

Exhibit 10

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Case No. 08-CV-1010 (RHK-JSM)

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LEMOND CYCLING, INC.,
Plaintiff,
- against -
TREK BICYCLE CORPORATION,
Defendant and
Third-party Plaintiff,
- against -
GREG LEMOND,
Third-party Defendant.

-----x

February 18, 2009
9:02 a.m.

DEPOSITION of SIDNEY D. BLUMING,
taken by the Defendant, pursuant to
Notice, held at the offices of Bluming &
Franco, 140 East 45th Street, New York,
New York, before Debbie Zaromatidis, a
Shorthand Reporter and Notary Public of
the State of New York.

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MS. RAHNE: Denise Rahne,
counsel for Greg Lemond and the deponent.

S I D N E Y D . B L U M I N G ,
having first been duly sworn by a Notary
Public of the State of New York, was
examined and testified as follows:

EXAMINATION BY MR. WEBER:

Q. Good morning.

A. Good morning.

Q. Could you tell us your full
name, please.

A. Sidney Bluming.

Q. And you are a lawyer, Mr.
Bluming?

A. Yes, I am.

Q. And we are in your offices in
New York?

A. Correct.

Q. Tell us a little bit about your
background, where you are from.

A. Going back to birth or do you
want a starting point?

Q. Where did you grow up?

A. New York, born and raised.

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Q. You went to Brooklyn Law School?

A. That's correct.

Q. Graduated in 1968?

A. That's correct.

Q. And since 1968, what has been your line of work?

A. I have always been in private practice with various law firms.

Q. Okay. And has licensing been a particular concentration of yours?

A. Yes, it has.

Q. Okay. Tell us a little bit about your practice in the area of licensing?

A. Since the early '70s, I have been involved in various aspects of licensing, really all aspects of licensing representing manufacturers, designers, athletes, personalities, retailers, licensing representatives. I have -- I have been speaking on licensing at various trade associations and licensing groups. I have written some work on licensing and business periodicals in business. I have

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2 been an expert witness in licensing
3 matters. It is a significant component of
4 our practice. I have a general commercial
5 business practice. I am involved in
6 arbitration, and I sit as an arbitrator
7 with the American Arbitration Association
8 primarily in intellectual property
9 matters.

10 Q. Okay.

11 A. And as I said a general
12 commercial practice by and large.

13 Q. How would you describe licensing
14 to a layperson?

15 A. Probably the simplest way to
16 describe it is that it is renting one's
17 name and image to another for use in
18 connection with a product or service that
19 entity has an experience -- has an
20 expertise in producing and so on.

21 Q. And in the context of renting
22 one's name and likeness to somebody else,
23 that, as I think you have written,
24 is -- becomes a shared enterprise, right?

25 A. I think that a good licensing

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2 Q. Because in part insofar as his
3 compensation is based on bike sales, he
4 makes more money the more bikes that get
5 sold, right?

6 A. Greg was always interested in
7 Trek doing as much marketing as they could
8 to promote bike sales. He was always
9 enthusiastic about Trek doing that, and as
10 far as I can recall he always encouraged
11 Trek doing that.

12 Q. Okay. He was enthusiastic about
13 Trek doing marketing.

14 How enthusiastic was Mr. Lemond
15 about helping Trek through personal
16 appearances to sell more of his bikes?

17 A. Well, I have specific
18 recollection of either Greg directly or
19 through me encouraging Trek to use him
20 more to promote sales particularly in
21 Europe, but he really was asking Trek
22 constantly to do more marketing and to
23 take advantage of him in doing that
24 marketing.

25 Q. So you have specific

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2 recollection of Greg wanting to do even
3 more than the contract required as -- of
4 him as far as personal experiences?

5 A. I don't think Trek ever -- I
6 won't say ever but certainly in recent
7 years came close to asking him to appear
8 30 days or spend 30 days.

9 Q. Do you recall in the contract
10 negotiations ever saying to Trek I know
11 you've asked for 30 days, but we would
12 like to do 45 because we think that will
13 help us sell more bikes? Do you remember
14 anything like that?

15 A. Of course not.

16 Q. Why do you say that?

17 A. Why? Because a licensor -- any
18 contract sets limits, and once you commit
19 contractually to limits you are
20 contractually committed. A good
21 partnership would have required
22 cooperation and planning together, which I
23 think was contemplated in the agreements
24 in terms of a marketing effort. So if
25 Trek had a good plan to use Greg to market

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MS. RAHNE: I object to the form.

A. It seems fairly evident.

Q. Well, when you say it confuses the image, in what way?

A. Well, what does it stand for? Does it stand for a prestigious, high end bicycle or does it stand for a bicycle that is being sold at whatever price the market will bear in any store that will carry it.

Q. So selling it in -- in the latter hypothetical selling at any store that will carry it at whatever price you can get could undercut the image of being a high end bike available in high end stores?

MS. RAHNE: I object to the form. Go ahead.

A. Yes.

Q. And that would damage Mr. Lemond's brand image?

A. Sure. I mean that is why a -- an Armani has several different

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2 lines. The high end Armani line is sold
3 in the high end stores, but Armani
4 accessories or there may be a lessor brand
5 of Armani suits or shirts could be sold at
6 low prices at different stores, and Armani
7 handkerchief could be sold anywhere, and
8 as a matter of fact that might help the
9 brand because people might say, gee, I
10 like that scarf. Where do I get a suit?
11 Well, if you bring them upstairs and they
12 buy a suit for 5,000 dollars, that is a
13 good thing.

14 Q. So in the approval section of
15 your deal points, you are looking to
16 protect Mr. Lemond both in terms of the
17 quality of the product and the places that
18 it is sold?

19 A. That is what it says.

20 Q. Paragraph 9 then of the deal
21 points relates to promotional and
22 marketing, and you explain to Mr. Dick
23 Burke "Trek should have the obligation to
24 use its best efforts to sell aggressively
25 to maximize volume," and then you go on to

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2 explain "It is typically for a licensee to
3 spend a percentage of its net sales on
4 advertising and promotion, which could
5 include participation in trade shows,
6 magazine advertisements, co-op
7 advertising, independent contests et
8 cetera."

9 Did I read that correctly?

10 A. I again compliment your reading
11 skills.

12 Q. And what were you trying to
13 explain to Trek in this deal point?

14 A. That marketing is important. It
15 is very important. It is what a
16 businessman doesn't have to really be
17 told. I wasn't trying to be pedantic with
18 him. It was simply from a license
19 agreement perspective saying these -- how
20 these -- this is how these things are
21 generally handled. They are generally
22 handled whereby the licensee will agree
23 that on -- that in addition to paying a
24 percentage royalty, they will apply an
25 amount to marketing and promotion so as to

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2 maximize sales, and I was encouraging
3 them, and this is a deal point we backed
4 away from I believe the ultimate agreement
5 as part of the give and take that you
6 alluded to that there would be a -- that
7 there should be or could be this
8 percentage commitment on Trek's part. We
9 would like to know that they are going to
10 go out there. It is juxtaposed with the
11 best efforts undertaking, and I think by
12 backing away from the percentage and
13 relying on the best efforts, you know, we
14 indicated that we were relying more on
15 their best efforts and their commitment
16 and their trust in things that Trek said
17 in terms of what it would do to maximize
18 sales.

19 Q. Well, we will look at how it
20 ultimately played out, but in any event in
21 this deal point what you are talking about
22 in terms of promotion and marketing is
23 that in your experience it is typical for
24 a percentage to be -- of net sales to be
25 set aside for promotion and marketing?