

Exhibit 15

OPUS|2

INTERNATIONAL

Games Workshop Ltd. v. Chapterhouse Studios LLC & Ors

Deposition of Andrew Jones

April 3, 2012

Opus 2 International - Official Court Reporters

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ORIGINAL

April 3, 2012

Games Workshop Ltd. v. Chapterhouse Studios LLC & Ors Deposition of Andrew Jones

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GAMES WORKSHOP LIMITED,

Plaintiff,

Civil Action No. 1:10-cv-8103

v.

CHAPTERHOUSE STUDIOS LLC and JON

PAULSON d/b/a PAULSON GAMES

Defendants.

Tuesday, 3 April, 2012

11:15 am

Videotaped Deposition of ANDREW JONES, taken
at the offices of Eversheds, 1 Royal Standard Place,
Nottingham, UK, before Ailsa Williams, Accredited
Court Reporter

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GILLIAN STEVENSON: (Games Workshop)

20

COURT REPORTER:

21

AILSA WILLIAMS

22

VIDEOGRAPHER: LINDA FLEET

23

24

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1 **THE VIDEOGRAPHER:** Here begins videotape number 1 in
2 the deposition of Andrew Jones, in the matter of Games
3 Workshop Limited versus Chapterhouse Studios LLC et al
4 in the United States District Court for the Northern
5 District of Illinois, Eastern Division, case number
6 110-cv-8103.

7 Today's date is April 3, 2012 and the time
8 on the video monitor is 11:16. The video operator
9 today is Linda Fleet, representing Opus 2
10 International, and this deposition is taking place at
11 Eversheds, 1 Royal Standard Place, Nottingham NG1 6FZ.

12 Counsel, please voice identify yourselves
13 and state whom you represent.

14 **MR. OH:** Joon Oh of Winston Strawn LLP, representing
15 Chapterhouse Studios LLC.

16 **MR. MOSKIN:** Jonathan Moskin of Foley & Lardner,
17 representing the plaintiff, Games Workshop.

18 **MS STEVENSON:** Gill Stevenson, in-house counsel, Games
19 Workshop.

20 **THE VIDEOGRAPHER:** The court reporter today is Ailsa
21 Williams, representing Opus 2. Could the courter
22 please swear in the witness.

23 ANDREW JONES

24 Having been duly sworn,

25 Testified as follows:

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1 **DIRECT EXAMINATION BY MR. OH:**

2 **MR. OH:** For the record, parties have agreed this
3 deposition will be conducted under the Federal Rules
4 of Civil Procedure.

5 Could you please state and spell your full
6 name for the record.

7 **A** Yes. Andrew, A-N-D-R-E-W, Meredith,
8 M-E-R-E-D-I-T-H, Jones, J-O-N-E-S.

9 **Q** Could you please state your home
10 address?

11 **A** 126 Main Street, Calverton, Nottingham
12 NG1 46FB, UK.

13 **Q** Could you please identify your present
14 employer?

15 **A** Games Workshop.

16 **Q** What is your current position?

17 **A** Head of Legal, Licensing and Strategic
18 Projects.

19 **Q** Where is Games Workshop located?

20 **A** The headquarters is here in Nottingham.
21 We have locations around the world.

22 **Q** Where do you work?

23 **A** Principally, here in Nottingham.

24 **Q** For the record, there are various Games
25 Workshop entities. Is there a specific entity you are

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1 employed by?

2 A At Games Workshop we always -- you just
3 kind of think of yourself as working for Games
4 Workshop. My specific entity that I work for is Games
5 Workshop Limited.

6 Q Have you been deposed before?

7 A Have I been deposed before? No, I have
8 not.

9 Q Have you testified at trial before?

10 A Yes, I have.

11 Q Can you state the names of the case
12 where you testified?

13 A I was a witness. I can't remember the
14 names. I was a witness at a case of, what do you call
15 it, I witnessed a violent incident and came forward to
16 testify.

17 Q Any other testimony in a trial?

18 A No. Actually, I went to observe a case
19 where we were suing a company who had made computer
20 games based on our IP. That was down at the Supreme
21 Court in London, but I was not a witness, I did not
22 get to say or do anything.

23 Q Move to strike as non-responsive,
24 everything before "I was not a witness." Do you
25 understand you are testifying under oath today?

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1 A Yes.

2 Q And that testifying here is the same as
3 if you were testifying under oath in a courtroom
4 before a judge and a jury?

5 A Yes.

6 Q Because the court reporter must take
7 down everything that you and I say, please answer each
8 question audibly, for example with a "yes" or "no",
9 instead of shaking or nodding your head or saying "uh
10 huh" or "nah". Would you do that?

11 A Yes.

12 Q Because the court reporter must take
13 down everything, it is also important we don't talk
14 over each other, so I will ask that you wait until I
15 finish asking my question before you start your
16 answer, and I will do my best not to talk over you as
17 well. Do you understand?

18 A Yes.

19 Q Let me know if you need to take a break
20 during the deposition and we can do that. I ask
21 however that if there is a question that is already
22 asked and has not finished being answered that we wait
23 until after you provide an answer before we take the
24 break. Is that okay with you?

25 A Yes.

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1 Q Is there any reason you cannot testify
2 fully and truthfully today?

3 A No.

4 Q Are you taking any medications that
5 would impair your ability to testify fully and
6 truthfully?

7 A No.

8 Q Are you under the influence of alcohol
9 or any substance that would impair your ability to
10 testify here today?

11 A No.

12 Q Is it your understanding that Jonathan
13 Moskin is representing you for purposes of today's
14 deposition?

15 A Yes. He is representing Games Workshop,
16 yes.

17 Q Is he your personal attorney?

18 A No.

19 Q There may be times during the deposition
20 that Mr. Moskin objects to a question that I ask. You
21 must answer each of my questions unless you are
22 instructed not to answer and you choose to follow that
23 instruction. Do you understand?

24 A Yes.

25 Q If you do not understand a question I

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1 ask, please let me know and ask that I rephrase it,
2 which I will be happy to do. Do you agree to do that?

3 A Yes.

4 Q If I ask a question and you don't have
5 an exact answer but you have an estimate, I am
6 entitled to that information. For example, if I ask
7 when you had your last haircut, you may not remember
8 the specific date but you may be able to estimate it,
9 for example, it was two weeks ago. Do you understand?

10 A Kind of. What I understand is you are
11 not asking me to make a guess, so all I can say on
12 that is I can do the best to the best of my
13 recollection.

14 Q That is fine. Do you understand that
15 you have been designated by Games Workshop Limited to
16 testify on certain topics for any 30(b)(6) notice
17 provided by the defendants?

18 A Yes, I understand that I have been asked
19 to testify on certain subjects. I don't necessarily
20 know the technical stuff you said at the end.

21 Q I am handing you what has been
22 previously marked as Exhibit 38, which is a copy of
23 that exhibit. Have you seen this before?

24 A Let me have a look at it. I believe I
25 have, yes. I believe Gill showed this to me. I have

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1 certainly not read it.

2 Q Keep it in front of you for now. I am
3 handing you what has been previously marked as Exhibit
4 39. Have you seen this before?

5 A I have indeed, yes.

6 Q Is it your understanding that you will
7 be providing testimony today with respect to the
8 following topics: 7, 14, 15, 18, 22, 23, 24, 27, 28,
9 33, and 34?

10 A Yes.

11 Q Are there any other topics that you are
12 aware of that Games Workshop has designated you to
13 testify about?

14 A No, there are no other topics.

15 Q Are you prepared to testify on each of
16 these topics today?

17 A Yes, I will do the best I can.

18 MR. MOSKIN: Just note for the record, Games Workshop
19 has of course interposed objections to the form of
20 many of these topics.

21 MR. OH: I am handing you what is marked as Exhibit
22 114, Plaintiff Games Workshop Limited's Second
23 Supplementary Response to Defendant Chapterhouse
24 Studio LLC's Interrogatory Set 4. The last page is
25 dated March 9, 2012. This is a Certificate of Service

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1 signed by or E-signed by Jason J Keener.

2 (Exhibit 114 marked for identification)

3 If you turn to the second page, you will see
4 it goes on to page 6, do you see a list of marks and
5 associated dates?

6 **A** Yes, I do.

7 **Q** These are the list of trademarks that
8 Games Workshop alleges that Chapterhouse Studios have
9 infringed.

10 **A** What the list actually is, as it says at
11 the top, it is the date of first use in commerce in
12 the US, at least as early as --

13 **Q** If you turn to the first page, where it
14 says "interrogatory number 18", I will read the first
15 portion of it, where it says: "Separately for each
16 mark you allege in this action."

17 **A** Okay.

18 **Q** Is this a list of the trademarks that
19 Games Workshop alleges that Chapterhouse Studios has
20 infringed in this lawsuit?

21 **A** Indeed, it is.

22 **Q** Is this a comprehensive list of the
23 trademarks that Games Workshop alleges that
24 Chapterhouse Studios --

25 **A** As of the date of this document, yes. I

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1 am sure if Chapterhouse Studios continue to release
2 infringing products using new trademarks we will
3 continue to add those to our claim.

4 Q But those will only be based on new
5 infringements?

6 A Yes.

7 Q After the date this was signed?

8 A Yes.

9 Q If you turn to the second page, midway
10 through the column on the left, do you see the
11 trademark "Adeptus Mechanicus"?

12 A I do.

13 Q Has Games Workshop used the mark
14 "Adeptus Mechanicus" as a trademark for product sold
15 in the United States?

16 A Adeptus Mechanicus, yes, it has.

17 Q On what product?

18 A Actually, it is spelt wrong, to be fair.

19 Q Please correct the spelling.

20 A Let me look. No, that is okay. On what
21 products? Adeptus Mechanicus, let me think about
22 that. Well, we have used Adeptus Mechanicus as a
23 trademark since, as it says, 1987, in various rule
24 books. Yes, in various rule books and models since
25 then.

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1 Q So in 1987 what was the use in commerce
2 in the United States of Adeptus Mechanicus as a
3 trademark, on what products?

4 A You know, I couldn't swear for certain.
5 It is a long long time ago, 1987. We released the
6 products that we released, the Warhammer 40,000
7 product we released in 87 would have started with the
8 Rogue Trader manual, which I believe had the Adeptus
9 Mechanicus in it, and since then Adeptus Mechanicus
10 has been a key part of our Warhammer 40,000
11 intellectual property that we have used since.

12 Q So sitting here today the only product
13 that Games Workshop is able to identify that it claims
14 was used in commerce in the US in 1987, with respect
15 to the mark "Adeptus Mechanicus", was in the Rogue
16 Trader rule book?

17 A I am not saying that is the only product
18 Games Workshop can identify. That is the only product
19 off the top of my head that I can identify from
20 memory, from something from 1987.

21 Q In the Rogue Trader rule book, just for
22 clarification on the record, "Rogue Trader" is
23 referring to a book that was published?

24 A Yes.

25 Q And "Adeptus Mechanicus", it was an

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1 entry inside the rule book?

2 A To the best of my memory, yes.

3 Q It was not used on the cover itself?

4 A No, I don't think it was.

5 Q What records does Games Workshop have
6 demonstrating that Adeptus Mechanicus was used as a
7 trademark on products in the United States in 1987?

8 A Could you be a little more specific?
9 What sort of things are you looking for?

10 Q What documentation does Games Workshop
11 have that show that Adeptus Mechanicus was used as a
12 trademark on products in the United States as a
13 trademark in 1987?

14 A I can't speak directly for the US
15 business, I don't know what records they might keep,
16 but I do know that, for example, we have a complete
17 archived database of every issue of our magazine White
18 Dwarf, which you can search, and which will have all
19 the adverts and pictures of products that we have
20 released going back to issue one, which certainly
21 predates Adeptus Mechanicus.

22 Q With respect to this database where you
23 are talking about White Dwarf, what other records
24 would Games Workshop have?

25 A Apart from our product archive and like

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1 I say the White Dwarf archive, which in a way is
2 another form of product archive, going back to 1987, I
3 am not sure what other records we have, to be honest.

4 Q Does the product archive contain
5 information -- strike that. How does Games Workshop
6 know that the product was actually sold in the United
7 States in 1987?

8 A The Rogue Trader, when you say the
9 product, what do you mean?

10 Q Other than Rogue Trader?

11 A So what is the product, what do you
12 mean?

13 Q The product on which Adeptus Mechanicus
14 is used as a trademark on, the product for which it
15 was sold in the United States?

16 A Okay. How do we know? Well, certainly
17 as long as I have been at Games Workshop we have sold
18 all of our products in all of our global territories
19 and markets. We don't pick and choose. So anything
20 that was released in the UK would have been released
21 in USA as well.

22 Q That is based on -- strike that. When
23 did you start working for Games Workshop?

24 A September 1986.

25 Q What position did you have at that

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1 point?

2 **A** I joined Games Workshop in
3 September 1986 as a telesales operative in the Trade
4 Sales Department.

5 **Q** Outside of the product -- strike that.
6 With respect to the product archive you mentioned
7 before, can you describe what this product archive is?

8 **A** The product archive that we have, it is
9 a largish room in which are stored our products going
10 back to the beginnings of Games Workshop. We store,
11 you know, it is systemized. Every time new products
12 come out, they are put into the archive.

13 **Q** How is it systemized?

14 **A** Well, there is a policy. There is a
15 written policy which says how it happens. To the best
16 of my knowledge, I think it is three copies of every
17 new product are put in the archive. Two go directly
18 into the archive, one goes into the archive master
19 chamber, which is a fire proof -- we kind of joke
20 about it being a bomb proof room, separate to the main
21 archive. So if anything happens to one building we
22 still have the records, and everything that goes into
23 the archive is recorded as such on a database.

24 **Q** And how would this archive -- strike
25 that. Does this archive contain information of when a

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1 product was released?

2 A What do you mean by "information"?

3 Q Does this archive contain -- strike
4 that. How would you use this archive to determine
5 the date when this product was first sold?

6 A Firstly, the products all have clear
7 dates printed on them on the packaging. Secondly, as
8 part of that archive, as I say, we scan in our
9 magazine, so we can search that. It is a searchable
10 PDF database which will reveal dates of first use, and
11 I believe that the database itself, when the products
12 are put into the archive, lists what date the product
13 is as well.

14 Q Referring to the date it was released in
15 the UK?

16 A As I said, when we release products,
17 since I have worked at Games Workshop, we release
18 globally, including the United States.

19 Q And you are just saying that as a matter
20 of general practice?

21 A As a matter of general practice and as a
22 matter of policy, as a sales business, is that for
23 example all of our Games Workshop retail outlets and
24 trade accounts have the same products worldwide on the
25 same launch date.

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1 Q So these policies, are these written
2 policies?

3 A Do you know, I am not sure about that.
4 You would have to ask our head of sales I guess, but
5 it is certainly how we operate, yes.

6 Q Who is head of sales?

7 A John Laughlin, L-A-U-G-H-L-I-N.

8 Q So every Games Workshop outlet and trade
9 account carries every product that is released by
10 Games Workshop?

11 A Actually, I can say there is a written
12 policy, thinking about it. First thing is that we
13 have what we call our release window, and there is a
14 written policy about what our disclosure period is,
15 when we let people know about a product, and then when
16 it comes out, and that is a universal policy. As to
17 every independent trade account and our hobby centers
18 stocking every product that we sell, if you like,
19 globally, at the end of the day, it is up to a trade
20 account what they choose to stock with Games Workshop.
21 So I cannot say that every trade account stocks every
22 single product. I can say that every Games Workshop
23 store stocks our retail range, and I can say that the
24 wider range is available via our global web store.

25 Q Can you explain what is the difference

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1 between the -- what do you mean by "retail range"?

2 **A** The range that is carried in our retail
3 shops.

4 **Q** And that is not all of the products that
5 Games Workshop sells?

6 **A** Correct.

7 **Q** So when you refer to "wider range", what
8 does that refer to?

9 **A** Games Workshop has -- I don't know the
10 exact number, but our product range is perhaps several
11 thousand codes. The best sellers, and by that I am
12 talking about the best selling 800 to perhaps a
13 thousand products are stocked in our chain of hobby
14 centers. We do have other products which the demand
15 is not great enough that they individually are
16 stocked. Well, we don't have the space actually in
17 our hobby centers to stock it all, unfortunately, but
18 they are all available on our website, our global web
19 store.

20 **Q** Every product that is available on the
21 global web store, have they actually been bought and
22 delivered to someone in the United States?

23 **A** To the best of my knowledge, yes, they
24 certainly have.

25 **Q** What is the basis of that answer?

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1 A Because we have a global web store which
2 prices all of those products in dollars, with delivery
3 prices in dollars, and it is commercially very
4 successful. So that is why I said to the best of my
5 knowledge, because can I say that every single one of
6 those potentially thousands of products has been
7 delivered to somebody in the US, no, but I absolutely
8 believe they have.

9 Q Does Games Workshop have records to
10 confirm which products have been sold in the United
11 States via the web store and which have not?

12 A I don't know for sure. Again, you would
13 have to ask the guy who runs our global web business,
14 but, given that they are all despatched to addresses,
15 it cannot be too much of a reach to think we must have
16 those addresses within obviously the remits and limits
17 of Data Protection Acts and the like.

18 Q And who is the head of the global web
19 business for Games Workshop?

20 A Ultimately, it is John Laughlin, because
21 it is a sales business, and he reports to Mark Wells,
22 the CEO. The guy who actually runs the web business
23 is called Erik, E-R-I-K, and his surname is Mogensen.
24 I will have a go at that. It is M-O-G-E-N-S-O-N I
25 think. It might be S-E-N at the end.

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1 Q So to backtrack about the retail range
2 that is sold in the United States, so the retail range
3 sold in the United States is only a subset of the
4 Games Workshop entire product line?

5 A Yes, although we describe every Games
6 Workshop store as being a window on to our wider
7 range, because we make sure -- although as I said
8 earlier we don't physically have the space to stock
9 everything physically in the store, every store does
10 have a web terminal which is specifically linked to
11 the wider range, and any customer who visits the store
12 looking for one of those products may have that item
13 delivered to the Games Workshop store to be picked up,
14 so it is all counted as one sale. So we certainly
15 have virtual stock, if you will, of the whole range in
16 every one of our retail hobby centers across the
17 United States of America.

18 Q For the US retail stores, does Games
19 Workshop have records that would verify that every
20 product in the Games Workshop range was sold through a
21 retail store, not just the products that are in the
22 retail range?

23 A Say that again?

24 Q For the stores in the US, does Games
25 Workshop have records that would confirm that every

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1 product in the Games Workshop range was actually sold
2 in the US through the retail stores?

3 A Okay. I guess that means -- that
4 depends on what you mean by "sold." Offered for sale,
5 certainly, by dint of the entire range being available
6 to look at with a dollar price, and all of that via
7 the web terminals in store. Have we got records that
8 show that every single item has been sold in the
9 States, I don't know, sorry. Via our hobby centers,
10 there might be one or two that have not, I don't know
11 for sure. They are certainly all there on offer.

12 Q Does Games Workshop have records to
13 confirm the first date that a particular product was
14 sold in the United States in one of its retail stores?

15 A We have got this list here that shows
16 where all the trademarks were first used. What sort
17 of -- what more than that are you looking for?

18 Q Are you saying that -- when you say the
19 "list right here", you are pointing to Exhibit 114,
20 correct?

21 A Yes. I mean, this is not a list of
22 products, it is a list of trademarks. In terms of the
23 products, the records we have, we have the archives
24 that I mentioned earlier. We have the scannable on
25 the PDF White Dwarf archive. What other records the

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1 American sales business keeps, again you would need to
2 talk to somebody in the American business. In fact, I
3 think you did talk to Sandra Casey who runs that base.

4 Q So whatever answer Sandra Casey was able
5 to provide with respect to the US business in terms of
6 dates -- actually, strike that.

7 Sitting here right now, you are saying that
8 the records you are referring to are not necessarily
9 the US records; it is general Games Workshop records?

10 A Games Workshop is a global company and
11 we are centralized, if you will, in the UK. So most
12 of our records for forecasting and all of that kind of
13 stuff are held in the UK.

14 Q Just for clarity, specific records
15 related to the US business, you mentioned Sandra Casey
16 is the person who would have knowledge of that
17 situation?

18 A She may do. I don't know what records
19 on top of the records we keep centrally because I
20 don't work in the Finance Department, so I am not
21 sure, and I don't work in the Forecasting Department.
22 Neither do I work in Sales. So detailed sales
23 figures, financial data and forecasting projections
24 aren't really my bailiwick, as it were, so there are
25 various other people who will know better than I.

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1 Q When you mention Sandra Casey, which
2 company does she work for?

3 A Gosh, now you are asking. She works for
4 Games Workshop. I don't know exactly which subpart of
5 Games Workshop she works for but she works for Games
6 Workshop.

7 Q Is it the US company you are referring
8 to she works for?

9 A She works for the US company, yes.

10 Q And you don't know the specific name of
11 the US company?

12 A Sorry, what is the question?

13 Q What is the name of the US company,
14 Games Workshop Retail Inc?

15 A The name of which Games Workshop --

16 Q The US based company?

17 A The Games Workshop, yes, Games Workshop
18 in the US is Games Workshop Retail Inc, I believe.

19 Q And Sandra Casey works for that company?

20 A I believe so, yes.

21 Q What is her title?

22 A She is the head of that business.

23 Q And where is that business located?

24 A In Memphis, Tennessee.

25 Q Is there a different Games Workshop

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1 business in the US that you are aware of?

2 A No.

3 Q With respect to the website you were
4 mentioning, where products are available for sale, did
5 Games Workshop have a website in 1983?

6 A Did Games Workshop have a website in
7 1983?

8 Q Did Games Workshop have a website in
9 1983 where customers in the US could order products?

10 A We would have been amazingly prescient
11 if we had, so the answer is no.

12 Q How about in 1987?

13 A I don't believe we did. It is a long
14 time ago.

15 Q Do you know when Games Workshop first
16 had a website where customers can order products from
17 the US?

18 A Many, many years ago. A long time ago.
19 No, I don't remember off the top of my head what year
20 that was. I do remember it was our American business
21 that led the way, so as and when we had a website I
22 imagine they would have been first out of the gate.

23 Q Sitting here today, you cannot confirm
24 the actual date or the approximate date when Games
25 Workshop first started selling products to customers

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1 in the United States?

2 A By "approximate", do you want me to
3 guess or estimate, because you know --

4 Q If you are able to make an estimate
5 based on your personal knowledge about the time?

6 A It was a long time ago. We were early
7 adopters, we were not slow in coming forwards with the
8 web, but as to an actual date, I would be guessing.

9 Q You mentioned the product archive
10 earlier. So the product archive has specimens of
11 products as they were packaged when they went on sale?

12 A Yes.

13 Q And they had specimens for every product
14 in that archive?

15 A There might be a few holes but
16 fundamentally, yes, that is certainly our intention.

17 Q So the archive would have specimens for
18 every product that used Adeptus Mechanicus as a
19 trademark?

20 A I would imagine so.

21 Q And each specimen would also include a
22 date on it, specifying the year when the mark was used
23 as a trademark on the package?

24 A Any product that is in our product
25 archive in its original packaging will have a date on

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1 it somewhere, yes.

2 Q That original packaging has a date on
3 it?

4 A Yes. In respect of the models, they
5 were also on the little tag on the base of the model.
6 We usually historically have put the date there as
7 well.

8 Q When you say on the base, it will be a
9 tag attached to the model?

10 A Yes. When a metal model or when a model
11 is made, I am talking about metal models now, which
12 historically form the basis of our product line, as
13 part of the casting process there is a tag sort of at
14 the base of the model. The tag then slots into a
15 plastic base, hence the term "slotter base". On the
16 tag it will typically say "Games Workshop", and then
17 the date.

18 Q For clarification, on the record, when
19 you are saying "the tag", is that a kind of a sticker
20 or piece of paper that is attached to the base?

21 A No, it is part of the casting. It is
22 metal. It is a metal tag. You have a metal model and
23 then he stands, the metal model stands on a metal tag
24 which then slots into a plastic base. So the model is
25 then free-standing, and that metal tag, once it is in

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1 the base you cannot see it, and that tag has a date on
2 it, typically.

3 Q So to confirm the -- strike that. Has
4 Games Workshop produced the -- strike that.

5 Has Games Workshop produced specimens with
6 respect to each of the trademarks that is at issue in
7 this case showing the trademark used on the -- strike
8 that. I will rephrase.

9 Let's use an example, Adeptus Mechanicus.
10 Has Games Workshop produced its earliest specimen of a
11 product using the trademark Adeptus Mechanicus on it
12 to the defendants in this case?

13 A Do you know, I am not sure on that. I
14 would imagine so. We have given you the list of the
15 earliest use of the trademarks, but no, I couldn't say
16 for sure.

17 Q Do you know if someone, as part of the
18 litigation, went into the product archive to locate
19 the early example of Adeptus Mechanicus used as a
20 trademark on a product?

21 A We certainly used the product archive in
22 order to build our documentation for the case, for
23 sure.

24 Q So here, where it says "Adeptus
25 Mechanicus 1987", and again I am referring to Exhibit

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1 114, what products does that entry relate to?

2 A I think you asked me that about an hour
3 or so ago and I told you to the best -- I answered to
4 the best of my knowledge at that point, which was I
5 can't remember exactly what I said at that point but I
6 know it is a long time ago, in 1987, we released --
7 that is right, we released the Rogue Trader rule book.
8 I believe that featured Adeptus Mechanicus, and then
9 we have released products since then.

10 Q Referring back to Exhibit 114, for every
11 trademark that is listed in here, Games Workshop
12 produced a specimen for each entry from that year
13 showing that that trademark was used on a product from
14 that year?

15 MR. MOSKIN: Could you read that back.

16 (Read back)

17 A That is not what I said. This lists, as
18 it says, is a list of first use in commerce of those
19 trademarks. Whether we have supplied you with
20 specimens, I couldn't swear to.

21 Q What documents have Games Workshop
22 provided to the defendants showing the trademarks used
23 on a product for each of the years associated with
24 these dates?

25 A Games Workshop, to the best of my

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1 knowledge, has supplied you with possibly tonnes,
2 certainly pallets full of documents about this case.
3 Gill Stevenson, who heads our legal team up, has got
4 all the details of that. I can't tell you exactly
5 which of these hundreds of trademarks we have actually
6 sent you products about.

7 **MR. MOSKIN:** I would also just object, I think it is a
8 totally improper line of questioning and he is not
9 designated to testify on document production.

10 **Q** I am handing you what has been marked as
11 Exhibit 115.

12 (Exhibit 115 marked for identification)

13 Bates label GW0002322.

14 **A** There is a product called Adeptus
15 Mechanicus on it. There you go.

16 **Q** Are you claiming that, again for the
17 record, this is a screenshot from the Games Workshop
18 website. Can you name the product that has been sold
19 here?

20 **A** Can I name the product?

21 **Q** Can you name the product listed?

22 **A** Yes, I can read. It says: "Battlefleet
23 Gothic: Adeptus Mechanicus Battleship." It also
24 says: "Battlefleet Gothic: Adeptus Mechanicus
25 Cruiser." It also says: "Battlefleet Gothic:

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1 Adeptus Mechanicus Light Cruiser."

2 Q And here is "Adeptus Mechanicus" being
3 used in isolation or is there any instance on this
4 page where "Adeptus Mechanicus" is used as a
5 stand-alone and not in conjunction with other words or
6 phrases?

7 A I really don't understand what you are
8 asking now. It is certainly not a web page that just
9 says "Adeptus Mechanicus" and no other words at all.
10 I don't know of any website that might do that or for
11 any product for that matter. It has words that put it
12 in context of what it is you are looking at, yes.

13 Q Is Games Workshop contending that this
14 is an example of how it uses "Adeptus Mechanicus" as a
15 trademark?

16 A This is one example of how Games
17 Workshop uses "Adeptus Mechanicus", yes.

18 Q Does Games Workshop have specimens of
19 other products where "Adeptus Mechanicus" is used as a
20 trademark on the product?

21 A I dare say we do.

22 Q Has Games Workshop produced those
23 specimens to the defendants?

24 A I don't know whether we produced this
25 one or whether you found it. So as I said earlier I

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1 product in the Games Workshop range was actually sold
2 in the US through the retail stores?

3 A Okay. I guess that means -- that
4 depends on what you mean by "sold." Offered for sale,
5 certainly, by dint of the entire range being available
6 to look at with a dollar price, and all of that via
7 the web terminals in store. Have we got records that
8 show that every single item has been sold in the
9 States, I don't know, sorry. Via our hobby centers,
10 there might be one or two that have not, I don't know
11 for sure. They are certainly all there on offer.

12 Q Does Games Workshop have records to
13 confirm the first date that a particular product was
14 sold in the United States in one of its retail stores?

15 A We have got this list here that shows
16 where all the trademarks were first used. What sort
17 of -- what more than that are you looking for?

18 Q Are you saying that -- when you say the
19 "list right here", you are pointing to Exhibit 114,
20 correct?

21 A Yes. I mean, this is not a list of
22 products, it is a list of trademarks. In terms of the
23 products, the records we have, we have the archives
24 that I mentioned earlier. We have the scannable on
25 the PDF White Dwarf archive. What other records the

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1 American sales business keeps, again you would need to
2 talk to somebody in the American business. In fact, I
3 think you did talk to Sandra Casey who runs that base.

4 Q So whatever answer Sandra Casey was able
5 to provide with respect to the US business in terms of
6 dates -- actually, strike that.

7 Sitting here right now, you are saying that
8 the records you are referring to are not necessarily
9 the US records; it is general Games Workshop records?

10 A Games Workshop is a global company and
11 we are centralized, if you will, in the UK. So most
12 of our records for forecasting and all of that kind of
13 stuff are held in the UK.

14 Q Just for clarity, specific records
15 related to the US business, you mentioned Sandra Casey
16 is the person who would have knowledge of that
17 situation?

18 A She may do. I don't know what records
19 on top of the records we keep centrally because I
20 don't work in the Finance Department, so I am not
21 sure, and I don't work in the Forecasting Department.
22 Neither do I work in Sales. So detailed sales
23 figures, financial data and forecasting projections
24 aren't really my bailiwick, as it were, so there are
25 various other people who will know better than I.

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1 Q When you mention Sandra Casey, which
2 company does she work for?

3 A Gosh, now you are asking. She works for
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5 Games Workshop she works for but she works for Games
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14 Games Workshop Retail Inc?

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18 in the US is Games Workshop Retail Inc, I believe.

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20 A I believe so, yes.

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4 mentioning, where products are available for sale, did
5 Games Workshop have a website in 1983?

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7 1983?

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11 if we had, so the answer is no.

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14 time ago.

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16 had a website where customers can order products from
17 the US?

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19 No, I don't remember off the top of my head what year
20 that was. I do remember it was our American business
21 that led the way, so as and when we had a website I
22 imagine they would have been first out of the gate.

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24 the actual date or the approximate date when Games
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7 adopters, we were not slow in coming forwards with the
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10 earlier. So the product archive has specimens of
11 products as they were packaged when they went on sale?

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14 in that archive?

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16 fundamentally, yes, that is certainly our intention.

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18 every product that used Adeptus Mechanicus as a
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3 it?

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5 were also on the little tag on the base of the model.
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19 the early example of Adeptus Mechanicus used as a
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21 A We certainly used the product archive in
22 order to build our documentation for the case, for
23 sure.

24 Q So here, where it says "Adeptus
25 Mechanicus 1987", and again I am referring to Exhibit

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1 114, what products does that entry relate to?

2 A I think you asked me that about an hour
3 or so ago and I told you to the best -- I answered to
4 the best of my knowledge at that point, which was I
5 can't remember exactly what I said at that point but I
6 know it is a long time ago, in 1987, we released --
7 that is right, we released the Rogue Trader rule book.
8 I believe that featured Adeptus Mechanicus, and then
9 we have released products since then.

10 Q Referring back to Exhibit 114, for every
11 trademark that is listed in here, Games Workshop
12 produced a specimen for each entry from that year
13 showing that that trademark was used on a product from
14 that year?

15 MR. MOSKIN: Could you read that back.

16 (Read back)

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18 it says, is a list of first use in commerce of those
19 trademarks. Whether we have supplied you with
20 specimens, I couldn't swear to.

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1 knowledge, has supplied you with possibly tonnes,
2 certainly pallets full of documents about this case.
3 Gill Stevenson, who heads our legal team up, has got
4 all the details of that. I can't tell you exactly
5 which of these hundreds of trademarks we have actually
6 sent you products about.

7 **MR. MOSKIN:** I would also just object, I think it is a
8 totally improper line of questioning and he is not
9 designated to testify on document production.

10 **Q** I am handing you what has been marked as
11 Exhibit 115.

12 (Exhibit 115 marked for identification)

13 Bates label GW0002322.

14 **A** There is a product called Adeptus
15 Mechanicus on it. There you go.

16 **Q** Are you claiming that, again for the
17 record, this is a screenshot from the Games Workshop
18 website. Can you name the product that has been sold
19 here?

20 **A** Can I name the product?

21 **Q** Can you name the product listed?

22 **A** Yes, I can read. It says: "Battlefleet
23 Gothic: Adeptus Mechanicus Battleship." It also
24 says: "Battlefleet Gothic: Adeptus Mechanicus
25 Cruiser." It also says: "Battlefleet Gothic:

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1 Adeptus Mechanicus Light Cruiser."

2 Q And here is "Adeptus Mechanicus" being
3 used in isolation or is there any instance on this
4 page where "Adeptus Mechanicus" is used as a
5 stand-alone and not in conjunction with other words or
6 phrases?

7 A I really don't understand what you are
8 asking now. It is certainly not a web page that just
9 says "Adeptus Mechanicus" and no other words at all.
10 I don't know of any website that might do that or for
11 any product for that matter. It has words that put it
12 in context of what it is you are looking at, yes.

13 Q Is Games Workshop contending that this
14 is an example of how it uses "Adeptus Mechanicus" as a
15 trademark?

16 A This is one example of how Games
17 Workshop uses "Adeptus Mechanicus", yes.

18 Q Does Games Workshop have specimens of
19 other products where "Adeptus Mechanicus" is used as a
20 trademark on the product?

21 A I dare say we do.

22 Q Has Games Workshop produced those
23 specimens to the defendants?

24 A I don't know whether we produced this
25 one or whether you found it. So as I said earlier I

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1 don't know exactly which pages we have sent to you
2 listing which products. That has been in the capable
3 hands of the Legal Department.

4 Q Turning your attention to the entry
5 below on Exhibit 114, "Assault Alpha Legion". Is that
6 a trademark that Games Workshop contends has been
7 infringed by Chapterhouse Studios, Assault Alpha
8 Legion?

9 A It is on the list, looks like it, yes.

10 Q And that was first used as a trademark
11 in 1987?

12 A Yes.

13 Q On what product?

14 A Again, to the best of my knowledge, the
15 Alpha Legion would be in the Rogue Trader manual, and
16 other products thereafter, including probably Alpha
17 Legion models. You know, it is like I say a long time
18 ago. The Alpha Legion are a well established part of
19 our canon, if you will. They were first referenced
20 and used in 1987.

21 Q Again you mentioned that it was used
22 subsequently as a trademark on other products after
23 the Rogue Trader?

24 A Well, yes.

25 Q Do you know which products?

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2 listing which products. That has been in the capable
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5 below on Exhibit 114, "Assault Alpha Legion". Is that
6 a trademark that Games Workshop contends has been
7 infringed by Chapterhouse Studios, Assault Alpha
8 Legion?

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10 Q And that was first used as a trademark
11 in 1987?

12 A Yes.

13 Q On what product?

14 A Again, to the best of my knowledge, the
15 Alpha Legion would be in the Rogue Trader manual, and
16 other products thereafter, including probably Alpha
17 Legion models. You know, it is like I say a long time
18 ago. The Alpha Legion are a well established part of
19 our canon, if you will. They were first referenced
20 and used in 1987.

21 Q Again you mentioned that it was used
22 subsequently as a trademark on other products after
23 the Rogue Trader?

24 A Well, yes.

25 Q Do you know which products?

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1 **A** No, I don't. Like I say, the Alpha
2 Legion are a well established part of our history and
3 story line, and we have released over the 25 years
4 since various Alpha Legion products.

5 **Q** Just for clarification, you have been
6 referring to Alpha Legion as a trademark, but the
7 entry here says "Assault Alpha Legion"?

8 **A** Yes, I don't know about that to be
9 honest.

10 **Q** Just for clarification, could this be
11 two separate entries, one for Assault and one for
12 Alpha Legion?

13 **A** I guess it could be.

14 **Q** With respect to the trademark "Assault",
15 just as a stand-alone, when was that first used as a
16 trademark in the US?

17 **A** The trademark "Assault," I don't believe
18 we have ever contended that we did solely use the
19 stand-alone trademark "Assault" in the US or anywhere
20 else.

21 **Q** With respect to Alpha Legion, has Games
22 Workshop used "Alpha Legion" as a trademark in the US?

23 **A** Yes, to the best of my knowledge we
24 have.

25 **Q** Starting in 1987?

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1 A We first used in commerce "Alpha Legion"
2 as early as 1987, yes.

3 Q And the product Games Workshop was able
4 to identify right now is Rogue Trader?

5 A To the best of my knowledge, given that
6 that was the first Warhammer 40,000 product, and it
7 came out in 1987, yes, I am estimating that the Alpha
8 Legion would be in that book.

9 Q Do you know what products?

10 A No.

11 Q Outside Rogue Trader?

12 A No, I don't. I would be guessing.

13 Q I am handing you Exhibit 116, Bates
14 label GW0002326.

15 (Exhibit 116 marked for identification).

16 This is a screenshot of a Games Workshop web
17 page that is listing Alpha Legion's shoulder pads. Is
18 that correct?

19 A It certainly looks like that, yes.

20 Q Games Workshop is contending that it
21 used Alpha Legion as a trademark, and this is an
22 example of Games Workshop using Alpha Legion as a
23 trademark with relation to its web page?

24 A Yes. The combination of words "Alpha"
25 and "Legion" as "Alpha Legion", to our customers the

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1 world over is uniquely associated with Games
2 Workshop's intellectual property, and there it is, as
3 you say, as a trademark on our web page.

4 Q I am handing what is marked as Exhibit
5 117, GW0004441.

6 (Exhibit 117 marked for identification)

7 For the record, it has been designated as
8 "Highly Confidential - AEO", and up on the top it says
9 "Alpha Legion Land Raider Doors".

10 A It does.

11 Q Do you know what this is, what this
12 document depicts?

13 A Yes, I do.

14 Q Can you please explain it?

15 A This looks to me like prototypes. That
16 is why it is highly confidential. In our Warhammer
17 40,000 mythos there is an armoured vehicle called a
18 Land Raider. It is specifically an armoured vehicle
19 that is only used by the Imperial Space Marines,
20 although sometimes Chaos Space Marines use them too.
21 The Land Raider armoured vehicle, as used by Space
22 Marines of one denomination or another, has doors, and
23 these look to be doors specifically made to fit our
24 Land Raider kit, but with the heraldry and iconography
25 of the Alpha Legion embossed on those doors. So that

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1 fans, hobbyists, customers can make a specific Alpha
2 Legion styled Land Raider, should they so desire.

3 Q For clarification, on the record, this
4 particular exhibit is not depicting a product package?

5 A No, it is not.

6 Q And is there any date associated on this
7 document?

8 A The only date I have got on it is on a
9 little sticker, which is --

10 Q The exhibit sticker you are referring
11 to?

12 A Yes. There is no other date on it that
13 I can see.

14 Q No indication of when this document was
15 created?

16 A Although actually, do you know what,
17 because I am not sure of what the coding means, that
18 could relate to a date, I don't know.

19 Q And by the coding you mean the numbers
20 at the top, that starts 995?

21 A The big numbers or indeed the IACSMA020.

22 Q I am handing you what has been marked as
23 Exhibit 118, GW0004449. Actually it is going to be
24 two pages, 04448 through 49.

25 (Exhibit 118 marked for identification)

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1 Mr. Moskin, this is designated "Highly
2 Confidential AEO". Is there any reason or can we just
3 undesignate this one?

4 **MR. MOSKIN:** I don't believe there is a reason. I
5 think it is not fine to treat this as nonconfidential.

6 **Q** Would you look on page ending 48. Is
7 this an example of one of the product packaging and
8 labeling that you are referring to earlier related to
9 your product or is this an example of one way your
10 products are packaged?

11 **A** This is one example of how we package
12 products. I believe this is a Forge World product.
13 This is a product from our department called Forge
14 World.

15 **Q** And if you look on the page that ends
16 with 48, that says "Alpha Legion Land Raider Doors".

17 **A** Yes.

18 **Q** And on the subsequent page it says
19 "Chaos Land Raider Doors, Alpha Legion." So is this
20 Chaos Land Raider Doors for an Alpha Legion vehicle?

21 **A** Yes, I would perhaps put it the other
22 way around, that these are Alpha Legion styled doors
23 for one of those vehicles I talked to you about, the
24 Land Raider.

25 **Q** So this describes what this product is

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1 for, or it describes this product, this is a Chaos or
2 an Alpha Legion Land Raider Door. If you look on the
3 first page, that is what this product is?

4 **A** Yes.

5 **Q** So it describes the product, Alpha
6 Legion Land Raider Doors.

7 (Read back)

8 **MR. MOSKIN:** Object to form.

9 **A** It is the name of the product. The
10 Alpha Legion Land Raider Doors.

11 **Q** And it has a date on one of the labels?

12 **A** It does indeed.

13 **Q** What is it.

14 **A** 2004.

15 **Q** So this specimen is from 2004?

16 **A** I would imagine so.

17 **Q** What records does Games Workshop have
18 that this product was actually sold in the US?

19 **A** What records does -- say that again?

20 **Q** What records does Games Workshop have
21 that demonstrate that this product was actually sold
22 in the US?

23 **A** Do you know, I really don't know. What
24 records do we have? If it was in White Dwarf
25 magazine, we have got that. Statutorily, we keep our

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1 financial records for six years, so this predates
2 that. So the long and the short of it is I don't know
3 what records we actually keep to demonstrate whether
4 we have sold, actually sold these products in 2004.

5 Q When you say statutorily you keep
6 records for six years, so sales records would be
7 included in that?

8 A Anything that we are statutorily
9 required to keep for six years we obviously keep for
10 six years.

11 Q Does Games Workshop retain sales
12 invoices for longer than six years?

13 A Typically, no.

14 Q Is there a policy for how long it keeps
15 invoices?

16 A We keep things for as long as we are
17 statutorily obligated to. We don't have a huge
18 warehouse full of decades of invoices.

19 Q And that would include purchase orders?

20 A Yes.

21 Q Shipping sheets?

22 A Like I say, whatever we are statutorily
23 required to store for six years. Six years is the
24 period, and it is whatever we are required, so there
25 is tax records, financial records, that kind of stuff.

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1 Q But if it is not required to be stored,
2 by statute, Games Workshop policy is not to retain
3 them any longer than --

4 A No, we don't. Like I say, we archive
5 all our products, we have a database that puts the
6 dates, and we have the scannable White Dwarf archive.
7 But as regards -- in fact, I am pretty certain that
8 doubtless, if we kept people's records for longer than
9 we are statutorily obliged to, we may be in breach of
10 various regulations too.

11 Q Can you turn your attention back to
12 Exhibit 114. Do you see the entry for Blood Ravens?

13 A Yes.

14 Q Is the first use date in the US listed
15 as 2004?

16 A It is.

17 Q What product was released in 2004 that
18 was sold in the US using Blood Ravens as a trademark?

19 A Now I am thinking about this. Simply
20 because the Blood Ravens are a chapter of Space
21 Marines that specifically are the main focus in the
22 Dawn of War computer games from THQ, the publisher,
23 created under license from Games Workshop, and I am
24 just trying to remember. Actually, I don't know if
25 Blood Ravens were invented or were part of our canon

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1 before or after Dawn of War, or whether they were
2 specifically created for Dawn of War, but they were
3 certainly in Dawn of War 1, which must have come out
4 some time around then, I guess.

5 Q Was "Blood Ravens" used as a trademark
6 with respect to Dawn of War?

7 A Yes, I imagine. I am just trying to
8 think of the adverts and all of that. But Blood
9 Ravens are one of the most famous aspects of the Dawn
10 of War computer game, yes, their iconography and so on
11 and so forth, and that was certainly used heavily in
12 the Dawn of War computer games. Once again, any of
13 our customers or people who know about our IP, Blood
14 Ravens is intimately associated and has no other
15 meaning other than as regards Warhammer 40,000, and
16 the Dawn of War specifically computer game.

17 Q So was Blood Ravens used as Dawn of War
18 on the packaging for the Dawn of War -- strike that.

19 Was Blood Ravens used as a trademark on the
20 packaging for the Dawn of War computer game?

21 A I am not sure, to be honest. I would
22 imagine -- I am just trying to remember what the back
23 of the box or the front of the box said. I can't
24 remember. I would be guessing again.

25 Q The Dawn of War computer game, would

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1 that be in the product archive that Games Workshop
2 maintains?

3 A I believe it is.

4 Q Has Games Workshop produced specimens of
5 that?

6 A Again, I don't know exactly what we have
7 provided as specimens for you.

8 Q Are there any other products where Dawn
9 of War computer -- "Dawn of War" was used as a
10 trademark?

11 A Dawn of War?

12 Q Excuse me, "Blood Ravens"?

13 A I am trying to remember if we made some
14 Blood Ravens. I am sure -- I would be guessing again.
15 I am sure there are, whether it is novels or models.
16 We have probably made some shoulder pads specifically.
17 Yes, so that people can -- I expect that is the sort
18 of thing we do, like the exhibit you just showed me of
19 Alpha Legion, I wouldn't be at all surprised if we
20 have created Blood Ravens shoulder pads so our
21 customers can convert and customize their own
22 vehicles.

23 Q I am handing you what is marked as
24 Exhibit 109, GW0004506. For the record it is
25 designated as "Highly Confidential AEO". Again, I

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1 will ask, and Exhibit 120, GW0004507, again this is
2 also designated as "Highly Confidential". With
3 respect to opposing counsel, for clarity, should these
4 documents be designated or can it be considered
5 unconfidential?

6 **MR. MOSKIN:** No, these are not confidential.

7 (Exhibit 119 marked for identification).

8 (Exhibit 120 marked for identification).

9 **Q** Again, 120 is a little bit -- it is not
10 the greatest copy but it looks similar, if you look at
11 119, if you look at the top, it says: "Blood Ravens
12 Space Marine Transfer Sheet." Do you see that?

13 **A** I do.

14 **Q** So is this an example of Games Workshop
15 using "Blood Ravens" as a trademark?

16 **A** When you say is this an example, what do
17 you mean, this whole sheet?

18 **Q** This specimen?

19 **A** I am not sure what packaging this might
20 or might not have been in, but this is certainly a
21 Blood Ravens product, which makes that very clear at
22 the top of it.

23 **Q** So without the packaging for the
24 transfer sheets that are Exhibits 119 and 120, would
25 you be able to determine whether "Blood Ravens" was

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1 used as a trademark related to these products?

2 A Sorry, what was the question again?

3 Q So without the packaging for the
4 transfer sheets that are depicted in Exhibits 119 and
5 120, would Games Workshop be able to determine whether
6 "Blood Ravens" was used as a trademark related to
7 these products?

8 A I am not sure I understand the question
9 actually. The question about does Games Workshop
10 understand whether "Blood Ravens" is used as a
11 trademark has got little to do with these particular
12 transfers, as far as I understand it. Of course we
13 understand "Blood Ravens" is a trademark, so tell me
14 again what you are getting at with this?

15 Q I am trying to determine, are these two
16 exhibits examples where Games Workshop contends "Blood
17 Ravens" is used as a trademark, just based on what you
18 are seeing?

19 A Okay, so is it part of the picture that
20 builds up, whether we own "Blood Ravens" or no. Yes,
21 it has got the Blood Ravens icons on it. It asserts
22 our copyright. It says: "Blood Ravens Space Marine
23 Transfer Sheet." Again, I am sure in the minds of all
24 of our customers "Blood Ravens Space Marines" means
25 one thing, and it is Blood Ravens Space Marines from

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1 the Warhammer 40,000 universe, if that helps.

2 Q And if you look at these two exhibits,
3 is there a date associated on them?

4 A There is indeed. This says 2010. I
5 can't read the other one.

6 Q The other one you cannot read?

7 A No.

8 Q Has Games Workshop produced specimens of
9 Blood Ravens being used as a trademark that are
10 earlier than 2010?

11 A Have we produced, do you mean?

12 Q To the defendants?

13 A Again, I have not been intimately
14 involved in what was submitted to you. You have
15 clearly got these, so I imagine you may have some
16 other things.

17 Q Has Games Workshop produced documents
18 showing that "Blood Ravens" was used as a trademark in
19 2004?

20 A Again, I have not been involved
21 intimately in exactly what documents, examples or what
22 have you we have sent to you.

23 Q What records does Games Workshop have
24 that confirm that "Blood Ravens" was used as a
25 trademark on products sold in the US in 2004?

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1 A We have got -- what have we got -- what
2 records have we got? Like I say, anything older than
3 six years, I am not too sure about, but we do have
4 copies of the computer games. Again, we could look in
5 White Dwarf and search for it there, and any other art
6 books or models of Blood Ravens we might or might not
7 have made in the intervening years.

8 Q Turning your attention back to Exhibit
9 114, on page 2, do you see a listing for "Chaplain"?

10 A I do.

11 Q The trademark "Chaplain" and the date of
12 first use in the United States, used in commerce, is
13 1987?

14 A Yes.

15 Q What product was Chaplain used as a
16 trademark that was sold in the US in 1987?

17 A That would go back to -- again, it is a
18 Space Marine Chaplain. Space Marines was first
19 commercially sold in 1987. The first book was the
20 Rogue Trader book, back in 1987, which I imagine
21 Chaplains were in. I cannot honestly remember when we
22 first released our first Chaplain models, but Space
23 Marine Chaplains are a huge part of our Space Marine
24 offering down the decades, and wherever we have sold
25 them, whenever we brought a Chaplain model out, we

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1 will have sold it in the US.

2 Q I am handing you Exhibit 121, GW0005178
3 through 79, and if you could staple that so we don't
4 get it lost in the record, that would be great.

5 (Exhibit 121 marked for identification).

6 If you turn to page ending 79, is this an
7 example of where Games Workshop uses "Chaplain" as a
8 trademark on one of its products?

9 A Yes.

10 Q Can you indicate where that is indicated
11 on this page?

12 A The bottom left.

13 Q Can you read that portion?

14 A Yes: "Space Marine Chaplain with Jump
15 Pack."

16 Q So that describes what this product is,
17 it is a Space Marine Chaplain with Jump Pack?

18 A That is the title of this product that
19 it is sold under, yes.

20 Q If you look on the back page or, excuse
21 me, the front page, which is 78, it is not quite in
22 focus, but is there -- you mentioned before that the
23 date related to the trademark would be on packaging.
24 Would it be somewhere on this back side?

25 A Yes.

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1 Q But right now you cannot see
2 specifically what the date is for this product?

3 A Right now I can't, no, though I am not
4 sure it is in focus enough to read it even if I could.

5 Q And on the other page, on 79, there is
6 no date that you can see, correct?

7 A Do you understand that these packaging,
8 the products are not fixed. The parts, you shake them
9 around and so, you know, you would certainly be able
10 to see the date on that packaging, yes.

11 Q If you were able to take out, open up
12 the packaging?

13 A Not even with opening it. They are
14 loose. It is a blister pack, so you can certainly see
15 the date.

16 Q So if we had the physical actual product
17 here and we were able to shake around the box, we
18 would be able to see the date through?

19 A Yes, you would.

20 Q What records would Games Workshop have
21 that "Chaplain" was used as a trademark on products
22 sold in the US in 1987?

23 A I would give the same answer I have
24 given for everything else, that what records -- we
25 have got the product archive, we have got the White

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1 Dwarf scans that we can go in and search. That is
2 probably about it actually. This will be artwork and
3 what have you from that era, but it is the product
4 archive with its dates on and other publications.

5 Q If I ask that same question about what
6 records Games Workshop has to show that it used each
7 of the trademarks listed in Exhibit 114 on the
8 associated date for each of the trademarks, would your
9 answer change for any of these trademarks?

10 A Possibly. Let's have a look. Simply
11 because I am looking at, for example, on page 4, there
12 is something called the Storm Raven, from 2009, which
13 is certainly within the statutory period, so we might
14 have some different records for that.

15 Q And that record would show that this
16 product was sold in the US or the product -- let me
17 rephrase that question.

18 So with respect to the trademark "Storm
19 Raven", Games Workshop has records showing that "Storm
20 Raven" was used as a trademark on products sold in the
21 US?

22 A It may do.

23 Q But you don't know for sure, sitting
24 here?

25 A No. I am thinking about from 2009 we

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1 may have some despatch notes or forecasts and all of
2 that information for the Storm Raven kit. But by and
3 large, certainly for the older things, I would be
4 giving you exactly the same answer. I am quite happy
5 to do that but it might take some time.

6 Q Outside of the Storm Ravens, any other
7 trademarks where Games Workshop may have records that
8 it sold products using that trademark in the US?

9 A I would probably defer to products in
10 the product archive to be honest, for the vast
11 majority of those.

12 Q And would the products in the product
13 archive show that that product was actually sold --
14 strike that.

15 Would the products where Games Workshop used
16 "Storm Ravens" as a trademark that are in the product
17 archive, would that confirm that those products were
18 sold in the US?

19 A Would it confirm that those products
20 were sold in the US? It would certainly confirm they
21 were offered for sale in the US, yes.

22 Q But actually sold?

23 A What do you mean by "actually sold"?

24 Q That someone in the US purchased it and
25 it was delivered or received by that person in the US?

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1 **A** The product archive wouldn't show you
2 that, no. It would show you that the product, for
3 example, if you looked in White Dwarf magazine, in the
4 product archive, you would be able to see products
5 with dollar prices and all of that stuff on them.
6 Would that actually prove that somebody in the US
7 bought them, no.

8 **Q** For the record, the exhibit we are
9 talking about was 121. It was marked as "Highly
10 Confidential AEO". Again, counsel --

11 **MR. MOSKIN:** It is not confidential.

12 **MR. OH:** I am going to hand you something that is
13 marked as Exhibit 122, GW0004839.

14 (Exhibit 122 marked for identification)

15 Also 5258 and 5248, 4829. These are four
16 separate pages. They are not consecutive. These are
17 also marked as "Highly Confidential". If you can
18 staple them together for the record. The first page,
19 5258 and the second page, 4839, do those appear to be
20 identical?

21 **A** Now you are asking me to do a spot the
22 difference competition. Do they appear to be
23 identical? On first glance, yes.

24 **Q** And how about the next two pages?

25 **A** On first glance, obviously without

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1 reading every word and so on, yes.

2 Q Turning back to the front of this
3 exhibit, do you recognize what this is?

4 A Yes.

5 Q What is it?

6 A This is a Storm Raven kit.

7 Q And this particular document, do you
8 know what this document is?

9 A This particular document?

10 Q Yes?

11 A This particular document looks like a
12 print layout which shows you that it is a cutter
13 guide, I believe, for when we are printing the boxes.

14 Q So was this box actually a finished
15 version of this box was it actually used for products
16 sold in the US?

17 A Say that again?

18 Q Is this just a mock up that was not used
19 for products?

20 A I see. Without having a Storm Raven
21 sitting right in front of me, I couldn't tell you for
22 sure, but it looks to me like the Storm Raven boxed
23 product packaging cutter guide.

24 Q But sitting here right now you cannot
25 confirm whether this is the actual packaging used?

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1 A As I say, to the best of my knowledge,
2 yes, it is. It is so tiny, like I say, to the best of
3 my knowledge, that looks like the Storm Raven box
4 cutter guide, yes.

5 Q For clarification, these cutter guides
6 were made for products that are going to be sold?

7 A Yes. The reason I call it a cutter
8 guide is because you can see the flaps for the card,
9 so you print that out of one flat sheet and this would
10 show you where the bits fold to make the corners of
11 the box, and that would be the sides of the box and
12 where it folds down, and all of that. That is what I
13 mean.

14 Q So this would be a guide sent to the
15 printer to make the boxes?

16 A Yes.

17 Q Are you able to make out on again that
18 first page where it says "Storm Raven Gunship"?

19 A Yes.

20 Q And if you turn to the last two pages,
21 if you look in the left-hand corner, do you see where
22 it says "Storm Raven Gunship"?

23 A I do.

24 Q And so when it says "Storm Raven
25 Gunship", that describes what this product is. It is

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1 a Storm Raven Gunship?

2 A Yes, Storm Raven Gunship is the product,
3 yes.

4 Q So this product is a Storm Raven
5 Gunship?

6 A It is a Storm Raven -- it is a plastic
7 kit used which represents the type of vehicle used by
8 Space Marines, and it is called a Storm Raven, in the
9 same way as I described earlier a vehicle that Space
10 Marines used called a Land Raider.

11 Q And what is written here is "Storm Raven
12 Gunship". So there is Storm Raven -- strike that.

13 A Storm Raven is the name. The descriptor
14 might change from language to language, as you can
15 see, apart from Japanese, where they cannot literally
16 write "Storm Raven". If you look at it, French,
17 German, Spanish, what have you, the product, the item,
18 the thing is called a Storm Raven. The rest of it is
19 a descriptor.

20 Q Turning back to Exhibit 114, can you
21 turn to the third page, and do you see an entry for a
22 Devastator?

23 A Yes.

24 Q For clarification on the record, should
25 that be D-E-V-A-S-T-A-T-O-R?

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1 A As opposed to?

2 Q With the --

3 A You mean --

4 Q Should it be with two A's instead of two
5 E's?

6 A Devastator.

7 Q To help you out, I will introduce --

8 A I am trying to remember. I certainly
9 spell it with an A after the V, not an E.

10 Q I am going to introduce Exhibit 123.

11 A There you go.

12 (Exhibit 123 marked for identification.)

13 Q So --

14 A Typo in list.

15 Q Typo in Exhibit 114?

16 A I think so.

17 Q Can you please provide the spelling that
18 Games Workshop contends is correct?

19 A D-E-V-A-S-T-A-T-O-R. Now, I say that
20 because that is what is on this product here, but I am
21 pretty certain we released a boxed set back in 1989,
22 and I couldn't say, having not looked at it for
23 perhaps 20 something years, how we spelt "Devastator"
24 on that product.

25 Q And this box set that was released in

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1 1989, what was this box set?

2 A I just remember that -- I can't remember
3 what it was called but it had a bunch of heavy weapons
4 and stuff in it, yes. What I am saying is just
5 because it is spelt "Devastator" here, which is how I
6 would naturally spell "Devastator", I am not saying
7 that back in 1989 Games Workshop didn't release a
8 product spelt with an E after the V. I can't say that
9 for certain because I don't have those products in
10 front of me and it is a long time ago.

11 Q Is it okay for the remainder of the
12 questions related to this particular entries that we
13 will refer to either spelling?

14 A Okay.

15 Q Is that okay?

16 A Okay.

17 Q Now, for the exhibit I just handed you,
18 123, this is a listing for Space Marine Devastator
19 Squad?

20 A Yes.

21 Q So this product, so the Space Marine
22 Devastator Squad is a description of the product that
23 is being sold here?

24 A It is a description of the product. I
25 mean, the description of the product is like a couple

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1 of paragraphs of text underneath, which tell you --
2 that describe the product, if that is what you mean.

3 Q Is "Space Marine Devastator Squad" the
4 title of this product?

5 A Is "Space Marine Devastator Squad" the
6 title of this product? Yes, I guess it is, yes.

7 Q Again, this web sheet doesn't include a
8 picture of the actual packaging?

9 A No, it doesn't.

10 Q Any reason to believe that the packaging
11 did not use the same phrase, "Space Marine Devastator
12 Squad"?

13 A Again, I would be guessing. The product
14 itself is Devastator, as it says on the first line.
15 It says "Space Marine Devastator Squad", and then it
16 says: "Devastators are the most heavily armed of all
17 Space Marine Squads." So what we are selling here is
18 Devastators. There is lots of different Space Marine
19 squads. What this product is is Devastators.

20 Q For clarification, on the record, this
21 is only the first page of a two page website printout.
22 Turning back to 1989, what products were sold in 1999
23 or 1999 in the US where Devastator was used as a
24 trademark?

25 A That is a good example of one of those

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1 products where I would give you the same answer, which
2 is we first launched Warhammer 40,000 in 1987. By
3 1989, we had got Devastator Space Marines out there,
4 and I would go to the product archive and the White
5 Dwarf scannable scanned archive in order to establish
6 first use of Devastator.

7 Q When you say first use --

8 A When it was first put out, when we first
9 had a product called Devastator.

10 Q So first offered for sale.

11 A Yes.

12 Q Not necessarily confirmation that
13 product was actually sold in the US in 1989?

14 A Given that we are a global business and
15 we have a business in the US, and we have been selling
16 Warhammer 40,000 and all the products since 1987, yes,
17 I can confirm that that would be offering for sale
18 rather than necessarily: "Did little Jimmy in Idaho
19 buy it?"

20 Q With respect to any of these trademarks
21 listed in Exhibit 114, does Games Workshop have
22 records indicating whether products sold were sold in
23 the State of Illinois using any of these trademarks?

24 A Not to the best of my knowledge,
25 although again, you know, we have, like I say, we are

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1 a global business, we have got our own hobby outlets
2 that we both own and trade within Illinois. We have a
3 number of Games Workshop hobby centers in Illinois.
4 They have been there for a number of years selling
5 nothing but our products. And latterly, over the last
6 few years, like I said, they have got their own web
7 terminals linking to our entire product range. So I
8 can say with confidence that our entire product range
9 has been offered for sale in Illinois and that quite a
10 lot of it has been bought.

11 Q With respect to -- strike that. I will
12 restart the question.

13 Has Games Workshop produced the product
14 specimen from 1989?

15 A As I said earlier, I have not been
16 involved in what exact specimens we have sent or not
17 sent to you, so we may have done or we may not have
18 done. I imagine if we had one we have.

19 Q For clarification, it has been Games
20 Workshop's practice to include the date on its product
21 packaging?

22 A Yes.

23 Q So if there was a specimen from 1989
24 showing a Devastator used as the trademark on that
25 packaging, and it was produced to defendants, it would

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1 have to have 1989 as the date on it?

2 A Chances are that any product made by
3 Games Workshop down the years has got a date on it
4 somewhere. I would hope certainly most of -- we might
5 have missed one or two back in the early days, I
6 suppose, but it is certainly our practice to put dates
7 on our products, yes, and those individuals models
8 would have, if they are metal, those are probably
9 plastic ones, but certainly in the early days the
10 metal models, as I have said, would probably have a
11 date on the tag to the model as well.

12 Q Turning your attention back to Exhibit
13 114, do you see the entry for Exorcist 1989?

14 A I do.

15 Q And what product did Games Workshop sell
16 in the US in 1989 that used Exorcist as a trademark?

17 A Honestly, I can't remember at all on
18 Exorcist.

19 Q Do you know if Games Workshop produced
20 any records that demonstrate that?

21 A Given that I can't remember whether we
22 did a product called Exorcist or not, I am even less
23 sure about whether we have kept records about that.

24 Q Do you know if Games Workshop produced
25 any specimens of Exorcist being used as a trademark

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1 on --

2 A I don't know that, no.

3 Q Back to Exhibit 114, do you see an entry
4 for Genestealer?

5 A Yes, I do.

6 Q And there is a first used date in
7 commerce for the US as 1987?

8 A Yes.

9 Q And what product was sold in the US in
10 1987 using "Genestealer" as a trademark?

11 A That would be the same answer as the
12 other products from 1987, is that Genestealer is a
13 character from the Warhammer 40,000 universe. The
14 first book featuring Genestealers was the Rogue Trader
15 book. I don't know when we first released Genestealer
16 models, but it would be thereabouts or soon after.

17 Q Has Games Workshop produced specimens of
18 Genestealer from where Genestealer was used as
19 trademark on products from 1987 or shortly thereafter?

20 A I have not been part of the process
21 whereby we have been providing specimens to you so I
22 am not exactly sure what specimens we have produced.

23 Q For clarification here, "Genestealer" is
24 spelled as two separate words G-E-N-E space
25 S-T-E-A-L-E-R. Is that the trademark that Games

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1 Workshop contends?

2 A I believe we have used Genestealer as
3 both one word, so it would be small S, and as two
4 words.

5 Q And has Games Workshop used both
6 versions as trademarks on products sold in the US?

7 A It is more common, it is more typical
8 for us to use "Genestealer" as one word. I am
9 thinking of the Genestealer, we did a boxed game --
10 well, it was a supplement to a game called Space Hulk,
11 called Genestealer, specifically a boxed game. That
12 was in -- I don't know the exact date, early 90s, 91
13 maybe.

14 Q And for the record that is Space Hulk,
15 H-U-L-K?

16 A Yes.

17 Q And when you are discussing Space Hulk,
18 was "Genestealer" used as a trademark on that box
19 game?

20 A It was used specifically as a trademark
21 on the product called Genestealer. That was
22 Genestealer was the name of the product released as a
23 supplement for Space Hulk.

24 Q Can you describe what that product was?

25 A Yes, it was some extra floor plans that

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1 would be used in this table top game. It was some
2 rule book with some extra rules and a bunch of extra
3 models in that game or in that product, all packaged
4 in a kind of pizza box square shaped thing, maybe
5 couple or 2 or 3 inches deep.

6 Q And that was in approximately 1989?

7 A No, we didn't -- did we release
8 Genestealer in 1999? I am trying to think when we
9 released the Space Hulk game. It was a long time ago.
10 We have released many iterations of it but I would peg
11 the actual Genestealer boxed supplement as being late
12 80s, early 90s, from memory. That is a guess.

13 Q But not in 1987?

14 A Genestealer, I am saying that is a
15 product that featured Genestealer, I am talking about
16 a specific product, but there were other Genestealer
17 products before or around that, and like I say
18 Genestealers feature in the very first Warhammer
19 40,000 product we released.

20 Q Has Games Workshop released products
21 using "Genestealer" as two words? Strike that. I
22 will rephrase. Has Games Workshop released products
23 using the two worded version of Genestealer as a
24 trademark in the US?

25 A I am not sure. In my mind, when I say

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1 "Genestealer", I see it as one word. I may be wrong.

2 Q Turning back to Exhibit 114, do you see
3 "Grenade Launcher"?

4 A I do.

5 Q Do you see a date associated with that?

6 A Yes.

7 Q And that is 1989?

8 A 87.

9 Q 1987. What products did Games -- strike
10 that.

11 What products did Games Workshop sell in the
12 US in 1987 where it used "Grenade Launcher" as a
13 trademark?

14 A Again, it is a long time ago. Grenade
15 Launcher will be a Warhammer 40,000 item. The first
16 product I know that Grenade Launchers were in, the
17 Warhammer 40,000 rule book. Beyond that, I am sure we
18 have released -- we have released lots of products
19 that have Grenade Launchers, but specifically in 1987,
20 you know, it is a long time ago. I can't remember.

21 Q When you say Games Workshop released
22 products using Grenade Launcher, what were those
23 products?

24 A We will have released -- actually in the
25 same way as on here you have a picture of a bunch of

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1 models, I am sure that we have got models that have
2 Grenade Launchers or that are marketed as Grenade
3 Launchers, but I can't remember when we released them.
4 We have released thousands of models.

5 Q For the record, what exhibit were you
6 holding up?

7 A That was Exhibit 123.

8 **THE VIDEOGRAPHER:** There is five minutes of tape left.

9 Q So Games Workshop uses "Grenade
10 Launcher" to describe miniature Grenade Launchers they
11 sell?

12 A Games Workshop may use the words
13 "Grenade Launcher" to describe a number of things. We
14 might use "Grenade Launchers" as phrases in our
15 novels. For example, we might also sell specific
16 products under the trademark "Grenade Launcher", but I
17 can't remember, because it is so long ago, exactly
18 what those products might be. But Grenade Launchers
19 were certainly featured in the very first Warhammer
20 40,000 rule book and have been a part of the Warhammer
21 40,000 canon of imagery and products ever since.

22 Q I am going to hand you an exhibit marked
23 124, GW0002437.

24 (Exhibit 124 marked for identification)

25 It appears to be page 97 of a publication

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1 called "Forces of the Space Marines". When you are
2 mentioning rule books or entries in a rule book, is
3 this an example of one of those descriptions used in a
4 rule book?

5 **A** This looks or this is a page of rules
6 entries for various weapons as used by Space Marines.

7 **Q** So just for clarification, for the
8 record, when you are referring to one of the marks
9 being used in the rule book, is this an example of, in
10 this particular case, "Grenade Launcher" being used as
11 a trademark in a rule book?

12 **A** It may well be, yes.

13 **Q** Has Games Workshop produced specimens of
14 products using "Grenade Launchers" as a trademark to
15 the defendants?

16 **A** Again, I have not been involved in the
17 specific process of exactly which samples or specimens
18 we have sent to you, so I would be guessing if I said
19 anything on that.

20 **THE VIDEOGRAPHER:** Two minutes.

21 **MR. OH:** It may be a good time at this point to take a
22 break. I believe lunch is scheduled for around this
23 time.

24 **THE VIDEOGRAPHER:** Going off the record. The time is
25 1:13.

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1 (Break for Lunch)

2 **THE VIDEOGRAPHER:** This marks the beginning of
3 videotape number two. The time on the record, 2:07.

4 **MR. OH:** You understand you are still under oath?

5 **A** Yes, I do.

6 **MR. MOSKIN:** I am not going to purport to tell you how
7 to use your time, I have long since given up on that,
8 but I just want to note for the record, maybe it will
9 help speed things along, that there is no category on
10 this deposition notice and Mr. Jones has not been
11 designated to testify on any subject concerning the
12 specific sales in specific years of any products.
13 This is frankly not even an issue in this case.
14 Again, I would consider all his testimony on this is
15 irrelevant, but you can use your time as you wish.

16 **Q** Mr. Jones, can you turn to Exhibit 39,
17 which was previously entered. I believe it is to the
18 right or to the left, if you look at the left-hand.
19 It is underneath. Is that Exhibit 39?

20 **A** It is.

21 **Q** Can you turn to topic number 15. Do you
22 see that?

23 **A** Yes.

24 **Q** I am going to read it: "How your
25 trademarks are used licensed and enforced, and when

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1 each was first used in commerce both in the United
2 States and abroad." Did I read that correctly?

3 A Yes, you did.

4 Q Are you the designated witness for that
5 topic?

6 A I am indeed.

7 MR. MOSKIN: Is there anything in there that
8 references specific sales in specific years, other
9 than the fact of the date of first use? I don't think
10 so. The other topic that I can see that has anything
11 on this regarding specific sales and years, actual
12 sales as distinct from how trademarks were used, the
13 witness is obviously designated to testify on how
14 trademarks were used, and he has testified on the
15 subject, but is item 23, which refers to total annual
16 profits and gross revenues, so again this is not a
17 subject that is in issue in this case and it is not a
18 subject for which the witness has been designated.

19 Q Please turn to Exhibit 114, and if you
20 can turn to page 3 of that exhibit. Do you see an
21 entry for Halberd?

22 A I do, indeed.

23 Q What is the listed first use of commerce
24 in the United States?

25 A 1987.

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1 Q What product did Games Workshop use the
2 word mark "Halberd" as a trademark on in the United
3 States in 1987?

4 A Sorry, the word mark?

5 Q Yes.

6 A Honestly, I am looking at this list and
7 going -- we certainly do have products that use the
8 word "Halberd", but I would not necessarily claim
9 "Halberd" as a trademark of Games Workshop. It quite
10 surprised me to see it there. "Halberd" is more a
11 term that would be more typically used as a trademark
12 I would imagine in our Warhammer fantasy products by
13 Halberdiers.

14 Q For clarification, what do you mean by
15 "Halberdiers"?

16 A A Halberdier is a historical term for
17 somebody who uses -- a trooper who uses a Halberd, and
18 so in a Warhammer game certainly we have Empire
19 Halberdiers.

20 Q For clarification then, what is the
21 reference in this exhibit to?

22 A Do you know -- sorry, carry on.

23 Q Please.

24 A If you just finish your sentence I think
25 I know what the answer is.

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1 Q I am just trying to understand then the
2 reason "Halberd" appears in this list with that date?

3 A You know what, I don't know. It is such
4 a long list. I imagine it is on here because your
5 client made some products that we are alleging
6 infringe our rights, and they are something to do with
7 Halberds, I would imagine, but "Halberd" as a
8 trademark, I cannot honestly remember a specific
9 product where we have called out "Halberd" and claimed
10 it as our own word.

11 Q So is Games Workshop not contending
12 there is a trademark on the word "Halberd"?

13 A I don't know, without asking my legal
14 department. I would have to question -- you know, as
15 I say, my opinion is that "Halberd" we cannot claim as
16 an exclusive trademark.

17 Q And the reason because?

18 A Because it is -- a Halberd is just a
19 Halberd. How could we claim the word "Halberd"? I
20 can't think of any Warhammer 40,000 specifically
21 products that we have put out in the market just that
22 are specifically -- you know, we look at the product
23 that says front and center "Storm Raven" or, you know,
24 "Alpha Legion Doors" but "Halberd", nothing springs to
25 mind from me that is a specific product that we might

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1 have used "Halberd". We might have used it as a
2 descriptor, something using a Halberd, but I can't
3 imagine us using a Halberd particularly as a
4 trademark. Maybe we have. 1987, we have released a
5 hell of a lot of products since then.

6 Q Sitting here today, regarding the first
7 use by Games Workshop of the term "Halberd" as a
8 trademark in 1987, there is no products in mind from
9 that product?

10 A No, I am being careful with what I say,
11 because the man with the encyclopedic memory on our IP
12 and trademarks and so on is Alan, and he may be going
13 there: "No, we did the such and such Halberd box in
14 1987". Personally, I can't remember that.

15 Q I will ask you to take a moment to kind
16 of go through this, the trademarks listed in this
17 Exhibit on 114. Are there other examples of marks
18 similar to this one regarding Halberd that you are not
19 able to identify a use in commerce associated with
20 that year?

21 A By the way, I am not saying we have not
22 used "Halberd" in commerce. I have said we do do
23 products that have Halberds, and we advertise as such.
24 It is just claiming Halberd as a specific trademarked
25 product. That is the thing I am struggling in my

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1 memory with.

2 Q As you go through the list, if you could
3 identify similar listed trademarks?

4 A Do you want me to call things out as I
5 see them.

6 Q Yes, as you see them?

7 A I would call out "plasma", simply
8 because certainly we have products that we have sold
9 as, you know, Plasma Gun, what have you, but I can't
10 remember us trying to use "plasma" specifically as a
11 trademark on its own.

12 I don't know what "Tau Geometric Groves" is.
13 It might be supposed to say "Grooves". It sounds like
14 it is rather to do with trees.

15 Q Which page are you looking at?

16 A Page 5.

17 Q Anything else?

18 A I am just having a look through. There
19 is a few things which I am trying to get to the bottom
20 of what we are actually saying these things are.

21 Q Sure.

22 A Because there is plenty -- there is a
23 few things in here that I would say is certainly a
24 mark that is used on boxes or packaging, so for
25 example the "I" symbol for the Inquisitor on page 6,

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1 we have certainly used that on products, so what has
2 been going through my head is wherever I am going down
3 this listing, and going: "Has that been on a product
4 as a mark?"

5 Q As a trademark?

6 A As a mark, then it is a -- yes, but
7 there are some things on here I look at and go:
8 "Okay, so Scorpion as a mark, page 4, the trademark
9 would be Striking Scorpion", I would imagine, unless
10 somebody more versed in our IP could tell me
11 otherwise.

12 Likewise, we use lots of skull marks, we use
13 lots of cog marks to represent the Adeptus Mechanicus.
14 I put "broadwords" in the same category as Halberds.

15 Q Which page?

16 A Very bottom of page 4. So page 5, for
17 example, it says "Cog", and I don't think we have ever
18 released a product with the word "Cog" as a trademark,
19 but what it refers to there would be the "Cog"
20 trademark symbol of the Adeptus Mechanicus.

21 Q So it is like an icon or logo?

22 A It is an icon or logo. It is not
23 literally the word "cog".

24 Q Is there a specific icon that you are
25 referring to when you say "cog"?

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1 **A** Yes, there might be various versions of
2 it but the key logo of the Adeptus Mechanicus is the
3 cog, the circular cog symbol. So I think, if that
4 makes sense, so where there are things, like I say,
5 like "cog", we definitely do have a cog mark that goes
6 on products in the minds of our customers that look at
7 that, and they will know exactly what that is. You
8 know, it is definitely a mark of trade, but we do not
9 literally use the word "cog". Likewise, I don't think
10 we literally use the words -- we probably do have --
11 we don't literally use the word "skull", the word, the
12 letters as a trademark, page 4, but we have lots of
13 products that do use skulls that have specific
14 stylized skulls in them, and we probably do have some
15 products, like there is a guy called Skulltaker, I
16 can't remember the rest of his name, but that would be
17 an example of a product with the word "skull" in it as
18 its mark of trade, if you will.

19 **Q** Anything else come to mind?

20 **A** Snakes, for example, page 5. Again, we
21 have a chapter of Space Marines called Iron Snakes,
22 and it has a particular snake symbol which is a
23 trademark rather in the way "cog" is, but I don't
24 think we would claim that "snakes" is entirely our
25 exclusive trademark.

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1 It is that unique combination, isn't it.
2 So, for example, we cannot possibly claim to own Roman
3 numerals, but when Roman numeral are combined with a
4 particular Space Marine shoulder pad and a particular
5 Space Marine or other back story or part of our IP,
6 then that is where we are claiming it as a mark of our
7 trade.

8 Q Returning to where you were referring
9 to, page 5, when you were talking about the entries
10 "Roman numerals combined with arrows"?

11 A Yes.

12 Q Was that what you were referring to?

13 A Yes.

14 Q Again you are saying it is the unique
15 combination of how Games Workshop uses the Roman
16 numerals with the arrows as depicted in an icon?

17 A Yes, what I am saying is we cannot claim
18 to exclusively own Roman numerals with or without
19 arrows. That is what I am saying. You asked me if
20 there is any things in this list that I felt were,
21 rather as I did with the word "plasma", that I can't
22 see how we can claim exclusivity to it. So in and of
23 themselves we cannot claim to own Roman numerals.
24 They are unique combinations in the framework of our
25 intellectual property, and as recognized by our

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1 customers worldwide of course we will.

2 Q For clarity, is Games Workshop
3 contending that it owns the trademarks about the idea
4 of Roman numerals combined with arrows?

5 A I don't understand that, sorry. Say
6 that question again.

7 Q Is Games Workshop claiming that it owns
8 a trademark with respect to the general concept of
9 Roman numerals combined with arrows?

10 A Roman numerals combined with arrows, it
11 will be -- I still don't really understand what you
12 are asking. We are not claiming we own Roman numerals
13 and we are not claiming we own arrows, but if there is
14 a unique combination or a way of depicting Roman
15 numerals and/or arrows or other symbols that we use in
16 commerce as marks of trade, rather like, I don't know
17 rather like what, but as a unique combination, and if
18 there is products that your client has made that have
19 those same combinations, then that is where they are
20 infringing that trademark.

21 Q For clarification, the contention is
22 that Chapterhouse Studios infringes the trademark if
23 Chapterhouse uses the combination that is identical to
24 the way Games Workshop depicts its combination of
25 Roman numerals and arrows?

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1 **A** Depends what you mean by the word
2 "identical", or whether you mean similar or
3 confusingly similar or any other number of words I
4 could use. To be identical, it would probably have to
5 be drawn by the very same person. I am not saying
6 they have to be identical.

7 **Q** But it would have to be -- it is not
8 just any combinations of Roman numerals with arrows
9 but a combination in a way that is depicted by Games
10 Workshop?

11 **A** Yes, I think that is fair.

12 **MR. MOSKIN:** Could you read that back.

13 (Read back)

14 **A** Or could be seen as confusingly similar
15 to.

16 **Q** Turning back to page 4, you mentioned
17 skulls, and again at that point you are again
18 referring to stylized versions of skulls that Games
19 Workshop depicted?

20 **A** Yes.

21 **Q** And you mentioned something called the
22 Skulltaker?

23 **A** A character called -- I can't remember,
24 I think I said I can't remember what his full name is,
25 but I think there is a character called something

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1 Skulltaker, for example, yes, that is what I was
2 referring to.

3 Q In that context, is Games Workshop
4 alleging that the skull in the context of the
5 Skulltaker is a trademark?

6 A That might be one example. I am not
7 saying the only time we could claim to be using
8 skulls, the icons, as marks of trade -- we are
9 renowned for -- if you were to look, a casual look at
10 our products and imagery would show quite a lot of use
11 of stylized skulls. I am looking through some of the
12 stuff you have given me so far to see if there is
13 anything there. Well, Chaplain is a great example,
14 isn't he.

15 Q Can you point out what you are referring
16 to, for the record?

17 A Sorry, yes. In terms of use of -- I
18 mean, it is not an icon as such, but our imagery is
19 redolent with skulls, and on Exhibit 121, the Chaplain
20 figure.

21 Q Is there a specific page you are looking
22 at?

23 A There is. Is it 5179?

24 Q Is that in the lower right-hand corner.

25 A Yes.

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1 Q Yes.

2 A So there is a guy there on the front, he
3 has got a very stylized skull helmet. We use a lot of
4 skull iconography, which again in the minds of our
5 customers is immediately identifiable or immediately
6 identifies products with Games Workshop.

7 Q So for that example you were just
8 referring to, where there is a character with a skull
9 head on, that is used as an illustration on the
10 product package, is Games Workshop contending that
11 that example of that character with the illustrated
12 skull is a trademark?

13 A No, I don't think in that particular --
14 I couldn't find a particular example of a stylized
15 skull that I would contend is being used as a
16 trademark, but I was using it for illustrative
17 purposes to show that even the most casual look at our
18 product output would show our IP is redolent with the
19 use of stylized skulls.

20 Q If you could turn your attention to page
21 5, towards the bottom there is reference to wolf fur,
22 wolf skulls, wolf tails.

23 A Indeed.

24 Q What is Games Workshop contending are
25 the trademarks associated with those three entries?

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1 A Again, looking at those, I can see and I
2 know that this is with regard to a Chapter of Space
3 Marines called the Space Wolves, who have variously
4 been described as one of the most ferocious Space
5 Marine Chapters, and their iconography is all about
6 wolf skulls, wolf pelts, Wolf fur, all of that. So I
7 think those are examples of -- would I say that we own
8 the words "Wolf Fur", I don't think we have ever
9 released a product that has as its tag "Wolf Fur".
10 But we have certainly used -- again, it is skulls
11 really, stylized wolf skulls to symbolize and be
12 closely associated with the Space Wolf Chapter of
13 Space Marines.

14 Q So specific stylized -- with respect to
15 at least the wolf skull entry is specific stylized
16 icons that Games Workshop has used as trademarks on
17 packages?

18 A I am kind of -- what I am using as my
19 guidelines here is I am picking something like the
20 Nike swoosh. You see that on a product, you think
21 "Nike". You know exactly what it is. If somebody
22 uses a stylized wolf skull that is like ours, they
23 will know exactly what it is. That is kind of what I
24 am talking about in terms of -- just so we are clear,
25 in terms of using them as -- I can't remember what the

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1 word, mark of trademark or exactly what you are
2 saying.

3 Q Then with respect to wolf fur --

4 A Yes. Honestly, I can't imagine why we
5 are holding it up. That is one that I would not say
6 why we are holding it. I would say why are we holding
7 up wolf fur as a particular trademark. Skulls and
8 wolf tails for sure I can picture the icon.

9 Q Now, for the wolf skull, just for the
10 record, can you describe what the icon --

11 A Oh, Lord. Well, it is a stylized sort
12 of front on version of a wolf skull.

13 Q Is it in silhouette?

14 A It has been used in silhouette. It is a
15 lit bike the Adeptus Mechanicus cog. If people see --
16 certainly if our customers worldwide see armoured
17 warriors, Space Marines, adorned with or alongside in
18 an article or whatever, or on the front of a book, and
19 there is those runic or symbolic pictures of wolf
20 skulls, wolf pelts, they will know exactly what it is.
21 They are there to establish: "Here come the Space
22 Wolves." So the skull icon, wolf skulls, they are,
23 you know, like I said, we have shown silhouettes and
24 we have also, in my head -- when is this? It goes
25 back to 1989, so I am imagining I am remembering some

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1 full color wolf skull icons as well.

2 Q So in this context you are referring to
3 several multiple different wolf skull icons?

4 A Yes, that is why it says "wolf skulls",
5 I imagine, because there is a specific style that the
6 people would recognize as being associated with Space
7 Wolves. I don't think we use wolf skulls in Warhammer
8 40,000 for any other mark or any other signifier. It
9 is all about the Space Wolves. But is there one
10 particular icon that we always use, you know, we use
11 them like with the Adeptus Mechanicus cog wheel.
12 There will be different iterations of it over the last
13 25 years.

14 Q So for all the different iterations of
15 the wolves skull icons, have Games Workshop used each
16 iteration as a trademark on product packages for
17 products sold in the US?

18 A I couldn't swear to that. Actually, we
19 might have done pictures, our artists might have drawn
20 versions of the wolf skull icons that we have used, I
21 was going to say on a novel but I guess that would
22 still be establishing it as a mark of trade. There is
23 the possibility that we have drawn wolf skulls and not
24 used them on the front of actually on a box, if that
25 is what you are asking.

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1 Q My question here is which wolf skulls
2 have been used by Games Workshop as trademarks on
3 product for products sold in the US and which ones
4 have not?

5 A Honestly, I don't know. Without seeing
6 the parade of products with them on, how can I say.
7 You know, 1989 to 2012 is a long time and I don't have
8 a mental list of wolf skulls, some of which have and
9 some of which have not been used as trademarks.

10 Q Then for wolf tails?

11 A Same answer, to be honest.

12 Q Can you describe what the wolf tail icon
13 looks like?

14 A Yes, on the models, I am sure as our
15 designers have said this, and I am sure Alan said
16 everything we do essentially comes from the models.
17 So the Space Wolf models, often they will be decked
18 with wolf tails as part of their decoration, which
19 would be literally a wolf tail sometimes hanging on, I
20 don't know, a bronze circle piece or something like
21 that that hangs off their armour. That is on the
22 model, and then the artist will draw a version of that
23 that might go on the front of a book or product or on
24 our website or wherever we choose to use it to
25 represent and to signal and call out: "This is Space

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1 Wolf product."

2 Q And then in that context, whereas you
3 have described the use of the wolf tail, are the wolf
4 tails being used in a stand-alone fashion?

5 A Sorry, how do you mean?

6 Q The wolf tail icon or symbols, as you
7 were describing them, are they used in a stand-alone
8 or always in conjunction with a larger illustration or
9 actually part of the product itself as a part of the
10 sculpture miniature?

11 A I think I understand what you are
12 asking. I don't think we have ever sold a single
13 model of -- we might have done accessories, I suppose,
14 I don't know, I am guessing now. I think it is
15 unlikely that we have sold many products that are just
16 wolf tails. Wolf tail symbols will certainly have
17 featured in Space Wolf products. Can I swear that
18 they have featured on the cover of a Space Wolf
19 product, certainly as part of an illustration. Have
20 we done them just as symbols on the cover on their
21 own, I don't think we have ever sold a product that
22 literally you pick it up and it is just a picture of a
23 wolf tail, no.

24 Q Does the same answer apply to the wolf
25 skulls then?

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1 A Actually, in terms of -- yes, I am kind
2 of guessing now. We are more likely to have used wolf
3 skulls as a hard front and center mark than wolf
4 tails. So could I imagine -- I still don't think we
5 have sold a product that literally just has a wolf
6 skull and only a wolf skull on it.

7 Q Turn to page 4. You see where it says
8 "skulls" towards the bottom of the page?

9 A Yes.

10 Q And from that point to the end of the
11 list of entries on page 6, let's focus with respect to
12 those trademarks, let's focus on those being actually
13 symbols --

14 A Okay.

15 Q -- that Games Workshop had used?

16 A Actually --

17 Q -- as trademarks, rather than as words
18 as trademarks. From that point to the end of the
19 list, are there any symbols associated with any of
20 those entries used stand-alone, not as part of a
21 larger illustration or part of the model itself, but
22 just as a stand-alone logo or icon? Can you identify
23 examples where an icon associated with any entries
24 from that point down is used as a trademark for
25 products sold in the US?

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1 **MR. MOSKIN:** Could you read that back?

2 **MR. OH:** Maybe I will try to rephrase.

3 **MR. MOSKIN:** Thank you.

4 **MR. OH:** Do you understand the general direction?

5 **A** I am not entirely sure. It is
6 stand-alone -- apart from anything else, it is
7 "stand-alone" that is confusing me, because when you
8 say stand-alone, I imagine you are talking about a box
9 which on the cover has nothing but the thing.

10 **Q** Then let me clarify. When I mean
11 stand-alone, it is the symbol used could be on the box
12 but it is used -- I will give this example. If there
13 was a cover illustrations of, let's say, a Space
14 Marine?

15 **A** Yes.

16 **Q** And as part of the illustration that
17 Space Marine had a symbol on the armour?

18 **A** Right.

19 **Q** Just as part of the picture. For
20 purpose of this questioning I am not including that
21 icon as a stand-alone icon.

22 **A** Right.

23 **Q** Okay. So, a stand-alone would be if it
24 was also in terms of Nike's shoosh, if it was a box,
25 it may have a picture of an athlete running wearing

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1 Nike gear, but separately there is also a little Nike
2 shoosh that is kind of overlaying. Does that help
3 clarify?

4 A So, for example, if we --

5 MR. MOSKIN: I still want to note objection to form,
6 but go ahead if you understand it.

7 A To make sure whether I think we are
8 talking about the same thing, is that if we had a book
9 that had an inset full color painting of a Space Wolf
10 Space Marine doing whatever he does, and then that was
11 in a frame which said something like "Codex Space
12 Wolves" at the top, and then maybe had a border with
13 the skull icons or the tail icons, those would be not
14 part of the picture, but not the words "skull" or
15 whatever, that you would consider those as stand-alone
16 items?

17 Q For purposes of this line of
18 questioning, let's go with that.

19 A Okay. So what was the question again?

20 Q Can you identify instances where --
21 let's start on page four with lions, where "lions" was
22 used as a stand-alone trademark?

23 A I cannot actually -- you know, with
24 "lions" I can't. I am struggling to remember or think
25 of a product there that has got pictures of lions on.

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1 I am not saying there is not but I would be struggling
2 to identify that. Likewise, "Griffin", "Triptych", on
3 page 4, I believe that is a specific Dark Angel
4 Triptych that we are referring to.

5 Q And has that been used as a stand-alone
6 trademark?

7 A It has certainly been used as a
8 stand-alone. I can picture the actual image. I think
9 I know what that specific thing refers to. It is just
10 some elements on a particular model that your client
11 makes which is basically taken from this Dark Angel
12 Triptych, I believe. "Broadswords", I think we have
13 talked about already.

14 Q Just so we can close out the Triptych,
15 can you describe what the Games Workshop Triptych
16 looks like?

17 A No, I can't, to be honest. I know it is
18 a Dark Angel Triptych, and it is an element on one of
19 the models that your clients made, but I can't
20 remember actually what the elements -- you know, a
21 Triptych is a center piece and then the two wings are
22 the two pieces on either side. So no, I can't
23 describe what that -- I just know it is a Dark Angel
24 Triptych.

25 Q Before we move on, are you able to

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1 identify a specific product where the Triptych was
2 used as a --

3 A No.

4 Q Let's move on.

5 A I will say, like I say, I think the
6 likes of Jes, Alan, Dave, those guys would have been
7 much more versed on this stuff than I am.

8 Q On page 5 now, on Exhibit 114 at the
9 top, again same set of questions trying to identify
10 use of commerce in the US, related to icons related to
11 these entries, and we are going to start from the top
12 with skulls with horns?

13 A As trademarks, specifically, I mean, we
14 use skulls with horns all the time, but specifically
15 in terms of describing them as a particular use on a
16 particular product in the States as a trademark, I
17 couldn't point at a specific thing, certainly not
18 going back to 1989. Stormbolters were first -- where
19 have we used -- I know exactly what Stormbolters are,
20 we use them a lot. They are a key part of our
21 iconography. Once again, any of our customers know
22 exactly what a Stormbolter is. He had a unique
23 identifiable association with Warhammer 40,000. Do we
24 sell -- I wouldn't be surprised if -- 1989, I wouldn't
25 be surprised if -- Forge World sell Stormbolter

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1 models. I wouldn't be surprised if in the intervening
2 years since 1989 we have sold separate Stormbolter
3 models.

4 Q But used as a trademark?

5 A If we were selling them specifically, if
6 we were selling an accessory pack that was a pack of
7 Stormbolters then it would have said on it
8 "Stormbolters", and that would be in the same way as
9 if I go to Exhibit 118, where you talk about Alpha
10 Legion and it is there.

11 Q Can you read what is on the label?

12 A It says: "Alpha Legion Land Raider
13 Doors", so we would probably have sold a pack -- if we
14 did sell a pack of Stormbolters it would have said
15 somewhere on the pack Stormbolter.

16 Q That describes what the product was?

17 A That would be the title of the product.

18 Q But no other instance you can think of?

19 MR. MOSKIN: Objection, go ahead.

20 A I don't think there is, and that was an
21 imaginary likely example, you know.

22 Q Let's go down the list.

23 A "Sword blade with blood drop". I can't
24 remember what the name of the Space Marine Chapter is
25 but that is a unique identifying mark of a particular

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1 Chapter or regiment, shall we say, of Warhammer 40,000
2 Space Marines.

3 Q Has it been used as a trademark for
4 products sold in the US?

5 A It has been, to the best of my knowledge
6 it has been used on products identifying those
7 particular -- whichever Chapter of Space Marines that
8 it is the symbol of since 1987, and those products
9 would certainly have been sold in the United States.

10 Q When you say it would have been used on
11 products, can you describe the use?

12 A It would have been rather like with the
13 stylized wolf skulls. It would have been a
14 stylized -- there is a stylized symbol for the sword
15 blade with blood drop which represents -- I mean, a
16 lot of these things here are the symbols of our Space
17 Marine Chapters that people will look at that symbol,
18 be it a clenched fist, be it a blood drop, with or
19 without sword blade, be it the cog for the Adeptus
20 Mechanicus, be it wolf skulls, and they will be
21 instantly recognizable as the marks that mean: "Ah,
22 that is a Games Workshop Warhammer 40,000 Blood
23 Drinker" or "That is a Games Workshop Warhammer 40,000
24 Space Wolf product." So when I talk about these
25 stylized images, that is exactly what I mean.

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1 Q So for this entry, the sword blade with
2 blood drop what product in 1987 was used as a
3 trademark in the US as a --

4 A Again, same answer. I can't remember,
5 and it is going to be the same answer for all of
6 these, I suspect.

7 Q Including "Clenched Fist -- "

8 A Do you know, "Clenched Fist in a
9 Gauntlet", I believe that that is our -- that will be
10 the Crimson Fists Space Marines. When we launched
11 Warhammer 40,000 we did bring out, back in 1987, we
12 did sell a range of t-shirts with those actual
13 stylized -- we had the Iron Hands and various other
14 Chapter t-shirts that had those symbols on them.

15 Q To describe the t-shirts, that would be
16 a t-shirt and the front portion --

17 A Yes, on the front it would literally
18 just have that icon. So I do remember them getting
19 some of those, yes, but apart from that, remembering
20 whether we have used a clenched fist in a gauntlet on
21 a particular product from 1987, same answer again, I
22 am afraid not.

23 Q Next entry?

24 A "Iron Snakes". Well, snakes, we talked
25 about this. I think we have dealt with the whole

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1 snakes thing. I don't know whether Forge World make
2 any Iron Snakes products. In the same way as exhibit
3 whatever it was we were looking at, Alpha Legion, it
4 would have the same branding, if they do. We have
5 also sold Iron Snakes novels, although again I can't
6 picture the cover of that, but there is a specific
7 Iron Snakes symbol that we use on shoulder pads, and
8 so on that, again, our customers the world over would
9 recognize as a Games Workshop identifying mark of that
10 particular part of our iconography.

11 Q Can you describe this particular symbol,
12 for the record?

13 A The Iron Snakes symbol, it is the unique
14 combination of the shape of the Space Marine shoulder
15 pad with a stylized snake, highly --

16 Q Wavy?

17 A Wavy snake icon, yes.

18 Q Is there specific colors related to
19 this?

20 A There probably are, yes. Those well
21 versed in the 40K lore will know better than I, but I
22 am not sure what the Iron Snakes color scheme is.

23 Q Would you be able to identify products
24 from 2002 using Iron Snakes symbol as a trademark for
25 products sold in the US?

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1 A Would I be able to identify them? If
2 there was a row of products put in front of me that
3 used that, yes, I would.

4 Q Which products were sold in the US in
5 2002 using the Iron Snakes logo as a trademark?

6 A I don't know.

7 Q Do you know when the Iron Snake Chapter
8 originated?

9 A When? Yes. Oh, gosh, I know where the
10 Iron Snakes chapter originated, and it will be -- it
11 was in the -- it would either be in Inferno magazine
12 or Warhammer Monthly, the comic, which would be --
13 crikey, ten years ago, maybe longer than that. I am
14 trying to think when we published Warhammer Monthly.
15 Within the last 12 years.

16 Q Can you describe what the Warhammer
17 Monthly is?

18 A Yes. We used to publish a monthly comic
19 about characters from our Warhammer and Warhammer
20 40,000, Another Blood Bowl, Necromunda, our other
21 backgrounds, we published a monthly comic called
22 Warhammer Monthly that was sold. In the US we
23 published it through and distributed it through
24 Diamond Comic Distribution.

25 Q Do you remember when the timeframe was

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1 approximately?

2 A Like I say, working back, it was
3 published earlier than five years ago but no longer
4 than 12, 13 years ago I would say. I am trying to
5 remember when we moved to other headquarters we were
6 in than now, because it was around then we first
7 published it.

8 Q Are you referring to the Nottingham --

9 A Yes, the Nottingham HQ. Could I have a
10 glass of water, please.

11 Q You also mentioned something called
12 "Inferno"?

13 A Yes.

14 Q Can you describe what that is?

15 A We also published around the same time a
16 bi-monthly, what would you call it, a digest type
17 magazine that was a collection of short stories,
18 illustrated features, comic art, all that kind of
19 thing, and that went under the name of Inferno.

20 Q Is it still being published?

21 A No, it is not. Inferno actually is
22 having a kind of new -- its purpose was to find new
23 authors and new subjects. In a way it was seeding the
24 ground for our very popular and successful novels
25 publishing business. The equivalent today is called

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1 Hammer and Bolter, which is an online, downloadable
2 anthology product from the publishing business.

3 Q And both Inferno and Hammer and Bolter
4 relate to Warhammer 40,000?

5 A Warhammer and Warhammer 40,000, yes.
6 They are a place where you can go if somebody wants to
7 go and look at short stories from our fictional
8 proprietary universes, then they may do so by either
9 buying and reading Inferno or by downloading the
10 latest issue of Hammer and Bolter.

11 Q And are these both publications by or
12 were publications by Games Workshop?

13 A Yes.

14 Q Who were the authors or the artists who
15 contributed to these publications?

16 A The authors, actually it was a mixture.
17 There were some of the guys who work in our design
18 studio, as writers, authors and so on, or some of the
19 game designers maybe. Then there was a bunch of
20 contracted freelancers who we had to brief. We had
21 very specific briefing meetings, product briefing
22 meetings, not just in terms of the individual stories
23 but the overarching themes of the magazine. Those
24 were internal meetings, because everything that was
25 done in Warhammer Monthly obviously had to meet the

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1 needs and directions of John Blanche and Alan Merrett
2 and those guys. Once we had got that in place we were
3 then able to go and steer and work with external
4 freelancers, some of whom then became full-time
5 employees and some of whom still work with us today.

6 Q On a freelance basis?

7 A Yes, only in as much as, you know, we
8 have a novels publishing business. We don't employ
9 full-time novel authors.

10 Q Are there specific names of some of
11 these freelancers you remember?

12 A Yes, Dan Abnett is a great example,
13 super chap. He was the guy we worked with on the
14 specifically -- the reason I call him that is because
15 he is the guy we worked with hand in hand in the
16 creation of the Iron Snakes Space Marines. Who else?
17 There is artists like Adrian Smith, who periodically
18 has worked for us full-time or has worked for us
19 freelance. Those are perhaps the two stand-outs.

20 Q Referring to the person you were talking
21 about right before, Dan --

22 A Abnett.

23 Q You said Games Workshop worked with him
24 hand in hand developing Iron Snakes?

25 A Yes.

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1 Q Can you explain what you meant by that?

2 A Generally, first of all, I should say
3 that in our core creative processes, so in the
4 creation of the universes and the background of
5 Warhammer, Warhammer 40,000, or anything else that we
6 are working on, that is all created internally within
7 Games Workshop. We often refer to it or think of it
8 as historical reality, you know, it is that scoped
9 out. So we think of it as a real place. So when we
10 are working with a freelancer, and incidentally I
11 would be very hard pushed to think in all the time I
12 have worked at GW, apart from maybe in the very, very
13 early years every so often, but 99.9 percent of
14 everything we have created in the core business of
15 model soldiers has been created by full-time
16 employees. So once we have created that sand box, if
17 you will, or that framework, we can then work with
18 freelancers to explore parts of it, to either
19 accomplish a specific goal that we have or to explore
20 further a specific element of the universe.

21 So what we won't do is just say to a
22 freelancer: "Hey, you are great. I have read some of
23 your novels. Why don't you just go off and write a
24 Warhammer 40,000 novel." We would never do that. We
25 would have to sit down with them and work, like I say,

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1 hand in hand, to make sure that they would be
2 sending -- you know, we would work with them on what
3 the storyline was, to make sure it fitted, and then we
4 would be working on Lord knows how many drafts and
5 extra drafts. As they came in and were edited we
6 would have to say: "That doesn't fit", or "Have you
7 thought about this, or why don't you put this in?"

8 That is the kind of process we go through.
9 We don't either with artists, writers, comic artists
10 we would never just say: "Hey, go and do a Warhammer
11 40,000 comic", any more than I am sure DC or Marvel
12 would say: "Go and draw some Spider-Man, go crazy."
13 It has to fit within the universe.

14 Q With respect to Dan Abnett --

15 A I think it is A-B-N-E-T-T.

16 Q Was he an artist?

17 A No, he is an author.

18 Q And Adrian Smith?

19 A He is an artist.

20 Q Any other freelancers you can remember
21 who were artists?

22 A Who were artists? Right. I know Adrian
23 Smith springs to mind because I have just known him
24 for years and years and years. Bill King, not the
25 author, there is another freelance author who

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1 variously has worked for us full-time and works
2 freelance. Freelance artists, Adrian Smith. Oh,
3 there was a chap called -- again he worked for us
4 full-time. Wayne England has worked for us full-time
5 and also done stints as a freelancer.

6 All my references go back quite some time
7 because I don't work -- just about the only people who
8 really use freelancers is the Black Library, our
9 publishing arm, and I have not worked in that for a
10 good long time. I am sure I could think of some more
11 if I sat here long enough, some names would come to
12 mind.

13 Q With respect to Adrian Smith and Wayne
14 England, does Games Workshop have a freelance contract
15 with them?

16 A Yes. Well, do you mean -- sorry, what
17 do you mean "a freelance contract"?

18 Q Regarding their work on a freelance
19 basis, does Games Workshop have contracts with them
20 for those freelance works?

21 A Yes, I would say our policy and process
22 is that whenever we work with freelance artists or
23 writers are indeed that we use a freelance contract.
24 So if Adrian Smith, for example, is drawing covers or
25 painting covers or illustrating covers for, let's say,

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1 our novels, they will all be done under a freelance
2 agreement.

3 Q Who is responsible for approving the
4 freelance agreements on the Games Workshop side?

5 A Do you mean approving --

6 Q Who actually signs the agreements on the
7 Games Workshop side?

8 A That will depend on where they are for.
9 In the publishing division, the Black Library, it is a
10 guy called George Mann who is responsible for the
11 freelancers that they use. He runs the publishing
12 department. In the studio, the core design studio, it
13 is Ben Fawcett who is the Studio Manager. I am trying
14 to think where else we might use freelancers.
15 Publishing business, hardly ever in the core studio.
16 Ben, George, I suppose, if we ever do use freelancers
17 in Forge World, which is a department that makes resin
18 models, then the chap there would be Tony Cottrell.

19 Q And since the -- strike that. How long
20 has it been in place to have written contracts with
21 freelancers?

22 A So for sure I know that the Black
23 Library, which has certainly celebrated its 10th
24 anniversary has always used freelance agreements. To
25 the best of my knowledge, ever since the early days of

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1 Games Workshop, whenever we have worked with anybody
2 we have always done some form of freelance agreement
3 and made sure, you know, we have never just by rote
4 let people go off and paint things or draw or write
5 things without having some form of agreement in place.
6 But, you know, we have been doing this since 1986, it
7 is a long time, but we have always had freelance
8 agreements.

9 Q When you are referring to freelance
10 agreements, you mean written agreements?

11 A Yes.

12 Q Where are all these written agreements?

13 A Lord alone knows. Can I put my hand on
14 my heart and say yes, we have all the freelance
15 agreements since 1987? No. Like I say, I am pretty
16 certain we have always used freelance written
17 agreements and pretty certain that if you were to
18 ask -- I don't know -- the guys who were doing it, I
19 was not involved in it at the time of course, so the
20 likes of John Blanche, Alan Merrett, they might not
21 have done the actual commissioning but they are very
22 much aware that yes, we used freelance agreements.

23 Apart from anything else, the guys need to
24 know how much money they are getting paid, and that
25 obviously forms a vital part of the agreement. The

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1 reason I asked, "Do you have a freelance agreement",
2 is because typically we will do them as it would be an
3 individual agreement for each piece of work or it will
4 be master agreement with vouchers that are tacked on
5 to it, so they get renewed every time a piece of work
6 was done.

7 Q So the freelance agreement would be tied
8 to a specific work that was commissioned?

9 A Yes. Well, there might be in the -- I
10 know in the publishing department we used to have a
11 specific agreement, which was like the master
12 agreement, and then there was a voucher system that
13 referred to all the terms and conditions of the master
14 agreement, and made explicit and clear that each new
15 commissioning was related to the terms in the master
16 agreement.

17 Q So even in this context, when you are
18 referring to a voucher, would Games Workshop be able
19 to identify a specific voucher as referencing to a
20 specific work commission?

21 A We should be able to, yes.

22 Q Let's turn our attention back to Exhibit
23 114, on page 5. Again, a little earlier we were going
24 through and identifying for each entry whether Games
25 Workshop used a symbol of each entry as a kind of

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1 stand-alone trademark for products used in the US. I
2 think the last one we did was Iron Snakes. Can we
3 continue that process?

4 A Sure. I can't remember where we have
5 used "Flaming Skulls" specifically. This is a real
6 test of my IP law actually. The "Flaming Challis"
7 refers to a particular -- rather like the Iron Snakes
8 refers I think to a particular Chapter of Space
9 Marines and is their stylized symbol. I think we have
10 talked about Salamanders, haven't we?

11 Q Before we move off the Flaming Challis,
12 is there a specific product --

13 A A specific product, not that I can -- I
14 can't remember the specific product. It is dated 87
15 so I would imagine the Flaming Challis was at least
16 used in -- well, that symbol would be used in or on
17 one of the rule books or products from 1987 and then
18 onwards as referring to that particular Chapter of
19 Space Marines.

20 Q And then for Salamander?

21 A Again, that is a Space Marine Chapter
22 who would have first come into being in 1989.
23 Examples -- we looked at one earlier examples of
24 Salamander products, didn't we. You showed me some --
25 was it Salamander shoulder pads or was it doors? No,

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1 they were Alpha Legion Doors. Similarly to the Alpha
2 Legion Land Raider Doors, I would not surprised if we
3 have some specific Salamander -- because Salamanders
4 again were a particular Chapter of Space Marines.

5 Q Can you describe the specific symbol?

6 A Do you know what, I can't. What does
7 the Salamander symbol look like? I know they are
8 associated particularly with scales. I am trying to
9 think what the Salamander actual symbol looks like.
10 It is probably a Salamander head but I am making that
11 up now. So no, would be my short answer.

12 Q And then for the next one?

13 A Sorry, the Tau?

14 Q No, the next one is "Dragon/Salamander
15 Scale"?

16 A Yes, that is just what I was saying
17 about with the Salamanders. The Salamander Space
18 Marines were associated with dragon like scales and
19 patterns that were used that were a key part of their
20 iconography.

21 Q But at this point, at this time you are
22 not able to identify specific products?

23 A I am not able to identify a specific
24 product.

25 Q Then next the Tau symbol?

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1 **A** Tau, we first released the Tau codex or
2 the Tau book in 2001. I can't identify specific
3 products but any of the -- I imagine the Tau symbols,
4 the Tau oval vents is a feature of Tau vehicles. I
5 don't think we would use oval vents as a particular
6 trademark. It is a defining part of the design of the
7 Tau, look of the Tau, I don't know, gestalt, if you
8 will.

9 So what you have got here is a list of
10 things that identify the Tau. The Tau symbol is a
11 trademark for sure. I can't remember what the Tau
12 symbol is actually.

13 **Q** But there is a specific Tau --

14 **A** There is a specific Tau symbol, yes,
15 there is, and that will be used as a mark on products.

16 **Q** As a stand-alone mark?

17 **A** If you mean a --

18 **Q** Separate from --

19 **A** Yes, there might be a boxed product
20 which has got a picture of some Tau guys in it. It
21 will say "Tau Codex", and there will probably be a
22 symbol, clear symbol marking that.

23 **Q** Then you see a couple of other ones.
24 Let's talk about them in specific: "Tau X marking on
25 Power Ammo Packs. Tau: Circle with Diagonal Line

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1 through it. Tau: Geometric Groves", which we believe
2 is "Grooves"?

3 A I think that will be "Grooves". Those
4 are all clear things again, rather like the wolf tails
5 and wolf skulls, that seeing that combination of
6 things would call to mind to our customers Tau, the
7 Tau race in Warhammer 40,000, that unique combination.
8 I suppose if we wanted to be -- I could imagine us
9 selling a Tau t-shirt, and all it would need to have
10 is a particular symbol on it and people would know.
11 You would not need to say, like the Nike shoosh we
12 talked about earlier, that it is a mark of -- this is
13 the Tau.

14 Q So for the last three Tau entries, those
15 are again -- correct me if I have got this not exactly
16 on point -- but those are features of the product
17 themselves, not stand-alone trademarks?

18 A To the best of my knowledge, that is the
19 case.

20 Q I believe we talked about Roman numerals
21 earlier?

22 A We did, and the cog.

23 Q Below that do you see X crosses and
24 inverted V's?

25 A Yes.

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1 Q Do you know what that refers to?

2 A Those are in fact Roman numerals, and
3 that might or might not be combined with arrows or
4 other symbols. So if you think about the X and V
5 Roman numerals for 10 and 5 respectively, so in the
6 same way as we describe about Roman numerals their
7 unique combination with a particular Chapter of Space
8 Marines, typically Ultra Marines, that shoulder pad
9 shape, that will be what that is about.

10 Q And when it says inverted V's, could
11 that be a reference to chevrons?

12 A It could be, yes.

13 Q And are you aware of a Roman letter that
14 is inverted V?

15 A No, I am not actually, no.

16 Q Are you saying that for the entry that
17 says X crosses and inverted V, the same answer you had
18 previously regarding the Roman numerals combined with
19 arrows, the same applies for this entry?

20 A In as much as that we cannot claim to
21 own the letter X, I think that would be unreasonable,
22 but it is the unique combination of the X or the
23 inverted V on a shoulder pad, you know, it is that
24 unique combination that makes it uniquely identifiable
25 and instantly identifiable with our customers as to

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1 what it is.

2 Q As a Games Workshop --

3 A As a Games Workshop product.

4 Q Or as Games Workshop, for clarification,
5 that unique combination in how a Games Workshop has
6 depicted that combination?

7 A Say that again.

8 Q In terms that the unique combination --
9 is it also the manner in which Games Workshop has
10 depicted that combination, depicted that combination?

11 A I am still not sure I am quite with you
12 on that.

13 Q Let's move on then. Next one is "Iron
14 Cogs"?

15 A Sorry, no, the next one is "Cog", which
16 I think we have talked about.

17 Q Can you describe what the cog symbol is,
18 for the record?

19 A Okay, yes. The cog symbol is the icon
20 of a cult or force, if you will, within our Warhammer
21 40,000 universe who are called the Adeptus Mechanicus,
22 who are basically heavily into machinery and
23 mechanization. So their badge, if you will, their
24 icon is a cog, a round toothed cog, which might be
25 depicted in a number of ways, often in association

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1 with a skull. So again, if people are looking at
2 anything from Games Workshop and they see anything
3 with a cogged wheel, and as I say often a skull, they
4 will immediately know that is the symbol, that is the
5 mark of the Adeptus Mechanicus.

6 Q Has Games Workshop used the cog symbol
7 as a stand-alone trademark for products sold in the
8 US?

9 A Again, I can't remember. I can't
10 remember. Probably.

11 Q But no specific instance comes to mind?

12 A I can't say product X have the cog
13 symbol as a stand-alone, no.

14 Q You wouldn't be able to identify one
15 from 1995?

16 A Well, I would, but it would involve me
17 going into our product archive, looking it up and
18 going: "It is this product." I cannot from my memory
19 identify a product that uses the Adeptus Mechanicus
20 cog as a stand-alone icon that was used in trade in
21 the US in 1995, no, I can't do that from memory, but I
22 would identify one if there is such a thing does exist
23 by talking to the guys in our studio and going to the
24 product archive and having a look and seeing what I
25 could find.

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1 Q If you were to review the documents that
2 Games Workshop produced to the defendants during this
3 litigation you would be able to find examples?

4 A If they are in there, yes, I would.

5 Q In preparation for this deposition, did
6 you review the documents that Games Workshop produced
7 to the defendants?

8 A No, certainly not all of them. I know
9 that Gill has put together many, many many, many
10 documents that they have sent through.

11 Q With respect to documents -- strike
12 that. With respect to your preparation for this
13 deposition today, did you review documents?

14 A Did I review documents? Yes, I did.

15 Q What did you review?

16 A I reviewed a number of documents. I
17 reviewed -- wait a minute. This one. Not that one.
18 The one with the list of topics.

19 Q Exhibit 39?

20 A Quite possibly. Let me just find it.
21 Yes, 39. There we go. So I had a look at 39.

22 Q What else?

23 A To give me an idea of what I was going
24 to be talking about, not that it helped me much in
25 this particular subject. Then what else have I looked

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1 at? I did have a quick look at -- I have looked at
2 our annual reports for the last couple of years. They
3 are a matter of public record anyway, but I thought
4 they might be useful in terms of information,
5 breakdown of sales and that kind of thing. I had a
6 quick look at our staff handbook, and in mind some of
7 the subjects that are in 39, Exhibit 39, I was
8 provided with some documents that we have sent through
9 to you, mainly about turnover in the broadest sense,
10 certainly not on a granular product by product sense.
11 Those were the documents I have looked at specifically
12 for this.

13 Q Keep going on with your answer but for
14 the record there is a fire drill that is scheduled to
15 occur soon, so if there is a noise that is what it is
16 going to be, but if you can keep on.

17 A Where did I get to? I had a quick look
18 at the employee handbook.

19 Q You mentioned documents regarding
20 turnover?

21 A Some documents that were provided to me
22 on the basis they had been provided to you, some
23 spreadsheets and so on, I had a quick look at those
24 and I had a quick look at our annual reports. In
25 terms of documents that I have looked at, that is

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1 probably about the long and short of it.

2 **THE VIDEOGRAPHER:** Going off the record at the 3:30.

3 (Fire alarm test)

4 **THE VIDEOGRAPHER:** Back on the record. The time is
5 3:31.

6 **MR. OH:** Right before the alarm I was asking you about
7 documents that you reviewed in preparation for today's
8 deposition.

9 **A** Yes.

10 **Q** And at that point I believe you said you
11 identified the set of documents you reviewed?

12 **A** Yes.

13 **Q** Returning back to the documents you were
14 saying which were about turnover, who provided you
15 those documents?

16 **A** That depends. The documents that
17 featured turnover were our annual reports that you can
18 get from our websites. You go to investor relations
19 section, and we are a plc, you can download them and
20 have a look at them. I also had some information that
21 Gill provided me, Gill Stevenson provided me with,
22 which were on the basis that they were some of the
23 information that we have sent through to Winston
24 Strawn.

25 **Q** For that second set of documents

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1 provided to you by Gill Stevenson, can you describe
2 those in a little more specificity?

3 A There were some spreadsheets about --
4 what are they about? They talk about the breakdown of
5 our turnover as a company, by IP type, so what
6 proportion of our income comes from Warhammer 40,000,
7 what proportion comes from Warhammer, what proportion
8 comes from hobby products, what proportion comes from
9 specialist games in the Lord of the Rings, that kind
10 of thing. There was a document that showed me the
11 Warhammer 40,000 turnover through Forge World, which
12 essentially is all of it, because that is what Forge
13 World does. What else was there? There was a
14 document which talked about our American business and
15 turnover, that sort of stuff.

16 Q Just for the record, because I believe
17 "turnover" is more of a British phrase, can you
18 describe what you mean by "turnover"?

19 A Revenue.

20 Q Any other documents you reviewed in
21 preparation for today's deposition?

22 A No, not really, no. I asked a bunch of
23 questions of people who hold documents so, for
24 example, I asked Rachel Tong, our Company Secretary,
25 about some of our policies with regard to employee

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1 records and tax records, and how long we keep them for
2 and so on, and what is our statutory obligations. So
3 I have talked to a bunch of senior managers in
4 preparation.

5 Q So who were among this bunch of senior
6 managers you talked with in preparation?

7 A Rachel Tong, Company Secretary. Richard
8 Boyd, B-O-Y-D, who looks after our tax affairs. Ben
9 Fawcett, who as I have said is the manager of our
10 design studio. George Mann, who heads up the
11 publishing business. Tony Cotterell, who heads up
12 Forge World. That is probably it actually.

13 Q Are you licensed to practice law?

14 A No.

15 Q Have you ever been licensed to practice
16 law?

17 A No.

18 Q For the senior managers that you just
19 mentioned, are any of them licensed to practice law?

20 A Not that I am -- I never asked them.
21 They might be, I don't know. I have no idea.

22 Q But as far as you know they are not
23 serving -- working for Games Workshop in the capacity
24 of legal counsel?

25 A They were certainly not working for

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1 Games Workshop in the capacity of legal counsel, no.

2 Q And when you had your discussions with
3 them, were any legal counsel present?

4 A No. I literally asked them about and
5 had actually one or two conversations. Most of it I
6 just dropped them a line saying, like for Rachel, I
7 would be saying: "What are our policies on tax
8 records?"

9 Q Combined, or in the aggregate, how much
10 time did you spend preparing for today's deposition?

11 A Not a huge amount of time, to be honest,
12 although given that I flew all the way to Chicago and
13 then sat around for a couple of days with time on my
14 hands, and then flew home again, that is quite a lot
15 of time to think about things. It depends what you
16 mean by "preparation", to be honest. If you mean
17 sitting on a plane thinking about this, I have never
18 done a deposition before so it has been on my mind for
19 a little while, so I have spent some time thinking
20 about it, that is for sure.

21 Q Let me ask this way. How much time did
22 you spend reviewing documents in preparation for
23 today's deposition?

24 A A few hours. A few hours.

25 Q In preparation for today's deposition,

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1 did you consult the product archive at Games Workshop
2 or review the product archive?

3 A No, I didn't, not specifically for this
4 deposition, no.

5 Q Let's return back to Exhibit 114 and the
6 list. I think we left off right after cogs, and now
7 we are talking about Iron Hands icon.

8 A Yes, the Iron Hands again is another
9 Space Marine Chapter icon, so Space Marines called the
10 Iron Hands, first introduced in the 1987 Rogue Trader
11 book, to my knowledge, and yes, so they are a stylized
12 icon, which again any of our customers or anybody who
13 knows anything about Warhammer 40,000 will recognize
14 the Iron Hands icon.

15 Q Has Games Workshop used the Iron Hands
16 icon as a stand-alone trademark for products sold in
17 the US?

18 A I don't know. I can't remember.
19 Similarly, I think I talked about the Clenched Fist.
20 I do know that when we launched Warhammer 40,000 back
21 in 1987 I am pretty certain there was an Iron Hands
22 t-shirt again with that icon design on it, but again
23 it is a long time ago.

24 Q Does Games Workshop have any records of
25 these t-shirts or possible t-shirts?

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1 A We would have to go and check the
2 product archive is the truth of that, and various
3 people who have been around a long time might still
4 have some of those t-shirts.

5 Q Let's move on to the overlapping/banded
6 armour?

7 A As a trademark, I don't know what that
8 refers to. I do know it is a feature of -- it is an
9 established feature of certain types of Space Marine
10 armour, that is for sure, but as a trademark I am less
11 clear.

12 Q We talked about the wolf, the three wolf
13 entries earlier.

14 A Yes, we did.

15 Q Let's go on to the Raven Wings with
16 blood drop in center.

17 A That will be the Blood Raven Chapter, I
18 imagine, which shows that they -- I imagine that is
19 what it is, because I know that we have got -- that is
20 in the Dawn of War computer games which focus on the
21 Blood Ravens. You gave us that -- where is it -- on
22 one of the exhibits had a whole load of Blood Ravens
23 stuff on, didn't it? There we are. There is your
24 Raven Wings with Blood Drop in Center. If it is dated
25 1987 that shows the Blood Ravens clearly predated Dawn

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1 of War by some time.

2 Q Are you referring -- for the record,
3 what exhibit were you just looking at?

4 A Sorry, yes, of course I can. It was
5 Exhibit 120 and Exhibit 119.

6 Q So the Raven Wings with the Blood Drop
7 in the Center, that is referring --

8 A That is a Raven Wing with Blood Drop in
9 Center, that is for sure, and that is the Blood
10 Ravens.

11 Q And that is what is depicted in Exhibits
12 119 and 120. Again, just for the record, I want to
13 make sure we are matching them.

14 A Okay, yes. So Exhibit 119 is the Blood
15 Ravens Space Marine icons on transfers. It is a Raven
16 Wings with Blood Drop in Center. Now, the interesting
17 thing about the Raven Wing icon, as it happens, is
18 that there is a Chapter of Space Marines in Warhammer
19 40,000 called the Blood Angels, and the common part of
20 their iconography is the blood droop, and they have
21 various offshoot/offspring Chapters of Space Marines,
22 one of which I believe is the Blood Ravens, in fact I
23 know it is, and they also have -- now, let me think
24 about this. Again my lore is not as strong as some of
25 the other guys you have talked to, but anyway there is

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1 a particular grouping of Space Marines who go around
2 on motorbikes, armoured motorbikes, called the Raven
3 Wing, and I am not sure what their symbol is but I
4 don't think it is that one. I am pretty sure that is
5 the Blood Raven symbol.

6 Q Again I want to -- because there is so
7 many different ones, we are talking about this entry
8 on page 5 on Exhibit 114, Raven Wings with Blood Drop
9 in Center. You are saying that icon there is depicted
10 in Exhibit 119 and 120?

11 A A version of it is depicted on Exhibit
12 119 and 120. There are -- if we are talking about the
13 Blood Raven symbol, there will be all sorts of
14 different versions of it created by us and under
15 license by Relic and THQ.

16 Q Can you identify the different versions
17 again, just for completeness for the record, that
18 would relate to this entry on Exhibit 114?

19 A I am not sure I understand the question.
20 Just to be clear, what I am kind of saying is that in
21 the same way as Mickey Mouse has been around for
22 decades but there is lots of different versions of
23 him, so claiming that -- if we were claiming that we
24 owned Mickey Mouse then I am not saying it is just a
25 1987 version, it is all the versions. There has been

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1 various incarnations of the Raven with Blood Drop,
2 depending which artist drew it, it will be slightly --
3 you know, but the Raven Wings with Blood Drop in
4 Center has been part of our Space Marine iconography
5 since 1987.

6 Q Let me ask a different way. All the
7 various versions of Raven Wings with a Blood Drop in
8 the Center, has Games Workshop used each of those
9 versions as a stand-alone trademark for products sold
10 in the US?

11 A I can't swear to the fact that -- you
12 say each of those versions. Some of those may have
13 been and some of them might have appeared for example
14 in a loading screen in a computer game or it might
15 have been in a comic strip. So I can't swear that
16 they have all been used as stand-alone trademarks on
17 products sold in the US.

18 Q My next question is which products have
19 used the Raven wings as stand-alone trademark in the
20 US?

21 A Again, I am not sure but I am trying to
22 imagine the Dawn of War packaging now. Again, I would
23 be estimating or guessing but those would be -- that
24 would be where I would go and look, that is for sure.

25 Q Do you know a specific product from 1987

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1 that used Angels Wings with Blood Drop as a --

2 A That would be -- well, I shouldn't say
3 that. Warhammer 40,000 launched in 1987, Space
4 Marines were introduced in 1987, and so whether it was
5 in the Rogue Trader manual or whether it was on the --
6 it might have been a Chapter symbol on the RTB01 Space
7 Marine box or it might have been in White Dwarf
8 magazine or on White Dwarf magazine. It could have
9 been in any of those places but you know, I am sorry,
10 I can't remember back and picture a specific product.

11 Q Moving to the next page, page 6 of
12 Exhibit 114, the "I" symbol for Inquisition?

13 A Yes.

14 Q What products have Games Workshop used
15 that icon for as a stand-alone trademark for products
16 sold in the US?

17 A There has definitely been a number, you
18 know, we have used the Inquisition symbol, the
19 stylized "I" for years and years and years and years
20 and years. Well, since 1987 in fact. And again in
21 the minds of our customers it is uniquely associated
22 with Warhammer 40,000 and the Inquisition.

23 What is coming to mind is that we did -- I
24 think it was an art book or I can definitely picture
25 at least one product which has the Inquisition "I" as

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1 its center piece on the cover of the book. But yes,
2 like I say, the stylized -- just like the other things
3 we have talked about, the stylized Inquisition "I" has
4 been in use for many many years.

5 Q Can you identify a product from 1987
6 where it was used?

7 A No, I can't remember. I am not saying
8 it was not.

9 Q You mentioned a book.

10 A Yes, I did mention a book.

11 Q Do you know which book?

12 A No, I can't remember the title of it. I
13 can just picture it. I can picture the cover. I am
14 trying to remember whether it was an art book or a
15 background book, but its big cover piece was the
16 Inquisition "I".

17 Q Do you remember when it came out?

18 A No. Within the last -- not very
19 helpful -- within the last 15 years or so.

20 Q Any other products?

21 A There has been many, we have released
22 many products that feature the Inquisition symbol. In
23 fact, we did a range of novels which I believe had the
24 big Inquisitor symbol on the cover, and one of them
25 was called "Inquisitor", funnily enough.

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1 Q Next entry, Scarab Beetles.

2 A Scarab Beetles. Actually, they are part
3 of our Necron iconography. I remember Scarab Beetles.
4 Sorry, what was the question again?

5 Q Same line. Is there a product where --

6 A Right. Again, my feeling is that there
7 will be products that have the stylized Scarab Beetle
8 icon on them, and once again that the unique depiction
9 and association of Scarab Beetles with skeletal
10 android aliens is uniquely associated in the mind of
11 our customers around the world as a symbol of the
12 Necrons in Warhammer 40,000. Can I remember a
13 specific product -- see if I can remember this word
14 for word -- a specific product which uses the scarab
15 as a stand-alone mark of trade in the US? I can't
16 remember, no, I couldn't. I mean, I could identify
17 one if there was a row of them, I would be able to
18 say: "Yes, there you go", but can I remember one, no.

19 Q Let's move on to Spirit Stones?

20 A Yes, same thing really. The Spirit
21 Stones are a key part of the Eldar, who were another
22 alien race in Warhammer 40,000. Spirit Stones are a
23 key part of their iconography and imagery. So again
24 the association of Eldar iconography, the word "Eldar"
25 and "Spirit Stones" speaks to something, uniquely

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1 associates with our customers and identifies that it
2 is an Eldar product in the Warhammer 40,000 universe.
3 Before I answer, Eldar Spirit Stones, okay. I would
4 say the same applies, all of those, the next items.
5 Can I remember a particular product which has --
6 actually which has Eldar either Spirit Stones, Eldar
7 Spirit Stones, I don't know why those are different,
8 and decorative gems on weapons as particular
9 stand-alone trademarks that have been used on products
10 sold in the USA, in specifics, no, I can't, but the
11 Eldar iconography, and it says Eldar iconography
12 symbol "C", that is like a collection of all of those,
13 it refers to all of those icons, those stand-alone
14 icons would certainly be on -- well, I would guess,
15 again, the memory is a wonderful thing for playing
16 tricks on you, I know it is not as accurate as you
17 would like to hope it is, but in my mind the Eldar
18 Codex Army Book that came out, and indeed associated
19 kits and so on that came out in 1991 would have had
20 that iconography and symbols as stand-alone somewhere
21 on the book, would be my memory of it.

22 Q And when you say "somewhere on the book"
23 you mean the --

24 A On the cover, somewhere there would be
25 some Eldar symbols.

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1 Q Just for the record, we are on page six
2 of Exhibit 114. We just finished talking about the
3 last four entries, which were: "Spirit Stone, Eldar
4 iconography/symbols (seer icons, et cetera). Eldar -
5 Spirit Stones", and the last one: "Eldar decorative
6 gems on weapons." Returning back to the one that is
7 the Eldar iconography, can you identify specific Eldar
8 iconography, for the record?

9 A No, I can't remember specific Eldar
10 symbols, if that is what you are asking. That might
11 be on the cover of our 1991 Eldar Codex Army Book.

12 Q For this line of questioning I think
13 there is just one we may have missed. Can you turn to
14 page 4. Do you see towards the bottom there is one
15 that is for wings, eagle wings.

16 A Yes.

17 Q Same question here?

18 A It is an interesting question, isn't it,
19 because "wings", do we claim that we own wings as a
20 unique trademark, no, but the unique association of
21 stylized wings so, for example, the Warhammer 40,000
22 logo has stylized wings on it, and certainly in 1987,
23 when we launched, in fact, again to my memory, the
24 Rogue Trader Warhammer 40,000 Army Book, the logo
25 itself is stylized eagle wings. One of the key icons

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1 of Warhammer 40,000 is the double headed eagle, which
2 we have used since 1987, and in fact it is the big
3 symbols stamped on the side of our headquarters
4 building here in Nottingham. So we certainly have --
5 almost any Imperium, i.e. that is for the good -- I
6 wouldn't describe anybody as good in Warhammer 40,000,
7 but the Space Marines Imperial Guard, typically, any
8 products featuring those characters would have some
9 form of winged icon somewhere on it, even if it is
10 only the Warhammer 40,000 logo.

11 Q Excluding the Warhammer 40,000 logo, and
12 again for the record we need to kind of identify the
13 specific instances of wings that Games Workshop is
14 claiming as trademarks, so what are the other
15 instances of wings? You mentioned the double headed
16 eagle, the Warhammer 40,000 logo, the main logo, what
17 are other examples?

18 A There were loads of them. We talked
19 earlier about the Raven Wings with the Blood Drop,
20 that is the Blood Ravens Chapter, or we talked about
21 the Raven Wing Space Marine Chapter, that that is
22 their unique symbol. Wings is commonly used, you
23 know, we use it a lot, and we use stylized wings in
24 Warhammer 40,000 as identifying icons a lot, as I am
25 sure you have gleaned from talking to the guys who

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1 actually do that work, be it Alan as head of IP or Jes
2 or John in their roles as sculptors and artists.

3 Q For right now, let's exclude the other
4 trademark entries that we discussed earlier, like the
5 Raven Wings or the Blood Angels or things like that.
6 I am just trying to identify what else may fall under
7 this entry for wings on page 4 that have not yet been
8 identified specifically?

9 A Oh, gosh, again I am not --

10 Q Again, we are only focusing on marks
11 that Games Workshop would have used as a stand-alone
12 trademark for products sold in the US.

13 A I am kind of a bit lost at that point
14 because we use wings so much. They are a key part of
15 our Dark Angel iconography, for example, and indeed
16 the Blood Angels use stylized wings. You might guess
17 with the Blood Angel they use angel wings as part of
18 their -- in fact it is Angel Wings with a Blood Drop
19 is their key identifying logo icon that any Blood
20 Angels product would have had that on somewhere.

21 Dark Angels would have had their wing icon
22 on. So yes, any Blood Angels product, any Dark Angel
23 product, any Imperial Warhammer 40,000 products -- I
24 am kind of going round in circles.

25 Q At that point when you are referring to

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1 this list, were you talking about these icons being or
2 logos being used as part of actual product?

3 **A** Yes, again, to the best of my memory.
4 Again, my memory of the Blood Angels Codex has that
5 icon on it.

6 **Q** Are there any instances where you recall
7 separate use of these icons as part of the packaging
8 for specific products?

9 **A** Again, my memory of these things is
10 that -- if by packaging you might mean the cover of a
11 book, then have we used these key icons on book covers
12 and the like, my memory, which may be wrong, tells me
13 yes, we have.

14 **Q** As stand-alone?

15 **A** Rather than as part of a piece of
16 artwork inside a frame, yes, that would be my guess,
17 or my memory going back. You know, we are talking
18 about going back to 1987 here.

19 **Q** But at this point you are not able to
20 identify any additional specific instances and
21 specific products?

22 **A** No.

23 **MR. OH:** This may be a good time now to take a break.

24 **THE VIDEOGRAPHER:** Going off the record. The time is
25 4:00 pm.

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1 (A short break)

2 **THE VIDEOGRAPHER:** This marks the beginning of video
3 tape three. Back on the record. The time is 4:21.

4 **MR. OH:** Do you understand you are still under oath?

5 **A** Yes.

6 **Q** Do you remember before earlier today we
7 were discussing Tau symbols.

8 (Break due to technical difficulties)

9 **THE VIDEOGRAPHER:** Back on the record. The time is
10 4:24.

11 **Q** Do you understand you are still under
12 oath?

13 **A** Yes.

14 **Q** Do you remember earlier today discussing
15 Tau symbols?

16 **A** Yes.

17 **Q** I am handing you what is marked as
18 Exhibit 125, Bates label GW0004878. For the record,
19 it is marked "Highly Confidential AEO". This is a
20 question for opposing counsel, can he consider this
21 nonconfidential?

22 **MS STEVENSON:** Yes.

23 **MR. MOSKIN:** Sorry, what is the exhibit number?

24 **A** 125.

25 (Exhibit 125 marked for identification)

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1 Q Does this refresh your recollection
2 about Tau symbols?

3 A Yes, indeed it does.

4 Q Are the symbols on this page Tau
5 symbols?

6 A They are indeed Tau symbols.

7 Q Earlier today, when we were discussing
8 use of Tau symbols as trademarks on products sold in
9 the US --

10 A Yes.

11 Q -- those symbols would be -- those Tau
12 symbols would be one of these symbols on this page?

13 A Yes, some of these. This is a lot of
14 Tau symbols. They won't all be used on the covers of
15 books or boxes, but to my memory this symbol here is
16 one of the main Tau symbols.

17 Q You are pointing to the one in the upper
18 left-hand corner.

19 A Yes.

20 Q But with respect to symbols being used
21 as trademarks, they will be what are the symbols on
22 this exhibit?

23 A I believe so. I am not saying that --
24 again, from my knowledge of our IP law, I am not
25 saying this is an exclusive or exhaustive list of all

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1 Tau symbols that we have ever used, but it looks like
2 a good representative sample.

3 **Q** Now, turning your attention back to
4 Exhibit 114. Just for the record, I believe in terms
5 of deposition time we are about at four hours now.

6 **A** Yes.

7 **Q** So on the clock the deposition time goes
8 to seven hours and there is three hours remaining.

9 **MR. MOSKIN:** I don't agree with that but go ahead.
10 There is no reason you cannot finish this up in a
11 timely manner.

12 **MR. OH:** Local time is about 4:30, so if we continue
13 on without breaks it is going to be around 7:30. Just
14 let me check that is okay.

15 **MR. MOSKIN:** That is not okay. We told you he needed
16 to be done by six today. You have had more than seven
17 hours with this witness. Frankly, you have spent --
18 the way you have decided to do this as a memory test
19 rather than using specific references, it is up to you
20 but I think you have wasted most of the afternoon
21 already, but it is up to you. Go ahead.

22 **Q** Just wanted to check in terms of
23 schedule, you understand where we are at?

24 **A** What I understand is that I have been
25 all the way over to Chicago for a scheduled deposition

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1 that didn't happen, so I flew there and back. So I
2 was there for -- I made myself available for however
3 many hours that added up to, and I have been here
4 since 9:00 o'clock this morning for a scheduled
5 deposition which didn't start until -- when did we
6 start?

7 **MR. OH:** It was after the Merrett deposition.

8 **MR. MOSKIN:** The Merrett deposition that you could
9 have done yesterday, had you so elected.

10 **MR. OH:** Mr. Moskin --

11 **MR. MOSKIN:** It is true, you have been deliberately
12 wasting time of all of the witnesses. If you think
13 there is a reason we are not upset with the behavior
14 of you and your colleagues -- you have given us
15 nothing but grounds to be extraordinarily angry with
16 the way you have been handling this. There is a total
17 lack of courtesy shown to all the witnesses, and it is
18 obviously continuing.

19 **MR. OH:** Again Mr. Moskin, yesterday Mr. Merrett was
20 not made available for the two hours that was agreed
21 to.

22 **MR. MOSKIN:** It was never agreed to and he was
23 available and he was available all day and all
24 afternoon, as he said this morning, but you decided to
25 waste most of the day on silly questions, asking

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1 Mr. Blanche about the contents of a box on his desk
2 and things like that. So that was your choice, that
3 was not our witness' choice.

4 Q If you can turn to page 3 of Exhibit
5 114, do you see an entry for "Heresy Armour"?

6 A I do.

7 Q Do you see a date associated with that?

8 A I do.

9 Q What is that date?

10 A That date is 1991.

11 Q With respect to this portion of the
12 list, again, before the break we were discussing
13 symbols that Games Workshop may have been using as
14 trademarks, and this portion we are going to be
15 concentrating on these as marks, so in terms of Heresy
16 Armour, I am going to be asking the same set of
17 questions, but now with respect to these as work
18 marks. Has Games Workshop used Heresy Armour as a
19 stand-alone trademark for products sold in the US?

20 A Heresy Armour refers to Space Marines
21 again, and it is Space Marine armour from a particular
22 time period in our proprietary Warhammer 40,000
23 mythology known as the Horus Heresy, hence "Heresy
24 Armour". Have we used that as a trademark? I can't
25 remember. I would say that we have doubtless released

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1 Heresy Armour Space Marines from 1991 onwards, and if
2 presented with a line-up of products I would certainly
3 be able to identify them, but right now I cannot call
4 out a particular product from memory as described.

5 Q I am going to hand you an exhibit that
6 has been marked as 126. It consists of two pages, the
7 first of which is Bates label 2358 and the second one
8 which is Bates labeled 2384. Will you please staple
9 these together so they don't get mixed up.

10 (Exhibit 126 marked for identification)

11 Can you identify the name of this product?

12 A This is Heresy -- sorry, yes, Heresy
13 Armour.

14 Q If you look over at the top left of the
15 page, can you read the full way it is listed?

16 A Yes: "MK V Heresy Armour (Product Code:
17 IA-ISM-I-020)."

18 Q Is there any indication based on this
19 exhibit when this product was first offered for sale?

20 A On this exhibit? Let me look. No, I
21 can't see anything, unless I am missing it.

22 Q Any indication that this product was for
23 sale in 1991?

24 A No, this particular product, no, there
25 is not.

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1 Q For the record, the order says "MK V
2 Heresy Armour." I think previously did you read that
3 as MK V Heresy Armour?

4 A Yes.

5 Q Just for our record, the way it is
6 typed, it appears as "MK" and then "V" and then
7 "Heresy Armour". So with respect to this, though, MK
8 V Heresy Armour, does that describe what this product
9 is?

10 A What do you mean by describe? I mean,
11 you keep asking does this describe it and I keep
12 saying the title of the product is "Heresy Armour".
13 That is what this is.

14 Q So the title of this product is "MK V
15 Heresy Armour"?

16 A Yes.

17 Q Are there any other products you can
18 recall where Heresy Armour was used as the word --
19 strike that. I will rephrase.

20 Are there any other instances you can recall
21 where the word "MK Heresy Armour" was used as a
22 trademark for a product sold in the US?

23 A No, I can't remember, no.

24 Q Turning your attention back to Exhibit
25 114, still on page 3, towards the bottom, you see an

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1 entry for "Jet Bike"?

2 A Yes.

3 Q And when was -- strike that. What is
4 the listed date of first use in US commerce based on
5 that page?

6 A 1987.

7 Q What products from 1987 did Games
8 Workshop use the word mark "Jet Bike"?

9 A On Space Marine, again, to the best of
10 my knowledge and memory, and 1987 is a long long time
11 ago, we launched Warhammer 40,000 in 1987, and one of
12 the key characters or key character sets in Warhammer
13 40,000 was the Space Marines, as we have discussed,
14 and Space Marine Jet Bikes are a well established part
15 of a mythos, and my guess is that if it has got 1987
16 there that we probably released a Space Marine Jet
17 Bike model in 1987, and certainly Space Marines have
18 had Jet Bikes since, Eldar Jet Bikes actually.

19 Q Can you explain the difference?

20 A Yes, sorry. Space Marines go around on
21 armoured motorbikes, I talked about those earlier,
22 whereas the Eldar, who are a different faction in the
23 Warhammer 40,000 universe, they go around on Jet
24 Bikes, so anti-gravity hovering vehicles.

25 Q Can you look up towards the top end of

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1 the exhibit on page 3, 114, can you see an entry for
2 an "Eldar Jet Bike"?

3 A I do.

4 Q For the record, in the exhibit, "Jet"
5 and "Bike" are two separate words?

6 A Yes.

7 Q Is that correct?

8 A That will be -- Jet Bike, do you know
9 what, I am not sure whether we use "Jet Bike" as one
10 word or two words.

11 Q Do you see the date?

12 A Yes, 1988.

13 Q And down below where it says "Jet Bike"
14 it says "1987"?

15 A It does.

16 Q What explains the discrepancy between
17 the two dates?

18 A Because Jet Bikes are a feature in the
19 Warhammer 40,000 universe. They are perhaps used most
20 exclusively or most often should I say by the Eldar,
21 they are a feature of the Eldar, but Jet Bikes as a
22 means of transport as a means of a kit that you could
23 stick a Space Marine on or an Imperial Guard or
24 whatever else, could well be a 1987 product, in the
25 same way that the Tau or Space Marines and the

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1 Imperial Guard all have tanks, you know. It is a type
2 of vehicle.

3 Q So what products in 1987 did Games
4 Workshop use the word mark "Jet Bike" as a trademark
5 for products sold in the US?

6 A We would have used it on a Jet Bike
7 model.

8 Q Did Games Workshop actually sell such a
9 Jet Bike model in the US in 1987?

10 A I can't remember. 1987 is a long long
11 time ago. I could certainly find out.

12 Q Then with respect to the Eldar Jet Bike,
13 did Games Workshop sell a product in the US in 1988
14 using the word mark "Eldar Jet Bike"?

15 A I am pretty certain the answer to that
16 is yes. The man who would absolutely have been able
17 to tell you would be Jes Goodwin, who I believe is the
18 guy that sculpted it, but I am pretty certain that
19 Eldar Jet Bikes have been part of the Eldar range
20 since time immemorial, since we released the Eldar.
21 So if the first one came out in 1988 or the first
22 iteration of it, I would not be at all surprised if
23 when we released it we would have released it in all
24 of our markets, and certainly including the USA.

25 Q Do you know if it was actually sold in

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1 the USA in 1987 or 88?

2 A Do I know that it was actually sold in
3 the USA? It was certainly offered. If the Eldar Jet
4 Bike model was released in 1988, it would certainly
5 have been offered for sale in the USA, and I am pretty
6 certain that some people will have bought them.

7 Q But sitting here today you don't know
8 for sure whether it was offered for sale at that time?

9 A No, I don't. The Eldar were one of
10 the -- well, let's think about that. The Eldar are
11 one of the most long established Warhammer 40,000
12 races, factions if you will, and they have been long
13 associated with Eldar Jet Bikes. So if the Eldar were
14 released in 1988 there was more than likely a Jet Bike
15 model with that release, and it would have been sold
16 globally. So the chances are that yes, if there was
17 an Eldar Jet Bike it would have been sold in the USA.

18 Q I am handing you what is marked as
19 Exhibit 127, which consists of three pages. The first
20 page is GW0004560. For the record, it is designated
21 as "Highly Confidential AEO". The second page of
22 GW0002350 and the last page GW00024448. Again if you
23 can staple these together that would be most helpful.

24 (Exhibit 127 marked for identification)

25 For the record, the first page appears to be

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1 a products box cut out. Is that the correct way --

2 A Yes, cutter guide.

3 Q The second page is a printout from the
4 Games Workshop website with an Eldar Jet Bike, that is
5 the page, and the last one is a printout from the
6 website. Based on this exhibit, can you determine the
7 date where this product was released?

8 A It will be down in the small -- I
9 imagine there will be a -- this one is 2009.

10 Q Which page are you referring to if you
11 look at the --

12 A I am looking at the copyright statement
13 on the front page, which says: "Copyright Games
14 Workshop Limited." I think, it is tiny, but 2009, and
15 it says blah blah blah -- there is all sorts of stuff
16 in there, and images, we should read the registered
17 trademark, and it is the little -- I think I might be
18 wrong here because it is so tiny. I read the circle
19 R: "Trademark and/or copyright Games Workshop Limited
20 2000 to 2009, variably registered in the UK and other
21 countries around the world. All rights reserved."

22 By the way, this is not the first Eldar Jet
23 Bike model, not by a long chalk.

24 Q Again, was this particular Eldar Jet
25 Bike sold in or was this particular Eldar Jet Bike

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1 product sold in the US?

2 A Yes, indeed. I mean, especially given
3 that it says "North America", it has got our American
4 address on it, so yes, this product was sold in
5 America.

6 Q Again, for clarification, for
7 distinction between being offered for sale and
8 actually sold, do you know if this product was
9 actually sold?

10 A Do I know if it was actually -- do I
11 know if customers bought this? Yes, they did.

12 Q And how do you know that?

13 A How do I know that? Because we shipped
14 a load of them out there, they went into our stores,
15 and we don't have that high a level of theft for it
16 all to just vanish, we didn't set it on fire or throw
17 it in a skip, and our stores make money selling lots
18 of Warhammer 40,000 products. The Eldar are popular.
19 All of those things lead me to say yes, we sold this,
20 by your definition, we certainly sold lots of Eldar
21 Jet Bikes in America, and like I say this is not the
22 earliest Eldar Jet Bike model that we have sold in
23 America either.

24 Q Again, for this particular one, how do
25 you know this particular one was shipped to the US?

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1 **A** I don't work in shipping and I don't
2 work in manufacturing, but I do know that we ship our
3 products to all of our subsidiary companies, I know
4 that, and I know that the product that -- where
5 something is sold we need to have the address of where
6 people can if they want to send returns to, and the
7 address of our American business is clearly on the
8 box. So just like any other Warhammer 40,000 product
9 I am convinced that we sold these products in America.

10 **Q** But your answer is not based on actual
11 sales records?

12 **A** No, my answer is not based on looking at
13 a spreadsheet that says SKU number whatever it is is
14 the sales number, from memory, that is for sure.

15 **Q** What is the title of this product?

16 **A** What is the title of it? "Eldar Jet
17 Bike".

18 **Q** Turning your attention back to page 3 of
19 Exhibit 114, do you see at the bottom where it says
20 "Jump Pack".

21 **A** I do.

22 **Q** Again, we are going to go through a
23 series of questions. Has Games Workshop used the word
24 mark "Jump Pack" as a trademark for products sold in
25 the US?

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1 **A** Jump Packs again are part of our Space
2 Marine iconography and storyline, Space Marines
3 wearing Jump Packs so they can essentially fly into
4 combat, and that has been the way of things since we
5 launched Warhammer 40,000 back in 1987. Have we sold
6 Space Marine Jump Packs? Yes, I believe we have. Can
7 I remember a specific product from 1987 or onwards?
8 No. Given that I believe we have released Space
9 Marine Jump Pack models, would we have sold them in
10 the USA? Yes. Would we have offered them for sale in
11 the USA? Yes. Do I believe they were sold in the
12 USA? Yes. Do I have evidence from a sales
13 spreadsheet or something similar going back to 1987
14 proving that we sold however many Space Marine Jump
15 Packs in the USA? No, I don't have that to hand.

16 **Q** With respect to the phrase "Jump Pack",
17 is that used as a -- does Games Workshop use that as a
18 trademark for a product or as the name or the title of
19 the actual product?

20 **MR. MOSKIN:** Object to the form.

21 **A** I don't understand what you mean.

22 **Q** I will hand you Exhibit number 128,
23 Bates label GW0002340.

24 (Exhibit 128 marked for identification).

25 What is the title of the product in this

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1 exhibit?

2 A The title of this product is "Space
3 Marine Chaplain with Jump Pack".

4 Q In this instance is "Jump Pack" being
5 used as a stand-alone phrase?

6 A No, it is not.

7 Q In this instance is it being used as --
8 is Games Workshop contending that "Jump Pack" is being
9 used as a trademark for product sold in the US?

10 A In as much as the product -- "Jump
11 Pack", I don't think this is the only product we have
12 ever made with the word "Jump Pack" in it. There may
13 well be product that we have released which are just
14 Jump Packs, and "Jump Pack" is a well established part
15 of our Warhammer 40,000 mythology. So in this case,
16 "Space Marine Chaplain with Jump Pack", it is quite a
17 long title but I would say that we are certainly
18 saying we are trading on the product called Space
19 Marine Chaplain with Jump Pack, and therefore "Jump
20 Pack" is part of that trading title, mark, call it
21 what you will.

22 Q I am handing you what is marked as
23 Exhibit 129, Bates label GW0002371.

24 (Exhibit 129 marked for identification)

25 What is the title of this product?

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1 A These are Jump Packs and they are
2 specifically Space Marine Jump Packs.

3 Q In this instance is "Jump Packs" being
4 used as a stand-alone phrase?

5 A Can you remind me again what you mean by
6 "stand-alone phrase"?

7 Q "Jump Pack", just appearing just like
8 that, without association or connection with any other
9 terms or phrases?

10 A In which case, no, these are associated
11 with Space Marines. These are Space Marine Jump
12 Packs.

13 Q And in this particular exhibit "Jump
14 Packs" is plural, correct?

15 A Yes.

16 Q Can you turn to Exhibit 114, page 4. Do
17 you see a listing for "Lightning Claw"?

18 A Yes, Lightning Claw, I do.

19 Q Again, I am going to be asking the
20 question has Games Workshop used the word mark
21 Lightning Claw as a trademark for products sold in the
22 US?

23 A Again, I will say that Lightning Claw is
24 a well established iconic mark or descriptor of
25 Warhammer 40,000 Space Marines, their imagery and

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1 iconography. It is a particular weapon used by Space
2 Marines. Have we sold Space Marines with Lightning
3 Claws? Yes, we have. In the US? Yes.

4 Q What is the basis --

5 A The basis is exactly what I said about
6 the Eldar Jet Bike, that we released globally, that we
7 have released products, Space Marine products with
8 Lightning Claws, we will have released them globally
9 since 1989. Do I have that on the basis of an SKU
10 based spreadsheet or whatever, no, I don't.

11 Q And has Games Workshop sold products
12 using Lightning Claw as a trademark in the US in 1989?

13 A I can't remember.

14 Q I am handing you what is marked as
15 Exhibit 130.

16 (Exhibit 130 marked for identification)

17 For the record, it is two pages, first one
18 is GW0005262 through 63.

19 A That is not what you have just given me.

20 MR. MOSKIN: You said 5462 to 5463? No, I have that.
21 I think you said 52 something.

22 MR. OH: I will say it again. It is 5463 to -- 5462
23 to 5463. Both pages are marked as "Highly
24 Confidential AEO".

25 MR. MOSKIN: They are not confidential.

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1 Q What is the title of this product?

2 A The title of this product is Terminator
3 Lightning Claws.

4 Q And in this case "Lightning Claws" is
5 plural?

6 A Yes.

7 Q When was it sold?

8 A This was sold -- this particular blister
9 pack is dated -- is it 2009? Does it say on the back
10 there? Yes, this particular blister pack is dated
11 2009, and as it says: "All associated marks, logos,
12 devices, names, characters, races, race insignia,
13 vehicles, locations, units, weapons illustrations and
14 images from the Warhammer and Warhammer 40,000
15 universes are either circle RTM and/or copyright
16 circle Games Workshop Limited 2000 to 2009."

17 Q Is the term "Lightning Claw" in singular
18 used as a stand-alone phrase on this package?

19 A On this package, no, it is not.

20 Q I am handing you what has been marked as
21 Exhibit 131, GW0002381.

22 (Exhibit 131 marked for identification)

23 What is the title of this product?

24 A "Space Marine Veteran with Lightning
25 Claws."

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1 Q And is the phrase "Lightning Claw" in
2 the singular used as a stand-alone phrase?

3 A No.

4 Q I will turn your attention to Exhibit
5 114, and it is going to be on page 4. Do you see the
6 entry that says "MK II Armour"?

7 A Yes, I do.

8 Q And if we are reading it just normally,
9 how would you pronounce that?

10 A Mark II Armour.

11 Q Has Games Workshop sold products in the
12 US using the word mark -- and I am going to spell the
13 first portion here: "MK II Armour" in 1991?

14 A Quite probably. If it was listed there
15 then there probably was a product Mark II Space Marine
16 Armour 1991.

17 Q And you use the words "quite probably"?

18 A Yes.

19 Q Why did you use "quite probably"?

20 A Because we have released thousands of
21 product over the years and, as I have said, I am not
22 the specialist in IP law, you have had plenty of those
23 to talk to. You are talking about a specific product
24 from 20 years or so ago, so that is why I say "quite
25 probably".

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1 Q I am handing you an exhibit marked 132.

2 It is Bates label GW0002383.

3 (Exhibit 132 marked for identification).

4 What is the title of this product?

5 A This is Mark -- this is MK -- I will say
6 it as it is supposed to be said: "Mark II Crusade
7 Armour (Product Code: IA-ISM-1-017)".

8 Q Can you please turn your attention to
9 Exhibit 114 on page 4. You will see an entry for -- I
10 will read it for the court reporter "MK V armour" or
11 Mark V Armour?

12 A Yes, I can, yes.

13 Q Did Games Workshop sell products in the
14 US in 1991 using the word mark "MK V Armour", as it is
15 spelled here?

16 A Again, the same answer as before, which
17 is probably in as much as Space Marine armour has
18 various marks, and it is part of the history, and
19 again my memory going back to 1991, I can remember a
20 picture in our catalog and in White Dwarf magazine
21 where we did sell different Mark I, Mark II, Mark III,
22 Mark IV, Mark V armour models. Hence I say
23 "probably". In terms of have we, I am not sure
24 whether that is 1991, but it was a long time ago, and
25 again, given that we are a global company, we would

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1 certainly have offered product for sale in the US.

2 Can I swear that a customer bought it in the US from
3 data on a sales sheet, no, I can't. Hence I say
4 "probably".

5 Q Can you turn back to a few exhibits ago.
6 I believe there was one -- let me have a look. Can
7 you please refer to Exhibit 126. What is the title of
8 that product?

9 A "MK V Heresy Armour (Product Code:
10 IA-ISM-I-020)."

11 Q Please return to Exhibit 114. On page
12 4, do you see a listing for "Predator"?

13 A Yes, I do.

14 Q And has Games Workshop used "Predator"
15 as a word mark on -- strike that. I will rephrase.
16 Has Games Workshop used the word mark "Predator" as a
17 trademark on products sold in the US in 1989?

18 A I will say yes, with a very fair degree
19 of certainty on that one, because I can kind of
20 picture the box cover. The Predator tank is a vehicle
21 used by Space Marines. It is a version of the vehicle
22 below it that you will probably ask me about in some
23 painful detail in a moment, which is called the Rhino.
24 We brought out a plastic kit called the Rhino, which
25 is an armoured transport kit for Space Marines, in

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1 1988, following the release of Warhammer 40,000. The
2 Predator is a version of that plastic kit with a
3 turreted gun on top of it. I can, in my mind at
4 least, as we said earlier, memory plays tricks,
5 certainly over a period of when you go back as far as
6 87 and 89, but I can in my mind's eye at least picture
7 the boxes for those products.

8 Again, given that we were a global company,
9 we had an American office, we had an American sales
10 business, we launched Warhammer 40,000 over there, did
11 we offer Predators and Rhinos for sale, yes, we did.
12 Do I know that from a spreadsheet? Actually, no. The
13 next bit is do I know that we have sold any? From
14 spreadsheet data, no, I don't have that information
15 going back to 1989 and 1988 respectively.

16 Q I am handing you what is marked as
17 Exhibit 133, Bates label GW0002386.

18 (Exhibit 133 marked for identification)

19 Is this the product you were referring to or
20 a version of the product you were referring to?

21 A This is not the product I was referring
22 to. It is an iteration of that product, yes.

23 Q What is the title of this product?

24 A The title of this product is Space
25 Marine -- well, it is a Predator Space Marine, Space

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1 Marine Predator. It is in the same way as, you know,
2 if you have in World War II the Germans had various
3 tanks called Tigers, Panthers and the like, and you
4 refer to them in model kits as it is a German Tiger
5 Tank or a Panther Tank, and as the text says the
6 Predator is the main battle tank of the Space Marines.
7 It is called a Predator.

8 Q What is the title of the product?

9 A The title of the product, I can't see
10 the packaging here. The label on this web page says
11 "Space Marine Predator". I don't know whether you
12 have got a printout of the actual box set. It looks
13 like there is a little picture of it there. So the
14 label on this page and indeed on the other pages that
15 we have looked at all day don't necessarily give the
16 same, the actual product title. It may, you know,
17 without seeing the box sets, I couldn't be 100 percent
18 sure. I do know that the text describes it as a
19 Predator several times.

20 Q If you look back to Exhibit 114, on page
21 4, do you see an entry for "Rhino"?

22 A Indeed, I do.

23 Q And it is going to be the same set of
24 questions.

25 A Yes, and I answered, I specifically

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1 talked about the Rhino a moment ago. Would you like
2 me to go through it again?

3 Q Yes.

4 A In that case you go through the
5 questions again.

6 Q So, did Games Workshop sell -- strike
7 that. I will restart.

8 Did Games Workshop use the word mark "Rhino"
9 on products sold in the US as a trademark in 1988?

10 A Again, to the best of my knowledge, yes,
11 we did.

12 Q What is the basis?

13 A The basis of that is that we launched
14 Warhammer 40,000, the game, in 1987, and one of the
15 key armies in Warhammer 40,000 is the Space Marines
16 and in 1988, I believe, it was certainly there or
17 thereabouts, it is a long time ago, we released a
18 plastic kit as the armoured personnel carrier for
19 Space Marines. That plastic kit was called the Rhino,
20 and, as I said, the Predator is a turreted version of
21 the Rhino, and that was released in 1988.

22 Q Did Games Workshop actually sell the
23 product you are describing in 1988?

24 A Yes.

25 Q In the US?

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1 A To the best of my knowledge, yes.

2 Q And the basis of your answer?

3 A The basis of my answer is that Games
4 Workshop is a company that sells its products
5 worldwide. We have a company based in America, and
6 when we offer the product for sale we offer it for
7 sale through all our countries. So the Rhino would
8 have been offered for sale in 1988, through our
9 American subsidiary.

10 Q And how does Games Workshop know it was
11 actually sold in the US in 1988?

12 A If you are saying do I have a
13 spreadsheet with SKU numbers and stockholding data and
14 sales figures dating back to 1988, specifically for
15 the Rhino armoured vehicle, I don't. I am basing my
16 assertion that we sold Rhinos as model kits in America
17 on what I said earlier, that Games Workshop is a
18 global company, we advertise or we put our products
19 into our own magazine, White Dwarf, and if we are
20 going to sell a Space Marine kit we sell it
21 everywhere, and that has always been the case.

22 Q I am handing you what has been marked as
23 Exhibit 134, Bates labeled GW0002387.

24 (Exhibit 134 marked for identification.)

25 What is the title of this product?

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1 **A** The label on this web page that we have
2 printed out says "Space Marine Rhino", but we cannot
3 actually see, there is no picture. It comes in a box,
4 so without seeing the actual cover of the box I
5 couldn't tell you what the title of the product is. I
6 can tell you that the label on the web page is "Space
7 Marine Rhino" and that it is referred to in the text
8 as a Rhino, singular. Rhino armoured troop carriers
9 are the mainstay of every Space Marine Chapter's
10 vehicle pool. The Rhino allows the Space Marine to
11 swiftly redeploy. This box set contains one -- if you
12 want to know -- one multipart Space Marine Rhino. So,
13 again, I don't have a copy of the box to look at to
14 tell me what the actual product title is.

15 **Q** Returning back to Exhibit 114, on page
16 4, do you see an entry for "Scorpion"?

17 **A** I do.

18 **Q** Just for clarification, does Games
19 Workshop use the term "Scorpion" in isolation as a
20 trademark on its product?

21 **A** Actually, do you know, I don't think we
22 do. I think we use "Striking Scorpion".

23 **Q** Turning back to Exhibit 114, page 4, do
24 you see an entry for "Storm Shield"?

25 **A** I do, yes.

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1 **Q** Did Games Workshop sell products in the
2 US using the word mark "Storm Shield" as a trademark
3 in 1989?

4 **A** Again, to the best of my knowledge, yes.
5 1989 is a long time ago, but yes, Storm Shields have
6 been a staple, if you will, in the Warhammer 40,000 IP
7 for a long long time.

8 **Q** So which products?

9 **A** Sorry, which products?

10 **Q** Can you identify the products where it
11 was used?

12 **A** Again, going back to 1989, I can't
13 remember a specific, what the specific product that
14 was titled Storm Shield was. I wouldn't be surprised
15 if Forge World or indeed if Games Workshop have
16 released blister packs of Storm Shields then and
17 since, and we certainly sell models armed with Storm
18 Shields, Terminator Space Marines normally.

19 **Q** And for those products is Storm Shield
20 again here in singular used in isolation on such
21 products?

22 **A** Sorry, say that again?

23 **Q** So is the phrase "Storm Shield", again
24 on the exhibit it is written in the singular, so is
25 "Storm Shield" used in isolation as a trademark on

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1 Games Workshop's products?

2 A It may have been. I don't know.

3 Incidentally, just going back, we have released -- I
4 don't think they are necessarily specific Warhammer
5 40,000 models but we have released models of Scorpions
6 that obviously we have called Scorpions in the past,
7 just going back to that one.

8 Q But they are not Warhammer 40,000?

9 A To the best of my knowledge, no, but you
10 asked have we used "Scorpions" as a mark, and yes we
11 have sold various Scorpion models. I think the name
12 Scorpion is normally associated with Eldar Striking
13 Scorpions and the like.

14 Q But with respect to 40K products --

15 A Okay, with respect to 40K products,
16 "Scorpion" is typically associated with the Eldar, to
17 be honest, in terms of their Striking Scorpion troops
18 or perhaps some vehicles.

19 Q Then returning back to Storm Shield, I
20 am handing you what is marked as Exhibit 135,
21 GW0002396.

22 (Exhibit 135 marked for identification)

23 Can you identify the title of this product?

24 A Yes, this is Black Templars Terminator
25 Storm Shields. That is the label on this web page.

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1 As I say, I don't necessarily know that is the actual
2 name of the product from this exhibit. Again, in the
3 bit underneath there, what is it, the product is
4 actually: "Five Resin Storm Shields.

5 Q Again, turning back to Exhibit 114, on
6 page 4, do you see an entry for Soul Drinker?

7 A I do.

8 Q Did Games Workshop sell a product in the
9 US using the word mark "Soul Drinker" as a trademark
10 for that product in 2002?

11 A I am trying to date now. Again, Soul
12 Drinkers are a Chapter of Space Marines from the
13 Warhammer 40,000 intellectual property. What I am
14 trying to think about in terms of products is we did
15 release a series of Soul Drinker novels, which were
16 certainly sold in America, because we have
17 distribution through Simon and Schuster into American
18 book stores.

19 Q When you say "a series", when was the
20 first?

21 A That is what I was trying to remember.
22 2002, that sounds about right to be honest. 2002.

23 Q Do you remember the name of these books?

24 A No, I don't. In fact, I suspect that
25 the first novel in the series may have just been

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1 called "Soul Drinker" or "Soul Drinkers".

2 Q I am handing you what is marked as
3 Exhibit 136.

4 (Exhibit 136 marked for identification)

5 The first -- the Bates label exhibit is
6 GW00000004. It appears to be a title page or a credit
7 page for a book. Does this help you refresh your
8 recollection on what the first book was called?

9 A It looks like it was called "Soul
10 Drinker".

11 Q And when was it released?

12 A In 2002.

13 Q And then you said there was a series?

14 A Yes.

15 Q Can you describe what you mean by "a
16 series"?

17 A The page you have given me here at the
18 top says "Soul Drinkers Omnibus", so it is a
19 collection. This is the page from a collection of
20 three novels that are all about the Soul Drinkers
21 Space Marines. The first novel in the series was
22 called Soul Drinker, the second was called "The
23 Bleeding Challis" and the third was called "Crimson
24 Tears".

25 Q And what the title of this particular

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1 book?

2 A This is the title page for -- that this
3 is?

4 Q Yes.

5 A That particular book was called the
6 "Soul Drinkers Omnibus".

7 Q So the title of that book was the "Soul
8 Drinkers Omnibus"?

9 A Yes.

10 Q Has Games Workshop released any
11 subsequent books related to Soul Drinker?

12 A Actually, I am not sure whether the
13 author might have either just written or is about to
14 do another one. Also, I couldn't say whether we have
15 released any other Soul Drinker products. Probably
16 not. But yes, the Soul Drinker product I was thinking
17 about was the 2002 book by that title.

18 Q If you could turn back to Exhibit 114,
19 and if you go to page 4, do you see an entry for
20 "Tactical"?

21 A I do.

22 Q Did Games Workshop use the word phrase
23 "Tactical" as a trademark for products sold in the US
24 in 1989?

25 A You know what, I think "Tactical" is one

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1 of those general words. "Tactical", did we ever sell
2 a product called "Tactical", no. We do Tactical Space
3 Marines, Tactical Squads. It is a key part of the
4 make-up of our game, and how we describe and label
5 particular units of troops and their functions. So
6 Tactical Space Marines is a key phrase, I suppose you
7 would call it, but "Tactical" as a -- it is a word.

8 Q So in this lawsuit is Games Workshop
9 contending that the word phrase "Tactical" is a
10 trademark at issue or that Chapterhouse has infringed
11 Games Workshop's copyright to the word?

12 A It will be once again the unique
13 association of the elements that are at issue. So it
14 will be the association of the word "Tactical" with
15 the word "Space Marine", with particular armour,
16 weapon combinations, and that will be at issue, not
17 the word in isolation, "Tactical."

18 Q For clarification on the record, the
19 word phrase "Tactical" in isolation, Games Workshop is
20 not claiming that it is --

21 A No.

22 Q Returning back to Exhibit 114, if you go
23 to page 2, do you see the phrase or the mark Aquila,
24 A-Q-U-I-L-A?

25 A Yes.

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1 Q Is Games Workshop contending that it
2 used "Aquila" as a trademark for products sold in the
3 US since 1987?

4 A The Aquila is a symbol. We have talked
5 about some things that are words and some things that
6 are symbols, and Aquila is one of those that has
7 actually been referred to as both. The Aquila is the
8 40K, the Warhammer 40,000 Imperial double headed
9 eagle, that icon that we have used as a key identifier
10 since 1987, that is the Aquila, and it is referred
11 to -- when we use it we use it as that symbol, and we
12 may refer to it in novels or texts or whatever, and we
13 talk about the Aquila.

14 Q Let's focus just on the word "Aquila".
15 Does Games Workshop -- strike that. I will start
16 over.

17 For the word "Aquila", has Games Workshop
18 used that word as a trademark on products sold in the
19 US since 1987?

20 A Honestly, I don't know. I don't
21 remember. I would imagine since 1987, that is a long
22 time and a lot of products. Are we likely to have
23 released anything that said "Aquila" on it, quite
24 possibly. Have we used things with the "Aquila" logo
25 on, absolutely certainly. Have those been sold in the

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1 US, yes. What is my basis for -- you ask the
2 questions.

3 Q When you are saying have they been sold,
4 you are referring at that point then to the logo, not
5 necessarily the word?

6 A I am saying that since -- I am not
7 saying that at all. I am saying that since 1987 to
8 the present day we have released many, many products.
9 Aquila is a well known part of the Warhammer 40,000
10 mythos. So have we released a product since 1987
11 which might have been called Aquila or had the name
12 "Aquila" as part of or either stand-alone or as part
13 of the trademark, quite possibly. I can say with
14 certainty that we have sold products that used the
15 Aquila icon as a mark.

16 Q Turning back to Exhibit 114, on page 2,
17 do you see an entry for "Black Templars"?

18 A Yes.

19 Q And has Games Workshop used Black
20 Templars as a trademark for products sold in the US
21 since 1993?

22 A I very much believe so, yes. Again
23 Black Templars are one of the famous Chapters of Space
24 Marines in the Warhammer 40,000 mythology, and we sell
25 Black Templars products.

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1 Q What products were sold in 1993 using
2 the word mark "Black Templars" in the US?

3 A Again, I can't swear to the date. 1993
4 sounds about right. Black Templars, we would have
5 released Space Marine models called Black Templars.

6 Q What specific products were called Black
7 Templars?

8 A Specific Black Templar models of Space
9 Marines that were Black Templar Space Marines that we
10 would have released.

11 Q When were those released in the US?

12 A From at least as early as 1993,
13 according to this list.

14 Q So the basis of your answer is just
15 based on Exhibit 114?

16 A No, it is not. The basis for my answer
17 is again -- I have said I am not an expert in our lore
18 or in our story telling and background, but I do know
19 that Black Templars are one of the Space Marine
20 Chapters, that they have been around for a long time,
21 that we will have made models and sold models. So
22 people can collect Black Templars armies, and they
23 have been around for a long time. So 1993, well, that
24 is quite a long time ago.

25 Q But currently there is not a specific

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1 product you have in mind?

2 A No.

3 Q I am handing you what is marked as

4 Exhibit 137. It is Bates label GW0002327.

5 (Exhibit 137 marked for identification).

6 What is the title of this product?

7 A "Black Templars".

8 Q Is that the full title of this?

9 A Yes, that is the title of this product.

10 Q What type of product is this?

11 A It is an Army Book for -- I think that

12 is what it is, yes. It is an Army Book for the

13 Warhammer 40,000 game.

14 Q So it is the title of this particular

15 book?

16 A Yes, it is called -- this product is

17 called "Black Templars", yes.

18 Q I am handing you what is marked as

19 Exhibit 138, Bates label page GW0002328.

20 (Exhibit 138 marked for identification)

21 What is the title of this product?

22 A That is harder to say, isn't it, because

23 I can't actually -- the label on this web page is

24 "Black Templars Sword Brethren Squad".

25 Q Returning back to Exhibit 114, page 2,

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1 do you see an entry for Blood Angels?

2 A I do.

3 Q Has Games Workshop sold a product in the
4 US since 1997 -- strike that. Let me rephrase.

5 Has Games Workshop sold products in the US
6 since 1997 using the word phrase "Blood Angels" as a
7 trademark?

8 A Yes.

9 Q What products were sold in 1997 using
10 that mark in the US?

11 A Specifically in 97, actually, I am
12 convinced Blood Angels go back way before 97, but that
13 is another thing. 97 is a long time ago in any case.
14 Blood Angels, similarly to Black Templars, we will
15 have released a Blood Angels Army Book and we will
16 have released Blood Angels models, so that our
17 customers in America can collect Blood Angels armies
18 of miniatures.

19 Q With respect to -- because you mentioned
20 books and other products, the models, with respect to
21 the models, without seeing the actual box itself,
22 would we be able to see how the phrase "Blood Angels"
23 was used?

24 A On the models, yes, it would have
25 been -- I would have -- sorry, without seeing the box?

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1 Q How would we know how the phrase "Blood
2 Angels" was used with respect to being a trademark?
3 Could we determine that without seeing the product
4 packaging?

5 A Could you determine how Blood Angels is
6 used as a trademark without seeing the packaging? I
7 really don't understand that question, sorry.

8 Q What is the best way to determine how
9 the word "Blood Angels" was used with respect to
10 products sold in 1997, related to a trademark called
11 "Blood Angels"?

12 A Sorry, say that again? I want to get
13 this right. I am not with you at all at the moment.

14 Q I will strike the question. Let me
15 think of a better way to phrase it.

16 A Okay.

17 Q Going back to 1997, what products were
18 sold using Blood Angels as a trademark in the US?

19 A Again, I am saying that I can't say 100
20 percent for sure these are all 1997, but certainly
21 around that time and onwards we sold Blood Angels
22 books where the mark of the title is "Blood Angels".

23 Q You mean title of the book is "Blood
24 Angels"?

25 A The trademark, "Blood Angels".

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1 Q With respect to the book, what was the
2 book's name?

3 A "Blood Angels", and we would have also
4 sold a lot of Blood Angels models specifically called
5 Blood Angels.

6 Q And when you say "specifically called
7 Blood Angels", do you have a specific product in mind?

8 A No, I don't. It is just the blister
9 packs and what have you would clearly identify
10 themselves as Blood Angels Space Marines or Blood
11 Angels whatever it might have been, Blood Angels
12 models.

13 Q I am giving you what is marked as
14 Exhibit 139, Bates label GW0002330.

15 (Exhibit 139 marked for identification)

16 What is the title of the product here?

17 A Again, I have not got a copy.
18 Unfortunately, I am not looking at a photo of the
19 actual product. I am looking at a listing on a
20 website, and the listing on website uses the word
21 "Blood Angels Battle Force", which in a way is the
22 listing. I don't know about the actual -- without
23 seeing the product, it uses effectively two
24 trademarks, one of which is we have a range of
25 products called Battle Forces, and we have lots of

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1 things that use the Blood Angels mark, so
2 unfortunately I have not got a picture of the product
3 box.

4 Q In terms of the product, at least this
5 web page, the phrase is used as "Blood Angels Battle
6 Force". Is that correct?

7 A Yes.

8 Q And those are used in conjunction, not
9 separately, as the title of this web page?

10 A Yes and no, because it is a Battle
11 Force, which is a particular product from Games
12 Workshop. The customer needs to know that, and there
13 is many different Battle Force products, and it is
14 specifically and very singularly Blood Angels TM, if
15 you will, Battle Force. If somebody sold Mickey Mouse
16 Coca Cola, you could not say that is one trademark.
17 It is using two things, isn't it. I am sure the
18 people who own Mickey Mouse would claim ownership to
19 that and assert it as a trademark and Coca Cola would
20 likewise assert their trademark there.

21 Likewise, I don't know if you -- I think
22 that is a good enough example. So Blood Angels is
23 very much a trademark of Games Workshop and Battle
24 Force likewise is a trademark.

25 Q A moment ago you said that because you

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1 could not see the actual product itself you were
2 able -- you could not say how Blood Angels was
3 actually used on the actual product?

4 **A** On the actual product.

5 **Q** So is the best way to determine how the
6 various trademarks listed in Exhibit 114 is used on
7 Games Workshop products is a specimen or a picture of
8 the actual product?

9 **A** That helps. I don't know that that is
10 the only way. Some of these things that we have
11 looked at may well be registered trademarks. Looking
12 at the list of registered trademarks is another way of
13 helping. But for completeness' sake, what I am saying
14 is I am not seeing the complete product here, but what
15 I do know is that Blood Angels is a mark of Games
16 Workshop, and likewise Battle Force is something we
17 use quite a lot as well.

18 **Q** With respect to the unregistered
19 trademarks, to determine how the various identified
20 trademarks in Exhibit 114 is used in connection with
21 the products sold in the US, would you know how the
22 trademarks are actually used in connection with those
23 products, without seeing the product itself?

24 **A** Would I know how they are used?

25 **MR. MOSKIN:** Object to the form. You can answer.

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1 **A** So without seeing a product do I know
2 how a trademark is used on that product? What kind of
3 question is that? So without even seeing a product, I
4 am supposed to -- how would a trademark be used on it?
5 Typically, a trademark is used as a mark of trade,
6 that is it. It is the label of the -- I don't know
7 quite know where we are going with this, without, you
8 know --

9 **Q** Maybe this will help. One of the issues
10 here is Games Workshop has identified a series of
11 unregistered trademarks that appears again in Exhibit
12 114. So to determine how Games Workshop has used a
13 particular unregistered trademark in association with
14 its products, how would we find that out?

15 **A** Oh, well, how would we find that out?
16 Well, yes, looking at products would help, looking at
17 catalogs might help, yes. I guess looking at
18 products, looking at catalogs, looking at our
19 magazine. All of those may help, yes, or should help.

20 **Q** Without access to the products or
21 specimens of products, copy of the products, the
22 catalogs and the magazines, is there a way to
23 determine how Games Workshop used a particular
24 unregistered trademark in connection with one of its
25 products sold in the US?

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1 **A** Sorry, without any access to any Games
2 Workshop products, let's say, and any catalogs or what
3 have you, is there a way of determining how we use --
4 again, I really don't understand. I am trying to
5 think. What do you mean by "a way of determining"? I
6 think that is the bit, I am just not quite sure what
7 you are asking.

8 **Q** Could someone even know whether Games
9 Workshop was using that identified word as an actual
10 trademark?

11 **A** So, for example, if I have never ever
12 heard of Coca Cola, drank it, seen it on telly or
13 anywhere, and I come up with something and call it
14 "Coca Cola" -- well, no, forget all that. It is like
15 just because there is a -- if I have not heard of a
16 brand, how would I -- are you saying if I have not
17 heard of that, how would I know about it? If you have
18 not heard of it, you have not heard of it. How could
19 you know about it? That is the bit I am struggling
20 with. I really don't understand. If I don't know
21 if -- I don't know what Games Workshop's product looks
22 like, and I have never seen a Games Workshop catalog
23 and I have never heard of any of those things, how can
24 I possibly -- how can I have any knowledge of it?
25 That does not stop them being trademarks. It just

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1 means I am not aware of them. I am sure there are all
2 sorts of businesses out there that I don't happen to
3 purchase who have very well established trademarks. I
4 am not aware of. It doesn't stop them being
5 trademarks, does it?

6 Q Let me rephrase that.

7 A I think that would help.

8 Q If Games Workshop -- strike that. I
9 will start over.

10 Without access to the products, the product
11 packaging, catalogs, magazines with Games Workshop
12 products, how can Games Workshop prove that a specific
13 mark, unregistered trademark, was actually used as a
14 trademark?

15 A But we do have access to those products.

16 Q But without, I am saying without?

17 MR. MOSKIN: Objection, hypothetical, and to form.

18 A We --

19 Q Let me put this situation. If Games
20 Workshop did not provide the defendants copies of the
21 magazines, the catalogs or the products or their
22 boxes, what information did Games Workshop produce to
23 establish that a specific unregistered trademark was
24 actually used in commerce in the US as a trademark?

25 A Ah, right. So now you are asking

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1 specifically. Let me get this right. So now you are
2 asking me about your client. Sorry, I am lost here.
3 I still don't really understand. If we didn't
4 provide, if we have not provided what, products?

5 Q Documentation of how Games Workshop
6 actually used a particular unregistered mark in
7 commerce as a trademark in the US?

8 MR. MOSKIN: Objection, again, hypothetical and to
9 form.

10 A I am not entirely -- I am not 100
11 percent sure of exactly what we have -- actually, what
12 I go back to saying, whether or not we have provided
13 things, and I am sure we have provided everything we
14 have been asked for, however vaguely that might have
15 been asked for, but so we will have done everything --
16 I know Gill and her team have been creating huge
17 amounts of documents and what have you to send to you.
18 Whether or not that is quite exactly what you were
19 expecting, perhaps you didn't ask clearly enough, I
20 don't know, but our act of sending things to you does
21 not make something a trademark or not. Putting
22 something in the post and sending it to you does not
23 make something a trademark. It is a trademark through
24 use, through seeing it on a product over the years,
25 like I say, in our catalogs, and whether or not your

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1 client is aware of those trademarks, and I am pretty
2 certain he is, given that he puts a big disclaimer on
3 his website, I am pretty certain he is aware of all of
4 these products as trademarks, so one way or another he
5 is very much aware of them. Us sending them to you or
6 whatever it is you wanted us to send you does not make
7 something or stop something being a trademark. I am
8 still a bit lost I think.

9 Q I will move on. Turning back to Exhibit
10 114, on page 2, do you see an entry for "40K"?

11 A Yes, I do.

12 Q Again, for that word mark, has Games
13 Workshop used "40K" as a trademark for products sold
14 in the US since 1987?

15 A It is "40K". That is what that is, the
16 given way of pronouncing 40K, and it is a very well
17 established shortcut if you will to the name
18 "Warhammer 40,000". That is what "40K" is, and it has
19 obviously been established and used since 1987. But
20 can I lay my hands on -- can I mentally picture,
21 because the product that had 40K on the cover or that
22 where we first used 40K as a trademark, no, I can't,
23 but again if you -- it is such a prevalent term that
24 we have used and is part of our IP intellectual
25 property for decades, that it is unique association in

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1 the mind of our customers. If you were to ask any of
2 our customers "what is 40K" they will tell you exactly
3 what it is: It is Warhammer 40,000.

4 Q Going back to Exhibit 114, page 2, do
5 you see an entry for "40,000"?

6 A Yes.

7 Q Again, for the court reporter it is
8 "40,000"?

9 A Yes, I do, yes.

10 Q Has Games Workshop used 40,000 as a
11 trademark for products sold in the US since 1987?

12 A I would give the same answer as I gave
13 for 40K. 40,000, well, you know, Warhammer was our
14 first proprietary universe from 1983, and that was a
15 traditional fantasy environment. So Warhammer 40,000
16 takes that into the future, if you like, by 40,000
17 years, shall we say. So again a shorthand, if you
18 will, for that was very well established as 40,000,
19 and, although it is a number, if you were to ask any
20 of our customers around the world "what is 40,000",
21 they would tell you straightaway it is uniquely
22 associated with Games Workshop, and Games Workshop and
23 Warhammer 40,000 specifically.

24 Q I am handing you what is marked as
25 Exhibit 140, Bates label GW0004389. It appears to be

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1 a copy of a trademark certificate issued by the United
2 States Patent and Trademark Office, registration
3 number: 3,751,267.

4 (Exhibit 140 marked for identification)

5 Does this appear to be a registration for
6 the mark "40,000"?

7 A Do you know what, well, it looks like
8 it. Having never seen one of these before, I couldn't
9 say for certain, but it says "United States of
10 America", in a rather fetching gothic script: "United
11 States Patent and Trademark Office." I suppose I
12 could make that up, but there we go, and it says
13 "40,000" and it has got somebody's signature and it
14 has got a stamp on it, so yes, I guess you could be
15 right.

16 Q Can you hand that back to me for a
17 moment?

18 A Sure.

19 Q Now, if you look towards the bottom of
20 the document, next to the seal, do you see something
21 that says "First use", and then next to it "in
22 commerce"?

23 A I do, yes.

24 Q Is there a date associated with those?

25 A Yes, it says: "0-0-1998", and then:

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1 "In commerce: 0-0-1998."

2 Q When you say "nought"?

3 A Nought, zero.

4 Q Turning back to Exhibit 114 --

5 A Yes.

6 Q And for 40,000, what is the date listed
7 as the first use in commerce there?

8 A The date there listed is 1987.

9 Q Is that the same date on the other
10 exhibit? Can you read the exhibit number?

11 A Exhibit 140, no, Exhibit 140 says
12 "1998".

13 Q What is the basis for the difference in
14 the dates?

15 A I have no idea. I am wondering whether
16 it is something to do with the definition of what
17 classes 9, 16, 28 -- without digging into it again,
18 off the top of my head, I really don't know. But 1998
19 is a long time ago as well. No, off the top of my
20 head, from memory, I can't tell you why those two
21 numbers are different.

22 Q I am going to hand you what is marked as
23 Exhibit 141.

24 A I am just continuing to look at this
25 because --

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1 Q Sure, and it is marked GW0004395.

2 (Exhibit 141 marked for identification)

3 It appears to be a trademark certificate
4 issued by the United States Patent and Trademark
5 Office, registration 3,768,909 for the mark "40K",
6 "40K". Again, on this exhibit, do you see a date
7 associated with first use and in commerce?

8 A I do, and that date is 9.19.2009.

9 Q Referring back to Exhibit 114, page 2,
10 what is the date associated with the mark "40K" there?

11 A 1987.

12 Q What is the basis for the difference in
13 dates?

14 A Again, I couldn't say without digging
15 into it and having a look and seeing what was
16 registered and looking closely and going through the
17 categories and all of that stuff. It might be the
18 class, this is just class 28, whatever class 28 is.

19 Q I am handing you what is marked as
20 Exhibit 142. It is titled: "Trademark/Service Mark
21 Statement of Use."

22 (Exhibit 142 marked for identification)

23 If you turn to the second page of this
24 exhibit, up at the top, is there listed a first use in
25 commerce date?

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1 A Yes, there is.

2 Q What is that date?

3 A 9.19.2009.

4 Q Is that the same date referenced on page
5 2 of Exhibit 114 for the mark "40K"?

6 A No, it is not.

7 Q Scrolling down towards the middle of
8 that page, do you see a portion that says "Signatory's
9 name"?

10 A I do indeed.

11 Q Whose name is that?

12 A That is my name.

13 Q And below, is that your title: "Head of
14 Legal and Licensing"?

15 A Head of Legal and Licensing, yes.

16 Q And if you turn to the second to last
17 page of the exhibit --

18 A Yes.

19 Q Is that your signature?

20 A Yes, that is. Yes, that is my
21 signature.

22 Q Do you recall anything specific about
23 this? Again at the top of that page, is that titled
24 "Declaration"?

25 A Sorry, say that again.

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1 Q The title of that page is "Declaration".

2 A Yes.

3 Q Do you recall anything specific -- do
4 you recall this declaration?

5 A Specifically, no, I don't. You know, I
6 have quite a lot of documents put under my nose.

7 Q Okay, we will move on. Does Games
8 Workshop have a licensing agreement with Fantasy
9 Flight Games?

10 A We do, yes.

11 Q When was that agreement entered into?

12 A Crikey. It has been renewed so within
13 the last -- it is about a five year old license,
14 something like that.

15 Q When you say it has been renewed, are
16 you saying that it has been renewed recently?

17 A Within the last year or so we negotiated
18 a renewal, yes.

19 Q When was it originally entered into?

20 A That is what I am saying. It was about
21 five -- Fantasy Flight have been a partner of ours for
22 four or five years, something like that.

23 Q And before that time Fantasy Flight was
24 not a licensee of Games Workshop?

25 A No, it was not.

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1 Q And was there circumstances around this
2 license related to Sabretooth Games?

3 A Were there circumstances? What do you
4 mean by "circumstances"?

5 Q The situation where this license came
6 about, was it somehow related to Sabretooth Games?

7 A Not directly. I mean, it ended up as we
8 did a couple of deals at the same time, but we had
9 been talking to Fantasy for quite some years about one
10 thing or another. They wanted to -- for many years
11 they wanted a license to do Talisman, for example, one
12 of our board games.

13 Q So the license related to Fantasy Flight
14 Games that was entered into originally four or five
15 years ago, that license was a brand new license at
16 that time?

17 A Yes, it was.

18 Q It was not a renewal or extension of a
19 pre-existing license?

20 A No, it wasn't.

21 Q And did Fantasy Flight Games purchase
22 Sabretooth Games from Games Workshop?

23 A Yes, they did, yes.

24 Q Were there any assignments of
25 intellectual property rights related to the sale of

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1 Sabretooth Games to Fantasy Flight Games?

2 A To the best of my knowledge, to my
3 memory, the only piece of IP that was assigned to
4 Fantasy Flight Games would be the Sabretooth name and
5 brand.

6 Q And Sabretooth Games, they made Games
7 Workshop related products?

8 A They made Warhammer and Warhammer 40,000
9 related product, yes.

10 Q And Sabretooth Games, was it a company
11 created by Games Workshop?

12 A No, it was not.

13 Q Was it a company that was acquired by
14 Games Workshop?

15 A Yes, it was.

16 Q And when was it acquired?

17 A Crikey. We have run Sabretooth Games --
18 well, a good few years before any license with Fantasy
19 Flight.

20 Q Do you remember a work called the Horus
21 Heresy?

22 A A work called the Horus Heresy, a
23 specific work called the Horus Heresy?

24 Q I will rephrase. Do you remember a
25 collector card game called the Horus Heresy?

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1 A I remember the Horus Heresy collectible
2 card game, yes.

3 Q And was that developed by Sabretooth
4 Games?

5 A Sabretooth Games, I am trying to think
6 of the timings of it. Initially Sabretooth Games had
7 a license from Games Workshop to develop collectible
8 card games based on our intellectual properties, which
9 rather like as we described with how we worked with
10 freelancers earlier, that we never just say to a
11 license "Go off and develop whatever the hell you
12 like", it is always hand in glove, hand in hand,
13 step-by-step with Games Workshop, with us helping to
14 guide and be intimately involved in the creative
15 process at all points, and obviously everything has to
16 be fully approved and so on and so forth, and all IP
17 rights of anything they create are fully assigned back
18 to Games Workshop.

19 So we set up a license with those guys
20 initially and then subsequently we bought Sabretooth
21 Games, and they continued to develop again hand in
22 hand with key creative people from Games Workshop.
23 They created a range of collectible card games,
24 including the one you mentioned, and then at a certain
25 point we sold Sabretooth Games to Fantasy Flight

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1 Games.

2 Q Going back to when Sabretooth Games was
3 a licensee, so actually for the Horus Heresy
4 collectable card games, when was that published? Was
5 it before or after Games Workshop purchased --

6 A I believe it was after, because they did
7 a -- they first released a Warhammer 40,000
8 collectible card game and then they released the Horus
9 Heresy collectible card game, which I believe, and I
10 might be wrong, was a little while ago, I believe that
11 the Horus Heresy game was created when they were owned
12 by Games Workshop.

13 Q So going back to the original license --
14 strike that. Which Games Workshop entity purchased
15 Sabretooth Games?

16 A That is a good question. I believe it
17 was our American business that purchased Sabretooth,
18 which would be Retail Inc, I believe.

19 **THE VIDEOGRAPHER:** Seven minutes.

20 Q I am handing you what has been
21 previously marked as Exhibit 66. If you flip back to
22 the last page, where you see Bates label ending in
23 777, over to the right-hand side, do you see an entry
24 for Sabretooth Games?

25 A I do, yes.

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1 Q And have you seen these type of charts
2 before?

3 A These type of charts, yes, I have, yes.

4 Q Based on this, what entity owned
5 Sabretooth Games?

6 A Games Workshop America Inc.

7 Q And that is different from Games
8 Workshop Retail Inc?

9 A Yes.

10 Q So does this refresh your recollection
11 with what company owned Sabretooth Games?

12 A Again, to be honest, at Games Workshop
13 we tend to think about our staff members, we think
14 about ourselves as working for Games Workshop. The
15 business is structured, you know, presumably for tax
16 reasons and for various other corporate reasons, which
17 a lot of us working in the business don't have much
18 interplay with, so whether that -- is it my
19 recollection that it was Games Workshop Inc? If I had
20 looked at this piece of paper and it said Games
21 Workshop Retail Inc, it would have been no more or
22 less of a surprise. My feeling was that it was one
23 of -- it was the American company that bought it.

24 Q So with respect to the original license
25 with Sabretooth Games, after Games Workshop purchased

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1 Sabretooth Games, what happened, what became of that
2 license?

3 A The license is still running, as I
4 believe, with all the assignments and everything
5 there, so all the intellectual property, so Games
6 Workshop Limited gives a license to Sabretooth Games
7 to create games based on our intellectual property,
8 and all the IP rights and so on then of course revert
9 back to and are fully assigned to Limited, and that
10 license is still in play, I believe.

11 Q Why do you say you believe it is still
12 in play?

13 A Because I believe it is still in play.

14 Q Are there any documentations that show
15 that original license is still effective today?

16 A Yes, there are.

17 Q What are they?

18 A I am looking at Gill Stevenson, who
19 holds all these in her office, but yes, that license
20 is still in play.

21 Q And you are saying that because --

22 A Because Gill Stevenson has told me it is
23 still in play, and she is head of our legal
24 department.

25 Q And you have not reviewed this

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1 particular license agreement with Sabretooth Games?

2 A No, I have not.

3 THE VIDEOGRAPHER: There is four minutes of tape.

4 Q I am handing you what was previously
5 marked as Exhibit 95. I am going to turn your
6 attention to the portion that is titled "Duration",
7 and that starts on GW0005802. Again, if you look at
8 the paragraph that has 3.3, it refers to "Renewals".

9 A Yes.

10 Q Do you see that? What documentation and
11 records does Games Workshop have establishing that
12 this license has been renewed and continued to be
13 renewed since --

14 A I believe we have an amendment document
15 to that effect.

16 Q For the record, this exhibit has been
17 designated "Highly Confidential AEO". Is there
18 amendment to this exhibit?

19 A There is an amendment. It is not in
20 here, is it? I believe there is an amendment to this.
21 That is what everybody instructed.

22 Q Is there an amendment as part of this
23 exhibit?

24 A I can't find it.

25 Q Your testimony is that this amendment

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1 would clarify whether this license agreement was
2 renewed and still in effect the entire time since it
3 was entered?

4 **A** Yes.

5 **Q** Have you seen this amendment?

6 **A** I may have done. I have been directly
7 instructed on the amendment.

8 **Q** When you say directly instructed?

9 **A** I have been told that there is an
10 amendment, in the same way as the legal department
11 tells me about many legal documents, property leases,
12 you know, instructions or contracts for suppliers and
13 the like.

14 **THE VIDEOGRAPHER:** One minute.

15 **MR. OH:** At this point we will take a break to change
16 the tape.

17 **A** Okay.

18 **THE VIDEOGRAPHER:** Going off the record. The time is
19 6:22.

20 (A short break)

21 **THE VIDEOGRAPHER:** This marks the beginning of video
22 tape number four. Back on the record. The time is
23 6:32.

24 **Q** Do you understand you are still under
25 oath?

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1 A I do.

2 Q Does Games Workshop Limited have a
3 copyright licensing agreement with Games Workshop
4 America Inc?

5 A Not that I know of. We have a license,
6 as we discussed, with Sabretooth Games.

7 Q I am handing you what has been marked as
8 Exhibit 143, Bates label GW0002576 through 2588. For
9 the record it has been designated "Highly Confidential
10 Attorneys' Eyes Only".

11 (Exhibit 143 marked for identification)

12 Was this one of the documents you reviewed
13 in preparation for today's deposition?

14 A Yes.

15 Q If you refer to the first page, what is
16 reflected on this page?

17 A Just checking. Sorry, what was the
18 question again.

19 Q On the first page, what is reflected on
20 this page?

21 A As I understand it, this is Warhammer
22 40,000 sales by year in US retail and US trade sales,
23 in money terms.

24 Q In US dollars?

25 A Yes.

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1 Q And are these gross or net figures?

2 A Sorry, would you like to explain what
3 you mean by that?

4 Q You said sales?

5 A Yes.

6 Q Are these gross sales?

7 A What do you mean by -- what is your
8 understanding of "gross sales"?

9 Q Gross sales, there is no accounting for
10 things like net profits and such. I guess this might
11 be a barrier because I am more familiar with terms of
12 gross revenues, which are like all the money that they
13 will be taking in, not accounting for deductions
14 related to production costs or other business
15 operation expenses.

16 A This will be the first page, the first
17 column is when it says "US Retail", that reflects
18 sales at retail price through our own stores that we
19 own in the USA, and US trade will be the value, the
20 invoiced value of products sold to independent trade
21 accounts in the USA.

22 Q So when you say invoice value for that
23 USA trade column, that is how much the trade account
24 was charged, not necessarily the retail price of
25 product?

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1 A Correct, I believe so. I think that is
2 the case.

3 Q And this reflects only Warhammer 40,000
4 products?

5 A Yes.

6 Q And this is overall sales, not just for
7 the products that Games Workshop alleges that
8 Chapterhouse infringed, whether by copyright or
9 trademark?

10 A This is overall Warhammer 40,000 sales,
11 yes.

12 Q And when it says "FY", that is reference
13 to the fiscal year?

14 A Yes.

15 Q What is Games Workshop's fiscal year?

16 A We run from -- we call them financial
17 years and we refer to them as -- well, the new
18 financial year starts on 1 June each year and runs for
19 12 months.

20 Q If you turn to the next page, and it
21 ends in 577, can you explain what this page -- what
22 information is being presented here?

23 A This is our overall Warhammer 40,000
24 sales globally. So this is our worldwide Warhammer
25 40,000 sales.

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1 Q And this is in pounds?

2 A This is in pound sterling.

3 Q Does Games Workshop, the various
4 entities around the world, do they all have the same
5 fiscal year?

6 A Yes.

7 Q And so the dates depicted on this page,
8 this is the fiscal year?

9 A Yes, what we refer to as the financial
10 year.

11 Q Financial year?

12 A Yes.

13 Q So this will be, if I get it right,
14 June 1, 2009 through end of May 2010?

15 A Yes, and then June 1, 2010 through to --

16 Q When it says "Core range sales", what
17 does that mean?

18 A "Core range" means it doesn't include
19 things like novels, or I don't think Forge World sales
20 are in there. In fact, it tells you on the next page.

21 Q What is in and what is out?

22 A Yes: "Less non-core products sales. So
23 that gives you -- that number, for example, on the
24 next page, so the 2010/2011 financial year turnover,
25 that is the same number in our annual reports, I

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1 believe, and then when you take the non-core product
2 sales out that is when you get to the numbers on that
3 prior page. As I said, that includes -- non-core
4 products includes Black Library, which is all the
5 novels and so on and so forth, Forge World and
6 Warhammer World and then also any intercompany
7 eliminations.

8 Q Turning back to the page ending in
9 772577, at the top, you see it says "estimate"?

10 A Yes.

11 Q What does it mean by "estimate"?

12 A It means it is based on despatch data.

13 Q Can you explain what despatch data is?

14 A Sorry, it means that is what we tend to
15 measure as product that we have shipped out of our
16 warehouse, either to trade accounts or into our own
17 hobby centers around the world. So despatch data, as
18 it says on the next page, includes an estimate of the
19 trade discount value to trade customers. So the trade
20 numbers that are in there are based on a standardized
21 average trade discount around the world, so that is
22 part of that as well.

23 Q Can you explain what this trade discount
24 value is?

25 A Trade discount value is if there is a

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1 recommended retail price, so the price at which we
2 sell products to end customers in our own hobby
3 centers around the world, be that in dollars,
4 sterling, euros or whatever, and indeed the price that
5 we will be selling on our own global web store, to
6 whichever territory, the full retail price, that is
7 the retail price, or the manufacturer's recommended
8 retail price. The trade price is if we are dealing
9 with a third party independent retailer, typically we
10 will give them a margin on that, and that is what we
11 refer to as the trade price.

12 Q Now, if you look, it says "Interco
13 eliminations"?

14 A Yes.

15 Q What does that mean?

16 A There are some products, they might
17 be -- I don't know competition trophies which for one
18 reason or another are shipped, it might even be a
19 point of sale or a racking for stores, that one part
20 of the business may charge, nominally charge another
21 part of the business for, but when we get to the sales
22 number we call those "wooden dollars" and eliminate
23 them.

24 Q When it says "variance", under "despatch
25 data -- "

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1 A Yes.

2 Q -- what does "variance" refer to?

3 A That is if you look at the -- I have not
4 done the maths but I would imagine it is despatch data
5 minus the core best sales estimate. Does that look
6 about right?

7 Q Is there a significance to what
8 "variance" is?

9 A No, not really. It is just that
10 variance is a difference. So despatch data tells us
11 114703, core business sales estimate, once you take
12 out these intercompany limitations and all the other
13 stuff is 114684, and it has got a variance of 19.
14 Does that actually add up?

15 Q It does?

16 A Yes, it does, it absolutely does. So
17 that is what variance is.

18 Q Then, if you turn to the next page,
19 ending 79, that appears to be a continuation of the
20 previous page.

21 A Yes, it is the assumptions that are on
22 those lines at the bottom there.

23 Q It got printed out over two pages.

24 A Yes.

25 Q If you flip the page, and now we are on

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1 2580, can you explain what we are looking at here?

2 A This is despatch data. So this is data
3 of despatches from our production facilities and GPI.
4 When it says "valued at GPI", that is something we
5 refer to as the global pricing index, because we tend
6 to start our despatch values by everything in
7 sterling, and then obviously there is all sorts of
8 currency fluctuations around the world. So we have
9 set up our own -- the global pricing index, which is a
10 derivation, shall we say, from sterling. It has an
11 assumed trade discount. We have talked about that, so
12 you know what that is. And what it says is that down
13 the one side you have got "WFB". You can see "40K",
14 "LOTR", that is "Lord of the Rings", "Specialist".
15 "Specialist" refers to our specialist games which
16 includes titles like Blood Bowl and some other game
17 titles that frankly we don't sell that much of. We
18 lump them together and call them "Specialist titles".

19 Q And "Specialist", those are unrelated to
20 40K?

21 A Actually, we have a game called
22 Necromunda, which is only related in as much as it is
23 a game based on a planet set within the Warhammer
24 40,000 universe, and we have another game called I
25 think "Inquisitor" actually, funnily enough. In fact,

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1 yes, the game was called -- I had forgotten about that
2 earlier, thanks for that, it is called "Inquisitor"
3 which was in terms of the registered trademark there
4 is another product which was a kind of a -- not quite
5 a role playing game but it is a skirmish level game or
6 the scale is bigger. So while as in our table top
7 hobby war game Warhammer 40,000, an individual
8 character might be about 30 mm, 35 mm tall, an
9 Inquisitor, they are more like 54 or 60 mm tall. So
10 those are specialist games. And then "Hobby" is our
11 range of paints and scenery and paint brushes and
12 pliers and modeling tools and glue, range rulers,
13 dice, all that kind of stuff that we sell as well.

14 Q Where it says "WFB", what does that
15 refer to?

16 A WFB is Warhammer Fantasy Battle, so that
17 is the fantasy Warhammer game and "40K", funnily
18 enough, refers to Warhammer 40,000.

19 Q If you look at the right-hand side of
20 this page, under "Assumed trade discount", if you look
21 under that total --

22 A I can't actually read them because it
23 has been printed out wrong. The numbers have been cut
24 off there. You cannot see the whole columns.

25 Q And then underneath it says "Percent of

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1 core business turnover." Again, can you explain what
2 "turnover" means?

3 A "Turnover" means sales value.

4 Q So when I see under the 40K, where it
5 says 50.6 as the turnover value, what does that
6 signify?

7 A That signifies that in money value
8 Warhammer 40,000 is 50 per cent -- was 50 per cent of
9 our turnover sales in the 2009 to 2010 financial year,
10 based on despatch data valued at the GPI and with an
11 assumed trade discount of 35 percent.

12 Q And this page refers to global sales?

13 A Yes.

14 Q If you flip the page, what are we
15 looking at here?

16 A What we are looking at here is we have a
17 business unit, a department really, called Forge
18 World. This is their Warhammer 40,000 sales starting
19 on the far right in 04, 05, the 04/05 financial year,
20 and then going 05/06, 06/07, 07/08, 08/09, 09/10,
21 10/11. Underneath it, where it says "Direct and
22 Exhibitions", Forge World's primary method of sales is
23 selling directly to end customers via the internet and
24 its website, but Forge World does also attend a number
25 of exhibitions where it has trade stands that it sets

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1 up and sells its wares.

2 Q So "Direct", that really means direct
3 website sales?

4 A Yes. I dare say they get some phone
5 calls and people sending a check and a letter, but
6 primarily it is their website.

7 Q Does Forge World have its own retail
8 stores?

9 A No.

10 Q Again, we are looking at 2581. If you
11 turn over the page, is that a continuation of the
12 previous page?

13 A Yes, it does, it goes right the way back
14 to 01/02, 02/03, 03/04.

15 Q Let's go to 2583. What are we looking
16 at here?

17 A What we are looking at here is novel
18 sales through our US business. Let me just see if it
19 goes over the years. No, I don't think so. Novel
20 sales based on our IP through our American business
21 with a summary on the right, which is probably the
22 most useful bit, which tells you the total sales value
23 in 2008, 2009 and 2010. So that is through our
24 retail, our hobby centers and our web store. The "WH"
25 is Warhammer fantasy and "40K" is Warhammer 40,000.

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1 So this tells you that through our own channels in the
2 States, so that is our own hobby centers and the
3 website, I believe we sold \$668,000 of Warhammer
4 40,000 novels and \$133,333 of Warhammer novels for a
5 total of just north of \$800,000.

6 Q Just a quick question. How do you know
7 this page refers to novels?

8 A Because when I was handed these I was
9 instructed that that is what these numbers were
10 showing me.

11 Q So it was part of what you reviewed --
12 there was nothing on the page itself?

13 A I can't remember what the actual
14 spreadsheet is called, the Excel document. It may
15 well be referred to there.

16 Q But not necessarily in this printout?

17 A It is certainly not on this printout,
18 no.

19 Q And where it says "US and CA", what does
20 that mean?

21 A Canada, US and Canada. Our American
22 business we refer to as "NAS", North American sales,
23 which includes Canada so.

24 Q So this reflects not just US sales but
25 North American sales?

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1 A Yes.

2 Q Returning back momentarily to the front
3 page, where it says "US retail", is that just US sales
4 or is that North American sales, including Canada?

5 A I believe that is just US retail and US
6 trade, otherwise it would say NAS.

7 Q Or it will say US and CA?

8 A CA.

9 Q And is that standard practice of
10 differentiating such --

11 A Between US and Canada, when we want to
12 know -- we do sometimes look at the different -- how
13 is Canada doing, or how is the US doing? But it is
14 all run out of Memphis, that one office.

15 Q Again, let's go back to 2583. Again,
16 you see "Amount as per channel sales". Do you see
17 that column?

18 A Amount as per channel sales. And then
19 grossed up in -- and then dollars, the grossed up will
20 be taking it from trade to retail value, you know, if
21 you remove the discount, so that is actually a grossed
22 up number, and then the final column is converting
23 that from sterling into dollars, at an average of 1.5.

24 Q So "grossed up" refers to eliminating
25 the trade discounts?

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1 A Yes, well that is what we usually do,
2 yes.

3 Q And that is the terminology you use to
4 do that, grossed up?

5 A Yes.

6 Q And "amount per sales channel", and the
7 sales channel here is US and Canada?

8 A Channel sales US, Canada, and if we have
9 sold them through trade accounts and the like, as well
10 as -- it is the channels of sale, internet, retail
11 trade.

12 Q And North America?

13 A In North America.

14 Q If you go to the next page, 2584.

15 A I think that is a carry on from this
16 page. It just printed out because it goes -- this
17 starts off in June 07 and then runs down on the next
18 page. It is going as far as September 11.

19 Q So it is the continuation of that first
20 set of columns?

21 A Yes.

22 Q If you now turn to 2585, what are we
23 looking at here?

24 A We are looking at -- I think that is the
25 summary page of what we have just been looking at, I

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1 believe, saying that in 2,008, 140,000 was 77 percent
2 of novel sales through our channels and Warhammer was
3 22.78 percent. In 2009, Warhammer 40,000 novels
4 through our channels was 78.87 percent and Warhammer
5 21.13 percent, and in 2010 Warhammer 40,000 sales were
6 83 percent and Warhammer 16 percent, 16.64 percent.

7 Q So this still refers to novels?

8 A Yes.

9 Q In North America?

10 A Yes.

11 Q If you flip the page --

12 A My next page is blank.

13 Q Mine is too. Then we go to 2587.

14 A Okay. This is S&S stands for Simon and
15 Schuster, who are our book distributor. You can see
16 there you have got fiscal year, you have got US and
17 Canada and the total, and for each fiscal year you can
18 see the gross sales units, which is numbers of
19 product, actual numbers of novels sold. You have
20 got -- that is the gross ship out number, if you will,
21 then what the gross sales amount is. The net sales
22 number, that is after bulk trade returns and the like,
23 which gets you to your net sales amount. Then you
24 have got the US number and the Canada number, which
25 you can then take down to the total number, which says

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1 that since 2006 gross units have been about 5 million
2 units, with a gross sales amount of about \$26 million,
3 and net sales after returns have been closer to
4 4 million units, with about \$20 million of net sales,
5 of which 77 percent have been Warhammer 40,000 novels,
6 with a gross sales for Warhammer 40,000 through Simon
7 and Schuster of \$20 million in total from 2006 to
8 2011, and net sales of over \$15 million. That is
9 essentially what that page is showing you.

10 Q Now, with respect to the fiscal year, is
11 this the same fiscal year as Games Workshop?

12 A Do you know what, without checking, it
13 is a good question, without checking I am not sure
14 exactly what Simon and Schuster's fiscal year is. By
15 the way, I should add, as the comments on 2011 there
16 at the bottom says, that is year to date for 2011.

17 Q And this page continues to the next one?

18 A Yes, that is what I was just saying. It
19 is that comment on the bottom right of 2011.

20 Q Now, this page, where did this
21 information come from?

22 A Where did this information come from?

23 Q Yes, on 2584 or 2587?

24 A This information came to me from Gill
25 Stevenson.

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1 Q Maybe I will ask it differently. Are
2 these numbers that Games Workshop created or were
3 these provided to Games Workshop from the publisher,
4 Simon and Schuster?

5 A Games Workshop won't have created these
6 numbers. We get reports from Simon and Schuster every
7 month saying what the gross unit sales are, gross
8 sales amount, returns and all of that. As our
9 distributor, we regularly get that information. So
10 whether Simon and Schuster have literally provided the
11 summary for us, I am not saying that is not the case
12 or whether we have taken all the information that they
13 provide on a monthly basis and pulled the summary
14 together, I am not quite sure which is the answer to
15 that. One way or another, these will be Simon and
16 Schuster numbers.

17 Q You notice on this page it lists "units"
18 as opposed to "gross" and "net"?

19 A Yes.

20 Q Does Games Workshop -- because in the
21 previous pages in this exhibit, there was not a column
22 for units.

23 A Yes.

24 Q Is that correct?

25 A That is correct.

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1 Q Does Games Workshop have breakdown based
2 on number of units?

3 A Do we have? With a chunk of work we
4 might be able to get to it. It is really important
5 for the book trade to have those numbers because they
6 do sale or return, whereas Games Workshop does not do
7 sale or return. So that is why we talk about units we
8 despatch, because by despatch they will -- we do not
9 see them again. We send them out, people buy them.
10 We don't burn them, we don't see them back, we don't
11 rip covers off. That is our business model. Whereas,
12 for Simon and Schuster, obviously, when they are
13 reporting to us because they have got to then remit us
14 the numbers, we want to know and they need to know
15 what the net sales units are.

16 Q But again, for the previous pages again
17 before 2587, there is even in the portions that we
18 were talking about, like the discount value and
19 despatch data, there were no entries for actual number
20 of units, were there?

21 A No. The reason for that is because
22 while Simon & Schuster are talking about novels, when
23 they say "units" they mean novels, for our core range
24 and for all of our other products under, let's say,
25 "Hobby", we say "Sum of total value in 09/10, 32

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1 million, at GPI, assuming trade discount 35 percent",
2 and all that, but under "Hobby" there is such a
3 multiplicity of items that the word "Unit" is kind of
4 meaningless. Is it a pot of paint or a single knife
5 or a paint set or a mega paint set with 140 paints in,
6 or a terrain board, you know. So when you get down to
7 that summary level, "Units", from our perspective, it
8 doesn't mean anything.

9 Q So Games Workshop does not do tracking
10 based on SKU level, to generate these reports about --
11 this was the number, total number of units sold in the
12 US for the last fiscal year?

13 A Again, "unit" isn't very useful as a
14 term for Games Workshop. Say Games Workshop sold
15 let's say 100,000 or 200,000 units last year, then if
16 that gets reported to our management the next question
17 is: "What the hell does that mean? Do you mean you
18 have sold 200,000 pots of paint or 200,000 Battle
19 Forces."

20 Q Similarly, it doesn't do that tracking
21 by SKU level either?

22 **THE COURT REPORTER:** Did you say "SKU"?

23 A Stock-keeping unit I think is what it
24 stands for.

25 Q When you say tracking, what do you mean?

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1 Would you be able to say in the last fiscal year US
2 Games Workshop sold X number of SKU's in the Warhammer
3 40,000 line?

4 A When you say number of SKU's, do you
5 mean -- because what you have is we have a number of
6 SKU's, so i.e. we might have -- I could say yes in our
7 best selling trade range rack has I think it is 57 of
8 the best selling SKU's stock-keeping units in that
9 rack. It has not got 57 distinct SKU's. Do we know
10 what our live range of 40K SKU's is? Yes, we can get
11 that information, you know. Do we know -- we have a
12 range management team who manage our range and number
13 of SKU's out there in the market, if that is what you
14 mean?

15 Q So could it determine -- again, my
16 understanding in this example, the rack that has the
17 57 best selling SKU's in it, would it also be able to
18 say the number 1 best selling SKU sold X number of
19 units in the last fiscal year?

20 A Yes, we can get that information, you
21 know, from our forecasting teams and what have. You
22 they have that information.

23 Q And could you do that then with the 57th
24 best selling?

25 A I believe so, yes.

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1 Q And would you be able to do it for
2 determining what products are in the retail range in
3 the US stores?

4 A Sorry, what is the question?

5 Q If you wanted to determine for each
6 product in the retail range and the US retail stores,
7 would Games Workshop be able to determine the number
8 of units by SKU's sold in the last fiscal year?

9 A Could we determine? I believe with a
10 chunk of work, yes, we could do that.

11 Q And the various -- strike that. And
12 then Games Workshop would be able to determine which
13 SKU's are not part of the retail range in the US also?

14 A Sorry, do you mean -- are you asking do
15 we know which of our products are in our retail range?

16 Q It is more -- strike that. The question
17 is, since Games Workshop is able to identify which
18 product by SKU's are in this retail range, by
19 extension, it knows which products fall out of the
20 retail range and is just part of a larger range of its
21 overall product offering?

22 A Yes.

23 Q As an example, the number one product in
24 the retail range, the top in the top 57 products in
25 the rack, would Games Workshop be able to determine

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1 the revenues generated from that top product from
2 sales in the US?

3 A That is trickier. That is why you see
4 phrases in terms of assumptions like "Assumed trade
5 discount", and that it is based on despatch data,
6 because there may be a small amount of theft, loss or
7 damage in terms of product that gets sent out to our
8 stores, for example, or every now and again a product
9 might be used to assemble so that we can have them for
10 a competition or in the shop window for display. So
11 for all those reasons we can get to the -- clearly, in
12 order to get to a summary there is a whole bunch of
13 numbers that have gone into that summary which have a
14 whole bunch of assumptions attached to them.

15 Q Would Games Workshop be able to --
16 strike that.

17 For a specific product using a certain
18 trademark -- strike that.

19 Would Games Workshop be able to determine
20 which products sold in the US used a particular
21 trademark and then determine the number of units sold
22 in the US in the last fiscal year?

23 A I think that is a similar answer to the
24 prior question, which is that when you pick a certain
25 product so, for example, if you wanted to say how many

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1 Citadel products have there been, then there is loads
2 of products that bear the Citadel logo on the Citadel
3 trademark. They also bear other trademarks so it
4 wouldn't be as simple as going: "These things over
5 here are just this use of this trademark", so you
6 wouldn't be able to say Warhammer 40,000 products --
7 we can do -- we can tell you everything that has a
8 Warhammer 40,000 trademark on it. There would have to
9 be a whole bunch of assumptions about what is it you
10 are actually looking to to measure in each case, I
11 suspect. But could our financial systems do it? I am
12 not an accountant, I don't work in the Finance
13 Department, so I don't know to the level of
14 granularity they can go.

15 Q For example, if we are talking about the
16 Space Marine Rhino vehicles that Games Workshop offers
17 for sale, would it be able to determine the number of
18 Space Marine Rhino vehicles sold in the US in the last
19 fiscal year?

20 A Yes, I would hope so. Again, there is
21 some -- there might be -- at each end of the fiscal
22 year you would have to make some judgments on was a
23 product shipped and invoiced in one year or the other,
24 so you might be shipping products out at the end of
25 the one year that won't get invoiced and therefore not

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1 fall in on the other end, you might have products that
2 you are invoicing for but were actually shipped in the
3 prior year, and all of that sort of technical
4 accountancy stuff that frankly I am not qualified to
5 talk about.

6 Q But are these reports that are typically
7 generated by Games Workshop?

8 A Typically generated? What do you mean
9 by "typically generated"?

10 Q Have you run across such reports in your
11 normal course of business?

12 A In my normal course of business, not
13 typically, no. If we need them for a specific
14 purpose, so if we wanted to find -- well, if we wanted
15 to find out which products need to go in that best
16 selling rack, we would do an exercise and dig up the
17 data, and it would tell us the answer we need to know
18 based on the assumptions that we put in, but we don't
19 get -- there is not, to the best of my knowledge,
20 there is not a monthly pack by all -- well, in the
21 retail stores alone there is between 800 and I
22 think -- between 800 and a thousand products, we don't
23 get a monthly report tracking each of those SKU's.
24 That would be impossible to manage.

25 Q Again, so the retail range in the US

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1 typically consists of around 800 to a thousand
2 different products.

3 A Something like that, yes.

4 Q What is the overall range of products
5 offered by Games Workshop?

6 A I don't know the total number but it is
7 perhaps 2,000 to 3,000 products in the real extended
8 range.

9 Q Referring back to again the Exhibit 143,
10 excluding the report at the back, are these typical
11 reports that are generated by Games Workshop in the
12 normal course of business?

13 A As I understand it, these particular
14 reports have been created in order to send you guys
15 some information, because you asked for it. I don't
16 think -- do Forge World -- you could go page by page.
17 Do Forge World regularly have an idea of their annual
18 sales and what they have sold through direct or
19 exhibitions? Yes, they do. That is something that
20 the guys who run Forge World definitely keep an eye
21 on.

22 Q What page are you referring to?

23 A 2581.

24 Q Do you know if that is just a regular
25 report that is run by Forge World?

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1 A In as much as it just gives you a single
2 annual figure, that will be something that Tony at
3 Forge World will be looking at. Here we go. The
4 information that feeds into there tony will be getting
5 on a monthly basis, and the annual summary will be
6 what is needed for the end of year accounts and to
7 feed into the published annual report and all of that
8 stuff.

9 Q Right now you cannot tell whether this
10 was generated specifically to give to the defendants
11 or whether this is actually a typical Forge World
12 report?

13 A This is not a typical -- well, I have
14 never seen a typical Forge World report that looks --
15 mind you, I don't see much of Forge World reports, but
16 my understanding is that this is a summary document
17 created for the purposes of providing information in
18 this matter.

19 Q Do you know what other types of report
20 Games Workshop attempted to create regarding sales
21 numbers with respect to this litigation?

22 A I think this is it. This is certainly
23 what I have been shown. I think we have attempted to
24 create whatever we were asked for.

25 Q Were there certain reports that Games

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1 Workshop attempted to create based on document
2 requests from the defendants that it was unsuccessful
3 in creating?

4 A Not that I know of.

5 **THE VIDEOGRAPHER:** Fifteen minutes of time left.

6 Q Let me hand you what is marked as
7 Exhibit 144.

8 (Exhibit 144 marked for identification.)

9 A Okay.

10 Q Do you recognize this?

11 A I do.

12 Q What is it?

13 A This is a responsibility tree of our
14 internal design studio. This is a structure diagram.

15 Q Is this document maintained in the
16 normal course of business?

17 A Yes.

18 Q Have you seen this before?

19 A Yes.

20 Q It says in the bottom "January 2012"?

21 A Yes.

22 Q What does that mean?

23 A That means that this is the structure of
24 our design studio here in Nottingham as of -- with the
25 titles and names as of January 2012.

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1 Q And is all the information in this
2 exhibit current?

3 A I believe so. I mean, that was
4 January 2012. If somebody has applied for another job
5 internally or whatever, I am not privy to that at the
6 moment, but design -- sorry, management structure
7 diagrams are a snapshot in time, aren't they. Things
8 change. But just at first glance I am not aware of
9 any. I don't think there are any major changes going
10 on.

11 Q Just to clarify, going from top to
12 bottom, does that signify the people on the top report
13 to the people below them on the chart?

14 A Yes. So Ben Fawcett is the head of the
15 studio. You can see his direct reports are Chris
16 Colston, Head of Range and Promotions, Senior Project
17 Manager, Hannah Farmer, Stuart Black as Art and Design
18 Manager, Pete Foley as Games Development Manager and
19 Dave Cross as the R&D Manager. Then you can see
20 flowing from that their respective areas of
21 responsibility.

22 Q Just for the record, this document is
23 designated as "Confidential" and is GW000434. Are you
24 familiar with a company called Relic?

25 A Yes, I am.

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1 Q What is it?

2 A Relic isn't a company. Relic is a
3 wholly owned subsidiary of THQ, as far as I know. I
4 have not looked into their corporate records and so on
5 and so forth, but certainly THQ refer to and talk
6 about Relic and have made clear that Relic are one of
7 their wholly owned studios, in the same way as Virgil
8 Games in Texas are.

9 Q When you say studios with respect to --
10 strike that. When you say studios with respect to
11 Relic, is this a -- what type of studio is this?

12 A Relic is a studio that develops computer
13 games or interactive software games.

14 Q Did they develop the Dawn of War
15 computer game related to 40,000?

16 A I would say what I need to make clear on
17 that is we need to be really clear about what we mean
18 by "develop", because in just the same way like when
19 we were talking about Sabretooth a little while ago,
20 whenever we are working with a developer or indeed a
21 publisher, or any other licensee for that matter, we
22 work hand in hand with them and we mutually develop
23 what the game is going to be, what the look is, what
24 the product, and there is a fairly rigorous or very
25 rigorous approvals process. So have the artisans at

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1 Relic written the code, if you will, that makes that
2 computer game, yes.

3 Q Does Games Workshop have copyright
4 assignments from any individual that was working with
5 Relic to develop the computer game?

6 A As far as I know, Relic, being a wholly
7 owned studio, is staffed by employees of THQ, and THQ
8 are obligated contractually that any intellectual
9 property rights in Dawn of War or all the other games
10 they develop with us are fully assigned to Games
11 Workshop.

12 Q Do you know if Relic used any
13 freelancers to develop the Dawn of War computer game?

14 A To the best of my knowledge, no, they
15 didn't. It is certainly not their regular practice.

16 Q But you don't know for certain with
17 respect to Dawn of War?

18 A No, I am not 100 percent certain. I
19 would be really surprised if they did. Like I say, it
20 is a wholly owned studio, a subsidiary, if you will,
21 of THQ staffed by full-time employees.

22 Q With respect to Games Workshop's
23 trademark, has it done market studies -- strike that.

24 Has Games Workshop conducted an evaluation
25 of its intellectual property?

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1 **A** Conducted an evaluation of its
2 intellectual property?

3 **MR. MOSKIN:** Object to the form.

4 **A** What do you mean by a valuation of our
5 intellectual property?

6 **Q** I will give you an example. Has it
7 conducted any type of brand analysis with respect to
8 the value in terms of dollar amount of its trademark
9 in the US?

10 **A** As opposed to the value of the sales and
11 so on and so forth?

12 **Q** Just specific in this example with
13 respect to the trademarks used in the US?

14 **A** What would that valuation look like, I
15 am sorry? I can show you what we have looked at, the
16 sales numbers and the value of the company and the
17 turnover and what proportion of that is Warhammer
18 40,000. So are you talking -- what are you --

19 **Q** Has it conducted any -- strike that.
20 Has Games Workshop commissioned any studies
21 by an independent research service to evaluate the
22 fame of its trademarks in the US?

23 **A** No, not to my knowledge we have not. I
24 suppose the closest you would get to a valuation is
25 the fact that companies like THQ sign up to million of

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1 dollars of guarantees in the licensing agreements we
2 have in place with them.

3 Q Has Games Workshop commissioned any
4 valuation or studies to determine the value of its
5 trademarks in the US in terms of dollar amount?

6 A No, we have not.

7 Q Has it conducted any studies to
8 determine the value of its copyright rights in the US?

9 A Again, the nearest you will get will be
10 in the amount of product that we sell. I suppose
11 there are things like you can look at many independent
12 websites, fan websites, you can Google our trademarks
13 and copyright, any of the ones on the list there, and
14 you will get Games Workshop -- right out the box -- if
15 you just look at how many independent events that
16 there are set up, the fact that 4,000 trade accounts
17 by our products based on these trademarks and
18 copyright images and we sell them exclusively through
19 our own hobby centers, and again that, you know, we
20 regularly appear in New York Times best seller lists
21 with our novels, and big name companies, computer
22 owned companies like Electronic Arts and THQ, to name
23 but two, will sign up to contracts worth multiple
24 millions of dollars based on our trademarks and
25 copyright intellectual property.

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1 Q Has Games Workshop conducted any studies
2 to determine the fame -- strike that.

3 Has Games Workshop conducted any studies to
4 determine the brand recognition with respect to its
5 trademark in the United States?

6 A I certainly have not been involved in
7 anything like that. I guess our US sales business
8 might have done so at some point in its history.

9 **THE VIDEOGRAPHER:** There is five minutes of time left.

10 Q Has Games Workshop conducted any studies
11 to determine the size of the market it competes in in
12 the United States with respect to the 40K line?

13 A Sorry, say that again? Studies?

14 Q I will repeat it. Has Games Workshop
15 conducted any studies to determine the size of the
16 market it competes it in the United States with
17 respect to its 40K line?

18 A Have we conducted any studies, no, I
19 don't believe we have. To the best of my knowledge,
20 no, we have not.

21 Q Has Games Workshop conducted any studies
22 regarding the size of the table top gaming market in
23 the United States?

24 A The US business might have done at some
25 point. I am not aware of any such thing. Also, when

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1 we talk about -- you would need to define what you
2 mean by table top hobby market and what do you mean by
3 market we compete in, and all of that for me to have a
4 clear understanding of what you are asking. But in
5 any case, to the best of my knowledge, I have not been
6 involved in any such survey, but that is not to say
7 the US business hasn't done such a thing at some point
8 in its history.

9 Q Again, the 40K line, is that a succinct
10 way of describing what it is, is it fair to
11 characterize it as a table top gaming platform, or
12 that is the -- if you had to describe what the 40K
13 line is, how would you describe it?

14 A Well, there is the Warhammer 40,000
15 intellectual property. If you were to ask, which is
16 much wider than that, that is the underlying IP, the
17 characters, stories, background mythos, all of that,
18 if you were to ask Fantasy Flight Games, for example,
19 what is their 40K line, it would be very different to
20 our description of the 40K, our product line.

21 Q Let me ask it in this way. If again you
22 met someone, just bumped into someone, you had to
23 describe to them what 40K is in a minute, how would
24 you describe it?

25 A That is probably about all I have got.

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1 Let's think about that. How would you describe
2 Warhammer 40,000 to somebody in just a minute? I
3 would describe it as a proprietary UK intellectual
4 property that has global renown, that is referred to
5 by folks as one of the most long-standing science
6 fiction properties, that has sold -- I don't know the
7 exact number -- many, many products ranging from
8 novels to models to computer games to art books and
9 pieces of scenery, and that by its title it is --
10 Warhammer 40,000 is a grim and dark universe in which,
11 as we say: "There is only war."

12 Q Let me ask this, who are or what are the
13 major competitors to Warhammer 40K?

14 A There is hours to go there, just in
15 terms of discussing -- what do you mean by competitor?
16 I have started so I will finish. Whether you are
17 talking about substitutes in kind or substitutes in
18 use. So when you look at our customers, and what they
19 do, and the activities that they fulfill and their
20 desires that they fulfill through the Warhammer
21 40,000, actually through Games Workshop's Warhammer
22 40,000 offer, well some of them are primarily
23 interested in collecting kits, so in terms of a
24 competitor any kit company may be seen as a
25 competitor. Some of them are really interested in

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1 painting, and so the competition to them may be other
2 people's paint as opposed to our paints, or other
3 people's models to paint. Other people enjoy -- other
4 customers enjoy as their main hobby gaming, perhaps
5 socially with their friends or competitively in
6 tournaments and the like. So Games Workshop's own
7 competition there would in -- Warhammer 40,000 would
8 be other -- I don't know, science fiction or
9 historical whatever table top hobby games. In terms
10 of Warhammer 40,000 novels, you know, they are two
11 fisted action novels set in a design fiction context.
12 So anybody whose interested in those sort of novels or
13 it might be by author, if you love Dan Abnett novels,
14 maybe the competition is other science fiction novels
15 or other Dan Abnett novels. If you go to computer
16 games again, you know, Dawn of War, it is a very well
17 established Warhammer 40,000 product, which arguably
18 is competing with any other realtime strategy game on
19 the market. Fantasy Flights' Warhammer 40,000 role
20 playing series will be competing with other role
21 playing game products on the market. Likewise their
22 card games and board games.

23 So it depends on your definition of market
24 and competitor, and are you looking at substituting
25 kind, use or whatever, I think, but as you know, ask

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1 anybody, it is a competitive world out there.

2 **MR. OH:** I think that is the end of the deposition.

3 **THE VIDEOGRAPHER:** This concludes the deposition of
4 Andy Jones. Going off record. The time is 7:34.

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CERTIFICATE OF WITNESS

I, Andrew Jones, am the witness in the foregoing
deposition. I have read the foregoing statement and,
having made such changes and corrections as I desired,
I certify that the transcript is a true and accurate
record of my responses to the questions put to me on
Tuesday, 3 April, 2012.

Signed:
Name: Andrew Jones
Date:

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1 CERTIFICATE OF COURT REPORTER

2

3 I, AILSA WILLIAMS, an Accredited LiveNote Reporter
4 with Opus 2 International, hereby certify that Andrew
5 Jones was duly sworn, that I took the Stenograph notes
6 of the foregoing deposition and that the transcript
7 thereof is a true and accurate record transcribed to
8 the best of my skill and ability. I further certify
9 that I am neither counsel for, related to, nor
10 employed by any of the parties to the action in which
11 the deposition was taken, and that I am not a relative
12 or employee of any attorney or counsel employed by the
13 parties hereto, nor financially or otherwise
14 interested in the outcome of the action.

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20 Signed: A.Y. Williams

21 AILSA WILLIAMS

22 Dated: 3rd April 2012

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