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

Proceeding	92067794
Party	Plaintiff Joshua S. Schoonover
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Submission	Testimony For Plaintiff
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Signature	/JSS/
Date	09/30/2020
Attachments	4-Decl-Bost-complete.pdf(1505361 bytes )

Cancellation No 92067794 (Parent)

Cancellation No. 92069499

*Joshua S. Schoonover*

v.

*The Burton Corporation*

### **DECLARATION OF TOBY F. BOST**

I, Toby F. Bost, hereby declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I have served a career as an executive in the action sports apparel and hardgoods business, including executive roles at La Jolla Group, O’Neill, Rip Curl, and No Fear. A true and correct copy of my resume is attached herewith as “Exhibit A”.
2. I founded the La Jolla Group’s multi branded portfolio as CEO/Chairman (brands included: O’Neill, Lost, Rusty, Metal Mulisha, FMF, Alien Workshop, Habitat, Reflex, Berrics, Target Swim, LJJ Retail, LJJ Ecommerce).
3. For purposes herein, the term “action sports” is synonymous with “extreme sports”, and means a sport that is physically hazardous, such as: surfing, skateboarding, snowboarding, and motocross.
4. I have appeared on the television series: Undercover Boss, CBS Feb 2013; and participated in multiple features in the Wall Street Journal, LA Times, and other national media platforms.
5. I am an expert in the action sports apparel and hard goods business.
6. During the years 1999-2013, my office was physically located in Irvine, CA, the same city where Forum Snowboards was headquartered prior to the “Burton Restructuring” as described in the Burton Press Release titled “Burton Realigns its Family of Brands for Long-Term Success” (a

true and correct copy is attached as “Exhibit B”). Being in the same city, and in the same business (action sports apparel), the Burton Press Release was a significant and meaningful event in the action sports industry that I recall well.

7. I have refreshed my recollection with a review of the Burton Press Release (Exhibit B).

8. I have further refreshed my recollection with a review of the Transworld Business interview with Jake Burton, published by the action sports network with the title: “Jake Burton On Overhauling Corporate Structure, Closing The Program Brands”, a copy of the interview is publicly available at: <https://www.adventuresportsnetwork.com/transworld-business/burton-overhauls-corporate-structure-pulling-out-of-the-program/> (a true and correct copy attached as “Exhibit C”).

9. I have been asked by Petitioner, Joshua S. Schoonover, to clarify the meaning of the phrase “transition out of”, “transitioning out of”, “exit out of” or “exiting out of” as it is used in the action sports apparel and hard goods business. I have also been asked to lend my opinion as to the intent of The Burton Corporation related to the act of exiting out of the Program Brands, namely the Forum brand.

10. First, the phrases “transition out of”, “transitioning out of”, “exit out of” or “exiting out of”, with respect to a brand, is a phrase that is often used in the action sports apparel and hardgoods business, and to “transition out” or “exit out” means, with respect to the brand, to stop making, selling and/or offering for sale, goods which bear the mark associated with the respective brand. With respect to a business, it would mean to cease activities of a business as a whole. In the instant matter, the phrase “transition out of” or “exit out of” is used in connection with The Program Brands, including Forum.

11. Therefore, it is my opinion that when The Burton Corporation made a public statement

(Exhibits B&C, respectively) manifesting intent to “exit out of the Program Brands”, namely Forum, it was received by myself, and likely most or all in the field, that Burton was going to stop manufacturing and selling goods bearing these marks, specifically the Forum mark.

12. Jake Burton expressly confirmed the intent to “put [Forum] to bed” in the Transworld Business interview (Exhibit C) but suggested The Burton Corporation would seek to maintain the trademarks. It appears from the documentary evidence, and is certainly my opinion, that The Burton Corporation’s intent was to stop making and selling goods bearing the Forum mark, among other marks identified, but to preserve the trademark registrations in absence of actual commercial use.

13. I have not been retained, paid or compensated in exchange for providing this declaration and opinion testimony. I am volunteering these statements and opinions in an effort to assist the Trademark Trial and Appeal Board (TTAB) with clarification of the meaning of a term of art in a specific field, which I understand to be disputed by the parties, and to lend my opinion concerning intent of The Burton Corporation as it relates to subject matter manifested in published releases and interviews, which intent is speculated but may be best appreciated under the circumstances by those with relevant experience in the particular field, and therefore my opinion may be helpful to the TTAB to redress a disputed issue, namely, intent which goes to the issue of abandonment. I have no interest in the outcome of this matter.

Dated: 7/24/2019

Signed: 

Toby F. Bost

# EXHIBIT A

## Contact

[www.linkedin.com/in/tobybost](http://www.linkedin.com/in/tobybost)  
(LinkedIn)

## Top Skills

Making a career out of BRAND BUILDING

Apparel

Brand Development

# Toby Bost

President and CEO//Senior Executive//Board Member  
Greater San Diego Area

## Summary

+ Appeared on Undercover Boss, CBS Feb2013. Multiple features in Wall-street Journal, LA Times, and other national media platforms

+ 25yr seasoned veteran in Consumer Products including Apparel, Footwear, Accessories, Class I&II Medical Devices

+ E2E understanding of business operations, creative, and marketing

+ Experienced Consumer Products Exec & CMO for Global Medical Device leader with P&L responsibilities

+ Seasoned veteran in the boardroom and in interacting with directors

+ Results-driven professional with 20 years of experience in brand building, interactive marketing, product franchising, running operations, manufacturing and delivering on revenue generation

+ Founded the La Jolla Group's multi branded portfolio as CEO/ Chairman (O'Neill, Lost, Rusty, Metal Mulisha, FMF, Alien Workshop, Habitat, Reflex, Berrics, Target Swim, LJG Retail, LJG Ecommerce)

+ Excellent long term relationships with retailers globally

+ Passion for creative processes & product innovation. Visioned consistent top selling product franchises for all consumer segments across the DJO & LJG portfolios. Directly managed creative teams from design inception to completion. Developed the industry leading and award winning Superfreak™ board short line for O'Neill

+ Skill set includes ability to identify opportunity, define the marketplace, build brands, drive customer transactions,

management of creative design, 21st century marketing, recruiting, ability to lead direct to consumer (ecommerce & brick and mortar) sales, and manufacturing of market leading products

+ Responsibilities: day to day management, identify opportunity, lead acquisition transactions, conduct license negotiations, partner relationships, product creation, press, product feedback, operations, hiring and follow-on investments

+ Deep and broad relationships to attract investors and brands

+ Successful track record working with complex organizational layers of executives and direct reports.

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## Experience

### DJO Global

President Consumer Business/Chief Marketing Officer

November 2013 - Present

Greater San Diego Area

A Blackstone Portfolio Company

### La Jolla Group LLC

CEO

May 2006 - November 2013 (7 years 7 months)

Irvine, CA

### O'Neill

CEO, COO, EVP

May 1999 - November 2013 (14 years 7 months)

Irvine, CA

### Rip Curl

VP Manufacturing

May 1998 - May 1999 (1 year 1 month)

### No Fear

VP Manufacturing

January 1996 - May 1998 (2 years 5 months)

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## Education

University of San Diego

Bachelor of Business Administration - BBA · (1989 - 1993)



# EXHIBIT B

## **Burton Realigns its Family of Brands for Long-Term Success**

BURLINGTON, VT (October 23, 2012) Burton Snowboards today announced that its senior management team has elected to alter the structure of Burton owned brands to better position the company, its retail partners and stakeholders for the future. The current family of brands includes Analog, Gravis, RED, anon, Foursquare, Forum, Special Blend and Channel Islands. During a company-wide meeting today at its headquarters in Vermont, Burton Founder and CEO Jake Burton explained the new structure and how it will allow Burton to focus on what it does best: make and support products that set the bar for snowboarding development and further progress the sport and lifestyle.

Specifically, Burton announced the following changes to its structure and subsidiaries. Over the next year, Analog will return to its roots of being a pure snowboarding brand based at its original home in Burlington, Vermont. Analog has a deep heritage in snowboarding from the day when Greg Dacyshyn (Burton Chief Creative Officer) and the late Jeffy Anderson (Team Rider) gave birth to the brand in Burlington, and as such, will revert back to being a winter-only brand. Burton's Gravis brand will ultimately move its headquarters to Tokyo, Japan and moving forward will be solely distributed in Asian markets selling lifestyle shoes and bags. Gravis was established in 1998 as the company's first independent lifestyle brand, and since then, Asia has been by far its most successful region. As a result, Gravis will now focus purely on this market and opportunity. Further, in a move that Burton has been planning for several years, the company will also start developing protective headwear under the anon brand name. Burton will continue to offer its RED helmets on a limited basis, but the bulk of helmet and optics product lines will be combined under the anon brand, which has become synonymous with quality riding accessories.

Also part of today's restructure, Burton announced it will transition out of its Program brands (Foursquare, Forum and Special Blend), which were purchased in 2004 with the intent to keep snowboard companies in the hands of snowboarders. Burton has supported these brands for eight years and will continue to support them over the next year through warranty service, dealer support, marketing and inventory. The company will exit out of The Program brands in winter 2014, in order to better focus on and invest in Burton.

Finally, Channel Islands, which was acquired by Burton in 2006, will be unaffected by this brand realignment and will continue to design, develop and manufacture best-in-class surf hardgoods products in Carpinteria, California.

In addressing all of these changes, Jake Burton had this to say: "Burton has experienced several years of income growth since the recession and paid out bonuses to employees over the last two years," said Jake. "That said, the economy has a voice of its own that we all have to listen to, and the message is clear: do what you do best and focus purely on it. In our case, that means to narrow our focus to the sport and lifestyle that got us here – snowboarding. We will continue to support Channel Islands in its endeavor to make the best surfboards in the world and Gravis in its new home in Japan, but when you walk through the front door here in Burlington, Vermont, it will be all snowboarding and snowboarding lifestyle all the time – driven by the Burton, Analog and anon brands."

Jake went on to share that one of the key factors that led senior management to these decisions includes the success of Burton's entry into the apparel and bag/pack business on a year-round basis, which has grown significantly in all seasons. The message Burton has taken from the marketplace is that for long-term success, this is the direction that the company should be pursuing, along with its core hardgoods and outerwear business.

Increasing the company's focus on Burton has also been demonstrated by recent significant investments in Burton's headquarters and infrastructure. These include the acquisition of the building next door to its Burlington, Vermont headquarters where the company not only built Craig's, a new 10,000-square-foot R&D and prototype facility, but also Area 13, a 6,000-square-foot Burton/anon/Analog wholesale showroom. Craig's (named after the late Craig Kelly) is known as the most advanced and sophisticated snowboard prototype facility in the world where ideas are conceived, built and on-snow in less than 24 hours. Area 13 is Burton's marquee showroom where retailers from all over the world can come to Vermont to see future product lines. Like today's announcement, both of these examples demonstrate the company's commitment to the long-term growth, progression and success of the Burton snowboard brands.

In closing, Jake went on to state the following: "I take full responsibility for the decisions that led to the creation (or acquisitions) of these ancillary brands, and I similarly am the individual ultimately responsible for the decision to realign and focus more purely on what made this company from the start. Clearly, the most difficult aspect of this decision and transition is the people affected. The employees and team riders associated with these brands have poured their guts into making it happen. Their level of commitment has been extraordinary, and we will do everything we can to help support them through this transition. There is never a good time for moves like this, and we could have delayed the announcement, but it isn't our style to perpetuate a myth. Clearly this transition will pose challenges along the way, but in the long run, everyone will see the results of our commitment to our core business."

### **About Burton**

In 1977, Jake Burton Carpenter founded Burton Snowboards out of his Vermont barn and has dedicated his life to snowboarding ever since. Burton has played a pivotal role in growing snowboarding from a backyard hobby to a world-class sport by creating groundbreaking products, supporting a team of top snowboarders and pushing resorts to allow snowboarding. Today, Burton designs and manufactures industry-leading products for snowboarding and the snowboard lifestyle, including snowboards, boots, bindings, outerwear and layering as well as year-round apparel, packs/bags and accessories. Privately held and owned by Jake and his wife, Burton President Donna Carpenter, Burton's headquarters are in Burlington, Vermont with offices in Austria, Japan, Australia and California. For more information, visit [www.burton.com](http://www.burton.com).

Follow our line at [facebook.com/burtonsnowboards](https://facebook.com/burtonsnowboards) and [twitter.com/burtonsnowboard](https://twitter.com/burtonsnowboard)

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[amd@burton.com](mailto:amd@burton.com)  
Burton Snowboards  
(802) 652-3720

## 2012 Burton Restructure: Key Facts by Brand

### **ANALOG**

#### Heritage

Following Burton's outerwear legacy, Analog was created in 1999 as a more progressive, style-conscious outerwear collection led by a handful of top pros at the time, including Trevor Andrew, Jeffy Anderson and Gigi Ruf. Since then, Analog has continued to drive many of snowboarding's outerwear style trends, and in 2003 Analog added a streetwear component to its line, followed by surf apparel, a surf team and an Analog skate platform.

#### Key Facts

- Burton has made the decision to ultimately transition out of Analog surf and skate apparel by next fall.
- Analog surf and skate apparel will be shipped through Spring/Summer '13, and will be marketed and supported.
- After the spring season, Burton will continue to design, develop and distribute Analog as a winter-only brand, operating out of Burton's headquarters in Burlington, Vermont, with points of distribution around the world.
- The new Analog will only design and distribute Analog outerwear and tech apparel, called "ATF", along with basics.

#### Team Update

The Analog snow team, made up of Danny Davis, Mikkel Bang and Zak Hale will continue on as Analog riders. Regarding the Analog surf and skate teams, we will be working with each team rider individually on an exit plan to transition them out of the brand.

### **GRAVIS**

#### Heritage

Gravis was started by Burton in 1998, as the company's first independent lifestyle brand. From the start, Gravis was focused on creating casual footwear, bags and softgoods built on an action sports lifestyle platform. Today the brand is still rooted in footwear, with the addition of a skate shoe collection and team, launched in August, 2008.

#### Key Facts

- Gravis will ultimately become an Asian-only brand, which will result in the wind down of the brand in North America, Southern Hemisphere and Europe.
- With this decision, Gravis' headquarters will be re-located to Tokyo and run out of Japan, in order to best serve the Asian market where Gravis is the most established and where it has its most viable business.
- Gravis product will be shipped through Spring/Summer '13 in all regions. Gravis will become an Asian-only brand in the fall of 2013.

#### Team Update

With this move to be a primarily lifestyle brand, the Gravis team will be restructured to accommodate the lifestyle market in Asia.

## **RED & ANON**

### Heritage

RED was started by Burton in 1996 as its first protection brand. Since then, RED has designed, developed and manufactured helmets and protective wear for pros and consumers alike. Anon was established as Burton's eyewear brand in 2001 and focuses on goggles.

### Key Facts

- Burton will be developing and manufacturing protective headwear (helmets) under the anon name. Anon has become synonymous with quality riding accessories, and it is a natural extension to add helmets to its mix.
- RED helmets will continue to be sold on a limited basis. Anon helmets will be launched for Winter 2014 for all channels.

### Team Update

We will be working with each RED and anon team rider on an individual basis regarding this announcement.

## **THE PROGRAM (Foursquare, Forum, Special Blend)**

### Heritage

Burton purchased The Program brands in 2004 from Four Star Distribution. At that time, Burton felt an obligation (and an opportunity) to slow the trend of ski companies buying up snowboard brands. Consequently, when these companies went up for sale, Burton purchased them and they became 'The Program' brands for Burton.

### Key Facts

- The intent from the beginning was to keep snowboard companies in the hands of snowboarders and keep these brands thriving. As the world's leading snowboard company, Burton felt there would never be a better home for these three brands.
- But even under Burton's wing, after 8 years, the businesses have failed to be viable. Consequently, Burton has realized it's time to exit out of them, in order to better focus and invest in the Burton brand.
- Therefore, Burton will be transitioning out of Foursquare, Forum and Special Blend globally after this season.
- Current winter 2013 product will be supported over the next year, via warranty, dealer, marketing and inventory support.

### Team Update

We will be working with each team rider on an individual exit plan to transition them out of these brands.

## **CHANNEL ISLANDS**

### Heritage

Burton acquired Channel Islands Surfboards in June, 2006 after the founders of each company, Al Merrick and Jake Burton, forged an agreement over the fact they shared a similar mindset and passion for their respective sports. With their shared vision for putting the sports in the hands of the team athletes and shared philosophies on hardgoods product development, it was a very natural partnership.

### Key Facts

- Channel Islands is not affected by the announcements today. Burton will continue to support the CI operation in Carpinteria, California, as usual.
- Burton is very happy with and committed to our relationship with Channel Islands.

### Team Update

There will be no team riders affected, as there are no changes to the Channel Islands operating or marketing structure.

**BURTON SNOWBOARDS**

Burton will continue to do what it does best: make and support products that set the bar for snowboarding development. The most graphic change will be increased resources and investments made available to Burton to further progress our sport and lifestyle. Outside of our renewed focus, it will be business as usual.

###

# EXHIBIT C

# Jake Burton On Overhauling Corporate Structure, Closing The Program Brands

*lewism*



Burton Founder and CEO Jake Burton. Photo: Curtes

In a company-wide meeting this morning, [Jake Burton](#) announced a sweeping realignment of the company's brands and corporate structure including transitioning out of The Program brands, Foursquare; Forum; and Special Blend after this winter, moving Gravis to Tokyo and distributing it solely in Asia, transitioning Analog out of skate and surf, launching anon helmets, and scaling back RED to limited availability.

We caught up with [Burton](#) after the meeting to learn more about the impacts and goals of this difficult decision:

**Sounds like it was a difficult morning out in Burlington today?**

Yeah, it was a little while coming--pretty tough. Especially for the people involved, but something we had to go through.



### **What's the mood over there today following this morning's meeting?**

The affects here in Burlington were negligible in the context of people or non-existent really.

### **The impacts were more in the California offices?**

Yeah, it's obviously more of a blow to our California crew. It's the hardest part of the whole thing obviously. We all feel that we've sort of let each other down, but everybody gave 100 percent in investment and commitment and passion towards those brands, but in the long run the writing was on the wall. I think everybody pretty much accepts that and has come to grips with it.

### **Will you guys be closing the Costa Mesa offices?**

There's quite a period of time of transition so that won't be happening immediately, but over time, probably. We have two buildings in Costa Mesa, Burton is out of a building as well. So we'll probably, over a period of six months or so, squeeze everything into there.

We're still shipping Analog spring/summer and we want to support it in the context of marketing and inventory and everything else that goes along with having a brand in the marketplace?

### **Can you share how many people were affected or a percentage?**

We are privately held so it's not like we have to file specific information, but I think it's a bit vague in the context. We could have put on sort of an act and pretended like the brands were still in business and had trade show booths.

### **Smoke and mirrors.**

Exactly. We didn't go that route so consequently we wanted to be honest and forth coming and not bullshit people. Our decision was to announce it pretty quickly and consequently a lot of people are sticking around to facilitate the transition. They're not sticking around forever. Some people are pretty much done, but that's a minority.

As you know, this is the beginning of a long-term transition strategy. As such, specifics on HR data will not be disclosed. What I can share is that where appropriate and where opportunities exist, we will be absorbing staff into the Burton infrastructure full-time, and/or keeping them on for transitional roles and support.

### **There's been a lot of talk and speculation around the industry about how you guys were impacted by last winter and the economy in general.**

That definitely precipitated it in some form, but **financially we've had a couple good years**. This year's looking fine, so this was more of a function of, and I say this in all honestly, looking forward at the long-term viability of those brands. Maybe a killer winter last year would have made us less focused on looking at our longer term deal, but I don't think it was something that was made in the context of just a tough winter.

### **You think that would have just prolonged the decision?**

Yeah, it would have probably just made us a little bit less inclined to look at the long-term viability of everything we're involved in.

### **In saying this has been a long time coming, give me a background of the discussions around these changes and where you're looking at taking things for Burton?**

It's a combination of the success that we've had with the Burton brand and also in new categories on a year-round basis. The apparel thing is going very well and our bag and pack business continues to surprise us with how real it is. We came to the realization that those are the areas where we should be investing and it's where the brightest future is for us and our retailers.

### **With focusing more of your efforts on the Burton brand, where do you see reinvesting on that side?**

We can focus more money on the marketing side of our year-round business--the apparel, bags, and pack stuff. We can invest in product development and R&D facilities much like we built Craig's for the board thing--we want to add in to [Craig's](#) the capability to make prototype bags--same day like we do with boards, and take things in that direction. Having those other brands that were not making money--it wasn't like I was all stressed solely about having to make money--but in the longer term it was money that could have been spent in other areas.

### **The philosophy of focusing on what you do well and pouring your energy into that is a serious reality in today's economy.**

Yeah, exactly. We have a board of directors--they're pretty financially oriented and capable people. They're more advisors because we're privately held and can do what we want, but the message from them was that this economy is very much rewarding those who focus on their core business. To hear that repeatedly, I guess it finally sunk in.

### **Take a look back at the Burton timeline:**

### **As far as The Program brands, the release says your transitioning out of them. What does that mean? Are you planning on selling them or are you putting those to bed?**

We'll probably, to use your words, put them to bed. I don't see us selling them. I think we will retain the trademarks should anything ever develop in the future, but it's part and parcel of the philosophy of looking at what we do best. We have looked at opportunities to target those brands towards specific opportunities that might exist in the marketplace at different levels of distribution or price points and it seems like the message we get from people is "we want Burton." So we've got to be responsive to that.

### **Do you see launching a different line under Burton to better target The Program customer?**

For sure. I think that the Burton brand is pretty encompassing, but this is an opportunity for us to expand our core business as we know it and seize on opportunities that exist.

**On to the Gravis front, how much of the market share of Gravis has been in the Asian market? I'm guessing that's why you're shifting it there.**

I don't have those numbers, but it's probably been close to, or more than, half. Even in the early years when Gravis was wildly successful, so much of the business done in North America and Europe was being diverted to Japan. Japan has always had this very genuine affinity towards the brand and I think our people over there were very anxious to give it a shot and felt they could succeed. I think in many ways it will be cool to have the brand rooted where it is virtually adored.

**So it will be headquartered out of the Burton Japan office?**

Yes, for sure.

**With funneling more resources into the Burton brand, do you foresee launching Burton footwear with that product knowledge from Gravis?**

It's not on the table. We really want to focus on our snowboard boots and products.

**On the anon side, it definitely makes sense to roll helmets up with that and move away from RED.**

That's something we've been talking about and it had been in process. It almost felt a little bit awkward lumping it in with this other news about other decisions that were made more recently, but we felt it was logical since this was going to be happening to announce them all together at the same time.

The anon thing is interesting. It's different logic that pushed that decision, but when you look at it in and of itself it's sort of the same philosophy.

**Will the design direction be similar to RED or will it be a big departure?**

I think it's an opportunity for different identity on the helmets in the context of logo-ing, and we're putting more resources into it. There were also a lot of efficiencies right there just with the expenses of running two brands. The efficiencies of making it one brand gives us more money to invest in R&D, design, marketing, team, and so forth.

**What does that mean as far as RED having limited availability going forward?**

We want to support the riders--there are some team riders on RED...

**So they'll stay on?**

Yeah.

**Will product still be available at retail?**

I don't know if we've decided the exact scope, but for sure in our retail. Beyond that, I'm not sure. It probably depends a lot on what the demand is.

**With focusing most of your efforts back on snowboarding, why did you guys decide to leave Channel Islands unaffected?**

Channel Islands is very independent. It's not any kind of a distraction for us and it's something we're very proud of and it's viable in the long term.

**And performing well financially?**

It's not the size of Burton and I wouldn't say it's making money hand over fist, but to a certain extent it's a labor of love. It's such a good thing and I feel a commitment to Al [Merrick] and a commitment to the people there to perpetuate it. It's very independent and doesn't have the end result of taking our eye off the ball in any way.

**What would be the take away message for your retailers? What does this mean for the relationship and for your brand?**

Just like it's tough for myself, I think it will be tough to a lot of retailers who have shown commitments to these brands. I don't want to minimize that. I get it and I understand it and I feel the same way, but I am confident that this is the right move in the long term for us and our retailers. I don't think that there is any conflict of interest there. I think we are very aligned and I think they will see that and see our increased commitment to our core business and I think we will all benefit in the long run. Hopefully they have confidence in our ability to make the right decisions and I think by and large we've done that in the long term. We've been in this business for over 35 years and a lot of our retailers have been in it damn near that long themselves. It's a tough period of time and I don't want to minimize the severity of what's going on, but I think that it is a decision that has been agonized over and debated and very thought out and I think that they need to trust us on that and those that do I think will be rewarded in the long run.

**Anything else you'd like to add?**

I just wish the best for the people affected.

**Follow the jump for this morning's press release and a run down of the affects on Analog, Gravis, anon, RED, Channel Islands, The Program, and Burton...**



Here's the release:

*BURLINGTON, VT (October 23, 2012) Burton Snowboards today announced that its senior management team has elected to alter the structure of Burton owned brands to better position the company, its retail partners and stakeholders for the future. The current family of brands includes Analog, Gravis, RED, anon, Foursquare, Forum, Special Blend and Channel Islands. During a company-wide meeting today at its headquarters in Vermont, Burton Founder and CEO Jake Burton explained the new structure and how it will allow Burton to focus on what it does best: make and support products that set the bar for snowboarding development and further progress the sport and lifestyle.*

*Specifically, Burton announced the following changes to its structure and subsidiaries. Over the next year, Analog will return to its roots of being a pure snowboarding brand based at its original home in Burlington, Vermont. Analog has a deep heritage in snowboarding from the day when Greg Dacyshyn (Burton Chief Creative Officer) and the late Jeffy Anderson (Team Rider) gave birth to the brand in Burlington, and as such, will revert back to being a winter-only brand. Burton's Gravis brand will ultimately move its headquarters to Tokyo, Japan and moving forward will be solely distributed in Asian markets selling lifestyle shoes and bags. Gravis was established in 1998 as the company's first independent lifestyle brand, and since then, Asia has been by far its most successful region. As a result, Gravis will now focus purely on this market and opportunity. Further, in a move that Burton has been planning for several years, the company will also start developing protective headwear under the anon brand name. Burton will continue to offer its RED helmets on a limited basis, but the bulk of helmet and optics product lines will be combined under the anon brand, which has become synonymous with quality riding accessories.*

*Also part of today's restructure, Burton announced it will transition out of its Program brands (Foursquare, Forum and Special Blend), which were purchased in 2004 with the intent to keep snowboard companies in the hands of snowboarders. Burton has supported these brands for eight years and will continue to support them over the next year through warranty service, dealer support, marketing and inventory. The company will exit out of The Program brands in winter 2014, in*

*order to better focus on and invest in Burton.*

*Finally, Channel Islands, which was acquired by Burton in 2006, will be unaffected by this brand realignment and will continue to design, develop and manufacture best-in-class surf hardgoods products in Carpinteria, California.*

*In addressing all of these changes, Jake Burton had this to say: "Burton has experienced several years of income growth since the recession and paid out bonuses to employees over the last two years," said Jake. "That said, the economy has a voice of its own that we all have to listen to, and the message is clear: do what you do best and focus purely on it. In our case, that means to narrow our focus to the sport and lifestyle that got us here - snowboarding. We will continue to support Channel Islands in its endeavor to make the best surfboards in the world and Gravis in its new home in Japan, but when you walk through the front door here in Burlington, Vermont, it will be all snowboarding and snowboarding lifestyle all the time - driven by the Burton, Analog and anon brands.*

*Jake went on to share that one of the key factors that led senior management to these decisions includes the success of Burton's entry into the apparel and bag/pack business on a year-round basis, which has grown significantly in all seasons. The message Burton has taken from the marketplace is that for long-term success, this is the direction that the company should be pursuing, along with its core hardgoods and outerwear business.*

*Increasing the company's focus on Burton has also been demonstrated by recent significant investments in Burton's headquarters and infrastructure. These include the acquisition of the building next door to its Burlington, Vermont headquarters where the company not only built Craig's, a new 10,000-square-foot R&D and prototype facility, but also Area 13, a 6,000-square-foot Burton/anon/Analog wholesale showroom. Craig's (named after the late Craig Kelly) is known as the most advanced and sophisticated snowboard prototype facility in the world where ideas are conceived, built and on-snow in less than 24 hours. Area 13 is Burton's marquee showroom where retailers from all over the world can come to Vermont to see future product lines. Like today's announcement, both of these examples demonstrate the company's commitment to the long-term growth, progression and success of the Burton snowboard brands.*

*In closing, Jake went on to state the following: "I take full responsibility for the decisions that led to the creation (or acquisitions) of these ancillary brands, and I similarly am the individual ultimately responsible for the decision to realign and focus more purely on what made this company from the start. Clearly, the most difficult aspect of this decision and transition is the people affected. The employees and team riders associated with these brands have poured their guts into making it happen. Their level of commitment has been extraordinary, and we will do everything we can to help support them through this transition. There is never a good time for moves like this, and we could have delayed the announcement, but it isn't our style to perpetuate a myth. Clearly this transition will pose challenges along the way, but in the long run, everyone will see the results of our commitment to our core business."*

## **2012 Burton Restructure: Key Facts by Brand**

### **ANALOG**

#### *Heritage*

*Following Burton's outerwear legacy, Analog was created in 1999 as a more progressive, style-conscious outerwear collection led by a handful of top pros at the time, including Trevor Andrew, Jeffy Anderson and Gigi Ruf. Since then, Analog has continued to drive many of snowboarding's outerwear style trends, and in 2003 Analog added a streetwear component to its line, followed by surf apparel, a surf team and an Analog skate platform.*

#### *Key Facts*

- *Burton has made the decision to ultimately transition out of Analog surf and skate apparel by next fall.*
- *Analog surf and skate apparel will be shipped through Spring/Summer '13, and will be marketed and supported.*
- *After the spring season, Burton will continue to design, develop and distribute Analog as a winter-only brand, operating out of Burton's headquarters in Burlington, Vermont, with points of distribution around the world.*
- *The new Analog will only design and distribute Analog outerwear and tech apparel, called "ATF", along with basics.*

#### *Team Update*

*The Analog snow team, made up of Danny Davis, Mikkel Bang and Zak Hale will continue on as Analog riders. Regarding the Analog surf and skate teams, we will be working with each team rider individually on an exit plan to transition them out of the brand.*

### **GRAVIS**

#### *Heritage*

*Gravis was started by Burton in 1998, as the company's first independent lifestyle brand. From the start, Gravis was focused on creating casual footwear, bags and softgoods built on an action sports lifestyle platform. Today the brand is still rooted in footwear, with the addition of a skate shoe collection and team, launched in August, 2008.*

#### *Key Facts*

- *Gravis will ultimately become an Asian-only brand, which will result in the wind down of the brand in North America, Southern Hemisphere and Europe.*
- *With this decision, Gravis' headquarters will be re-located to Tokyo and run out of Japan, in order to best serve the Asian market where Gravis is the most established and where it has its most viable business.*
- *Gravis product will be shipped through Spring/Summer '13 in all regions. Gravis will become an Asian-only brand in the fall of 2013.*

### *Team Update*

*With this move to be a primarily lifestyle brand, the Gravis team will be restructured to accommodate the lifestyle market in Asia.*

### **RED & ANON**

#### *Heritage*

*RED was started by Burton in 1996 as its first protection brand. Since then, RED has designed, developed and manufactured helmets and protective wear for pros and consumers alike. Anon was established as Burton's eyewear brand in 2001 and focuses on goggles.*

#### *Key Facts*

- *Burton will be developing and manufacturing protective headwear (helmets) under the anon name. Anon has become synonymous with quality riding accessories, and it is a natural extension to add helmets to its mix.*
- *RED helmets will continue to be sold on a limited basis. Anon helmets will be launched for Winter 2014 for all channels.*

### *Team Update*

*We will be working with each RED and anon team rider on an individual basis regarding this announcement.*

### **THE PROGRAM (Foursquare, Forum, Special Blend)**

#### *Heritage*

*Burton purchased The Program brands in 2004 from Four Star Distribution. At that time, Burton felt an obligation (and an opportunity) to slow the trend of ski companies buying up snowboard brands. Consequently, when these companies went up for sale, Burton purchased them and they became 'The Program' brands for Burton.*

#### *Key Facts*

- *The intent from the beginning was to keep snowboard companies in the hands of snowboarders and keep these brands thriving. As the world's leading snowboard company, Burton felt there would never be a better home for these three brands.*
- *But even under Burton's wing, after 8 years, the businesses have failed to be viable. Consequently, Burton has realized it's time to exit out of them, in order to better focus and invest in the Burton brand.*
- *Therefore, Burton will be transitioning out of Foursquare, Forum and Special Blend globally after this season.*
- *Current winter 2013 product will be supported over the next year, via warranty, dealer, marketing and inventory support.*

### *Team Update*



*We will be working with each team rider on an individual exit plan to transition them out of these brands.*

## **CHANNEL ISLANDS**

### *Heritage*

*Burton acquired Channel Islands Surfboards in June, 2006 after the founders of each company, Al Merrick and Jake Burton, forged an agreement over the fact they shared a similar mindset and passion for their respective sports. With their shared vision for putting the sports in the hands of the team athletes and shared philosophies on hardgoods product development, it was a very natural partnership.*

### *Key Facts*

- *Channel Islands is not affected by the announcements today. Burton will continue to support the CI operation in Carpinteria, California, as usual.*
- *Burton is very happy with and committed to our relationship with Channel Islands.*

### *Team Update*

*There will be no team riders affected, as there are no changes to the Channel Islands operating or marketing structure.*

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing document with applicable exhibits has been served on CATHLEEN E STADECKER, counsel for Respondent, by forwarding said copy on September 30, 2020, via email to: [tmip@drm.com](mailto:tmip@drm.com).

Signature: /Joshua S. Schoonover/

Date: September 30, 2020