reg. Number
		☐ Foreign Reg. Renewal Expiration Date	☐ Foreign Renewal Reg. Date
Owner Data		☐ Owner Name	☐ DBA/AKA/TA
		☐ Address 1	☐ Address 2
		☐ City	☐ State
		☐ Zip Code	
		☐ Citizenship	☐ Entity
		☐ Entity Statement	☐ Composed of
		☐ Assignment(s)/Name Change	
Amd/Corr Restr.		☐ Concurrent Use	
Prior U.S. Reg.		☐ Prior Registration	
Correspondence		☑ Attorney	☐ Domestic Representative
		☐ Attorney Docket Number	
		☐ Correspondence Firm Name/Address	

I certify that all corrections have been entered in accordance with text editing guidelines.

KH
LIE

5-13-00
DATE

Other:

SP 00371

TRADEMARK EXAMINATION WORKSHEET

☑ AMENDMENT STAGE ☐ NO CHANGE ☐ PUBLICATION/REGISTRATION STAGE

Name: Amphone Mary Sananikone L.O. 110 Date 3/15/00 Serial No. 75/625090

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.

Legal Instrument Examiner (LIE)

	Amended	Data Element	
Class Data	✓	☑ Prime/International Class	☐ Goods and Services
		☐ First Use Date	☐ First Use in Commerce Date
		☐ In Another Form	☐ Certification
		☐ 1b	
Mark Data		☐ Word Mark	☐ Pseudo Mark
		☐ Mark Drawing Code	☐ Design Search Code
		☐ Sizing/Lining Code	
Misc. Mark Data	✓	☐ Mark Description	☑ Disclaimer
	✓	☑ Lining/Stippling	☐ Name/Portrait/Consent
		☐ Translation	
Section 2(f)		☐ Section 2(f) Entire Mark	
		☐ Section 2(f) Limitation Statement	☐ Section 2(f) in Part
		☐ Amended Register	☐ Amended Register Date
Foreign Reg. Data		☐ Foreign Country	☐ 44(d)
		☐ Foreign Application Number	☐ Foreign Application Filing Date
		☐ Foreign Registration Number	☐ Foreign Registration Date
		☐ Foreign Registration Expiration Date	☐ Foreign Renewal Reg. Number
		☐ Foreign Reg. Renewal Expiration Date	☐ Foreign Renewal Reg. Date
Owner Data		☐ Owner Name	☐ DBA/AKA/TA
		☐ Address 1	☐ Address 2
		☐ City	☐ State
		☐ Zip Code	
		☐ Citizenship	☐ Entity
		☐ Entity Statement	☐ Composed of
		☐ Assignment(s)/Name Change	
Amd/Corr Restr.		☐ Concurrent Use	
Prior U.S. Reg.		☐ Prior Registration	
Correspondence		☐ Attorney	☐ Domestic Representative
		☐ Attorney Docket Number	
		☐ Correspondence Firm Name/Address	

I certify that all corrections have been entered in accordance with text editing guidelines.

AMS
LIE

3/15/00
DATE

Other:

SP 00372

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO.	APPLICANT
75/625090	Sports Warehouse, Inc.

MARK
SPORTSMAN'S WAREHOUSE HUNTING FISHING CAETC

ADDRESS
BRUCE H. LITTLE,
LINDQUIST & VENNUM P.L.L.P.
4200 IDS CENTER
80 SOUTH EIGHTH STREET
MINNEAPOLIS, MINNESOTA 55402

ACTION NO. 01

MAILING DATE 08/06/99

REF. NO. 1077760 1

FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE

PAPER NO.

ADDRESS:
Assistant Commissioner
for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

Please provide in all correspondence:

1. Filing Date, serial number, mark and Applicant's name.
2. Mailing date of this Office action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and ZIP code.

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID *ABANDONMENT*. *For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.*

RE: Serial Number: 75/625090 **SPORTSMAN'S WAREHOUSE · HUNTING · FISHING · CAMPING · RELOADING · OUTERWEAR and design**

The assigned trademark examining attorney has reviewed the referenced application and determined the following.

Section 2(d) Refusal Registration is refused under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's mark, when used on or in connection with the identified services, so resembles the mark in U.S. Registration No. 2071417 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the enclosed registration.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG,* 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

Applicant's proposed mark and the cited registrant's are confusingly similar,
SPORTSMAN'S WAREHOUSE HUNTING · FISHING · CAMPING · RELOADING · OUTERWEAR · FOOTWEAR and design vs. BASS PRO SHOPS SPORTSMAN'S WAREHOUSE and design.

The test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The issue is whether the marks create the same overall impression. *Visual Information Institute, Inc. v. Vicon Industries Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP section 1207.01(b).

The examining attorney must compare the marks for similarities in sound, appearance, meaning or connotation. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Similarity in any one of these elements is sufficient to find a likelihood of confusion. *In re Mack*, 197 USPQ 755 (TTAB 1977).

When the applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), *cert. denied*, 351 U.S. 973, 109 USPQ 517 (1956).
Each mark contains the words SPORTSMAN'S WAREHOUSE

SPORTSMAN'S WAREHOUSE, while descriptive, is the dominant feature of the applicant's in mark for several reasons: 1) it presented in larger font 2) it is embossed over the mountain range design, and 3) the remaining terms are informational as to the type of equipment applicant retail and whole stores feature.

The examining attorney must consider the marks in their entireties in determining whether there is likelihood of confusion. A disclaimer does not remove the disclaimed portion from the mark for the purposes of this analysis. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281 (Fed. Cir. 1984); *In re MCI Communications Corp.*, 21 USPQ2d 1535 (Comm'r Pats. 1991).

sports·man
1. A man who is active in sports.
2. A person whose conduct and attitude exhibit sportsmanship.

ware·house
1. A place in which goods or merchandise are stored; a storehouse.
2. *Chiefly British.* A large, usually wholesale shop.[1]

The services of the parties are related and overlap as to retail stores, and overlap further in that both feature fishing supplies.

It is well settled that the issue of likelihood of confusion between marks must be determined on the basis of the goods or services as they are identified in the application and the registration. *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); *Paula Payne Products Co. v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76 (CCPA 1973). Since the identification of the applicant's services is more extensive, it is presumed that the application encompasses all services of the type described, including those in the

[1] *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

registrant's more specific identification, that they move in all normal channels of trade and that they are available for all potential customers.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration. Additionally, the applicant must also respond to the following.

Lining / Stippling Statement The lining and stippling shown in the drawing appears to be a feature of the mark and not intended to indicate color. The applicant must insert a statement to that effect. 37 C.F.R. Section 2.35; TMEP section 807.06(d).

Disclaimer The applicant must disclaim the descriptive wording SPORTSMAN'S WAREHOUSE HUNTING · FISHING · CAMPING · RELOADING · OUTERWEAR · FOOTWEAR apart from the mark as shown. Trademark Act Section 6, 15 U.S.C. Section 1056; TMEP sections 1213 and 1213.02(a). The wording is merely descriptive because the retail and wholesale stores are presumed to be *warehouse style* featuring goods for the sportsman; while hunting, fishing, camping, reloading, outerwear and footwear are merely informational.

The computerized printing format for the *Trademark Official Gazette* requires a standard form for a disclaimer. TMEP section 1213.09(a)(i). A properly worded disclaimer should read as follows:

> No claim is made to the exclusive right to use **SPORTSMAN'S WAREHOUSE HUNTING · FISHING · CAMPING · RELOADING · OUTERWEAR · FOOTWEAR** apart from the mark as shown.

See In re Owatonna Tool Co., 231 USPQ 493 (Comm'r Pats. 1983).

Classification The applicant has classified the goods incorrectly. The applicant must amend the application to classify the goods in International Class 35. 37 C.F.R. Sections 2.33(a)(1)(vi) and 2.85; TMEP sections 805 and 1401.

Linda E. Blohm
Trademark Examining Attorney
Law Office 110, 703.308.9110 ext.130
fascimile: 703.308.9091

Sportsman's Warehouse

Mark
BASS PRO SHOPS SPORTSMAN'S WAREHOUSE

Pseudo Mark
BASS PRO SHOPS SPORTSMANS WAREHOUSE

Goods and Services
IC 042. US 100 101. G & S: retail stores featuring clothing, fishing supplies and sporting goods. FIRST USE: 19950102. FIRST USE IN COMMERCE: 19950102

Mark Drawing Code
(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Code
031924 031925 260302

Serial Number
75066261

Filing Date
March 1, 1996

Publication for Opposition Date
March 25, 1997

Registration Number
2071417

Registration Date
June 17, 1997

Owner Name and Address
(REGISTRANT) BASS PRO TRADEMARKS, L.P. composed of BassGec Management Company, a Missouri corporation LIMITED PARTNERSHIP MISSOURI 1935 South Campbell Springfield MISSOURI 65898

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SPORTSMAN'S WAREHOUSE" APART FROM THE MARK AS SHOWN

Type of Mark
SERVICE MARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

SERVICE MARK APPLICATION, PRINCIPAL REGISTER, WITH DECLARATION	MARK: SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR and Design CLASS NO. 42

TO THE ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS:

Applicant Name: Sports Warehouse, Inc.

Applicant Business Address: 7035 South 185 West
Midvale, Utah 84047

Applicant Entity:

Applicant is a corporation organized under the laws of the State of Utah

Services:

Applicant requests registration of the above-identified service mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et seq., as amended) for the following services: Retail and wholesale stores featuring hunting supplies, fishing supplies, camping supplies, reloading supplies, outerwear clothing and footwear.

Basis for Application:
Applicant is using the mark in commerce on or in connection with the above-identified services. (15 U.S.C. 1051(a), as amended.) Three specimens showing the mark as used in commerce are submitted with this application.

- Date of first use of the mark anywhere: June 16, 1995
- Date of first use of the mark in commerce which the U.S. Congress may regulate: June 16, 1995
- Specify the type of commerce: Interstate
- Specify the manner or mode of use of mark on or in connection with the services: the mark is used in advertising and promotional materials.

Disclaimers
The applicant makes no claim to the exclusive right to use "Sportsman's Warehouse" apart from the mark as shown.
The applicant disclaims the following individual words; "Hunting." "Fishing," "Camping," "Reloading," "Outerwear" and "Footwear" apart from the mark as shown.

POWER OF ATTORNEY

Please recognize Bruce H. Little, member of the Bar of the State of Minnesota, and member of the law firm of Lindquist & Vennum P.L.L.P., 4200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402 to prosecute this application to register, to transact all business in connection therewith, and to receive the certificate.

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is properly authorized to execute this application on behalf of the applicant; he believes the applicant to be the owner of the service mark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he believes applicant to be entitled to use such mark in commerce; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

Dated:

12/16/98

Sports Warehouse, Inc.

By Stuart B. Hyman

Its President

LINDQUIST & VENNUM P.L.L.P.

4200 IDS CENTER
80 SOUTH EIGHTH STREET
MINNEAPOLIS, MINNESOTA 55402-2205
TELEPHONE: 612-371-3211
FAX: 612-371-3207

IN DENVER
LINDQUIST, VENNUM & CHRISTENSEN P.L.L.P.
600 17TH STREET, SUITE 2125
DENVER, COLORADO 80202-5401
TELEPHONE: 303-573-5900

ATTORNEYS AT LAW

Bruce H. Little
(612) 371-2437
blittle@lindquist.com

January 19, 1999

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: **Mark:** **SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR**
Class: **42**
Our File No.: 433225.0007

Dear Sir/Madam:

Enclosed for filing pursuant to 15 U.S.C. §1051(a) as amended, please find a service mark registration application for the above-referenced mark along with three specimens of the mark as currently used in commerce, and, a check, made payable to the Commissioner of Patents and Trademarks, in the amount of $245 for payment of the requisite filing fee.

Please contact the undersigned if you have any questions or need further information regarding this mark.

Very truly yours,

LINDQUIST & VENNUM P.L.L.P.

Bruce H. Little

Enclosures
cc: Sports Warehouse, Inc. (without enclosures)

Doc# 1088542\1

75625090

TRADEMARK APPLICATION SERIAL NO.

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

01/29/1999 CMAY11 00000016 75625090
01 FC:361 245.00 OP

PTO-1555
(5/87)

SP 00381

01-22-1999

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #10

DRAWING

APPLICANT NAME:	Sports Warehouse, Inc.
APPLICANT ADDRESS:	7035 South 185 West Midvale, Utah 84047
DATE OF FIRST USE:	June 16, 1995
DATE OF FIRST USE IN COMMERCE:	June 16, 1995
GOODS:	Retail and wholesale stores featuring hunting supplies, fishing supplies, camping supplies, reloading supplies, outerwear clothing and footwear.

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,390,988

United States Patent and Trademark Office

Registered Oct. 3, 2000

SERVICE MARK
PRINCIPAL REGISTER

SPORTS WAREHOUSE, INC. (UTAH CORPORATION)
7035 SOUTH 185 WEST
MIDVALE, UT 84047

FOR: RETAIL AND WHOLESALE STORES FEATURING HUNTING SUPPLIES, FISHING SUPPLIES, CAMPING SUPPLIES, RELOADING SUPPLIES, OUTERWEAR CLOTHING AND FOOTWEAR, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-16-1995; IN COMMERCE 6-16-1995.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SPORTSMAN'S WAREHOUSE" APART FROM THE MARK AS SHOWN; AND DISCLAIMS THE FOLLOWING INDIVIDUAL WORDS, "HUNTING," "FISHING," "CAMPING," "RELOADING,", "OUTERWEAR," AND "FOOTWEAR" APART FROM THE MARK AS SHOWN.

THE LINING AND STIPPLING SHOWN IN THE DRAWING ARE NOT INTENDED TO INDICATE COLOR.

SER. NO. 75-625,090, FILED 1-22-1999.

LINDA E. BLOHM, EXAMINING ATTORNEY

110

LINDQUIST & VENNUM P.L.L.P.

4200 IDS CENTER
80 SOUTH EIGHTH STREET
MINNEAPOLIS, MN 55402
TELEPHONE: 612-371-3211
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FAX: 303-573-1956

www.lindquist.com

02-09-2000
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #57

February 7, 2000

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, certified mail, return receipt requested in an envelope addressed to:

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

on 2/7/2000
Date

Signature

BRUCE H. LITTLE
Typed or printed name of person signing certificate

Ms. Linda E. Blohm
Trademark Examining Attorney
United States Patent and Trademark Office
Law Office 110
2900 Crystal Drive
Arlington, VA 22202-3513

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re:	**Mark:**	**SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR & Design**
	Serial No.:	**75/625090**
	Our File No.:	433225-0007
	Office Action Date:	August 6, 1999

Dear Ms. Blohm:

We are in receipt of Office Action No. 1 with regard to the above-referenced mark and we respond on behalf of Applicant.

TMEO
LAW OFFICE 110
2000 FEB 11 P 3:45
RECEIVED

Doc# 1194698\1

SP 00384

THERE IS NO LIKELIHOOD OF CONFUSION

The Examining Attorney initially refused registration of Applicant's mark pursuant to 15 U.S.C. § 1052(d) because the mark is allegedly confusingly similar to the registered mark "BASS PRO SHOPS SPORTSMAN'S WAREHOUSE," U.S. Registration No. 2,071,417. Despite the Examining Attorney's contention that the marks are confusingly similar, the marks are sufficiently distinct and registration should issue. Moreover, because of the Examining Attorney's amendment re-classifying the services in Class 35, the already remote likelihood that Applicant's mark will be confused with the BASS PRO SHOPS mark has been reduced.

The test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison but rather whether the marks are sufficiently similar so that there is a likelihood of confusion as to the source of the good or services. In evaluating the similarities between marks, the emphasis must be on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. TMEP § 1207.01(b) (citing Sealed Air Corp. v. Scott Paper Co., 190 U.S.P.Q. 106, 109 (TTAB 1975)).

Although both marks contain the phrase "Sportsman's Warehouse," the overall commercial impression created by the marks is distinct. The mark cited by the Examining Attorney features prominently the phrase "BASS PRO SHOPS" in a distinctive design in the form of an open-mouthed fish (a bass). The phrase "BASS PRO SHOPS" does not appear anywhere in the Applicant's mark. Nor does there appear in Applicant's mark the design of a fish.

By contrast, Applicant's mark contains a design featuring mountains and the words "HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR." None of those words appear anywhere in the "BASS PRO SHOPS" mark cited by the Examining Attorney. Applicant's mark prominently features a design of mountains, while the "BASS PRO SHOPS" mark is predominantly an open-mouthed fish. Due to the numerous differences in the visual impressions created by the marks, there is no likelihood of confusion.

The only feature the two marks share is the phrase "Sportsman's Warehouse." The owner of the "BASS PRO SHOPS" mark made the following disclaimer: "No claim is made to the exclusive right to use "SPORTSMAN'S WAREHOUSE" apart from the mark as shown." Similarly, Applicant affirmatively disclaimed the exclusive right to use the term "Sportsman's Warehouse." A disclaimer in a trademark registration amounts to a statement that, in so far as that particular registration is concerned, no rights are being asserted in the disclaimed component

standing alone, but rights are asserted in the composite. TMEP § 1213 (citing Sprague Electric Co. v. Erie Resistor Corp., 101 U.S.P.Q. 486, 486-87 (Comm'r Pats. 1954)). Thus, because the owner of the "BASS PRO SHOPS" mark has disclaimed the exclusive right to use the phrase "SPORTSMAN'S WAREHOUSE," that phrase should not prevent the Applicant from obtaining a registration for its dissimilar mark containing the same descriptive phrase. As noted above, numerous differences exist between the marks, and there is only one similarity. Because the only similarity between the marks is a descriptive phrase that has been disclaimed by the owners of both marks, registration must issue.

In addition, Registration No. 2,071,417 was issued to Bass Pro Trademarks L.P. in International Class 42, "Miscellaneous" for "Retail stores featuring clothing, fishing supplies and sporting goods." Applicant seeks registration in Class 35, "Advertising and business" for a much broader variety of services: "Retail and wholesale stores featuring hunting supplies, fishing supplies, camping supplies, reloading supplies, outerwear clothing and footwear." At a minimum, Applicant should be permitted to amend to delete the phrase "fishing supplies" from its description of services, and registration should issue.

A registration is indicative of "the registrant's exclusive right to use the mark in commerce on or in connection with the goods or services specified in the certificate." 15 U.S.C. § 1057(b). Even if a mark is registered, "the presumption of an exclusive right to use it extends only so far as the goods or services noted in the registration certificate." Mushroom Makers, Inc. v. R.G. Barry Corp., 580 F.2d 44, 48 (2d Cir. 1978). Even an incontestable mark – and the "BASS PRO SHOPS" mark is not incontestable – does not permit a registrant to claim rights over a greater range of products than he would otherwise be entitled to claim. Union Carbide Corp. v. Ever-Ready Inc., 531 F.2d 366, 377 (7th Cir. 1976); Sunmark, Inc. v. Ocean Spray Cranberries, Inc., 64 F.3d 1055, 1058 (7th Cir. 1995).

The "BASS PRO SHOPS" registration and Applicant's mark have in common only the descriptive phrase "SPORTSMAN'S WAREHOUSE." Use of that disclaimed phrase is not a proper basis for extending the scope of the Registrant's mark and denying registration to Applicant.

LINING/STIPPLING STATEMENT

The lining and stippling shown in the drawing are not intended to indicate color. PRINT

DISCLAIMER

No claim is made to the exclusive right to use "SPORTSMAN'S WAREHOUSE HUNTING • FISHING • CAMPING • RELOADING • OUTERWEAR • FOOTWEAR" apart from the mark as shown.

PRINT

CLASSIFICATION

The Application is amended to classify the goods in International Class 35.

LINDQUIST & VENNUM P.L.L.P.

Bruce H. Little

cc: Enterprise Investments, Inc.

Doc# 1194698\1

State of Utah

Department of Commerce
Division of Corporations and
Commercial Code
160 East 300 South 2nd Floor
Box 146705
Salt Lake City, Utah 84114-6705

Trademark File#

For office use only

Application for State Trademark or Service Mark Registration

(It is the applicant's responsibility to check for conflicts with federally registered trademarks or service marks)

Please type all entries. Complete all spaces. See instructions on other side.

. Applicant's Name: Sports Warehouse, Inc.

. Applicant's address: 218 West 1st Street, P.O. Box 10, Star Prairie WI 54026-0010
Street Number City State Zip

. Daytime telephone number (include area code): 801/561-6681

. State in which applicant was formed as a business: Utah

. Is this a new application? ☒ Renewal? ☐ (enter TM file number)

. Describe the trademark or service mark: The mark consists of the words "SPORTSMAN'S WAREHOUSE"

. How will the trademark or service mark be used: Displays, signs, advertising materials, television advertising, letterhead, business cards, hats, coffee cups.

. Describe the product or service associated with the mark: Retail sales of sporting goods and equipment.

Attach two specimens of the mark on separate pages.

). Date of first use of the trademark or service mark:

t Utah 6/30/94

utside Utah 04/15/96

.. Certificate

ereby certify that I own and have the right to use the trademark or vice mark applied for, that to the best of my knowledge it is neither entical to nor deceptively similar to any other registered trademark or vice mark, and that the two specimens or facsimiles attached to this plication are representative of the trademark or service mark.

Stuart B. Stegman
Applicant's signature

Chairman / CEO 10/18/99
Title Date

DO NOT WRITE IN THIS SPACE

FORM TRADMK

SP 00388

THE Enterprise
Volume 27, Number 23 Monday, December 1, 1997 Salt Lake City, Utah One dollar

Sporting goods retailer to expand Midvale store, open another in Provo

by Barbara Rattle
Managing Editor

Fred Hayes/The Enterprise
Sportsman's president Stu Utgaard, *expansions to be complete in May.*

Sportsman's Warehouse, a Midvale retailer of hunting, fishing, reloading and camping products and supplies, is preparing to nearly double the size of its Salt Lake area store and to open a second location in Provo.

Stuart B. Utgaard, who purchased Sportsman's Warehouse and its sister wholesale company Pacific Flyway Wholesale on Nov. 1 of last year, said both the Midvale expansion and the new Provo location should be complete by May.

In January, Pacific Flyway will move from quarters it shares with Sportsman's Warehouse in Midvale to newly-leased, 15,000 square foot quarters at 1009 W. 3160 So.

Once Pacific Flyway is relocated, its Midvale space will be combined with that of Sportsman's Warehouse, 7037 So. 185 W., expanding Sportsman's retail presence there from 26,000 to 42,000 square feet, Utgaard said. A present staff of approximately 80 full and part-time employees will probably be increased by 10 as a result of the store growing in size, he added. The store will remain open during construction.

Ground has been broken for the firm's 35,000 square foot retail store on University Ave. in Provo. Utgaard said he expects to hire between 50 and 60 people to staff the facility, projected to open this coming May.

Eckman & Midgley Construction, Midvale, is acting as general contractor for both projects, which are being financed internally, according to Utgaard.

More Sportsman's Warehouse stores are in the planning stages, he said, noting "I'd say we're the largest retailer of hunting, fishing and camping [products] in Utah."

Pacific Flyway leased its new wholesale warehouse space through Jim Sheldon of CB Commercial.

Utgaard is no stranger to Utah's sporting goods industry. His St. Paul, Minnesota-based mid-market mergers and acquisition brokerage, Enterprise Investments Inc., was instrumental in arranging for the sale of Salt Lake's Udisco Inc./Sunset Sports Centers to Malone & Hyde Inc. in 1980.

The following year, Utgaard helped orchestrate the sale of Wolfe's Department Stores, Salt Lake, also to Malone & Hyde.

Since its formation in 1972, Enterprise Investments Inc. has been involved in 98 transactions for 100 clients valued at roughly $1.5 billion.

Texas Fishing Forum
Topic Ganzer Mtn. vs. BPS. vs. Sportsmans Wa

an_average_joe posted 12-16-2004 09:27 AM12-16-2004 09:27 AM

TFF MEMBER
Angler

In your opinion tell me who is #1 in
Tackle Selection
Prices
Service (helpfulness of staff)

I have now been to all 3 and I think I'd rate them this way
Tackle Selection - Sportsmans
Price - BPS and Sportmans (tie)
Service - Sportsmans

Ian

Posts: 427 | From: Waxahachie, TX, USA | Registered: Jun 2003 | IP: Logged | Report Post

RedRanger posted 12-16-2004 09:37 AM12-16-2004 09:37 AM

TFF MEMBER
TFF Pro Angler

I saw that Gander mountian down 45..

It sure is small.....

Posts: 1916 | From: Irving | Registered: Aug 2003 | IP: Logged | Report Post

StreakBreaker posted 12-16-2004 09:42 AM12-16-2004 09:42 AM

TFF ALERT
Schlick Monger

Service = Sportmans

Price = BPS
Selection = tie
GanderMtn = not been there yet

However, IF I had to rate who'd get my business...it'll be Sportman's Warehouse. I'll pay a little more for the better service and less hassle. Period.

An uncanny resemblance.....

Posts: 3343 | From: Collin County | Registered: Mar 2004 | IP: Logged | Report Post

championl91
Angler

posted 12-16-2004 09:47 AM12-16-2004 09:47 AM

how close is sportsman's warehouse to bass-pro? never been there before. where is it?

Posts: 363 | From: Commerce TX, USA | Registered: Dec 2003 | IP: Logged | Report Post

TCB
Outdoorsman

posted 12-16-2004 09:52 AM12-16-2004 09:52 AM

Sportsmans Warehouse is located on 35E and Hebron Parkway, next to Target. Their selection isn't as vast as BPS but they carry a large selection of items from out West. Not to mention I've always received great customer service.

Posts: 185 | From: Keller, Tx | Registered: Nov 2001 | IP: Logged | Report Post

probass911
TFF MEMBER
TFF Pro Angler

posted 12-16-2004 10:33 AM12-16-2004 10:33 AM

Just glad they are all here. Nice to have so many good places to get what you need. Add Cabela's and we really have it good around here. Mark

---

MARK PERRY

Posts: 2273 | From: Lake Bridgeport, Texas USA | Registered: Jan 2004 | IP: Logged | Report Post

Bass Champ 203
Angler

posted 12-16-2004 12:39 PM12-16-2004 12:39 PM

Sportsmans Warehouse then BPS. Never been to Gander Mountain. Where is it?

Brian McCarty
"Bringing A Dream - Home To You!"
Ebby Halliday Realtors
(214)683-7663
brianmccarty@ebby.com

Posts: 352 | From: Frisco, TX, USA | Registered: May 2003 | IP: Logged | Report Post

Big Joe8565
Angler

posted 12-16-2004 12:40 PM12-16-2004 12:40 PM

I've not been to Sportsmans Warehouse yet, but I've been to BP and Gander Mountain. I was impressed with Gander Mountain and the variety of merchandise they carried. They have most everything I fish with and I was pleased with their customer service. They seemed much friendlier that the folks at BP. My .02 cents. Once they build the Bass Pro in Garland, I'm sure I'll do most of my shopping there. It's 5 minutes for the house...

Posts: 380 | From: Dallas | Registered: Jan 2003 | IP: Logged | Report Post

Goat Farmer
Angler Extreme

posted 12-16-2004 12:44 PM12-16-2004 12:44 PM

Sportsman's for the selection and price
Bass pro for the atmosphere and the Bass tanks/feedings

Bass pro has a good selection too, but sometimes I feel like they push their own products too much and keep some name brand competition out. That may not be true, but that's what it seems like.

Sportsmans has some cool stuff you can't get at bass pro.

Gander mountain - never been

Posts: 928 | From: Texas, USA | Registered: Feb 2003 | IP: Logged | Report Post

bass-assasin1
Outdoorsman

posted 12-16-2004 01:02 PM12-16-2004 01:02 PM

You guys are lucky you have all those choices close by. All we have is Academy but from what I hear we will soon have a BPS.

Posts: 120 | From: san antonio | Registered: Mar 2004 | IP: Logged | Report Post

an_average_joe
TFF MEMBER
Angler

posted 12-16-2004 01:14 PM12-16-2004 01:14 PM

Gander Mtn is off I-45 in corsicana south of the metroplex.

Big Joe - If you liked Gander Mtn. selection I think you'd be amazed with Sportsman's Warehouse I thought it was head and shoulders above Gander Mtn. on fishing stuff (variety)

Posts: 427 | From: Waxahachie, TX, USA | Registered: Jun 2003 | IP: Logged | Report Post

Bass Champ 203
Angler

posted 12-16-2004 01:21 PM12-16-2004 01:21 PM

an_average_joe,
Thanks for letting me know!

Brian McCarty
"Bringing A Dream - Home To You!"
Ebby Halliday Realtors
(214)683-7663
brianmccarty@ebby.com

Posts: 352 | From: Frisco, TX, USA | Registered: May 2003 | IP: Logged | Report Post

scott01
TFF Pro Angler

posted 12-16-2004 01:28 PM12-16-2004 01:28 PM

Sounds like I need to take a little road trip during lunch one day and visit Sportsmans Warehouse.

Posts: 1201 | From: Bedford | Registered: Jun 2002 | IP: Logged | Report Post

Bass Champ 203
Angler

posted 12-16-2004 01:36 PM12-16-2004 01:36 PM

Scott01,
It will be well worth your while! I was amazed at the selection!

Brian McCarty
"Bringing A Dream - Home To You!"
Ebby Halliday Realtors
(214)683-7663
brianmccarty@ebby.com

Posts: 352 | From: Frisco, TX, USA | Registered: May 2003 | IP: Logged | Report Post

LargemouthSpec
Outdoorsman

posted 12-16-2004 07:46 PM12-16-2004 07:46 PM

I really do not see how BPS stays in business. The Katy store has more boats everytime I go. The shelves are always full and it is really never full.

Never been to Sports. Warehouse.

Gander has a good tackle dept with the exception of the rods and reels.

My ranking...
BPS=GM (I go to Gander since BPS is hell and gone from where I live.

Cut Rate tops them all!!!

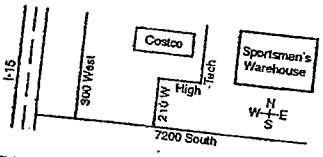
Jason

SPORTSMAN'S WAREHOUSE

Hunting • Fishing • Camping • Archery
Reloading • Marine • Outerwear • Footwear

Dale Smith

7035 South 185 West
Midvale, Utah 84047



(801) 566-6662 • Fax (801) 566-0128 • Vendors (801) 566-6681

1994/1995
Calling Card

SPORTSMAN'S WAREHOUSE
HUNTING • FISHING • CAMPING • RELOADING • OUTERWEAR • FOOTWEAR

7035 South 185 West, Midvale, Utah 84047
(801) 566-6662 • Fax (801) 566-0128
Vendors (801) 566-6681

1995/1996
Calling Card