

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CASE NO. 12 CIV 2275 (PKC) (4LE)

NIKE, INC., and NIKE :
USA, INC., :
Plaintiff, :
v. :
REEBOK INTERNATIONAL :
LTD., :
Defendant. :

Transcript of the deposition of KENNETH GAMBLE
(VIA TELEPHONE), called for Oral Examination in
the above-captioned matter, said deposition taken
by and before SILVIA P. WAGE, a Certified
Shorthand Reporter, Certified Realtime Reporter,
Registered Professional Reporter, and Notary
Public for the State of New York, New Jersey and
Pennsylvania, at the offices of STILLMAN &
FRIEDMAN, P.C., 425 Park Avenue, 26th Floor, New
York, New York, on Monday, April 2, 2012,
commencing at 10:44 a.m.

HUDSON REPORTING & VIDEO, INC.
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1 KENNETH GAMBLE
2 KENNETH GAMBLE,
3 (Business Address) 1895 JW Foster Blvd.
4 Canton, Massachusetts 02021, after having
5 been duly sworn, was examined and testified
6 as follows:

7 EXAMINATION BY MR. FOSTER:

8 Q. Mr. Gamble, you have counsel with you
9 in the room?

10 A. Yes, sir.

11 Q. Anyone else with you?

12 A. That's it.

13 Q. All right, Mr. Gamble, are you the
14 person most knowledgeable within Reebok of the
15 Reebok NFL Players Association license agreement?

16 A. Yes, sir.

17 Q. Would you take a look at a document
18 that you have in your -- some pile in front of
19 you, it's marked in the lower right-hand corner
20 with little tiny letters and numbers, RBK 31
21 through 37. Can you get that document out,
22 please?

23 A. One second. Yes, it looks like it's
24 the copy of our licensing agreement with the NFL
25 Players, Inc.

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1 KENNETH GAMBLE
2 Q. Okay. And this agreement expired by
3 its term on February 28, 2010; is that correct?
4 A. 2010, no, that's not correct.
5 Q. Excuse me. Let's try that one again.
6 Thank you.
7 This agreement expired on its term on
8 February 28, 2012, correct?
9 A. Correct. The terms expired 2/28/12,
10 yes.
11 Q. And this was a group license
12 agreement, correct?
13 A. Yes, sir.
14 Q. And this was an agreement for the use
15 of players names and groups of six or more,
16 correct?
17 A. Yes, sir.
18 Q. All right. And you are familiar with
19 the NFL Players Association Group Licensing
20 Assignment, which is the last page in this
21 document that I've identified and that we're
22 going to mark as Exhibit 5?
23 A. Yes, yes, sir I'm familiar with that.
24 (Deposition Exhibit No. 5, License
25 Agreement, was marked for identification.)

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1 KENNETH GAMBLE
2 Q. All right. So let me just ask you,
3 specifically, about player movement.
4 Prior to February 28, 2012, did Reebok
5 require any special authorization from the
6 Players Association to mark team jerseys or
7 T-shirts for players that were traded or teams
8 that signed free agents?
9 A. Prior to 2/28/12?
10 Q. Yes.
11 A. No.
12 Q. So under your Players Association
13 license, you were free to mark -- because you had
14 this group license, you were free to mark team
15 apparel with players names under the scope of
16 your team license -- your group license, right?
17 A. Yes, sir.
18 Q. Okay. So, as of February 28, 2012,
19 Reebok had no authority to mark any players names
20 on any team apparel without getting some kind of
21 special approval, right?
22 A. That was -- that's not true. We
23 still have or actually still have rights under
24 this agreement as part of our sell off period.
25 But because we have been transparent all the way

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2 through the process with the NFL, not as much
3 with the PA because we haven't really been in a
4 situation where we've had to have conversations
5 with them, we have been reaching out to the
6 League to let them know what our intentions are,
7 what we are planning on doing and they've been
8 reciprocating.

9 And, in this instance, we wanted to do the
10 same with the Players Association because we
11 wanted to make sure they are aware of how we were
12 going to attack all the player movements that
13 were going happen in the month of March.

14 Q. So let me -- just help me understand
15 that a little bit.

16 So are you saying, as far as you were
17 concerned, Reebok could take a Jets jersey and
18 puts somebody's name on it after February 28,
19 2012?

20 A. Yes, sir.

21 Q. And the basis for that is what again,
22 exactly?

23 A. Would be in that license agreement,
24 Section 17E, I believe it is.

25 Q. Okay. That's the sell off period?

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1
2 A. Yes, sir.

3 Q. Okay. And so even a player that had
4 moved from one team to another team after
5 February 28th, it's your view that Reebok would
6 have the right to take that players name, let's
7 say, Tim Tebow under your sell off rights and
8 mark apparel?

9 A. Peyton Manning, Randall Marshall, Tim
10 Tebow, yes, I believe we had the right to do
11 that.

12 Q. Okay. And so -- okay. Did you tell
13 the Players Association that you felt you had
14 those rights under the sell off provision?

15 A. I did not, specifically have that
16 conversation with them, no.

17 Q. Okay.

18 A. But I believe that they understood
19 our contract or they, at least, should have
20 understood our contract.

21 Q. Okay. And did you get advice from
22 legal counsel concerning this matter prior to
23 March 15th?

24 A. No, sir.

25 Q. You do have lawyers in-house at

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1 Reebok, don't you?

2 A. Yes, sir.

3 Q. Okay. Did you negotiate the license
4 agreement with the NFL Players Association?

5 A. I was part of the negotiating team,
6 yes.

7 Q. Who else was part of that team?

8 A. At one point David Baxter, as well as
9 another in-house counsel Sara Stewart, who was
10 checking the document.

11 Q. Is David Baxter a lawyer?

12 A. No, sir.

13 Q. Okay. I'm sorry. I may have
14 misunderstood what you just told me, so I just
15 wanted to clarify.

16 So the team that negotiated the Exhibit 5
17 with the NFL Players Association was you, David
18 Baxter and Sara Stewart had some involvement?

19 A. Sara Stewart wasn't part of
20 negotiation team.

21 Q. Okay.

22 A. She was the legal counsel who would
23 make sure that we had all the detail covered that
24 all of our points were in the document.

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1
2 Q. Okay.

3 A. And David Baxter was only involved to
4 the extent that we -- that he agreed to the
5 financial terms that were part of this agreement.

6 Q. Okay. Were you involved in the
7 negotiation of the earlier license agreement with
8 the NFL Players Association?

9 A. No, sir.

10 Q. Do you know who was involved in that?

11 A. I do not.

12 Q. All right. Have you seen
13 Mr. Gordan's declaration in this case?

14 A. I have.

15 Q. Okay. Do you have that in front of
16 you?

17 A. I do not.

18 Q. Mr. Gordan indicated in his
19 declaration that the NFL players -- and I'm going
20 to quote -- "NFL Players has not authorized the
21 use of Tim Tebow's name on any newly introduced
22 Tebow New York Jets Reebok products."

23 Is that a true statement, as far as you're
24 concerned?

25 A. That is a true statement.

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1
 2 Q. Okay. So you understood that the NFL
 3 players did not authorize Reebok to use
 4 Mr. Tebow's name on any Jets apparel?
 5 A. My conversations with Mr. Gordan were
 6 never about Tim Tebow. My conversations with
 7 Mr. Gordan happened between the dates of 3/9 and
 8 3/13 and at that point Tim Tebow was not part of
 9 any conversation.
 10 Q. Your focus was on Peyton Manning,
 11 right?
 12 A. My focus was on Peyton Manning,
 13 initially, and then all the other player movement
 14 that was happening during that time period
 15 between 3/9 and 3/13.
 16 Q. Okay. So let me ask you to pick up
 17 some documents. There is a stack of documents
 18 that are marked in the lower right-hand corner
 19 with the No. 39 and they go on through the No.
 20 66.
 21 A. Okay, one second. I have it in front
 22 of me.
 23 Hello?
 24 Q. I am here.
 25 You got those documents?

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1
 2 A. Yes, I do.
 3 Q. Okay. So the one that is marked with
 4 39 at the end, do you have that in front of you?
 5 A. Yes, sir.
 6 Q. This is an e-mail from you to
 7 Mr. Gordan. It says, "Give me a call when you
 8 get a moment." You leave a phone number. It's
 9 dated March 9th, Friday?
 10 A. Yes, sir.
 11 Q. Seven in the morning?
 12 A. Yes.
 13 Q. Why were you asking -- first of all,
 14 who is Keith Gordan?
 15 A. Keith Gordan is -- I hope I get his
 16 title right -- the President of NFL Players,
 17 Inc., which is the marketing arm for the NFL
 18 Players Association.
 19 Q. Okay. And why were you sending this
 20 e-mail to Mr. Gordan?
 21 A. I was sending the e-mail to
 22 Mr. Gordan because on 3/8/12 Peyton Manning was
 23 released by the Indianapolis Colts, that made him
 24 a free agent, and I wanted to reach out to him to
 25 have a conversation about this --

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1
 2 Q. Okay.
 3 A. -- incident.
 4 Q. And what was it that you wanted to
 5 talk to him about?
 6 A. I wanted to talk to him about making
 7 sure that he was clear, that we wanted to
 8 activate in the marketplace when Peyton Manning
 9 decided that he -- when Peyton Manning decided to
 10 play for a particular team, when that moment
 11 came.
 12 Q. Okay.
 13 A. And I wanted to make sure that he was
 14 visible about -- had visibility to what our
 15 intentions were.
 16 Q. You were calling to ask him
 17 permission to do that, weren't you?
 18 A. Part of the conversation with him was
 19 to make sure that he was okay with it.
 20 Q. And what else?
 21 A. And that was it, on that particular
 22 day.
 23 Q. All right. So take a look at the
 24 document with the numbers in the lower right-hand
 25 corner ending in 40. It's the next page.

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 2 that's because Reebok had a current license with
 3 the NFL, right?
 4 A. Yes.
 5 Q. So you didn't need anybody's approval
 6 to sell NFL authorized apparel, right?
 7 A. No. But, again, as I stated earlier,
 8 you know, it's been our intention from, I guess,
 9 the day we met with the NFL back in August of
 10 last year to be transparent about any activity
 11 that we're having around their business,
 12 particularly, as we're the outgoing licensee.
 13 Q. Right. But you had a current license
 14 with the NFL, correct?
 15 A. Yes, sir.
 16 Q. It didn't expire until the end of
 17 March, right?
 18 A. Correct.
 19 Q. So your inquiry -- the holdup here
 20 was with the Players Association, right?
 21 A. Yes.
 22 MR. FRIEDMAN: Object --
 23 A. I wanted to make sure that they were
 24 aware of what we were doing.
 25 MR. FRIEDMAN: Okay. Kenny, this is

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 2 Julian. I would ask to just give me the
 3 opportunity to make some objections. You're
 4 answering very quickly.
 5 THE WITNESS: Okay, sorry.
 6 MR. FRIEDMAN: Even though it's been
 7 answered, I object to the form of the last
 8 question.
 9 Go ahead.
 10 Q. And at this time, you knew that your
 11 license from the Players Association had expired,
 12 right?
 13 A. At this time, I did know, yes, that
 14 our license -- our term had expired with the NFL
 15 Players Association.
 16 Q. And when you say in your e-mail to
 17 these folks at Reebok, your e-mail dated
 18 March 9th, "hold until you hear from me," what
 19 was it they were holding, what were they holding
 20 off doing?
 21 A. We were holding on -- they're waiting
 22 for me to advise them how to proceed with
 23 creating graphics for Peyton Manning.
 24 Q. Okay. Graphics for what?
 25 A. Graphics for him becoming a free

1 KENNETH GAMBLE
 2 agent and going to another team. He was traded
 3 -- he -- excuse me.
 4 He became a free agent on the 8th and on
 5 the 9th, the next day, he was a free agent, he
 6 was free to chose what team he was going to play
 7 for.
 8 Q. And so what graphics were going to be
 9 created?
 10 A. We would probably create some name
 11 and numbered T-shirts kind of replicate the
 12 uniform, which has a been series that we've been
 13 running for ten years, and then some player
 14 imagery stuff of him in an action photo.
 15 Q. Okay. Now, Mr. Manning is a Reebok
 16 athlete, isn't he?
 17 A. I believe he still is, yes.
 18 Q. Okay. Which means he has an
 19 endorsement agreement with Reebok?
 20 A. I believe he does, yes.
 21 Q. Okay. Who is the person most
 22 knowledgeable about that?
 23 A. Not me.
 24 Q. Okay. Well, who is?
 25 A. Diane -- what's her last name? Diane

1 KENNETH GAMBLE
 2 A. Yes, he did, after I e-mailed him
 3 first back on the 9th, I believe.
 4 Q. And he has a response to your e-mail
 5 and that is the e-mail that is the middle e-mail
 6 on that page of Exhibit 62
 7 A. Correct.
 8 Q. Okay. And he indicated to you that
 9 he's not comfortable granting Reebok the ability
 10 to make a new jersey or name and number?
 11 A. He did indicate that, yes.
 12 Q. I also need to be allowed to finish
 13 my question. So it's a little hard on the phone.
 14 And I appreciate your patience with me, but let
 15 me ask the whole question and then you can give
 16 me the answer that you just gave me.
 17 A. Okay.
 18 Q. So Mr. Gordan writes you back and
 19 indicates that he's not comfortable granting
 20 Reebok the ability to make a new jersey or
 21 name/number in conjunction with the team product
 22 for Peyton if he signs with a new team. Do you
 23 see that?
 24 A. Yes.
 25 Q. Okay. What was your understanding of

1 KENNETH GAMBLE
 2 talk to him about.
 3 Q. All right. So you were asking him to
 4 grant Reebok the ability to make new jersey or
 5 name and numbers?
 6 A. I didn't say "grant." I was asking
 7 him if he was okay if we proceeded.
 8 Q. Okay.
 9 A. And I explained that we are having
 10 conversations with the NFL and the NFL was okay
 11 with what we were doing and I just wanted to make
 12 sure that he was aware of what our intentions
 13 were.
 14 Q. Okay. And, at this time, did you
 15 feel like it didn't really matter what the
 16 Players Association said, you could go ahead and
 17 do what you wanted to do on your sell off
 18 provision?
 19 A. No, sir. No, sir. I actually,
 20 reached out -- that was at 6:20, I believe, he
 21 e-mailed me and that was the Friday or Friday of
 22 the weekend and I just said to myself, you know,
 23 I'll reach out to him on Monday and, you know,
 24 just have a conversation with him because I think
 25 he's missing out on an opportunity that really

KENNETH GAMBLE

1 shouldn't be passed up. So I e-mailed him the
 2 following Monday to -- and then we started
 3 e-mails for the most part that whole day.
 4 Q. Okay. At any point did you send
 5 Mr. Gordan an e-mail, or did you otherwise
 6 communicate to him that it was Reebok's position
 7 that they had the right to use Mr. Manning's name
 8 on a jersey or T-shirt during this time period
 9 regardless of what the Players Association said?
 10 A. No, sir.
 11 Q. Did you ever have that conversation
 12 with anybody internally at Reebok?
 13 A. No, sir.
 14 Q. So this is a position that you've
 15 come to recently, in your own mind?
 16 A. No, sir.
 17 Q. You always felt that way?
 18 A. I know the language of the contract.
 19 And, as I stated earlier, we're paying these
 20 guys, you know, we're trying to be as transparent
 21 as we can be with these guys so they understood
 22 what our position was and what we were trying to
 23 do around this business.
 24 Q. And so would it be your position
 25

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1 then --
 2 A. We were --
 3 (There is a discussion off the record.)
 4 MR. FRIEDMAN: Kenny, the last few
 5 words of your answer got cut off.
 6 A. We're acting in good faith.
 7 Q. Good.
 8 So your sell off period is for what,
 9 150 days?
 10 A. Yes, 150 days from the end of the
 11 term.
 12 Q. So it's your position then, Mr.
 13 Gamble, that Reebok can continue to put players
 14 names on team apparel for the next what,
 15 120 days?
 16 A. Yes, yes, sir, you asked that
 17 question before, sir, yes.
 18 Q. I must have asked in a little
 19 different way. I want to make sure I understand
 20 what it is your saying.
 21 A. Okay.
 22 Q. So you can put anybody's name on
 23 anybody's jersey for a player -- specifically,
 24 for a player that moves from one team to another
 25

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1 over the next period of time through the entire
 2 150-day sell off period?
 3 A. In our licensing agreement, in
 4 Section 17E, it makes no specific reference to
 5 any of what you just said. So I feel we have the
 6 right to do and activate, you know, during that
 7 sell off period, as we chose.
 8 Q. What is it you're selling off?
 9 A. We're selling off inventory.
 10 Q. Inventory of what?
 11 A. Blank jerseys, finished jerseys.
 12 "Blank," meaning, there is no imprinted player
 13 name and number on them, which we cannot sell
 14 into the marketplace blank per the NFL; "finished
 15 jerseys," which have imprinted player name and
 16 number on the product and any specific T-shirts
 17 that have specific NFL colors that aren't colors
 18 that we can run across and leverage across our
 19 other businesses we have to sell off.
 20 Q. So you have no existing inventory
 21 with players names printed on them or with
 22 players name affixed?
 23 A. I don't know what our finished
 24 inventory position is. I haven't checked that in
 25

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1 a while. But I do know about a month and a half
 2 ago I checked and to see what our blank situation
 3 was and we had a lot. Not specific as to -- I'm
 4 not specific as to what the number is.
 5 Q. I just want to be abundantly clear
 6 about what we're talking about here.
 7 So, if a player is traded on August 15th
 8 from the Seattle Sea Hawks to the Green Bay
 9 Packers, it's your position that Reebok can slap
 10 that players name on a Green Bay packers team
 11 apparel and sell it into the market?
 12 A. August 15th of what year?
 13 Q. This year?
 14 A. Of '12?
 15 Q. Yes, sir.
 16 A. No, we don't have that right.
 17 Q. How about July 15th?
 18 A. Yes, July 15th, we do. Our rights
 19 end on, I believe, July 31, '12.
 20 Q. Okay. So take a look at exhibit --
 21 what's been marked as Exhibit 1. It's Page 42 at
 22 the bottom.
 23 A. Yes, sir.
 24 Q. This is another e-mail from you at
 25

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1 KENNETH GAMBLE
 2 is an e-mail from Blake Lundberg. Do you see
 3 that?
 4 A. Is that RBK 0042.
 5 Q. Yes, sir, Exhibit 1.
 6 A. Okay.
 7 Q. There is an e-mail from Blake
 8 Lundberg to Glen Giovanucci and John Warren. Do
 9 you see that?
 10 A. Yes.
 11 Q. Okay. And it has the same RE sign --
 12 the subject line is your e-mail?
 13 A. Yeah.
 14 Q. Okay. It says, "JW says we have no
 15 rights through NFL PA as they expired 2/28. He's
 16 working on a one-time deal." Do you see that?
 17 A. Yeah. I think Blake misspoke.
 18 Q. Who is --
 19 A. He's not familiar with the contract.
 20 Q. Well, I haven't asked you a question
 21 yet.
 22 Do you see that, what I'm referring to?
 23 A. Yes.
 24 Q. Who is JW there?
 25 A. John Warren.

1 KENNETH GAMBLE
 2 Q. Okay. And Blake Lundberg is a --
 3 what's his position, he's the vice president?
 4 A. Vice president and general manager of
 5 our Indianapolis Printing Facility and
 6 Distribution Facility.
 7 Q. Okay. So he's, apparently, reporting
 8 on a conversation you had with John Warren?
 9 A. I'm not certain about that.
 10 Q. Okay. John Warren is -- do you
 11 report to John Warren?
 12 A. Yes, I do.
 13 Q. Okay. So take a look at the next
 14 e-mail above that. Do you see that, it's from
 15 John Warren to you?
 16 A. Yeah.
 17 Q. It says, "Do you think we can get a
 18 deal done with the NFL PA to ship Manning if he
 19 goes soon?" Do you see that?
 20 A. Yes.
 21 Q. What's the deal that John Warren
 22 wanted to get done?
 23 A. I'm not exactly sure what he's
 24 referencing there.
 25 Q. Well, you responded to him, right,

1 KENNETH GAMBLE
 2 Go ahead, Kenny.
 3 A. Yes --
 4 MR. FRIEDMAN: I have to get my
 5 objections in whenever I can.
 6 A. Yeah, Blake, Mr. Lundberg, does not
 7 know the terms of our contract. So he's really
 8 speaking out of turn.
 9 Q. Mr. Warren knows the terms of the
 10 contract?
 11 A. Mr. Warren does not know the terms of
 12 the contract like I know the terms of the
 13 contract.
 14 Q. Okay. So did you tell Mr. Warren
 15 that you didn't need to get a deal done because
 16 you already had the rights?
 17 A. No, I didn't cover that with him, no.
 18 Q. Okay. And you didn't do that because
 19 why?
 20 A. I didn't think to have to cover that
 21 with him at the time.
 22 Q. Okay. Wasn't everybody anxious to be
 23 in a position to sell Manning jerseys and
 24 t-shirts?
 25 A. Sure. Yes.

1 KENNETH GAMBLE
 2 Q. But at this time it didn't seem
 3 important enough to tell Mr. Warren that you
 4 thought Reebok already had the rights that he
 5 wanted to get through some deal with the Players
 6 Association?
 7 A. That did not come up in the
 8 conversation with Mr. Warren or in any e-mails,
 9 no, sir.
 10 Q. Okay. Did you tell Mr. Warren that
 11 you had talked with Mr. Gamble and that Mr.
 12 Gamble --
 13 MR. FRIEDMAN: This is Mr. Gamble.
 14 MR. FOSTER: I got it.
 15 MR. FRIEDMAN: Okay.
 16 Q. Did you tell Mr. Warren that you had
 17 received an e-mail from Mr. Gordan indicating
 18 that the Players Association didn't feel
 19 comfortable granting Reebok the ability to make a
 20 new jersey or name and number in conjunction with
 21 a team product for Peyton if he signs with a new
 22 team?
 23 A. I believe I had a conversation with
 24 him face to face about that, yes.
 25 Q. Okay. And what was his reaction to

KENNETH GAMBLE

1 that?
 2
 3 A. I don't recall.
 4 Q. Okay. Did you tell him at that time
 5 that you didn't need the Players Association's
 6 authority to proceed because Reebok had rights
 7 under the sell off provision of the Players
 8 License Association Agreement?
 9 A. No, I did not have that conversation
 10 with him. But he knew this was our plan all
 11 along, which was to make sure that we were
 12 transparent with the League and the Players
 13 Association on what our intentions were during
 14 this time period.
 15 Q. When was the first time you had a
 16 conversation with Mr. Warren or anybody else at
 17 Reebok in which you took the position that Reebok
 18 had the right under the sell off provisions of
 19 the players license to mark team apparel with a
 20 players name after March 1, 2012?
 21 MR. FRIEDMAN: Before you answer,
 22 Kenny, let me just say I have no problem with the
 23 question because it says when. If you're going
 24 to ask him about conversations and they are
 25 privileged, I will be objecting.

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 2 A. No, I didn't talk to Mr. Gordan about
 3 that at all.
 4 Q. Specifically, you talked --
 5 A. I spoke to Mr. Warren and I believe I
 6 said -- mentioned something to Mr. Giovanucci.
 7 Q. So, specifically, you remember
 8 talking to Mr. Warren and saying, we have the
 9 rights to mark under the sell off provision,
 10 right?
 11 A. I believe I just said we have the
 12 rights anyway.
 13 Q. Okay.
 14 A. But, as he said, you know, he said
 15 we're being transparent with the Leagues and the
 16 Players Association, so, you know, we're
 17 following the guidelines that we set for
 18 ourselves on ending the business the right way.
 19 Q. And you recall that being a
 20 conversation after March 13th and prior to the
 21 Nike lawsuit being filed?
 22 A. Yes, sir.
 23 Q. Okay. And was that -- is that in
 24 writing anywhere, is there any --
 25 A. No, sir. As I stated earlier, we had

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 2 communications with Mr. Gordan about all of this
 3 since his e-mail to you saying he didn't feel
 4 comfortable granting Reebok the ability to make a
 5 new jersey or name and number?
 6 A. Well, as I recall, the e-mail started
 7 on 3/9 and then with a follow-up voice message
 8 and then Mr. Gordan's response on 3/9 late that
 9 day about his being uncomfortable and then, like
 10 I said, it was the weekend and I waited until,
 11 you know, Monday to respond to him again and I
 12 guess this e-mail happened that Sunday before
 13 Monday, the 12th, and I just basically told these
 14 guys, you know, hold tight and I'm working with
 15 players and, you know, we'll get moving here.
 16 Q. Okay.
 17 A. Because they were anxious to,
 18 obviously, get some product in the marketplace.
 19 Q. Right, okay.
 20 So take a look at Page 50 in the lower
 21 right-hand corner, 50 and 51.
 22 A. Okay.
 23 Q. All right.
 24 A. Page 50 right now?
 25 Q. Yeah. Let's mark this as Exhibit 7.

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1
 2 (Deposition Exhibit No. 7, e-mail string
 3 RBK00050 & 51, was marked for identification.)
 4 A. Seven?
 5 Q. Right.
 6 A. Okay.
 7 Q. Pages 50 and 51 are Exhibit 7. This
 8 is an e-mail Tuesday morning, March 13th, from
 9 you to Mr. Gordan.
 10 A. Yeah.
 11 Q. Okay. So you're kind of knocking on
 12 the door again, right?
 13 A. Yes, because I wanted to speak to him
 14 about his e-mail on Friday.
 15 Q. Okay. And the e-mail on Friday is
 16 the one where he indicated he was not
 17 comfortable, right?
 18 A. Yes, sir.
 19 Q. Okay. And, at this point, you wanted
 20 to talk more than just Peyton Manning, you wanted
 21 to talk with about Randy Moss, right?
 22 A. Yeah, I believe -- Randy Moss, I
 23 believe -- I could be wrong -- but I believe he
 24 had just signed with the 49ers on Friday.
 25 Q. Right, okay.

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1
 2 And did you have a conversation with
 3 Mr. Gordan on that day?
 4 MR. FRIEDMAN: Do you mean Friday or
 5 Monday?
 6 Q. Did you have a conversation with
 7 Mr. Gordan on March 13th?
 8 A. I believe I did but late, late in the
 9 day.
 10 Q. Okay. Now, take a look at Page 52
 11 through 54. We're going to mark that as
 12 Exhibit 8.
 13 A. Okay.
 14 (Deposition Exhibit No. 8, e-mail string
 15 RBK52 to 54, was marked for identification.)
 16 Q. This is an e-mail to John Warren at
 17 the top of the page. Apparently, you had talked
 18 to Mr. Gamble the night before.
 19 Does that refresh your recollection?
 20 A. I talked to Mr. Gamble?
 21 Q. I'm sorry, I keep doing that. I
 22 apologize.
 23 You talked with Mr. Gordan the night
 24 before, that is, Monday night, March 12th, if I'm
 25 reading this e-mail correctly?

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1
 2 A. Yeah. Obviously, it looks like I
 3 spoke to him on the evening of the 12th.
 4 Q. Okay. Do you recall that
 5 conversation?
 6 A. I do.
 7 Q. What was discussed?
 8 A. It was just -- what was discussed was
 9 all the player movement and the opportunities
 10 that were presented and I was aware that Nike
 11 wasn't going to have any product in the
 12 marketplace because that's something that was --
 13 it was at some point public knowledge and I
 14 wanted to make sure that he was aware of that.
 15 He was. He said he had conversations with
 16 Nike about this but to no avail. And I told him
 17 it was just going to be a missed opportunity,
 18 particularly, at a time when consumer demand was
 19 going to be at its highest and that was going to
 20 be a missed opportunity, you know, to generate
 21 royalties, you know, for his business.
 22 Q. Okay. And did he explain to you why
 23 he was uncomfortable with authorizing Reebok to
 24 do what you wanted to do?
 25 A. He said he was uncomfortable because

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1
 2 he had agreements that started on 3/1 with Nike
 3 and VF.
 4 MR. FRIEDMAN: And VF.
 5 A. VF Imagewear.
 6 Q. And you already knew there was an
 7 agreement with Nike?
 8 A. I did, I did. He had previously said
 9 that in his e-mail on the 9th as well.
 10 Q. Okay. And what else did he say?
 11 A. He said that he was going to go and
 12 talk to his attorney, Ahmad Nassar, and see if
 13 there is anything that they can do that would
 14 allow us to move forward.
 15 Q. Okay. And what was it that you
 16 needed to move forward?
 17 A. I just wanted to make sure that he
 18 was clear and knew our intentions about putting
 19 product into the marketplace.
 20 Q. Okay. And so did you tell him that
 21 you were going to be marking these products and
 22 you were just calling him to advise him of that?
 23 A. I wanted to make sure that he
 24 understood what we were doing. As I stated
 25 earlier, you know, our policy was, you know, as

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1
 2 we're moving out of this business is to be very
 3 transparent with the leagues, as well as the
 4 Player Association, so they knew what our
 5 intentions are.
 6 Q. And so if he said, no, you would have
 7 still gone forward?
 8 A. I don't know what I would have done.
 9 Q. Okay.
 10 A. But, again, you know, we have a
 11 current relationship with the NFL because we have
 12 another brand called Mitchell & Ness where we
 13 currently entered into a relationship with the
 14 NFL for the next five years. So I didn't want to
 15 do anything to jeopardize our business with the
 16 NFL or with Players Association because we have
 17 intentions on vying for some other business
 18 that's still available out there. So it wasn't
 19 my intention to be malicious or wanton or, you
 20 know, damaging to either one of the parties, NFL
 21 or NFL Players Association.
 22 Q. Okay. So take a look at Page 55.
 23 Again, this is another e-mail. It looks like
 24 you're getting a little -- well, you're following
 25 up on an earlier e-mail that day and the

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1 conversation that occurred the prior night. Do
2 you see that?
3
4 A. Yes, sir.
5 Q. Okay. And did you talk with
6 Mr. Gordan after this e-mail that we've marked as
7 Exhibit 92
8 A. I did. I talked to him that evening.
9 He called me. He was in Chicago at the time.
10 Q. Yeah.
11 A. And it might have been around I want
12 to say -- it was on my way home. It might have
13 been like quarter to six in the evening.
14 Q. You say you were on your way home.
15 Were you in your car?
16 A. I was in my truck, yes.
17 Q. In your truck, okay.
18 What kind of truck do you have?
19 A. Toyota Tacoma, beautiful truck, great
20 riding truck.
21 Q. I think it might have been truck of
22 the year a year or two ago.
23 A. Beautiful thing.
24 Q. Okay. So tell me in as much detail
25 as you can give to me what happened. The phone

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1 rings?
2 A. Yeah. It was a short, pretty short,
3 conversation, 3 minutes and 14 seconds, to be
4 exact. We talked and exchanged some quick
5 pleasantries, learned that he was in Chicago. He
6 told me he had some fun. And then we just talked
7 about, you know, whether or not they were okay
8 with us moving forward.
9 Q. Well, what --
10 A. And he said, we are, but there are
11 two conditions. One is that we couldn't do
12 anymore than five players because if we did over
13 five, it would infringe on Nike and VF's rights
14 which start -- the Group Licensing Agreement
15 starts at 6 players and above. And this way if
16 we did less than five, they would have an
17 argument against Nike and be able to say that we
18 did less than five. So, therefore, we're not in
19 breach of contract and we're not infringing --
20 and they're not infringing on the rights.
21 And then the second condition was that
22 there was to be nothing submitted to the NFL
23 Players Association for approval and that there
24 was to be no further communication on the subject

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1 matter and that was the last time I spoke with
2 Mr. Gordan.
3 Q. Okay.
4 A. I explained to him that if he was,
5 you know, still concerned, that, you know, we
6 could -- we could somehow manage, you know, how
7 much product that we had in the marketplace
8 because our intention was not to flood the
9 market. And I think he heard my comment, but he
10 didn't say anything about it. And then he
11 finished, you know, going over those two
12 conditions again and then the call ended.
13 Q. Okay. How do you know this took 3
14 minutes and 14 seconds?
15 A. Because I have a log on my BlackBerry
16 that timed that call.
17 Q. Okay. Now, Mr. Gordan also told you
18 that you needed approval from the players, didn't
19 he, individual players?
20 A. No.
21 Q. I'm sorry?
22 A. No.
23 Q. There was no discussion about getting
24 approval from individual players?
25

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1 A. No. In this instance, he didn't want
2 us to have any approvals as far as sending
3 artwork or any type of graphics that we might
4 create or re-introduce. He didn't want there to
5 be, I guess, any trail.
6 Q. Well, you understood because you're
7 very familiar with the Players Association
8 license that the Players Association only has
9 rights to grant group licenses for six or more
10 players, right?
11 A. That is correct.
12 Q. So Exhibit 4, which ends with page
13 56, you sent an e-mail -- did you send that
14 e-mail from home?
15 A. After I pulled off to the side.
16 Q. Yeah.
17 A. Actually, Mr. Giovanucci e-mailed me.
18 He wanted to know what was the status. And I
19 pulled over to the side and texted it or actually
20 e-mailed him.
21 Q. So --
22 A. And I was basically following, you
23 know, the point that Keith made, which was to not
24 have any communication on it. So I wanted to

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1
2 call and then have verbal conversation with him
3 about what the conditions were.

4 Q. And the conditions were five players
5 or less?

6 A. Five players or less and no
7 communication.

8 Q. Okay. Did you think that was a
9 little odd?

10 A. I thought it was a little odd, but
11 that's what they decided, how they decided to
12 handle and so I went with it.

13 Q. Okay. That's not the way that Reebok
14 typically takes care of its licensing
15 arrangements; is it?

16 A. That is true, that is true, that is
17 correct.

18 Q. And you understood the five or less
19 condition to be there because the Players
20 Association was not granting a group license,
21 right?

22 A. Actually, I had to have him explain
23 it to me again why they were going that route.

24 Q. And he explained to you that they
25 didn't have authority to grant -- they only had

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1
2 authority -- hang on just a second.

3 MR. FRIEDMAN: One at a time.

4 Q. Mr. Gamble, he explained to you,
5 didn't he, that the Players Association only had
6 authority to grant a group license, that is six
7 players or more?

8 A. No. He explained to me -- can I --
9 Q. Go ahead.

10 A. He explained to me that he didn't --
11 he didn't want to have an issue, you know, with
12 their contract and agreement with Nike and VF.
13 And if there was -- anything came up or there was
14 any argument, they could argue that we did --
15 that they allowed us to do less than six players.

16 MR. FOSTER: Can we take a moment.
17 Just step outside.

18 MR. FRIEDMAN: Okay.

19 MR. FOSTER: We'll just step outside
20 the door.

21 (Recess taken 11:34 to 11:36 a.m.)

22 Q. I think we're done.

23 MR. FRIEDMAN: Okay. So I have no --
24 hang on for one second. I have one question for
25 Kenny.

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KENNETH GAMBLE

1
2 Kenny, this is Julian. I have one
3 question for you.

4 THE WITNESS: Yes, sir.

5 EXAMINATION BY MR. FRIEDMAN:

6 Q. You said before that the sell off
7 provision contained in the agreement with NFL PA,
8 the Players Association, I guess, NFL players
9 Inc., that that sell off agreement in paragraph
10 17 had an end date of five months after the end
11 of the term of the license, correct?

12 A. Yes, 150 days.

13 Q. Was there also a sell off provision
14 in Reebok's agreement with the NFL?

15 A. Yes, sir, there was.

16 Q. Do you remember the terms of that
17 sell off agreement?

18 A. Those -- that term was also 150 days.
19 But, in recent months, we had renegotiated a sell
20 off period with the NFL that included the
21 exchange of rights for Mitchell & Ness brand that
22 I talked about earlier.

23 Q. Right.

24 A. And that window was reduced to
25 60 days from the expiration of the NFL contract.

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1
2 Q. And what was the date of the
3 expiration of the NFL contract?

4 A. 3/31/12.

5 Q. So the 60 days give or take a day
6 would be May 31st?

7 A. Yes.

8 Q. If -- withdrawn.

9 Was it necessary to have both sell off
10 provisions in effect in order for Reebok to sell
11 team specific player name and number apparel?

12 A. Pretty much, yes.

13 Q. So if Reebok had manufactured goods
14 -- apparel with the name and number of moving
15 players and used their new team logos, what would
16 be the last date by which Reebok could sell that
17 apparel?

18 A. 5/31.

19 Q. Okay. I have no further questions.

20 EXAMINATION BY MR. FOSTER:

21 Q. Kenny, tell us what this Mitchell &
22 Ness arrangement is about, what kind of goods?

23 A. They are a brand that we bought I
24 want to say three years ago, maybe four years
25 ago. They're a vintage license brand so they,

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