

7/24/2009 Townley, Jay

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UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

LEMOND CYCLING, INC,

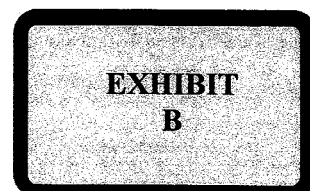
Plaintiff,

vs. File No. 08-1010 (RHK-JSM)

TREK BICYCLE CORPORATION,

Defendant.

The Videotaped Deposition of
JAY TOWNLEY, taken pursuant to Notice of
Taking Deposition, taken before Kelly L.
Hemsath, RPR, Iowa CSR, a Notary Public in
and for the County of Hennepin, State of
Minnesota, taken on the 24th day of July,
2009, at 800 LaSalle Avenue, Minneapolis,
Minnesota, commencing at approximately
9:08 a.m.



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APPEARANCES:

DENISE RAHNE and JENNIFER ROBBINS,
ESQUIRES, of the Law Firm ROBINS, KAPLAN,
MILLER & CIRESI, LLP, 2800 LaSalle Plaza,
800 LaSalle Avenue, Minneapolis, Minnesota
55402, appeared for and on behalf of the
Plaintiff.

RALPH A. WEBER and CHRIS DOMBROWICKI,
ESQUIRES, of the Law Firm GASS, WEBER,
MULLINS, LLC, 309 North Water Street,
Milwaukee, Wisconsin 53202, appeared for and
on behalf of the Defendant.

ALSO PRESENT:

Dean Hibben, Videographer

*The Original is in the possession of
Attorney Ralph Weber.*

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1 dealer agreements, which have different
2 requirements of the retailer.
3 They will look at the relationship
4 they've got with that company that would
5 guarantee they get the goods, because we
6 tend to be an industry of too little or too
7 much.

8 So it's both, can I -- as a
9 retailer, am I going to get fair treatment
10 and can I live with this brand, am I going
11 to get the supply, if I give the commitments
12 that they want from me, and can I negotiate
13 the mix with the brands that will give me
14 the yield we anticipate out of our
15 marketplace?

16 So a lot of it has to do strictly
17 negotiating with the brands, but all of them
18 are under authorized dealer agreements. If
19 I've got six brands, I got six agreements.
20 Those agreements are similar in the core,
21 but different in the detail.

22 And the detail gets to the demand
23 that a brand can place on a retailer for
24 product, and so they take all of that into
25 account.

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1 that have been in that high-end market are
2 being eroded, are losing market share, with
3 several key issues.

4 One being that it's now apparent
5 from the standpoint of looking at two year's
6 worth of data and information, that, from
7 the standpoint of true upper-end, and this
8 economy aside, because that is also an
9 issue, but outside of how the economy is for
10 the first time impinging white-collar
11 workers and people that are in this class of
12 consumer, is the importance of Tour
13 sponsorship for a team -- or a bike brand to
14 be associated with a Tour team, and tracking
15 that back and trying to determine what the
16 effect has been of the Tour sponsorship.
17 The bottom line is that there's
18 been a trend also where a bicycle brand
19 that's in the tour is offering the same
20 product that the professionals ride to the
21 consumer, which has also driven up these
22 price points and part of the dynamic of the
23 high-end consumer with a very expensive
24 bike, dropping it, selling it on eBay and
25 buying another bike because that's what is

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1 being ridden in the Tour, and they can now
2 get access to it, they can buy it.
3 And that's across all of the --
4 this year, the 19 brands sponsoring the 20
5 teams, last year, I think, it was 17 brands
6 sponsoring the 20 teams.

7 MS. RAHNE: Ralph, can we take a
8 break sometime in the next five or ten
9 minutes?

10 MR. WEBER: Right now is fine.

11 VIDEOGRAPHER: We're going off the
12 record at 10:11 a.m.

13 (Whereupon, a recess was taken.)

14 VIDEOGRAPHER: We are back on the
15 record at 10:25 a.m.

16 BY MR. WEBER:

17 Q. Let's switch gears a second. We've been
18 talking about the United States at this
19 point. Let's talk about a different set of
20 countries.

21 And let's start with Austria. All
22 right?

23 A. Uh-huh.

24 Q. Tell me, by order of importance, whether
25 revenue or volume, the categories of bikes

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1 that are being spent on pro teams might be
2 spent in other areas in a more effective
3 way?

4 A. Exactly.

5 Q. So that the industry ought to consider, as
6 you're spending your promotion and
7 advertising dollars, where you're going to
8 get the most bang for your buck?

9 A. Where you're going to get the most bang for
10 the bulk, we tend to look at that as a near
11 term, but if you look at per thousand
12 penetration of bicycles to U.S. population,
13 we're shrinking. Not necessarily a good
14 thing. Bang for the bulk would be the
15 future growth of the industry.
16 And is what you're doing -- as an
17 example, all the top tier brands sponsor a
18 tour team, and there's a cost associated
19 with that. Giant is a public company that
20 just announced in the European press that
21 8 percent their total revenue, on an annual
22 basis goes to pro team support.
23 That's estimated at 22 million
24 dollars, substantial amount of money. Not
25 trying to tell Giant what to do, but in the

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1 off-road triathlon, but the team
2 sponsorships are not necessarily the
3 high-end road piece of the market. It's
4 spread into off-road, BMX, there's pro
5 riders there, Extera, which is the off-road
6 equivalent of Triathlon, so -- Cyclocross
7 (phonetic).

8 So it's looking at the total budget
9 allocation, and the little bit it would
10 take, not taking away at all from the pro
11 team side and the importance of it or what
12 you do to promote that, and actually take
13 that money and spend in the general market
14 expansion.

15 That's a lousy picture, by the way.

16 BY MR. WEBER:

17 Q. You said historically brands have spent
18 promotion and advertising dollars in
19 supporting pro teams, right?

20 A. Yes.

21 Q. Do you know what promotion and advertising
22 dollars Trek has spent on pro teams in
23 support of the LeMond brand?

24 MS. RAHNE: Object to the form.

25 Go ahead, if you know.

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1 arrangements I've been involved with in my
2 life's work.

3 Q. All right. Are you aware of anything in the
4 contract between LeMond Cycling and Trek
5 which specified the amount of dollars Trek
6 was obliged to spend in promotion and
7 advertising?

8 A. My recollection is there's a percentage
9 amount.

10 Q. Do you know whether Trek met that
11 percentage?

12 A. Well, two respects: One, percentages for
13 marketing expenditure, based on whatever the
14 level of compensation, or whatever, whatever
15 the royalty is based on, net, gross, I'm not
16 sure, but in the first year or two, if
17 you're going into a license agreement, that
18 is meaningless. You got to spend the money
19 it takes to establish the brand in the
20 marketplace. Again, it's fundamental.
21 Whether they spent the amount or
22 not, I am not absolutely sure, but in
23 recollecting the deposition particularly of
24 the product manager and the marketing
25 manager, it appeared to me that they were

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1 again, licensing, to be successful, is
2 making sure that when you take it on you're
3 going to do what you have to do in the
4 marketplace.

5 Whether the 3 percent is right or
6 not, you put a percentage in the contract
7 and both parties are agreeing that, yeah,
8 it's something like this.

9 But you can't apply it to the early
10 years, because there's no revenue. So
11 what's the obligation to establish a brand
12 to go to market, you're going to have to
13 spend some money to go to market.

14 If the -- particularly the company
15 or person acquiring the license has got this
16 obligation, I would believe, at least from
17 my thinking, to be successful in promoting
18 that brand. Why else do it?

19 BY MR. WEBER:

20 Q. But specifically as to my question --

21 A. On the 3 percent --

22 Q. Let me finish.

23 As to my question, and if you
24 assume that what the contract calls for is
25 a 3 percent spend on promotion and

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1 advertising, do you know one way or another,
2 as you sit here today, whether Trek
3 satisfied that criteria?

4 MS. RAHNE: Object to the form.

5 Go ahead.

6 A. Based on my review of the record produced,
7 and what I went through, my strong sense is
8 no, but I did not see any dollar amounts.

9 BY MR. WEBER:

10 Q. Well, how could you have any sense of
11 whether they met the 3 percent criterion if
12 you didn't look at dollar amounts?

13 MS. RAHNE: Object to the form.

14 Go ahead.

15 A. Whether it's 3 percent or enough or an
16 amount of money sufficient to promote the
17 brand, maybe it would be over-simplistic,
18 but you take a look at what was sold in the
19 markets, compared to the Trek brand of road,
20 which we were specifically looking at,
21 compared a product within the same category,
22 and over the time frame, it looks like what
23 it is.

24 There was no effort that was equal
25 to promoting Trek brand in the marketplace,

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1 because the numbers aren't there, and
2 additionally, no effort that would meet,
3 what I would think, is just the implied
4 obligation, maybe the absolute obligation,
5 of the letter of that contract that was
6 signed to promote that brand, to make it
7 successful in the marketplace. Why else
8 license?

9 BY MR. WEBER:

10 Q. Are you done?

11 A. Do you want me to be done? I'm done.

12 MR. WEBER: Can you reread my
13 question, please.

14 BY MR. WEBER:

15 Q. Please listen to my question, and answer it
16 if you can.

17 (Whereupon, the requested portion of
18 the record was read back by the
19 Reporter.)

20 MS. RAHNE: Reinsert my objection.
21 Go ahead.

22 A. By looking at the sales results.

23 BY MR. WEBER:

24 Q. Anything else?

25 A. And the testimony of the people immediately

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1 responsible for the marketing of the product
2 within the company.

3 Q. If the contract calls for a certain
4 percentage to be spent on promotion and
5 advertising, that's a mathematical
6 calculation that can be determined, true?

7 A. Yes.

8 Q. But you didn't do that?

9 A. I did not.

10 Q. Putting a sponsorship of a pro team to one
11 side, and that topic, that subset of
12 promotion and advertising, is there anything
13 else that you believe Trek should have done
14 that it did not do?

15 A. Given their culture, again, reading the
16 record, the presentation and the marketing
17 to the dealer organization, from the
18 standpoint of what I read, what I understand
19 works in that marketplace, it's my opinion
20 that there was not enough effort put into
21 the marketing of the product to the
22 retailers, and the retail staff, at the same
23 level that Trek was in turn investing and
24 educating and working with their retailers
25 relative to the other road brands they had.

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1 Q. So in addition to the pro team issue, you're
2 saying Trek didn't spend enough to promote
3 and advertise the LeMond brand to dealers?

4 A. Yes. To their dealers.

5 Q. And what would you cite in support of that
6 conclusion?

7 A. Again, the record.

8 Q. What part of it?

9 A. The previous brand manager, the current
10 marketing manager, the marketing manager at
11 the time that the depositions were taken,
12 and the crossover, their -- the LeMond
13 marketing manager within the Trek
14 organization, and the product manager
15 responsible, and then the original manager,
16 and I'm not sure if it was marketing or not,
17 but the original manager responsible for the
18 LeMond brand when they brought it on, when
19 they did the contract, when they were moving
20 forward.

21 Q. And what did any one of them say that Trek
22 did not do in terms of promotion,
23 advertising of the LeMond brand to Trek
24 dealers?

25 A. Well, specifically the product manager was

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1 concerned about the degree of technology
2 that had been developed and the points of
3 differentiation, and getting that out into
4 the marketplace.

5 But from a marketing standpoint,
6 the references to both the dealer meetings
7 to getting Greg out, getting Greg LeMond out
8 to do more promotion, and I think generally
9 the comments made early on, I think Ira
10 Langer, is that the name of one of the
11 original -- he's no longer employed by the
12 company, but, again, my sense of reading
13 those through was that there could have been
14 a lot more done.

15 But looking at where Trek ended up
16 over the time frame and where LeMond ended
17 up, I mean, it's -- to me it's hard to get
18 the kind of numbers that are posted there
19 for LeMond without almost abject neglect
20 from the standpoint of building the brand,
21 at least to the level of the other brands
22 that you're responsible for.

23 Q. And I want to be quite specific, and I
24 understand your testimony about pro teams,
25 and now a second item you've identified is

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1 you think Trek should have gotten Greg out
2 more.

3 A. Essentially. One of the aspects of that,
4 yes.

5 Q. What else, in addition to pro team
6 sponsorship and getting Greg out more, do
7 you think Trek should have done under the
8 contract with LeMond Cycling that it did not
9 do?

10 A. Those would be on my top two. Whether that
11 collateral material and working the vertical
12 press would have helped that, I think it
13 would have naturally followed.

14 In other words, the pro team
15 generates PR, visibility, buzz in the
16 vertical silos of marketing in the dealer
17 channel, and proactively being out in the
18 field with dealers and talking to dealers
19 about the brand, as opposed to once a year
20 coming in -- or coming into meetings, is
21 getting the dealer and their staff a closer
22 relationship to the product.

23 If they -- they get called on. I
24 mean, this is fairly common in the dealer
25 trade, something I learned early on, that if

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1 the company representative comes in and
2 talks to the dealer, shakes of the hands of
3 the mechanics, maybe takes them out for a
4 lunch, chats them up a little bit, it's good
5 for morale, as opposed to not doing that
6 relative to the brand.

7 Q. Okay. And, again, you've gone back to
8 getting Greg out more --

9 A. As part of that.

10 Q. So that's two. Is there a third?

11 A. And what would be related to that as a third
12 would be what they would put into the
13 vertical publications.

14 Q. What is a vertical publication in this
15 context?

16 A. It is an enthusiasts cyclists publication.
17 Best example I can give you Velonews.
18 V E L O N E W S, all one word.

19 Q. So these are three examples of promotion and
20 marketing efforts that you believe Trek
21 should have done at a greater level than it
22 did, right?

23 A. Yes.

24 Q. Is there a fourth?

25 A. No.

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1 Q. Is there anything else, in addition to
2 promotion, advertising of the LeMond brand,
3 that you're here to testify about, in terms
4 of what Trek did or didn't do?

5 A. Did or didn't do relative to?

6 Q. The LeMond brand.

7 A. I think overall those are the keys, but it's
8 also the issues of representation, good
9 will, making sure the sales force is out
10 there talking up the product. I mean,
11 that's part of the salesmanship side, it's
12 not promotion, and it's not the dealer
13 calls.

14 This is the standard group of
15 people on the phones, driving the cars,
16 coming in taking in the orders.

17 Q. Anything else?

18 A. No.

19 Q. So the -- if I understand you correctly, in
20 addition to the pro team, getting Greg out
21 more, collateral material for enthusiasts
22 publication like Velonews, a fourth item
23 you're saying Trek should have done more was
24 making sure the sales staff is talking up
25 the product? Am I understanding you

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1 correctly?

2 A. Positively talking up the product and out
3 explaining the features of the
4 differentiation.

5 Q. And what is the source of your knowledge, if
6 any, about Trek's efforts to have its sales
7 staff out talking up the product and
8 explaining the features of the
9 differentiation?

10 A. From what I read in the record.

11 Q. And what in particular?

12 A. The testimony of, again, the marketing
13 manager, coupled with the folks that did the
14 earlier marketing and sales.

15 Q. And what specifically did any of those
16 people say with respect to making sure the
17 sales staff was out talking up the product
18 and out explaining the features of the
19 differentiation?

20 A. I don't recall anything specific that I can
21 quote to you. It's the general sense, I got
22 from reading those documents through
23 numerous times to try to get a feel for what
24 they were saying relative to the support
25 that was given to the brand.

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1 Q. And what did any of them say in particular
2 from which you're drawing these sensory
3 inferences?

4 A. I'm trying to recall specifically. Sitting
5 here right now, at this moment, I can't
6 quote it.

7 Q. Well, do you think it's enough for an expert
8 just to come in and say, Well, I read a lot
9 of materials, and this is kind of my gut
10 feel?

11 MS. RAHNE: Object to the form.

12 A. I think it also goes to the numbers. I
13 mean, if you're looking at the sales effort,
14 why would they accept the sales that they
15 got?
16 It's the numbers in comparison to
17 the effort that went in to -- the brand
18 management piece on the race side, you've
19 got one brand that's showing a fairly
20 aggressive curve in the marketplace, and the
21 other one is flat.
22 And, again, from experience in the
23 same issues in several companies with the
24 same kinds of products associated with the
25 same market, the only way that occurs is if

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1 there's not support, because if you're
2 putting support into it, you get something.
3 And these are just -- these numbers
4 are very small, I mean, if Trek, from the
5 standpoint of what it promotes, and LeMond,
6 from the standpoint of where LeMond ends up.
7 So the answer to your question,
8 from my standpoint, is evaluating the stats.

9 BY MR. WEBER:

10 Q. You're talking about sales stats?

11 A. Yeah. Yes.

12 Q. And I'm talking about the evidence that you
13 have reviewed that enables you to, you
14 believe, to draw expert opinions in this
15 case.

16 And my question, with respect to
17 this fourth item you've identified, making
18 sure the sales staff is talking up the
19 product and out explaining the features of
20 the differentiation, I'm asking you to refer
21 me to a single piece of evidence that would
22 support a conclusion in this regard, other
23 than the ultimate sales numbers.

24 MS. RAHNE: Object to the form.

25 Go ahead.

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1 A. And other than the ultimate sales numbers,
2 and my sense of the record, sitting here
3 right now I can't give you a specific
4 instance.
5 I could put it in the context of
6 what would I do, and what have I seen done,
7 but those seem to me to be the basics, that
8 you build the ability to take a brand to
9 market and do it successfully, and if the
10 numbers don't yield that, which they don't,
11 if you had the experience in looking at how
12 you build the brand, you look at the pieces
13 that make that successful. It's not rocket
14 science. It's fairly straightforward.

15 BY MR. WEBER:

16 Q. Fairly straightforward to sell a bike brand?

17 A. Well, 147 of them are sold in the
18 marketplace, and a good number of those
19 stick around, and there's a formula to that.

20 Q. Was Schwinn successful --

21 A. In many ways.

22 Q. -- or did Schwinn go bankrupt?

23 A. Schwinn went bankrupt.

24 Q. Did Cannondale go bankrupt?

25 A. Yes.

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1 ground. The easiest market to sell in this
2 business is upper-end, enthusiasts, because
3 that's what the shops are populated with,
4 that's what the business is all about,
5 that's where the product managers are -- the
6 bike shops in this country are populated
7 with enthusiasts, simple terms, so are most
8 of the product development departments, and
9 consequently that's a great mindset to be
10 in.

11 I mean, they had all the elements
12 for that brand to be successful. The
13 Coasting and the problem of dealer feedback
14 and dealers not representing products or not
15 selling products to the consuming public, or
16 condescending to women, not doing the things
17 that expand the market, are part and parcel
18 of the statement I made.

19 But, in turn, from the standpoint
20 of selling LeMond bikes, they had all the
21 tools they needed, they just didn't employ
22 them.

23 Q. Because they had the incorrect, in your
24 view, dealer-focused marketing strategy?

25 A. Overly influenced by dealer feedback, as

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1 opposed to going out and finding out what
2 consumers want, need and opinion was.

3 Q. The next paragraph, "The alleged problems
4 relative to both the Trek and LeMond brands
5 are much more an emotional reaction within
6 the Trek-dealer focused culture than real
7 substantive problems in the bike shop
8 channel of trade or the adult enthusiast
9 cyclists market."

10 What do you mean?

11 MS. RAHNE: Slowly.

12 A. The core of the statement leading on from
13 the first paragraph, the issues that were
14 raised relative to LeMond, and selling
15 LeMond product, are based on this emotional
16 reaction to what was said, whatever that
17 was.
18 When you get to the heart of
19 selling bicycles, marketing bicycles,
20 moving -- even in the dealer trade, that
21 marketplace, that channel, this is such a
22 small subset that's based on -- rumors mean
23 a lot, you know, there's the trash talk that
24 goes on, but more than anything else it's
25 the emotion.