

1 IN THE COURT OF COMMON PLEAS
2 FRANKLIN COUNTY, OHIO
3 CIVIL DIVISION

3 - - -
4 Royal Tiger Publishing)
5 Ltd., dba C The Columbus)
6 Magazine,)
7 Plaintiff,)
8) Case No. 06CVH-14976
9 vs.)
10 206 Publishing LLC dba,)
11 C-BUS Magazine,)
12 Defendant.)

11 - - -
12 TRANSCRIPT OF PROCEEDINGS
13 BEFORE MAGISTRATE MICHAEL McPHILLIPS
14 HELD ON MONDAY, DECEMBER 1, 2006

15 - - -

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

2 - - -

3 Monday, December 4, 2006

4 Morning Session

5 - - -

6 THE MAGISTRATE: Good morning. We're
7 here in the case of Royal Tiger Publishing
8 Limited, dba C The Columbus Magazine versus 2006
9 Publishing LLC, dba C-BUS Magazine,
10 06-CVH11-14976.

11 My name is Michael McPhillips. I'm a
12 Magistrate of the Court for Judge Sheward, and
13 Judge Reece, acting as Duty Judge, referred this
14 matter to me, though the case is assigned to
15 Judge Sheward and will be on Judge Sheward's
16 docket from here on out.

17 Now, I don't have the exact date of the
18 order of reference, but there's a matter that I
19 went over with counsel just beforehand regarding
20 the order of reference, and I wanted to clarify
21 that in just a moment, but first I'll ask counsel
22 to enter their appearances for the record,
23 starting with counsel for the plaintiff.

24 MR. RICHARDSON: Matt Richardson, Vorys,

25 Sater, Seymour and Pease, your Honor.

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1 MS. SMITH: Elizabeth Hanning Smith,

2 Vorys, Sater, Seymour and Pease.

3 THE MAGISTRATE: Thank you.

4 MR. WILLISON: Eric Willison for the

5 defendant, your Honor.

6 THE MAGISTRATE: Okay. Thank you all.

7 The order of reference, as I mentioned,

8 Judge Reece signed for Judge Sheward, it included

9 a date for the hearing on the motion for the

10 preliminary injunction of this morning at 9:00

11 but has not yet been filed, and under Civil Rule

12 53, Magistrates such as myself can only act and

13 have jurisdiction by way of an order of

14 reference. I wanted to get counsel to clarify on

15 the record, or object if they have any objection,

16 as to my hearing this case this morning with the

17 understanding that the order of reference will be

18 filed today, or sometime shortly.

19 Mr. Richardson, do you have any

20 objection to my hearing the case today?

21 MR. RICHARDSON: I have no objections,

22 your Honor.

23 THE MAGISTRATE: And Mr. Willison?

24 MR. WILLISON: Defendant has no

25 objection, your Honor.

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1 THE MAGISTRATE: Thank you both.

2 It appears there was a motion for a

3 combined temporary restraining order and

4 preliminary injunction filed on November 16,

5 2006. The decision I have doesn't have a time

6 stamp on it, but it does have the date written in

7 of the 20th of November, 2006, where Judge Reece,

8 again, for Judge Sheward, issued a decision and
9 entry denying the motion of Royal Tiger for a
10 temporary restraining order. Title of the
11 document says denying preliminary injunction as
12 well, although that's obviously a matter that's
13 been referred over to me to hear today.

14 Also in the record I have a verified
15 complaint for injunctive relief filed by the
16 plaintiff on November 14th, 2006. A motion of
17 Royal Tiger for expedited discovery which was
18 filed on November 20th, 2006, and granted, it
19 appears, on that same date.

20 Several entry documents I received this
21 morning include defendant's preliminary
22 injunction hearing trial brief and plaintiff
23 Royal Tiger's bench memorandum of law regarding a
24 hearsay issue that might arise. We talked off
25 the record before and it's my understanding there

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1 was also an agreed protective order entered by
2 the parties.

3 Other than the protective order document
4 which I don't have and the other documents I just
5 ran through, does plaintiff's counsel want to
6 bring to the Court's attention any other
7 documents that I'll need to have before hearing
8 this case today?

9 MR. RICHARDSON: No, your Honor. There
10 aren't any.

11 THE MAGISTRATE: And Mr. Willison?

12 MR. WILLISON: Nothing, your Honor.

13 THE MAGISTRATE: Okay. Well, the burden
14 regarding the motion will be on the plaintiffs,
15 so plaintiff will present their case first.
16 Typically, with a bench trial, I'll have
17 defendant's counsel present their case in chief,
18 next and give plaintiff the opportunity of
19 rebuttal testimony on the motion just as they
20 would with a reply brief if the motion were to be

21 decided in writing without a hearing. So I'll
22 give the parties the opportunity if they wish now
23 to make opening statements. If you would like to
24 waive opening statements, we can proceed to the
25 evidence.

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1 MR. RICHARDSON: I have an opening
2 statement prepared that's fairly brief, if it
3 would please the Court.

4 THE MAGISTRATE: Yes, you may.

5 MR. RICHARDSON: May I approach the
6 lectern, your Honor?

7 THE MAGISTRATE: Yes, you may.

8 MR. RICHARDSON: Good morning, your
9 Honor. May it please the Court. This is an
10 action -- my name is Matt Richardson, and I
11 represent the plaintiff, Royal Tiger Publishing
12 Limited, and Royal Tiger Publishing Limited has
13 filed suit against 206 Publishing for claims of
14 trademark infringement and unfair competition
15 under state and federal law, as well as a claim
16 under state law for deceptive trade practices.

17 The plaintiff requests preliminary
18 relief, preliminary injunction and permanent
19 injunction.

20 My client, Royal Tiger, publishes C The
21 Columbus Magazine. The defendant, 206
22 Publishing, publishes C-BUS Magazine, and if it
23 will please the Court, your Honor, I have two
24 exhibits, if there are no objections, these
25 are -- I'm showing these to opposing counsel.

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1 These are exhibits of -- examples of both C The
2 Columbus Magazine and C-BUS Magazine.

3 THE MAGISTRATE: Were these the same
4 exhibits that were attached to the motion?

5 MR. RICHARDSON: I have the first and
6 last issue of C The Columbus Magazine all of the
7 issues of C-BUS Magazine to provide a fuller view
8 of the two parties' magazines.

9 THE MAGISTRATE: Okay. I'll wait to
10 review them until they come up, if they come up
11 during evidence.

12 MR. RICHARDSON: Thank you, your Honor.

13 Your Honor, the evidence will show that
14 my client has invested heavily over a span of
15 years in creating a brand that makes prominent
16 use of the letter C in representation to its arts
17 and entertainment magazine, a magazine directed
18 to young professional Columbus readers.

19 My client has invested in numerous ways
20 in creating what I will call the "C marks", by
21 publishing a magazine that makes prominent use of
22 the letter C; by establishing a web presence
23 through various web addresses, such as
24 cemmag.com, cbusmag.com, cbusonline.com and
25 incbus.com.

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1 Additionally, my client has promoted
2 numerous social networking events entitled "Red
3 Box Events" which refer to my client's trademark
4 letter C in a red box.

5 By contrast, the evidence will also
6 show that the defendant has begun a competing
7 magazine in January of this year, addressing
8 substantially the same readers in the same
9 geographic location, with the same content
10 marketed through the same channels, and most
11 importantly, with a confusingly similar name,
12 C-BUS.

13 The evidence will show that defendant
14 intended to infringe my client's C marks by
15 blurring the boundaries between the C marks and
16 defendant's name for its arts and entertainment
17 magazine, C-BUS Magazine.

18 The evidence will show that defendant
19 took particular interest in my client's magazine
20 not to distinguish it from my client's magazine,
21 but for material that could be used in the
22 defendant's magazine, including design and
23 layout, feature content, and a name that also
24 made prominent use of the letter C.

25 Evidence will also show that my client

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1 notified defendant of the infringement at the
2 earliest opportunity when my client first learned
3 of it in January of 2006. And when defendant
4 first published its magazine in January of 2006.
5 However, defendant continues on, and confusion
6 between the two magazines mounted.

7 The evidence will also show that my
8 client thoughtfully assessed the impact of
9 defendant's infringement over a span of several
10 months before deciding to litigate this matter.
11 My client's decision, however, became simple when
12 after the confusion had increased over the
13 months, he sent a final cease and desist letter
14 to Derek Grosso, publisher of C-BUS Magazine,
15 which was ignored.

16 Additionally, the evidence will show
17 that defendant managed to publish at the time my
18 client instituted this action.

19 Individuals are constantly confusing
20 these two magazines in numerous ways. The result
21 is that the hard-earned goodwill my client has
22 developed over the years in relation to its C
23 marks has been diverted to the defendant, who is
24 not entitled to that goodwill. The defendant is
25 taking a shortcut to success.

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1 My client brought suit harming him. The
2 evidence will show this through the affidavits
3 attached to the defendant's motion for
4 preliminary injunction, testimony supporting
5 affidavits from plaintiff's officers and
6 employees, from defendant's own document
7 production, and from defendant's officers
8 testimony.

9 I plan to call Roopan Dey, CEO of Royal
10 Tiger Publishing Limited. Mr. Dey will testify
11 to confusion among advertisers and others in the
12 marketplace. Whether through a failure to
13 distinguish the magazines or a failure at various
14 social networking events that the parties sponsor
15 to distinguish the magazines. Mr. Dey will also
16 tell the story of C The Columbus Magazine, how it
17 began, how he invested heavily in building a
18 brand.

19 Next, Jason Ohlson, Executive Editor of
20 C The Columbus Magazine, will testify to ways in
21 which the defendant has created confusingly
22 similar content and layouts in his its magazine
23 in comparison to my client's magazine.

24 Mr. Ohlson will also testify to
25 instances of confusion he has noticed. One which

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1 involves a national media figure who went through
2 an entire photo shoot for my client's magazine
3 thinking all along it was for C-BUS Magazine.
4 Additionally, an advertiser phoned Mr. Ohlson
5 asking whether C-BUS Magazine was affiliated with
6 my client's magazine, an advertiser who
7 advertised in my client's magazine.

8 Finally, Shawn Ruble, Advertising
9 Director of C The Columbus Magazine, will testify
10 that even advertisers are confused about these
11 two magazines. The confusion exists when the
12 names are pronounced orally and among other
13 advertisers.

14 And there's evidence even subsequent to
15 the filing of this action in which other have
16 confused the two magazines. Jason Ohlson will
17 testify to a particular instance of this
18 subsequent confusion, and the plaintiff will also
19 submit another affidavit from an individual who
20 was also confused by the two magazines who had
21 been familiar with my client's magazine prior to
22 the confusion.

23 This confusion has harmed and is harming
24 my client's business, and my client merely wishes
25 to stop the harm by asking this Court to enjoin

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1 the defendant's use of the word C-BUS in relation
2 to the defendant's magazine and website. Nothing
3 more.

4 Thank you.

5 THE MAGISTRATE: Thank you very much.

6 Mr. Willison, opening statement?

7 MR. WILLISON: Your Honor, the key
8 aspect to this lawsuit is that the plaintiff is
9 trying to assert trademark protection for a
10 letter of the alphabet, that letter being C.
11 Now, case after case has ruled that you can't
12 trademark a letter. You can trademark a stylized
13 version of a letter, such as the Enron "E", it's
14 got sort of a rainbow thing, it's coming out of a
15 box, it's very recognizable. But Enron can't
16 just trademark "E" and keep every other energy
17 trader from starting their company with the
18 letter E.

19 So the question is not whether 206
20 Publishing is using the letter C in the title of
21 its magazine. The question is: Are they using
22 the stylized C that Royal Tiger has come up with.
23 That stylized C, the evidence will show, always
24 occurs in a red rectangle and it's a white C.

25 206 Publishing has never put its C on

1 any sort of a colored background. It doesn't put
2 it in the upper left-hand corner of the magazine.
3 The title of C-BUS is centered in the middle of
4 the magazine. Now, naturally, the C is closer to
5 the left-hand side, but you have to -- it's a
6 four letter word and you got to center it, but
7 it's not all the way over to the left.

8 Further, the evidence is gonna show that
9 the plaintiff never used the term "C-BUS" in its
10 commercial activities. It has tried to register
11 the domain names using C-B-U-S as part of the
12 domain names, but if you go to the Internet, the
13 evidence will show that by typing in the Internet
14 addresses that Mr. Richardson referred to, you
15 get mostly 200 parked pages where you come to a
16 place where all it is is a bunch of Google ads.
17 The last one he referred to that they are using
18 it just refers you directly to their home page.
19 That's not use as it's defined under trademark
20 law.

21 The evidence and likelihood of confusion
22 that's going to be presented here today is almost
23 all hearsay evidence, your Honor. Now, there are
24 cases going both ways on this issue of hearsay,
25 and of course we'll get into that later, but the

1 primary problem with the hearsay evidence here is
2 that when you're talking about confusion, it's
3 important to know why these people were confused.

4 For instance, if somebody said, "C The
5 Columbus Magazine," or in the same breath said
6 "C-BUS" and a loud car went by and you couldn't
7 hear what they said, you might say, "Which one?
8 C-BUS?" But we don't have that declarant in here
9 to testify as to why the person was confused.
10 That's the inherent weakness of that hearsay

11 evidence.

12 Further, this hearsay evidence is all
13 going to be related through witnesses who either
14 work for C The Magazine (sic), or are very, very
15 closely affiliated with C The Magazine (sic).
16 And that's an important consideration for this
17 Court to take in weighing this evidence.

18 Lastly, your Honor, even if you were to
19 find that there's sufficient confusion to rise to
20 the high level to grant them this preliminary
21 injunction that they seek, the trouble is that
22 they have been aware of C-BUS and this magazine,
23 the evidence will show, since very late in the
24 year of 2005 and were sending letters about it in
25 January of 2006. The last letter they sent was

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1 around January 17th of 2006, maybe a little bit
2 after that.

3 But once that ended, the whole year
4 almost went by, month after month after month,
5 nine months went by wherein 206 Publishing put
6 out two issues of its magazine, has almost
7 completed a third one for its publication.

8 So if there's this danger of irreparable
9 harm, why are these people sitting around for
10 nine months navel-gazing when they should have
11 been jumping right into litigation and trying to
12 stop this irreparable harm that they are
13 claiming? It doesn't make sense. Children were
14 conceived and born during the time they waited.
15 That doesn't auger towards the kind of harm that
16 they are describing.

17 Thank you, your Honor.

18 THE MAGISTRATE: Thank you,
19 Mr. Willison.

20 Plaintiffs may call their first witness.

21 MR. RICHARDSON: Thank you, your Honor.
22 Your Honor, I have a bench memorandum, actually,
23 of law on the question of laches that the that

24 opposing counsel just raised, if I may submit it
25 to the Court.

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1 THE MAGISTRATE: Certainly. If you
2 would bring that forward, please.

3 MR. WILLISON: Thank you.

4 We would also make a motion to separate
5 witnesses, your Honor, if they are going to
6 testify.

7 THE MAGISTRATE: Any objection?

8 MR. RICHARDSON: To separate witnesses?

9 THE MAGISTRATE: Yes.

10 MR. RICHARDSON: No.

11 THE MAGISTRATE: I'll allow each party
12 to have one representative at the table with
13 them.

14 MR. RICHARDSON: Yes, your Honor.
15 That's fine.

16 THE MAGISTRATE: I'll order the
17 separation of witnesses. If there is a
18 representative of Royal Tiger you want at the
19 table, just as 206 does, you can do that. But
20 everyone else who will potentially testify in the
21 hearing I'll just ask them to leave now.

22 MR. RICHARDSON: That's fine, your
23 Honor.

24 Your Honor, I plan to call Roopan Dey.

25 THE MAGISTRATE: Is this Mr. Dey?

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1 MR. RICHARDSON: Yes.

2 THE MAGISTRATE: Okay. Sir, please make
3 your way to the witness stand. Before you have a
4 seat, I'll ask that you raise your right hand.

5 (Witness placed under oath.)

6 THE MAGISTRATE: Thank you. Have a

7 seat, and please pull the microphone up to you
8 where you can be heard by everyone.

9 THE WITNESS: Sure.

10 THE MAGISTRATE: You may need to adjust
11 your chair.

12 THE WITNESS: Okay. Thank you.

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1 ROOPANJAN DEY
2 of lawful age, being first duly placed under
3 oath, as prescribed by law, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. RICHARDSON:

7 Q. Mr. Dey, will you state your name?

8 A. Sure. Roopan Dey.

9 Q. And would you spell that, please?

10 A. Sure. It's R-o-o-p-a-n-j-a-n, D-e-y.

11 Q. Mr. Dey, what is your current
12 employment?

13 A. CEO of Royal Tiger Publishing,
14 founder/partner of ponddata --
15 p-o-n-d-d-a-t-e-r -- .com. Founder/partner of
16 glance.tv, g-l-a-n-c-e.t-v, and also CEO of
17 Adhaus, A-d-h-a-u-s, Advertising.

18 Q. Before I ask you about Royal Tiger,
19 Mr. Dey, I'd like to ask you about some of these

20 other businesses briefly.

21 A. Sure.

22 Q. Tell me about Adhaus.

23 A. Sure. Adhaus is the advertising company
24 in Columbus, Ohio that -- we specialize in small
25 to medium-sized businesses for the purposes of

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1 print brokering, design, logo, marketing,
2 branding. We've worked with companies such as
3 Cameron Mitchell's Restaurants, Burgundy Room,
4 G Michael's, and, you know, various other
5 companies in Columbus, Ohio.

6 Q. Tell me a little bit about
7 ponddater.com.

8 A. Sure. Ponddater is an Internet dating
9 site based on MP3 players, which we've received
10 quite a bit of press on internationally. We've
11 been in the Wall Street Journal, New York Times,
12 a lot of television appearances, CNBC, "The Big
13 Idea" with Donny Deutsch, and ABC Worldwide News,
14 just to name a few. I think we have about
15 140,000 media mentions around the world.

16 Q. You mentioned that ponddater.com was an
17 MP3 dating service; is that correct?

18 A. That's correct.

19 MR. WILLISON: Your Honor, I'm going to
20 object. I'm not sure what the relevance of
21 ponddater.com is to this litigation.

22 THE MAGISTRATE: I'll allow it for
23 background.

24 MR. RICHARDSON: Go ahead.

25 THE WITNESS: I'm sorry, can you repeat

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1 the question?

2 BY MR. RICHARDSON:

3 Q. I'm just looking for an explanation of

4 what a MP3 dating --

5 A. It's a system we developed where a user
6 can upload their profile or preferences for
7 somebody they would like to date. And then
8 download them to their MP3 player to later review
9 their matches wherever they are, whether they are
10 in a restaurant, the subway, on an airplane, and
11 then when they get to their destination they can
12 meet those dates if they like.

13 Q. Tell me about glance.tv.

14 A. Sure. Glance.tv is a mobile video
15 website where users generate content from their
16 cellphones and it gets immediately posted on the
17 website to share with friends.

18 Q. Thank you.

19 About Royal Tiger, what does Royal Tiger
20 do?

21 A. Royal Tiger Publishing Limited is a
22 publishing company, we publish C The Columbus
23 Magazine. It's an arts/entertainment/lifestyle
24 publication for Columbus, Ohio focusing on young
25 professionals.

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1 Q. And before I ask you about C The
2 Columbus Magazine, just some brief personal
3 background. Where were you born?

4 A. I was born in Long Island, New York.

5 Q. And did you -- were you raised in New
6 York?

7 A. Briefly. But I came to Columbus, Ohio,
8 I actually grew up here from third grade on.
9 Went to college here at Ohio State University.
10 Went to high school, Thomas Worthington High
11 School, and to the Wellington school as well.
12 Then I went to Ohio State University and CCAD.

13 Q. What does CCAD stand for?

14 A. Columbus College of Art and Design.

15 Q. What did you study in college?

16 A. Design, I studied design, photography.

17 Those were my main concentrations.

18 Q. Did you finish your degree?

19 A. No, I did not. At the same time, I
20 created a print brokering business and a booking
21 agent, agency for national acts and local acts,
22 and that business took off. So by my last year,
23 it was a little hard for me to finish school, but
24 my businesses were taking off.

25 Q. And by national acts, you are talking

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1 about entertainment acts?

2 A. Correct. We've worked with Grammy award
3 winners. We were one of the first ones to do a
4 huge concert at The Ohio State University at the
5 south oval with Wyclef Jean, W-y-c-l-e-f, and the
6 last name Jean, J-e-a-n. He's a Grammy
7 award-winning artist.

8 Q. Thank you, Mr. Dey.

9 I want to ask you some questions about
10 C The Columbus Magazine. How did C The Columbus
11 Magazine get started?

12 A. Sure. As I mentioned, I had been
13 working with a lot of national acts, and I
14 also -- I had my print brokering business, and so
15 I decided to put both those together in a
16 magazine for Columbus, Ohio that targets young
17 professionals.

18 Furthermore, I looked at Cleveland and
19 Cincinnati and how close they are in proximity
20 and how similar they are in demographics, so we
21 developed a magazine for Cleveland, Columbus and
22 Cincinnati, and then developed C The Columbus
23 Magazine --

24 Q. And --

25 A. -- which is a part of the original

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1 C Entertainment Magazine.

2 Q. And when did you start

3 C Entertainment Magazine?

4 A. The first issue came out in summer of
5 2002. I registered the name in 2001, to my
6 recollection.

7 MR. RICHARDSON: I'm showing opposing
8 counsel an exhibit that's been marked Plaintiff's
9 Exhibit 3. May I approach the witness, your
10 Honor?

11 THE MAGISTRATE: Yes, you may.

12 BY MR. RICHARDSON:

13 Q. Please take a look at Plaintiff's
14 Exhibit 3.

15 A. This is our first issue and our last
16 issue of C Entertainment Magazine.

17 Q. Thank you.

18 THE MAGISTRATE: Mr. Dey, when you say
19 the last issue, are you still in publication?
20 It's not planned to be the last issue?

21 THE WITNESS: Oh, no, no, no. It's the
22 last issue under the title
23 C Entertainment Magazine, Columbus, Cincinnati,
24 Cleveland.

25 THE MAGISTRATE: Okay.

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1 MR. RICHARDSON: I planned to explore
2 that on direct, your Honor.

3 THE WITNESS: Then we moved into
4 C The Columbus Magazine.

5 THE MAGISTRATE: I see. Okay. Thank
6 you.

7 MR. RICHARDSON: If it may please the
8 Court, I could show the Court the two magazines
9 as well.

10 THE MAGISTRATE: Yes, please.

11 BY MR. RICHARDSON:

12 Q. Mr. Dey, why did you choose the letter

13 "C"?

14 A. I chose the letter C for a few reasons.

15 One, for a branding identity. "C" is a common

16 letter between Cleveland, Columbus and

17 Cincinnati, so that was helpful. It also -- I

18 mean, I believe very strongly it brands

19 everything I do with my other companies or any

20 company I've ever had. I believe the brand is

21 the strongest thing that you need to project,

22 whether it's your reader, listeners, users,

23 that's the reason why we picked that C.

24 Q. And what did you do to promote this

25 brand?

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1 A. We've done concerts, charity events,

2 printed T-shirts, postcards, you know, worked

3 with charities such as Childhood League, Junior

4 League. We've given I think about \$50,000 worth

5 of advertising to Corporate Angel Network which

6 flies children on private jets, cancer patients,

7 just to name a few.

8 Q. Did you seek registration of any

9 trademark with any government?

10 A. Yes, I did. C Entertainment Magazine,

11 from what I recall, was registered in 2001 with

12 the State of Ohio.

13 MR. RICHARDSON: I'm showing defense

14 counsel a document that's been identified as

15 Plaintiff's Exhibit 4. May I approach witness,

16 your Honor?

17 THE MAGISTRATE: Yes, you may.

18 BY MR. RICHARDSON:

19 Q. Mr. Dey, do you recognize Plaintiff's

20 Exhibit 4?

21 A. Yes, I do.

22 Q. What is that?

23 A. That is my filing with the State of Ohio

24 for C Entertainment Magazine, Columbus, Cleveland

25 and Cincinnati.

1 Q. Is that a filing with the Secretary,
2 State of Ohio?

3 A. Yes, it is.

4 MR. RICHARDSON: Your Honor, at this
5 point I move that this be admitted into evidence
6 as a public record.

7 THE MAGISTRATE: Hearing no objection,
8 we'll handle the admission of all exhibits at the
9 end of plaintiff's case in chief.

10 MR. RICHARDSON: Thank you, your Honor.

11 THE MAGISTRATE: One other point, you
12 have free reign to approach the witness to give
13 him exhibits, unless there's some objection from
14 defendants, since there's no jury to be confused.

15 MR. RICHARDSON: Thank you, your Honor.

16 BY MR. RICHARDSON:

17 Q. Did you have a web presence for this
18 magazine?

19 A. Yes, I did.

20 Q. Please describe it.

21 A. C Entertainment had a website, you know,
22 basically outlining the sections of the magazine,
23 what we do, what we are, upcoming events of the
24 publication. How to contact us, media kit,
25 k-i-t. It's a book with all our information.

1 Q. Would you explain "media kit"?

2 A. Sure. Media kits, in, you know, for
3 magazines in particular, outline what the
4 magazine is, who the magazine reaches. Typically
5 they have a rate card in there as well, let
6 advertisers know what the costs are. But more
7 importantly, it holds demographic information
8 which is done by a third party, usually at
9 accredited stores so the advertisers knows

10 exactly who's getting the magazine. And it's not
11 based on -- you know, I could sell you anything
12 by selling you anything. So this is actually a
13 third party that's accredited and lets the people
14 know what those demographics are.

15 Q. Thank you.

16 Are you still publishing
17 C Entertainment Magazine?

18 A. Yes and no. C Entertainment Magazine,
19 for Cleveland, Columbus, Cincinnati is not being
20 published as it originally was done. It is being
21 published as C The Columbus Magazine. We found
22 that we had to break up the three cities, so we
23 decided to do one for Columbus, one for
24 Cincinnati and one for Cleveland. Originally all
25 three cities were in one magazine, but the

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1 template is virtually exactly the same. Lot of
2 the sections are the same exact names, as well.

3 Q. Do you recall when you published your
4 final issue of C Entertainment Magazine?

5 A. From my recollection, I think that was
6 summer of -- I'm sorry, winter of 2004 or 2003.

7 Q. Okay. Did you immediately start
8 publishing C The Columbus Magazine after you
9 stopped publishing C Entertainment Magazine?

10 A. No, but soon after. I think it was
11 about six months or so for retooling and getting
12 the concept for the magazine and how we were
13 going to market C The Columbus Magazine just for
14 Columbus. And also there was a decision which do
15 we start in first, Columbus, Cleveland or
16 Cincinnati.

17 Q. Uh-huh. Did you make the same efforts
18 to achieve a brand identity for C The Columbus
19 Magazine as you did for C Entertainment Magazine?

20 A. Yes, I did. Charity events,
21 affiliations, you know, printing marketing
22 material, radio advertising, billboards.

23 Q. Did you register the name, "C The
24 Columbus Magazine" --
25 A. Yes, I did.

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1 Q. -- with the government?
2 A. As a URL and also with the State of
3 Ohio. We've also done the Federal U.S. PTO
4 application for it as well.
5 Q. Uh-huh. You mentioned URLs. Does C The
6 Columbus Magazine have a web presence?
7 A. Yes, it does.
8 Q. Could you describe that presence?
9 A. Sure. The magazine has, you know, our
10 upcoming events, what is going on in the city.
11 Little brief description about the publication.
12 How to contact us.
13 Q. Is C The Columbus Magazine a different
14 magazine from C Entertainment Magazine?
15 A. Only in the fact that it's just for
16 Columbus. It doesn't have Cleveland or
17 Cincinnati in the same exact issue.
18 Q. I understand.
19 Why did you file suit against the
20 defendant?
21 A. Well, you know, we spent about five
22 years, significant amount of money developing
23 this brand, and I noticed that people are getting
24 confused in the marketplace. In particular,
25 pretty prominent people that we work with and

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1 organizations that I'm a part of and, you know,
2 the -- that C-BUS is a part of as well. One of
3 which was Janet Jackson, President of the United
4 Way.
5 MR. WILLISON: Your Honor, I'm going to

6 object on hearsay grounds. How do you want me to
7 handle -- I know this is going to come up
8 throughout the hearing. Do you want me to make a
9 continuing objection to the hearsay or object to
10 each one?

11 THE MAGISTRATE: Yes, I'd like you to
12 make a specific objection to hearsay of testimony
13 that you feel is objectionable. What I'm gonna
14 do is, unless I think it's clearly objectionable
15 and not admissible, I'll allow plaintiff's
16 counsel to proffer the evidence that the hearsay
17 objection is raised about, and withhold --
18 reserve decision on a ruling of the admissibility
19 of it or not, pointing out that my decision can
20 be objected to, and I want a little more time
21 after the evidence is done being taken to go
22 through what I'm allowed to admit and what I'm
23 not, and you know, make my Magistrate's Decision
24 based upon what my legal research shows me.

25 So does that make sense to counsel, that

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1 I'll allow the plaintiff to question the witness
2 about this particular statement, apparently from
3 Janet Jackson?

4 I would like to know from the defense
5 counsel what you do find objectionable, and
6 please raise the objection when it comes up. But
7 in this case, at least, I'm going reserve
8 decision on the admissibility of it or not, but I
9 am going to allow the witness to put into the
10 record what the statements were from the third
11 party.

12 MR. WILLISON: Just so I'm clear, do you
13 want me to make a specific objection each time
14 another person comes up? I can do that. Okay?

15 THE MAGISTRATE: Yes. And no need to
16 make a speaking objection, if you just want to
17 say, "Objection. Hearsay."

18 MR. WILLISON: Sure.

19 THE MAGISTRATE: We'll continue on.
20 MR. RICHARDSON: Thank you, your Honor.
21 BY MR. RICHARDSON:
22 Q. You were talking about Janet Jackson.
23 A. Yes. I was speaking with Janet Jackson,
24 President of United Way, and she had held up
25 C-BUS Magazine and C The Columbus Magazine. We

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1 were at Abbracci Restaurant, that's in downtown
2 Columbus, and she was looking at both magazines.
3 And, you know, I had to explain to her, "Well,
4 C The Columbus Magazine has been here for about
5 five years now," and, you know, basically what we
6 do, and she didn't understand. You know, was
7 this C-BUS? Was it a back issue? Was this a new
8 issue of our magazine?

9 I explained to her, "No, this is a
10 completely separate magazine that just came out."
11 This was in February of '06. That's actually
12 right -- from what I remember when their magazine
13 first came out.

14 Q. Was anyone else present?

15 A. Ryan Stopper. He's the owner of the
16 restaurant.

17 Then we had another instance -- should I
18 continue?

19 MR. WILLISON: I'm going to object also
20 to Mr. Stopper as well.

21 THE MAGISTRATE: Okay.

22 MR. RICHARDSON: The witness hasn't
23 offered any of evidence that could be described
24 as hearsay at this point.

25 THE MAGISTRATE: I'm sorry?

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1 MR. RICHARDSON: The witness hasn't
2 testified to any evidence that could be described

3 as hearsay, your Honor.

4 THE MAGISTRATE: So noted.

5 Actually, before we get to the legal
6 issue, the gentleman you are talking about, his
7 last name is spelled --

8 THE WITNESS: S-t-o-p-p-e-r.

9 THE MAGISTRATE: And the first name
10 is --

11 THE WITNESS: Ryan, R-y-a-n. I'm pretty
12 sure that's the last name.

13 Also, I had --

14 THE MAGISTRATE: Before you go on, there
15 had been no statement from Mr. Stopper referred
16 to yet, so overruled, as far as any hearsay
17 objection at this point.

18 MR. WILLISON: My only issue there was
19 he asked the question, implied there was
20 confusion on the part of Mr. Stopper. He said,
21 "Was anyone else confused." He said,
22 "Mr. Stopper."

23 MR. RICHARDSON: I asked was anyone
24 present. I simply wanted the events and
25 circumstances about what he was testifying about.

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1 MR. WILLISON: I didn't hear that part.

2 THE MAGISTRATE: I'll allow it for
3 setting forth presence.

4 BY MR. RICHARDSON:

5 Q. When did you first become aware of
6 C-BUS Magazine?

7 A. Can I finish?

8 Q. Please do.

9 A. I also ran into David Barker, who's the
10 Vice President of Experience Columbus, and from
11 what I understand, both C The Columbus Magazine
12 and C-BUS Magazine are members of this
13 organization. I've known Mr. Barker for quite a
14 few years now, and I met him at -- ran into him
15 actually at Due Amici.

16 MR. WILLISON: I'm objecting to
17 Mr. Barker, as well.
18 THE MAGISTRATE: Objection noted.
19 Go ahead.
20 THE WITNESS: Thank you, your Honor.
21 "I'm looking forward to the event that
22 we are doing with you," referring to Experience
23 Columbus and C The Columbus Magazine.
24 To which I replied, "We're not doing any
25 event with you at this time."

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1 However, the event that he was referring
2 to was the one with C-BUS Magazine and Experience
3 Columbus.
4 Most recently, I ran into one of their
5 advertisers, his name is Yuseeh Sadiq, he owns a
6 jewelry store, S-a-d-i-q, and he had mentioned --
7 MR. WILLISON: I'm going to object to
8 Mr. Sadiq's testimony, too, your Honor.
9 THE MAGISTRATE: So noted.
10 THE WITNESS: -- about six weeks ago,
11 you know, "What is the difference between these
12 magazines?"
13 And I explained to him, "Well, you know,
14 we're and audited magazine by a third party.
15 We've been around for five years," and basically
16 what we do as far as, you know, reaching young
17 professionals through our arts and entertainment
18 lifestyle publication.
19 And you know, he was -- that confusion
20 of, you know, what the benefits are of
21 advertising two magazines that are similar, that
22 are very similar, was something I had to go
23 through with him.
24 THE MAGISTRATE: Again, Mr. Sadiq, you
25 think it's S- --

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1 THE WITNESS: S-a-d-i-q, I'm pretty
2 sure.

3 THE MAGISTRATE: And the first name?

4 THE WITNESS: Yuseeh, I think it's
5 Y-u-s-e-e-h, but I'm not 100 percent sure.

6 THE MAGISTRATE: Thank you.

7 BY MR. RICHARDSON:

8 Q. Let's back up just a little bit,
9 Mr. Dey. When did you first become aware of
10 C-BUS Magazine?

11 A. I learned of C-BUS Magazine from my
12 recollection in January of 2006. Of this year.

13 Q. And what was your response, if any?

14 A. My first response was, when I learned
15 the name, I was wondering how that was possible
16 since we have quite a few URLs registered CBUS.
17 For example, CBUSmag, CBUSonline, inCBUS.

18 And also, you know, I decided to call
19 Mr. Grosso, congratulate him on starting a new
20 magazine. I know how exciting and hard it is to
21 create a publication. I offered any assistance
22 that he may need, if he, you know, for a sounding
23 board. I've spoke with other media people and
24 when I started my magazine. It's nice, it's a
25 small community, so --

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1 But I also mentioned that there might be
2 an issue to trademark infringement and confusion,
3 mainly because we have the these C marks, as
4 well. To which he replied, "I'll get back to
5 you." And I received an e-mail saying that he
6 doesn't believe there's any confusion or problem.

7 Q. What happened next?

8 A. We decided -- I consulted my attorney.
9 He advised us to immediately file the U.S. Patent
10 Trademark Office's filings for CBUS magazine,
11 C The Columbus Magazine. Previously we were just

12 in the State of Ohio. And so I did so. And his
13 name is Michael Galliger.

14 He went and contacted C-BUS to let them
15 know that there's an infringement, and from what
16 I remember, confusion, as well, that may arise
17 from these magazines' names being so similar. I
18 think also, in fact, it's in violation of our
19 Federal application.

20 Q. Was there a reply to Mr. Galliger's
21 letter?

22 A. Yes, there was. I believe the reply was
23 from Porter, Wright, Morris & Arthur, which is
24 very surprising since I have been a client of
25 Porter, Wright, Morris & Arthur for quite a few

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1 years. And I believe that, you know, our
2 response was conflicted out, and from what our
3 lawyers told us at Porter-Wright, they let go of
4 C-BUS as a client but continued to represent us
5 in other matters.

6 Q. Are you saying there was a conflict of
7 interests and that Porter-Wright withdrew its
8 representation of C-BUS Magazine?

9 A. That is correct.

10 Q. What, if anything, happened next?

11 A. We -- there was another letter that was
12 sent out by Michael Galliger in response to that
13 letter. Michael Galliger handled our trademark
14 and patent issues for our companies. Our
15 litigation lawyer's Porter-Wright., to which we
16 received a letter from Schottenstein, Zox & Dunn.

17 None of these letters mentioned anything
18 about infringement in any way, but they do say
19 they need more information from us, and at this
20 time C-BUS should keep publishing, but they need
21 more information from us, basically.

22 Q. You are referring to letters from
23 opposing counsel?

24 A. Correct. And at that time, we were

25 looking for -- we were you know, speaking --

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1 there's this paper going back and forth between
2 lawyers at that time.

3 Q. Then what happened?

4 A. Then we worked with -- we signed up with
5 Vorys and decided to file suit against
6 C-BUS Magazine. I think at first it was a letter
7 sent before we filed suit in October of this
8 year, requesting that they stop using the C-BUS
9 name.

10 Q. There was a -- What kind of time lag was
11 between the letter that you received from
12 Schottenstein and your retaining Vorys as your
13 counsel?

14 A. I don't know if the letter's present, I
15 don't know if I can look at that to refresh my
16 memory, but I think about two or three months.
17 Not much time.

18 Q. Do you recall when the last letter you
19 received from the Schottenstein firm was?

20 A. I believe that might have been maybe
21 February or March.

22 Q. And then you retained Vorys a few months
23 later?

24 A. Yes, I did.

25 Q. Okay. Did you file suit then?

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1 A. No, I did not.

2 Q. What were you doing in those months?

3 A. During those months, one, I was, you
4 know, weighing the cost of litigation. I don't
5 think anyone ever wins in a situation like this,
6 which is unfortunate. It's an unfortunate
7 situation to be in in the first place. And I
8 was, you know, litigation is expensive. I had to

9 look at this as a business move. Do I take this
10 money and put it into advertising my company, to
11 let more people know about the C brand, or, I
12 don't know, advertise the C brand more. But then
13 what I realized is because of all the confusion
14 that we kept encountering, every dollar I would
15 put into advertising would also benefit them,
16 which made no sense to me.

17 And as a last resort, from what I
18 remember, we didn't even receive any response
19 from them when Vorys -- when you sent them the
20 letter. And at that point, I didn't know what
21 else to do. I had to protect my company which I
22 spent so much money to start, from my own money,
23 my family's money. So much time, blood, sweat
24 and tears, and I couldn't -- there's no other way
25 to -- I don't know, to -- I was -- I had no other

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1 options left except for litigation at that point.

2 Q. Have you and your company, or have your
3 company and magazine suffered harm as a result of
4 the publication of C-BUS Magazine?

5 A. Absolutely.

6 Q. Could you describe that harm?

7 A. Sure. First off, with the aspect of
8 design of the magazine, design is such a critical
9 portion of publications. I mean, it's why people
10 pick them up. Magazines are very oriented to the
11 type of person that reads them, and that design
12 is something that we've cultivated and created
13 over the last five years, and the brand of "C"
14 goes along with that design.

15 And for me, to -- number one, see a
16 product out there that mimics the design, in a
17 crude fashion, one, it cheapens what I've done
18 and spent so much money to create. Secondly, we
19 have advertisers that have, you know, that don't
20 advertise with us anymore.

21 Champps Americana, C-h-a-m-p-p-s, it's a

22 funny spelling, and generally you have
23 advertisers, moreover, that are the smaller
24 advertisers that I feel are being taken advantage
25 of because they know the C brand, and they think

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1 they are buying the C brand for a, you know,
2 maybe a lesser price, but it's not the actual C
3 magazine that they are buying.

4 Which, you know, I don't know how, you
5 know, that's -- that harm is huge. Because as a
6 magazine, we're based on our look, design and how
7 people respond to the publication. The
8 reputation of the publication. And with having
9 substandard product out there -- and also
10 advertisers who are confused, you know, we can't
11 progress. And any dollar that we do put into
12 progress, whether it's advertising or -- goes to
13 benefit the other confusing mark.

14 Q. Thank you, Mr. Dey.

15 I have just one more question, sir. I
16 should have asked it earlier. I apologize.

17 With reference to your web presence of
18 the C The Columbus Magazine, did you have
19 documentation for all of the URLs that you
20 registered?

21 A. We have documentation for all the URLs
22 that we registered except for CBUSmag, which was
23 on -- they were unable to locate that
24 documentation. However, that was done at the
25 same time that inCBUS and CBUSonline were -- I

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1 was trying to think if there were any other CBUS
2 names that I have. I have about 30 or 40 URLs I
3 operate and own two other Internet companies as
4 well. I'm pretty well versed in buying URLs,

5 that you should buy surrounding URLs as well
6 because people can mistype, you know, and this
7 way they can find you. Not to mention it
8 protects the brand.

9 Q. Did you register cbusmag.com before you
10 learned of the defendant's publication of
11 C-BUS Magazine?

12 A. Yes, I did; incBUS, CBUSmag,
13 incbusonline were registered, I think in either
14 2002 or 2003. I think we have the
15 registration -- go ahead.

16 MR. RICHARDSON: I'm saying it's part of
17 the exhibits in the motion for the preliminary
18 injunction, your Honor.

19 THE MAGISTRATE: Okay. Thank you.

20 MR. RICHARDSON: I have nothing further.
21 I'll pass the witness.

22 THE MAGISTRATE: Please stay seated.

23 Cross-examination?

24 MR. WILLISON: Thank you, your Honor.

25 - - -

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1 CROSS-EXAMINATION

2 BY MR. WILLISON:

3 Q. When did you first become aware of 206
4 Publishing and their magazine, C-BUS?

5 A. From what I remember, January of 2006.

6 Q. Do you know if it was -- what time in
7 January?

8 A. No, I do not remember what time in
9 January.

10 Q. Okay. How did you become aware of them?

11 A. I was told there was a new magazine
12 that's coming out called C-BUS Magazine. Also
13 our deputy editor, Kristen Foley, was a member of
14 CYP or YCP, those two organizations that have
15 similar names, clever one, Mr. Grosso is
16 affiliated with. And she told us that this
17 organization is making the magazine called

18 C-BUS Magazine.
19 Q. And you can't remember whether that was
20 early or late July (sic)?
21 A. January.
22 Q. I'm sorry, January of 2006?
23 A. No, I can't remember whether it was --
24 exact, you know, the exact date. I'm sorry.
25 Q. Can you tell the Court why you don't

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1 remember that?
2 A. Am I allowed to ask why the exact date
3 is important? What day in January? If I --
4 THE MAGISTRATE: Just answer the
5 question if you know why you don't remember.
6 THE WITNESS: No, I don't know why I
7 don't remember. I'm sorry.
8 BY MR. WILLISON:
9 Q. Okay.
10 A. I, you know, there was an e-mail that
11 was sent from Mr. Grasso. I could safely say
12 that it was around the same time previous to when
13 I received that e-mail from Mr. Grasso.
14 Q. Okay. You said that you had eventually
15 caused your attorney, Mr. Galliger, to send a
16 letter to 206 Publishing, asking them basically
17 to cease and desist the publication of C-BUS. Is
18 that correct?
19 A. That's correct. Just the name, not stop
20 doing a magazine. I think starting a business is
21 exciting. I've created businesses. I love
22 creating businesses. But I would never poach off
23 the name of someone. When I created C The
24 Columbus Magazine, I made sure -- and also
25 C Entertainment Magazine, I made sure that we did

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1 not poach off the ideas, the looks, the feel, the

2 phonetic sounding of Columbus Monthly or any of
3 the other publications that were existing at that
4 time.

5 So I did not -- I was not against them
6 creating a magazine. I think that's great.
7 We've had a lot of magazines that we've worked
8 with and also come and gone. However, I did
9 object to the name, in particular to the name of
10 a URL that I owned as well, which is CBUSmag,
11 inCBUS, CBUSonline.

12 Q. Now, that would have been in January of
13 2006 when you first sent out that cease and deist
14 letter telling them they needed to change their
15 name?

16 A. From my recollection it was either
17 January or beginning of February. There's been
18 quite a few letters that have gone back and
19 forth, but the initial letter I'm sure was sent
20 out before they even brought out their magazine,
21 brought out their publication. Actually, I think
22 their magazine came out in February.

23 Q. And then you got a response from
24 Porter-Wright saying, "We don't think that the
25 marks are similar enough to tell our client to

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1 switch his magazine's name"?

2 A. I don't think that's exactly correct. I
3 think they said they need more information from
4 us and our filing. But at this time, they should
5 go ahead and publish their magazine until we get
6 more information.

7 Q. Okay. And Porter-Wright then had to
8 drop out because of the conflict that you
9 mentioned, correct?

10 A. That's correct.

11 Q. And then 206 went over to Schottenstein,
12 Zox & Dunn?

13 A. That's correct.

14 Q. Did you send a second letter to

15 Schottenstein, Zox & Dunn or was it the same
16 letter that was originally sent out to
17 Porter-Wright?

18 A. There was a secondary letter, from what
19 I remember, from Mike Galliger to Schottenstein,
20 Zox & Dunn.

21 Q. That would have also been in that
22 January-February time period?

23 A. Correct. To my recollection. I think
24 we have the paperwork to get the exact dates.

25 Q. Then Schottenstein, Zox & Dunn sent a

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1 letter back to you, correct?

2 A. Correct.

3 Q. And they said again, "We need more
4 information, but from what we have right now,
5 we're not going to tell him to change his name"?

6 A. No, they said, "Go ahead. We're not
7 going to tell C-BUS to stop publishing, but we do
8 need more information from you."

9 Q. Did you ever provide more information to
10 them?

11 A. At that time, we were actually speaking
12 with Schottenstein, Zox & Dunn to represent us
13 and there was another conflict issue that came
14 up, so we had to find another attorney.

15 Q. But the question is: Did you ever send
16 any more information to Schottenstein, Zox & Dunn
17 like they requested?

18 A. I'm sorry. Not to Schottenstein, Zox &
19 Dunn. We hired Vorys at that point and they took
20 the case from there.

21 Q. Well, I understand. But you had an
22 attorney, Mr. Galliger, at that time, right?

23 A. Mr. Galliger was our patent and
24 trademark attorney. And our litigation lawyers
25 are Porter-Wright. We also stopped using

1 Mr. Galliger at that time as well for other
2 reasons with my other companies.

3 Q. I understand that. But what I'm saying
4 is at this point in late January or early
5 February, in there, you've got a request before
6 you from Schottenstein, Zox & Dunn saying, "We
7 need more information." Did you or any attorney
8 you ever hired subsequent to that ever send any
9 more information on to Schottenstein, Zox & Dunn
10 about this matter?

11 A. Well, first off, I do not believe that
12 the letter directly asked me for more
13 information. It just merely stated they need
14 more information. And never said, "Mr. Dey, we
15 need more information from you to create a
16 decision on this." It was merely, "We need more
17 information."

18 Q. Did you ever send any?

19 A. No, we did not. Because we hired other
20 counsel. They handled the case.

21 Q. And when that last letter came from
22 Schottenstein, Zox & Dunn saying, "We need more
23 information," when did that arrive?

24 A. I would probably have to look at the
25 paper to refresh my memory, but I think that's

1 probably end of February.

2 Q. End of February 2006?

3 A. 2006.

4 Q. Okay. Now, at that point, you didn't
5 send any more letters or initiate litigation in
6 March, did you?

7 A. At that point, did we send any more
8 letters? Not until October.

9 Q. Okay. And you said that the reason that
10 you didn't do that is because you were weighing

11 your options?
12 A. Weighing our options as far as, you
13 know, one, magazines come and go every day; two,
14 you know, this is a pretty big financial
15 decision; and three, upon, you know, when we
16 first spoke with Vorys, which was soon after
17 we -- you know, February, part of the thing was
18 we needed to compile information of confusion. I
19 wanted to make sure there's actual confusion out
20 there, not do a frivolous lawsuit or frivolous
21 litigation for no reason.

22 When I saw that instances of confusion
23 were mounding and becoming more serious --
24 secondly, they moved from a quarterly publication
25 to a bi-monthly publication. At that point, you

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1 know, I had to do what was right to protect, you
2 know, everything that I've built.

3 Q. I understand that you're giving me
4 reasons why, but I just asked you did you send
5 any letters in March.

6 A. Did I send any more letters in March?
7 From my recollection, no.

8 Q. What about April?

9 A. No. As I explained, I was speaking with
10 our lawyers at that time and it was in the hands
11 of our attorneys.

12 Q. And the same with June, July and
13 August --

14 A. That's correct.

15 Q. -- and September? And did you send any
16 in October?

17 A. Yes, we did in October.

18 Q. When in October?

19 A. I think it was the end of October.

20 Q. Okay. How many meetings did you have on
21 this issue?

22 A. With whom?

23 Q. With anyone?

24 A. We had quite a few meetings on this
25 issue with various attorneys and various other

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1 people. Are you asking a specific question as to
2 who I'm meeting with? Are we talking just my
3 attorneys, or how many in general?

4 Q. I'm talking how many meetings on this
5 issue of whether or not to bring a lawsuit did
6 you have?

7 A. A significant amount of meetings. I'd
8 say --

9 Q. Could you give me a number?

10 A. An exact number?

11 Q. Not an exact number. A number within
12 five or ten.

13 A. Oh, I would say probably more than ten.

14 Q. Okay. Somewhere around --

15 A. I would say confidently more than 10.

16 Q. More than 20?

17 A. Between ten and 20.

18 Q. Okay.

19 A. Lawyers are expensive to talk to.

20 Q. I understand that.

21 When you talked about your damages, you
22 said that you had damages because of your
23 designs. I know you said more than that, but I
24 wasn't quite understanding how you were damaged.
25 Seemed like you gave examples, and one of the

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1 examples was this design. Tell me about how you
2 were damaged through the design again.

3 MR. RICHARDSON: Your Honor, I'm going
4 to object to the characterization of the question
5 as damages.

6 THE MAGISTRATE: Response?

7 MR. WILLISON: Well, he was asked about

8 damages. Did you suffer any losses, and he said
9 something about design. I didn't quite
10 understand what he was getting at.

11 MR. RICHARDSON: I believe it was harm,
12 your Honor. Not damages.

13 THE MAGISTRATE: I have in my notes
14 harm.

15 MR. WILLISON: Okay. I'm rephrase it.

16 BY MR. WILLISON:

17 Q. You said that you were harmed by the
18 design. Can you tell the Court a little bit more
19 about that?

20 A. Absolutely. Design, you know, when you
21 look at two items -- let me -- am I allowed to
22 give an example? Okay. If I'm -- if I have a
23 Mercedes Benz and I create a, I don't know, a Kia
24 that looks just like the Mercedes Benz, looks
25 like the Mercedes Benz, has the Mercedes Benz

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1 symbol, but what may be a little bit of a
2 different design, and I sell that to you for a
3 lot less, however, this other substandard product
4 is similar, however, the door handle falls off.
5 You know, the finish is not exactly the best. On
6 the street you may confuse the two and you may
7 buy one of them, but when you buy, you know, the
8 substandard product, you'll notice the fit and
9 finish isn't there. And the Mercedes definitely
10 has better fit and finish.

11 The design of C-BUS is very similar to
12 the design that we have. Not just in colors,
13 which was the prominent red, black, white colors
14 that we use in our publication, but also the
15 design structure and sections that we have in our
16 magazine.

17 You know, whether it's a section that is
18 our Up and Comers, whether it's our Food Section,
19 I think the last -- we had a dining issue and
20 they came out with a dining issue right

21 afterward. We had Latitude 41 this past month as
22 our restaurant review, and in their issue, they
23 had Latitude 41 in their magazine as well, so
24 these similarities.

25 And then when the design is similar,

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1 it's hard for laymen or general public to look at
2 these magazines and say, "Wait, which is which?"
3 That's how the design has harmed us.

4 We have a product that we've worked hard
5 to create and cultivate, and when someone sees
6 this other design and says, "Hey, you know what?
7 This magazine -- what happened to your magazine?"
8 Nothing happened to my magazine. That's --
9 that's a different publication. It's not mine.

10 Q. So you are saying that C Magazine about
11 Columbus and young professionals that has a food
12 section in it would be too similar to your
13 magazine, they are copying your design?

14 A. No, I don't believe I said that. I
15 believe having exactly the same sections as our
16 publication and also the same look and feel as a
17 full color publication, and also the name that is
18 similar, with -- I mean, if you look at my
19 publication and Columbus Monthly, Columbus
20 Monthly has a food section, we have a food
21 section. Columbus Monthly has a housing section,
22 we have a house section. But they are vastly
23 different in the way they look, but also the way
24 that they are laid out and also the way they are
25 titled.

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1 For example, our home section is called
2 "Homework". We look at ourselves as being
3 cutting edge and a little bit fun of a

4 publication. Our Up-and-comer publication is
5 called "Suitless." Those are items that no one
6 does in the city and that was done on purpose.
7 Our banner on -- across the top was done on
8 purpose. All these items, you know, were done to
9 distinguish ourselves from current publication at
10 that time and what is occurring now.

11 Q. Has C-BUS ever used the term "Suitless"
12 in their magazine to cover one of their columns?

13 A. I -- I don't know if they have or not.
14 I know they have a section called, I don't know,
15 which one, the Up and Comers, which is similar to
16 our Movers and Shakers. You know.

17 THE MAGISTRATE: I'm sorry, the term in
18 your magazine again?

19 THE WITNESS: It's Movers and Shakers,
20 it's Suitless. "Suitless" is the section.
21 S-u-i-t-l-e-s-s.

22 THE MAGISTRATE: Okay. Thank you.

23 THE WITNESS: No problem.

24 BY MR. WILLISON:

25 Q. And does 206 Publishing's magazine have

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1 any sort of a section called, "The Homework"?

2 A. I'm not too -- not from my recollection
3 right now. But I know they have a section on
4 young professionals which mirrors and looks
5 almost exactly like our section, Suitless, which
6 is on young professionals, with the large picture
7 and text on the side, designed the same way.

8 Q. You talked about advertisers who don't
9 advertise with you anymore. Isn't it true that
10 advertisers come and go from magazines all the
11 time?

12 A. Absolutely. But most of our
13 advertisers -- I think we have about a 90 percent
14 retention rate. Not to mention we increased in
15 advertising about 70 percent in the first year as
16 C The Columbus Magazine, and 20 percent

17 thereafter. So most of our advertisers are
18 retained.

19 Q. Do you have any sort of evidence of
20 dollar figures that your magazine has been --

21 A. Sure.

22 Q. -- damaged?

23 A. Sure. I'd say the Bexley Monk account,
24 that alone is about \$12,000. The Champps
25 Americana account is probably about another 6 to

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1 \$7,000. Who else do we have. I mean, there's so
2 many different little advertisers. The Yuseeh
3 Sadiq account, that one, you know, they assigned
4 with C-BUS, I don't know how much he's spending
5 with C-BUS, but I know with us he was looking at
6 spending, you know, at least half page rate for a
7 while. So that would be another -- let's just be
8 conservative with it and say \$3,000.

9 And not to mention, I mean, you had
10 brought this up, if I can address this, with
11 harm, we -- our magazine is audited by a third
12 party auditing firm which is used by the Columbus
13 Dispatch, Columbus Monthly, The Other Paper,
14 Columbus Alive, pretty much any prominent media
15 source.

16 And what that does is it lets the
17 advertiser know that the demographic information,
18 who's reading it, how many people are reading it,
19 what the patterns are of their buying styles, are
20 being given from a third party. When you have a
21 magazine that's similar and, you know, not
22 audited and telling people, "Hey," you know, "we
23 reach these same people," that information is
24 being made up. It is not coming from any third
25 party source.

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1 When you have our publication, which has
2 worked hard to get this accreditation of, you
3 know, the Columbus Dispatch or Columbus Monthly,
4 with that kind of accreditation, and we work hard
5 to get that information and provide it honestly
6 to our advertisers, and there is this other
7 publication and think they can get something
8 similar at a lesser cost, but what they don't
9 realize is, you know, it's being stolen. That
10 information is completely false and it's not come
11 from anywhere.

12 So, and that's another point of harm
13 that I look at, not only to me but to the
14 advertisers, because they are being lied to.

15 Q. You talked about the that had you
16 registered cbusonline.com.

17 A. Yes.

18 Q. If somebody types in cbusonline.com,
19 where are they taken?

20 A. Right now it should be a landing page.
21 We've actually stopped --

22 Q. Before you go any further, could you
23 tell the Court what a landing page is?

24 A. A landing page is just a holding page
25 who has an image or the server that's hosting

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1 that URL may just put ads up there. It's a page
2 that just stays until someone either puts a
3 website on it or forwards it somewhere. We
4 stopped forwarding all those URLs because of the
5 mounting confusion. I did not want someone to be
6 confused further by typing in CBUSonline or
7 CBUSmag or any of my "C" URLs and come to my
8 C The Columbus Magazine because, you know, that
9 ends up just hurting me even more.

10 Q. And is that the same case with
11 incbus.com?

12 A. That's correct. Any of the C marks.
13 Except for our columbusmag and cemmag.com. You

14 only use that because that's tied to our e-mails,
15 and that's an e-mail logistics issue.

16 Q. So you're not using these domain names
17 to promote your magazine, C The Columbus
18 Magazine?

19 A. We were using those domains to promote
20 our magazine. When C-BUS came out and confusion
21 started mounting, we stopped using those URLs as
22 forwarding URLs. I would love to use those URLs,
23 but I cannot because of continued harm and damage
24 to my company.

25 MR. WILLISON: If I could have just a

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1 moment, your Honor.

2 (Pause in proceedings.)

3 MR. WILLISON: Nothing further, your
4 Honor.

5 THE MAGISTRATE: Okay. Please stay
6 seated. Any redirect?

7 MR. RICHARDSON: No, your Honor.

8 THE MAGISTRATE: I may have one or two
9 questions, and I'll allow counsel to follow this
10 up if they wish.

11 - - -

12 EXAMINATION

13 BY THE MAGISTRATE:

14 Q. Is there currently C The Cleveland
15 Magazine?

16 A. No, there's not.

17 Q. Is there a C The Cincinnati Magazine?

18 A. No, there's not. And your Honor, if I
19 may, the only reason is it was an economic
20 decision right now because the economy is not as
21 strong to sustain those publications. If it was,
22 I would love to do it right now.

23 Q. Okay.

24 THE MAGISTRATE: Any further questions
25 based on my question?

1 MR. RICHARDSON: No, your Honor.

2 MR. WILLISON: No, your Honor.

3 THE MAGISTRATE: Okay. You may step
4 down. Thank you for your testimony.

5 THE WITNESS: Thank you.

6 (Witness excused.)

7 THE MAGISTRATE: At this point we'll
8 take a 15-minute break and we'll resume at about
9 20 minutes after the hour.

10 Off the record.

11 (Recess taken.)

12 THE MAGISTRATE: Let's go back on the
13 record.

14 We're continuing with the moving party's
15 case on this motion for a preliminary injunction.

16 Mr. Richardson, you may call your next
17 witness.

18 MR. RICHARDSON: Thank you, your Honor.

19 Elizabeth Smith will call the next witness.

20 MS. SMITH: We're going to call
21 Mr. Jason Ohlson.

22 THE MAGISTRATE: Please make your way up
23 to the witness stand.

24 MS. SMITH: Your Honor, with the Court's
25 permission, I would like to use an easel for some

1 exhibits.

2 THE MAGISTRATE: I'm sorry?

3 MS. SMITH: I have an exhibit that I
4 will be positioning up there.

5 THE MAGISTRATE: Any objection from
6 defendant's counsel?

7 MR. WILLISON: None, your Honor.

8 THE MAGISTRATE: Okay.

9 MS. SMITH: I'll try to put it someplace

10 where both the Court and defense counsel can see
11 it.

12 THE MAGISTRATE: Can the witness see it
13 from that angle?

14 THE WITNESS: I think so.

15 MS. SMITH: Can you see it, your Honor?

16 THE MAGISTRATE: I should be able to.
17 Please raise your right hand.

18 (Witness placed under oath.)

19 THE MAGISTRATE: Thank you.

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1 JASON OHLSON

2 of lawful age, being first duly placed under
3 oath, as prescribed by law, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MS. SMITH:

7 Q. Mr. Ohlson, I'm going to ask you a few
8 questions. Let's start with your full name for
9 the record. Can you give me your full name?

10 A. My name is Jason Edward Ohlson.

11 Q. Where are you employed?

12 A. I am employed by C The Columbus
13 Magazine.

14 Q. What is your title there?

15 A. Executive Editor.

16 Q. Okay. How long have you been employed
17 with C The Columbus Magazine?

18 A. Since the magazine was created in the
19 beginning, middle of '01.

20 Q. When the magazine -- you say the
21 magazine was created in the middle of '01. Was
22 that C Columbus or C Entertainment?

23 A. C Entertainment. I was approached by
24 Roopan Dey to create one of a kind feature
25 magazine, so that was between '01 to '02.

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1 Q. You were involved as the editor of
2 C Entertainment Magazine, correct?

3 A. Correct. I was the editor of C
4 Entertainment Magazine.

5 Q. And you are currently editor of C The
6 Columbus Magazine?

7 A. Correct.

8 Q. And I think we had mention earlier that
9 C The Columbus Magazine first published in 2004;
10 is that correct?

11 A. Correct.

12 Q. And sometime before then C Entertainment
13 stopped being published?

14 A. Correct.

15 Q. But as I understand, it was similar, the
16 two magazine types or brands?

17 A. They were. One, C Entertainment was
18 originally designed to be a three-city magazine.
19 We were looking to marry the three cities, marry
20 the demographics. It proved to be a pretty
21 outstanding opportunity for content.

22 Q. Your role in both those magazines was
23 pretty similar, though, as editor, correct?

24 A. It was exact.

25 Q. Why did you endeavor to start a magazine

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1 for the Columbus area?

2 A. I had -- I graduated school and was
3 doing freelance writing, and as a writer you
4 would love an opportunity to write for yourself
5 or write your own publication, but I had an
6 opportunity throughout Roopan to provide the

7 first kind of feature type magazine for the city,
8 which wasn't based on superlatives, ratings,
9 reviews, stars, numbers. It was a true feature
10 magazine. So high utility and then positivism.
11 Marry those two and you have what is generally
12 known as a feature magazine.

13 Q. Is that what you think C The Columbus
14 Magazine is, a feature magazine?

15 A. Absolutely.

16 Q. What was your target market or audience
17 as an editor?

18 A. Well, you want to grab everyone, but you
19 have to be intelligent about it. We wanted the
20 young professional who essentially was spending
21 every penny and every minute of their life
22 building their professional identity and people
23 ready to retire. They were both the 25-year-old
24 and the fifty-five-year-old, and whichever the
25 case may be in between. Both are equally

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1 inundated with the number of decisions they have
2 to make on a daily basis, so being able to give
3 them a feature magazine to help reduce that was
4 our objective.

5 Q. As executive editor, what specifically
6 do your duties involve with the magazine?

7 A. Well, creative oversee, the development
8 of story ideas, the management of writers, hiring
9 of writers. Advertising. As well as both being
10 integral as far as what the advertising -- how
11 the advertising -- I guess it's important to know
12 there's a feature magazine where every month of
13 the feature magazine is thematic. So you would
14 have, for example, a music issue, an art issue, a
15 food issue. So you try to tailor the advertising
16 to that.

17 Let me go back to my information. I was
18 in charge of the copy, also in charge of the
19 advertising, because they were related to one

20 another. I also ran many of the advertising
21 accounts for restaurants because I had a pretty
22 outstanding relationship with many of the
23 restauranteurs.

24 Of course layout, design, essentially
25 being integral with all of the magazine from the

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1 beginning day until the day it goes to print.

2 Q. You said you worked with restauranteurs,
3 or those who work with your magazine?

4 A. Correct.

5 Q. Had you worked with those restauranteurs
6 prior to C the Entertainment -- Columbus
7 Magazine?

8 A. Absolutely. I paid -- I worked with
9 four large restaurants since I was 17 years old,
10 built outstanding relationships, and then just
11 rolled them over gradually, from Olive Garden
12 finally to BDI, which is Bravo Development. I
13 built some great ties. And I worked with the
14 Doodys, the owners of that company, and paid my
15 undergrad and part of my prep for graduation for
16 grad school as well. So that's where I built the
17 basis for most of my network opportunities for
18 the restauranteurs.

19 Q. And do you continue to work closely with
20 those advertisers, as well as others?

21 A. I personally run 95 percent of the
22 restaurant accounts in the magazine.

23 Q. Do you also consult on the contents of
24 the features that are in the magazine?

25 A. Absolutely.

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1 Q. Okay. Are you familiar with the
2 defendant publication, C-BUS Magazine?

3 A. Uh-huh. Now I am.
4 Q. Okay. How did you first become familiar
5 with C-BUS Magazine?

6 A. Well, right around their release, I had
7 friends and family and colleagues ask me if it
8 was -- if I had changed the name of my magazine,
9 if somehow we had morphed into another
10 publication.

11 MR. WILLISON: Your Honor, I'm going to
12 object to whatever what other persons said in
13 that hearsay objection.

14 THE WITNESS: How did I learn of --

15 THE MAGISTRATE: Just one moment.

16 Okay. Objection is noted, and I'll
17 reserve decision on it. You can continue to
18 answer if there's any more to that.

19 THE WITNESS: I learned of the magazine
20 through people bringing it to my attention,
21 people in my family, my friends, people that
22 worked with had brought it to my attention.

23 Q. Okay. And that's how you first learned
24 there was a publication?

25 A. That's how I learned of the publication,

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1 correct.

2 Q. Was there a time that you ever saw --
3 was there a time where you came to see an actual
4 copy of the magazine, C-BUS Magazine?

5 A. Yes. I'm not sure who in my staff was
6 at one of the Columbus Young Professional -- one
7 of their events, and had brought a magazine to
8 our offices to show me.

9 Q. Okay.

10 MS. SMITH: Your Honor, the same rule
11 applies, I'm going to approach the witness with
12 leeway, if that's okay. I'm showing this to
13 counsel. I'm going to ask the witness -- these
14 are blow-ups of the cover of both C-BUS Magazine
15 as well as C The Columbus Magazine.

16 BY MS. SMITH:

17 Q. I'm going to ask you, Mr. Ohlson, is
18 this an accurate representation, the one on my
19 left here, the C-BUS Magazine of the first issue
20 that you saw?

21 A. Yes.

22 Q. Is that an accurate representation of
23 our own magazine, C the Columbus Magazine? The
24 copy date on that is July -- I'm sorry, print
25 date on that is July 2005.

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1 A. Yes.

2 Q. Okay. And both those are accurate --

3 A. They are.

4 Q. -- from what you recall?

5 A. They are.

6 Q. What -- what similarities -- or, I'm
7 sorry, strike that.

8 You said you -- there came a time when
9 you actually did see -- come to see a copy of
10 their magazine.

11 A. Right.

12 Q. What did -- what did you think the first
13 time you saw it?

14 A. There's two things immediately when --
15 really the only two things were the name, the
16 color of the actual letter and working with the
17 Bus, and then the moniker across the top.

18 Q. When you say the moniker, what does that
19 mean?

20 A. Moniker, the line across the top, the
21 line of copy that goes across the top of the
22 magazine.

23 Q. Okay. I'm going to identify -- tell me
24 if I'm doing this correctly. Is this what you
25 mean when you say the moniker?

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1 A. Yes. Correct. Yes.

2 Q. When you first saw the magazine, did you
3 have any concern about those immediate
4 similarities that you noticed?

5 A. Name. Name and the fact that there were
6 similar elements in the moniker, you know, just
7 pretty much the -- and I had already been
8 approached by people asking me if this was
9 something I was working with or something that
10 was mine.

11 Q. Okay.

12 MS. SMITH: I'm going to approach the
13 witness again, and put up two other
14 representations.

15 THE WITNESS: Uh-huh.

16 BY MS. SMITH:

17 Q. On the left --

18 A. Uh-huh.

19 Q. -- I'll represent to you I took this
20 from C-BUS Magazine's premier issue. Have you
21 read through that magazine?

22 A. Which magazine?

23 Q. The C-BUS Magazine.

24 A. I have.

25 Q. Have you previously seen this, the C-BUS

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1 Presents --

2 A. I have.

3 Q. -- Up-and-Comers? Is that an accurate
4 representation of --

5 A. From what I can recall, yes.

6 Q. Okay. And on the right, on my right --

7 A. Uh-huh.

8 Q. I represent to you that's from your own
9 magazine, C The Columbus Magazine, I believe
10 published it July 2005. Your Suitless feature,
11 which underneath the title it reads: Capital
12 Movers and Shakers. Did you have any concerns

13 when you noticed this feature in the
14 C-BUS Magazine?
15 A. No. Not so much in the fact that when I
16 first -- when I first saw C-BUS and was actually
17 able to explore into the magazine, I was really
18 under the impression, having had some people
19 relate the Young Professional organization to the
20 magazine, I was kind of under the impression that
21 it was a, like a -- an expanded newsletter, like
22 a publication that serviced the organization. So
23 having these black and white columns, these
24 Up-and-Comers, so to speak, seemed like they were
25 pulling people from their organization.

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1 But there were certainly some
2 similarities as far as the categories being
3 called Up-and-Comers and Movers and Shakers. But
4 at that point there, no.

5 Q. At that point you didn't have concerns
6 with the similarities?

7 A. No. It was name and the elements, just
8 being confused with the covers.

9 Q. Okay. I'm gonna put another one up
10 here, and this is C-BUS' magazine,
11 September-October issue. The same feature called
12 Up-and-Comers, again, juxtaposed next to our
13 Capital Movers and Shakers from the C The
14 Columbus Magazine. When you saw this, did you
15 have any concern about similarities?

16 A. Yes. It's, in my opinion, and from just
17 the pure presentation standpoint, it was moving
18 closer and closer to the full page picture, you
19 know, layout using the actual image itself to be
20 the anchor for the piece itself, and then of
21 course the designated copy. It just seemed to be
22 moving more and more in stride with what my
23 "Suitless" is.

24 And the "Suitless" is notorious to
25 having two thirds the page, if not the entire

1 page, being the picture, and then the copy
2 wrapped around that. Or, if we've actually
3 designated white space next to a large image to
4 contain the copy. Copy as far as words.

5 Q. When C-BUS' September-October issue then
6 came out and you saw this Up and Comers feature
7 which, in your own testimony, seemed to be
8 different than what you had seen before --

9 A. Right.

10 Q. -- in that same feature, is it true that
11 you had concerns with that?

12 A. Absolutely. This seemed to me being,
13 you know, nearly an emulation of what we were
14 already doing.

15 Q. I'm going to put up the two most
16 recent -- your Suitless feature, what is also
17 again called the Capital Movers or the Capital
18 Movers and Shakers, next to the most recent
19 Up-and-Comers feature published by
20 C-BUS Magazine. Does this look like an accurate
21 representation of what you've seen before from
22 those magazines?

23 A. It looks like our magazine.

24 Q. Okay.

25 A. This new one here is, yet again, an

1 expanded version of what they originally started
2 with, a black and white small box, black and
3 white image, moving to a two-third-page picture
4 with the copy next to it, to, of course, here
5 being, you know, which is another page that looks
6 just like that, as well as -- which is my final
7 word -- just the entire page being an up close
8 picture in color and then the text that wraps

9 around it. So that, to me, is -- I would be hard
10 pressed to find any differences.

11 Q. Okay. In your own opinion then, did it
12 seem to evolve, this feature --

13 A. Yes.

14 Q. -- on behalf of C-BUS Magazine?

15 A. Right.

16 Q. Closer to your own magazine feature?

17 A. Each issue with this section solely, as
18 an example, is clearly moving towards what we do
19 and how we present our story.

20 Q. And while you said you didn't have
21 concerns with the first time they had such a
22 feature magazine --

23 A. Right.

24 Q. -- with that being confused with your
25 own, did you come to have concerns at all?

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1 A. At this point here, it's -- the
2 confusion is almost, you know, in my opinion is
3 what is the next step going to be in this series
4 of this development, from a black and white small
5 to a color with a picture, with the next one to
6 being a full page, you know, the next step
7 would -- you know, they look identical.

8 Q. Was there anything that C-BUS continued
9 to publish, and I think at the time when you
10 filed this lawsuit or when your company filed
11 this lawsuit, there were three issues currently
12 out, correct? Or they published three issues.
13 Was there anything in the theme or content of the
14 issues that were similar that caused you concern
15 as editor?

16 A. Yeah, there was. And there are. What
17 took -- if I may real quickly touch base on this
18 again, you have a person that made no other
19 magazine and is able to see that development,
20 from my concern. Now at this point is a person
21 that's introduced to the magazine, whether it's

22 our home delivery, whether it's our drop deliver
23 that they see, and it's -- that's the biggest
24 confusion now.
25 Now, where they -- how they look and how

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1 they are compared, there's this huge gray area.
2 They almost like maybe collapse into the same
3 definition, same presentation. That's where my
4 immediate concern is right now. That someone new
5 learning this is going to have a hard time.

6 But to your question, content
7 similarities. Aside from the Suitlesses, if I
8 could have you repeat to me, are you talking
9 about when I was originally introduced to C-BUS
10 or presently?

11 Q. As more issues came out, I wondered if
12 you had any concern about similarities that you
13 saw --

14 A. Content.

15 Q. -- in theme and content.

16 A. First off is that we were -- the
17 template of our magazine has food, fashion,
18 entertainment, people, and of course our cover
19 stories. And arts. So having gone through the
20 magazine, there's really no element of my
21 magazine that's not represented in their
22 magazine. Okay, except maybe the arts.

23 So having gone through the beginning of
24 my magazine, first three pages of my magazine are
25 always the Suitlesses. So I introduce with those

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1 three profiles.

2 Similarly here. You go on through the
3 magazine you get into your dining sections.
4 Okay. Well, I've got two dining sections. I
5 have a large elaborated feature on a prominent

6 restaurant.

7 Then I have a lunch section that's

8 called "Nine for Nine". That's for the title,

9 for the inclusiveness, it's nine places you can

10 go get a bite to eat for nine bucks or less.

11 Doesn't mean you have a \$9 menu, it just means

12 that you have one qualifying dish.

13 So it's imperative when we do our layout

14 that we bold that one dish aside from mentioning

15 all the other elements about that restaurant.

16 Whether they've got \$20 filets or they have got

17 great pizza, I still have to highlight and bold

18 one dish to qualify it for this section of the

19 magazine, which is Nine for Nine.

20 So you've got a burger for five bucks, I

21 say great carpaccio, great steaks. By the way,

22 they have a \$5 burger. It qualified. So I have

23 to bold, I have to highlight that. So it's a

24 number, it's a number-titled category, Nine for

25 Nine.

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1 Okay. They have a section in here

2 that's -- I'm not sure if it's Seven Days a Week,

3 Seven for Seven, or if it's 21-21, and there's a

4 number, there's a food section that's dedicated

5 to dining, and it's presented with a number. And

6 that number is a small box of copy on that

7 particular page. And then they actually have

8 parentheses inside the story, in this numbered

9 section, where they call out the price of each

10 dish.

11 So again, the part here is that it's an

12 essential thing for me to have to paren -- put

13 the name and the title in parentheses. Again, it

14 finds its way surfacing in another section. It's

15 name and number presentation is confusing.

16 So I've got Suitlesses, then I've got

17 the food section, so those are the two main

18 things to be given.

19 Q. Just for the Court's benefit, and I
20 don't want to assume that the Court hasn't seen
21 the magazine, read all of the features, but with
22 the Movers and Shakers and Up-and-Comers, what is
23 the purpose of those? Who do they profile?

24 A. Our Suitlesses are entirely for -- to
25 profile people who -- what have they done, what

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1 do they do, what have they done lately. I have a
2 section in the back of the magazine that profiles
3 prominent people, but it's not about what they do
4 for a living. It's simply an opportunity to talk
5 to prominent people and get a Q and A with them.
6 Whereas the Up-and-Comers, Shakers and Movers,
7 Suitlesses are all about businesses, what people
8 do, how people make a profession.

9 Q. So they are similar in content?

10 A. Yeah, very much.

11 Q. Well, you mentioned earlier that you had
12 a feature called Nine for Nine --

13 A. Uh-huh.

14 Q. -- featuring lunches. And I'm going to
15 put up there, and represent to you that that is
16 from a copy, July 2005 --

17 A. Uh-huh.

18 Q. -- issue of C The Columbus Magazine in
19 which that very feature appears. That appear to
20 be an accurate representation to you?

21 A. Yes.

22 Q. Okay. And you mentioned that you
23 believe that you had seen previously an issue of
24 C-BUS Magazine --

25 A. Correct.

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1 Q. -- which used a number and had a -- kind

2 of played off the where to eat in Columbus and
3 featuring different restaurants?

4 A. Correct.

5 Q. I represent to you that that is a
6 feature from C-BUS Columbus Magazine from their
7 September 2006 issue. And I want to ask, had you
8 seen anything previous like this from
9 C-BUS Magazine prior to the September and October
10 issue?

11 A. No. Actually, if I'm not mistaken,
12 there was a small black and white blurb in the
13 first issue. It was a small black and white
14 blurb about a restaurant. It had nothing to do
15 with it having its own elaborate color extension
16 and layout and all that jazz, so -- it wasn't
17 calling it numbers and names.

18 Q. This was your most recent Nine for Nine.
19 This is, as I understand your testimony, and
20 correct me if I'm wrong, this is something you
21 publish every month?

22 A. Yeah.

23 Q. Or every month that the magazine comes
24 out?

25 A. We published this section since -- we've

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1 been publishing this section ever since we were
2 C Entertainment, except in that case, we did
3 three restaurants in Cleveland, three restaurants
4 in Columbus and three restaurants in Cincinnati.

5 Q. Okay.

6 A. So yes.

7 Q. Was there some -- when the C-BUS
8 September-October issue came out and it had this
9 21 Ways a Week --

10 A. Uh-huh.

11 Q. Did you have concerns about the way the
12 restaurants were presented?

13 A. Well, yeah. It's -- at this point
14 everything is a cooperative, you know, situation

15 for me. I've got a name issue that's still the
16 same, similar issue. The moniker issue. The
17 contents being designed and being progressed and
18 developed so that it more -- you know, looks as
19 though -- as my sections do. And then I have
20 titles that are very similar to my titles,
21 whether it's the use of numbers, use of letters.
22 And then of course the cover layouts on the
23 design. So, you know, we use high-res images.
24 We've always used the best of the best for
25 photographs. It's not like I'm -- I'm saying

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1 that -- they both have pictures to represent
2 their restaurants. It's the whole cooperative
3 presentation with all these elements working
4 together.

5 So yes, you add this, you add this name,
6 this food section, this title to it, and then
7 yes, I'm one step further to being concerned. Or
8 really concerned.

9 Q. Does C The Columbus Magazine publish a
10 dining issue?

11 A. We do, every year. Our dining issue is
12 our food issue, and it's our April issue.

13 Q. Did C The Columbus Magazine publish the
14 dining issue in April of 2006?

15 A. We did publish a dining issue this year
16 in April.

17 THE MAGISTRATE: My question, the Nine
18 for Nine --

19 THE WITNESS: Uh-huh.

20 THE MAGISTRATE: Over on the right,
21 would that be exhibits that I saw attached to the
22 motion, looked like the C The Columbus Magazine
23 is on 8.5 by 11, roughly, portrait as opposed to
24 landscape-type format. Is that correct? First
25 of all, it's always published this size magazine,

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1 dimension-wise?

2 THE WITNESS: Our magazine is produced
3 that size. We have produced larger magazines in
4 the past, but yeah.

5 THE MAGISTRATE: But the Nine for Nine,
6 that shows two pages across --

7 THE WITNESS: That's a spread, yes.

8 THE MAGISTRATE: Okay. And --

9 THE WITNESS: So if you cut that in
10 half, it would fit one page into that magazine.

11 THE MAGISTRATE: And 21 Days a Week
12 appears much taller on the easel, but would that
13 be on the same size page, on half of the Nine for
14 Nine that we see there?

15 THE WITNESS: Right. After my Nine for
16 Nine, and that one page would each represent a
17 single page of the magazine, yes.

18 MS. SMITH: Your Honor, if I may, this
19 is the actual magazine, and it's a spread. And
20 to be fair, C-BUS' magazine included additional
21 pages, and they are here, represented right here.
22 This would be their continuing spread. This was
23 the first page, second, third, fourth, fifth and
24 sixth.

25 THE MAGISTRATE: Okay. Thank you. I

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1 didn't mean to throw you off with your question
2 about the April dining issue, I just wanted to
3 qualify that.

4 BY MS. SMITH:

5 Q. Has C-BUS Magazine ever published a
6 dining issue, or what seemed to be an issue
7 featuring dining in Columbus?

8 A. I'm not sure if this is our first year,
9 but they did produce a dining issue which was
10 September.

11 Q. That came after your own?

12 A. It came about five months after ours.

13 Q. Were any similarities between your
14 own -- between their dining issue that was
15 published in September of 2006 and yours?

16 A. Aside from having a dining issue, I
17 believe that's in my media kit, it's one of the
18 features of the 11 months that we publish. We
19 have a dining issue that's come to be expected
20 each year. But the first one was -- there was --
21 they had people on the cover eating -- I think it
22 was BDI's food. That struck me because I work
23 for BDI. The section -- there was a special
24 advertising section that looked like miniature
25 Nine for Nines. It was color box, copy, color

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1 box copy. It was termed "Special Advertising,"
2 but it looked very much like a food section.

3 Then of course this remained, their food
4 section remained. And then there was one thing
5 that really struck me odd? I did -- each issue
6 we have special sections. And my food issue,
7 aside from we got the Doodys together on the
8 cover, we got Cameron Mitchell together on the
9 cover, we got the Doodys, D-o-o-d-y-s, and then
10 we had the Hyde Park owners. So we wanted a
11 chance to celebrate restaurant cultural, again,
12 positivism.

13 I didn't want to snide anybody in the
14 area, so I wanted to give attention to some other
15 restaurant tours that weren't the cream of the
16 crop, they weren't moguls. We did a section
17 called, "At Your Service," and it was 15
18 restaurant tours. It was a very deliberate
19 breakdown, you know, where are you from, what is
20 your restaurant. A little bit of bio on them and
21 then a quick Q and A, and then there was a
22 picture of them and content, picture, content.

23 O that was a large spread, and it was
24 actually a sought-after section because we're

25 dealing with some clients of ours, prominent

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1 people in the area. But when I got to their
2 dining issue, "them" being C-BUS, they had
3 virtually the exact same thing. Except as
4 opposed to doing 15 restaurant tours, they did
5 four. Of those four, one of them was one of my
6 members that I had done mine on. And it was Ryan
7 Stopper from Abbracci, who had recently become an
8 advertiser of theirs.

9 So you have only four, and of those
10 four, one of them is one of my -- one of the
11 people we actually featured on. It seemed
12 strange to me, from an editor's standpoint, that
13 you would run something that somebody just did,
14 much like running a restaurant feature, if I find
15 one someone else did, I think about tabling it.
16 I don't want to be doing the same thing somebody
17 else did. But it was that close and it looked
18 just like it. So yes.

19 Q. Were there any other similarities with
20 regards to the -- anything else with new issues
21 that came out that have concerned you, above and
22 beyond what we've talked about?

23 A. Again, it's progressive. It just keeps
24 getting greater and greater. Where it was --
25 where I was content at first, just the name and

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1 what was this? You know. This is -- is this a
2 Young Professional Organization letter? Is this
3 serving that? It was black and white. Each step
4 seems to go from sounding like a name confusion
5 to looking like, looking and sounding, really
6 looking and sounding. So that's where my concern
7 is today.

8 Q. Did you do a dining feature in the most
9 recent issue, a special dining feature featuring
10 one restaurant?

11 A. In my most recent issue we did Latitude
12 41. In our magazine we shoot everything in-house
13 and we write everything in-house, so I don't buy
14 stock photos 95 percent of the time, and we write
15 everything in-house. So we do these things, you
16 know, pretty far out in order to get this stuff
17 together. They don't just hit the wire.

18 Q. I'll represent to you that this is the
19 dining feature on Latitude 41 that was published
20 in your most recent issue, November of 2006.
21 Does that look like an accurate representation?

22 A. Uh-huh. It does.

23 Q. For the Court's purposes, it is --
24 again, this is two pages that have been reduced
25 to one?

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1 A. That's correct.

2 Q. Are you aware if C-BUS Magazine has ever
3 done a feature on Latitude 41? Do you know?

4 A. I believe in their most recent issue
5 they did a page spread on Latitude 41.

6 Q. I'll represent to you that this is a
7 copy of the dining feature from -- on Latitude 41
8 that was published in the most recent issue --

9 A. Right.

10 Q. -- of C-BUS Magazine, I believe called
11 their November-December issue.

12 A. Uh-huh.

13 Q. And I just want to make sure that we
14 all -- that when you do a dining feature on one
15 restaurant, what is the purpose of that?

16 A. The whole magazine, as a feature, is to
17 highlight what people do well. Highlight the
18 positive things. The restaurant feature is an
19 opportunity for us to highlight, and in a much
20 greater fashion, an institution, a chef or

21 restaurant that demands more than 300 words. It
22 demands its own spread.
23 Q. When you read their -- C-BUS Magazine's
24 review of Latitude 41, did that seem to be the
25 same kind of feature to you?

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1 A. There were similarities. Ours is really
2 geared towards the food and geared towards the
3 entire holistic experience from A to Z. So since
4 we cover all elements, you know, a story that
5 deals with the chef, deals with the cuisine,
6 deals with the location, is gonna be similar.

7 Q. Okay.

8 A. You know.

9 Q. These are of the two issues of the most
10 recent issues --

11 A. Right.

12 Q. -- of both C The Columbus Magazine, your
13 magazine, and defendant's magazine or
14 publication, C-BUS Magazine. I'm going to turn
15 them over for you for the Court. Do you notice
16 anything similar about these magazines, looking
17 at it this way?

18 A. Yeah. Exact same ad.

19 Q. You have similar advertisers; is that
20 true?

21 A. We do. We do. So much so that the back
22 cover is shared by the same advertiser.

23 Q. Okay. Is there, looking at the front of
24 it -- we talked a little bit earlier about the
25 front of the covers of the magazine.

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1 A. Right.

2 Q. These being the most recent issues, we
3 dealt earlier with the --

4 A. Was the "C-BUS" red in the first issue?

5 Q. I don't believe so.

6 A. Okay. Well, that right now really
7 screams at me, that it's red.

8 Q. As you look at these, is there anything
9 on the front cover of the most current issues
10 which you believe are similar?

11 A. Well, again, it's the same exact things,
12 it's the name, now with this red presentation,
13 the name, the moniker across the top. Yeah.

14 Q. Okay. And, you know, we've just been
15 talking here and exploring a little bit about
16 what I believe in the industry is called trade
17 dress, similar look of the magazines. Is it true
18 that your magazine may in feature or content be
19 similar to other Columbus magazines? Is that
20 true?

21 A. Well, you're gonna have similarities if
22 you're gonna deal with the categories we deal
23 with. You know, food, fashion, art, so on and so
24 forth. However, monthly magazines, review
25 magazines, which is what we painstakingly made

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1 sure not to be confused with. We didn't want to
2 be confused with the other -- only other
3 high-glossy magazine, which was Columbus Monthly.
4 City Scene came out thereafter, but there weren't
5 these great confusers, though they still touched
6 on the same or similar elements that we do; food,
7 art, so on and so forth.

8 Can you bring me back around?

9 Q. Yeah. Well, you were talking -- I was
10 asking you a little bit about the trade dress,
11 and you told us a little bit about how you
12 believe the trade dress is similar. Is that what
13 it -- the trade dress alone, is that what
14 concerned you about the similarities of these
15 magazines?

16 A. Well, no. It's the packaging, it's from
17 the inside out. Like you had asked me --

18 actually you had asked me if we were similar to
19 other magazines in the area, and I said we made
20 sure we weren't being confused with Columbus
21 Monthly or with other ones, because it didn't do
22 us any good to be confused with that because we
23 were trying to be our own, you know, magazine.
24 So when you -- when you deal with this
25 type of instance, because everybody's going to

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1 relate certain things. If you got the word
2 "Columbus" or you got the word "Magazine", some
3 choose "Monthly", we wanted to be feature, so --
4 which is the one defining element about our
5 magazine that makes our content different than
6 everyone else's, is that I don't do reviews, I
7 don't do ratings, I don't do stars, I don't do
8 forks. It's just a fairly inclusive, positive,
9 utilitarian magazine.
10 So that copy, it's all positive. The
11 entire magazine is positive. I don't throw dirt.
12 I don't prostitute my literature. No one buys
13 stories from me. The biggest problem right now
14 is the trade dress. It works with the name
15 confusion. It works with the packaging
16 confusion. The esthetic presentation of the
17 magazine. The phonetic presentation, when you
18 say it orally, whether it's C-BUS,
19 C-BUS Magazine, C The Columbus Magazine, Columbus
20 Magazine, when you -- all these things working
21 together, in addition to content looking similar,
22 in addition to stories, actual story choices
23 being similar, with thematic elements being
24 similar, and then of course now with titles being
25 similar, they just cooperatively work together to

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1 be -- to be confusing.

2 And it's -- my biggest thing is I don't
3 want to be confused with anybody else, which is
4 the same reason we didn't want to be confused
5 with Columbus Monthly or anyone else.

6 Q. Have you -- do you yourself have any
7 personal knowledge of any individuals that you
8 run into that a seem to moniker confused or had
9 actual confusion between your magazine, C The
10 Columbus Magazine and the defendant's
11 publication?

12 A. Two great instances, one was an
13 advertiser. Our inside cover is Buyers Volvo;
14 the sales director is Mark Geeding,
15 G-e-e-d-i-n-g, and we've become friends over the
16 course of having a professional relationship.
17 And he called me, and he called me in August of
18 this -- end of August last year, and had asked
19 me, said --

20 MR. WILLISON: Your Honor, I'm going to
21 object on the hearsay issue.

22 THE MAGISTRATE: Okay.

23 MS. SMITH: And your Honor, if I may,
24 while I realize my counsel and I have prepared a
25 bench memo and presented that to you, I have

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1 specific testimony that I'm going to elicit that
2 I anticipate defendant's counsel will object to,
3 and I'd like -- beyond what is in the bench memo,
4 I'd like to be able to make an argument to the
5 Court that it's admissible under hearsay
6 objection state of mind.

7 THE MAGISTRATE: Would you like to do
8 that now, as far as --

9 MS. SMITH: Yeah, actually, why don't I
10 do that now, if that's okay with the Court,
11 please the Court.

12 THE MAGISTRATE: Yes, yeah.

13 MS. SMITH: We're going to be eliciting

14 some testimony about conversations that
15 Mr. Ohlson has had with advertisers, people we've
16 featured in the magazine. And I'm going to be
17 asking him to relate some of the information or
18 things that he witnessed.

19 And I present to you that while
20 defendant's counsel may object to this as hearsay
21 evidence, the purpose -- first, the purpose of
22 eliciting the evidence for information is not to
23 show that what they said is true, only to show
24 their state of mind, which under Ohio Rule of
25 Evidence 8033 is an exception to the hearsay

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1 rule. I'm using it to show what then the
2 declarant's state of mind was when they made the
3 comments. And clearly, under the Ohio Rules of
4 Evidence, that is admissible.

5 Furthermore, preliminary injunction
6 hearings usually are a lot less formal. Evidence
7 oftentimes which may not be admissible under
8 regular course is in a preliminary injunction
9 hearing.

10 Again, I would submit to the Court it's
11 not hearsay evidence at all because under 8033,
12 as the testimony develops, you'll see that I'm
13 simply asking Mr. Ohlson to describe for me the
14 state of mind which the declarants made those
15 statements.

16 Thank you.

17 THE MAGISTRATE: Does defendant's
18 counsel have any response they would like to make
19 now as far as the state of mind exception?

20 MR. WILLISON: Yes, your Honor.

21 There are courts who have recognized the
22 state of mind as an exception to hearsay and
23 making it admissible in these cases, but there
24 also are courts that have come to the exact
25 opposite rulings. We would be happy to refer

1 that to you in writing after the hearing if you
2 would like, if you would like to give us a few
3 days to do that.

4 THE MAGISTRATE: Okay. I think I would
5 like that, since we do have a brief from the
6 plaintiff regarding it.

7 MR. WILLISON: Okay.

8 THE MAGISTRATE: Again, that's an issue
9 I'm going to need to address once we're done
10 taking the testimony.

11 BY MS. SMITH:

12 Q. You mentioned that you had a call from
13 advertiser at some point.

14 A. Uh-huh.

15 Q. Do you know when that was?

16 A. End of August. This past August.

17 Q. Okay. Do you know, who was the
18 gentleman again? I apologize.

19 A. Mark Geeding, Wholesale Manager for
20 Buyers Volvo.

21 Q. And how did Mr. Geeding contact you?

22 A. He, as many of my advertisers, received
23 the magazine, and it came to him unrequested, and
24 he said -- he called me up, called me on my cell
25 and said, you know, "I just got this

1 C-BUS Magazine. When did you guys -- are you
2 guys working on this? Did you change something?
3 Is this something you're working with?"

4 I said, "No, no, no. That's not my
5 magazine. That's not something we're endorsing
6 whatsoever."

7 But it, you know, from a sales manager
8 at a large automotive firm, to make a personal
9 call to make sure that that's not mine, I was
10 like -- oh. I was kind of set back by that.

11 Q. Had he advertised with you for some time
12 prior to this call?

13 A. Absolutely. Yes. And he's my -- one of
14 my three largest advertisers. He's my inside --
15 my inside cover.

16 Q. So he was familiar with C The Columbus
17 Magazine when he made that telephone call?

18 A. Very much so. And very familiar with
19 me.

20 Q. Okay. And I just want to be clear for
21 the record, when he telephoned you, did he
22 identify himself? Did you recognize his voice?

23 A. Yes. Absolutely.

24 Q. You knew it was Mark Geeding?

25 A. I knew exactly.

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1 Q. Have there been any other instances that
2 you have personal knowledge of where individuals
3 have confused your magazine with defendant's
4 magazine?

5 A. One, probably the greatest, we see
6 advertising deals with the monetary elements, but
7 this was purely editorial, from an editorial
8 standpoint. We organize and orchestrated all of
9 our covers. Again, 95 percent of them are shot
10 by us. So we have to set up an arrangement to do
11 the interview and do the photo shoot. For Kirk
12 Herbstreit, which was my August issue, which was
13 my Back to Campus issue, I had arranged with his
14 agent to meet at Gateway. In fact, the
15 advertisement on the back cover of both magazines
16 is an empty space above CBRE, Richard Ellis.

17 So we met there. We were introduced.
18 We went upstairs. Makeup was being applied, you
19 know, the photographer was being set up,
20 introductions had happened. And when we went to
21 move from -- after having already shot a number
22 of shots, because you have multiple wardrobes, we
23 went to the theater next door to take some more

24 shots, and upon walking up the steps after taking
25 the last shot to get food, he -- he turned around

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1 and says --

2 MR. WILLISON: Your Honor, I'm going to
3 object at this point to what Mr. Herbstreit said.

4 THE WITNESS: He said in front of, you
5 know, Jerry Johnson, a Marketing Coordinator; in
6 front of obviously me; and in front of the
7 stylist, walked upstairs and said -- I said, "Are
8 you familiar with the magazine?" We bring back
9 issues to show the person what we've done, mostly
10 recently. A lot of times these people aren't in
11 town.

12 He said, "No, no, no, I know your
13 magazine. C-BUS Magazine. You deliver it to the
14 radio offices." He works for you know, a large
15 radio network. And I was setback.

16 I'm like, "No, no, no, no, did you --
17 you're thinking of C-BUS Magazine. I'm C
18 Magazine." And I showed him the examples.

19 He's like, "Oh, my God." He's like,
20 "Wow. I hadn't seen this."

21 So at that point I realized that he was
22 attending a photo shoot, honestly believing --
23 whether or not he was intimate with C-BUS as far
24 as understanding what they are, he knew C-BUS,
25 knew that it was delivered to their radio station

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1 and actually believed he was being shot by that
2 magazine. Okay. So that's a huge concern of
3 mine.

4 Q. And he said that, those comments that
5 you just shared with us?

6 A. Absolutely. He said that right after

7 the shoot. Right after the shoot was completed.

8 We were walking upstairs to get our food.

9 Q. And when had you handed him a copy?

10 A. I handed him my copy, some back cover to
11 show him some of our features in the past. And
12 he was like, "This is a great magazine. I like
13 it." He's like, I've never seen this."

14 That's the point we realized, "Wait a
15 minute..."

16 Q. Did you explain --

17 A. I explained --

18 Q. -- the differences?

19 A. Very much. I actually contacted his
20 agent, and his agent is like, "No, I know exactly
21 who you are. I know exactly where I sent Kirk."
22 Kirk was confused.

23 Q. When did that happen?

24 A. That happened in June. June of '06.

25 Q. You mentioned a few individuals, Jerry

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1 Johnson and a stylist that was there?

2 A. Correct.

3 Q. Was there anyone else that was there,
4 that was present?

5 A. There was both photographers, both of
6 our photographers, Kyle Winter and Eric Wagner.
7 And the stylist, as well as myself. I'm not sure
8 if the Associate Editor had made it there yet,
9 Deputy Editor. Let me correct that. The
10 Associate Editor was there, Johnny Davis was
11 there. The Deputy Editor, I'm not sure if she
12 was right in there at that time or not. I know
13 she came late. Her name is Kristen Foley,
14 F-o-l-e-y. So there was a group of folks there.

15 And then plus Kirk Herbstreit's best
16 friend, which I don't know his name.

17 Q. We can understand that, certainly.

18 Since you filed your lawsuit --

19 A. Uh-huh.

20 Q. -- which I believe was filed in early
21 November --
22 A. Uh-huh.
23 Q. -- have you since that occasion
24 encountered any individuals who confuse your
25 magazine with the defendant's magazine?

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1 A. I work with Brad Adams, who's one of the
2 owners of BOMA, Bar of Modern Art, so he and his
3 other partners, we've met in the past, done a
4 presentation to them on how we could come
5 together and some advertising opportunities,
6 promotional opportunities, red box opportunities.
7 And he had said, "Hey, you know what? Get ahold
8 of Starker," Tom Starker who runs the door and is
9 one of the other owners at BOMA.

10 So, I called Bret and Bret said, "Get
11 ahold of Tom. Now's a good time to get ahold of
12 Tom, figure out a time to set up our planning for
13 '07."

14 So I called Tom. Bret gave me Tom's
15 cell number. I called Tom. I met Tom in the
16 past. We had a sit-down meeting. And I said,
17 "Hey, you know, Tom, this is Jason Ohlson. How
18 are you?" I said, "Hey, Bret told me to give you
19 a call so we could set up '07."

20 He said, "Hey, by the way, love the
21 story. Love the story."

22 MR. WILLISON: Objection.

23 THE MAGISTRATE: Objection overruled.

24 THE WITNESS: "It was a great spread."

25 I said, "Actually, this is C Magazine."

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1 He's like, "Oh, oh, oh, I'm sorry, sorry
2 sorry." He was getting the Mayor's birthday
3 together, and so clearly he confused me, and he

4 knows me and my magazine with C-BUS.

5 BY MS. SMITH:

6 Q. Did you take some time to correct his
7 error with you?

8 A. I took -- actually the bulk of my
9 time -- which would have been spent pitching a
10 meeting -- to differentiate the two magazines.

11 Q. When you called -- I just want to be
12 clear. When you called Mr. Starker, did you
13 identify yourself as Jason Ohlson?

14 A. Yes. And I also identified his partner,
15 Bret Adams, which legitimized my call.

16 THE MAGISTRATE: And my question was,
17 was it Mr. Starker or Mr. Adams who made the
18 comment, along the lines of, "loved the story"?

19 THE WITNESS: My entire conversation, I
20 talked to Bret. He told me to call Tom Starker.
21 I called Tom Starker. Tom Starker is the
22 individual that confused us. He was the person I
23 was talking to on the phone.

24 THE MAGISTRATE: Okay. Thank you.

25 THE WITNESS: Thank you.

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1 So this was just last week, on Thursday.

2 MS. SMITH: Okay.

3 BY MS. SMITH:

4 Q. Do you know, have you ever done an
5 article or done recently an article on BOMA, the
6 Bar of Modern Art?

7 A. No.

8 Q. To your knowledge, has C-BUS Magazine?

9 A. They were the cover story, they were on
10 the cover and they were a five-page cover story.
11 I believe five pages.

12 Q. The gentleman we just talked about, the
13 comments made, were those individuals confused
14 about your magazine and defendant's magazine?
15 Were they confused about the issues or the two
16 issues, which one was which?

17 A. They received me as though -- you know
18 when I said, "This is Jason with C Magazine,
19 C The Columbus Magazine," they said, "Oh, loved
20 the story." Never done a story on them.

21 Q. Is it possible that Mr. Starker misspoke
22 when he said that?

23 A. No, no, no. It was a chance for him to
24 thank for me for something I had never done.

25 Q. Is it possible Kirk Herbstreit misspoke?

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1 A. No. He mentioned the fact he gets it at
2 his radio station. I don't deliver there.

3 Q. Is it possible that Mark Geeding
4 misspoke when he said C-BUS Magazine when he was
5 asking you about C-BUS Magazine versus C The
6 Columbus Magazine?

7 A. No, because he referenced -- when he was
8 talking to me he was referencing the cover he was
9 looking at.

10 MS. SMITH: Thank you, Mr. Ohlson.
11 That's all I have. Thank you.

12 THE MAGISTRATE: Thank you, Ms. Smith.
13 I think we're going to break for lunch now.
14 We're going to take an hour, a little more.
15 We'll plan to come back at 1:30. So please plan
16 to be here at that time.

17 We'll go off the record just one moment.

18 (Luncheon recess taken.)

19 - - -

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p R O C E E D I N G S

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Monday, December 4, 2006

Afternoon Session

- - -

THE MAGISTRATE: We're back from lunch and continuing with the plaintiff, moving party's case. We left off at the end of Mr. Ohlson's direct testimony.

Mr. Ohlson, you can take the stand again, please. Remember, you're still under oath.

Cross-examination?

MR. WILLISON: Thank you, your Honor.

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JASON OHLSON

of lawful age, being previously placed under oath, as prescribed by law, was examined and testified as follows:

CROSS EXAMINATION

BY MR. WILLISON:

Q. Mr. Ohlson, earlier you had testified as to the similarities between the two magazines, C The Columbus Magazine and C-BUS. Isn't it true that the magazines are of a different physical size?

A. They are a different size, yes.

13 Q. And C The Columbus Magazine, which is
14 the magazine that you work for, correct?
15 A. One more time?
16 Q. C The Columbus Magazine, that's the
17 magazine you work for, correct?
18 A. Correct.
19 Q. That's full glossy, color pages all the
20 way through, isn't it?
21 A. Correct.
22 Q. Okay. But C-BUS isn't, correct?
23 A. Well, it depends. Because you have
24 different instances with different issues, part
25 of it's been glossy and then they introduced

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1 multiple glossy pages, some standard pages, so
2 it's hard to know if it is or it is not.
3 Q. But from what is out there right now --
4 A. There's both pages, glossy and regular
5 print.
6 Q. Right. So we have a combination in
7 C-BUS Magazine of color glossy pages, and at the
8 same time, matted pages in some instances?
9 A. Color mated images.
10 Q. Sorry. Is that right?
11 A. It's been used in combination, correct.
12 Q. Does C The Columbus Magazine, do they
13 ever use matted pages?
14 A. No, we do not use matted pages.
15 Q. Okay. So do you know of any issues of
16 C-BUS that have ever come out that are full color
17 glossy all the way through?
18 A. Full color glossy all the way through,
19 no. Of the three magazines produced, no. But
20 they have changed as far as the use of the gloss
21 in each instance.
22 Q. Uh-huh. You talked about the use of
23 lettering across the top cover of the two
24 magazines earlier, correct?
25 A. Uh-huh.

1 Q. And you said that one of the things that
2 C Columbus Magazine did was to put subjects that
3 were going to be in that magazine across the very
4 top above where it said C The Columbus Magazine?

5 A. I said the moniker can be used to
6 insinuate what kind of content would be in the
7 magazine.

8 Q. And the lettering across the top, we're
9 referring to that as the moniker?

10 A. Correct.

11 Q. I wanted to be sure we're on the same
12 page of music here. That moniker suggests what
13 can be in the magazine?

14 A. It can. When you say, "can be in the
15 magazine," cover lines can tell you what is in
16 the magazine. The use of page numbers can tell
17 you what is in the magazine. The moniker can be
18 its own tool to tell you what is inside the
19 magazine, or it can be just a sentence, you know,
20 or some type of message they want to use.

21 Q. Does C The Columbus Magazine always use
22 that moniker to suggest what is in the magazine?

23 A. Yes.

24 Q. Okay. And you said that there was a
25 similarity between C-BUS and C The Columbus

1 Magazine because of the use of dividers between
2 those subject headings?

3 A. I said -- no, I never said that. I said
4 that the use of a moniker, the type of content in
5 a moniker and use or placement of where the
6 moniker is is similar.

7 Q. Okay.

8 MR. WILLISON: Can we mark this as
9 Defendant's No. 1?

10

- - -

11

Thereupon, Defendant's Exhibit

12

No. 1 was marked for purposes

13

of identification.

14

- - -

15

BY MR. WILLISON:

16

Q. I'm going to hand you what has been

17

marked for identification purposes as Defendant's

18

Exhibit A. And if you would tell me when you've

19

had a chance to review that.

20

A. Okay.

21

Q. What is that?

22

A. What is -- what do you mean by that?

23

Q. What is Defendant A?

24

A. This is the cover of Columbus Monthly

25

for 10 of 2006.

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1

Q. Is there a moniker across the top of it?

2

A. I don't think that that's a moniker as

3

much as that's the use of cover lines.

4

Q. I'm sorry?

5

A. These are content lines.

6

Q. So you would differentiate this

7

lettering across the top from what you --

8

A. I would say that this information here

9

are actual cover lines telling you about stories.

10

It's not giving you categories within the

11

magazine.

12

Q. Uh-huh. So don't these tell you or

13

suggest what is in the magazine?

14

A. They are cover lines. They are

15

suggesting what stories, what individual stories

16

are found.

17

Q. Right. And are they divided by any kind

18

of markers?

19

A. They have a small block, yes.

20

Q. Okay. I'm going to hand you what has

21

been marked as Defendant's Exhibit B. Could you

22

tell the Court what this is?

23 A. This appears to be the cover of Columbus
24 CEO.
25 Q. Okay. And across the top --

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1 A. Uh-huh.
2 Q. -- what do you see?
3 A. I see cover lines --
4 Q. Okay.
5 A. -- that have been placed, as opposed to
6 in the body, much like Columbus Monthly, as
7 opposed to putting story cover lines in the
8 actual body of the cover, they have chosen to put
9 their cover lines at the top.
10 Q. Right. And so they are using this top
11 area here to suggest what is in the magazine just
12 as yours does?
13 A. No, that's -- no, that's -- again, the
14 use of the moniker the way we've used the moniker
15 is to suggest categories that you will see
16 regularly in the magazine. To say "Happiness
17 Training" or "New Albany Tree Cutting," they are
18 telling you what stories -- much like if you
19 place "Recycled Brass" here on the Eddie George
20 cover for Columbus Monthly, they have applied
21 other cover lines. The choice here was CEO, and
22 then -- also published by the same company -- CEO
23 and Columbus Monthly chose to put their cover
24 lines at the top. Not as a moniker, but by
25 giving you actual cover lines. Sometimes it's so

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1 that you don't clutter the field, the picture,
2 you know, put words across someone's face. But a
3 moniker is very different.
4 Q. So if I'm understanding your
5 distinction, then, between a moniker and cover

6 lines --

7 A. Uh-huh.

8 Q. -- a moniker tells you the particular
9 stories -- story that's in there?

10 A. No. Backwards. A moniker is a
11 categorical -- is used categorically. It's
12 placed at the top, generally at the top of a
13 magazine or publication to tell you or to
14 insinuate what type of sections, what type of
15 topics, Sports, Entertainment, Camping, Diet.
16 Those things are not cover lines; they are
17 categories. They are content categories.

18 To say call out Latitude 41, for
19 example; Eminent Domain, for example; Conference
20 Facilities, for example; those are stories within
21 that magazine. They are not categories. They
22 are actual story titles.

23 Q. Couldn't "Conference Facilities" at the
24 center of the Columbus CEO Magazine, couldn't
25 that be a category?

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1 A. Well, you wouldn't infer that it's a
2 category if it's placed within the actual titles
3 of stories, Happiness Training, Eminent Domain
4 and Conference Facilities. You are likely to
5 find stories on those particular names inside
6 your magazine. Just like you're likely to find
7 stories in CEO on what to wear. But they won't
8 be titled, "What to Wear." You'll find
9 categories, you'll find stories in my magazine
10 that fall under the moniker's sections. You will
11 not find something in my magazine that's titled
12 after my moniker.

13 Q. I'm going to hand you what has been
14 marked for identification as Defendant's Exhibit

15 C. Is there a moniker across the top of that?

16 A. There sure is.

17 Q. And what magazine is that?

18 A. C The Columbus Magazine.

19 Q. Doesn't it say, "what to Wear"?
20 A. It says: What to wear, where to go, and
21 where to be in Columbus."
22 Q. Didn't you just say you wouldn't use,
23 "What to wear in Columbus"?
24 A. I did not say that. I said I would not
25 use my moniker to title a story inside my

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1 magazine.
2 Q. Okay. Handing you what has been marked
3 for identification purposes as Plaintiff's
4 Exhibit D, could you tell the Court what that is,
5 please?
6 A. It appears to be Ohio Magazine,
7 September 2006.
8 Q. And do they have information about what
9 is in the magazine, across the top, of the title?
10 A. Repeat that, please.
11 Q. Do they have information about what is
12 in the magazine across -- above the title?
13 A. They appear to have cover lines at the
14 top of their magazine.
15 Q. So they have cover lines up there?
16 A. Correct.
17 Q. Just as your magazine does?
18 A. No.
19 Q. No?
20 A. My magazine has categories listed in the
21 moniker at the top of my magazine which never
22 change.
23 Q. Very good.
24 A. But the top of this are actual cover
25 lines, 8 Landmarks Then & Now," and then part of

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1 this is cut off. So I think it says, Two-wheel
2 Adventure," actually both of these have

3 information above them that's been cut off.
4 It's -- there's a title with a colon that's been
5 cut off. Beneath it says, "8 Landmarks Then &
6 Now." There's actually a title there that's been
7 cut off. Yours has it correct, I believe.

8 Q. We could switch, if you like.

9 A. That would be great. "Pictures from the
10 Past: 8 Landmarks Then & Now." "Two-wheel
11 Adventure: Cycle the Buckeye Trail." Those are
12 distinct cover lines.

13 Q. And other than the portion that was cut
14 off, these two are basically the same?

15 A. No.

16 Q. Wouldn't you say that they are the same
17 magazine cover?

18 A. You can -- repeat that again.

19 Q. Would you say these are both the same
20 magazine cover, although the one in Defendant's
21 Exhibit D that's actually marked D is a little
22 bit cut off?

23 A. They appear to be the same issue of the
24 same magazine, but again, really important
25 information at the top of the magazine, two

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1 introductory points of the cover line are
2 missing.

3 Q. Is there anything between the two items
4 on the left and the two items on the right in
5 there that separates them?

6 A. Is there anything separating the cover
7 lines at the top of the magazine?

8 Q. Yes. It's very faint, but if you take a
9 close look, can you see them?

10 A. I see nothing separating the two cover
11 lines at the top of the magazine except a space.

12 Q. Don't you see a slight white vertical
13 line there between the two? Here, I'll point it
14 out for you. Right in here (indicating).

15 A. No, I do not see that.

16 Q. Okay.
17 A. I don't see it on the other one either.
18 Q. You spoke earlier about the dining issue
19 that came out.
20 A. Which --
21 Q. Yeah, I was getting to that. There was
22 a dining issue that was in C-BUS and then there
23 was also a dining issue in C The Columbus
24 Magazine, correct?
25 A. We had a food issue, because that's the

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1 theme of April. There was a dining magazine for
2 C-BUS. I don't know what the terms were. I
3 wouldn't feel comfortable telling you other than
4 the fact they said it's a food issue or a dining
5 issue maybe.
6 Q. Okay. So there was a magazine that
7 C-BUS put out that dealt with food around
8 Columbus?
9 A. Right. They dedicated one of their
10 magazines to dining and food, yes.
11 Q. And then you also said there was one
12 that you put out that was done as well, right?
13 A. I said that we had put one out every
14 year in April.
15 Q. Okay. Theirs didn't come out in April,
16 did it?
17 A. Theirs came out in September.
18 Q. So that would be a different season
19 then?
20 A. Pardon me?
21 Q. That would be a different season of the
22 year then?
23 A. It would be a different season.
24 Q. Okay.
25 A. However, my dining issue, should it be

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1 important, covers everything for the entire year.
2 I'm not covering spring dining. I'm covering all
3 restaurant tours, all cuisine. I rerun that,
4 Nine for Nine that you're familiar with by now.
5 Every April I go back and I rerun the Nine for
6 Nines from the entire past year, so I cover all
7 seasons. I rerun all those stories as a part of
8 my dining guide, my food guide.

9 Q. C-BUS doesn't do that, do they?

10 A. They wouldn't have that many features of
11 just two magazines produced.

12 Q. Now, when you talk about your article on
13 food --

14 A. Which article is that?

15 Q. You've got Nine for Nine, correct?

16 A. That's the section.

17 Q. The section. I'm sorry. And you are
18 saying that C-BUS' use of "21" is one of the
19 things that makes the two confusingly similar?

20 A. I said the use of numbers to title their
21 food section --

22 Q. Uh-huh.

23 A. -- is similar. Much like I believe
24 there is another one they did the month before
25 that was seven, Seven Ways to Dine. So it wasn't

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1 just -- the number 21 is not the problem for me.
2 It's the issue of confusion for me when --
3 especially when I said the magazine was -- a
4 number was being changed to present a dining
5 section.

6 Q. Now, in their dining article, in C-BUS'
7 dining article --

8 A. Which dining article?

9 Q. "21 Ways" -- 21 is done numerically,
10 right? It's number 21, right?

11 A. Uh-huh.

12 Q. But you are differing -- you spell out
13 "Nine", don't you?

14 A. We go back and forth. I use Nine for
15 Nine and I use the number "9". It's really a
16 matter of design. But that's really when we're
17 working within a dining section, 300 Restaurants
18 featured. People look for that feature.

19 Sometimes we like to change the "nine"
20 for that page, as we change the design for every
21 page. One time you'll see the colors for Nine
22 for Nine is going to change varying on the colors
23 used.

24 Q. So yours changes monthly?

25 A. It can vary.

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1 Q. It can vary?

2 A. It does not have to vary.

3 Q. So if anybody was trying to copy you,
4 they would have a hard time because you are
5 varying it now and again, right?

6 A. Why -- what do you mean by "copy" me?

7 Q. You don't understand the word "copy"?

8 A. I don't understand the word "copy" in
9 the question that you're asking me.

10 Q. If anybody was trying to copy your
11 work --

12 A. Copy the section?

13 Q. Yeah.

14 A. Copy the words?

15 Q. Try to pass it off as if it was yours,
16 you would have had a hard time because you vary
17 yours, right?

18 A. It depends on if you're reading it or if
19 you are told. If someone is telling you Nine for
20 Nine, you don't see the word "nine"; you hear
21 "9". If I'm calling you on the phone and you're
22 a restaurant and I'm setting up a section and I'd
23 like to feature you in my Nine for Nine, I'd like
24 to feature you in my 21 Ways, there's a

25 confusion. It depends on how you receive the

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1 section.

2 Q. How did you decide on Nine for Nine as
3 the title of that section?

4 A. Really, phonetically, it worked well
5 together. Nine for Nine.

6 Q. What is the significance of nine?

7 A. The significance of nine. The
8 significance of nine is just we were sitting
9 down, we wanted more than one option. The
10 magazine is about providing choices and utility,
11 so I did nine. We did nine all the way back when
12 we were C Entertainment because we couldn't do
13 one restaurant. We were already doing a
14 restaurant feature, per se, so we needed
15 something else that was greater.

16 Since it's a lunch-oriented section and
17 it's not nearly as dramatic or elaborate as
18 anything else, we do In and Out, we do three,
19 three and three, we just developed that theme,
20 Nine for Nine. Plus \$9 is kind of the important
21 part because it's -- \$9 is the part of lunch that
22 has the utility.

23 We feature the entire restaurant as a
24 whole, but we try to feature -- we have to
25 feature at least one dish that you can get off

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1 their menu that's at least -- at most \$9 or less,
2 so -- which allowed me, seeing that I needed to
3 expand the utility, I wanted to be able to take
4 Carpaccio at Lindey's, although they do not have
5 a \$9 menu, I could find one qualifying dish. So
6 we found that to be the one number that you can
7 usually find on almost every menu, so we kept the
8 \$9 and we just chose Nine for Nine choices.

9 Q. It makes perfect sense.

10 Your section, Nine for Nine, does that
11 run in every magazine that you do?

12 A. Yes. We publish a Nine for Nine section
13 every magazine.

14 Q. Do you know how many times 21 Ways has
15 run in C-BUS?

16 A. I don't know. Probably once. But there
17 is another number section, I think that's what
18 it's morphed into, if I'm not mistaken. It was
19 preceded by another dining section that had a
20 number. I'm not sure if they use the number 21
21 every time, but they've used the number to
22 present that section.

23 Q. But the only evidence that we've shown
24 the Court so far today, the 21 Ways article, to
25 your knowledge, that's only ever run once?

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1 A. Correct.

2 Q. Now, you talked about your Nine for
3 Nine. It's a very comprehensive review of the
4 restaurant; is that right?

5 A. No.

6 Q. No?

7 A. Well, comprehensive as far as what?

8 Q. Well, you talked about a lot of details
9 that went into your articles and you --

10 A. No. The Nine for Nine, okay, is a
11 small, 100-word section that allows us to talk
12 about the restaurant from an overview but to be
13 more specific about their food. All right. It's
14 supposed to be a utilitarian guide for lunch
15 dining, all right?

16 Q. Uh-huh.

17 A. So that's why you use the nine. But I
18 wouldn't say that it's -- it's an intimate look
19 into all aspects of the restaurant. I can't do
20 that in 100 words.

21 Q. Okay. Now, in the examples that you

22 gave --
23 A. Uh-huh.
24 Q. -- that your attorneys put up there for
25 to you identify comparing Nine for Nine and 21

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1 Ways, different colors were used in those,
2 weren't they?
3 A. I'd have to see them again.
4 MR. WILLISON: Do you have an objection
5 to us putting those back up here now?
6 BY MR. WILLISON:
7 Q. Have you had a chance to take a look at
8 those again?
9 A. Uh-huh.
10 Q. Is it fair to say that different colors
11 are being used in the different magazines?
12 A. We've chosen to use different primary
13 colors, yes.
14 Q. Okay.
15 A. However, on nearly every one of my Nine
16 for Nines, as that example shows, I change the
17 colors.
18 Q. Uh-huh. Which brings us to the second
19 exhibit, third exhibit, I guess. Here we still
20 have different colors being used, right. Yours
21 are primarily -- would you call that maroon and
22 orange?
23 A. We've chose to use the maroon and orange
24 from the peanut butter sandwich, and then to
25 carry that through the rest of the images that

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1 we've chosen out of the images shot for each one
2 of those so it fits that color scheme, yes.
3 Q. And the defendant's exhibit uses green.
4 A. But that's only one page of the

5 four-page spread, though. You still have four
6 more cells of that, which the colors will change
7 over and over again.

8 MS. SMITH: I just want to make sure I
9 get the right one. That's the five subsequent
10 pages.

11 BY MR. WILLISON:

12 Q. And the five subsequent pages of the
13 defendant's -- excluding any advertisements you
14 see there, like Live Sports and all that -- don't
15 vary their main headings, which have the days
16 like Tuesday, Wednesday, Thursday, aren't those
17 green?

18 A. They are in green.

19 Q. And then there's a little bit of blue in
20 there, it looks like.

21 A. There's some green. There's blue.
22 Again, there's red. There's primary colors. You
23 generally have to use primary colors in layout.
24 You only have like five to choose from.

25 Q. There's no way to get around some

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1 similarity, is there?

2 A. On the color scheme, yeah. Because
3 there's only five colors, right. For your layout
4 you're gonna use one of the five primary colors
5 generally. He opted to use not only the primary
6 colors, it's not impossible that you can't step
7 outside of the primary color scheme, but you'll
8 have some similarity in the color choices.

9 Q. You have your article written on a black
10 background with white text, right?

11 A. Depends on which one you're looking at.

12 Q. The one in your hand right now.

13 A. This one has a white background, maroon
14 and black.

15 Q. You have different backgrounds in
16 different color text; is that right?

17 A. In this instance we do (indicating); in

18 this instance we do not (indicating).
19 Q. Right. But the defendant's doesn't have
20 any black background with white text, does he?
21 A. He has white background, he has blue
22 background and he has a -- looks like a yellow
23 background.
24 Q. Now, you talked earlier about how your
25 magazine did an article on a restaurant called

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1 Latitude 41, and then very shortly thereafter,
2 C-BUS did an article on Latitude 41.
3 A. I didn't say that.
4 Q. Okay. What did you say?
5 A. I said in equal issues, there were
6 stories on both restaurants. My November issue,
7 and their November issue both had a feature on
8 Latitude 41.
9 Q. Okay. When did Latitude 41 open as a
10 restaurant?
11 A. Soft opening or grand opening?
12 Q. Give us your knowledge of when it
13 opened. Soft or hard.
14 A. Well, it depends, because it's going to
15 make it difficult for me because they did it in a
16 series of openings.
17 Q. When did it open for the public?
18 A. Open to the public. Couple months back.
19 Q. Couple months back?
20 A. Correct.
21 Q. So both articles in your magazine and in
22 C-BUS came out right around the time that that
23 restaurant opened; is that right?
24 A. Well, it depends on, I mean, when they
25 came out or when the story was written.

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1 Q. When the stories came out in the

2 magazines --
3 A. Uh-huh.
4 Q. -- didn't they both come out right
5 around the time that restaurant Latitude 41
6 opened?
7 A. They, well, we came out at the beginning
8 of November, and they came out I think the third
9 week of November.
10 Q. I'm not asking when the magazines --
11 A. I'm saying that's the relative time
12 frame. We came out the beginning of the month,
13 close to when they had been open about a month,
14 and then I think C-BUS' last magazine came out,
15 it was almost two months since they had been
16 open.
17 Q. So both articles came out right around
18 the time that Latitude 41 opened?
19 A. If you say right around the time is two
20 months.
21 Q. Okay.
22 A. Ours was a month.
23 Q. Okay.
24 A. I just know we were, we had done the
25 story, then a month later we ran it. So we're

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1 30 days out, not 60.
2 Q. Didn't Columbus Monthly also run an
3 article on that magazine -- I'm sorry, on that
4 restaurant right around that time?
5 A. I don't know.
6 Q. Don't know?
7 A. Don't know.
8 Q. Didn't Columbus Dispatch write up an
9 article on that restaurant right around that time
10 too?
11 A. No. They, if I'm not mistaken, the
12 Dispatch did a story on -- before the hotel
13 opened, which included view into the restaurant.
14 Q. Okay. Would you say that it was fairly

15 big news that a new restaurant would open for
16 magazines which dealt with the subject matter
17 that you and C-BUS deal with?

18 A. Please, if you would, repeat the
19 question.

20 (Record read back as requested.)

21 THE WITNESS: I have a dining section.
22 I have a large two- to three-page feature, like
23 a -- it's got a great amount of real estate in
24 the magazine, it's one of my, you know, major
25 themes in the magazine. So that's a big deal for

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1 me to do a restaurant feature. So to say it's
2 any one restaurant or another, it's --

3 Q. It's a big deal for your magazine,
4 right?

5 A. My restaurant section is a big deal.

6 Q. Uh-huh. The point is, isn't it a
7 newsworthy event for magazines of this type?

8 A. Well, news, maybe. I don't do news,
9 though. I do a feature. So it was the best
10 thing for me to wait for a restaurant to be up
11 and running, which is what we probably usually
12 do, because again, our restaurant section is to
13 get in A to Z. To tell you where to sit, you
14 know, what to eat, what is the menu, how to
15 prepare your wines, an intimate look on all
16 elements of that. It's hard to do that just when
17 a restaurant opened.

18 News print run their stories within
19 24-hour periods. I mean, as soon as they have a
20 hook on something, they are going to run it.
21 It's news. The shelf life is different.

22 Q. What is the monthly circulation for
23 C The Columbus Magazine?

24 A. 34,000.

25 Q. You said that your magazine has a target

1 market of people between 25 and 55, but you go
2 for everybody; is that fair?

3 A. No, I -- 25 to 55 is what we're trying
4 to get to. The young professional and the
5 seasoned professional.

6 Q. Okay. So -- but you would be happy if
7 70-year-olds read it, right?

8 A. I wouldn't discriminate anyone reading
9 my magazine.

10 Q. Sure. Sure. But your market that
11 you're sort of really trying to write for and
12 to -- you put out your magazine for, you say are
13 people between the ages of 25 and 55?

14 A. Target audience is 25 to 55. It's the
15 professional audience. The professional
16 demographic.

17 MR. WILLISON: If I could have just a
18 moment, your Honor.

19 THE MAGISTRATE: Yes, you may.

20 (Pause in proceedings.)

21 BY MR. WILLISON:

22 Q. You had talked about a section in your
23 magazine which -- I believe your section was
24 called "Suitless"; is that right?

25 A. Movers and Shakers.

1 Q. Movers and Shakers.

2 A. Which is, you know, monikered
3 "Suitless".

4 Q. So whenever you see Movers and Shakers,
5 it appears with the word "Suitless", right?

6 A. Suitless is the introductory point, is
7 the element, category. And it's across that
8 banner you see across every Suitless page.

9 THE WITNESS: Do you have a couple
10 Suitlesses here to show him?

11 BY MR. WILLISON:

12 Q. You had previously talked about your
13 section, Suitless -- I'm sorry, Movers and
14 Shakers, and then the word Suitless always
15 appears with the words Movers and Shakers.

16 A. Yeah. If you will grab the other two as
17 well, it will help illustrate the two sections.
18 I believe it's those right there. That one and
19 the other one.

20 MS. SMITH: This one?

21 THE WITNESS: Yeah. And then my other
22 one. There you go.

23 As you see, "Suitless" here, then you've
24 got Movers and Shakers. You have Suitless here,
25 Capital Movers.

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1 Q. Okay. Now, C-BUS has never used the
2 term "Suitless" in any of their magazines, have
3 they?

4 A. No. It's a coined term.

5 Q. And they've never put the words "Movers"
6 or "Movers and Shakers" on any of their sections
7 relating to this material that you know of?

8 A. No, I don't recall them ever using
9 "Suitless".

10 Q. In fact, they use a different
11 terminology, don't they? Up-and-Comers?

12 A. Up-and-Comers, correct.

13 Q. Okay. And I notice that your article
14 about Chris Plank, all the text is below the main
15 portion of the picture; is that right?

16 A. Correct. Because in that instance, her
17 face has all the shot. Takes up the majority of
18 the field so we had to place it below her on that
19 one spot that wouldn't interrupt the picture.

20 Q. But in the Up-and-Comers sections --

21 A. Uh-huh.

22 Q. -- we've never seen that design, have
23 we?

24 A. Well, right there you have it.

25 Q. Where is that?

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1 A. You've got a full page picture. See
2 these two here? If I may, these two together
3 create a very similar presentation of copy. You
4 have a full page image and then you're gonna do
5 your bold white text, place it wherever it
6 doesn't interrupt the field. On the left in one
7 this one and below her on this one.

8 On this instance here, you get a very
9 different relationship. These two nearly look
10 identical. In fact, these minus the word
11 Up-and-Comers, could almost run in our magazine.
12 That's how close that designated white space and
13 picture looks. All the way down to the bar, the
14 solid bar of color at the top. One's blue, one's
15 maroon, Up-and-Comers, Suitless Capital Movers,
16 title, white space, two-thirds of the pictures
17 takes up most of the field. Those look very,
18 very, very similar. But they don't use Suitless,
19 they still remain loyal to the name of their
20 section, but the presentation of that name, the
21 presentation of that page is just very similar.

22 Q. We'll get to that in just a moment, but
23 in Up-and-Comers, all of the text is on one half
24 of the page, sort of going up and down, but in
25 the Chris Plank article in Suitless, Movers and

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1 Shakers, all of yours is horizontally across the
2 bottom, isn't that correct?

3 A. In the instance of Chris Plank at the --
4 it's at the bottom because it has to be there
5 with that picture.

6 Q. And then in later issues --

7 A. Uh-huh.

8 Q. -- then we've got a person on the left
9 versus a person on the right; is that correct?
10 A. This one here?
11 Q. Person on the right, person on the left,
12 correct?
13 A. Yes.
14 Q. And then in yours --
15 A. Uh-huh.
16 Q. I'm sorry, in Up-and-Comers, we have the
17 story, the text of the story is in a box, isn't
18 it?
19 A. It is in a very small box, yes.
20 Q. Right. But yours isn't in an a defined
21 box. It's just along that side, right?
22 A. The way that you lay the image like
23 this, you don't have to put another box because
24 the picture itself creates a line.
25 Q. I understand. But there's no black

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1 lines around yours, right?
2 A. Again, the picture is cropped, so
3 that -- it creates its own border. But I have
4 not put a black line on my picture, no.
5 Q. That's what I was asking, was there a
6 black line?
7 A. Very good. No, there's not a black
8 line.
9 Q. So there are stylistic differences
10 between these two articles, aren't there?
11 A. The title's different and one has a thin
12 black box around the copy.
13 Q. In fact, Movers and Shakers puts the
14 person who's being interviewed's name in color,
15 don't they, in the one on the right?
16 A. You mean their name, of the subject?
17 Q. Pamela Hashem?
18 A. Correct. We've chosen to place her name
19 in color.
20 Q. But they've used black, haven't they?

21 A. Right. But their title is in red. And
22 then their name is in black. Our name's in red,
23 title's in black.
24 Q. So there are stylistic differences, is
25 what I'm pointing out, correct?

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1 A. Very little difference, yes, but they
2 are not the same. We've used black on both our
3 name and title, between -- items matter of, you
4 know, design, esthetics. You choose a color
5 relative to the scheme of the picture.
6 Q. Have you ever seen layouts like this in
7 any other magazine?
8 A. Like which?
9 Q. Like yours.
10 A. No.
11 Q. No?
12 A. Well, no. No.
13 Q. What's the advertising to editorial
14 ratio of C Magazine?
15 A. It depends. Everything's kind of a
16 goal, you know.
17 Q. Well, you are the editor, aren't you?
18 A. I am the editor.
19 Q. But you don't know that?
20 A. I said I -- well, ask your question
21 again, please, if you would.
22 Q. What is the advertising to editorial
23 ratio of C Magazine?
24 A. Well, we like to achieve 70/30, get as
25 close as we can, but trying to get that and

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1 actually getting that are --
2 Q. Now, is that 70 advertising, 30
3 editorial?

4 A. Correct.
5 Q. With your Movers and Shakers/Suitless
6 subjects, is there an age range that you use with
7 them --
8 A. No.
9 Q. -- or is that just the age range of your
10 magazine?
11 A. No. I don't discriminate any type of
12 profile.
13 Q. Okay.
14 A. Suitless is simply about what you do for
15 a living. It's a business section.
16 Q. And without regard to age?
17 A. No.
18 Q. Okay.
19 MS. SMITH: Nothing further, your Honor.
20 THE MAGISTRATE: Okay. Thank you. Any
21 redirect?
22 MS. SMITH: Yes, please. Thank you,
23 your Honor.
24 - - -
25 REDIRECT EXAMINATION

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1 BY MS. SMITH:
2 Q. Mr. Ohlson, I'm going to start again
3 with the Suitless feature, since opposing counsel
4 put it up there.
5 When Mr. Willison was asking you some
6 questions, he asked you about some of the
7 differences that you saw between the two
8 features. This on my left being the feature
9 "Up-and-Comers" from C-BUS Magazine, and on my
10 right the Suitless feature from C The Columbus
11 Magazine. Are there similar colors in that?
12 A. Yeah. Red, black and white.
13 Q. Are there other similar features about
14 that?
15 A. The entire page is an image. The copy
16 is placed, you know, so that it doesn't interrupt

17 the image. It's white bold, so that you can't
18 place just general white -- you can't place white
19 over top of the young man's face, it wouldn't
20 look like -- you wouldn't see his face. You also
21 couldn't use the white around his face, which is
22 why they used the red. They had white text on
23 top of his shirt and did an outline around the
24 color. They chose to use red.
25 Q. What color are the names in these two

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1 pictures, Jason Galli and Chris Plank?
2 A. They are both white.
3 Q. You identified one difference that you
4 noted, or he called to your attention, that was a
5 matter of where the text was --
6 A. Uh-huh.
7 Q. -- is that correct?
8 A. Correct.
9 Q. As you have -- with the experience you
10 have as an editor, looking at this ad, is that
11 the first thing that you notice, that the text is
12 below? Do you notice more similarities or more
13 differences?
14 A. Image is always first. You know, the
15 image takes you to the copy. That's the first
16 thing you're ever gonna recognize reading
17 anything, is image. So I catch the fact that
18 there's a young man's face, the entire page. I
19 see that there's a woman's face, the entire page.
20 Q. And everything -- you talked about it a
21 little bit earlier in your testimony, but isn't
22 it true with these two juxtaposed next to each
23 other, the content of these features pretty much
24 is the same? They feature -- they are talking
25 about what that individual does in the Columbus

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1 community for a living?

2 A. Correct. It's not about hobbies or
3 entertainment. It's about what they do for a
4 living.

5 Q. What does the tab, "Up-and-Comers" mean
6 to you?

7 A. Somebody who's developing a professional
8 identity. Somebody who's moving up the ladder of
9 success. Someone who's not already succeeded.

10 Q. What does Movers and Shakers suggest to
11 you, that tab?

12 A. People are actively moving about, you
13 know, in the marketplace, trying to be
14 successful.

15 Q. I'm going to put these back up here
16 again. Again, on the left is C-BUS' --

17 A. Uh-huh.

18 Q. -- feature, Up-and-Comers, and on the
19 right is C The Columbus Magazine's feature --

20 A. Right.

21 Q. Movers and Shakers.

22 A. Uh-huh.

23 Q. What is the first thing you notice about
24 those two? Any similarities?

25 A. Two thirds of the page is an image of a

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1 person standing vertical. Vertical image,
2 two-thirds of the page.

3 Q. And how's the text?

4 A. Red, black and white.

5 Q. Okay. And where is the text placed?

6 A. To the side of the picture.

7 Q. Now, Mr. Willison called your attention
8 to the fact that there was a black line box
9 around the text on the C-BUS page.

10 A. Uh-huh.

11 Q. Is that the first thing you notice when
12 you look at the magazine or when you look at that
13 feature?

14 A. No. No.
15 Q. I want to talk a little bit about the
16 dining, and I think Mr. Willison asked you just a
17 little bit about how often you had seen a feature
18 in C-BUS magazine using a number --
19 A. Uh-huh.
20 Q. -- the 21 Ways a Week, I think it was.
21 A. Uh-huh.
22 Q. How many issues of C-BUS are you
23 familiar with that have been published?
24 A. Three.
25 Q. Okay. You are familiar with three

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1 magazines?
2 A. Correct.
3 Q. And out of those --
4 A. Actually, that may be the fourth one.
5 THE MAGISTRATE: Just answer based on
6 your knowledge.
7 BY MS. SMITH:
8 Q. Three or four; is that correct?
9 A. Three or four.
10 Q. And out of those three or four, how
11 many -- how many 21 Ways a Week have you seen?
12 A. One.
13 Q. And Nine for Nine, you've been running
14 that how long?
15 A. Over two years.
16 Q. When you say "Nine for Nine" out loud,
17 whether it's spelled the same or not, doesn't it
18 sound the same? 9 for 9 versus "nine" spelled
19 out, Nine for Nine?
20 A. Right. Correct.
21 Q. As a matter of fact, to illustrate --
22 bear with me. Can you read out loud for me that
23 tagline right there?
24 A. Nine for Nine.
25 Q. Can you read out that tagline for me

1 right there?

2 A. Nine for Nine.

3 Q. And I even think it says right here,
4 what's the top tag say?

5 A. Nine for Nine.

6 Q. And it's "nine" the numeric
7 representation?

8 A. Correct. Actually, Nine for Nine is
9 mentioned almost always in our contents as well,
10 content page.

11 Q. Do you suspect that other magazines in
12 Columbus may feature similar restaurants or do a
13 similar article every once in a while?

14 A. They will cover similar restaurants.
15 How they choose to cover them is usually the
16 difference.

17 Q. I think you talked about that with
18 Mr. Willison.

19 A. Correct.

20 Q. You are more of a feature as opposed to
21 a review?

22 A. -- a review, right.

23 Q. I think Mr. Willison asked you a little
24 bit about Columbus Monthly and Columbus
25 Dispatch --

1 A. Uh-huh.

2 Q. -- also running articles on Latitude 41.

3 A. Uh-huh.

4 Q. Has your magazine ever been confused --
5 do you have a personal knowledge that your
6 magazine has ever been confused with the Columbus
7 Dispatch?

8 A. No. Well, the Dispatch is a newspaper,
9 so no. The likelihood anything would be

10 confused, it's a newspaper, not a magazine.
11 Q. Has your magazine ever been confused, to
12 your knowledge, to Columbus Monthly?
13 A. No. Well, we kind of did things so that
14 we wouldn't be confused, you know, which we
15 didn't want "Monthly". We used "Magazine",
16 C The Columbus Magazine, and it's actually been a
17 rule in our company that you have to say the
18 entire name, so you present the entire title, so
19 no. We don't want to be confused.
20 Q. The entire title being --
21 A. C The Columbus Magazine.
22 Q. -- C The Columbus Magazine. I'm going
23 to hand you a few issues of your magazine.
24 A. Uh-huh.
25 Q. Starting with June of 2005 -- I'm sorry,

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1 June of 2005, ask you read the tagline on the
2 moniker at the top of that magazine.
3 A. What to wear, where to go and where to
4 be in Columbus.
5 Q. I'm going to hand you the April of 2006
6 issue, can you read the moniker on the top of
7 that magazine?
8 A. What to wear, where to go, where to be
9 in Columbus.
10 Q. I'm going to hand you an issue from
11 August 2006. I'd like you to read the moniker
12 across that.
13 A. What to wear, where to go, where to be
14 in Columbus.
15 Q. September 2006, C The Columbus Magazine.
16 Can you please read the moniker across that?
17 A. What to wear, where to go and where to
18 be in Columbus.
19 Q. And finally, November of 2006, a copy of
20 C The Columbus Magazine, can you read the moniker
21 with that?
22 A. The same. What to wear, where to go,

23 where to be in Columbus.
24 Q. Okay. Has your moniker changed ever
25 since you've been publishing C The Columbus

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1 Magazine?
2 A. No.
3 MS. SMITH: Your Honor, if I may, I
4 think we had two exhibits that we put up here.
5 THE MAGISTRATE: Yes.
6 BY MS. SMITH:
7 Q. These are issues of
8 C Entertainment Magazine. I'm going to hand them
9 to you, I think this is your first issue and your
10 last issue.
11 A. Correct.
12 Q. Starting with the first issue, can you
13 read above there?
14 A. For the first issue: Where to be, where
15 to go, what to wear, what to eat and what to say.
16 Q. And when was that published?
17 A. March of '02.
18 Q. Okay. Can you read it from the last --
19 A. Last issue? Where to be, where to go,
20 what to wear, what to eat.
21 Q. Okay. Were those similar, similar
22 design and idea --
23 A. Uh-huh.
24 Q. -- then to what you use to now in C The
25 Columbus Magazine?

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1 A. Correct.
2 THE MAGISTRATE: I'm sorry, what is the
3 date of the last issue again?
4 MS. SMITH: The date of the last issue
5 is July-August 2003.
6 BY MS. SMITH:

7 Q. Now I'm going to hand you copies which
8 we'll be introducing, I think at the conclusion
9 of our case in chief, of C The Columbus Magazine
10 (sic). This is their most recent issue.

11 A. Uh-huh.

12 Q. I'm going to ask you to read the moniker
13 across the top.

14 A. Careers, cultures, dating, dining,
15 people, places, sports, style.

16 Q. Now, I won't belabor it, but I'm going
17 to show you the three remaining issues.

18 MS. SMITH: And actually, if opposing
19 counsel doesn't object, these are --

20 MR. WILLISON: Uh-huh.

21 BY MS. SMITH:

22 Q. Can you just read those to us? Do they
23 say anything different than what the first
24 magazine said across the moniker?

25 A. Doesn't appear to have any differences.

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1 Q. What -- what are those monikers? That
2 suggests to you what?

3 A. That those are the categories of
4 interest in the magazine. Those are the sections
5 where the topics will fall.

6 Q. And I think we talked earlier a little
7 bit about some similarities that you noticed
8 between the monikers, and these are just samples,
9 again, we used earlier.

10 A. Uh-huh.

11 Q. Other than the fact that they both
12 represent categories versus titles of articles
13 that might be contained in the magazine, what
14 else do you notice about the moniker that's
15 similar?

16 A. Well, much like the one attorney showed
17 me, the cover of Columbus Monthly, they used
18 little tiny squares for their cover lines at the
19 top. And they have used the actual hash marks,

20 so they both have hash marks dividing their
21 topics.
22 Q. Okay. What color are they both in?
23 A. They are both white.
24 Q. While this is up here, I'd just like to
25 ask, I notice when you put those magazines on top

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1 of each other --
2 A. Uh-huh.
3 Q. -- like that, where does the "C" appear?
4 A. Top left. Prominently top left.
5 Q. If these magazines were laying on top of
6 one another, what would you see?
7 A. Well, it would be a "C". Especially if
8 there was a red one.
9 Q. And I realize they could be laying on
10 top of each other like this, but if they happened
11 to be laying on top of each other like that, what
12 do you see?
13 A. Prominent C.
14 Q. I just want to conclude with asking you
15 a little bit about the exhibits that were
16 introduced by defendants.
17 MS. SMITH: And I do apologize, I don't
18 necessarily remember, I think this is A, is that
19 correct?
20 MR. WILLISON: I think that's right.
21 MS. SMITH: Okay.
22 THE MAGISTRATE: Just one moment.
23 I was thinking, I'm just -- while I'm
24 thinking about it, we're going to have to be real
25 careful when we move the exhibits into evidence

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1 that there are no duplicates and so forth. I do
2 have one, that one as A, though.

3 MS. SMITH: Okay. I think we used
4 numbers. I'll start with this, this number A, so
5 everyone's on the same page, Columbus Monthly
6 October of 2006.

7 BY MS. SMITH:

8 Q. Just read the moniker again just to
9 refresh what Mr. Willison asked you to. Do those
10 suggest to you that that's something that's going
11 to appear on every issue of Columbus Monthly?

12 A. No. That's -- and again, I don't
13 necessarily even believe that's a moniker as much
14 as it could be a series of, you know, cover
15 lines.

16 Q. Okay.

17 A. So, no, you would not expect to find,
18 "The Fall of WVKO" in every issue of their
19 magazine. Nor would you find, "Homes, a
20 Granville Rehab" in every issue. Nor would you
21 find, "New Albany and the Tree-Cutters" in every
22 issue. No.

23 Q. It suggests to you that those are
24 articles contained in that issue and that issue
25 alone?

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1 MR. WILLISON: I'm going to object, your
2 Honor. We're getting a lot of leading questions
3 here. If we could lay off those.

4 THE MAGISTRATE: The opinion questions?

5 MR. WILLISON: I'm sorry. She's
6 basically reading the statement to the witness
7 and he's just responding with yes or no. She's
8 leading the witness through his testimony.

9 THE MAGISTRATE: Yeah, please be careful
10 of that.

11 MS. SMITH: I will. Thank you, your
12 Honor.

13 BY MS. SMITH:

14 Q. Do you have an opinion of whether or not
15 that is an article that would be contained in

16 that magazine or whether it's an article that may
17 appear in every magazine? Do you have an opinion
18 on that?

19 A. I believe that these are cover lines for
20 this specific issue of Columbus Monthly.

21 Q. Okay. That's it?

22 A. They are not to be reoccurring themes or
23 content.

24 Q. Okay. And finally -- and I do apologize
25 I didn't do this first -- do you have the most

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1 recent issue of C-BUS?

2 A. Yeah, right here.

3 Q. I think counsel asked you earlier about
4 the size of these.

5 A. Uh-huh.

6 Q. Do you recall that?

7 A. Uh-huh.

8 Q. If these aren't sitting side by side, if
9 you just see this magazine, can you just discern
10 the difference in size versus this magazine?

11 A. No.

12 Q. If this was laying in a coffeehouse and
13 you went and picked up this magazine --

14 A. Uh-huh.

15 Q. -- would someone be able to tell whether
16 this was different than the size of your
17 magazine?

18 A. No. Like Rolling Stone is deliberately
19 a larger, larger magazine. W Magazine, usually
20 they use size to be huge and run these huge ads.
21 Those are made twice as large, three times as
22 large. Those two are especially large magazines.

23 Interesting thing that you showed me, if
24 you remove the space, C-BUS, the mailing section
25 there, they look almost the same.

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1 MS. SMITH: Thank you, Mr. Ohlson.

2 That's all I have.

3 THE MAGISTRATE: Anything further?

4 MR. WILLISON: Just a few last

5 questions.

6 - - -

7 RE-CROSS-EXAMINATION

8 BY MR. WILLISON:

9 Q. Mr. Ohlson, how much does your magazine
10 cost to the consumer to buy?

11 A. For a subscription? Right now we're
12 free.

13 Q. Okay. Now, in all of your magazines, on
14 your -- what you call the monikers, you have
15 these words: What to wear, where to be. That's
16 a common theme in your magazine, right?

17 A. Those are common themes, right.

18 Q. Using this sort of an interrogatory word
19 beginning with "W", whether it's "what" or
20 "where"; is that correct?

21 A. I know that we've used those words as
22 our moniker. I don't know if there's any
23 intention to make, you know, litigation, no.

24 Q. They are consistently used?

25 A. Those words are consistently used. Not

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1 because of their "W", but because they answer the
2 questions, the same questions.

3 Q. And on all of your magazines, right?

4 A. Correct.

5 Q. Have you ever seen those two words used
6 that way on any of the C-BUS issues?

7 A. Style and what to wear. Those are
8 similar, right? Is that what you mean?

9 Q. No. I'm asking, have you ever seen the
10 words, "What to wear" appear on a C-BUS cover?

11 A. Of the four I've seen, no.

12 Q. Have you ever seen, "Where to go" on the

13 C-BUS cover?
14 A. No.
15 Q. What about, "Where to be in Columbus"?
16 A. On the cover, on the top portion, I have
17 not seen those three messages as I have them.
18 Whether or not they have actually been included
19 in the body, I'm not clear. They may have been
20 used as cover lines on the C-BUS issue, like --
21 Q. I understand.
22 A. Okay.
23 Q. Now, there's a rule at your magazine
24 that you never just put "C" by itself, that you
25 always -- the rule is you always have C The

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1 Columbus Magazine; is that right?
2 A. No. I said that we try to make a point
3 to say our full name so that we don't get
4 confused with other magazines.
5 Q. Right. Have you ever had an issue of a
6 C The Columbus Magazine that didn't have "C The
7 Columbus Magazine" on it?
8 A. Actually, Columbus Magazine
9 introduced -- early issues of C Magazine did not
10 have "The Columbus Magazine". It was just called
11 C. Didn't even have "Magazine".
12 Q. How long ago was that?
13 A. Two years ago. Year-and-a-half ago.
14 Two years ago.
15 Q. But since then you've been consistently
16 using C The Columbus Magazine on your cover,
17 right?
18 A. Right.
19 Q. Okay. Has C-BUS ever put "The Columbus
20 Magazine" next to their name?
21 A. No. But they've got, "connecting
22 Columbus" here, and they've got, "The magazine
23 that's connecting Columbus" here. So, again,
24 it's -- these keep changing.
25 Q. When you put your C, or C Columbus

1 Magazine --
2 A. Uh-huh.
3 Q. It's always the white C within the red
4 rectangle, isn't it?
5 A. Correct.
6 Q. Have you ever seen the C-BUS cover that
7 had C-BUS as a white C on a red rectangle?
8 A. Just a white C.
9 Q. But you've never seen it within a red
10 rectangle?
11 A. I've seen a white C, top left corner;
12 large white C, top left corner; large white C,
13 top left corner; large blue C; and most recently,
14 top left corner, large red C.
15 Q. So their C has changed its color several
16 times?
17 A. Yes.
18 Q. Okay. But yours hasn't?
19 A. Correct.
20 Q. Theirs has never appeared within a red
21 rectangle, has it?
22 A. No. It's just turned red. But it would
23 be -- I guess it is important to recognize that
24 where we have our, "C The Columbus Magazine",
25 they have, "C The Magazine that's Connecting

1 Columbus", "C Connecting Columbus". So there's a
2 secondary title underneath all the Cs in every
3 instance they produced a magazine.
4 MR. WILLISON: If I could have just a
5 moment, your Honor.
6 THE MAGISTRATE: Uh-huh.
7 (Pause in proceedings.)
8 MR. WILLISON: Nothing further, your

9 Honor.
10 THE MAGISTRATE: Anything from
11 plaintiffs?
12 MS. SMITH: No, your Honor.
13 THE MAGISTRATE: You can step down.
14 Thank you for your testimony.
15 THE WITNESS: Thank you very much.
16 (Witness excused.)
17 MS. SMITH: Your Honor, may Mr. Ohlson
18 stay in the courtroom now that his testimony is
19 done?
20 THE MAGISTRATE: Yes, if there's no
21 possibility of calling him again. You are kind
22 of forfeiting the right to call him on rebuttal
23 if you want to keep him in the courtroom, so
24 that's up to you.
25 MR. RICHARDSON: I think we would like

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1 to reserve our right.
2 MR. OHLSON: Step out?
3 MR. RICHARDSON: Uh-huh.
4 THE MAGISTRATE: All right. The
5 plaintiffs may call their next witness.
6 MR. RICHARDSON: Thank you, your Honor.
7 Plaintiffs call Shawn Ruble.
8 THE MAGISTRATE: Good afternoon.
9 MR. RUBLE: Hello.
10 (Witness placed under oath.)
11 THE MAGISTRATE: Thank you. Could you
12 state and spell your name?
13 THE WITNESS: Sure. Shawn Ruble,
14 S-h-a-w-n, R-u-b-l-e.
15 THE MAGISTRATE: Thank you.

16 - - -
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1 SHAWN RUBLE
2 of lawful age, being first duly placed under
3 oath, as prescribed by law, was examined and
4 testified as follows:

5 DIRECT EXAMINATION
6 BY MR. RICHARDSON:

7 Q. Mr. Ruble, what is your current
8 employment?

9 A. My employer, C The Columbus Magazine,
10 which is Royal Tiger Publishing.

11 Q. Do you have a specific job title,
12 Mr. Ruble, at C The Columbus Magazine?

13 A. Yes. I am the Advertising Director.

14 Q. Are you aware of the dispute between
15 C The Columbus Magazine and C-BUS Magazine?

16 A. Yes, I am.

17 Q. Have you had any contact with anyone at
18 C-BUS Magazine?

19 A. I did before C-BUS Magazine was around
20 in June of 2005, Derek Grosso had phoned in to
21 our office, C Magazine's office, for a media kit
22 that he wanted to possibly advertise the Columbus
23 Young Professionals Club that he and Mr. Patrick
24 Preston had created at that time. And I sent the
25 media kit to their Aschinger Boulevard address,

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1 and then I passed the information along to one of
2 my sales reps. And then she then phones
3 Mr. Grosso on July 5th of 2005 just to follow-up,
4 but nothing came of it.

5 Q. Are you saying, then, that the -- that

6 Mr. Grosso did not advertise in C Columbus
7 Magazine?

8 A. Correct. They did not advertise the
9 Columbus Young Professional Club in their
10 magazine.

11 Q. I'd like to move on to a different
12 subject. As advertising director of C Columbus
13 Magazine, have you ever understood anyone
14 confusing C-BUS Magazine with C The Columbus
15 Magazine?

16 A. Yes, I have. Early on, right before or
17 shortly after the first issue of C-BUS Magazine
18 came out, it was early February of this year, I
19 was at an Experience Columbus networking event at
20 Lindey's restaurant down in German Village. I
21 was talking to my friend Tina Giusti, who's a
22 freelance reporter, and photographer for the
23 Columbus Alive, which is the Columbus Dispatch,
24 more or less. She and I were conversing and
25 Mr. Grosso came over to introduce himself, and

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1 when he did, he said, "My name is Derek Grosso
2 with C-BUS Magazine," and my friend Tina said,
3 "Oh, you're with..."

4 MR. WILLISON: I'm going to object.

5 MR. RICHARDSON: Your Honor, there
6 hasn't been a statement entered into evidence for
7 the truth of the matter asserted. I don't know
8 what he's arguing -- defense counsel is arguing
9 about.

10 THE MAGISTRATE: I'll allow you to
11 continue.

12 Before I have you do that, how do you
13 spell Giusti.

14 THE WITNESS: G-i-u-s-t-i, Giusti.

15 THE MAGISTRATE: Before defendant's
16 counsel made the objection, you were starting to
17 say what?

18 THE WITNESS: I was just saying that

19 Mr. Grosso came over to introduce himself to
20 Tina, and he did so as, "My name is Derek Grosso
21 with C-BUS Magazine."

22 And she said, "Oh, C Magazine," and kind
23 of gestured to me.

24 And he said, "No, I'm with C-BUS, which
25 is a new magazine that just came out.

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1 THE MAGISTRATE: And I don't want to --
2 I'm sorry. Continue on, please.

3 MR. RICHARDSON: Thank you, your Honor.

4 BY MR. RICHARDSON:

5 Q. What happened next?

6 A. I walked away from the conversation.
7 Tina and I are friends. We would have caught up
8 later that evening, so I just let them talk. I
9 walked away.

10 Q. I understand. Have you noticed any
11 other examples of individuals confusing the two
12 magazines?

13 A. Yes. One that really frustrates me
14 happened in May of this year. I was working with
15 the somewhat new marketing coordinator at the
16 Columbus Symphony Orchestra. She had only been
17 there six months, and I had just gotten there and
18 she was somewhat new in the location. Her
19 predecessor in the symphony had advertised with
20 us, C The Columbus Magazine. They started
21 actually advertising with us in June of 2004,
22 which was our first issue.

23 So I approached her because the Picnic
24 with the Pops season was coming up in the
25 summertime, which they had always advertised with

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1 C The Columbus Magazine. I gave her our media

2 kit. I gave her old contracts that her
3 predecessor had signed, and that was just to show
4 what they had done so she was familiar with it.

5 So she did buy two full page ads, one
6 which ran -- one full-page ran in June of 2006
7 and one ran in July of 2006.

8 Around May 19th or May 20th when we were
9 in production for the June issue, the graphic
10 designer at the symphony e-mailed over the ad,
11 the ad with an attachment to the e-mail, the file
12 was saved as, "C-BUS, full page", which is what
13 they placed with us, which was a full page ad,
14 but it was entitled "C-BUS Magazine, full page".

15 So immediately we thought, "Well, this
16 might be an error on their part." So I e-mailed
17 back the graphic designer and said -- and I
18 attached to that e-mail our specs, our design
19 specs. And I said, "I just want to make sure
20 that this is for C The Columbus Magazine and not
21 C-BUS Magazine," because when I opened the ad in
22 Photo Shop, it looked like it could have been the
23 size of this C-BUS full page.

24 So when I e-mailed the graphic designer
25 to make sure it was for us and not

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1 C-BUS Magazine, I got a phone call like ten
2 minutes later from the woman who I was working
3 with, and she said --

4 MR. WILLISON: I'm going to object again
5 to what she said, your Honor.

6 MR. RICHARDSON: She hadn't said
7 anything.

8 THE MAGISTRATE: Objection noted.

9 THE WITNESS: Can I finish?

10 THE MAGISTRATE: Go ahead.

11 THE WITNESS: She said these -- "This ad
12 is per your specs."

13 I said, "Well, it was entitled C-BUS, so
14 I was just double checking."

15 She said, "Well, I thought you were
16 C-BUS Magazine." And she had already had all of
17 our information, our media kit, our old
18 contracts. And there was obviously some
19 confusion on her part.

20 BY MR. RICHARDSON:

21 Q. Did anything happen next?

22 A. Yeah. That was resolved and she was
23 fine with it, and she obviously signed the
24 contract and the ads ran. But then in June when
25 Picnic with the Pops was starting up, it was like

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1 the third week of June, right before the first
2 Picnic with the Pops. I had to go pick up our
3 tickets because we did have a table at Picnic
4 with the Pops.

5 So when I went to the Symphony's ticket
6 office, there were no tickets for C Magazine,
7 C The Columbus Magazine, but there were tickets
8 there for C-BUS Magazine. And the tickets
9 matched what we had ordered. They were all
10 Saturday performances, a table for eight. They
11 totally -- they were the tickets in the envelope;
12 however, they were labeled incorrectly.

13 So then I explained the situation that I
14 just told the Court and the ticket office worker
15 was like, "Well, hang on. I need to call Jackie
16 Schmidt up in Marketing to make sure these are
17 really for you." So she did that, but she wasn't
18 in, Jackie wasn't in, but another colleague of
19 Jackie was aware of the situation and he said
20 that, "Yes, those tickets are for C Magazine. Go
21 ahead and give them to him because that's -- they
22 are for C Magazine, not C-BUS," so --

23 Q. Have you encountered any other instances
24 of individuals confusing the two magazines?

25 A. Yeah, a couple.

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1 Q. Would you describe --

2 A. One in particular is the salon where I
3 get my hair cut. It's Bliss' Salon in the short
4 north. They are friends of mine, but they also
5 had advertised with C Magazine. I take them
6 every issue of C Magazine because they want to
7 have that copy there for the customers.

8 Early September I was there getting my
9 hair cut, and after I was done, the owner,
10 Rhonda, which I do not know Rhonda's last name,
11 so I apologize, she said, "I really enjoyed your
12 last..."

13 MR. WILLISON: Your Honor, I'm going to
14 object again, just for the record.

15 THE MAGISTRATE: Okay. Noted.

16 MR. RICHARDSON: I don't know how to
17 counter the objection, your Honor. I don't know
18 what is being objected to.

19 THE MAGISTRATE: What we've heard so far
20 I would overrule, but I don't know where it goes
21 from here. Continue with what she said.

22 THE WITNESS: She said, "I really
23 enjoyed your issue that just came out." Like I
24 said, it was early September.

25 I said, "Oh, which one?"

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1 She said, "The dining issue with the
2 girl, the two guys on the cover and have the
3 reviews in there."

4 And I was like, "Oh, that -- that wasn't
5 ours. Our dining issue came out in April."

6 She's like, "No." She's like, "I just
7 picked it up last week and it had the two..."
8 again, she reiterated there were two gentleman
9 and the woman on the cover.

10 And I said, "No. You're probably
11 confusing us with C-BUS."

12 She's like, "Oh. That's not C
13 Magazine?"

14 I'm like, "No." I went out to the car
15 and got her our September issue and she realized
16 she had confused the two.

17 MR. WILLISON: I would object based on
18 hearsay.

19 MR. RICHARDSON: It's not offered for
20 the truth of the matters asserted. I don't think
21 counsel is suggesting that we're offering what
22 the hair salon operator said about enjoying the
23 magazine for its truth. Your Honor, we were not
24 offering it for the truth of the matter asserted.

25 THE MAGISTRATE: That's going to be

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1 another issue I'm going to need to address later
2 on. I'll reserve judgment on it for now, but
3 counsel's objection and response to it are noted
4 for the record.

5 MR. RICHARDSON: Thank you, your Honor.

6 BY MR. RICHARDSON:

7 Q. Have there been any other instances of
8 confusion?

9 A. The one most recently was two months
10 ago, almost two months ago, October 13th of this
11 year. Ballet Met Columbus advertises with us.
12 We were a sponsor of their Dracula performance.
13 I went to their office on the 13th of October to
14 pick up tickets for the opening nights of
15 Dracula, which was that evening. And the ticket
16 envelope was labeled "C-BUS Magazine," not C The
17 Columbus Magazine.

18 And the ticket office manager knows me,
19 knows me and he knows that I represent C The
20 Columbus Magazine. It wasn't the first time I
21 was there to pick up tickets as part of my job.

22 THE MAGISTRATE: And I missed, at the
23 very beginning, the event that you were involved
24 with every year, that this has to do with was --

25 THE WITNESS: Dracula. Their

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1 performance of Dracula, the ballet. We sponsored
2 their after-party.

3 THE MAGISTRATE: Okay. Thank you.

4 BY MR. RICHARDSON:

5 Q. So Mr. Ruble, you are saying that you
6 received tickets for this event that you jointly
7 sponsored with Ballet Met --

8 A. Correct.

9 Q. -- in an envelope marked "C-BUS"?

10 A. Correct.

11 Q. Okay.

12 MR. RICHARDSON: Thank you, Mr. Ruble.

13 I have nothing further.

14 THE MAGISTRATE: Please stay seated.

15 Mr. Willison may have some questions on

16 cross-examination.

17 - - -

18 CROSS-EXAMINATION

19 BY MR. WILLISON:

20 Q. On the incidents of confusion that you
21 mentioned, I think you started off with someone
22 named Tina Giusti?

23 A. Yes, correct. Uh-huh.

24 Q. How long did that confusion last?

25 A. I can't speak for her, but the incident

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1 at the first -- that first incident that I spoke
2 of, at Lindsey's, it was only a couple of minutes.

3 Q. Couple of minutes. The unidentified
4 person at the Columbus Symphony Orchestra, is
5 that --

6 A. No, her name is Jackie Schmidt.

7 Q. Jackie Schmidt. How long did

8 Ms. Schmidt's confusion last?
9 A. Well, it must have lasted quite a while
10 because we had spoken in late April and early
11 May, and she signed the agreement for the two
12 full-page ads in early May. And then when the
13 e-mail was sent over with the ad and it was
14 labeled "C-BUS Magazine", apparently she was
15 confused. And the graphic designer was confused
16 because it clearly was not for C-BUS. It was for
17 C The Columbus Magazine.

18 Even in the phone conversation that we
19 had, after I replied to the graphic designer
20 saying, "I just want to make sure that this is
21 for us, and not C-BUS," when we were on the
22 phone, she said, "Well, I thought you were
23 C-BUS."

24 Q. And when she brought that to your
25 attention, how long did the confusion last at

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1 that point?

2 A. I told her, I said, "No. I don't
3 understand why you are confused. You have our
4 media kit. Clearly our red box and white C is
5 different from C-BUS. You have..." I don't know
6 if she had materials for C-BUS, I don't know, but
7 she was -- she clearly was confused.

8 Q. She was. And how long did it last once
9 you tried to straighten her out?

10 A. The conference ended with, "The ads will
11 run, that's fine." Signed the contract, but she
12 had thought it was C-BUS.

13 Q. How long did the confusion last once you
14 tried to straighten her out?

15 A. The entirety of the phone conversation,
16 which was probably a 15-minute phone call.

17 Q. The salon worker, Rhonda, which you
18 spoke of, how long did her confusion last on this
19 issue?

20 A. Until I brought her a copy of my

21 magazine from my car.
22 Q. Few minutes?
23 A. Yeah, like five minutes. Five, ten
24 minutes.
25 Q. Okay. And the Ballet Met envelope

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1 issue, how long did that confusion last?
2 A. I can't say because I picked up the
3 envelope and left, and that's when I left and was
4 in my car, that's when I realized it was labeled
5 C-BUS.
6 Q. Okay. Of all these instances of
7 confusion that you spoke of, have you as your
8 magazine been damaged in any way by them?
9 A. I don't know if you want to say damaged,
10 but I think that these incidences and others that
11 have been brought up, I feel that people -- if
12 people don't know the difference, they will get
13 confused.
14 Like if they've never seen and read see
15 the C Columbus Magazine every month and they see
16 C-BUS, I think there would be some confusion.
17 Especially for marketing directors and media
18 buyers who are very busy people, and they don't
19 sit down and take the time to differentiate
20 between the two, then yes, I think it may have
21 been somewhat detrimental in the past year
22 because we've lost ad buys or other sales.
23 Q. But you can't point to any specific
24 instances of that --
25 A. No.

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1 Q. -- from these four?
2 A. No.
3 MR. WILLISON: Okay. Nothing further,
4 your Honor.

5 THE MAGISTRATE: Anything further from
6 plaintiffs?

7 MR. RICHARDSON: Your Honor, we don't
8 plan to call any more witnesses, but I do have
9 another affidavit of confusion that I'd like to
10 submit to the Court, if I could.

11 THE MAGISTRATE: So this witness can
12 step down?

13 MR. RICHARDSON: Yes, your Honor.

14 THE MAGISTRATE: Okay. Thank you for
15 your testimony.

16 (Witness excused.)

17 THE MAGISTRATE: I've been handed what
18 has been marked as Plaintiff's Exhibit 8, titled
19 Affidavit of Jeff Davis. And just give me one
20 moment to read through it. It's only six
21 paragraphs.

22 (Pause in proceedings.)

23 THE MAGISTRATE: This affidavit of a
24 Jeff Davis appears to have been notarized on
25 December 1st, 2006, and speaks to the issue of

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1 alleged confusion.

2 Objection?

3 MR. WILLISON: Yes, your Honor. I would
4 object. Again, I don't have a chance to
5 cross-examine an affidavit. As with all of the
6 hearsay statements, I can't really cross-examine
7 those either.

8 MR. RICHARDSON: Your Honor --

9 MR. WILLISON: I don't know why we can't
10 have Mr. Davis come in here and testify if this
11 is what he says. Instead he just comes in and
12 says what appear to be some legalistic
13 conclusions using terms like, "confusingly
14 similar," and that sort of thing, I can't
15 cross-examine him. I don't have the right to
16 confront him.

17 MR. RICHARDSON: That's irrelevant.

18 This is a preliminary injunction. Affidavits are
19 perfectly acceptable forms of evidence at a
20 preliminary injunction hearing.

21 THE MAGISTRATE: I am going to reserve
22 ruling on the objection to Mr. Davis' affidavit.
23 It's been a while since the issue of the use of
24 an affidavit in an injunction hearing has been
25 before me, and before I make even a preliminary

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1 ruling now, I want to make sure that I'm clear on
2 the current law regarding that.

3 Anything else from the plaintiffs?

4 MR. RICHARDSON: No, your Honor.

5 THE MAGISTRATE: Let's go off the record
6 for a minute.

7 (Discussion held off the record.)

8 THE MAGISTRATE: It's my understanding
9 that plaintiff's counsel has moved into evidence
10 what have been marked as Plaintiff's Exhibit 1,
11 2, 3, 4 and 8. Is that correct?

12 MR. RICHARDSON: Yes, your Honor. It
13 is.

14 THE MAGISTRATE: Plaintiff's Exhibit 1,
15 let's start with any objection from defendant.

16 MR. WILLISON: No objection to 1, your
17 Honor.

18 - - -

19 Thereupon, Plaintiff's Exhibit

20 No. 1 was admitted into

21 evidence.

22 - - -

23 THE MAGISTRATE: Plaintiff's Exhibit 2,
24 can I have plaintiff's counsel describe -- we
25 didn't go through all or nearly -- or even most

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1 of Plaintiff's Exhibit 2. Will you explain what
2 that contains?

3 MR. RICHARDSON: Your Honor, the
4 Plaintiff's Exhibit 2 is -- consists of all of
5 the copies of, or copies of all issues of
6 C-BUS Magazine, one of which is the original,
7 three of which are color copies printed from
8 C-BUS Magazine's website. I would have no
9 objection if defense counsel would like to submit
10 the originals in their place.

11 MR. WILLISON: Your Honor, our only
12 objection to the three color copies is that they
13 don't give the actual texture, feel and size of
14 the original. However, I think my objection can
15 be remedied if the Court would take judicial
16 notice of what the witnesses said earlier about
17 how they are a different size and they are a
18 combination of gloss and matte verse all gloss,
19 from what C The Columbus Magazine says.

20 Other than that, my client assures me
21 that they are identical, but things like texture
22 and feel are very important, and I would just
23 want to note in the record that in looking at
24 this, you know, you've got to compare these side
25 by side, and the text and feel and size are very

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1 important.

2 THE MAGISTRATE: With that condition,
3 could plaintiff's counsel be agreeable to the
4 Plaintiff's Exhibit 2 being admitted with the
5 understanding that the Court take notice of the
6 testimony --

7 MR. RICHARDSON: Yes, your Honor.

8 THE MAGISTRATE: -- regarding
9 differences that may involve texture, et cetera?

10 MR. RICHARDSON: Yes, your Honor. We
11 have no objection.

12 - - -

13 Thereupon, Plaintiff's Exhibit

14 No. 2 was admitted into
15 evidence.
16 - - -
17 THE MAGISTRATE: What has been marked as
18 Plaintiff's Exhibit 3 consists of what appear to
19 be two magazines with C Entertainment near the
20 top. These, I'm told, are the first and last
21 magazines that C Entertainment --
22 MR. RICHARDSON: Yes, your Honor.
23 THE MAGISTRATE: Any objection from
24 defendant?
25 MR. WILLISON: I don't have any

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1 objection, your Honor.
2 - - -
3 Thereupon, Plaintiff's Exhibit
4 No. 3 was admitted into
5 evidence.
6 - - -
7 THE MAGISTRATE: And Plaintiff's Exhibit
8 4, that was the --
9 MR. RICHARDSON: Registration.
10 THE MAGISTRATE: -- what appeared to be
11 Secretary of State documentation. Any objection?
12 MR. WILLISON: No objection.
13 THE MAGISTRATE: Okay.
14 - - -
15 Thereupon, Plaintiff's Exhibit
16 No. 4 was admitted into
17 evidence.
18 - - -
19 THE MAGISTRATE: We went over the
20 objection to Plaintiff's Exhibit 8, the Jeff
21 Davis affidavit just a moment ago. Anything
22 further?
23 MR. WILLISON: Nothing further than what
24 we've already stated.
25 THE MAGISTRATE: I indicated I was going

1 to reserve judgment on this, but it's Exhibit 8.

2 Anything further from plaintiffs?

3 MR. RICHARDSON: No, your Honor.

4 Plaintiffs rest.

5 THE MAGISTRATE: Okay. We're going to
6 take a 15-minute break now, and then we'll
7 continue on with defendant's case.

8 MR. WILLISON: Okay.

9 THE MAGISTRATE: So please return back
10 in about 15 minutes.

11 (Recess taken.)

12 THE MAGISTRATE: We'll go back on now.

13 Ms. Smith, you moved for the admission
14 of certain additional Plaintiff's Exhibits.

15 MS. SMITH: Yes. Plaintiffs move to
16 introduce Exhibits 9 through 14, which are some
17 of the demonstratives that we used in
18 cross-examining Mr. Ohlson, specifically.

19 THE MAGISTRATE: Any objection from
20 defendants?

21 MR. WILLISON: No, no objection, your
22 Honor.

23 THE MAGISTRATE: All right. Exhibits
24 marked as 9, 10, 11, 12, 13 and 14 will be
25 admitted into evidence without objection.

1 - - -

2 Thereupon, Plaintiff's Exhibit

3 Nos. 9 through 14 were

4 admitted into evidence.

5 - - -

6 THE MAGISTRATE: Anything further from
7 plaintiffs?

8 MR. RICHARDSON: No, thank you, your
9 Honor.

10 THE MAGISTRATE: Thank you.

11 We'll now move on to the defendant's
12 case. Defendants may call their first witness.

13 MR. WILLISON: We call Derek Grosso,
14 Grosso. Derek is D-e-r-e-k.

15 THE MAGISTRATE: Okay. Mr. Grosso,
16 please have a seat at the witness stand.

17 MR. GROSSO: Thank you.

18 THE MAGISTRATE: Raise your right hand.

19 (Witness placed under oath.)

20 THE MAGISTRATE: Thank you. Just pull
21 your seat up to the microphone where you can
22 speak into it.

23 THE WITNESS: Sure.

24 - - -

25

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1 DEREK GROSSO
2 of lawful age, being first duly placed under
3 oath, as prescribed by law, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WILLISON:

7 Q. Mr. Grosso, can you tell us a little bit
8 about yourself? Where do you come from?

9 A. I grew up in Glen Cove, New York. It's
10 on Long Island.

11 Q. So you're from Long Island, just like
12 Mr. Dey is?

13 A. Yes. After graduating high school I
14 went to college in Washington, D.C., George
15 Washington University. I worked in publishing
16 through college and after graduation at various
17 firms, all publications of magazines, newspapers
18 and such, gaining experience.

19 Took a semester of pre-medical study
20 back in Long Island, New York before I came out
21 to Columbus in search of new venture.

22 Q. Tell me about the idea to do a magazine
23 here in Columbus. When did that happen?

24 A. That was an idea that my business
25 partner, Patrick Preston, and I had been talking

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1 about in college. We both went to George
2 Washington and shared a room. We had been
3 talking about working together on a venture, a
4 magazine that would be something that could
5 connect people, young professionals, give them
6 advice on quality of life, living.

7 Q. When was this in time, if you could
8 clarify for the record.

9 A. It was the early part of 2005.

10 Q. Okay.

11 A. Yes. It was at that time that
12 Mr. Preston and I had been talking about cities,
13 and he was in the middle of moving to Columbus
14 for a job with WBNS, and he suggested Columbus
15 since it was an emerging marketplace for young
16 professionals. In fact, the city of Boston
17 ranked Columbus as one of the best markets for
18 twenties, thirties and early forty-somethings.
19 The fourth largest population of major US
20 citizens, which was one of the reasons why we had
21 looked at Columbus as a city that would be
22 perfect for this type of a magazine.

23 Q. Tell me about why you picked the name
24 for the magazine that you did.

25 A. Sure. As folks in that age range know

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1 and folks who are possibly younger and older,
2 C-BUS is a slang term for Columbus, and people
3 who say, "I work in C-BUS" and/or "I live in
4 C-BUS," both to central Ohioans and others who
5 don't live in Ohio, referring to the city as an
6 endearing term, letting people know that it's

7 kind of hip, young, trendy, as a way to refer to
8 the City of Columbus.

9 And we wanted something that both spoke
10 to the geographic area of Columbus as well as the
11 target audience that we were going after, young
12 professionals and young adults.

13 Q. Do you know who coined the term "C-BUS"?

14 A. I believe it was Jim Rome.

15 Q. Do you know who Jim Rome is?

16 A. He's -- depending on who you ask,
17 he's -- I believe he works as a sports caster and
18 a commentator on various affairs in the sporting
19 world, as well as some national affairs as well.

20 Q. Is it fair to say that he's sort of come
21 up with his own lingo for his shows that he does?

22 A. Yes. He's coined numerous terms to
23 refer to cities and places and athletes to kind
24 of give himself more of a higher stature that
25 he's seen as more cool and trendy and hip. And

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1 it's effective. You know, some of the things,
2 lingo that he uses catches on. But as far as we
3 know, he was the first to coin that term and use
4 it to refer to Columbus, Ohio.

5 Q. You are meaning the term "C-BUS"?

6 A. C-BUS.

7 Q. I'm going to hand you what has been
8 marked as Defendant's Exhibit E. If you could
9 identify that for the record, please.

10 A. Looks to be labeled "Smactionary",
11 referencing various terms, terminology, words,
12 phrases that are used on the Jim Rome show.

13 Q. Is C-BUS used in there?

14 A. Yes.

15 Q. Okay. What is the target audience that
16 you're trying to reach with C-BUS Magazine?

17 A. We're looking at adults and
18 professionals who are ages 21 through 44 as a
19 target range audience, defined as young

20 professionals.

21 Q. Okay. You heard witnesses for the
22 plaintiff talk about that they went from 25 to
23 55.

24 A. Yeah.

25 Q. Is that your target range?

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1 A. Not entirely. I'm sure that as a
2 pre-publication you'll have people picking it up,
3 but the great care that we intend to utilize
4 through the magazine, through the stories,
5 through the events, through the publication as a
6 whole, is intended as a guide, as an advice, as a
7 magazine for young adults and young professionals
8 who are either on the rise or interested in
9 hearing stories of others who are Up-and-Comers,
10 or on the rise in Columbus.

11 Q. Have you ever done any articles on
12 people who are over the age of 45 in your
13 magazine?

14 A. Unless they weren't telling the truth.
15 We have a section that's called MC-Bus in which
16 we ask questions to prominent figures, mostly in
17 the media, television, radio. And we ask them
18 about their favorite things, favorite restaurants
19 in Columbus, favorite place to view the city,
20 describe the Columbus you know. Those folks have
21 no limit on age ranges.

22 We've also introduced the section called
23 Words of Wisdom, which two executives are
24 speaking to the youth of Columbus as from their
25 words of wisdom in how to grow and prosper as

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1 older, seasoned professionals.

2 Q. In your Up-and-Comers section that we
3 talked about previously, have you ever

4 interviewed anybody who was over the age of 44?

5 A. I've never actually done any of the
6 interviews, but the magazine, our writers, no.
7 We specifically utilize the Up-and-Comers as a
8 section to profile those essential Ohioians who
9 are on the rise in various fields with various
10 life styles who are in the age range of their
11 twenties and thirties who are the Up-and-Comers,
12 the younger Columbus residents.

13 Q. What do you see as the differences
14 between C-BUS Magazine and C The Columbus
15 Magazine?

16 A. I think that there's a world of
17 difference between the two publications.
18 Starting with the look and the feel. Our
19 magazine is a larger publication. It starts out
20 with glossy pages.

21 Q. When you say larger, how do you mean
22 larger? Do you mean circulation or do you mean
23 in --

24 A. In physical size. The dimensions of our
25 magazine are nine and a quarter inches wide by

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1 11-and-a-half inches in height. That actually
2 distinguishes us from all other Columbus
3 magazines in the central Ohio region as a
4 different publication, different size.

5 When you open the magazine, generally
6 the first eight pages, and depending on size of
7 the publication, the first eight pages and the
8 last eight pages are of a high-gloss material.
9 The inside, which generally is 20 or 30 pages or
10 so, is either matted, or when we first started
11 was black and white, and we did that for a
12 reason. One, to differentiate ourselves from
13 other magazines and other media in the market,
14 both newspaper and glossy magazines.

15 Also to get more in touch with all young
16 professionals, not folks who were, for lack of a

17 better term, elitists, but really down to earth,
18 everyone. Anyone who was in the age range of 21
19 to 44 could pick up the magazine and not be
20 frightened and not think it was too high luxury
21 of a magazine. It was a common element, and it
22 also had glossy and high imagery where it needed
23 it.

24 Q. The covers of your magazines, how do you
25 see the covers of your magazines differing from

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1 the covers of C The Columbus Magazine?

2 A. Sure. Two main things jump out at me.
3 First of all, as far as I've seen, C The Columbus
4 Magazine does a real good job on focusing on
5 celebrities from Ohio, and they generally tend to
6 interview these folks and place them on their
7 cover. With few exceptions, it's been one person
8 on a cover smiling as a head shot.

9 Our magazine, C-BUS Magazine, we find
10 local people who are either the subject of our
11 stories or who are friends of ours or models, who
12 are young, who are active. And we try to -- we
13 try to engage them in some kind of activity in
14 the cover, whether it be toasting the camera for
15 our dining issue or standing at the side of a bar
16 for our nightlife feature, or standing on top of
17 a ladder for our career issue on Ways to Climb
18 the Corporate Ladder.

19 We want our magazine to be more active
20 because we feel that's who our readers are. We
21 feel that if you look at our magazine, compare it
22 to other magazines, and you compare it to C The
23 Columbus Magazine, it's quite different by virtue
24 of the fact that the acts on the cover speaks
25 louder than the cover model itself.

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1 Q. There was some testimony earlier from
2 one of the plaintiff's witnesses that you had
3 called up requesting what is known as a media
4 kit.

5 A. Yes.

6 Q. Can you tell the Court what a media kit
7 is?

8 A. Sure, A media kit is for either members
9 of the media, advertising clients, or, as far as
10 I can tell, general public who were interested in
11 knowing more about what is inside the
12 publication, who the target is, demographics and
13 psychographics, readership, circulation, as well
14 as athletes. Media kit tells you what the
15 magazine is and who it reaches.

16 Q. Did you have to misrepresent yourself to
17 get ahold of that?

18 A. No.

19 Q. You just told them?

20 A. I called -- I called up and told them
21 that I was interested in seeking information for
22 the purpose of advertising for -- I believe at
23 the time it was for the Columbus Young
24 Professionals Club, because the magazine had not
25 launched yet. As we did with all other

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1 publications, mediums, newspapers, billboard
2 advertising agency, we called a URL, and to find
3 out, one, the opportunities for advertising; two,
4 in terms of finding out about what other
5 publications and what other opportunities there
6 were, to advertise so that we could again compare
7 and contrast and distinguish our publication when
8 we were looking to launch from all other forms of
9 media in Columbus and central Ohio.

10 Q. What is the content of your magazine as
11 far as percentage goes when we talk about
12 advertising to editorials?

13 A. Sure. Generally, a magazine
14 industrywide is about 50 percent editorial,
15 50 percent advertising. A good magazine, and our
16 magazine, we like to focus on the editorial
17 content as a major aspect of it, give people a
18 lot to read. And we actually have more editorial
19 content than advertising. Probably about
20 60 percent, 60 to 65 percent editorial content
21 and 35 to 40 percent advertising.

22 Now, of course, that will vary, but we
23 try to keep it industry standard about 55/45,
24 editorial to advertising.

25 Q. How does that compare with what

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1 C The Columbus Magazine is doing?

2 A. Based on previous testimony and just
3 looking through the magazine, they have a lot of
4 ads, which is great. A majority of the magazine
5 is advertisements. And they seem to be
6 70 percent advertising and 30 percent editorial,
7 which is vastly different if you look through a
8 magazine for a leisure activity to read it, and
9 look through a coupon book for advertisements and
10 such, the two publications are quite different.

11 Q. There were certain similarities pointed
12 out by witnesses for the plaintiffs. One of
13 which dealt with your article, "Up-and-Comers",
14 which has now been marked as Plaintiff's
15 Exhibit 12. And comparing that to Suitless,
16 Capital Movers and Shakers, what has been marked
17 as Plaintiff's Exhibit 11, can you explain the
18 similarities between those?

19 A. I think that the two cover -- or the two
20 photo subjects of the story, both have blonde
21 hair, and of course that's a similarity. They
22 are both one person and it's a story about them.

23 In terms of looking at what the article
24 is and how it's laid out, I would say that, if
25 given the opportunity, I could produce hundreds

1 upon hundred of examples of magazines who are
2 having an article with the majority or most or
3 all of the page is a photograph with text
4 overlaying it. That's a standard for magazine
5 layout.

6 But, in looking closer, I feel as though
7 the subject in C The Columbus Magazine's article
8 seems to be a bit older, without, you know,
9 without seeing any age there.

10 Q. Just for the record, that's Plaintiff's
11 Exhibit 11 you're talking about?

12 A. Yes. And C-BUS Magazine, again, the
13 Up-and-Comers' section, focuses on young adults
14 who are on the verge of greatness, on the rise,
15 twenties and thirties, and our article features a
16 22-year-old who's opening up a franchise
17 restaurant in Columbus.

18 Q. For the record, that's Plaintiff's 11.

19 A. The one I was just referring to was
20 Defendant's 12; is that right? Our
21 Up-and-Comers, versus Plaintiff's 11. Oh, I'm
22 sorry. Plaintiff -- I was referring to
23 Plaintiff's 12.

24 And looking at Plaintiff's 13, that
25 Up-and-Comers section, again, it's a photograph

1 of a person who we've interviewed for a story
2 with text over it, and again, stylistically, you
3 could produce hundreds upon hundred of magazines,
4 have -- not just in Columbus or central Ohio, but
5 throughout the nation and globally, where it
6 would either look similar because there's a
7 picture, there's words, it's a focus on one
8 person, and it's a feature article on a person or
9 what they do or who they are.

10 But again, the major difference here is
11 that our section focuses on folks who are
12 younger, who are on the rise, versus what appears
13 to be a person who's a mover and shaker. In my
14 mind, a definition of mover and shaker is someone
15 who's already achieved and is moving and shaking
16 the community in Columbus.

17 THE MAGISTRATE: Before you go on, I
18 can't read the exhibit label that's here. The
19 gentleman in the white shirt is -- that's been
20 marked as --

21 MR. WILLISON: 12.

22 THE MAGISTRATE: Okay. That's 12. Ms.
23 Plank is 11.

24 THE WITNESS: I may also add, when I
25 have a moment --

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1 MS. SMITH: Hold on a second.

2 THE WITNESS: Sure.

3 THE MAGISTRATE: Okay. Great. Thank
4 you.

5 BY MR. WILLISON:

6 Q. Now, when we're comparing Plaintiff's 12
7 and Plaintiff's 11, are those from the same time
8 period?

9 A. No. It looks as though that plaintiff's
10 11, which is from C The Columbus Magazine, is a
11 much older issue of their magazine, one of their
12 archived issues, quite far back, possibly a year
13 or two.

14 Q. Can you read the date on there?

15 A. July 2005.

16 Q. When is Plaintiff's 11 -- what is the
17 date on that?

18 A. Plaintiff's 12.

19 Q. I'm sorry.

20 A. I just read Plaintiff's 12.

21 Q. Yes, you're right. Plaintiff's 12, what
22 is the day on that?

23 A. November-December 2006.
24 Q. Now, in looking at two of the other
25 comparisons that were made, there was some

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1 comparisons made between Plaintiff's 13 and
2 Plaintiff's 14 during the testimony of the
3 plaintiff's witnesses. Can you tell me what you
4 feel is stylistically different in those and what
5 is the same?

6 THE MAGISTRATE: And again, the woman,
7 is that 13 or 14?

8 THE WITNESS: The woman is 14.

9 THE MAGISTRATE: The woman is 14. Okay.

10 THE WITNESS: Yes, your Honor.

11 Aside from the obvious fact it's a male
12 and a female, Plaintiff's 13 is C-BUS Magazine
13 dated September-October 2006. Plaintiff's 14 is
14 C The Columbus Magazine, dated November 2006.
15 September-October, comes before November in the
16 year 2006. So if there was any sort of copying,
17 Plaintiff's 14 came out after Plaintiff's 13,
18 which was C The Columbus Magazine's issue came
19 out after C-BUS Magazine's issue.

20 But stylistically, get back to your
21 question, again, it's a standard of layout to
22 have photos of people and large photos of people,
23 because other people are interested in those
24 people visually. Certainly the huge banner that
25 pops out is, "C-BUS Presents Up-and-Comers,"

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1 that's the first thing on either of the two, 13
2 or 14.

3 But in terms of reading the articles,
4 I'm sure they are very different people. It
5 focuses on who they are. I haven't read

6 Plaintiff's 14, but I would imagine it's talking
7 about who Pamela Hashem is, or what she does, and
8 also just noting it says, "Capital Movers" rather
9 than "Capital Movers and Shakers." I don't know
10 if that means anything.

11 But again, they are both similar type
12 articles, which you'll find in a variety of
13 magazines nationally and globally when you're
14 focusing on a person, an individual and a feature
15 story on them which is contained on one page.

16 Again, I mean, it's comparing apples in Columbus
17 to apples in California. It's just a matter of
18 that's kind of how it's done. It was no attempt
19 to copy anyone.

20 Q. There was testimony earlier about a food
21 issue that your magazine did and a food issue
22 that Columbus -- that C The Columbus Magazine
23 did. Tell us a little bit about the differences
24 and similarities with regard to that issue.

25 A. Yes. Our fall dining issue,

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1 C-BUS Magazine has decided to publish two dining
2 issues a year. As far as I know, other magazines
3 in Columbus and central Ohio have at least one
4 annual dining issue, which includes C the
5 Columbus Magazine, Columbus Monthly and others.
6 But in our fall dining issue, we focused on
7 people who are behind the scenes, in a -- in
8 reference to -- I believe it was Jason Ohlson's
9 testimony of an article which he had profiled 15
10 restaurants and C-BUS Magazine premiered four.
11 Perhaps you might have one that is of interest to
12 both audiences.

13 Secondly, the article in C-BUS Magazine,
14 September-October 2006, was intended to provide
15 an opportunity not to look at the food, but to
16 look at the multiculturalism of dining in
17 Columbus. There were four different types of
18 people from four different walks of life who

19 might be seen at four completely different
20 restaurants in four given neighborhoods.
21 C The Columbus Magazine focused on 15
22 restaurants and asked them Q and A questions such
23 as: Who are you? What do you do? Where do you
24 work? What would be your family favorite meal?
25 That was a Q and A interview in C The Columbus

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1 Magazine, and in C-BUS Magazine it was a
2 full-fledged feature story. I don't see any
3 similarity at all between the two.
4 Q. Why did you select the number 21 in the
5 title, "21 Ways..." for that article?
6 A. Well, 21 is seven cases a week, and
7 generally folks eat three meals a day, so three
8 times seven is 21. Also, 21 is just a very
9 popular number, 21 years old.
10 One for blackjack, that sort of thing.
11 And as a popularity number and the fact that it
12 just mathematically became a great number for
13 seven days a week to focus on three restaurants
14 in a particular neighborhood in the city. We
15 didn't focus on menu items. We have focused on
16 restaurants in different areas of town. So each
17 day was a different area of town with a
18 breakfast, lunch and dinner option in that
19 neighborhood.
20 And it was further written about who was
21 behind the scenes, why this was an interesting
22 place to go to and that sort of thing.
23 Q. We had heard testimony earlier where
24 plaintiff had selected their title, Nine for
25 Nine, in part because there should -- there might

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1 have been a menu item at \$9 in that article. Did
2 you have any sort of price range when you came up

3 with 21, or -- go ahead. Is there any price
4 range dealing with 21 in your article?

5 A. No. 21 specifically referred to the
6 number of meals there were throughout a week that
7 one could, if they were so inclined to eat out
8 the entire week, could potentially experience.

9 Q. Did you link price in any way into the
10 title of your article?

11 A. No.

12 Q. How many times does your article,
13 "21 Ways," run in your magazine?

14 A. It only ran in one issue, the
15 September-October 2006 edition, which was our
16 fall dining issue.

17 Q. How many times have you seen the Nine
18 for Nine running in Plaintiff's magazine?

19 A. I would imagine every -- every month.
20 I'm just guessing because I don't look at the
21 magazine every month. But that number would be
22 twelve.

23 Q. How many times do you try to publish
24 your magazine per year?

25 A. We began quarterly in 2006, but we had

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1 planned to go more frequently, and in fact, in
2 2007 we'll be publishing at a greater frequency,
3 six issues every 25 months. We feel that that's
4 a great improvement upon our magazine, our
5 product, and we feel that busy young
6 professionals, that's the great amount, has the
7 best amount of time to read through all the great
8 content that we provide over 25 months.

9 Q. Just so we're clear for people reading
10 the transcript later, you said six issues over 25
11 months; you meant six issues every year --

12 A. Six issues every year.

13 Q. -- separated by two months?

14 A. That's correct.

15 Q. Just to be clear.

16 A. Thank you.
17 Q. Since your magazine has gotten off the
18 ground and started to be published, how many
19 articles would you estimate have appeared in your
20 magazines, in all the magazines you've put out so
21 far?
22 A. I can't be sure without looking through
23 them, but I would imagine a great deal. In four
24 issues we've probably produced hundreds of
25 articles. We weight heavily on strong editorial

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1 local content that's useful to our reader.
2 Q. And of the articles that you see here,
3 how many of those are yours?
4 A. Of these three?
5 Q. Of all the ones there on the easel. Let
6 me show them to you.
7 A. Of those exhibits, including covers?
8 Q. Yes, of all those exhibits. How many?
9 A. Of all those exhibits, three of them are
10 ours. One is a cover, two stories.
11 Q. Two articles and one cover?
12 A. Yes.
13 Q. And that's out of hundreds of articles?
14 A. Yes.
15 Q. What is your website domain name?
16 A. CBUSmagazine, www.CBUSmagazine.com. We
17 also have a second URL which is
18 C-BUSmagazine.com.
19 THE MAGISTRATE: No hyphen between the
20 "bus" and the magazine; just go straight into it?
21 THE WITNESS: Just as it is on the cover
22 of our magazine, yes.
23 BY MR. WILLISON:
24 Q. And what was your intent in reserving
25 those domain names rather than some other ones?

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1 A. We wanted one brand identity that said
2 exactly what we were. We were a magazine called
3 C-BUS. C-BUSmagazine.com was available and that
4 was all that we wanted, and that was exactly what
5 we took.

6 Q. When did you first become aware that
7 Royal Tiger Publishing, the plaintiff in this
8 matter, had an issue with you?

9 A. I believe it was about two weeks before
10 our issue was set to be released, and I think
11 that was late January 2006, if I recall.

12 Q. How did you become aware of that?

13 A. I received a phone call which was
14 actually routed to my -- which was routed to the
15 office's voicemail. So I received a voicemail
16 from the publisher, Mr. Roopan Dey, who alleged
17 that he owned the name C-BUS and that we may have
18 a trademark issue.

19 He did wish me, you know,
20 congratulations, although he said that he owned
21 the name and that we had to stop.

22 Q. What did you do then?

23 A. I -- I believe I received an e-mail from
24 him about the same time, in which I replied to
25 that e-mail. And I did -- I did discuss this

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1 with current counsel -- or, I'm sorry, previous
2 counsel. And the e-mail was then replied to as,
3 "We would like to know what your grievances are.
4 Please list them and we'll forward them to our
5 legal counsel."

6 Q. Who sent that message to Mr. Dey?

7 A. I believe I replied to his initial
8 message via e-mail.

9 Q. What did you tell him?

10 A. I asked him to list his grievances in
11 writing, and we would have our legal -- you know,

12 we would look at -- our legal counsel would look
13 at it.

14 Q. Did you get anything back from him at
15 that point?

16 A. We received a letter from his -- his
17 lawyers, Dawsey and Galliger, I believe.

18 Q. Okay.

19 A. And the letter alleged that we were
20 infringing upon their trademark, that they owned
21 the name C-BUS for quite some time and that their
22 websites were also in use, and that we were
23 infringing upon their trademark, and they asked
24 to us stop using C-BUS.

25 Q. What did you do at that point?

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1 A. We referred it to counsel.

2 Q. What counsel?

3 A. This was at Porter, Wright, Morris.

4 Q. Okay. And did they respond, then, to --
5 was it Mr. Galliger who sent you that letter?

6 A. Yes.

7 Q. Okay.

8 A. Then legal counsel took over. I have to
9 state, at the time, they told us there was no
10 conflict with Royal Tiger, and so they had
11 replied to the letter, your initial letter from
12 Galliger, and they had not only told them that
13 they felt that we had rights to the name,
14 specifically since we had registered it with the
15 Secretary of State and we had achieved that
16 registration quite some time ago, but that they
17 had found other instances of the letter C, and
18 that they not only not had rights to using the
19 letter C, but that they needed to see proof
20 before we were to pull anything or do anything
21 that they were asking. We would like to see
22 proof of their allegation. Which we, of course,
23 did not produce any.

24 Q. Okay. So they sent a letter back to

25 Mr. Galliger; is that correct?

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1 A. Yes.

2 Q. Okay. And what was the gist of the
3 letter that was sent back to Mr. Galliger?

4 A. The first letter from Porter --

5 Q. Right?

6 A. That was, "We'll not relinquish our
7 rights, we have rights to this."

8 I believe they cited some precedent or
9 some previous legal debates, and what they had
10 then said was: We are not -- we're advising the
11 client not to do as you say. We'd like to see
12 evidence of what you're alleging. Please.

13 Q. So they asked for more information?

14 A. Yes.

15 Q. Okay. What happened then?

16 A. We received a second letter -- actually
17 prior to that letter, we spoke with counsel who
18 said that upon returning from vacation, one of
19 the lawyers at their firm had represented Mr. Dey
20 in a previous matter unrelated, and could not get
21 them the information they needed in time, so that
22 would -- it would be a conflict, they would be
23 conflicted out, which they had referred to us
24 another firm, Schottenstein, Zox & Dunn.

25 We then received a letter from

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1 Mr. Galliger.

2 Q. Was that a letter sent to Schottenstein,
3 Zox & Dunn, or to you?

4 A. No, it was sent to me.

5 Q. Okay.

6 A. Which stated that they were aware that
7 we were no longer in the counsel of Porter,
8 Wright, Morris, and that before we go through the

9 expense of looking for another lawyer, we should
10 just do as they say. We should just, you know,
11 stop using the name "C-BUS" because they alleged
12 that their client had used it and had owned it.
13 We forwarded that letter to our counsel at
14 Schottenstein.

15 Q. And what happened then?

16 A. Schottenstein reviewed it, and again,
17 found that there was no conflict. And they had
18 written a response to Mr. Galliger stating that,
19 again, previous counsel at Porter -- reiterating
20 what their points were in that first letter from
21 Porter, Wright and Morse, and stating that,
22 again, we'll not relinquish our rights. We've
23 registered the name legally and we own it as a
24 tradename in Ohio. If you have any evidence, you
25 need to send it to us, please.

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1 Q. And what happened then?

2 A. We received no word from the plaintiff,
3 Royal Tiger Publishing, after that.

4 Q. Okay. This last letter that went out
5 from Schottenstein, Zox & Dunn, do you know when
6 that was sent out?

7 A. I believe it was February 2006. I'm not
8 sure. I'd have to look at the documents.

9 Q. But you think it was in February?

10 A. Yes.

11 Q. Okay. In March, did you hear anything
12 back from the plaintiff?

13 A. No.

14 Q. What about April?

15 A. No.

16 Q. What about May?

17 A. No.

18 Q. What about June?

19 A. No.

20 Q. What about July?

21 A. No.

22 Q. What about August?
23 A. No.
24 Q. What about September?
25 A. No.

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1 Q. What about October?
2 A. October 31st I received a letter at
3 home, which was a letter from their current
4 counsel at Vorys stating that they wanted us to
5 cease and desist using the name "C-BUS" and not
6 to produce our fourth issue, which was due to be
7 released within the next week or two.

8 Q. During the nine months that you didn't
9 hear anything, did you invest any money into your
10 magazine?

11 A. Yes.

12 Q. About how much?

13 A. Quite a lot. Quite a lot of time and
14 money was invested in building the name C-BUS,
15 the website. Producing the magazines was not
16 inexpensive either. We had worked with a number
17 of organizations and businesses and individuals
18 throughout central Ohio to establish the name of
19 C-BUS and the brand of C-BUS as the magazine
20 that's connecting Columbus. We wanted to connect
21 young professionals with other young
22 professionals and other opportunities and folks
23 who have made it.

24 And in doing so, we've, I mean, I don't
25 know an exact number figure, but it -- it's close

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1 to the high tens of thousands of putting this
2 magazine in the place where we've put it.
3 Strategically where young professionals live and
4 work, where residents of Columbus can enjoy it as

5 a free publication. And as we go around the
6 business community promoting it, and, you know,
7 looking for advertising revenue and opportunities
8 to work with a variety of organizations.

9 Q. How much time do you spend per week in
10 the typical week working on your magazine, C-BUS?

11 A. I don't think that's physically possible
12 to -- quite a lot of time. Way more than 40 or
13 50 hours per week.

14 Q. Would that have been true for the time
15 period between February and October 31st, when
16 you hadn't heard anything back from the
17 plaintiff?

18 A. Yes.

19 Q. Why didn't you stop what you were doing
20 back in February?

21 A. We didn't have any need to stop. We,
22 for one, we had registered legally in Ohio with
23 the Secretary of State. Our business was
24 completely legitimate. We had nothing but
25 praise, and the folks who we were writing about,

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1 specifically. If you look at the exhibits that
2 we were looking at, those are folks who you don't
3 know. Those were some of the unknowns who are
4 being spotlighted for the very first time in a
5 magazine. The young, professional Up-and-Comers.

6 They were so happy. Our advertiser were
7 happy because they were working with a
8 publication that was not only providing a new
9 type of publication in a way that was successful
10 for them, but an opportunity for them to connect
11 with their customers or potential customers
12 through our events, through our charity
13 initiatives, and obviously through our magazine
14 that we -- we have really took such great lengths
15 to really build it up and get it to where it is
16 now.

17 And since everything was in the right

18 places, and although we had what we call an
19 obstacle, stumbling block in the beginning of the
20 business, it -- it seemed to go away. It seemed
21 that it was really a non-issue, that it was more
22 of an intimidation strategy from a bully who's
23 trying to edge out the new guy.

24 Now, we had successfully published two
25 issues of the magazine to great reviews, and we

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1 continued to do it. Not at the cost of others,
2 but on our own merits. We even applaud that in
3 one of our editorials in that we can produce this
4 magazine for free in a marketplace like Columbus,
5 which is growing, and really, really highlights,
6 points out some of the great things that are
7 going on for both central Ohioans and those who
8 are either new to Columbus or visiting Columbus.

9 Q. When you didn't receive an answer back
10 to the letter that Schottenstein, Zox & Dunn sent
11 out to the plaintiff, what was your understanding
12 of the situation at that point?

13 A. We understood that the matter was done.
14 That was it.

15 MR. WILLISON: If I could have a moment,
16 your Honor.

17 (Pause in proceedings.)

18 MR. WILLISON: Nothing further, your
19 Honor.

20 THE MAGISTRATE: Okay. Please stay
21 seated. Cross-examination?

22 MR. RICHARDSON: Thank you, your Honor.

23 - - -

24 CROSS-EXAMINATION

25 BY MR. RICHARDSON:

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1 Q. Mr. Grosso, your magazine is distributed

2 in such places as coffeehouses, correct?
3 A. Yes.
4 Q. Doctors' offices?
5 A. Yes.
6 Q. Restaurants?
7 A. Yes.
8 Q. Okay. And you have subscribers as well,
9 correct?
10 A. Yes.
11 Q. And your magazine is directed at young
12 professional readers in Columbus, isn't that
13 correct?
14 A. That's correct.
15 Q. And your magazine contains profiles of
16 Columbus young professionals --
17 A. Yes.
18 Q. -- correct?
19 Your magazine has arts, entertainment
20 and lifestyle content, correct?
21 A. Those are some of the sections we have
22 in the magazine, yes.
23 Q. Your magazine sponsors events for social
24 networking, isn't that right?
25 A. Yes.

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1 Q. Your magazine sponsors events for
2 charity, right?
3 A. Yes.
4 Q. But it's your belief that C-BUS and my
5 client's magazine are vastly different, isn't
6 that correct?
7 A. That is correct.
8 Q. Okay. In fact, I think you just said
9 that there's a world of difference between the
10 magazines, correct? Right?
11 A. That's correct.
12 Q. And it's also your belief, isn't it,
13 that the similarities between the magazines are
14 limited to the mere fact that they were Columbus

15 magazines, isn't that right?

16 A. For the most part, yes.

17 Q. Now, your testimony, as I gathered it
18 from your direct examination, is that you sent
19 for the media kit from my client for my client's
20 magazine in mid-2005 in order to perform research
21 on my client's magazine?

22 A. That's correct.

23 Q. You wanted your magazine to be distinct
24 from my client's magazine, correct?

25 A. I believe we wanted it to be distinct

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1 from all other magazines, that is correct.

2 Q. Okay. And you performed some research,
3 diligent research with respect to establishing
4 the Columbus Young Professional's Club, isn't
5 that correct?

6 A. That's correct.

7 Q. And for background, the Columbus Young
8 Professional's Club is a social networking club
9 for higher income individuals between the ages of
10 21 and 44; is that a fair representation?

11 A. Not necessarily. There is no regard to
12 income at all. It's young professionals, some of
13 whom don't necessarily consider themselves young
14 professionals. Anyone between the ages of 21 and
15 44, and others who are young at heart. We have
16 some early 50-year-olds who come to functions,
17 are welcome to join. It's an organization to
18 connect young professionals and young adults in
19 Columbus with the a variety of opportunities.

20 Q. But, you would admit, would you not,
21 that professionals tend to earn more money than
22 non-professionals?

23 A. I know a lot of teachers who would
24 disagree with you and who are in our club.

25 Q. Okay. Well, I won't fight with you

1 about that. In fact, when you were choosing the
2 name for the Columbus Young Professional's Club,
3 you researched at least 30 or 40 Columbus clubs,
4 organizations and associations, correct?

5 A. That's correct.

6 Q. But you didn't come across an
7 organization known as the Young Professionals of
8 Columbus, did you?

9 A. No, we did not.

10 Q. And your company's Columbus Young
11 Professionals Club is vastly different from Young
12 Professionals of Columbus, correct?

13 A. I believe all of the young professional
14 clubs that you are referencing, the 20 or 30 or
15 40, so I think there are some commonalities
16 because there are associations for young
17 professionals, whether to raise scholarship money
18 to house students or connect young professionals
19 or give them opportunity to network. I think
20 there are similarities, but I think that our
21 organization is different than most of the others
22 out there.

23 Q. And the name of your organization, the
24 Columbus Young Professionals Club, is different
25 from the Young Professionals of Columbus?

1 A. That is correct.

2 Q. Okay. Now, just to clear something up,
3 earlier you were remarking on two of plaintiff's
4 exhibits. If I may bring them back up. I don't
5 anticipate a long cross on this issue.

6 Earlier you were testifying about
7 Plaintiff's Exhibits 13 and 14. And tell me if
8 this is correct: Plaintiff's 13 is a page from
9 C-BUS Magazine from September-October issue of
10 '06?

11 A. That is correct.
12 Q. And Plaintiff's Exhibit 14 is a page
13 from C The Columbus Magazine, November 2006?
14 A. That's correct.
15 Q. And Plaintiff's Exhibit 14 is an
16 instance of a feature known as Suitless, Capital
17 Movers, correct?
18 A. Yes.
19 Q. Okay. But, of course, you acknowledge
20 that C The Columbus Magazine has been running the
21 feature Suitless, Capital Mover from before
22 November 2006, correct?
23 A. I would imagine so, yes.
24 Q. Okay. And I have what has been marked
25 as Plaintiff's Exhibit 15. Could you take a look

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1 at that, and when you're done, tell me what it
2 is.
3 A. It appears to be the April 2006 issue of
4 C The Columbus Magazine with an article on
5 Nicholas Stefanec and Scott Harper.
6 THE MAGISTRATE: I'm sorry, what is the
7 month again?
8 THE WITNESS: April 2006.
9 THE MAGISTRATE: And is that a feature
10 known as Suitless, Capital Movers?
11 THE WITNESS: That's correct.
12 THE MAGISTRATE: From C The Columbus
13 Magazine?
14 THE WITNESS: Yes.
15 THE MAGISTRATE: Okay. Thank you.
16 MR. RICHARDSON: And I'll represent for
17 the Court, or I'll say this to the Court, it's
18 probably worth -- if you can see that, your
19 Honor. Should I --
20 THE MAGISTRATE: Well enough, I think.
21 I'll take a quick look.
22 MR. RICHARDSON: Thank you.
23 BY MR. RICHARDSON:

24 Q. Okay. Mr. Grosso, do you believe that
25 the term C-BUS is a slang term for the name

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1 Columbus, isn't that right?

2 A. Yes.

3 Q. And you believe it's a popular term for
4 the term Columbus, isn't that right?

5 A. Yes.

6 Q. Okay. Yet you've also said that really
7 very few people know what you mean when you say
8 the term "C-BUS", isn't that right?

9 A. I don't think I said that.

10 Q. Okay. Let me refresh your memory --

11 A. Thank you.

12 Q. And ask if this sounds familiar: "We
13 named it C-BUS Magazine, a faster way of saying
14 Columbus. Or, as David Letterman would say,
15 'It's what the kids are calling it these days.'
16 All four of them. You would be amazed at how
17 many people don't know what we mean when we say
18 C-BUS. Is it about public transportation? Is it
19 about the ocean? These are real questions we
20 have answered."

21 Does that sound familiar?

22 A. Sure.

23 Q. Do you know what its from?

24 A. Yes. Self-deprecating editorial issue
25 from Columbus -- from, I mean, our first issue in

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1 which we talk about the term C Columbus from
2 C-BUS Magazine's premier issue.

3 What we did there was add a bit of humor
4 to our editorial column in such that a lot of
5 times, when you ask I guess seasoned
6 professionals, the folks with the money, folks
7 who are owning the businesses, who are going to

8 be spending money to advertise to the younger
9 generations, they don't know what C-BUS means
10 because they are not, quote-unquote, hip yet.
11 But young professionals are readers,
12 definitely know what it means. That's what the
13 kids are calling it. And so that article is
14 really meant to kind of poke fun at us for going
15 after an audience where a portion of the audience
16 may not know what C-BUS is, but we have to
17 educate them, and that's the older audience, the,
18 you know, the seasoned professionals who, again,
19 would appear would be the ones who would be
20 sending us checks to pay for this magazine for
21 the younger audience, the kids.
22 Q. All four of them?
23 A. All four of them.
24 Q. Just so I understand.
25 A. And then again, that was could he

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1 written, so, you know, it was a -- it was an
2 article that was co-written by the other
3 publisher.
4 Q. It was published in C-BUS Magazine?
5 A. Yes.
6 Q. Thank you. I know of one of the web
7 addresses you use is -- URLs you use is
8 CBUSmagazine.com, correct?
9 A. Yes.
10 Q. And my client uses cbusmag.com, correct?
11 A. To my knowledge.
12 Q. Okay. Now, you had the opportunity to
13 register CBUSmag.com, isn't that right?
14 A. That's right.
15 Q. But chose not to because you wanted the
16 word "magazine" in the URL, isn't that right?
17 A. That's right.
18 Q. Okay. Because the word "magazine" is in
19 the title of C-BUS Magazine, correct?
20 A. Yes.

21 Q. Okay. Now, Mr. Grosso, you also run a
22 magazine entitled Greenlight Long Island
23 Magazine, isn't that correct?
24 A. That's right.
25 Q. But the URL for that magazine is

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1 longislandmag.com, correct?
2 A. That's correct.
3 Q. And the name for that magazine, Green
4 Light Long Island Magazine has the word
5 "magazine" in the title, isn't that right?
6 A. That's right.
7 Q. Okay. Now, when you had the opportunity
8 to register CBUSmag.com, wouldn't you have
9 registered it because it was easier for the
10 viewer to find the website for C-BUS Magazine
11 because it was shorter?
12 A. I think the two instances you are
13 referring to, longislandmagazine.com,
14 cbusmag.com, first of all --
15 MR. RICHARDSON: I don't think that's
16 the question I asked.
17 THE WITNESS: I'm sorry.
18 THE MAGISTRATE: Okay. Please the
19 respond to the question.
20 THE WITNESS: I'm sorry, could you
21 please ask again? I'm sorry.
22 MR. RICHARDSON: Yes.
23 BY MR. RICHARDSON:
24 Q. When you had the opportunity to register
25 cbusmag.com, wouldn't you have registered it

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1 because it was easier for the viewer to find the
2 website for C-BUS Magazine because it was shorter
3 than CBUSmagazine.com?

4 A. No.

5 THE MAGISTRATE: Do you understand the
6 question?

7 THE WITNESS: Yes. I think the reason
8 we chose CBUSmagazine was because C-BUS and
9 magazine as an abbreviation isn't really what we
10 wanted to convey. So if we called it CBUSmag, it
11 would just be seven letters that, for the
12 purposes here, wouldn't really make sense when
13 typing in URLs, where, you know, they are just,
14 you know, letters that don't really make much
15 sense. They are nonsensical. Whereas C-BUS is
16 the name of the magazine and it's a magazine.
17 That helped us out with regard to spelling out
18 the entire word "magazine".

19 We could have had cbusmag.com, but there
20 was really no need, and it probably would have
21 been more of a hassle to market that as a seven
22 letter URL than C-BUS Magazine, specifically with
23 the, you know, the -- in review of the David
24 Letterman quote, where some of the older
25 audiences that we were looking at did not

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1 understand C-BUS as a term for Columbus.
2 "CBUSmag" may have been too young or too
3 nonsensical.

4 Q. But you didn't have to market if you
5 registered it, correct? You wouldn't have to
6 market C -- market cbusmag.com if you registered
7 it, correct?

8 A. We haven't had to.

9 Q. Okay.

10 A. But I don't see why we would have had to
11 register 30 websites and not use them.

12 Q. Wouldn't it prevent confusion?

13 A. No. I think it would just rack up money
14 for website domain companies, and if we just
15 wanted one website, we could use one website and
16 market that rather than marketing 30 websites,

17 directing them and wasting time and efforts of
18 the Internet and all the websites somewhere
19 potentially registered, there are thousands of
20 them with the name "C-BUS" or "magazine" in the
21 title. We said, "Let's just register one."

22 And of course the hyphen came along
23 with -- when we realized that hyphen is in our
24 name and our title, so we might as well throw in
25 C-BUSmagazine.

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1 Q. You were interested in ensuring that
2 your magazine succeeded on its own terms,
3 correct?

4 A. Yes.

5 Q. Back to Greenlight Long Island Magazine,
6 isn't it true that Greenlight means where to go?

7 A. That's -- that's the tagline for the
8 magazine, yes.

9 Q. And isn't it also true that the words
10 "where to go" are on the moniker of C-BUS, the
11 Columbus Magazine?

12 A. I believe they are. I will add, though,
13 that I never connected the two. And Long Island,
14 New York and Columbus, Ohio, a magazine in either
15 market, specifically with the name "Greenlight",
16 marketed as "where to go", not "what to wear",
17 has no relevance.

18 Q. Now, earlier you testified about the
19 ratio of editorial content in your magazine to
20 the ratio or to the content of advertising.
21 Isn't that true?

22 A. Yes, I did.

23 Q. And it's your view that the ratio of
24 advertising to editorial content in your magazine
25 is lower than it is in C The Columbus Magazine?

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1 A. We have much more editorial content in
2 our magazine, C-BUS.

3 Q. Would it surprise you to learn that the
4 early issues of C The Columbus Magazine had a
5 editorial-to-advertising content ratio of about
6 50 to 50?

7 A. I don't know. Because apparently it's
8 not in existence anymore, C Entertainment.

9 Q. I'm referring to C The Columbus
10 Magazine.

11 A. How long ago were those issues? I mean,
12 I wouldn't be surprised to know. I would hope
13 that they would have a strong editorial product
14 as well. It's just, in looking at the two
15 magazines currently, they don't have a lot of
16 strong editorial content. They have mostly
17 advertisements and that's it.

18 Q. And you've published how many issues?

19 A. Four.

20 Q. Okay. Isn't it true, Mr. Grosso, that
21 you have encountered individuals who confuse your
22 magazine with my client's magazine?

23 A. Of the thousands and thousands of people
24 that I've countered in publishing a magazine and
25 being a part of various organizations,

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1 specifically a co-founder of, as you referred,
2 the Columbus Young Professional's Club, with over
3 2,500 members, I've met a lot of people in
4 Columbus. Possibly tens of thousands, if not
5 more. There have been a few people, and I can't
6 speak as to why they were confused or if they
7 were specifically confused on a truck going by
8 and they didn't hear that correctly, or they
9 didn't remember the article that they read in
10 Columbus Monthly versus the Dispatch versus Alive
11 versus C The Columbus Magazine. I can't speak to
12 that. There have been a few people. Again, but
13 very, very, very small.

14 Q. So it's really a small number of people
15 relatively speaking, who are confused about the
16 two magazines out of tens of thousands of people
17 you've met?

18 A. In my experience, yes.

19 Q. Are you telling the Court that you've
20 met tens of thousands of people and had
21 conversations since you started publishing C-BUS
22 and had conversations with them about your
23 magazine?

24 A. I'm saying that of the thousands,
25 possibly in the tens of thousands, I've met quite

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1 a lot of people in Columbus, and most people the
2 first question is they ask is, "What do you do?"
3 And I tell them, "I publish C-BUS Magazine."

4 I'm not, again, saying that there's a
5 number of people that I know that I've met or
6 communicated with, but certainly in the high
7 thousands, and I -- possibly 10,000 is the number
8 I believe I said.

9 Q. And the two magazines are vastly
10 different?

11 A. Yes, I believe so.

12 Q. Does the name Shannon Worthington ring a
13 bell?

14 A. Yes.

15 Q. Isn't it true that Shannon Worthington
16 thought that you had -- your magazine had
17 published an article on Miss Ohio USA?

18 A. That's correct.

19 Q. But your magazine had not published an
20 article on Miss Ohio USA, correct?

21 A. That's correct.

22 Q. And, in fact, that was in my client's
23 magazine, correct?

24 A. That article on Miss Ohio was in C The
25 Columbus Magazine. But between -- I can't --

1 someone thought they read an article in a
2 magazine and thought it was a different magazine.
3 That happens all the time with every element of
4 society, I believe. Someone read something in
5 the Dispatch, "Oh, I read that in the paper."
6 Well, it was never in The Dispatch. They wrote
7 about it in The Plain Dealer, some other
8 publications.

9 So, to reference where you read an
10 article, I think a lot of people in publication,
11 what they read, what they see on a TV, what they
12 hear on the radio may not make the specific
13 assumption that you're referring to. I don't
14 know if she was confused with regard to which
15 magazine was which, but she thought she read an
16 article on Miss Ohio in our magazine.

17 Q. So the two magazines are vastly
18 different, correct?

19 A. Uh-huh.

20 Q. But people are often confused about what
21 appears in what magazine?

22 A. As I say, I think that people -- a
23 person will be confused to what they read. They
24 are human. They read an article in a magazine
25 one day and mistake it for something that they

1 saw on TV. Or, as a pledge to the ego, saying,
2 "Well, sure, I -- I attended that conference and
3 heard that lecture, when they read it in a
4 cartoon or something like that.

5 Someone seemingly thinks that something
6 was intended for an audience that was a little
7 superior to what they want to appear to be, more
8 esteemed. I just think that's, again, that's a
9 human thing.

10 Q. So people are confusion the two
11 magazines?

12 A. I think people get confused, period. I
13 think that the specific examples that you've
14 cited some examples of some of confusion, but I
15 don't think the great majority of people in
16 Columbus, specifically not the large amount of
17 people that I've met, have confused the two. And
18 definitely not one advertiser I've met with has
19 ever gone and spent money with me thinking I was
20 someone other than who I am.

21 Q. I understand.

22 Mr. Grosso, isn't it true that my client
23 notified you in January of this year that there
24 could be a trademark problem with your company's
25 use of the term C-BUS?

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1 A. Yes.

2 Q. Yet you did not believe that you were
3 infringing my clients marks?

4 A. Not at all. We did a trademark search
5 in the State of Ohio and nothing came up. We
6 went through attorneys who had done searches, and
7 there was no C-BUS registered.

8 Q. Uh-huh. And you don't have any legal
9 training, correct?

10 A. I do not.

11 THE MAGISTRATE: I'm sorry, the question
12 was you don't have any --

13 MR. RICHARDSON: Legal training.

14 THE MAGISTRATE: Okay.

15 BY MR. RICHARDSON:

16 Q. You continued to use C-BUS in the months
17 to follow my client's contacting you about a
18 conflict between the --

19 A. I was advised by counsel as soon as I
20 heard from your client that there was no dispute.
21 That there was no infringement.

22 Q. And you did receive my letter October

23 31st, 2006, informing you that your use of the
24 term C-BUS was causing confusion in the
25 marketplace, correct?

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1 A. October 31st?

2 Q. Yes.

3 A. I did receive that letter.

4 Q. Yet you didn't reply to that letter, did
5 you Mr. Grosso?

6 A. I forwarded it to my previous counsel at
7 Schottenstein, Zox & Dunn, who did not reply to
8 it. The magazine was at the printer, and I don't
9 know if attorney/client privilege represents
10 itself right now, but they told me that it was
11 not an issue right now. Go forward with the
12 magazine.

13 This has been three, you know, three
14 issues, four issues and we haven't heard
15 anything. This is, you know, to my knowledge, it
16 seemed like intimidation, not to mention the fact
17 that the letter came to my home, not my business
18 address, which you could have found out if you
19 looked through any of our magazines.

20 Q. And in fact, you published the next
21 issue of C-BUS Magazine?

22 A. We did.

23 Q. Okay. And the next issue of
24 C-BUS Magazine is slated to be sent to the
25 printer the week of December 18th, correct?

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1 A. I believe so. The January-February 2007
2 issue.

3 MR. RICHARDSON: I have nothing further.

4 THE MAGISTRATE: Any redirect?

5 MR. WILLISON: Just one question, your
6 Honor.

7

- - -

8

REDIRECT EXAMINATION

9

BY MR. WILLISON:

10

Q. What is the circulation of your

11

magazine, C-BUS?

12

A. 25,000 copies, 9,000 subscribers.

13

THE MAGISTRATE: How many subscribers?

14

THE WITNESS: 9,000.

15

MR. WILLISON: Nothing further, your

16

Honor. Sorry.

17

THE MAGISTRATE: Okay. I have a

18

question to clarify that.

19

- - -

20

EXAMINATION

21

BY THE MAGISTRATE:

22

Q. So by "subscribers" you mean people who

23

mail in a card or something saying that at this

24

point I want it mailed to my home?

25

A. In addition to members of organizations

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such as the Columbus Young Professionals Club,

2

Experience Columbus, The Business and

3

Professional Women of Columbus, and a variety of

4

local Chambers of Commerce, as well as high

5

traffic beauty salons and dentists' offices

6

who --

7

Q. They would all be considered

8

subscribers?

9

A. Yes. Mail subscribers. A good portion

10

come from our website to inquire or to receive a

11

free subscription.

12

Q. Okay. And the 25,000 copies, that was

13

the number you gave for copies, right?

14

A. Yes.

15

Q. Does that include the 9,000 subscribers?

16

A. Yes, it does.

17

Q. I may have missed this at the very

18

beginning, but what title do you go by? Is it

19

founder, co-founder, president?

20 A. Co-publisher and CEO.
21 Q. And that would be your title with 206
22 Publishing LLC?
23 A. 206 Publishing, President and CEO. On
24 the masthead of the magazine it's listed as
25 co-publisher.

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1 THE MAGISTRATE: Okay. Thank you.
2 Any questions based on my questions?
3 MR. RICHARDSON: No, your Honor.
4 MR. WILLISON: Nothing, your Honor.
5 THE MAGISTRATE: Thank you. You can
6 step down. Thank you for your testimony.
7 (Witness excused.)
8 THE MAGISTRATE: Do the defendants wish
9 to call any other witnesses?
10 MR. WILLISON: No other witnesses, your
11 Honor.
12 THE MAGISTRATE: Let's go off the record
13 for a moment and address exhibits, if any, that
14 defendants want to move into the record.
15 (Discussion held off the record.)
16 THE MAGISTRATE: Okay. Mr. Richardson,
17 you brought to my attention there is another
18 evidentiary issue you would like to raise.
19 MR. RICHARDSON: Yes, your Honor. The
20 plaintiff is seeking to admit Plaintiff's
21 Exhibit 15, which was referred to in the
22 cross-examination of Mr. Grosso. It is a
23 April 2006 issue of C The Columbus Magazine
24 turned to the page of the Suitless Capital Movers
25 feature.

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1 THE MAGISTRATE: I'm sorry, say that
2 last part again.

3 MR. RICHARDSON: Turned to the page of
4 the Suitless Capital Movers feature in C The
5 Columbus Magazine.

6 MR. WILLISON: Defendant has no
7 objection.

8 THE MAGISTRATE: Okay. What's been
9 marked as Plaintiff's Exhibit 15 will be admitted
10 without objection.

11 - - -
12 Thereupon, Plaintiff's Exhibit
13 No. 15 was admitted into
14 evidence.

15 - - -
16 THE MAGISTRATE: Okay. What we're going
17 to require from counsel at this point is, under
18 Rule 53, any party can request findings of fact
19 and conclusions of law when a Magistrate hears a
20 matter without a jury. I'm going to render my
21 decision with findings of fact and conclusions of
22 law, and I'm going to give the parties' counsel
23 an opportunity to submit on or before December
24 13th, 2006, the end of business, proposed
25 findings of fact and conclusions of law.

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1 I've provided counsel with my e-mail
2 address and I've asked that they submit it to me,
3 if they submit it to me electronically, which
4 will speed things along, the process of my
5 rendering a decision.

6 As Magistrate, I don't have discretion
7 to enter a final decision in this matter. Under
8 Rule 53, I'm required to issue a written
9 Magistrate's decision which can be objected to by
10 one side or both sides. A decision on the motion
11 for preliminary injunction will not be final
12 until Judge Sheward adopts, reverses or modifies
13 in some way my decision.

14 And given what has been told to me about
15 the time frame we have here, you may want to

16 bring to the Judge's attention quicker action
17 than the normal objection period if that becomes
18 an issue.

19 MR. WILLISON: Yes.

20 THE MAGISTRATE: Anything further from
21 counsel?

22 MR. RICHARDSON: I had prepared a
23 closing argument, your Honor, but it's -- I
24 understand that you're suggesting that the
25 proposed findings of fact and conclusions of law

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1 from the parties will take the place of an oral
2 closing argument at today's hearing.

3 THE MAGISTRATE: Yes.

4 MR. WILLISON: Nothing further from
5 defendant, your Honor.

6 THE MAGISTRATE: Did you say defendant?

7 MR. WILLISON: Defendant, yes.

8 THE MAGISTRATE: Okay. Thank you all.

9 And if anything further comes up between now and
10 the deadline for the findings, please feel free
11 to give me a call, I'll set up a conference and
12 we'll address it.

13 MR. WILLISON: Okay.

14 MR. RICHARDSON: Thank you, your Honor.

15 THE MAGISTRATE: Thank you.

16 - - -

17 (Thereupon, the hearing was adjourned
18 at 5:03 o'clock p.m. on Monday,
19 December 4, 2006.)

20 - - -

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C E R T I F I C A T E

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State of Ohio,)
County of Franklin,)

I, JULIE A. LONG, Registered
Professional Reporter and Notary Public in and
for the State of Ohio, hereby certify that the
foregoing is a true and accurate transcript of
the proceedings hereinbefore set forth, as
reported in stenotype by me and transcribed by me
or under my supervision.

JULIE A. LONG
Registered Professional Reporter and
Notary Public in and for the State of Ohio

My Commission Expires: 04-08-2007