EXHIBIT K
BY THE WITNESS:

A. And they do board games and card games. They've sort of become the inheritors of our Sabertooth license. The idea has kind of ended up with Fantasy Flight.

I've actually got the -- although I don't actively -- I'm not actively involved in seeking the license partners, as head of intellectual property, I get to veto the licensees if they're not suitable. And, generally speaking, we stick to things that we don't regard as being directly competitive with our miniatures business. So, we don't license out any kind of three dimensional representation of Games Workshop's imagery because that's what we do.

And it might seem a bit weird, but we don't license out to any toy companies, either, and the reason we don't license out to toy companies is because our major -- a huge part of our customer base are impressionable teenagers, and we don't like to think that impressionable teenagers like to be associated with children's toys. So, we think that would be diluting our brand and quality.

BY MR. MOSKIN:

Q. Has Games Workshop given a license to Chapterhouse Studios for it to make its products?

A. No.

Q. Where can people buy the Games Workshop products, the Warhammer 40,000 or Warhammer products?
A. We've got a whole bunch of Games Workshop stores dedicated to selling our products all around the world. I think we've got over 400 around the world. Actually, Chicago is one of our big centers. So, we've got twelve Games Workshop stores in the greater Chicago area.

Q. And are those stores that Games Workshop owns?

A. Yes.

Q. Are there other places, other stores, where you can buy it?

A. Yes. We also sell to independent game stores and hobby stores and also to some distributors. So, I would say -- I don't know the exact number of stores around Chicago, but there will be at least as many trade accounts in Chicago as there are Games Workshop stores. And those stores would be stores that sell other gaming products or other hobby products or card games or just about any -- comic stores, that kind of place. And then if you haven't got a store near you, then you can go on our websites and order directly from our web store, obviously.

Q. Does Games Workshop do any advertising for its products?

A. Not in any kind of mass market way. We're a niche business. We know that actually our products don't appeal to everybody. That's fairly evident from seeing what it is. It's a very special kind of offer for a unique kind of or a specific kind of customer. Contrary to belief, that's not defined by age and gender or culture. You have to be -- you know, you have to like the models and like playing the games and like the kind of
imagery, which quite a lot of people, frankly, don't, which is fair enough.

So, we don't mass market advertise anything. We rely on what we call word of mouth. So, we rely hugely on the impact that we can have on people that come to our own stores or read the magazine or come to one of our events or maybe actually order from us online. And those people we hope actually give great recommendations to their friends, and that's how it works. That's how we advertise.

Q. Is there any other particular means whereby word of mouth spreads?

A. Well, obviously, the Internet is the big one today and social media, but the Internet is probably the biggest single way that our kind of nerdy, geeky customers would communicate with each other. And actually, you can't -- if you were to go online and type Games Workshop, you would find a myriad of forums and blogs and websites of our fans goobering about our stuff, basically.

Q. Goobering?

A. Getting excited about.

Q. I don't know how to goober. I'm sorry.

Can you describe some of these forums, the names of them?

A. Oh, Lord. Well, off the top of my list, one's like Dakka Dakka, Bell of Lost Souls, Warseer, Heresy Online, Librarium
And then here are actually the stat lines, which the aficionados of the game can translate this back into the scores that you need to make on the dice when you're rolling for them to do damage to their enemy and such like. And these are the various rules about how you can include them in your army and what they can do when they're in it. It's very, very arcane.

Q. Let's look at Page 1240.

A. This is a list of all of the different options for weapons and upgrades for the model. So, the models have different configurations of guns. They carry different equipment. And this lists all the points values for each of those different kinds of guns and things.

Q. Are there only specific types of weapons that Space Marines are allowed to use?

A. Yes. Each army will have its own unique set of weapons, and even if they share the same kinds of weapons, there will be different sets of them, there will be different options, depending on which army it is. So, it's very much part of the character of the army.

Q. And let's look at Page 1274 to 75. 1274 even to 85. But start at 1274. And if you can scroll through and just tell us what we're seeing on these pages.

A. Right. These are pages from the showcase section of the book, and what these pages do is they show off what the products could look like if you paint them up, you know, and create the
As I just told -- I just told you that my role was actually to manage the design, manage the designers.

So you were not the individual who's identified as the designer?

No. That's correct. I'm not.

And you did not speak to every designer of every one of those products regarding what resources they relied upon in their design?

With 30-odd years of being involved in the business, I couldn't possibly testify to say that I'd spoken to every designer about every image and about every source that every designer had used. But that's not the way that we work at Games Workshop. We don't expect our designers to use sources. We expect them to use Games Workshop's resources to generate all that work.

So as you just said, you can't testify to every resource that every designer relied upon in creating these products?

No, I didn't say that. I said I could not testify to every source the designers used, but I know that they are instructed to use only Games Workshop resources to do all the design work.

But you personally cannot say what each of the designers relied on to create the works that are here?

Can you qualify what you mean by rely on?

I'll rephrase it.
You can't state -- you can't testify as to what materials the designers looked at for any of these products, to design any of the products that are allegedly infringed here today?

A    I can testify that I know what they're expected to do and how they're expected to do that and what instructions they are expected to follow, and I can testify that those instructions involve generating original ideas and using Games Workshop original ideas as the wellspring and source of all the design work they do.

Q    But you can't testify that they all did that?

A    No, of course I can't testify they all did that.

Q    Let's talk specifically about one of the products that you identified as wholly original to Games Workshop. The item is the product No. 112, the gun-Halberd weapon in Exhibit 120, page 104 -- or 121 -- 1020, page 104.

Do you recall testifying about this product?

A    Yes.

Q    And you testified that it was a wholly original Games Workshop design?

A    Wholly original Games Workshop idea, and therefore that's a copy of a Games Workshop idea, and the expression of the idea is illustrated opposite.

Q    On the right-hand side?

A    Yes.
what we do for a living.

Q  So you don't believe that any external robots were considered by any designer of any Tau product?
A  Not to my knowledge, no.

Q  But do you have knowledge what they referred to?
A  Well, they didn't refer to anything. What we did is we generated concept drawings, and the guys that were working on the project brainstormed concepts of -- for the Tau idea.

Q  And none of them had ever seen a robot?
A  Well, that's preposterous to suggest, isn't it?
Q  It is.
A  Yeah, of course it is.

Q  So the designers could have drawn inspiration from existing robots?
A  They could have done. They could have drawn inspiration from the clouds in the sky.

Q  So you can't say which elements of the Tau race were original?
A  To the best of my knowledge, all the elements of the Tau race -- of the Tau mortals were original.

Q  But we've already established that you don't have knowledge of what the designers looked to in creating their design?
A  No, no. A lack of knowledge doesn't imply a positive affirmation of another fact. That's not logical. Just
So, I was able to make quite a lot of figures that would just help us get going with play testing.

Q. You mentioned something about the level of briefing that was done. Could you describe what you mean by that?

A. The amount of brief that we got at that point was very minimal. We would just have a brief, they would say, "Let's have a code of fighters or Paladins," and for fantasy that is pretty easy, because you would know, generally speaking, what a Paladin was. A Paladin was like a noble fully armed potent warrior, you know, whereas a normal fighter might just be an average guy, so he would be less well armed, less well equipped, less skilled. So, you would make models that would reflect that.

That is really -- that came from us having our background in making historical models, because the historical war gaming market and sculpting for that meant that we had a depth of knowledge on military costume across all these different periods that I referred to earlier, and we were able to draw on that resource of knowledge of military history and apply it to the models. But because it was fantasy, you could apply it in an ad hoc manner, so you didn't have to -- you had no rules.

You know, if you wanted to combine a Samurai armor with a GI's equipment, you could do so because that was allowed. So, we had very little in the way of brief beyond those basic
Q. Correct me if I'm wrong, did you say that you took an overall feel from the references --

A. Yeah. Sometimes, yes, but not -- we didn't lift an entire look from a movie or a book or anything. We would glean, as we had done with the historical stuff, we would say, "That's a nice touch, I like that. The way that descriptor of that -- the way that helmet works in that comic, the way that glove looks or that particular gun, that's got a nice mechanic to it."

And you would visually take that in, if you like. You wouldn't say, "I'm going to photocopy that and file it." It didn't work like that. It was just a case of you having an ambient appreciation of what was going on outside.

Q. You referred to themes and overall flavors.

A. Yes.

Q. Would you say that Warhammer 40K falls into the realm of science fiction?

A. Yes.

Q. Did you mention that you took inspiration from certain movies, books, and comics that sculptors in the field generally were aware of in the 1980s?

A. I can give you names of movies that were around at the time, but they would only be examples of the general field of like, say, science fiction movies. There were not that many science fiction movies, so we tended to watch them all, you know, so you would have watched things, like you would have watched Star
Q: How about the term "lascannon"?

A: Yes. Well, again, it will be on here, I imagine. We sell products. We sell lascannons for our models.

So the example product is a Chaos Space Marine Havoc. Havoc is a type of Chaos Space Marine. So Chaos Space Marine Havoc with lascannon. This is the product code. Again, you will start seeing from 2004 the numbers coming in, $7,000 of sales, $6,000 of sales, $8,000 of sales and so on. So there's your annual sales.

Q: How about --

A: Once again actually, you know, don't forget there's the title Lascannon. That's just an example product. The overall sales for products with lascannon were 34,000, 28,000, 50,000, yes.

Q: And the next disputed term was lightning claw. When did Games Workshop start selling lightning claw products?

A: If you go down a few lines, we can see because there's the Lightning Claw Terminators. I told you about those really heavily armored Space Marines. One of their specific weapons is a lightning claw.

In terms of that individual conversion and things, you can buy just a left hand lightning claw. That's the product code for it.

And in 2004 we made $20,000 selling those, and about another 20,000 in the next year and see on.
pad with studs and skull for 28 millimeter Marine Tactical.

Q What haven't we talked about here yet?

A Well, what we haven't talked about yet is that we have another chapter of Space Marine. There's a thousand chapters of Space Marines, but don't worry, we're not going to look at all of them, but there are many of them, and one of them is The Legion of the Damned. And so, again, there's no need whatsoever to say this is a specific Legion of the Damned thing. We can just say here's another great, unique, original add-on for your tabletop gaming models. That's all that's needed to be said.

Q Page 23.

THE COURT: After we do this one we're going to take our break.

BY MR. MR. KEENER:

Q Let's look at product 23, the shoulder pads for Chalice or Soul Drinker Tactical. What is the concern here?

A It's Soul Drinkers. We talked about the Soul Drinker novels earlier, that we have a range of novels featuring the Space Marines from the Soul Drinker chapter. Here's theirs there. We talked about their symbol, that mark and that our customers will -- that's a mark that we use. And here we are in the title of the product from Chapterhouse, it's a Soul Drinker Tactical shoulder pad. Well, Soul Drinker is ours.
that's our intention, before then we go back and do it again. And so, that's what we do. And then we put our book out, and somebody else comes along and goes, oh, on Page 60 of that book, there's this thing call a Tervigon, for example. Games Workshop hasn't made one of those yet. There's a picture of it. It shows you what it looks like. There's rules for it in the game, and there's some story about it. Well, if Games Workshop Limited hasn't made one of those, I think I'm going to do it.

Well, that just can't be right. It's ours. It's in our book. It's up to us when we want to release that product, and it might be we might release it at the same time as we release the book, we might release it six months later, it might be something we're saving up for two years later. That's our choice. That's for us to do with our characters and our stories. You know, if there was --

MR. COOPER: Objection, your Honor. Narrative.

THE COURT: Let's ask another question.

MR. KEENER: I think that's all the questions I have for now.

BY THE WITNESS:

A. Yes. And I think -- yes, so those are the concerns.

MR. KEENER: Thank you.


MR. COOPER: Bryce Cooper. For the record, Bryce
Q. And this list contains all of the terms Games Workshop claims are its trademarks and Chapterhouse has infringed?

A. Yes.

Q. And by my count there are 92 terms and icons on that list. Does that sound about right?

A. That sounds about right.

Q. And just to be clear, during your direct exam you didn't present any evidence that shows that any customer has been confused and thought that a Chapterhouse product that might have used one of those terms was actually a Games Workshop product. You didn't present any evidence like that.

A. You mean this afternoon?

Q. Yes.

A. No. No, I didn't.

Q. Now, if you look at the first page of this list, it has what are called registered trademarks; is that right?

A. Yes.

Q. And there are nine items on that list?

A. Yes.

Q. And you understand that registering a trademark gives you a presumption of that trademark's validity, right?

A. Yes.

Q. You haven't done any consumer survey to show that people recognize these marks as belonging to Games Workshop?

A. No.
Q. And the product that's listed for that is Heavy Flamer Battle Sister, right?
A. Yes.

Q. So, you haven't shown a product that's just called Heavy Flamer, correct?
A. Correct.

Q. And the jury hasn't seen a product packaging that is called Heavy Flamer Battle Sister. They haven't seen that, right?
A. No. We have a trademark there called Battle Sister, and we do lots of Battle Sister products, and we do lots of products that have Heavy Flamer there, as well, in combination, so that, you know, you can combine two trademarks together, like Kellogg's Corn Flakes or Kellogg's Frosties. You know, that's perfectly fine.

Q. What you are saying, the jury wasn't able to evaluate that because they didn't get to see the product, correct?
A. Well, they got to know the product title, and they got to know the unique product number, and they got to know how much money we've made selling that product over the last -- well, since 2004, at least.

Q. Another term you claim as your trademark is Iconoclast, correct?
A. Yes.

Q. And there's no Games Workshop product that's just called
Jones - cross

1 Iconoclast, right?

2 A. That we use Iconoclast as the -- as I explained, there are

3 some spaceship models for a game called Battlefleet Gothic.

4 Q. And the jury didn't get to see that product.

5 A. They didn't get to see a picture of it, no. They got to see

6 its title and product code and the sales values for selling that

7 product from that specific product code over a number of years.

8 Q. Another product that you claim is Lascannon, correct?

9 A. Yes.

10 Q. And there's no Games Workshop product that's just called

11 Lascannon?

12 A. Again, you know, we've got 2,000 SKUs and -- sorry, the

13 individual products, and I wouldn't be at all surprised if Forge

14 World or even on our website you can buy Lascannons. But the

15 example we used -- and remember, these are just examples --

16 that's a Chaos Space Marine Havoc with Lascannon.

17 Q. I should rephrase that question. You didn't show or testify

18 about any Games Workshop product that's just Lascannon, correct?

19 A. Correct.

20 Q. And the jury didn't see how the term Lascannon was used on

21 the product packaging for the Chaos SM Havoc with Lascannon?

22 They didn't say how Lascannon --

23 A. I didn't show a picture of the actual blister pack, if

24 that's what you mean.

25 Q. Another term -- thank you. That is what I meant.
Q. I did. Games Workshop doesn't have any proof of that?
A. Well, some of the proof might be the fact that we've made a great deal of money selling jetbike kits to tabletop hobby war gamers for many, many years and the fact that, you know, where do Chapterhouse market those jetbikes? Who do they talk to about them? They go onto Warhammer 40,000 sites and say here's a jetbike. They don't go onto other generic science fiction sites or onto Star Trek sites or Star Wars sites. It's all on Warhammer 40,000 sites. And then the product that they sell is, it's listed under Eldar. So, jetbike --
Q. Games Workshop is the largest miniatures company in the world, right?
A. I don't know about that.
Q. But you can't know what's in the minds of consumers. You will agree with me on that, right?
A. Yes. Of course not.
Q. And Games Workshop -- strike that.
You haven't testified today about any consumer surveys that Games Workshop did that show what consumers think when they hear the term jetbike, have you?
A. That's true.
Q. And Games Workshop -- you haven't presented any testimonials from consumers to say what they think when they hear the term jetbike, right?
A. No. But we think it's fairly compelling that, you know, for
is designed to fit on Games Workshop Space Marine Terminator figures," right?
A  Yes.
Q  Now, you have not accused any Chapterhouse product packaging of trademark infringement, right?
A  Correct.
Q  All of your trademark infringement allegations are entirely focused on how Chapterhouse markets its products on its website?
A  And if it does stuff on eBay and forums and so on and so forth.
Q  On the Internet?
A  Yes.
Q  And for the Chapterhouse website pages, anyway, you agree that for all of the trademarks Chapterhouse is accused of infringing on its website, there's a disclaimer at the bottom of the web page, correct?
A  There is.
Q  And you understand that for every single mark Chapterhouse is accused of infringing, when Chapterhouse uses the mark on its website, at the top of the web page there's Chapterhouse Studios and the Chapterhouse icon? You agree with that?
A  I do agree with that, yes.
THE COURT: We're going to take a ten-minute break right here.
A. Absolutely. They were ordered to do that by the judge.

Q. And did they --

MS. GOLINVEAUX: Objection, your Honor.

THE COURT: The reference to an order by the judge is sustained. It's not relevant, and the jury is directed to disregard it.

BY MR. KEENER:

Q. Do you know if any eBay posts were produced to Games Workshop?

A. No, they were not produced.

Q. Showing you what's been marked Plaintiff's Exhibit 1008, what are we looking at here?

A. This is one of the eBay auctions that I removed a few weeks ago for selling Chapterhouse products using Games Workshop trademarks.

Q. Now, are you suggesting that Chapterhouse was selling this a few weeks ago?

A. No. In fact, it was somebody in France from recollection.

Q. So, now why do you think this shows customer confusion?

A. Well, because the images are Chapterhouse image. It's taken directly from their website.

MS. GOLINVEAUX: Objection.

THE COURT: I'm sorry. Basis?

MS. GOLINVEAUX: Relevance.

THE COURT: Overruled. Complete your answer.
BY THE WITNESS:

A. So, it's a Chapterhouse image, and actually the description reads a bit like a Chapterhouse description from recollection. But if you look at the product title, it says one -- I don't speak French, but the words I can say are Exarque Scorpion Eldar Eldars Warhammer 40K 40,000.

BY MR. KEENER:

Q. So, are you concerned about confusion here on the seller or the buyer?

A. Both.

Q. Can you explain what you mean?

A. Well, the seller maybe doesn't know what they're selling, or alternatively the buyer could be confused as to whether he's buying a Games Workshop product or a Chapterhouse product.

Q. Let's go to Plaintiff's Exhibit 1009. What are we looking at here?

A. This is the other auction that I referred to pulling down a few weeks ago.

Q. And why do you believe this shows customer confusion?

A. Again, the image is the image taken from the Chapterhouse website, but you can read the title of the auction is Eldar Farseer Eldars Warlocks Warhammer 40K 40,000, which are Games Workshop trademarks.

Q. And again are you worried about confusion from the buyer or the seller here?
A. Well, again, it's both.

Q. And why is that?

A. Because either the seller doesn't know what he's selling or the buyer doesn't know what he's buying.

Q. Now, in your role at Games Workshop, have you done anything to demonstrate potential confusion between the Games Workshop and Chapterhouse products?

A. Yes, I have. So, I gave some images from the Chapterhouse website off their products to our hobby team, who are the very talented painters who painted the models on the board at the front, and I asked them to take an equivalent Games Workshop kit and to pose it in the same pose as the Chapterhouse product and paint it using their color scheme to give a very visual representation of whether people could be confused.

Q. Let's look at Plaintiff's Exhibit 1022 at Page 2. What are we looking at here?

A. This is a chart that I had put together. As I said, the images on the left-hand side are the Chapterhouse images from their website, and on the right-hand is a Games Workshop model that has been prepared using an Eldar Farseer kit, as you can see, it says. And it has been posed and painted using entirely Games Workshop parts, and that is all one kit, painted in their color scheme to show how easy it would be to be confused once you've got a final finished product.

Q. Why do you think this shows potential confusion?
Stevenson - cross

and Games Workshop have coexisted for five years because as of June 2008 when I removed those auctions from eBay, there was no reference to Chapterhouse, and the e-mail I got from Nick Villacci in June '08 didn't refer to Chapterhouse. My understanding is that Chapterhouse didn't exist until 2009.

Q. So, but either their products that you claim Mr. Villacci was selling on eBay and Chapterhouse together coexisted for about five years; is that right?
A. Coexisted in probably the most unhappy sense rather than coexisting happily.

Q. But coexisting in the marketplace.
A. Yeah.

Q. And today you testified about three e-mails that you claim evidence some degree of consumer confusion; is that right?
A. I did, yes.

Q. Before we get to those e-mails, it's true, isn't it, that Games Workshop has no evidence of confusion as to products it added to the case in the second phase; is that right?
A. Yeah. I mean, the jury have heard quite a lot about the forums that people who are fans of Warhammer 40,000 look at and post on, and actually -- I know you're not allowed to look at the Internet, but if you were allowed to look at the Internet, what you would see is an awful lot of speculation about this case, and actually our customers, our staff, and even just people who are interested all know about this case and have for
Stevenson - cross

a very long time. So, the likelihood of there being any
confusion where there's such a publicly well known case, it's
just not really very likely because people know.
Q. But, Ms. Stevenson, you haven't presented any evidence of
confusion as to the products added in the second phase of the
case, have you?
A. No.
Q. And Games Workshop's not aware of any complaints about the
quality of those products, either, is it?
A. Not from people who buy the products directly, but --
THE COURT: That's the answer. Thanks. Next question.
BY MS. GOLINVEAUX:
Q. Turning to the products that you first sued on, they're
listed in a comparison chart for --
THE COURT: Actually, if you're going to go to a
different topic, this is where we're going to stop. So, we'll
resume at 1:30. I'll be right back out to talk to the lawyers.
All rise.
(The following proceedings were had in open court, out of
the presence and hearing of the jury:)
THE COURT: The reason for the sustaining of the
objection in the early part of the cross is I don't think it's
at all relevant how the materials in question were arranged for
production, and even if it was somehow relevant, which I don't
think it is in the least bit, it's unnecessarily confusing in a
Stevenson - direct

1    do you remember that?
2    A    I do.
3    Q    So can we pull back up PX-1008, please, and if you could
4        blow up the top portion of the page.
5        So, Ms. Stevenson, you identified the seller here as
6    Inroi -- I think that's 551 -- and the location is France, is
7        that right?
8    A    That's right, yes.
9    Q    And above the location in the gray scale box, do you see
10       where it has the number of bids identified?
11   A    Yes. It says there's no bids.
12   Q    Zero bids?
13   A    Zero bids.
14   Q    Can we move to PX-1009, please? I think you can blow up
15       the same top portion of the page.
16   Ms. Stevenson, is the seller here the same Inroi 551?
17   A    It is.
18   Q    And is the seller location also in France?
19   A    I believe so, yes.
20   Q    And what is the number of bids on this one?
21   A    No bids.
22   Again, this auction was reported to me almost
23    immediately it was put up. So I pulled it down straight away
24    before anyone had a chance to bid.
25   Q    Okay. You can take that exhibit down, please.
yes.

Q Your external lawyers?
A Yes, and it was an email which was following an earlier email which I sent two seconds earlier referring to someone who was confused. So it was here's one who is and here's one who isn't.

Q And that's your name underneath where I just read, "another one who clearly is not confused"?
A Yes. One who was, one who wasn't, as I said.

Q So that's your name right there?
A That's right.

MS. GOLINVEAUX: You can take that exhibit down.

BY MS. GOLINVEAUX,

Q So, Ms. Stevenson, what you are telling us that in the five years that you have been aware of Mr. Villacci and Chapterhouse Studios, that you have received these three emails that you think are evidence of confusion, is that right?
A Yes, and they're all prior to his issuing the court proceedings.

Q And what is the relevance of that?
A Well, the public knowledge afterwards would mean that people wouldn't be confused.

Q So the litigation itself has mitigated any likelihood of confusion; is that fair to say?
A: I don't know that you could actually say that because we have had evidence from the French eBay vendor, and actually as we have seen from the side-by-side documents, there's clearly scope for confusion.

Q: But in light of the litigation, people aren't likely to be confused?

A: People who don't know about it might be.

Q: And so you have identified three emails that you consider to be evidence of confusion, is that right?

A: Absolutely.

Q: And two of those emails were sent from what appears to be U.K. email addresses?

A: That's right.

Q: And the third one didn't show the sender's email address at all, did it?

A: It didn't.

Q: Okay. And Games Workshop has no way of knowing if any of these three individuals were in the United States, does it?

A: No.

Q: And the most recent of those three emails was dated February 15th, 2010, is that right?

A: I don't know. Sorry.

Q: Well, we can go back through them, if you would like.

A: Not really. Yes, we can do that.

Q: Let me represent to you that the most recent one was dated
need the exact number, but we can figure it out if we want to
do the math.

I figure roughly 23 designers, not including yourself
and Mr. Fiertek, is that about right?

A    Yes.

Q    Okay. And ten people who have painted products for you?
A    That seems about right, yes.

Q    Now, you market your products.

Other than on your own website, you market your
products specifically on the Internet forums that Mr. Merrett
described, correct?

A    Yes.

Q    And so these include forums such as belloflostsouls and
dakkadakka and bartertown, Heresy-online, WarSeer.com,
frothersunite, and so forth?
A    I think so, yes.

Q    And also on eBay, correct?
A    Yes.

Q    And you make a particular point, don't you, to market your
products on your website and on these forums in color?
A    Yes.

MR. MOSKIN: Can we pull up Plaintiff's Exhibit 168
at pages 30 to 31?

(Brief interruption.)

BY MR. MOSKIN:
Villacci - cross

flat surface.

So, I contacted Tomas, who's been talked about, and he's like, yeah, you know, I sculpt these by hand, and I'm like holy cow. And at the time I knew how -- I don't know why I was getting into learning how to do resin casting in my garage, but -- actually, I don't even know if I knew how to do it at the time, but I think they sell kits at Hobby Lobby where you can buy your little resin casting kit, and it gives you instruction how you do it, and you can do it on your table.

So, I told him, hey, if you send me some of those, I'll make you a few hundred of them for your personal collection. And Tomas, he's like awesome, you know. I don't know how to cast. All I know how to do is sculpt this by hand. So, that's what happened. You know, two people meeting on the Internet -- sounds weird -- got together, and we started doing this just for ourselves.

And then that same forum I met him, we posted our stuff on there, and everyone's like, oh, those are awesome. Where did you get those. Games Workshop doesn't have anything like that, you know. So, through private messages they sent Tomas and myself or just posting on the forum, we told them we had them, and people started paying for them. And I think a lot of businesses start that way. You do something small, and you're not really looking to make any money, but there was a demand for it, and that's how we started.
Villacci - cross

A. That our main line of business was doing custom sculpts and components for the Warhammer 40,000 line.

Q. And when you refer there to Warhammer 40,000, what is that referring to?
A. The Games Workshop Warhammer 40,000 product line.

Q. Turning to the next page of the same exhibit, PX435, what's at the bottom of the web page?
A. A disclaimer.

Q. And what's the first line say?
A. "This website is completely unofficial and in no way endorsed by Games Workshop Limited."

Q. Why did you put that on there?
A. We didn't want to get in legal trouble with Games Workshop. So, besides going to an attorney and finding out what he told us, we went to the Games Workshop --

MR. MOSKIN: Objection, your Honor.

THE COURT: Basis?

MR. MOSKIN: There's been no defense in this case of --

THE COURT: I'll tell you what. Here's what we're going to do. We're going to need to discuss this a little bit further. So, it's almost five minutes to 5:00. We're going to break for the day. Remember we're starting at 9:00 tomorrow. Please time your schedules to make sure you get here by 9:00. I have nothing else scheduled. We'll start right at 9:00. Don't discuss the case.
A: Yes, I am.

Q: And that's a Games Workshop product?

A: Yes, it is.

Q: Do you know when that product was first released?

A: Right now it's 2013. I want to say it was 2011.

Q: And when did you release your kit, conversion kit?

A: The first quarter of 2010, I believe, or first half of 2010.

Q: So did you copy any elements from the Games Workshop product that was released in 2011 when you created your product in 2010?

A: That would have been impossible unless we had a time machine.

Q: Before that time, had you ever seen a Games Workshop model sold under the name Tervigon?

A: No.

Q: Why did you consider your conversion kit to be an add-on to Games Workshop's products?

A: Because it's basically just some bony parts and some gross looking sac things. You can't build an army or even use it as a model in the game. I don't think anyone you're playing against -- at least in my experience no player would say, oh, yeah, that's a model.

You have to have a Games Workshop product in order to utilize our product. It doesn't fit on any other product.
That was mid-2009.

When did you first release that product?

I want to say the first -- I don't know if it's on here. I don't see it on here, but I want to say it was the first or second month of 2010.

And looking at the right-hand side of the exhibit, do you see the image at the bottom from the Tyranid, Warhammer Tyranids book?

Yes.

Was the image shown from that page published at the time that you designed your product?

No.

So did you copy any elements from that picture?

No.

Why do you consider this product, the Ymgarl heads, to be an add-on to Games Workshop’s products?

Because the Games Workshop Genestealer kit comes with all the components to make a Genestealer, what you see pictured over on the right-hand side. They have a number of components, and one of those separate components is the head. Our head looks different and gives the players another option to individualize their models apart from everyone else on the tabletop.

So, again, you can't play with a bunch of little heads on the army. You've got to have actual physical
representations of these creatures.

And as far as I know, there is no character or creature in the Games Workshop book that is just a head. You can't play with a bunch of little heads. They actually supplement the Games Workshop product.

Q Where did the ideas for your products come from?
A Myself, Tomas, our concept artist. A lot of them come from customers.

Q Can you give me examples of ideas that you have referenced outside of the Games Workshop universe in creating your products?
A Sure. I'm pretty much a bookworm. I read lots of books. So there's that; movies, Star Wars. Star Wars is another one with a -- there's a character in Return of the Jedi called Squid Head. I don't know if anyone played with Star Wars when they were little kids, with toys, but there's an actual action figure called Squid Head that looks like that, too.

So movies, pop fiction, I mean, just everything and anything I have seen throughout my life.

Q If you have an idea for a product or if a customer brings you an idea for a product, what factors do you consider in determining whether to actually make it?
A Whether there will be an actual demand for it. We have gotten some really crazy ideas from customers, and while they can still order that product, that influences the price
wanted to give the hobbyists the option of using four different arms with different weapons. And I think one of those arms is someone holding -- he's like -- it's a wizard, so they're holding a fireball like they're going to throw it. I wanted to do the same thing with this. I wanted to give the hobbyists all the options they could possibly use in this product. And we were talking about we know what options the Games Workshop rules legally allow you to use in the game. How can we sculpt those without -- again, something similar but not identical to the -- you know, the idea of that -- the rules. And that's going into detail about that.

I think the main thing is talk about chain sword, chain blades, chain sabers and how to implement that idea in a new design.

Q So did you give any guidelines to Mr. Okamura regarding how he should design the weapons?

A Yes.

Q What did you say?

A Let's see.

Q And specifically I'm wondering about in connection with Games Workshop's designs.

A Basically, you know, we knew we were both Games Workshop hobbyists. We knew what their sword looked like. I wanted to do something different, add our own flair to it. And also I believe the Games Workshop rules allowed a weapon that we'd
talked about yours being $1 for one shoulder pad, right?

A. Yes.

Q. And Games Workshop's being $8.25 for ten shoulder pads?

A. Yes.

Q. So that was why you were saying that yours was more expensive?

A. Yeah. If you wanted ten of those, you had to pay $10 versus $8 and change from the Games Workshop site.

Q. And then you said that your Warrior Priestess is $16 -- or I forget what you said. How much?

A. I want to say it's 16.

Q. Okay. And Mr. Merrett testified that the Striking Scorpion product that Games Workshop says is infringed by that product costs $41 for six figurines?

A. Okay.

Q. So how does that compare to your product?

A. 16 times six, if you want to compare apples to apples, as he would want -- $96, I guess? Is that correct? 16 times six? Yeah.

Q. Is it more or less expensive?

A. More expensive.

Q. Okay. Now, we've heard a lot about trademark usage and words that Games Workshop contends are trademarks.

Why do you have to use those words on your website?

A. To accurately describe what our products can be used for
in the players' armies or what parts they're compatible with.

Q. And have you ever used the double-headed eagle Aquila trademark that Games Workshop has asserted?

A. No.

Q. And let's look at PX 316. And can we zoom in on the symbol in the middle?

What's that symbol?

A. That's the Games Workshop's logo for Warhammer 40,000.

Q. Have you ever used that logo in connection with the advertising of any product?

A. Never.

Q. Let's talk about some of the other words that Games Workshop says are trademarks.

What does the phrase assault cannon mean to you?

A. A big cannon that shoots bullets.

Q. And are you familiar with the use of that term outside of the Games Workshop universe?

A. Yes.

Q. Where?

A. I was in the army, so we referred to things as assault cannons sometimes in the army.

Also, my very first miniature war gaming was Battle Tech, FASA's Battle Tech. They have assault cannons in their fiction. And that was 1985 I believe the first time I saw that. Star Wars toys have assault cannons, Halo has assault
force behind that. Being an artist, the influences are constant and many fold. I have points of reference or points of references that constantly inspire me on an artistic and creative basis.

Q. What were some, outside of the original Warhammer game, what were some of the points of references for the Warhammer 40K game?

A. Historical costume, the pageant of warfare, certainly classical art, certain literature. It probably sounds frivolous, but very important to me personally as an artist, the weather, the environment, geology, so everything I am surrounded with.

Q. Were there any futuristic points of references?

A. Some, but I would regard that as being very minimal in my own personal case because I tend to view everything in a very archaic dystopian way, so, for instance, a busy shopping center will influence me in a 40K sense more than most things.

Q. Were there any futuristic themed literature that was a point of reference?

A. I said certain literature. Tolkien had a massive influence. Mervin Peake with Gormanghast trilogy books. I tend not to have read many science fiction. Treasure Island.

Q. Do you remember when Mr. Goodwin made these figures?

A. I am sorry, no, I don't remember.

Q. Was it before the development of Warhammer 40K?
A. I was an artist or illustrator.

Q. Before the break you mentioned that Tolkien was a point of reference for the Warhammer 40K works. Is that correct?

A. It was the base point for a whole generation becoming aware of fantasy as a wider subject matter.

Q. And by Tolkien, you mean J.R.R. Tolkien?

A. I do, yes.

Q. Are you familiar with the term heraldry?

A. Yes.

Q. Can you describe what that is?

A. It is a system of symbols used in medieval society by the aristocratic families to define that particular family's badges or symbols.

Q. Before the break, you mentioned historical costumes and I believe pageantry for warfare?

A. Yes.

Q. Is heraldry and livery related to the historical costume and pageantry for warfare?

A. Yes.

Q. And so, is heraldry also a point of reference for the Warhammer 40K work?

A. Yes.

Q. And can you describe how?

A. Particularly Space Marines and their color schemes and their symbols on their shoulder pads, et cetera, that would be a
Blanche - deposition

strong part of their specific chapter heraldry.

Q. Are you familiar with heraldry, classical symbols used in heraldry?
A. Yes.

Q. Can you name examples of classical symbols used in heraldry?
A. Like rampant lions.

Q. What is a rampant lion?
A. It is a lion rearing up on its hind legs with its four limbs sort of extended in an aggressive pose.

Q. Is that the same thing as a Griffin?
A. No.

Q. Is a Griffin a classic heraldry symbol?
A. It is derived from classical Greek mythology, being part lion, part eagle.

Q. Are Griffins used in heraldry?
A. Yes.

Q. Can you name other classic heraldic symbols?
A. Unicorn, wyverns.

Q. What are wyverns?
A. They are dragons without forelimbs. They are a two-limbed dragon.

Q. And are dragons used in heraldry, also?
A. Yep.

Q. Any other animals?
A. Gosh, there is lots of mythological animal shapes that are
used in various forms. I am not familiar with all the names, but --

Q. Can you describe some of these classical shapes used in heraldry?

A. Sort of sea serpents with unicorn forefronts.

Q. Anything else?

A. You are only concerned with animals? There is lots of abstract shapes used in heraldry like chevrons, flowers, squares, diamonds and squares and ermine's tails, and crowns and castles and chains and swans, ships, sea, just hundreds and hundreds.

Q. Too many to name right now?

A. Too many.

THE COURT: And that's where we'll stop. 5:00 o'clock. So, start time should be 9:45 tomorrow. Don't discuss the case with anyone, and we'll -- oh, I was going to give you something on the schedule. Hang on one second. Let me just see the primary lawyers at sidebar.

(Off-the-record discussion.)

THE COURT: Okay. So, here's my sense of how this is going to work. I think the odds are pretty strong that we will finish the testimony, finish the evidence, tomorrow sometime, probably before the end of the day, but not certainly, but probably before the end of the day. If we do, we're not going to go right into the closing arguments. The lawyers and I are
heraldry, those insignia will incorporate a collection of symbols that somehow tell the history of the particular unit.

Q  How is heraldry relevant to your work, sir?
A  Again, our museum tells a story of the United States Army Division that is made up of various components, and each of the subunits within the division have their own distinctive unit insignia and heraldry.

Q  Are you an expert in medieval heraldry?
A  No, I'm not.

Q  But you encounter heraldry as it relates to modern material military culture, is that correct?
A  Yes, absolutely.

Q  So I would now like to ask you some questions about the specific symbols that you saw in Games Workshop's works.

Let's start with chevrons. So what is a chevron?
A  A chevron is two bars that terminate in a point and that can be oriented. The point can be oriented upward or downward, so in a V or in an inverted V shape, or horizontally.

Q  And are chevrons encountered in military insignia?
A  Yes. Chevrons are regularly encountered in military insignia, particularly in United States military insignia, starting in the 19th century.

They are commonly used for rank, insignia for non-coms or for noncommissioned officers, sergeants, corporals,
1 and for enlisted men.

And they are also used at times in current military
for unit designators, armored unit designators.

Q Now, Mr. Brewster, I'm showing you what has been marked as
PX-1020 at entry 50. This is an example of one of
Chapterhouse's accused products in the case.

What is the design element on this product?
A That appears to be a shoulder pad that incorporates a
single chevron.

Q I'm now showing you examples of Games Workshop's claimed
works from Plaintiff's Exhibit 1020, entry 50 and entry 52.

What symbols do you see on these works?
A Again, I believe those are two shoulder pads that
incorporate forms of chevrons and Roman numeral.

Q Sir, have you brought images of chevrons appearing in
military material culture to discuss today?
A Yes.

Q Let's look at those.

I'm showing you now in the upper right corner, we're
seeing the two images from Plaintiff's Exhibit 1020 that we
just looked at, 50 and 52.

What is in the rest of the screen?
A That's an image of an M1A1 Abrams tank, a United States
military tank, in the Gulf War, and it is incorporating two
different chevrons on the skirt around the body of the tank, a
single large chevron and then a chevron with number 3.

Q. And during what time period was this particular insignia used?

A. In this case, that's a unit designator. That dates from the Gulf War from 1990 to 1991.

Q. Mr. Brewster, what is this book?

A. That's Stein's History of U.S. Heraldic Crests.

Q. Is this one of the reference books that you consulted in looking for examples?

A. Yes.

Q. Again, we show examples of two of Games Workshop's claimed works up in the upper right-hand corner.

Mr. Brewster, what are we looking at at the rest of this slide here?

A. That's a distinctive unit insignia for the 198th armed regiment. You can see it's a shield that incorporates a single chevron with a dragon design and a motto at the bottom.

Q. Sir, during what time period was this insignia used?

A. Starting in the late 1960s and onward.

Q. And -- oh, sorry.

For the record, the last crest he was discussing is Defendants' Exhibit 285 at pages 97 and 101.

Sir, I'm now showing you images from Defendants' Exhibit 285 at pages 98 and 103.

What are we looking at here?
This image is from Stein's Heraldic Crests, and it is another distinctive unit insignia from the 89th Army Reserve command. And in this particular image, it's using a pair of chevrons with a torch and two fleur de lis.

And, sir, during what time period was this insignia used?

In the late 1960s into the early 1970s, or into the 1970s.

Excuse me.

Let's turn to arrows. Did you see examples of arrows in the works that Games Workshop is claiming in this case?

Yes, I did.

Now, can you tell me which specific works contained arrows?

Not individual pieces. I didn't chart individual pieces.

And are arrows encountered in military insignia?

Yes, they are.

In what form?

They're incorporated into shoulder insignia and into distinctive unit insignia.

Mr. Brewster, I'm showing you an example of one of Chapterhouse's products that is accused in this case.

This is from Plaintiff's Exhibit 1020, entry 55. Can you describe the symbol you see on that?

Yes.

What is that?

That's an -- again, I believe it's a shoulder pad that is
using a single arrow symbol.

Q I'm showing you now examples of Games Workshop's claimed works in this case from Plaintiff's Exhibit 1020, images from entry 56.

Can you describe the symbol we're looking at here?

A Yes. There are two shoulder pads, each with a single arrow on them.

Q And is this type of arrow typical of arrow designs that you are familiar with from military insignia?

A It's the most basic form of arrow, so, yes, certainly.

Q Sir, I'm now showing you the cover from Defendants' Exhibit 285. This is page 12. Can you tell us what resource we're looking at here?

A That's Britton's U.S. Military Shoulder Patches of the United States Armed Forces.

Q Sir, is this one of the books from your reference library at work?

A Yes, it is.

Q Now, I'm showing you an enlarged image of one of the symbols that appears on Defendants' 285, page 12. What are we looking at here?

A That's the shoulder insignia of the first logistical command.

Q During what time period was that particular insignia used?

A 1960s, 1970s.
Q Sir, I'm showing you what's been marked Defendants' Exhibit 285 at pages 100 and 104.

Where did you find these images and what are we looking at here?

A Those images are from Stein's U.S. Army Heraldic Crests, and that particular image is distinctive unit insignia from the 562nd Air Defense Artillery, and it incorporates an arrow piercing a second arrow with a winged dragon on a shield.

Q During what time period was this insignia approved?

A Through the 1960s.

Q And I'm showing you what has been marked as Defendants' 285 at pages 100 and 109.

Where is this from and what are we looking at here?

A And that's from Stein's Heraldic Crests. That's the distinctive unit insignia of the Third Artillery. It incorporates a barred arrow in the upper field, a pair of chevrons with arrows, a dragon, a fleur de lis, and I believe that's a thistle on a shield.

Q So let's turn to another symbol that you encountered in Games Workshop's works.

The cruciform, can you tell us what a cruciform is?

A In this sense, a cruciform is made of two bars that create an X, and that's also referred to as a St. Andrews cross.

And this particular form that we're examining is called an arrow cross. There are arrow points at the ends of
the canton.

Q During what time period was this insignia used?
A In the later 1960s.

Q Let's turn to Roman numerals.
A Are you aware of examples of Roman numerals in military insignia?
Q Yes.
Q How are Roman numerals used?
A Roman numerals are used as unit designators in the United States military.
Q And I'm showing you examples of Games Workshop's claimed works in this case from Plaintiff's Exhibit 1020 at entries 46, 47 and 50.
Q What symbols do you see on these works?
A And there are arrows, chevrons and also the arrow cross that all incorporate Roman numerals, in particular with the arrows and numerals in series.
Q Mr. Brewster, I'm showing you an image from Defendants' 285 at page 19.
Q What are we looking at here?
A That's from U.S. military shoulder patches by Britton, and those are shoulder insignia for marine air wings. Again, they incorporate several symbols, stars, wings, and Roman numerals in series to designate units, specific marine air units.
Q Which symbol is designating the particular unit?
A The Roman Numeral I, II, III, and IV.
Q During what time period were these insignias used?
A World War II.
Q Mr. Brewster, I'm showing you an image from Defendants' Exhibit 285 at page 18.

What are we looking at here?
A Again, those are from U.S. military shoulder patches by Britton, and they are again representing marine air wings, and they incorporate the marine eagle globe and anchor, wings and then again Roman numerals in series designating the particular air wings.
Q The Roman numerals designate what?
A The marine air wings.
Q And during what time period were these used?
A In 1940s, 1950s.
Q Mr. Brewster, I'm showing you an image from Defendants' Exhibit 285 at page 16.

What are we looking at here?
A Those are from Britton's U.S. Military Shoulder Patches. They are shoulder insignia for United States Army Corps and logistical commands. They are incorporating, again, several symbols, in particular, numbers or Roman numerals in three examples.
Q During what time period was this in use?
A World War II.

Q Let's turn to blood drop symbols.

Are you familiar with examples of the use of blood drops in military insignia?

A Yes. Blood drops appear singly and in multiples in different U.S. military insignia from the 1940s onward through into the 1960s.

Q Did you see them in the military insignia from the Vietnam conflict period?

A Well, specifically from the Vietnam conflict period, that's where you see the proliferation of the use of blood drops, specifically in small unit patches, special forces, unit insignia patches that were designed for them at the time during the Vietnam War.

Q Did you identify the use of blood drops in the Games Workshop's works that you reviewed --

A Yes, I did.

Q -- in forming your opinion?

I'm showing you examples of Games Workshop's claimed works in this case for Plaintiff's Exhibit 1020 at entries 4 and 12.

Are these consistent with images you reviewed of Games Workshop's works in forming your opinion?

A Yes, they are.

Q What symbols do we see here?
Q I'm showing you images from Defendant's Exhibit 285 at page 79. What images are we looking at here?
A Those are images presented, again, in Kraus's German Army in the First World War. They are excerpted from a pre-World War I catalog of German unit military insignia, and in that particular case that insignia is for an infantry regimen, and then use of the skull down here is for a regimen of Hussars.
Q What time period are we talking about for these symbols?
A Really 1900 through World War I.
Q Showing you an image from Defendant's Exhibit 286 at page 19, what are we looking at here?
A That is from Tucker's History on Their Shoulders. That's a skull wearing a green beret, so that is a specific unit insignia for a United States Army Special Forces.
Q During what time period were these symbols used?
A Mid to late 1960s.
Q Mr. Brewster, we've reviewed a number of symbols from various resource books. Are these symbols that you used in forming your opinion in this case?
A Yes.
Q And can you recap for the jury what your main conclusion is?
A Well, I again reviewed the materials presented and found that particular symbols that are used by Games Workshop to create insignia are also symbols that are found in use by the
1 United States military for their insignias and heraldic unit
designators.

3 MS. GOLINVEAUX: Thank you, sir.
4 THE COURT: Mr. Keener.
5
CROSS EXAMINATION
6
BY MR. KEENER:
7 Q Good morning, Mr. Brewster.
8 A Good morning.
9 Q I'm going to see where we can reach agreement because I think we're going to agree about a lot of what you said today.

11 Now, you're an expert in military history, correct?
12 A Military material culture, yes.
13 Q You're not an expert in miniature war gaming?
14 A No.
15 Q Or any experience in Warhammer 40K?
16 A No.
17 Q And you've had no experience in miniature war gaming at all since a couple of years in your teen years?
18 A Yes. That's accurate.
19 Q And you're not offering any opinions whether or not Chapterhouse copied any Games Workshop symbols or designs, right?
20 A No.
21 Q And you didn't attempt to identify any similarities or differences between the two products?
you have to prove, and I think it's proper rebuttal in this case.

B, the fact that somebody's going to stipulate, I'm not going to make you stipulate to it, and that's very quick, anyway.

And the third thing about lay opinion, I think it's a proper lay opinion. So, the objection's overruled.

(The following proceedings were had in open court, in the presence and hearing of the jury:)

THE COURT: Raise your right hand.

(Witness duly sworn.)

JEREMY GOODWIN, PLAINTIFF'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MOSKIN:

Q. Can you please state your full name for the record for the jury?

A. My name is Mr. Jeremy Goodwin.

THE COURT: Goodwin is G-o-o-d-w-i-n?

THE WITNESS: Yeah.

BY MR. MOSKIN:

Q. And are you employed?

A. Yeah. I'm employed by Games Workshop and have been for 27 years. I'm a sculptor and a miniatures designer.

Q. Did you -- just generally. I don't want to go into the details. Did you have any role in the original creation of
Warhammer 40,000?

A. Yes.

Q. You said you're a sculptor. Can we bring up images

Plaintiff's Exhibit 777 to 780? And I'll approach the witness.

A. That's a terrible photograph.

Q. Is this an example of something that you have sculpted?

A. Yes.

Q. And what does this involve, this sculpting process?

A. These are made by hand using dental tools and a sort of
plumber's putty that you put over a wire armature. It's all
very old school.

Q. Do you know where Games Workshop manufactures its products?

A. Yes.

Q. And where is that?

A. In the UK.

Q. Now, Chapterhouse has suggested that there's only a limited
number of ways to design shoulder pads. Do you agree with that?

A. No.

Q. And why is that?

A. Well, if you include things like size, proportion, where it
sat, the sort of detail that can go in it, before you get
towards colors and everything, there's hundreds of variations
that you could choose for these. You have to make design
choices all the time about what you're going to do. But there
are a huge amount of choices.
say anything, you got to say it loudly. And if you need to move
to see it, just move.

My inclination, folks, is so that we can finish this
testimony is we might go a little bit later than our normal
lunch break so that we can get this done.

BY THE WITNESS:
A. So, I'm going to do a rough Marine shape, one shoulder pad
on the other side, and then I'll try some of the other ones on
the other side. So, we'll start with the head. This one --

THE COURT: My advice is don't talk as you're doing it.
Wait 'til you're done and then describe it to the jury while
you're facing them.

THE WITNESS: Okay.

(Brief pause.)

BY THE WITNESS:
A. Okay. So, that's roughly the fellow there, the one that
you've been seeing all week. Does that look reasonably like
that?

THE COURT: No, you don't get to ask them questions.

Sorry.

BY THE WITNESS:
A. So, I put the shoulder pad on this side. So, it runs from
nearly the ear of the Space Marine down to about there. It
covers the whole of that part of the body.
Q. And in the shoulder pads, you were showing to the jury the different designs of shoulder pads, correct?
A. Which ones?
Q. The different designs that you had on here. You were doing some variations of drawings, right?
A. So, the ones that Dr. Grindley brought up?
Q. Sure.
A. Okay.
Q. And you drew your own versions of those that were on the chart, correct?
A. Yeah, I tried to do them as accurately as possible.
Q. Now, Games Workshop doesn't sell any of the shoulder pads that you drew on the board, correct?
A. No.
Q. And, in fact, from all of the products -- do you understand there's 163 products that Games Workshop is accusing Chapterhouse of copying?
A. If you say so, yes. I haven't counted them all.
Q. And of all the products here, you talked about this one, right?
A. Yeah.
Q. You didn't talk about any of the other 162 products?
A. No.
Q. As a matter of fact, Games Workshop doesn't have products for anything else that Chapterhouse sells apart from a shoulder
of the two?

A. No, I don't know what you mean.

Q. Okay. Is there sort of a blob here that's the shoulder, that's meant to represent the entity of the shoulder?

A. Yeah.

Q. And the shoulder pad is a cap that fits on top of the shoulder?

A. That's correct.

Q. And when we're talking about the fit, you didn't testify about how those shoulder pads were to fit on top of a particular shoulder, correct?

A. They just go on top there.

Q. And have you seen any of the Chapterhouse products in terms of their shoulder pads?

A. Not physically, no.

Q. And so, you don't know if, in fact, they do have other things on top of them such as the things that you drew, correct?

A. Those -- which elements that I drew do you mean?

Q. Any. You don't know --

A. Well, most of those were plain. Come on.

Q. Okay. So, for example, you had one that had some banding on it. Do you remember that from the Alien movie?

A. Yes.

Q. You don't know if Chapterhouse actually sells a product which has physical banding on it, as opposed to a plain pad,
Goodwin - cross

1 A. The Imperium is a civilization or the remnants of one.
2 Q. Fine. And so, the Imperium, the civilization, that's the setting in which this game is to take place; is that right?
3 A. Yep.
4 Q. And that game is an amalgamation of so many ideas that were floating around, taken from sources like 2000 AD, right? Isn't that true?
5 A. That just doesn't finish off the sentence, does it?
6 Q. Well, let's look at the rest of the sentence. Taken from 2000 AD and Michael Moorcock novels and real history all put into a big pot and regurgitated by us. Do you see that?
7 A. Yes.
8 Q. Isn't that what Games Workshop did?
9 A. That's a very, very simplistic reading of it, yes.
10 Q. And that's in The Art of Warhammer book, right?
11 A. Yes.

MR. ALY: No further questions.

THE COURT: Redirect?

MR. MOSKIN: No, your Honor.

THE COURT: Any questions from any of the jurors? I see nobody writing.

Okay. Any further rebuttal on behalf of the plaintiff? I see nobody writing.

MR. MOSKIN: Nothing further.

THE COURT: Aside from our exhibit issues and other stuff we're got to deal with, is there any further evidence on
MR. MOSKIN: Yes, Death Watch pads, shoulder pads. So product 6 was Celestial Lyons. Mr. Merrett did testify that the imagery on the Lyon is not -- we're not claiming copyright in that, but the claim remains for the shape, the underlying shape of the shoulder pad.

THE COURT: Okay.

MR. MOSKIN: The other product, the Death Watch shoulder pads, which are product 9, that's -- they're gone. They're out of the case. He did concede that they're not --

THE COURT: Okay, all right.

MR. MOSKIN: Turning the page, page 11.

THE COURT: So I assume that -- I assume that in terms of what the jury is doing, all we really need to do on that is remove that item from the verdict form, right?

MR. ALY: That's right. If they want to take it from the chart, they can.

THE COURT: Okay. Well, I mean, the jury is going to know from the verdict form. They're going to know from the verdict form these are things they have to decide.

MR. MOSKIN: And we're at least agreed that there's a separate listing for everything that corresponds to a product in the --

THE COURT: And the numbers correspond to the claim chart basically.

MR. MOSKIN: Exactly, yes.
THE COURT: Have you lived in France?

MR. MOSKIN: I'm sorry. No, I haven't. So maybe --

THE COURT: I have.

MR. MOSKIN: -- that's why I made such a naive comment.

But, anyway, more important, is the inferences that can be drawn that one person anywhere in the world was confused. Simply the fact that it is available -- we took it down very quickly, but it could have been purchased in the U.S. That's the nature of the Internet.

THE COURT: Okay. Then. So I think -- I'm not persuaded at this moment in time that there is insufficient evidence on the Striking Scorpion. I'm not persuaded that the fact that the Eagle thing wasn't on this particular claim chart precludes it from being asserted. I think there is some evidence about the Celestial Lyon and the Death Watch Runic everybody is agreeing should come off. So you should just take the one off on the rest of them, and I'm overruling the objection.

All right, so we're done with that.

So on the -- let me just make a note here.

MR. ALY: Take the two off?

THE COURT: Yes. Well, no, because the other one isn't on the copyright part. It's just on the trademark part.

MR. ALY: The Lyon, I'm sorry. Maybe I should --
just make a note.

Okay. Anything else that either side has on this particular page?

MS. HARTZELL: Yes. On that same instruction, protected expression, we also think that protected expression does not include common geometric shapes should be included as well.

THE COURT: So that's something that kind of cries out for more definition. What do you mean by "common geometric shapes"? Do you mean, trapezoids, rhombi?

MS. HARTZELL: In the defendant's proposed instructions we included, for example, arrows. I think that when --

THE COURT: I don't think an arrow would be a geometric shape, but I get your point.

MS. HARTZELL: Yeah. I think that with the addition of the combination of elements instruction it's necessary to also distinguish what is not included without that combination.

THE COURT: Is there any risk that a juror would think that an arrow without more is copyrightable?

MS. HARTZELL: I think there is that risk, yeah.

THE COURT: Really. I don't think so. I'm not going to include that. I don't think it's necessary.

Anything else on this page?
or symbols used to identify a product, distinguish it from those manufactured or sold by others, and indicate the source of the product. The purpose of trademark law is to prevent confusion among consumers about the source of products and to permit trademark owners to show ownership of their products and control their products' reputation.

To prevail on its claim with regard to a particular trademark, Games Workshop must prove each of the following elements by a preponderance of the evidence:

Number 1. Games Workshop owns the symbol or term as a trademark.

Number 2. The symbol or term is a valid trademark.

Number 3. Chapterhouse used the symbol or term in a manner that is likely to cause confusion about the source, origin, sponsorship or approval of Chapterhouse's product.

I will explain what I mean by these terms in a moment.

If you find that Games Workshop did not prove each of these elements by a preponderance of the evidence as to a particular trademark, then you must find for Chapterhouse as to that trademark. If, on the other hand, you find that Games Workshop proved each of these elements by a preponderance of the evidence as to a particular trademark, then you must go on to consider Chapterhouse's defense of fair use as to that trademark.
There are several pages of definitions here. The first involves ownership of trademark. Games Workshop owns a symbol or term as a trademark if it used the symbol or term in interstate or foreign commerce in a way that allowed consumers to identify it with Games Workshop or its product before Chapterhouse began to use the symbol or term. I have previously ruled that Games Workshop owns 71 of the claimed trademarks that are at issue in the case. A list of these trademarks will be provided as part of the verdict form that I'm giving you, and we'll discuss the verdict form in a few minutes.

I have made no determination regarding ownership of the other claimed trademarks that are at issue in this case. That determination is one of the matters that you will have to decide.

The next definition is "valid trademark." A "valid trademark" is a symbol or term that is distinctive. In other words, it is capable of distinguishing the trademark owner's product from the products of others.

I have previously ruled that the following terms are valid trademarks owned by Games Workshop: Space Marine; Eldar; Tau; T-a-u; and Warhammer. I have made no determination regarding ownership of the other claimed trademarks that are at issue in this case.

A symbol or term may be considered distinctive if it
Fourth, the degree of care that purchasers or potential purchasers are likely to exercise in buying or considering whether to buy the product. This may depend on the level of sophistication of potential buyers of the product and the cost of the product.

Fifth, the degree to which purchasers or potential purchasers recognize Games Workshop's trademark as an indication of the origin of Games Workshop's product. You may consider my previous instructions concerning distinctiveness to help you assess this factor.

Sixth, whether Chapterhouse's use of the trademark has led to instances of actual confusion among purchasers or potential purchasers about the source, origin, sponsorship or approval of Games -- or excuse me -- or approval of Chapterhouse's product. However, actual confusion is not required for a finding of likelihood of confusion.

Seventh, whether Chapterhouse intended to pass off -- it should say, its product as that of Games Workshop or intended to confuse consumers.

The weight to be given to each of these factors is up to you to determine. No particular factor or number of factors is required to prove likelihood of confusion.

So the next instruction includes the fair use defense on the trademark claims.

Chapterhouse claims that its use of Games Workshop's