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

GAMES WORKSHOP LIMITED,	}	
Plaintiff,		Docket No. 10 C 8103
vs.		
CHAPTERHOUSE STUDIOS, LLC,	}	Chicago, Illinois
et al.,		June 4, 2013
Defendants.		9:45 a.m.

VOLUME 2  
TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MATTHEW F. KENNELLY AND A JURY

APPEARANCES:

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MARSHALL, GERSTEIN & BORUN  
BY: MS. JULIANNE M. HARTZELL  
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Also Present:

MR. NICHOLAS VILLACCI  
MS. GILLIAN STEVENSON

LAURA M. BRENNAN - Official Court Reporter  
219 South Dearborn Street - Room 2102  
Chicago, Illinois 60604  
(312) 435-5785

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

3 THE COURT: 10 C 8103, Games Workshop v.  
4 Chapterhouse.

5 The same lawyers are here. Do you want me to have  
6 them repeat their names?

7 THE REPORTER: No.

8 THE COURT: You don't care. Okay, good.  
9 What did you have?

10 MR. MOSKIN: Two things. One, I just conferred  
11 with --

12 THE COURT: Hang on a second.

13 (Brief interruption.)

14 THE COURT: Go ahead.

15 MR. MOSKIN: And I just confirmed with Mr. Aly that  
16 because we haven't had a chance to review in advance any --  
17 this will come up presumably later this morning or this  
18 afternoon on cross examination. We have not had a chance to  
19 review any exhibits that they may want to use with Mr. Merrett  
20 or subsequently with other witnesses. We're not going to --

21 Unless we have already said there is no objection to  
22 an exhibit, they will have to lay a foundation before they can  
23 publish to the jury.

24 THE COURT: Okay. I will deal with objections as I  
25 deal with them.

1 MR. MOSKIN: I did want to ask in advance -- I don't  
2 know that I need an advance ruling -- but I mention our  
3 concern is since we did offer to do this in advance and confer  
4 before hearing, that I hope that the time spent dealing with  
5 that in court doesn't address -- isn't docked against us on  
6 our trial time.

7 MR. ALY: Judge, I just want to be clear about what's  
8 going on. These are the objections from the pretrial order.  
9 We didn't want to go through all of the objections or send  
10 them all to your Honor. So we just said when we -- we don't  
11 know what we're going to need at cross examination. And when  
12 we do, you can raise the objection then, but foundation isn't  
13 going to be one of them unless they raise that in the chart.  
14 These are talking about relevance objections here and there.

15 THE COURT: Well, just so you know, the only occasion  
16 on which there's even --

17 The clock keeps running against the questioning party  
18 if I'm just dealing with the objections from here. If we have  
19 to have a sidebar to deal with something, then I figure out  
20 who to allocate it against. And, quite honestly, it ends up  
21 being the losing party. So it's an incentive not to make  
22 objections that are losers and not to offer stuff that is, you  
23 know --

24 MR. MOSKIN: That's fine.

25 THE COURT: -- likely not admissible.

1           But if I'm just dealing with it from here, the clock  
2 just keeps running against the questioning party.

3           MR. MOSKIN: Before the jury came in, I thought I was  
4 using --

5           THE COURT: We're still missing the juror anyway.

6           MS. HARTZELL: May I raise one issue?

7           THE COURT: Yes.

8           MS. HARTZELL: With motion in limine number 9  
9 regarding Games Workshop's IP policy.

10          THE COURT: Regarding the?

11          MS. HARTZELL: IP policies for Games Workshop.

12          THE COURT: Yes.

13          MS. HARTZELL: The order was that you understood that  
14 our party was intending to raise them only for purposes of  
15 impeachment or rebuttal. And in Mr. Moskin's opening  
16 argument, he challenged the sufficiency of our disclaimer. So  
17 we would like to be able to question about the language of the  
18 disclaimer coming from Games Workshop.

19          THE COURT: Okay. You lost me at motion in limine  
20 number 9.

21          MS. HARTZELL: In motion in limine number 9, the  
22 plaintiff requested --

23          THE COURT: The proposition that I remember all of  
24 these things is -- I'm not that good, okay.

25          So motion in limine number 9 --

1 MS. HARTZELL: Was relating to Games Workshop's IP  
2 policies. The plaintiff asked that those be --

3 THE COURT: Let me just get the ruling.

4 (Brief interruption.)

5 THE COURT: So what I said is:

6 "Because defendant contends this evidence would only  
7 be used to impeach or rebut, ruling is deferred until  
8 defendant determines whether to offer the evidence."

9 MS. HARTZELL: And this was the issue that we raised  
10 during the hearing.

11 THE COURT: So now what you are saying is Mr. Moskin  
12 took issue with the adequacy of the disclaimer that  
13 Chapterhouse makes in his opening statement and, therefore,  
14 you wanted to what?

15 MS. HARTZELL: To ask questions about the fact that  
16 the language of that disclaimer came from Games Workshop's own  
17 website, which it suggests.

18 THE COURT: So somebody from Chapterhouse is going to  
19 say, we just took theirs and used it?

20 MS. HARTZELL: The one that they recommended be used  
21 on websites.

22 THE COURT: You nodded. Is that a yes?

23 MS. HARTZELL: Yes, your Honor.

24 THE COURT: All right. So do you have a problem with  
25 them questioning about that?

1 MR. MOSKIN: No.

2 THE COURT: Well, there you go.

3 MS. HARTZELL: Thank you.

4 MR. MOSKIN: One --

5 THE COURT: Hang on a second.

6 MR. MOSKIN: Yes.

7 (Brief interruption.)

8 THE COURT: We've got time to talk because we tried  
9 to call the one juror and it just went into voicemail, which  
10 hopefully means he's in the building, but it doesn't  
11 necessarily mean that.

12 MR. MOSKIN: And one last thing.

13 I have been having my secretary keep an eye out for  
14 any correspondence from the copyright office because I had  
15 asked the copyright office to send me anything new. We had  
16 never gotten any substantive correspondence on that one  
17 application.

18 We have not gotten that, but I did get something in  
19 yesterday from the copyright office. So I need to fix the  
20 declaration I was going to file today, so if I can do that  
21 later tonight as soon as I get a chance.

22 THE COURT: That's fine.

23 MR. MOSKIN: And so that's all I wanted to mention.

24 THE COURT: Okay. So is there anything anybody can  
25 think of to talk about until our last juror comes in and I

1 have the discussion with the jurors about peer pressure?

2 MR. MOSKIN: Since we're talking about board games, I  
3 can mention that I had a really fun case a few years ago for  
4 Hasbro where somebody claimed that they had invented Stratego.  
5 I don't know if that was another one. That was a game I  
6 played as a kid.

7 THE COURT: I played Stratego.

8 THE REPORTER: Do you want this on the record?

9 THE COURT: No, we can go off the record.

10 (Brief interruption.)

11 THE COURT: So it's five minutes to 10:00. My  
12 courtroom deputy placed a call to Mr. Marsell, who is the  
13 missing juror. It went into his voicemail. That was about  
14 9:40 to 9:45. I did the same about five minutes ago. It also  
15 went into voicemail.

16 My recollection is I told the jurors our start time  
17 would be 9:40. I reminded them it takes longer to get through  
18 the metal detectors, told them to be here before that.

19 We don't have a lot of time to play with here, and  
20 when I have somebody who is completely nonresponsive, in about  
21 five minutes, I'm going to ask whether anybody has an  
22 objection to me excusing him from the jury and we just proceed  
23 with what is left. So just be thinking about that, unless I  
24 get a call back from him. It's complete radio silence at this  
25 point.



1 (Brief interruption.)

2 THE COURT: The juror is here. We're going to get  
3 going.

4 (The following proceedings were had in the presence and  
5 hearing of the jury:)

6 THE COURT: You can all sit down. We're still  
7 waiting. Everybody have a seat. We're still waiting on one  
8 person to come in, but you can all sit down. I lost somebody.

9 (Brief interruption.)

10 THE COURT: Okay. I understand that all of you are  
11 making a sacrifice to be here. I also understand that, you  
12 know, sometimes things happen with transportation. I need a  
13 call in advance. The only way I'm --

14 I'm going to be really clear about this. The only  
15 way I can make the time limits that I gave you yesterday is if  
16 everybody gets here on time. I can't start until you're all  
17 here. I was literally one minute from excusing one person  
18 from the jury and maybe taking some other steps.

19 So the purpose of that is to put peer pressure on  
20 you. So you're all responsible to each other for the overall  
21 time we have to spend here. All right. I'm hoping that is  
22 all I will need to say about it.

23 Mr. Merrett, do you understand you're still under  
24 oath?

25 THE WITNESS: Yes.

Merrett - direct

1 THE COURT: Mr. Moskin, you can proceed.

2 MR. MOSKIN: Thank you, your Honor.

3 ALAN R. MERRETT, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

4 CONTINUED DIRECT EXAMINATION

5 BY MR. MOSKIN:

6 Q Mr. Merrett, when we broke yesterday we were, in fact,  
7 about to begin a new subject, the subject of infringement.

8 And I would like to begin --

9 I don't know if you answered the question, but let me  
10 begin again with whether you have any familiarity with the  
11 defendant in this case, Chapterhouse Studios?

12 A Yes, I do.

13 Q And what is the nature of your familiarity?

14 A I've looked through their web store and examined a few of  
15 their products physically, actually held one or two of their  
16 products, took them, examined them.

17 Q When you say you have looked at their web store, what  
18 actually have you done?

19 A Looked through all the pages in the web store, looking at  
20 all the different products. Yes, that's about it. I pretty  
21 much looked at every page in the store, I think.

22 Q Okay. Well, I'd like to begin by showing you from  
23 Plaintiff's Exhibit 435, page 1062 to 63, and can you --

24 Is this familiar to you, this image?

25 A Yes.

Merrett - direct

1 Q And what is it that you understand it to be?

2 A I understand this to be Chapterhouse Studios' website from  
3 before the lawsuit.

4 Q And to focus in at the very top of the page where we have  
5 looked at this earlier, where it says "specializing in custom  
6 sculpts and bits for Warhammer 40,000 and Fantasy, did Games  
7 Workshop give a license to Chapterhouse to use the Warhammer  
8 40,000 name like that?

9 A No, we did not.

10 Q And if we can back up a little and look in the upper  
11 left-hand corner where it says "under our store"?

12 A Yes.

13 Q And what do you understand this to be?

14 A That looks like a listing of all the pages in the -- on  
15 the site organized and referencing things, Workshop names and  
16 Games Workshop trademarks.

17 Q Okay. And did you consent to Chapterhouse's use of Games  
18 Workshop names in this manner?

19 A No, sir, we did not.

20 Q Okay. I would like to show you next Plaintiff's  
21 Exhibit 690.

22 THE COURT: What was that previous one, the number?

23 MR. MOSKIN: The Bates number of that?

24 THE COURT: No, just the number of the exhibit.

25 MR. MOSKIN: The first one I mentioned?

Merrett - direct

1 THE COURT: Yes.

2 MR. MOSKIN: 435. It was the entire website.

3 THE COURT: Thanks, right.

4 BY MR. MOSKIN:

5 Q Now I'm showing you Plaintiff's Exhibit 690 and  
6 page 28506.

7 And do you recognize this?

8 A Yes. This is the current Chapterhouse Studios website.

9 Q Okay. And when did you become aware of the new version of  
10 the website?

11 A Subsequent to the lawsuit --

12 Q Okay.

13 A -- they changed their website to make it look like this.

14 Q And if you look, focusing on the left under the heading  
15 Products, can you tell me what you see there?

16 A Again, as before, it's a navigation section that leads to  
17 different sections in the web store using Games Workshop names  
18 and Games Workshop trademarks. Obviously, some of them  
19 aren't.

20 Q Which ones are?

21 A This Dark Elf and Eldar, Eldar, Imperial Guards, Space  
22 Marine, Tau, Tyranid.

23 Q Okay. I didn't ask. Did Games Workshop consent to  
24 Chapterhouse's use of the Games Workshop names?

25 A No, sir, we did not.

Merrett - direct

1 Q Okay. Now, I'd like to show you what's been marked as  
2 Plaintiff's Exhibit 1020 and ask if you can tell me what this  
3 is?

4 A This is a side-by-side comparison chart, which on the  
5 left-hand side shows the product of Chapterhouse marketing on  
6 their web store and on the right-hand side relevant Games  
7 Workshop proprietary products that we think these have been  
8 copied from.

9 THE COURT: Hang on a second. Is this where I'm  
10 supposed to read the instruction that we discussed yesterday?

11 MR. MOSKIN: That would be fine.

12 THE COURT: So you're going to be seeing some charts  
13 that have this same kind of format here. These charts are  
14 summaries of Chapterhouse website pictures and Chapterhouse  
15 marketing materials compared with Games Workshop materials.  
16 Although the parties are displaying and marketing painted and  
17 assembled products that are shown in the summaries, they're  
18 actually sold unassembled and unpainted.

19 And, moreover, for some of the Chapterhouse products,  
20 the picture will be showing Chapterhouse pieces added to a  
21 Games Workshop product.

22 Okay. Go ahead, Mr. Moskin.

23 BY MR. MOSKIN:

24 Q And let's just -- by way of example, let's look at page 15  
25 of this chart.

Merrett - direct

1           And can you just show and tell us what we're looking  
2 at here, including this highlighted yellow language?

3 A   Yes. The top box number 10 on the left-hand side, under  
4 the Chapterhouse product type, picture, description column, it  
5 shows a component that's offered for sale on the Chapterhouse  
6 website and some text that has been taken from the  
7 Chapterhouse website describing that piece.

8 Q   Okay.

9 A   And the highlighted names are brand names, trademarks that  
10 Games Workshop -- well, they're Games Workshop names and  
11 trademarks that they're using to describe that component.

12 Q   And if we can back up a little bit to see what is it being  
13 compared to on the right?

14 A   On the right is an illustration that was taken from Games  
15 Workshop's White Dwarf magazine which shows how Games Workshop  
16 uses that name and those trademarks and that design of  
17 component.

18 Q   Okay. And let's just show one other example, page 24.

19 And what --

20           A JUROR: Am I allowed to ask a question?

21           THE COURT: Not right now. Just make a note of it  
22 when he is done testifying.

23 BY MR. MOSKIN:

24 Q   And focusing on this, the top product number 24, again,  
25 just tell us what we're looking at.

Merrett - direct

1 A Fundamentally the same thing. There's a component that  
2 Chapterhouse is selling. In this case it's called a shoulder  
3 pad for chalice or Soul Drinker Terminator, and it describes  
4 what that component is and what it will be used for. And it  
5 talks about Soul Drinker and Space Marine Terminators.

6 And then on the right-hand side, it shows an  
7 illustration from the cover of Games Workshop which has that  
8 exact icon illustrated on the shoulder pad of the Space  
9 Marine.

10 Q Let me back up.

11 A That's a section from the cover painting -- well,  
12 literally the cover of a novel called Soul Drinkers.

13 Q And that is one of the Black Library publications?

14 A Oh, it's Black Library, yes. A Black Library novel, it  
15 was published in 2002.

16 Q Okay. Let's look at Exhibit 1021, and let's just look at  
17 page 134.

18 THE COURT: And 1021 is another chart of the type  
19 that we were discussing before.

20 MR. MOSKIN: Exactly.

21 THE COURT: And so the same thing I said about that  
22 one applies to this.

23 MR. MOSKIN: And can you put up page 134?

24 (Brief interruption.)

25 MR. MOSKIN: I'm sorry. Page 3. Sorry. It's

Merrett - direct

1 Exhibit 1. There we go. No, is that it?

2 Product 134. I'm sorry. Flip down two more.

3 (Brief interruption.)

4 BY MR. MOSKIN:

5 Q Just again explain what we're looking at.

6 A On the left-hand side, imperial attack jetbike. It's a  
7 picture from the Chapterhouse Studios website showing a  
8 Chapterhouse Studios model and on the right-hand side shows an  
9 illustration from a Games Workshop -- Games Workshop book  
10 called Heresy Collected Visions published in 2007 showing a  
11 Space Marine jetbike.

12 Q Now, you can see this has -- where it says the date 2003  
13 there, do you see that under the picture of the Games Workshop  
14 product?

15 A Yes. It says -- it's in funky colors. Yes, it's 2034.  
16 Jetbike squad, Eric Ren 2003.

17 Q Did Games Workshop do anything to determine whether the  
18 products on its side of this chart were published before the  
19 Chapterhouse models that we're complaining about?

20 A Yes. We went through the chart endless times to check and  
21 recheck those dates and to check those products. In fact,  
22 even this week, I think the weekend, we double-checked some  
23 products. We went back and looked again to check the dates of  
24 publication.

25 Q And why is there a second claim chart 1021 in addition to



Merrett - direct

1 1020?

2 A Subsequent to us starting the first lawsuit, Chapterhouse  
3 released some more products which we thought were notable and  
4 of concern to us. And so we started a second set of claims  
5 against those subsequently released products. That's why  
6 there's two claim charts.

7 Q Now, I would like to jump to a summary of the claim  
8 charts, and we'll begin with Exhibit 1012.

9 And if we can move forward a page, and are there --  
10 just can you tell us what we're looking at on this page?

11 A On the left-hand side, it's CHS, which stands for  
12 Chapterhouse Studios, Doomseer Iyanar 108, which I don't know  
13 what that is. That's a code number, I think.

14 And it shows photographs of a complete miniature that  
15 Chapterhouse are selling on their -- offering for sale on  
16 their website.

17 And on the right-hand side, on the GW for Games  
18 Workshop, it says Eldar Farseer, and those are two black and  
19 white illustrations from the Eldar Codex, and a miniature from  
20 the Games Workshop Eldar range, again, a complete miniature  
21 shown fully painted.

22 Q And can you identify for us any original elements,  
23 elements that Games Workshop contends that are original to it  
24 that you think Chapterhouse has incorporated in its product?

25 A Well, yes, I can.

Merrett - direct

1           So, first of all, start with -- the name is a big  
2 clue for us because in the Eldar, you have Farseers, and this  
3 thing is called a Doomseer. So there's a clear relationship  
4 there between the names.

5           The style of the name is very much the style of the  
6 names that we use.

7           But beyond that, you start looking at the actual  
8 Chapterhouse miniature. If you could sort of blow up that  
9 left-hand box, we can go.

10 Q The whole box?

11 A Yes, that's it. That's fine. I was trying to use this  
12 funky pointer.

13           The most obvious thing about this model are the large  
14 antler-like crests that are on the top of the helmet. This is  
15 really typical of the style of the Games Workshop models. As  
16 you can see here, this model has got large antler-like crests.

17           The Farseers are -- the Games Workshop Farseer idea,  
18 it's an Eldar Wizard with robes. And as you can see, this  
19 model has the same style of robes. It has a very, very  
20 distinctively patterned helmet with that sweeping,  
21 long-pointed peak and frontispiece with an attendant rune, and  
22 this very, very specific face -- sort of reset faceplate which  
23 is plain and just has eye lenses here. And, again, that's  
24 very much a signature of the Games Workshop Eldar range.

25           In the Eldar range, this kind of arrangement is

Merrett - direct

1 almost defining of what the Eldar style is like.

2           There are other things about this model which are of  
3 concern. If you can see on this Games Workshop miniature, the  
4 chest has this embossed raised pattern, kind of like a very  
5 complex rune that acts like a reinforcement over the figure's  
6 chest.

7           And this model has a similarly raised detail in the  
8 pattern of a complicated, complex Eldar rune over its chest.

9           There are other things, these serqs. It's a clever  
10 name for what these gems are called, and I can't remember what  
11 the clever name is but the --

12 Q Gemstones?

13 A The gems have smooth, rounded, sort of polished character,  
14 and that's very typical of our Eldar. And you can see on here  
15 the top of the crest has these two polished, smooth, non-  
16 faceted rune gems.

17           Can you zoom out from that one to look at the spear?

18 Q Maybe get rid of the box on the right so we can look.

19 A No.

20 Q That's fine.

21 A This model, this variation of the Chapterhouse model, has  
22 got this spear. It's got this very distinctively shaped blade  
23 which is very similar to the Games Workshop blade shape.

24           I think you can zoom those left boxes out again.

25           In the Games Workshop Eldar Codex, the specific

Merrett - direct

1 weapons an Eldar Farseer can be equipped with are listed, and  
2 this set of miniatures has those same options.

3 So in form, style, look, in every which way, this is  
4 a copy of the Games Workshop Eldar Farseers. Even on the way  
5 it's been painted on the -- this model here, this view of it,  
6 it's even got the signature triangular-shaped rune on the back  
7 of the cloak and another one of the polished gems here.

8 There is more stuff. On the website as well, there  
9 is a description of the Doomseer, which basically it's a very,  
10 very shallowly disguised version of exactly the same  
11 description of an Eldar Farseer from our Eldar Codex.

12 MR. MOSKIN: Can you go back to Exhibit 1020 and  
13 product number 108? I think it's maybe on page 107.

14 (Brief interruption.)

15 THE WITNESS: It talks about this character is cursed  
16 with the ability to foresee the slow death of the race.

17 And if you remember, yesterday I talked about the  
18 Eldar and how about the Eldar are a doomed race and that the  
19 Farseers have that precognitive talent to see into the future  
20 and predict the slow death of the Eldar race.

21 It uses the terminology. It makes reference to  
22 things that are very specific to the Eldar. It talks about  
23 the path of her race, not the destiny or the future of, but  
24 the path of her race.

25 And the path is such a strong association in the

Merrett - direct

1 minds of Games Workshop customers with the Eldar, and it talks  
2 about she was psychically scarred when she witnessed the death  
3 of an entire world ship.

4           Again, yesterday I talked about the Eldar and their  
5 craft world ships that they live on.

6           So the combination of the name, the style of the  
7 name, this text and then the miniature itself, the complete  
8 model and those pertinent bits of design and style of design  
9 are things that we think are all -- we think that's what Games  
10 Workshop has invented, and this is just using all that stuff.

11           Sorry. I'm not very good at explaining that as  
12 clearly as I would like to. So those are the points.

13 Q   Okay. Let's move on, and we're back to 1012 and the next  
14 product here.

15           I will ask you the same question, if there are any  
16 original elements or elements that Games Workshop contends are  
17 original that it thinks Chapterhouse has taken in its product  
18 123, Arama'Serq?

19 A   Yes. Again, it's the same form, the Chapterhouse model on  
20 the left, Games Workshop, some examples of Games Workshop  
21 models on the right.

22           Again, all these models are actually sold unpainted,  
23 but they're all marketed painted, and I think the coincidences  
24 of detail here are extraordinary.

25           First of all, in the description on the Chapterhouse

Merrett - direct

1 website, this complicatedly named character is described as  
2 Scorpion Princess or Scorpion Queen or something, which is a  
3 fairly clear reference to the Eldar Striking Scorpions.

4 When you look at the miniature, there's lots of  
5 things about this model which are disturbing for us, not least  
6 of which you check out the form of the armor. So if you can  
7 look at the textures and the shapes of the armor here and  
8 compare it to this one. So blow that up.

9 (Brief interruption.)

10 THE WITNESS: So the basic Eldar suit is a form-  
11 fitting suit with reinforced sections over the major muscle  
12 groups. So here you can see these reinforced panels or  
13 sections over the thighs of the model conveniently highlighted  
14 by the painter.

15 Then the form of the armor has these, I will describe  
16 them as being kind of like ridges or ridged armor patterns  
17 that run all the way from the -- over the foot and then up the  
18 lower legs. And they're actually also on the lower arms  
19 although you can't see them on this. Again, very similar here  
20 on the Games Workshop style and design for this particular  
21 type of character.

22 BY MR. MOSKIN:

23 Q Can you explain, when you're talking about the raised  
24 panels for the musculature, is that something you can see on  
25 the Games Workshop model?

Merrett - direct

1 A Yes. You can see here on the thighs over the knee pads,  
2 on the upper arms, and it's the same -- fundamentally the same  
3 arrangement on this model.

4 So the overall style is basically that or a very  
5 close approximation of that same idea.

6 There are other things about this model. The  
7 Striking Scorpions, which I think I talked about yesterday,  
8 have these kind of wicked kind of attachments on either side  
9 of their masks. And they're called the mandiblasters. And  
10 what a surprise that this model has those exact details  
11 modeled into the headdress of this character here.

12 Mandiblasters.

13 The Games Workshop design has this kind of a topknot  
14 or this kind of a -- kind of a -- hair, and that's got the  
15 same kind of detailing on the head of this model.

16 The configuration of weapons, this miniature is  
17 offered for sale with three sets of arms, three different  
18 pairs of the arms, and this -- each of those pairs of arms  
19 conform exactly to the selections that are listed in the Eldar  
20 Codex for a character of this type, a heroic Striking Scorpion  
21 miniature, and the exact -- literally the exact configurations  
22 of weapons.

23 So this -- so this complete miniature is sold with I  
24 think it's three pairs of arms.

25 Q When you say "arms," do you mean weapons?

Merrett - direct

1 A Well, arms with weapons attached, modeled to them.

2 And each of the pairs of arms and components builds  
3 in exactly the same configurations as are listed in our Eldar  
4 Codex for a leader of the Striking Scorpions.

5 Q Does that include -- are you also referring to what looks  
6 like a weapon on the forearm?

7 A If you look at the weapons, the signature weapon for the  
8 basic Striking Scorpion Trooper is a large sword with a chain  
9 blade on it called a chain sword, funny enough. It's a  
10 gruesome device.

11 And you can see that the Chapterhouse miniature  
12 has -- this one has the same exact weapon. This is a heroic  
13 character, and the heroic version of this character, one of  
14 the potential configurations is to have a pair of these horrid  
15 blades, horrid weapons, with these attached arm-mounted guns  
16 on them.

17 Q You mentioned at the outset of your testimony something  
18 about the description of this product on the Chapterhouse  
19 website. Maybe we can show on Exhibit 1020 product number 123  
20 towards the back.

21 And scroll down perhaps. No, scroll down to the  
22 text.

23 A Yes. The gods have always demanded worship and sacrifice,  
24 blah-blah-blah. It talks about Serquitet, goddess of the  
25 Scorpion, protects her followers through her warrior. I don't



Merrett - direct

1 know what the rest of it would say. It's not in there.

2 Have we got the rest of that?

3 Q Yes, if you scroll down the page.

4 A Armed with sword and pistol.

5 If you look further down, what is circled -- sorry.

6 If you scroll down to these pictures here, this is  
7 another pair of arms, and that's got a very distinctive clawed  
8 arm which is most directly copied from a -- it looks directly  
9 copied from the cover of the Eldar Codex we were looking at  
10 yesterday.

11 Q And I think if you pull back a little, you can maybe go  
12 down.

13 A Here this shows the third pair of arms that this model is  
14 marketed by Chapterhouse, and this is the Games Workshop  
15 version of the heroic Scorpion with that exact weapon  
16 configuration.

17 Q I see. Let's go back to Exhibit 1012.

18 A Right, yes. There, that one. Just highlight the middle  
19 one.

20 And there you can see that weapon, that arm obviously  
21 like a crab's claw with the weapon mounted on the back of it,  
22 slightly obscured by the rest of the miniature, but it goes  
23 like that. There you go.

24 Can we put up the cover of the Eldar book we were  
25 looking at yesterday, the Eldar Codex? Is that possible to

Merrett - direct

1 do?

2 MR. MOSKIN: Hang on just a minute.

3 (Brief interruption.)

4 MR. MOSKIN: That would be --

5 MS. HARTZELL: Your Honor, we're going to object to  
6 this. May we have a sidebar?

7 THE COURT: Sure.

8 MS. HARTZELL: It's beyond the scope.

9 THE COURT: Okay. Laura, come on over.

10 You're going to hear that annoying noise again.

11 (The following proceedings were had at sidebar in the  
12 presence but out of the hearing of the jury:

13 THE COURT: You can talk in normal voices.

14 So what is the issue?

15 MS. HARTZELL: The purpose of the claim charts was to  
16 identify the works that were allegedly infringed. This is a  
17 product that is not an image, that is not included in the  
18 claim chart, and it's a bit late in the game to be adding  
19 where the copyrighted work comes from.

20 MR. MOSKIN: I think we have established this. We  
21 don't need to dwell on it further. I think it's in the  
22 record. We can make a further comparison, but I think it is  
23 clear enough.

24 THE COURT: So you don't need to ask more questions.

25 MR. MOSKIN: I don't need more questions.

Merrett - direct

1 THE COURT: So the objection is essentially moot  
2 then. Thanks.

3 (The following proceedings were had in the presence and  
4 hearing of the jury:)

5 THE COURT: Go ahead.

6 BY MR. MOSKIN:

7 Q Rather than take time to go back to the Eldar Codex, why  
8 don't we move on.

9 Let me ask you a question. Would you call these  
10 products add-ons to anything that Games Workshop sells?

11 A I'm not sure I would call these add-ons. These look like  
12 complete miniatures to me.

13 Q Do you understand what the term "add-on" means?

14 A Something that adds onto something else. Just anything.  
15 I don't think it's got technical meaning. Add-on, extra bit,  
16 alternative.

17 Yes, sorry. Yes, it doesn't really mean very much.  
18 I don't think it matters because if it's something -- whether  
19 it's an add-on or a replacement or an extra part, if it's  
20 Games Workshop's, it doesn't -- it's not something that would  
21 free it from being any responsibility for not being a copy or  
22 not using our intellectual property.

23 Q Let's go back to 1012 and go down to the next product.  
24 Can you describe what we're seeing here?

25 A Right. What we're seeing here are two products that

Merrett - direct

1 Chapterhouse sell, offer for sale, on their website:

2 Farseer/Warlock jetbike conversion kit.

3 To my memory it's listed as two separate products on  
4 their Farseer jetbike and Warlock jetbike.

5 Again, what this is is a --

6 Okay. To help, this is the Chapterhouse image from  
7 their website.

8 Q And the witness is pointing to the claim chart on the  
9 left.

10 A Yes.

11 And this shows the Chapterhouse pieces attached to  
12 the Games Workshop plastic kit or an element from the Games  
13 Workshop plastic kit. So that part there and that and that  
14 bit there are actually this plastic kit.

15 And what Chapterhouse do sell, or offer for sale -- I  
16 suppose I don't know if they actually sold it, but they offer  
17 for sale this complete miniature that sits on that, and that  
18 replaces the Games Workshop plastic miniature with their resin  
19 model, and then these ancillary lumps that stick on the side  
20 and this little bit here.

21 The miniature here, and I think that's the Farseer,  
22 again, similar to the previous one, this model copies all of  
23 the sections and details of an Eldar Farseer. Hardly  
24 surprisingly, that's what they called it.

25 So if you look at the helmets, they're a very similar

Merrett - direct

1 pattern to the Farseer.

2 In fact, could we blow that image up as well on the  
3 claim chart and put it next to it?

4 So this is the Farseer miniature --

5 Q You are referring to the image of the Games Workshop  
6 products on the right?

7 A So this product, this set of five miniatures, is called  
8 the -- is an Eldar Farseer and four Eldar Warlocks. We'll  
9 come back to the Warlocks in a minute.

10 If you look at this model here, this is the Farseer,  
11 and its signature weapon here is this spear.

12 And the spear has a very specifically shaped blade  
13 which has this triangular notch, and this is actually a rune  
14 design worked into the hilt of the blade, and if you look  
15 here, the same rune worked into the hilt of the similarly  
16 shaped blade on this model here.

17 The primary difference between these is that this one  
18 has a light blade, like the blade's been painted in a light  
19 color, and the Games Workshop one has been painted in a dark  
20 color, but they're essentially the same, substantively the  
21 same.

22 The helmet again has the sort of recessed faceplate  
23 with the eye lenses, again, very similar here and picked out  
24 in a dark color. So you can see it there. In fact, you can  
25 see it in that model as well.

Merrett - direct

1           As before, this has got the robes, which is one of  
2 the associated features for the Farseer. This shows the  
3 reinforced breastplate, the weird wraithbone bone that they  
4 grow using the power of their minds, and this character has  
5 similarly raised detail on its chest area.

6           Then if we look at the other, the other Chapterhouse  
7 product that is on this page, this is the model I think they  
8 call the Warlock. As you can see, it has a sword, and these  
9 are the four Games Workshop Warlock models, Eldar Warlock  
10 models, and they are --

11 Q   And this is referring to the four models on the right-hand  
12 side of the claim chart?

13 A   Yes. And, again, these all have swords, and notice the  
14 shape of the sword. I'm told by our expert, Mr. Goodwin, that  
15 that is referred to as a leaf-bladed sword, and, indeed, the  
16 Chapterhouse miniature has a leaf-bladed, and basically it's  
17 the same shape.

18           And going back down to the model, and, again, this  
19 product that Chapterhouse offers is a complete -- a complete  
20 miniature, a complete miniature, that replaces the rider, a  
21 complete rider, that replaces the Games Workshop rider.  
22 Again, it has the signature robes of an Eldar Warlock. It has  
23 the same helmet and style as our Eldar Warlocks.

24           It has the same raised detail on the chest area, the  
25 same -- it uses the signature gems, I think. I think it's got

Merrett - direct

1 gems here. I think there is a gem or a rune here.

2 I'm not entirely sure what these big ugly lumps are  
3 on here. I think those are -- parts.

4 Again, the Chapterhouse products, apart from using  
5 both our names and our distinctive style and distinctive  
6 arrangements of detail on our characters, they're also  
7 configured to an exact form that is dictated by the Eldar  
8 book.

9 Our Eldar Codex has units and it lists -- and options  
10 listed for what --

11 You know, yesterday I talked about how you can  
12 configure your army and you pay points to configure the army  
13 to include certain things in there. Well, one of the options  
14 for the Eldar Farseer and the Eldar Warlock and the Eldar  
15 Codex is that they can be mounted on a jetbike.

16 And so this is not even -- there is no originality in  
17 this idea. It's simply saying Games Workshop have said that  
18 you can mount this character on a jetbike and so we'll make --  
19 so that's what it does. It basically just --

20 Q When you say there is no originality in the idea, you are  
21 referring to the Chapterhouse product?

22 A Yes. There is no originality in that kind of -- and what  
23 that is. It's literally listed in our Eldar book, the option,  
24 that configuration.

25 Q Let's move on to the next product. I'm sorry, and this is

Merrett - direct

1 1013, Plaintiff's Exhibit 1013.

2 And we're showing you what has been identified as  
3 Plaintiff's Exhibit 1013. Can you identify any original  
4 elements from the Games Workshop artwork and model that you  
5 think Chapterhouse has taken?

6 MS. HARTZELL: Objection, foundation.

7 THE COURT: State the question again, if you would,  
8 Mr. Moskin.

9 BY MR. MOSKIN:

10 Q Well, can you tell us what we're looking at here?

11 A On the left-hand side is Chapterhouse Studios Dark Elf  
12 Arch-Torturess. Again, it's a photograph from the  
13 Chapterhouse website showing a painted version of the model,  
14 the complete miniature they sell, and it's listed as a Dark  
15 Elf Arch-Torturess.

16 The model is depicted and was actually raised off the  
17 ground with its feet together. The feet are bare.

18 Q When you say "the model," what are you referring to?

19 A The Chapterhouse miniature has -- is posed with its legs  
20 tucked together, its naked feet pointing down. It's actually  
21 raised up off the base by some stuff. I can't quite see what  
22 that is. So it gives the impression of it floating just off  
23 the ground.

24 It's got a macabre claw and weapons. It's got these  
25 extra weird kind of techno-organic extra arms on the back, one



Merrett - direct

1 of which is holding what's been modeled to look like a syringe  
2 or some kind of hideous injector thing.

3 If we look at the Games Workshop models and the Games  
4 Workshop and the pictures on the Games Workshop, you can see  
5 these same features. The Games Workshop miniature is floating  
6 above the ground with its legs together, naked feet. It's got  
7 these extra arms. It's got macabre clawed weaponry. It's  
8 got --

9 If you look at the pictures actually at the top,  
10 there you go. One of the arms here has got this strange  
11 syringe/injector hanging down, again, hideous clawed arms,  
12 strange drooping character to the extra arms.

13 And the name. I just don't know where to start. The  
14 Dark Eldar are the really, really vile, evil versions of the  
15 Dark -- of the Eldar we talked about yesterday. And the Eldar  
16 fundamentally are elves in space. And so actually this is --  
17 Chapterhouse called it a Dark Elf, which is really helpful in  
18 narrowing down which models we were looking and we think it's  
19 copied from, our images is copied from.

20 Q You mentioned the description on the website. Can we  
21 perhaps flip to page -- to Exhibit 1021, product number 160.  
22 And scroll down. I think it's the next page.

23 (Brief interruption.)

24 BY MR. MOSKIN:

25 Q Can you tell us what we're looking at here?

Merrett - direct

1 A This is the picture and text lifted from the Chapterhouse  
2 website, and it talks about in gruesome detail about how the  
3 torturers inflict pain and then experiment on themselves to  
4 become these grotesque things.

5 And, again, that description is not verbatim, but  
6 that's a fairly close -- it's queuing off all the references  
7 to the dark -- the Dark Haemonculus in our Dark Eldar burg.

8 Q What do you call them, Haemonculus?

9 A Yes, I will always get this wrong. Haemonculi or  
10 Haemonculus, yes, which is what the Dark Eldar, the Games  
11 Workshop Dark Eldar character is called.

12 Q Let's again go back to Exhibit 1013.

13 Are there any other elements, particular elements,  
14 that Games Workshop believes is original to its dark Eldar  
15 Haemonculus that it believes Chapterhouse has borrowed in the  
16 Dark Elf Torturess?

17 A No. I think I've done that one.

18 Q Let's move on to Plaintiff's Exhibit 1018. And can you  
19 tell us what we're looking at here?

20 A On the left-hand side is Chapterhouse Studios' TRU-Scale  
21 conversion for a Space Marine Storm Raven.

22 The picture in the top right, this picture here,  
23 actually shows the Games Workshop plastic kit for a Space  
24 Marine vehicle called a Storm Raven, hopefully labeled by  
25 Chapterhouse so we know which one we're looking at.

Merrett - direct

1           And this has got some kind of panels that add onto  
2 that or fill in that back part there. And if you compare it  
3 to the Games Workshop image on the right, that's a Games  
4 Workshop Space Marine Storm Raven.

5           And our kit supplied them unpainted and unassembled,  
6 but that shows the assembled one.

7           And I think you can see that what the Chapterhouse  
8 parts do is they can fill in the bits of the back there, and I  
9 think it slightly extends the length of it.

10 Q   And what is the result of the Chapterhouse model?

11 A   I'm sorry?

12 Q   Can you think of any use for the Chapterhouse add-ons  
13 other than for the Storm Raven?

14 A   Oh, they are specifically tailored to fit on our plastic  
15 kit. There is no way those parts could be -- I mean, you  
16 could potentially use them for something else, but it would be  
17 like --

18           I can't imagine it would be very convenient to use  
19 them anywhere else. They are literally tailored to exactly  
20 fit on the Games Workshop kit down to the last millimeter, I  
21 think. I don't know if the picture below shows anymore.

22           These are the bits that Chapterhouse added to,  
23 extended that, and these pieces fit exactly onto the Games  
24 Workshop kit. That product has no other reason to exist.

25 Q   Let's move to the next product on this same Exhibit 1013.

Merrett - direct

1 -- 1018. Excuse me.

2 Can you tell us what we're looking at here?

3 A Okay. What we're looking at here are Chapterhouse Studios  
4 TRU-Scale Knights Praetorius conversion kit which the  
5 photograph is potentially slightly confusing because it shows  
6 pieces, these pieces here, assembled together with Games  
7 Workshop components from our Space Marine range.

8 Q Which components are the Games Workshop components?

9 A Well, I think in this instance, it would be the heads and  
10 the arms.

11 Q Okay.

12 A But as you can see here, all these other components, the  
13 legs, the torsos, the shoulder pads and the backpack are all  
14 Chapterhouse parts.

15 Q Does the -- do the words "TRU-Scale" have any meaning to  
16 you?

17 A Yes. It's a slightly complicated explanation, but I will  
18 do my best.

19 Our Space Marines are super heroic characters in our  
20 41st millennium in the mythos and over time call all the  
21 descriptions that our authors have written into stories, and a  
22 lot of the descriptions are written into the -- into our  
23 Codexes of our Space Marines, painting them in evermore heroic  
24 and grand -- and give them even more grandeur and more a kind  
25 of epic status.

Merrett - direct

1           And as a consequence of that, some fans a few years  
2 ago actually thought that the miniatures --

3           MS. HARTZELL: Objection, your Honor, hearsay.

4           THE COURT: Yes. Let's avoid that sentence.

5           MR. MOSKIN: Okay.

6           THE COURT: Ask another question.

7 BY MR. MOSKIN:

8 Q    Again, have you heard the word "TRU-Scale" used?

9 A    Yes.

10 Q   And how has it been used?

11           MS. HARTZELL: Objection, hearsay.

12           THE COURT: Sustained.

13           You're going to have to lay more of a foundation so I  
14 can get some sort of a sense as to whether there is a  
15 nonhearsay use.

16 BY MR. MOSKIN:

17 Q    What is your understanding of how --

18           What is the net effect of --

19           Look at the Chapterhouse product. What does it look  
20 to you? What has Chapterhouse done? Has it used any of the  
21 original components or features of the Games Workshop product  
22 in making its product?

23 A    It looks to me like they have copied the Games Workshop  
24 product. So I can --

25           If you look at these, these are plastic components

Merrett - direct

1 from the Games Workshop Space Marine range. These are Space  
2 Marine legs with the distinctive space armor, the segmentation  
3 and the flares.

4 And if you look at these components here, these are  
5 exactly the same configuration. These have the same style of  
6 armor, the flared legs, the same kind of compartmented feet.

7 The Space Marines boot has basically two parts to it.  
8 The front part is -- it's like the opposite way around to a  
9 reinforced toe cap.

10 So the front of the boot is actually kind of lower  
11 than the back of the foot, so you get this kind of ridge  
12 halfway along the foot, and you can see exactly that same  
13 detail on these models here.

14 They have the same flared legs and the same things.  
15 The only difference between these is that the Chapterhouse  
16 products are slightly elongated in order to --

17 Q They're bigger?

18 A Stretched slightly, I believe.

19 But they're basically the same, even down to the  
20 curved legs here; the lower greave, the flare-in, has studs on  
21 it, which is exactly the same as this Games Workshop component  
22 here with the studded legs.

23 I go back to the chest plates, the chest areas.  
24 These have got the signature shape and style of the Space  
25 Marine torso. So the upper area of the chest is protected by

Merrett - direct

1 this very large smooth plate upon which icons or other details  
2 are embossed.

3 This one's got studs on. This one is plain, which I  
4 assume is to facilitate painting something on it.

5 And you can see here the same effect with the Games  
6 Workshop plate. And the raised collar at the back, the raised  
7 collar at the back, and the detail of the belt with a gun that  
8 is very distinctively shaped and detailed, emulating and  
9 copying the Games Workshop one.

10 And even the backpack, although superficial  
11 differences, the shape and the size and the proportion of the  
12 backpack compared to the other components -- you go back to  
13 here, so these have the outward appearance of Games Workshop's  
14 Space Marine models.

15 If you compare that to these models here --

16 Q And witness is referring to --

17 A Games Workshop Space Marine.

18 Q -- the right side?

19 A On the right side. So the net effect is they're just the  
20 same.

21 Q Okay.

22 A Go back to the TRU-Scale Knights Praetorius conversion  
23 kit. Oh, goodness, I will get the pointer working.

24 Here you can see the shoulder pads, and these are all  
25 very distinctively shaped, the same general size and

Merrett - direct

1 proportions as the Games Workshop shoulder pads, the same  
2 kinds of characteristic detailing.

3           Apart from that one, I don't think we have anyone  
4 with that specific kind of surface on it. But these others  
5 are all very similar to the Games Workshop shoulder pads.

6           And when they're assembled, of course, you can see  
7 that their models have the same proportions, same relative  
8 proportions. So these look very much like these although  
9 they're in different colors.

10 Q Did the words --

11           So the net effect is -- what is the net effect of  
12 comparing the assembled Chapterhouse product and the Games  
13 Workshop Limited miniatures?

14 A I think the TRU-Scale Knights Praetorius models will be  
15 slightly taller than the Games Workshop Space Marine models.

16 Q Does the word "TRU-Scale" mean anything to you?

17 A Yes.

18 Q What does it mean to you?

19 A It means -- it is a fan's description of a slightly taller  
20 Space Marine created in response to the fiction that we  
21 present about Space Marines which presents them in evermore  
22 grandeur -- in evermore grand terms, in more heroic terms.

23           And as a consequence of that, some fans took it on  
24 themselves to actually create miniatures that were slightly  
25 larger than our own, than the Space Marines we produced, by



Merrett - direct

1 skillfully modeling them so they had slightly longer legs and  
2 slightly wider torsos.

3 Q Other than Chapterhouse, have you ever heard the word  
4 "TRU-Scale," the name "TRU-Scale" used before?

5 A Yes, I have, yes.

6 Q In what context?

7 A I've heard it in the context of individual collectors who  
8 have converted models to TRU-Scale or sometimes referred to as  
9 art scale, and we even actually asked a person --

10 MS. HARTZELL: Objection.

11 THE COURT: What --

12 MS. HARTZELL: Withdrawn.

13 THE COURT: I'm sorry?

14 MS. HARTZELL: Withdrawn.

15 THE COURT: You're withdrawing the objection. Okay,  
16 you can proceed.

17 THE WITNESS: I think his name was Smith who produced  
18 the TRU-Scale Space Marine models, and we -- Games Workshop  
19 asked him to stop making them because we thought they were  
20 infringing, and he did.

21 BY MR. MOSKIN:

22 Q Just if you can turn to --

23 And where have you heard these references to  
24 TRU-Scale?

25 A On the Internet.

Merrett - direct

1 Q In what context on the Internet?

2 A Talking about all kinds of matters, including these models  
3 and parts.

4 Q In any particular types of places on the Internet have you  
5 heard?

6 A Oh, on forums about Games Workshop, on places like  
7 Dakkadakka, WarSeer, Bolter and Chainsword, loads.

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Merrell - direct

1 Q And how far back have you started hearing these references  
2 to TRU-Scale?

3 A I don't know. Some years. I don't know exactly, John. I  
4 don't know.

5 Q Just turn the page to the -- and if you can tell me, this  
6 is again part of the TRU-Scale Knight Praetorius comparison to  
7 Games Workshop. Is there anything about the other images  
8 shown on this second page, page 4 of the exhibit, about the  
9 Chapterhouse product?

10 A More of the same really.

11 Also, I mean, this -- the Chapterhouse products on  
12 the left-hand side, pointing at that exhibit, just have more,  
13 more variations modeled on or painted onto the products, but  
14 the modeled on details are things like on this chest plate,  
15 here a double-headed eagle, here a pair of eagle wings, and I  
16 think it's a blood drop on this one and a tiny skull with  
17 wings on this one. These are all fairly typical of the kinds  
18 of what we call iconography imagery or details or symbols that  
19 you find on the Games Workshop Space Marines, I think.

20 And the same on the backpacks. These are just being  
21 detailed up with in some cases it's a blood drop with wings on  
22 it. I think that's a skull with a scroll beneath it. That's  
23 another drop icon here and a winged, winged device on this  
24 pad -- backpack, and some of these symbols repeated on these.

25 This is a chalice on this shoulder pad here and

Merrell - direct

1 repeated here. And these drop icons that appear on -- those  
2 ones. And, again, you can see on the legs the same drop  
3 icons. And it's interesting, two back pair of legs there,  
4 doesn't have the separate segmented kneepad. And if you look  
5 at the Games Workshop, so if you could come out and look at  
6 the Games Workshop, show down in this corner, these legs.

7 Q The lower right-hand side of this page is where he's  
8 referring.

9 A You can see here we have a variety of the Space Marine  
10 armour that doesn't have the kneepad, it's the -- the greave  
11 goes straight up over the knee.

12 Q What type of Space Marine wears the kind without the  
13 kneepad?

14 A Well, they vary. Each one can wear them. It's just --  
15 just part of the variation of that Space Marine, that Space  
16 Marine form.

17 It's actually the original form of the leg. The  
18 first ones had those kneepad less greaves.

19 Q And would you call this an add-on to anything that Games  
20 Workshop sells?

21 A Well --

22 Q Chapterhouse product, that is.

23 A It's a meaningless phrase to me. Add-on, replacement,  
24 extra bits, attendant bits, I don't think it matters. These  
25 are replacement parts only. These replace the Games Workshop

Merrell - direct

1 parts.

2 In fact, if anything, the Games Workshop bits have to  
3 be added onto those bits to make them into complete models.  
4 But they're using -- it's using our FP. They're the same  
5 shape and structure and design as our Space Marine product  
6 component so --

7 Q Only bigger?

8 A Well, in theory. I've not measured them, but that's the  
9 implication of the TRU-Scale name, I think.

10 Q Let's move on to Exhibit 1010. And can you tell us what  
11 we're looking at on this page, page 3 of the exhibit?

12 A Yes. Chapterhouse Studio power armor shoulder pads. It  
13 shows two images from the Chapterhouse website showing  
14 shoulder pads for power armor, and these are the exact same  
15 size and proportionality as the Games Workshop shoulder pads  
16 on Games Workshop Space Marines. We've shown this picture  
17 here, but actually you've seen the plastic kits, and you see  
18 how the shoulder pads are separate little components on the  
19 plastic kit. And these are actually basically the same size,  
20 shape, proportion as the Games Workshop components.

21 Q Does Games Workshop sell shoulder pads for its Space  
22 Marines as separate stand-alone pieces?

23 A Yeah, we do, yes. Generally speaking, we sell them with  
24 detail on them, markings which we'll go on to, but, yeah, we  
25 sell separate Space Marine shoulder pads, power armor shoulder

Merrell - direct

1 pads.

2 Q And if we can refer back to Exhibit 1020 and product  
3 number, I apologize, 54. And is there anything in the --

4 We can move on from this. That's all right.

5 Let's go back, then, to Exhibit 1010 and look at the  
6 products on the bottom, the crested power armor pad in  
7 comparison to the Games Workshop Space Marine pad. Can you  
8 tell us what we're looking at?

9 A Chapterhouse Studios product called a crested power armor  
10 shoulder pad. And, again, here's an example from a piece of  
11 Games Workshop artwork of a shoulder pad with a raised crest,  
12 but this is typical of the kind of shoulder pad embellishment  
13 that we've put on our Space Marine miniatures. The more  
14 elaborate pads are used by the commanders and leaders of the  
15 Space Marines.

16 So, again, the pad is the same size and proportions  
17 and general -- has the same details as a Games Workshop pad.

18 Q Let's turn the page. And can you tell us what we're  
19 looking at here?

20 A Yeah. Again, on the left Chapterhouse Studios shoulder  
21 pads for power armor and on the right pictures from the  
22 Insignium Astartes book, I believe, showing -- and another  
23 one -- oh, yeah. No. They're all from the Insignium  
24 Astartes, these pictures here, showing the tactical markings  
25 on the Space Marine shoulder pad, showing the distinctive

Merrell - direct

1 white arrows and the Roman numerals dictating the squad  
2 designations. These are Tactical Space Marine shoulder pads,  
3 and so they have big white arrows pointing upwards with Roman  
4 numerals I through VI, and the Chapterhouse shoulder pads are  
5 sold with big white arrows pointing up and the Roman numerals  
6 I through VI.

7 Q And is there anything about that combination that Games  
8 Workshop contends is original that it thinks Chapterhouse has  
9 borrowed?

10 A Yeah. We think we created this system of symbology and  
11 numbering for Space Marine shoulder pad. It's not derived  
12 from any preexisting source or historical reference or  
13 anything. It's completely made up by Games Workshop. And  
14 that specific combination of elements, the Space Marine  
15 shoulder pad with a big arrow on it and a Roman numeral we  
16 think is our image. We think that's something we created.

17 Q How about the shape of the shoulder pad itself?

18 A Well, the shape is a signature of the Space Marine form,  
19 so the shoulder pads are of very specific shape and size and  
20 proportion, and they have a sort of narrow range of very  
21 specific kinds of detail. The typical shoulder pad has a  
22 raised rim.

23 Q And the witness has pointed to the Games Workshop product  
24 on the right side of the page.

25 A And this is a slightly fuzzy picture of a shoulder pad

Merrell - direct

1 that Games Workshop sells that has the big arrow on it, and  
2 the reason that arrow would just be an outline is because that  
3 will have been created to make it easier for people to paint  
4 the color on the arrow. You imagine it's -- even though it's  
5 quite a large shoulder pad in terms of the models, it's still  
6 actually a tiny component. So when you're painting it, any  
7 kind of guide, that's really helpful, so having the detail  
8 embossed or having outlines are really useful for helping  
9 people to paint the thing in the right colors.

10 But that's essentially that icon. That and that are  
11 essentially the same.

12 Q Is that a -- the product on the upper right-hand -- in the  
13 right-hand side of the page, is that a product that Games  
14 Workshop sells by itself?

15 A Yes, we have sold that product. I don't know if it's  
16 currently still sold, but we do sell it, yes.

17 Q Let's turn the page. And can you tell us what we're  
18 looking at here?

19 A Yeah. This is the assault squad power armor shoulder pads  
20 from Chapterhouse's website showing the Space Marine, typical  
21 Space Marine shoulder pad in the same size and shape and  
22 proportion. It's basically the shoulder pad with the rims and  
23 these big --

24 Q You said the rims?

25 A The rims, the ridges on the edge.



Merrell - direct

1           And this has -- these are assault squad shoulder  
2 pads. And, again, if you remember from yesterday, the assault  
3 squads in the battle company are squads seven and eight, VII  
4 and VIII Roman numerals, and, lo and behold, VII and VIII on  
5 the Chapterhouse products.

6           And that's a Games Workshop shoulder pad. It's a  
7 little bit blurry, but that's a little metal casting of a  
8 Space Marine shoulder pad with the big crossed arrows on it,  
9 again, done in the form which makes it easy for someone to  
10 paint that, throw some paint in there with a little tiny brush  
11 to get the color.

12 Q   Anything about the names of concern?

13 A   Well, again, as I said, the names assault squad power  
14 armor shoulder pads, I mean, it's a direct, direct reference  
15 to assault squads, to power armor. You know, there's a  
16 striking coincidence of things that it can't be -- it couldn't  
17 possibly have been created without knowledge of the Games  
18 Workshop --

19 Q   Let's turn the page.

20 A   -- system of --

21           THE COURT: Are we about to go to another one?

22           MR. MOSKIN: We can stop after this one. This is a  
23 good place to take a break.

24           THE COURT: After this next one? Okay. You mean  
25 right here?

Merrell - direct

1 MR. MOSKIN: When we finish this and then there's --

2 THE COURT: Okay. Go ahead and finish that one,

3 then.

4 MR. MOSKIN: Related but --

5 THE COURT: That's fine.

6 BY MR. MOSKIN:

7 Q And can you tell us what we're looking at here?

8 A Again, it's on the left-hand side, there are pictures of  
9 the Chapterhouse products, Devastator Squad power armor  
10 shoulder pads, and on the right Games Workshop Devastator  
11 Space Marine shoulder pad designs from the Insignium Astartes  
12 book that you saw yesterday. Again, it shows the -- these are  
13 exactly the same shoulder pads, the same general shape, size  
14 and proportions, the same detail, the same rims. These  
15 shoulder pads have got this big upside down V shape on them,  
16 and these two images here have the Roman numerals IX and X.  
17 And, again, as according to the Games Workshop system of  
18 uniforms for Space Marines, squads IX and X are, lo and  
19 behold, that's Space Marines shoulder pads. So you go  
20 Devastator Squad, Devastator power on the shoulder pads, Space  
21 Marine shoulder pad.

22 THE COURT: We're going to break here for ten  
23 minutes. The jurors can come with me.

24 (Recess taken.)

25 (The following proceedings were had in the presence

Merrell - direct

1 and hearing of the jury:)

2 THE COURT: Okay. You can all have a seat.

3 You can proceed, Mr. Moskin.

4 BY MR. MOSKIN:

5 Q Are there any particular markings on the -- physical  
6 markings on the Games Workshop shoulder pads themselves?

7 A The basic front of the pad is quite plain with the rim,  
8 but the back has actually got very distinctive markings on it.

9 MR. MOSKIN: May I approach the witness, your Honor?

10 THE COURT: That's fine.

11 MR. MOSKIN: I'll show counsel Exhibit 704, the  
12 physical product.

13 THE COURT: Okay. That's fine.

14 THE WITNESS: Thank you.

15 BY MR. MOSKIN:

16 Q And is there a way to show these markings from the  
17 physical product, Exhibit 704?

18 A You'd have to get in really close to the back of these  
19 little components to see it but --

20 MR. MOSKIN: Perhaps -- your Honor, may I use the  
21 technology to show that?

22 THE COURT: That's fine.

23 MR. MOSKIN: I'd like the record to reflect that -- I  
24 don't know what this machine is called.

25 THE COURT: It's an ELMO.

Merrell - direct

1 MR. MOSKIN: ELMO.

2 THE COURT: It stands for something. Don't ask me  
3 what.

4 MR. MOSKIN: I can do an impersonation of the  
5 character.

6 THE COURT: It's not that Elmo.

7 MR. MOSKIN: But I won't bother.

8 BY MR. MOSKIN:

9 Q Can you tell us what we're looking at?

10 A This is the back of that little Space Marine plastic  
11 component for a shoulder pad, the power armor shoulder pad  
12 from the Games Workshop's, and there's two distinctive sets of  
13 detailing. There's this detailing around this rim here, which  
14 show these little kind of squarish indents in the shoulder  
15 pad, and then on this lower area here just in shade you can  
16 see there's a little square kind of recessed cutout in the  
17 base of the pad.

18 Now, what these represent are the -- is to give the  
19 impression that the shoulder pad is made of a composite,  
20 complex construction. It's not just a single lump of metal.  
21 It's supposed to be a piece of a machine, the power armor.  
22 And so this is supposed to imply technology inside the  
23 shoulder pad or complex construction. They serve no assembly  
24 function whatsoever. They're purely artistic marks.

25 Q And do you have any concern about whether Chapterhouse has

Merrell - direct

1 used any similar markings?

2 A Well, in my deposition, I think it's the second time I was  
3 deposed by Chapterhouse, I actually was given a Chapterhouse  
4 Space Marine shoulder pad component to look at, and, lo and  
5 behold, on the back of it it had --

6 Q I'd like to show you what's be marked as Plaintiff's  
7 Exhibit 165 and 166. And it's a little small, but can you  
8 tell us what we're looking at in 165 and maybe scan ahead to  
9 166?

10 A That's the Chapterhouse shoulder pad, a Chapterhouse  
11 shoulder pad in a little bag.

12 Q And I'll note for the record I believe it's the tactical 6  
13 pad shown on page 4 of Exhibit 1010.

14 A And that's the -- that is the Chapterhouse shoulder pad.  
15 It's a horribly grainy picture of the back of it, but you can  
16 see that it's got these squarish indents in the vertical kind  
17 of like side and then a small squarish indent on the inner  
18 surface of the lower edge of the shoulder pad. And that's the  
19 Games Workshop shoulder pad, and you can see, spookily  
20 similar.

21 Q Let's move on to the next set of images we were looking at  
22 in Exhibit 1010, so starting on page 8. And can you tell us  
23 what we're looking at here?

24 A It's a Chapterhouse product. It's a shoulder pad. I  
25 think this one is arranged so that's the vertical edge, that's

Merrell - direct

1 the lower edge. It's got some -- this thing attached to it,  
2 but the general size and proportions and shape of the shoulder  
3 pad is the same as the Games Workshop one. This one's  
4 actually got the studding which is very similar to this arcane  
5 form of studs often referred to as Heresy era. In fact, I  
6 even searched the Heresy pattern shoulder pad -- Heresy  
7 pattern Space Marine armor, which is supposed to be a sort of  
8 a more arcane form of the armor, and that has that same  
9 detailing on it.

10 Q And anything about the symbol?

11 A The symbol is some sort of a Maltese cross-type symbol,  
12 which is actually similar to a Games Workshop Black Templars  
13 Maltese cross symbol.

14 Q Let's move on to the next product. And can you tell us  
15 what we're looking at here?

16 A This is a -- I think this is -- these are the Space Marine  
17 shoulder pads, the same basic size, shape, proportion as the  
18 Games Workshop shoulder pad. They've got this gross  
19 decoration on the top. This is called a blood eagle, which is  
20 very similar to the Games Workshop names, blood ravens and  
21 blood angels, and you can see it's got an upside down blood  
22 drop, another --

23 Incidentally, the thing about this one is the name  
24 because it's so similar to our name.

25 Q Let's move on to the next slide. And can you tell us what

Merrell - direct

1 we're looking at here and anything original that you think  
2 Chapterhouse is --

3 A Again, it's the same things to do with the pad. Less  
4 concerned about the things on the pads, but the fact that the  
5 pads are -- and in this case and the previous ones it says  
6 Tactical and Terminator, and you see this is actually the  
7 signature size and shape and proportions of a Space Marine  
8 Terminator shoulder pad, and this is the Space Marine  
9 terminate -- this one's got a rim around it, around the top  
10 surface and has these embossed lines. And, again, the name  
11 Celestial Lions is one of our names.

12 Q Let's go on to the next page. Is there -- tell us what  
13 we're looking at?

14 A This -- this is the Exorcist -- it says Exorcist  
15 compatible shoulder pads. Games Workshop -- the Exorcist is a  
16 Space Marine chapter, and you see the signature feature of  
17 them is the -- this very, very unique horned skull on the  
18 shoulder pad. The horned skull has symbol -- the symbol for  
19 the Exorcist has these characteristics that has no lower jaw,  
20 and it has these kind of downwardly curving horns. I'm not  
21 quite sure what beast would have horns like that. Not quite a  
22 ram's horn, but these downwardly curving horns. And here you  
23 can see the Chapterhouse product is the skull with no lower  
24 jaw and the downwardly curving horns.

25 And, again, I think these two shoulder pad designs,

Merrell - direct

1 one is shaped like a Space Marine in the same size and shape  
2 and proportion, and this one is actually the Terminator with  
3 that sort of notched lower --

4 Q Did you show us that yesterday, the Terminator's --

5 A Yeah.

6 Q -- notched --

7 A Yeah. We were looking at an Insignium Astartes book, the  
8 big blue ones with that particular shape.

9 Q Anything about the colors that you think are original  
10 to --

11 A Well, the Chapterhouse are called the Exorcist. It's  
12 clear reference to the Games Workshop Space Marine chapter.  
13 And the colors are the same. It's a red filled with a black  
14 rim, which is, again, it's the same colors.

15 Q Move on to the next product. And can you tell us what  
16 we're looking at here and identify any original elements that  
17 you -- from Games Workshop's works that you think Chapterhouse  
18 has borrowed?

19 A Well, this is called Sawblade shoulder pad and jewel and  
20 Terminator pad. With one of the Space Marine chapters, one of  
21 the very first ones, we described the Flesh Tearers, and they  
22 have this really unusual design of a sort of sawblade with a  
23 single drop, blood drop on it. That's a Games Workshop  
24 component that we actually sold.

25 Q And let the record reflect the witness is referring to the



Merrell - direct

1 Games Workshop image on the right side of the page.

2 A Right side of the page.

3 And Chapterhouse's product, again, the same general  
4 size, shape, proportions of shoulder pad with the same kind of  
5 detailing and the sawblade with the blood drop and, again,  
6 painted and presented on the Chapterhouse website in the  
7 selfsame colors as the Games Workshop variant.

8 Q And what about the other Chapterhouse product on the  
9 bottom?

10 A This one, I don't know what's going on with the thing, but  
11 it's the same sawblade design and light color with the drop on  
12 it. And this is the Terminator shoulder pad shape.

13 Q Let's move on to the next product. Can you tell us what  
14 we're looking at and identify anything original you think that  
15 Chapterhouse has borrowed?

16 A We're looking at comparison between the Chapterhouse  
17 shoulder pad they sell and the Games Workshop Howling Griffin  
18 intellectual property, and, again, the shoulder pad is the  
19 same size, shape, proportions and general detailing as a Games  
20 Workshop shoulder pad, and it has a griffin symbol on the -- I  
21 think that's called a griffin rampant symbol on the thing, and  
22 it's showed in black, and that's black, and the color scheme  
23 of this Howling Griffins is corded yellow and red, and so the  
24 pad is showing corded yellow and red.

25 Q Let's go to the next product. And can you tell us what

Merrell - direct

1 we're looking at and identify anything original you think  
2 Chapterhouse has borrowed?

3 A It's a comparison between Chapterhouse shoulder pads for a  
4 thing called Iron Snake compatible Tactical Terminator and  
5 comparison with some Games Workshop IP. We publish a number  
6 of novels based on the Iron Snakes, which is a Space Marine  
7 chapter variant, and the chapter symbol for the Iron Snakes is  
8 this curly, curly viper thing, and there's a curly viperous  
9 thing here.

10 And if you see the number of loops even, there's two  
11 loops here, two loops at the bottom, two loops at the bottom.

12 And it's, again, the shoulder pad is the same general  
13 size and shape and proportions as the Games Workshop shoulder  
14 pad. This has got some extraneous detail on the rim, but  
15 fundamentally it's the Games Workshop shoulder pad shape,  
16 size, proportions with a Games Workshop image on it or icon.

17 Q Let's move to the next product. And can you tell us what  
18 we're looking at and identify any original features from Games  
19 Workshop's works that you think Chapterhouse has appropriated?

20 A Again, we're looking at a Chapterhouse shoulder pad and a  
21 comparison with some Games Workshop intellectual properties  
22 and pictures from Games Workshop's publications, and it shows  
23 the pad is the same general size, shape and proportions as the  
24 Games Workshop shoulder pad, and this one has studs on it and  
25 references the Heresy era, I think, and it's the text on their

Merrell - direct

1 website, and that looks -- so it's a reference to this Heresy  
2 armor or Heresy pattern thing and a big skull. I'm not -- the  
3 big skull is neither here nor there really.

4 Q Anything about the skull design itself?

5 A Well, the skull doesn't have a lower jaw, but I think  
6 it's -- the skull is a skull. That's not a --

7 Q Okay. Let's move to the next product.

8 A Okay. This skull is not -- just, again, we're looking at  
9 Chapterhouse Studios' product, which is a Space Marine -- a  
10 power armor shoulder pad, which, again, has the same size,  
11 shape, general proportions as a Games Workshop shoulder pad.  
12 And this one has a rather unusual badge on it. It has a  
13 skull. It lacks a lower jaw. The top of the skull is cut off  
14 on a horizontal. It's got things which are painted to look  
15 like flames coming out of the top of it. And then we have a  
16 Games Workshop piece of IP for this Chaos Space Marine with  
17 the skull, no lower jaw, flames coming out of the top of it.

18 MR. MOSKIN: And just for the record I want to note  
19 the witness has been referring to page 16 of Exhibit 1010.

20 THE WITNESS: Oh, yes, page 16.

21 BY MR. MOSKIN:

22 Q Let's move on to the next product. And can you tell us  
23 what we're looking at?

24 A Chapterhouse Studios' shoulder pads for chalice or Soul  
25 Drinker Tactical and Terminator. Again, these are the

Merrell - direct

1 shoulder pad that have the same size, shape, proportions as  
2 Games Workshop shoulder pads. I think that one is for the  
3 Terminator.

4 Q When you say "that one," what are you referring to?

5 A The one on the right.

6 Q The Chapterhouse one on the right?

7 A The Chapterhouse one on the right, yeah.

8 Both the shoulder pads show this cup or chalice-type  
9 thing with flames coming out of the top and have raised upper  
10 rims on the pads.

11 And then the image on the right is actually an  
12 excerpt from the cover of a Games Workshop Black Library  
13 novel. I can't think of the exact title of it, but it's the  
14 book about the Soul Drinker. It might even be called Soul  
15 Drinkers. And it shows quite clearly the Soul Drinker's  
16 chapter badge, which is actually a chalice with rays or flames  
17 coming out of the top, and the shoulder pad has this elevated  
18 rim right around the top surface.

19 Q Do you consider those features original to the Games  
20 Workshop --

21 A Yes, I would.

22 MS. HARTZELL: Objection, your Honor. Foundation.

23 THE COURT: It came in the kind of the middle of the  
24 question, so I didn't hear the whole question. Can you put  
25 the question --

Merrell - direct

1 MR. MOSKIN: I said, do you consider those features  
2 original to Games Workshop?

3 THE COURT: And the objection is lack of foundation?

4 MS. HARTZELL: As to whether or not these were  
5 original, I believe the witness is not the designer of the  
6 patent.

7 THE COURT: Lay a little bit of foundation, in other  
8 words, what his basis is for --

9 MR. MOSKIN: Okay.

10 THE COURT: -- having a view on that topic.

11 BY MR. MOSKIN:

12 Q Do you have any basis to say the features you just  
13 described are original to Games Workshop?

14 A Yes, I do. Because that's what we do. We create original  
15 IP, and we commission and design original iconography to go on  
16 our models.

17 This was a Black Library created Space Marine  
18 chapter, and the -- I don't know the specifics, so I can't  
19 talk anymore about -- but my -- everything I know about how we  
20 do these things would tell me that that was originally created  
21 for that specific purpose, to illustrate that specific  
22 character on that specific book.

23 Q Are you aware of any prior uses of anything like the Soul  
24 Drinkers --

25 A Not that specific configuration of details. As a chalice

Merrell - direct

1 with flames or rays coming out of the top of it, I'm not aware  
2 of any prior art of that.

3 Q And so do you believe that the features that Chapterhouse  
4 has borrowed from this product are original to Games Workshop?

5 A Yes, I do believe that.

6 MS. HARTZELL: Objection, your Honor. Foundation.

7 THE COURT: I think it goes to weight, not  
8 admissibility. I mean, I think you can cross examine him, and  
9 the jury can consider, you know, the level of information he  
10 has about that, but I don't think it renders it inadmissible.  
11 The objection the overruled.

12 BY MR. MOSKIN:

13 Q Let's move to the next product on page 18 of Exhibit 1010.  
14 Can you tell us what we're looking at?

15 A Again, we're looking at a comparison between the  
16 Chapterhouse products offered on their website and Games  
17 Workshop intellectual property, an image taken -- I don't know  
18 where the image is taken from, but it's Games Workshop  
19 Salamanders intellectual -- Salamanders is a Space Marine  
20 chapter whose chapter icon is a angry lizard or dragon-type  
21 thing.

22 Q Can you identify for us any features of the Games Workshop  
23 product that you think are original that you believe  
24 Chapterhouse has copied?

25 A Well, I think the symbol here is original. I mean, first

Merrell - direct

1 and foremost, the shoulder pads are, again, the size and shape  
2 and proportions of Games Workshop shoulder pads. They've got  
3 this gross overlay detail on it, including here a badge which  
4 is actually of a sort of really angry dragon or lizard-type  
5 thing, which is similar to the Games Workshop angry lizard,  
6 snarling mouth, almond-shaped eye.

7 Q Do you have any familiarity with what lizards -- excuse  
8 me -- what Salamanders in the real world look like?

9 A Salamanders in the real world look like big newts. They  
10 don't look like dragons or lizards.

11 Q Can we move to the next product on page 19 of Exhibit  
12 1010, and can you tell us what we're looking at?

13 A Again, it's a comparison of on the left-hand side products  
14 from Chapterhouse's website. It says Hammer of Dorn, Tactical  
15 and Terminator, and, again, these shoulder pads here are the  
16 general size, shape and proportion of Games Workshop shoulder  
17 pads.

18 Q Can you tell -- I'd like you to focus on -- just on things  
19 that you think are original to Games Workshop that you think  
20 Chapterhouse has copied.

21 A Well, in this instance I think they've copied the shape  
22 and the proportions of the fist. And actually, more  
23 specifically, I think they've copied this specific icon. So  
24 if you look at this --

25 I need that top right-hand image blown up a little

Merrell - direct

1 bit more. That one.

2 Let's compare that and that, first of all.

3 Q When you say "that and that," you're talking the Imperial  
4 Fists?

5 A Yeah, the Imperial Fists Chapter icon.

6 And the Chapterhouse component put them side by side.  
7 And you see the details of the -- this fist has some  
8 interesting -- so, first of all, four fingers and a thumb that  
9 sits over the top. The four fingers, only the fourth little  
10 pinky is showing. Only the little pinky here. The other  
11 fingers are obscured by the thumb, which is distinctively  
12 shaped going across there. And the hand is -- the palm is  
13 that kind of almost pentagonal shape. There's a little  
14 pentagonal shape there. And then this distinctive armored  
15 cuff. Or would you call that a cuff in -- that's -- or  
16 gauntlet effect with this very distinctive three spikes, three  
17 spikiness.

18 It's very -- well --

19

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**Merrett - direct**

**1 Q. Anything else about -- if we can back up -- about the  
2 Chapterhouse product that you think is similar to anything --  
3 original to anything that Games Workshop has done?**

**4 A. Well, if we look at this symbol here on this Games Workshop  
5 piece of art, you can see that this is a variation on that  
6 chapter symbol. It's the signature Imperial Fists, armored  
7 fists icon, and this armored fist is grasping a hammer, and the  
8 hammer is a horizontal shaft with this square blocky, and it  
9 sets on top of a representation of a laurel wreath here, this  
10 greenish laurel wreath with the leaves.**

**11 And then if we look at this symbol here on the  
12 Chapterhouse shoulder pad, you can see it's actually the armored  
13 fist just gripping a hammer with a square blocky shape, and it  
14 sits on top of what looks like a representation of a laurel  
15 wreath. So, this looks very much like it's a direct copy of  
16 this symbol.**

**17 Q. And --**

**18 A. And that image is actually the cover of a Games Workshop  
19 novel, I believe.**

**20 Q. And anything about the name?**

**21 A. Well, the name is very unusual. The Imperial Fists chapter,  
22 the founder of the chapter, the first kind of mighty general of  
23 the Imperial Fists was called Rogal Dorn, D-o-r-n, and Hammer of  
24 Dorn seems to be a fairly specific and clear reference to the  
25 Imperial Fists leader.**

**Merrett - direct**

**1 Q. Let's move to the next product. And first just tell us what  
2 we're looking at.**

**3 A. Okay. We're looking at a comparison between products  
4 offered for sale on the Chapterhouse website to a shoulder pad  
5 for Scythes of the Emperor Power Armor and Terminator and an  
6 image from Games Workshop publication showing the Scythes of the  
7 Emperor Games Workshop intellectual property.**

**8 Q. Can you identify anything original from Games Workshop that  
9 you think Chapterhouse has taken?**

**10 A. Again, the shoulder pad size and proportions and in this  
11 case the crossed scythes with the Games Workshop intellectual  
12 property in the bottom right-hand corner. The golden scythes  
13 with these distinctive notches in them and this distinctive  
14 shape on the bottom of the halves of the scythes. And you can  
15 see here that those shapes have been rendered up as little  
16 claws, and the blades have these little notches in them So,  
17 there they actually modeled that up to look like bones or  
18 something. It's very -- it emulates the Games Workshop symbol.**

**19 Q. Anything about the name of concern?**

**20 A. Well, it says Scythes of the Emperor on the Chapterhouse  
21 label and the Games Workshop IP called Scythes of the Emperor.**

**22 Q. Let's move on to the next product. And first can you just  
23 tell us what we're looking at?**

**24 A. On the left-hand side, we're looking at Chapterhouse Studios  
25 products that are offered for sale on their website. Again,**

**Merrett - direct**

**1 they're Games Workshop size and shape shoulder pads.**

**2 Q. And I'd like you to focus on anything original from the**  
**3 Games Workshop products or works that you think that**  
**4 Chapterhouse has taken.**

**5 A. On the Games Workshop -- again, this goes back to that idea**  
**6 about the Horus Heresy. The armor was more primitive and was**  
**7 made up of banding, or one of the forms of the armor was that it**  
**8 had all the banding on it, and you can see this picture on the**  
**9 bottom right. You can see there the banded armor here, like an**  
**10 armadillo, and here you see the shape, and it's kind of like the**  
**11 shapes on these, some of the stylings, very much like an**  
**12 armadillo.**

**13 Q. Let's move to the next product. And first just tell us what**  
**14 we're looking at.**

**15 A. We're looking at Chapterhouse products. Off just on the**  
**16 left side, Thunder Armor Shoulder Pads Mark I Heresy Era for 28**  
**17 millimeter marines.**

**18 Q. And on the right?**

**19 A. Games Workshop Space Marine with Mark I shoulder pad.**

**20 Q. And can you tell us anything original from the Games**  
**21 Workshop side that you think Chapterhouse has borrowed?**

**22 A. Yeah. If you look at this close up on this miniature.**

**23 Q. On the upper right?**

**24 A. On the upper right, the shoulder pad is -- it's the same**  
**25 size and shape as a normal shoulder pad, but this is segmented**

**Merrett - direct**

**1 in three sections, and this one's a three-sectioned, three sort  
2 of armor plated shoulder pad. And this particular Space Marine  
3 from Games Workshop is actually called Thunder Armor. It's  
4 Mark I Space Marine armor. It's supposed to be the first  
5 iteration of the armor, the first type.**

**6 Q. Anything about the use of the name?**

**7 A. Mark I, and that's our Mark I Space Marine armor Heresy Era.  
8 Well, the Mark I was used during the Horus Heresy period, and  
9 it's called Thunder Armor, and that's Mark I Thunder Armor Space  
10 Marine. So, it's an unmistakable reference to that model, that  
11 piece of Games Workshop IP.**

**12 Q. Okay. Can we move to the next line? And first just tell us  
13 what we're looking at.**

**14 A. We're looking at a comparison between Chapterhouse products  
15 offered for sale on their website, some Games Workshop  
16 intellectual property, some pictures, images from a Games  
17 Workshop application, and --**

**18 Q. Just if I can interrupt. The witness is referring to  
19 Page 25, and I'm just asking you to identify anything original  
20 in Page 24 that you think Chapterhouse house has taken.**

**21 A. Okay. Again, the shoulder pad.**

**22 Q. This is Page 24 now.**

**23 A. 24. Same shape, proportions as the Games Workshop ones.  
24 And these have got these studs all over them and the Games  
25 Workshop Horus Heresy pattern armor has shoulder pads with studs**

**Merrett - direct**

**1 on them**

**2 Q. And let's go to the next slide. And first just tell us what**  
**3 we're looking at on Page 25.**

**4 A. Okay. On the top left-hand side is a component that's sold**  
**5 on the Chapterhouse website. On the lower left-hand side are**  
**6 photographs of a miniature front and back, and the miniature is**  
**7 a composite of a Games Workshop Space Marine Terminator**  
**8 miniature with what appears to be the Chapterhouse component**  
**9 assembled onto its shoulder area.**

**10 Q. Can you tell us anything original from the Games Workshop**  
**11 works that you think Chapterhouse has borrowed?**

**12 A. In the artwork that we've created for the Horus Heresy**  
**13 period -- and I think this image is lifted from the Collected**  
**14 Visions book. We have pictures of Space Marine Terminators from**  
**15 the Horus Heresy, and they have this distinctive shoulder armor,**  
**16 and it varies slightly from place to place, but you can see here**  
**17 that this particular version of that shoulder armor has two big**  
**18 armored sections here and here, very similar to these.**

**19 Q. When you say these, the Chapterhouse product?**

**20 A. The Chapterhouse miniature. And then the Chapterhouse**  
**21 miniature has these lappets or straps that hang down, and you**  
**22 can see that these hang down from the -- in artwork they're**  
**23 illustrated hanging down from those armor plates.**

**24 Q. The rimming or articulation, anything about that of concern?**

**25 A. I'm sorry?**

**Merrett - direct**

**1 Q. The rims around the --**

**2 A. Yeah. These plates have armored raised rims around them**  
**3 and you can see those on the illustration here. Raised rims**  
**4 around the shapes.**

**5 Q. Anything about the name of concern?**

**6 A. Well, they're called Heresy Era shoulder pads for**  
**7 Terminators, and that's the specific illustration of a Heresy**  
**8 Era Space Marine Terminator with those specific style and shape**  
**9 of shoulder pads.**

**10 Q. Can we go to the next slide or page, Page 26 of Exhibit**  
**11 1010? And first just tell us what we're looking at.**

**12 A. We're looking at comparison between some Chapterhouse**  
**13 products, images taken from their website, and a comparison with**  
**14 some Games Workshop intellectual property. Again, the Games**  
**15 Workshop image is taken from the Collected Visions book, and it**  
**16 shows a Heresy Era character with, again, similar kind of**  
**17 designed shoulder pad in the illustration, and here's**  
**18 Chapterhouse's model, which it's the same configuration as the**  
**19 previous product. It has two big armor plates with this raised**  
**20 rim and the hanging leather strapping. And again you can see**  
**21 that quite clearly illustrated on that image there, on the Games**  
**22 Workshop image.**

**23 Q. Can you tell us if those are things that you think are**  
**24 original to Games Workshop that they've taken?**

**25 A. Yes, I think they are original.**

**Merrett - direct**

**1 Q. Anything about the name that's of concern?**

**2 A. Again, the name, Heresy Era shoulder pads for Terminators,**  
**3 which is the same as the previous one. It's the same thing**  
**4 there. They're illustrations of Heresy Era Terminators in our**  
**5 Collected Visions book.**

**6 Q. Let's move to the next product. And I'll ask you both to**  
**7 tell us what we're looking at and identify anything original to**  
**8 Games Workshop that you think Chapterhouse has taken.**

**9 A. Okay. On the left-hand side, the top left image is the**  
**10 piece advertised on Chapterhouse's website Heresy Era shoulder**  
**11 pads for Terminators, and I don't know what Type E means, but**  
**12 here is the part. Again, it's in two components, the upper and**  
**13 a lower armored plate with this raised rim and the hanging sort**  
**14 of leathery straps.**

**15 The photographs -- the two photographs on the bottom**  
**16 left are of a Games Workshop Space Marine Terminator model with**  
**17 the -- assembled with those Chapterhouse components for the**  
**18 shoulder pads. And on the right-hand side, some Games Workshop**  
**19 artwork. Again, that self-same illustration from the Collected**  
**20 Visions book showing that configuration of shoulder pad, the**  
**21 hanging leather, and the distinctive shape, two plates, raised**  
**22 rim**

**23 And then here's an original piece of concept art by**  
**24 John Blanche, which is also in the Collected Visions book, which**  
**25 shows the sort of starting point for the idea, the two plates**

**Merrett - direct**

**1 and the hanging leather.**

**2 Q. Can you refer to any particular expression in there or**  
**3 actual imagery in there that you think is original to Games**  
**4 Workshop on the upper image on the right side?**

**5 MS. HARTZELL: Objection. Leading.**

**6 THE COURT: Overruled. You can answer.**

**7 BY THE WITNESS:**

**8 A. This is a piece of artwork by John Blanche, and I think it's**  
**9 totally original.**

**10 BY MR. MSKIN:**

**11 Q. How about just focusing on the shoulder pad, the shape of**  
**12 the shoulder pad.**

**13 A. Well, yeah. I said it's got that sort of double layered**  
**14 appearance. This one's actually on an angle, but you can see**  
**15 the second plate in there and the hanging leather straps and the**  
**16 raised rim around the edge of it.**

**17 Q. And let's move to the next product on Page 28 of Exhibit**  
**18 1010. And then can you tell us both what we're looking at and**  
**19 anything that you think is original to Games Workshop that**  
**20 Chapterhouse has borrowed?**

**21 A. As with before, in the upper left is the Chapterhouse**  
**22 component. Bottom left the Games Workshop Space Marine**  
**23 Terminator model with the added Chapterhouse components. And**  
**24 this component has similar integration to the previous ones as**  
**25 to a two-part shoulder pad with a rim and the hanging leather**



**Merrett - direct**

**1 straps, and this one's got little studs on the armor plates.**

**2 And if you look over on the right-hand side, we show**  
**3 images from the -- again I think from the Horus Heresy Collected**  
**4 Visions book that show that same configuration of shoulder pad,**  
**5 the two-part pad with the hanging leather straps, which you can**  
**6 see here.**

**7 Q. When you say here, the straps as you're referring to on the**  
**8 bottom picture?**

**9 A. Yes, on the bottom picture and the studs on the panel of the**  
**10 armor here. And it's the same issue with the name, just called**  
**11 Horus Era shoulder pads for Terminator.**

**12 Q. Heresy Era.**

**13 A. Heresy Era.**

**14 Q. Let's move to the next product. Or maybe let's -- if we can**  
**15 scan through the next series of pages, 30 through 33, I think,**  
**16 and just tell us generally what your concerns are about these.**  
**17 First of all, we're looking at in general what your concerns**  
**18 are.**

**19 A. These are all products of shoulder pads variously named.**  
**20 They're all of similar size and shape and proportions. And many**  
**21 of them have the signature details, the rims or other elements**  
**22 on them. Not so -- yeah, the general shape and proportions and**  
**23 the banded rims on these.**

**24 Q. When you say these, you're referring to --**

**25 A. I'm pointing at Page 30, I think.**

**Merrett - direct**

1           **Here I don't know -- this is V, which is a shoulder pad**  
2           **with a big V on it and things, and this is the shape of the**  
3           **Terminator shoulder pad. A skull that lacks a lower jaw and has**  
4           **wings on it may cause concern. But again, mostly this is to do**  
5           **with the general size, shape, and proportions and underlying**  
6           **detail of that shoulder pad. Of the two shoulder pads.**

7           **Q. Not the surface ornamentation, just the shape.**

8           **A. Not particularly on these, no.**

9           **Q. When we say these, on Pages 30 through 32?**

10          **A. Yeah.**

11          **Q. 30 and 31. I'm sorry.**

12                 **And let's move to Exhibit 1011. And can you tell me**  
13                 **both what we're looking at and anything you think is original to**  
14                 **Games Workshop that you think Chapterhouse has taken?**

15           **A. Yeah. What we're looking at are images from Chapterhouse's**  
16           **website on the left showing Eagle Thunder Hammer, Dragon, or**  
17           **Salamander Thunder Hammer. On the right Games Workshop Space**  
18           **Marine Thunder Hammers intellectual property images from various**  
19           **Games Workshop publications and a picture of one of our**  
20           **miniatures waving a big hammer.**

21                 **And the thing that's of concern for us here is the**  
22                 **hammers are impossibly sized pseudo-mechanic,**  
23                 **pseudo-technological weapons, which is very much the**  
24                 **configuration of the Games Workshop Thunder Hammer. And these**  
25                 **then have various elements of Games Workshop iconography laid**

**Merrett - direct**

**1 onto them So, there's a reference to the Aquilla on this one.**

**2 Q. When you say this one --**

**3 A. On the left-hand side on the central hammer and the  
4 hammer -- the Chapterhouse hammer on the right. Both have that  
5 angry dragon symbol that references our Salamander. So, as you  
6 can see it just here.**

**7 Q. And let's move to the next product. And again just tell us  
8 what we're looking at and anything original to Games Workshop  
9 that you believe has been taken.**

**10 A. The Salamander Power Fist, which is a Chapterhouse product  
11 from their website, and it shows like an armored glove is the  
12 best way of describing it, which is a specific kind of upgrade  
13 for a Space Marine power armor, which you can see. Space Marine  
14 with shoulder pads.**

**15 But that's a Games Workshop power fist, and the  
16 Chapterhouse component has very similar features. This broad  
17 armored plate here, it's been covered in scaly texture, and  
18 there's segmented fingers. And you can't quite make it out on  
19 here, but the back of this thing has very similar detail to  
20 this. It has a small shoulder attachment and then this elbow  
21 joint with a connecting piece of cabling.**

**22 Q. Maybe we can see that a little -- some of the detail of the  
23 Chapterhouse product a little more clearly if we show you  
24 Defendant's Exhibit 642 at Page 21.**

**25 A. Yeah. So, you can see here --**

**Merrett - direct**

**1 Q. When you see say here --**

**2 A. On the left-hand side, that's the Chapterhouse component,  
3 and this is the Games Workshop component. And you can see the  
4 general shape of that Chapterhouse hand section is the same as  
5 the Games Workshop one. It has the same kind of elongated  
6 fingers.**

**7 The Games Workshop component has these little  
8 pseudo-mechanical elements here. They look like little tubes or  
9 little pistons or something, and you can see these sort of  
10 replicated on the top of the Chapterhouse fingers here. But  
11 this back area, there's a -- the shoulder shape is a little tiny  
12 shape here, and you can see that like little cable that links  
13 the two things together.**

**14 Q. Did you say cable?**

**15 A. Little cable or little tube that links the fist to the  
16 shoulder, and you see the same effect here.**

**17 Q. Let's move to the next product on Exhibit 1011. And can you  
18 tell me both what we're looking at here and anything original to  
19 Games Workshop that you think Chapterhouse has taken?**

**20 A. On the left-hand side we're looking at Chapterhouse Studios  
21 power claws compatible with Games Workshop Space Marine model.  
22 On the right-hand side, we're looking at a number of different  
23 Games Workshop components for power fists. And if we could look  
24 at that a bit closer.**

**25 Q. That being the upper left-hand corner of the photo of the**

**Merrett - direct**

**1 Chapterhouse product?**

**2 A. Yeah, that's fine. And then --**

**3 Q. You're comparing it to --**

**4 A. To the Games Workshop.**

**5 Q. -- the product on the top on the right?**

**6 A. Yeah.**

**7 Q. The middle image.**

**8 A. Yes. So, if we look at this, you can see the general shape,  
9 proportion, size, and detailing are all very similar. The Games  
10 Workshop power fist component has these slightly elongated  
11 segmented fingers, and you can see the slightly elongated  
12 segmented fingers. And you can count the one, two, three  
13 segments. One, two, three segments. The thumb, it sits just  
14 here along the top of the fist, and you can see the thumb  
15 sitting along top of the fist. One's left, and one's right.**

**16 Then the armored kind of glove on the lower surface of  
17 the fist --**

**18 Q. You're referring to the Games Workshop?**

**19 A. I'm referring to the Games Workshop one. Doesn't quite  
20 cover the whole of the palm, and so a section of the palm of the  
21 hand is showing through, peeking through like that, and on the  
22 Chapterhouse component it's exactly the same. A little bit of  
23 the palm is peeking through.**

**24 The Games Workshop component has this semi-circular  
25 cutout in that area there of the power fist, and the**

**Merrett - direct**

**1 Chapterhouse component has a very similar cutout here same. And**  
**2 then this is a cable that links the power fist component on the**  
**3 Games Workshop model to the upper arm It's a segmented cable.**  
**4 And on the Chapterhouse component there's a similar segmented**  
**5 cable linking the power fist to the upper arm**

**6 Q. Does the cable have any meaning in the fiction?**

**7 A. It's a piece of artistic let's imply that this thing is**  
**8 powered. So, maybe it's a fuel line or it's a power cable. Who**  
**9 knows. It's there to create the impression that this is not**  
**10 merely a piece of armor, but it's actually a piece of technology**  
**11 and has some workings inside of it.**

**12 Q. And anything about the names of the product of concern? You**  
**13 can back up.**

**14 A. Well, they're called power claws, and these components are**  
**15 called power fists. So, there's a quite clear association**  
**16 between the names. The tops have similar congruities, as well.**  
**17 There's similarities between the tops of these products. Little**  
**18 details like this implication of some kind of lever or piston**  
**19 that's cutting into that little shoulder pad, which is the same**  
**20 on both the Games Workshop and the Chapterhouse component.**

**21 Q. And the use of claws?**

**22 A. Well, Games Workshop does a version of the power fist called**  
**23 a lightning claw, which actually is a power fist that's modified**  
**24 to have these long raking claws that sort of come out the top**  
**25 and back of that component, and the Chapterhouse power claw has**

**Merrett - direct**

**1 an attachment on the top of this underlying armored fist  
2 structure.**

**3 Q. Let's move on to the next product. And first identify what  
4 we're looking at and tell us anything original to Games Workshop  
5 that you think Chapterhouse has taken.**

**6 A. Okay. On the left we're looking at a component called the  
7 Wolf Tech Storm Shield. It's a product on the Chapterhouse  
8 website. On the right a piece of Games Workshop intellectual  
9 property which shows the Games Workshop Space Wolves icon. The  
10 Space Wolves are one of the Space Marine chapters, and their  
11 signature icon is a snarling wolf head.**

**12 And one of the bits of -- sort of underlying bits of  
13 sort of imagery associated with the Space Wolves is this sort of  
14 lozenge shape that appears on almost all of the Space Wolf  
15 vehicles and on the Space Wolf related art and Space Wolf  
16 related sort of banners and symbology. And here we see a  
17 snarling wolf head and that same signature lozenge sitting  
18 behind it.**

**19 Q. When you say lozenge, like a diamond shape?**

**20 A. Yeah, diamond shape.**

**21 Q. Let's move to the next product on Page 6 of Exhibit 1011.  
22 And can you first tell us what we're looking at and anything  
23 original to Games Workshop that you think Chapterhouse has  
24 taken?**

**25 A. These are called Chapterhouse Combi weapons on the left, and**

**Merrett - direct**

**1 there's eight little pictures. And what the pictures show, I  
2 believe, is this single component, which is a thing that's  
3 shaped like one of our bolt guns with a cutout in the top and  
4 these other components which glue onto it to create four  
5 different configurations of a sort of combined weapon.**

**6 The four configurations that you can make, I think,  
7 were a plasma combi, a melta combi, a flame thrower combi, and a  
8 grenade launcher combi. And some of these -- well, three of  
9 these are actually the same configurations that are legal on a  
10 Games Workshop Space Marine hero miniature.**

**11 Q. When you say legal, is that found somewhere in the rules or  
12 something?**

**13 A. Yes, defined in the rules.**

**14 Q. Anything else particular about these that are original to  
15 Games Workshop you want to call out?**

**16 A. We think that the shape of the back of the bolter component  
17 and the barrel of the bolter component are fairly -- are  
18 signature bits, but I don't know how important that is. And  
19 there's the plasma combi component and the -- it's sort of  
20 similar to a pla -- but not really too much there.**

**21 Q. Let's move to the next product on Page 7. And can you tell  
22 us both what we're looking at and anything original to Games  
23 Workshop you think Chapterhouse has taken?**

**24 A. Okay. On the left-hand side of the photograph, it shows five  
25 cream colored pieces, which are called gun halberds. They're**



**Merrett - direct**

**1 from Chapterhouses website. And on the right-hand side, a piece  
2 of Games Workshop art from the Collected Visions book. And the  
3 gun halberds are basically a boxy shaped gun with a small round  
4 barrel with a blade and a spike and then a long shaft. And on  
5 the -- this is all that you need to see on this particular  
6 painting.**

**7 You can see here the weapon that the Games Workshop  
8 Custodes are armed with is, in fact, a boxy shaped gun with a  
9 spike at the back and a long blade, which you can see here, and  
10 it's on the end of a long shaft, improbably long shaft, and  
11 there's nothing else like this. This is a wholly original Games  
12 Workshop design.**

**13 Q. Did you say -- I didn't hear the word. Did you say  
14 improbably long?**

**15 A. Yes. It's an improbably strange thing to do with a gun to  
16 stick it on the end of a long pole and put an axe blade on it.  
17 It's a fantastical concoction. You'd never make one yourself  
18 because it's kind of a bit bonkers.**

**19 Q. And let's move to the next product. And just tell us on  
20 Page 8 of Exhibit 1011, just tell us what we're looking at and  
21 also tell us anything original to Games Workshop that you think  
22 Chapterhouse has taken.**

**23 A. Okay. On the left is a kit that Chapterhouse offers for  
24 sale on their website called a conversion beamer weapon and  
25 harness kit, and on the right is Games Workshop Space Marine**

**Merrett - direct**

1 with servo arms. The thing that's of concern to us here is not  
2 this thing here, this component, the lower -- the bottom  
3 component on the Chapterhouse picture, but we're concerned about  
4 the top ones because it's a variation of that Space Marine  
5 backpack. In fact, I think that might be one of the, quote,  
6 two-skull Knight Praetorius backpacks.

7 And it's got this large kind of crane like grabber  
8 thing that attaches there, and that will set up like that on the  
9 model, and it's very similar to the Games Workshop servo arm  
10 component which attaches to the backpack of a Space Marine on  
11 that side and sticks up with that kind of funky angle, and it's  
12 got these big grabbers there.

13 Q. Let's move to the next product, which is on Page 9 of  
14 Exhibit 1011, and just tell us both what we're looking at and  
15 anything original to Games Workshop that you think Chapterhouse  
16 has taken.

17 A. On the left, a product off the Chapterhouse site, Death  
18 Angel Land Raider doors. The Land Raider is the Space Marine  
19 big tank. That's a Land Raider (indicating).

20 Q. The witness is referring to the demonstrative exhibit in the  
21 courtroom

22 A. Yes. And these are doors that fit onto it. Of particular  
23 concern here are -- and if we can zoom in on the Chapterhouse  
24 picture. Of particular concern here are the embossed designs of  
25 this weapon here, which we think has copied this weapon here,

**Merrett - direct**

**1 and on the other door, particularly this weapon here we think is  
2 a copy of this design here.**

**3 Q. You can back up so we can see that a little less blurry.**

**4 A. We're also concerned about the shape of these components  
5 because these are tailored to fit onto our Land Raider kit.**

**6 Q. Let's move on to the next product on Page 11 of Exhibit  
7 1011. And tell us both what we're looking at and what you think  
8 is original to Games Workshop that Chapterhouse has taken.**

**9 A. We're looking at Chapterhouse product, skull or chaplain  
10 head bit, and some Games Workshop intellectual property, some  
11 illustrations from Games Workshop, and a picture of a Space  
12 Marine chaplain miniature. Pointing at the top right, and it's  
13 a Space Marine chaplain imagery.**

**14 And two things. One, the name chaplain in the 40K  
15 universe, Space Marine chaplains are a type of Space Marine hero  
16 miniature, and they're characterized rather gruesomely by being  
17 covered in skulls and skull imagery, and a specific feature of  
18 the chaplain is the helm, which is usually a skull plate or  
19 sometimes sculpted into a skull, and that's what we have  
20 concerns about this because this is a head that's the same  
21 shape, proportions, and general size as a Space Marine head, and  
22 it's got this skull faceplate on the front.**

**23 Q. Is a chaplain in the Space Marine fiction like a chaplain  
24 that people would ordinarily know in the real world?**

**25 A. Similar to, although it's a different kind of spirituality**

**Merrett - direct**

**1 that they're paying attention to. So, they're the spiritual  
2 leaders of the Space Marines, but they're pretty horrific. I  
3 mean, they're not nice guys at all.**

**4 Q. Anything about the way the Chapterhouse product was painted?**

**5 A. Well, the Chapterhouse product's been painted with red eyes,  
6 which is the way that we generally show the Space Marine  
7 chaplain helmet. It's got red eyes.**

**8 Q. And let's move to the next page, which is also a chaplain  
9 product, and tell us what we're looking at and anything original  
10 to Games Workshop that you think Chapterhouse has taken.**

**11 A. Again on the left is an image for Chapterhouse product, sort  
12 of a blurry one, and that's a Space Marine style head, same  
13 general shape, size, and proportions. Detail is a Space Marine  
14 helmet, and it's got the skull faceplate on the front, and it's  
15 also got these horizontal ribbed cabling that come around the  
16 lower jaw area.**

**17 Q. Cabling?**

**18 A. Cabling or pipework. And then here you can see that same  
19 kind of detail here.**

**20 Q. And here on the Games Workshop?**

**21 A. On the Games Workshop model, same idea. Space Marine  
22 helmet. Look at this boxy shape here on the top of the  
23 Chapterhouse head. Same shape here.**

**24 Q. Let's move to the next product on Page 13 of Exhibit 1011,  
25 and again tell us both what we're looking at and any concerns**

**Merrett - direct**

**1 about anything original to Games Workshop that Chapterhouse has  
2 taken.**

**3 A. It's a comparison between on the left Spikey Marine Heads  
4 from Chapterhouse's website. On the right Horus Era Space  
5 Marine illustrations from Collected Visions book. The Collected  
6 Visions book shows Marines from that bygone era and the Horus  
7 Heresy, and the armor had a -- the Space Marine armor is  
8 depicted with these sort of more archaic features. In this case  
9 spikes on the helmets, extra faceplate details.**

**10 This particular illustration shows this large elongated  
11 front plate with these three grooves or vents punched through  
12 the front of it. You can see very similar detailing on this  
13 Chapterhouse component. This figure here in the Games Workshop  
14 work art --**

**15 Q. Are you referring to the Games Workshop?**

**16 A. Games Workshop picture. We can see the helmet has spikes on  
17 the helmet. If you could go on and look at some of the other  
18 pictures.**

**19 Q. Maybe you can back up a little.**

**20 A. So, if you look at the bottom right picture below the art,  
21 again you can see the helmets in these illustrations have some  
22 masks you could call it and spiky ridges on the helmets, again  
23 very similar to these.**

**24 If you go to the top Games Workshop picture, this one  
25 here, the right-hand side, it's not as clear on there. Oh, yes,**

**Merrett - direct**

**1 I can see that. Again, you see the spiked helmet and plates on  
2 the fronts of the helms here and here.**

**3 Q. Anything about -- that's okay. Let's move on to --**

**4 THE COURT: We're going to break here for lunch. We'll  
5 resume at 1:35.**

**6 (Whereupon, the within trial was recessed to 1:35 o'clock  
7 p.m of the same day.)**

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

GAMES WORKSHOP LIMITED,	}	
Plaintiff,		Docket No. 10 C 8103
vs.		
CHAPTERHOUSE STUDIOS, LLC,	}	Chicago, Illinois
et al.,		June 4, 2013
Defendants.		1:35 p.m.

VOLUME 2  
TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MATTHEW F. KENNELLY AND A JURY

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Also Present:

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1 (The following proceedings were in open court out of the  
2 presence and hearing of the jury:)

3 THE COURT: Go ahead.

4 MS. HARTZELL: May we speak at sidebar since the  
5 witness is present?

6 THE COURT: Oh, jeez, come on.

7 MR. MOSKIN: Would it help if Mr. Merrett stepped  
8 out? Whatever is faster.

9 THE COURT: Go out of the room.

10 (Brief interruption.)

11 MS. HARTZELL: There were two motions in limine that  
12 the Court resolved relating to dropped claims and the Court's  
13 prior orders excluding that information.

14 We believe that by testifying as to the original  
15 elements of the circular saw blade and the teardrop shape in  
16 the middle, the plaintiff has opened the door to the judge's  
17 order that those items in combination are not original. We  
18 understand that the order also --

19 THE COURT: Back up a little bit. What is the  
20 dropped claim?

21 MS. HARTZELL: Well, that's a separate one. I  
22 haven't gotten there yet.

23 THE COURT: Okay. So you started off talking about  
24 dropped claims. Now we're on what then?

25 MS. HARTZELL: The Court's prior orders.

1 THE COURT: I know. There's been about 800 of them  
2 in this case. Which one?

3 MS. HARTZELL: This one is the summary judgment --  
4 the first summary judgment motion on 11/27 at page 22 where  
5 the court ordered that with respect to only the product that  
6 was a circular saw blade and a teardrop shape in the middle  
7 but not the shoulder pad with the circular saw blade and the  
8 teardrop shape in the middle, Games Workshop cannot claim  
9 copyrightability based solely on the circular saw and teardrop  
10 shapes alone. But we believe that the witness' testimony  
11 regarding the originality of that circular saw blade and the  
12 teardrop shape opened the door for that portion of the Court's  
13 order.

14 THE COURT: So when you say "opened the door to that  
15 portion," what exactly are you --

16 MS. HARTZELL: To allow us to ask the witness about  
17 that portion of the Court's order.

18 THE COURT: Why would you be asking a witness about  
19 something I said? Wouldn't I just be telling the jury  
20 something?

21 MS. HARTZELL: That would be fine as well.

22 THE COURT: Okay. So what do you want me to tell  
23 them?

24 MS. HARTZELL: That Games Workshop cannot claim  
25 copyrightability based solely on the circular saw and teardrop

1 shapes alone. These two elements, even when combined, to  
2 create a single symbol, are merely two geometrical shapes  
3 placed one atop the other. This does not warrant copyright  
4 protection.

5 THE COURT: Okay. I have one. The one that I have  
6 downloaded here is the Westlaw version, and so I'm sort of  
7 groping for the --

8 MS. HARTZELL: The paragraph starts, "the two  
9 remaining products found in entries 33 and 105," if that  
10 helps.

11 THE COURT: Oh, okay, hang on a second. Let me read  
12 it then.

13 (Brief interruption.)

14 THE COURT: All right. So this is at star 12 of 2012  
15 Westlaw 5949105.

16 Mr. Moskin, let me hear from you.

17 MR. MOSKIN: Yes. I'd like to, if I could, even show  
18 you the product, but this was in reference to a different  
19 product that Chapterhouse was selling. It was a -- to add  
20 onto a vehicle.

21 THE COURT: It was item 33 on whatever claim chart we  
22 were working on.

23 MR. MOSKIN: And that is not in the case. We're not  
24 talking about that product anymore. And they were selling --

25 It came on, you know, like one of those little -- the

1 technical term is sprue, and it had separate --

2 In series, there was a saw blade and a shape like a  
3 drop unpainted. And the issue there was that those -- just  
4 those two items alone, your Honor held, and we're not  
5 challenging, were not copyrightable.

6 What the witness spoke to this morning was -- I think  
7 what I asked him was, is there anything original, and he was  
8 talking about the combination of on a shoulder pad, the color  
9 black, the color white, the two mounted on top of each other.  
10 He wasn't saying just the two isolated elements were  
11 copyrightable. He was saying that the entire design.

12 And I don't think there has been a ruling that the  
13 entire what is called the flesh tearer shoulder pad design,  
14 including that icon painted in those colors with a black  
15 background, is not original.

16 MS. HARTZELL: We would note that the Court's order  
17 did specifically state that these two elements, the saw blade  
18 and the blood drop, even when combined to create a single  
19 symbol, are merely two geometric shapes placed one atop the  
20 other.

21 We agree that this is on -- combined with a shoulder  
22 pad, but the witness' testimony specifically gave details  
23 about the originality of the saw blade and of the blood drop.

24 MR. MOSKIN: As shown combined in color, in the  
25 specific colors. So not just the geometric shapes, but the

1 colors shown and combined altogether with the black  
2 background.

3 THE COURT: Well, the ruling I made was about the  
4 geometric shapes. That's clear from the text of the decision.

5 GW cannot claim copyrightability based solely on the  
6 circular saw and teardrop shapes alone. These two elements,  
7 even when combined to create a single symbol, are merely two  
8 geometric shapes placed atop the other. This does not warrant  
9 copyright protection.

10 I don't, frankly, as I sit here, recall the reference  
11 that I cited from the copyright compendium, but, I mean, what  
12 I think Mr. Moskin is telling me is that what he was --

13 And I'm going to just concede, I do not -- I don't  
14 have in my head the image that was up on the screen.

15 MR. MOSKIN: I can now put up the image, if you would  
16 like.

17 THE COURT: Put it on the screen.

18 MS. HARTZELL: And this is the image that was --

19 THE COURT: Hang on. He's going to put it on the  
20 screen.

21 MS. HARTZELL: Okay.

22 MR. MOSKIN: The bottom.

23 THE COURT: So it's item -- this is item number 3,  
24 and which one specifically are we talking about?

25 MR. MOSKIN: Just the bottom one, 33.

1 MS. HARTZELL: It was subject to the order.

2 THE COURT: The thing that looks like a forest?

3 MR. MOSKIN: Yes.

4 THE COURT: Okay.

5 MR. MOSKIN: And it's just the geometric shapes  
6 uncolored.

7 THE COURT: All right. That's what you are saying I  
8 was talking about when I entered the order.

9 So what was he testifying about this morning?

10 MR. MOSKIN: What he was testifying was on the icon.

11 THE COURT: Up at the top there.

12 MR. MOSKIN: The upper right is one example of it. A  
13 color painted white with a red blood drop against a black  
14 background.

15 THE COURT: Okay. I suppose that if I was going to  
16 say something to the jury, I would say that there has been a  
17 ruling that simply combining a teardrop with a circular saw,  
18 those two shapes, is not subject to copyright, but there has  
19 been no ruling regarding whether adding other elements such as  
20 colors and things like that makes it copyrightable.

21 Do you really want me to say something like that?

22 MS. HARTZELL: I do.

23 THE COURT: Really? So you're actually asking me to  
24 confuse the jury.

25 MS. HARTZELL: I think it's a clarification for the

1 jury.

2 THE COURT: It's pretty much what you're doing.

3 Okay. Do you have any problem with me saying that?

4 MR. MOSKIN: No. I think there will be an  
5 instruction eventually that the underlying shape is also  
6 copyrightable, the shape of the shoulder pad itself.

7 Since we're not claiming any rights in the abstract,  
8 it's only on a shape with that rim and whatever.

9 THE COURT: And the thing that I was talking about is  
10 clearly the one down at the bottom. That is item 33. It  
11 wasn't the pad.

12 MR. MOSKIN: Correct.

13 THE COURT: It wasn't the shoulder pad.

14 Okay. And what he was testifying about this morning  
15 was what is identified on there as product 12 or product 13?

16 MS. HARTZELL: Yes.

17 THE COURT: As compared with the one over on the  
18 right which is GW's?

19 MR. MOSKIN: Yes.

20 THE COURT: Okay, fine. I will do that. What else?  
21 What was the second thing?

22 MS. HARTZELL: And for the dropped claims, a number  
23 of the trademarks that have been dropped by consent judgment  
24 were identified as marks that are of concern in the title  
25 including --

1 THE COURT: Okay. So the way we're going to do that,  
2 I have to say --

3 I mean, and I'm willing to do the one thing we just  
4 talked about now. But I have to say the case is complicated  
5 enough without me flinging literally, which is what you're  
6 asking me to do, a whole bunch of additional information that  
7 the jury now in the middle of one witness' testimony, which,  
8 by the way, it's still the direct examination of the first  
9 witness in the case, okay.

10 You know, there ought to be an instruction at the end  
11 of the case. If you think that there's some potential for the  
12 jury finding a trademark infringement based on some trademark  
13 that has been the subject of the consent judgment, then the  
14 way to deal with that is to give an instruction, we  
15 incorporate it in the instructions at the end of the complaint  
16 that there is no trademark claim or whatever based on the  
17 following terms, and we just list them, okay, rather than me,  
18 you know, doing that right now because it's --

19 There is such a massive amount of information they're  
20 having to absorb at this point, I just don't think that would  
21 be terribly productive. So that's the way to do it, and I'm  
22 just going to leave it to you to give me something.

23 Are we ready? Bring them in.

24 Just be prepared -- yes, get the witness.

25 And just be prepared to put that image back up there



1 right when they come out, Mr. Keener, or whoever is doing it.

2 MR. MOSKIN: Oh, you're doing the instruction now.

3 THE COURT: Right. I'm just going to do it right at  
4 the beginning while it's still fresh in my mind.

5 MR. MOSKIN: Here's the book that we're going to show  
6 that image again.

7 THE COURT: He's got it. Your guy's got it. You  
8 have got it.

9 Is somebody getting Mr. Merrett? Here he comes.

10 (Brief interruption.)

11 (The following proceedings were had in the presence and  
12 hearing of the jury:)

13 THE COURT: Okay. You can have a seat.

14 Sorry for the late start. We actually had an issue  
15 that we were discussing. So it's all on the clock, just so  
16 knows everybody.

17 Mr. Merrett, you can come back up here.

18 While he is doing that, if you could put that one  
19 image back up on the screen.

20 So this morning there was some testimony about this  
21 image. This is item number 3 from the chart which has three  
22 products on the left, product 12, product 13 and product 33.  
23 And those are all Chapterhouse products, and then a Games  
24 Workshop product on the right.

25 There's been a prior ruling by me that simply

Merrett - direct

1 combining a circular saw shape with a teardrop shape by itself  
2 is not subject to copyright protection. And it was really in  
3 relationship to that item number 33, which is the furthest one  
4 down on the left. There hasn't been any ruling at this point  
5 whether adding other elements such as putting it on the  
6 shoulder pad and colors and things is or isn't copyrightable.

7 I'm loathe to tell you that because I'm concerned  
8 that it might make things more confusing than they might  
9 already be, but I'm giving you that instruction now. And  
10 there will be further details on what the issues are in terms  
11 of copyrightability once we get to the end of the case.

12 I can't. I know you want to say something, but I  
13 can't.

14 A JUROR: I want to know which that is.

15 THE COURT: That was item number --

16 Which exhibit number is this? 1021 or 1020?

17 MR. MOSKIN: 1019.

18 THE COURT: It's number 1019 -- Exhibit 1019, and  
19 it's line item 3 from 1019, and it's called flesh tearers  
20 icon. Thanks.

21 Mr. Moskin, go ahead.

22 ALAN R. MERRETT, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

23 CONTINUED DIRECT EXAMINATION

24 BY MR. MOSKIN:

25 Q And as we are resuming, I hope I can say to some relief of

Merrett - direct

1 all assembled that there are only 20 products more to go, so  
2 we're getting there.

3 THE COURT: We'll debate over whether that's a basis  
4 for relief or not. It's like "I hold in my hand the final  
5 envelope," you know, the old Johnnie Carson line.

6 BY MR. MOSKIN:

7 Q So I think we were in the middle of Plaintiff's  
8 Exhibit 1011. It may have been renumbered, but this is on  
9 vehicles, around page 16. Back up one. There we go.

10 Mr. Merrett --

11 A Hello.

12 Q Welcome back.

13 And can you please tell me both what we're looking at  
14 on page 15 of Exhibit 1011 and whether there are any original  
15 elements from the Games Workshop product shown that Games  
16 Workshop believes Chapterhouse has taken?

17 A Okay. What we're looking at is, again, as before, on the  
18 left-hand side, there are products from the Chapterhouse  
19 website, Salamander or Dragon drop pod armor or door panel.

20 And on the right-hand side is a photograph of the  
21 Games Workshop kit it's marketing and showing an assembled  
22 Space Marine drop pod.

23 And the pointed issue on these is that on the  
24 Chapterhouse, if you look on the Chapterhouse product here on  
25 the left, you see the shape of the door or component. And the

Merrett - direct

1 one on the right, the shape of the component, and it's exactly  
2 the same shape as this component here shown assembled onto the  
3 drop pod Games Workshop kit.

4 And notice the very specificity, the very specific  
5 character, of the shape of this panel or this door. It's got  
6 little notches here, here on the top left, top right, so  
7 middle left side, middle right side. And these tessellate  
8 exactly onto the detail of the Space Marine tank kit or drop  
9 pod kit.

10 The thing you will notice about the Space Marine drop  
11 pod kit is it has a space here for the Chapterhouse icon to go  
12 on, which goes there, and the Chapterhouse kit has its little  
13 badge in exactly that same position.

14 And the icon is actually that little angry  
15 dragon-come-lizard thing, which is a 3D representation of the  
16 little Salamander chapter badge.

17 Q Anything about the name that is of concern?

18 A Well, again, Salamander is the name of the Space Marine  
19 chapter that uses this symbol, and this says Salamander.

20 And it is also described as a drop pod armor or door  
21 panel, and that's a Space Marine drop pod.

22 Q Anything about the styling of the second Chapterhouse  
23 product, the other drop pod door that's of concern?

24 A The second one, the unpainted -- the Chapterhouse product  
25 on the right is an unpainted component, but it shows off this

Merrett - direct

1 banding which, again, is characteristic of that older style of  
2 Space Marine armor and weaponry.

3 Q From where?

4 A From the Heresy era.

5 Q Thank you.

6 And let's move to the next product on page 16, and,  
7 again, tell us what we're looking at and if there are any  
8 original elements from the Games Workshop materials on the  
9 right that you believe have been taken by Chapterhouse.

10 A Okay. On the left-hand side, we can see a thing that's  
11 called the Wolf Rhino conversion kit, which is -- in fact,  
12 there's two products, 82 and 104.

13 I can't tell you which one is 82. But this top one,  
14 there are actually four separate plates, and the plates are  
15 basically configured so that they will fit onto the Games  
16 Workshop vehicle kit, the Rhino vehicle kit.

17 Q Was that Rhino shown in here somewhere?

18 A That's an earlier version of the Rhino, but here you can  
19 see this component here and this component here, the same  
20 configuration, the same proportion and shape.

21 And these are the side doors from that kit, and they  
22 have a very specific shape, little hinges at the bottom, these  
23 locks at the top, and that's slightly -- the corner's cut off.  
24 And this panel here and this panel here are exactly the same  
25 shape, the same little hinge details, same profile.

Merrett - direct

1 Q What do you think about the icon itself?

2 A Yes, okay. This icon here is a fairly typical Games  
3 Workshop Space Wolf icon reference of a wolf's skull shown in  
4 plan, I suppose, looking down from the top, actually looking  
5 down on top of the wolf's skull. And it sets on one of those  
6 diamond shapes.

7 In fact, here you can see the Games Workshop  
8 illustration on the far right of the exhibit showing that plan  
9 view of a wolf's skull sets on a diamond-shaped pinth, and the  
10 Chapterhouse product repeats that diamond shape here, repeats  
11 the diamond shape here.

12 Q Here you are referring to the image on the upper left?

13 A Sorry. On the Chapterhouse component on this left-hand  
14 side and then again the wolf's skull in plan shown there.

15 There are other features of this. There are various  
16 little fangs hanging down and little -- which, again, are  
17 details on this Games Workshop icon.

18 And there are -- I don't know quite how you describe  
19 these. They're kind of like wolf tails, and they are attached  
20 to the vehicle components using these little metal sort of  
21 ferals, and, again, you can see the same typical kind of use  
22 on the Games Workshop icon on the right.

23 The component, the Chapterhouse kit on the bottom  
24 left, which is another Wolf Rhino conversion kit, which is  
25 seen with 104, has the same configuration for the door

Merrett - direct

1 components and the hatches. So those components match -- they  
2 are a different size, but they're actually the same  
3 configuration and shape.

4 And this set of doors uses a different type of Wolf  
5 icon which is a stylized Wolf face and very similar to the  
6 Games Workshop style or face.

7 Q Shown on the lower right?

8 A On the lower right.

9 Q Let's turn to the next product on page 17 of Exhibit 1011,  
10 and can you tell us both what we're looking at and if there is  
11 anything original to any Games Workshop designs that you think  
12 Chapterhouse has taken?

13 A As before, it's the same exhibit, same kind of form. The  
14 exhibit on the left-hand side is the Chapterhouse product. On  
15 the right, actually the Games Workshop -- some Games Workshop  
16 imagery that we think is relevant.

17 In this case again, these are -- these are the same  
18 shape and configuration as the doors on the previous exhibit.  
19 I'm pointing to the top left of the Chapterhouse picture.

20 And this image is upside-down. So you imagine the  
21 hinges are at the top here. It's just the way the picture is  
22 shown.

23 And that component, the component on the lower right  
24 of the Chapterhouse photo, the photo of the Chapterhouse  
25 product is that -- it's the same shaped rectangular.

Merrett - direct

1           But the thing that is interesting about these is they  
2 have got that Heresy era banding style on them that we talked  
3 about earlier, and I think in the description it describes  
4 these as a Heresy era style of upgrade which is why the  
5 other -- these Games Workshop images on the right are  
6 pertinent because they're showing that style on the shoulder  
7 pads of the characters illustrated.

8       Q   Let's turn to the next product, page 18 of Exhibit 1011.  
9       Again, tell us both what we're looking at and any concerns  
10      that Games Workshop has about the taking of original elements  
11      from Games Workshop materials.

12      A   Okay. On the left-hand side of the exhibit we have a  
13      photograph of the product Chapterhouse offers on its website.

14                 And, again, these are door panels and doors to  
15      replace the Games Workshop components on the Rhino kit, and  
16      this is the relevant Rhino kit in this instance.

17                 So this component here on the left, extreme left of  
18      the Chapterhouse picture, is the front plate of the Rhino, as  
19      you can see on the Games Workshop photograph of a Rhino kit.

20                 The doors, the central pieces on -- these two central  
21      pieces on the Chapterhouse photograph fit into the side of the  
22      Rhino into specially shaped holes.

23                 What is interesting about these components is they  
24      are -- they're again using our Salamander icon, the Angry  
25      Dragon, the thing which we have got a picture of on the lower



Merrett - direct

1 right of the exhibit. And I'm not sure if it's clear from  
2 this, but can we --

3 Q Zoom it just a little bit.

4 A These two components, I'm pointing to the top right of the  
5 Chapterhouse section of this exhibit. It's two panels.

6 Effectively from the upper door of the Rhino kit,  
7 when you push those together, you can see that this section  
8 tessellates into this section. It fits together.

9 When you fit them together, magically an image  
10 appears here of the Angry Dragon symbol that is very, very  
11 similar if not the same as the Games Workshop Salamander icon.

12 Q Do the cutouts at the bottom fit into anything on the  
13 Games Workshop product?

14 A This component on the Chapterhouse, the lower component on  
15 the Chapterhouse picture, is actually four separate little  
16 panels that have been designed to fit directly into these  
17 little recesses on the Games Workshop Space Marine Rhino kit.

18 The Games Workshop Space Marine Rhino kit has four of  
19 these little cutouts, two on either side, and there are four  
20 components here on the Chapterhouse -- in the Chapterhouse  
21 product, and those fit exactly into those little slots.

22 Q Let's go to the next product on page 19 of Exhibit 1011.  
23 And, again, tell us what we're looking at and if there are any  
24 original elements from the Games Workshop materials that you  
25 think Chapterhouse has copied.

Merrett - direct

1 A Okay. On the left-hand side again, we have the  
2 Chapterhouse product as advertised on their website. On the  
3 right-hand side, we have some relevant Games Workshop imagery,  
4 including a photograph of one of our tank kits, the Space  
5 Marine Rhino, and an image from one of our books and the cover  
6 of one of our novels.

7 The Chapterhouse product on the left again has  
8 components that are designed to swap out for the components on  
9 the Rhino kit. On the Rhino kit, we have two doors, a front  
10 section, and an upper door or top hatch and four little pieces  
11 that fit into the Space Marine Rhino covers, sponsons on these  
12 little cutouts.

13 And the symbols on these, on the Chapterhouse  
14 products, on the two side doors and the top hatch is that  
15 curly snake image which is copied -- it looks like it's copied  
16 from the Games Workshop icon, the Iron Snakes. "Brothers of  
17 The Snake" is an Iron Snakes novel, and this character carries  
18 that symbol, and this is the Iron Snakes intellectual property  
19 from Games Workshop on the bottom right. And the Chapterhouse  
20 product is called Rhino tank conversion kit for Iron Snakes.

21 Q Let's turn to the next product.

22 And again on page 20 of Exhibit 1011, can you tell us  
23 both what we're looking at and if there is anything original  
24 from the Games Workshop materials on the right that you think  
25 were copied by Chapterhouse on the left?

Merrett - direct

1 A On the left-hand side, we have Dragon or Salamander  
2 variant Rhino door kits. In this case we have three  
3 components, one, two, three.

4 Two of the components are actually side doors that  
5 fit exactly into the side door hole of the Games Workshop  
6 Rhino kit, and the middle component, central component, is a  
7 panel that fits on the front of the Games Workshop Rhino kit.

8 The two side doors in the Chapterhouse product carry  
9 that Angry Lizard Dragon symbol which looks like our  
10 Salamander icon.

11 The central icon is a long-necked serpent thing,  
12 which looks a little bit like the hydra device on our -- on  
13 the bottom right, which is a Games Workshop icon.

14 Q Let's turn to the next product. And, again, this is on  
15 page 21 of Exhibit 1011.

16 Again, can you tell us what we're looking at and if  
17 there is anything original in the Games Workshop material that  
18 you think Chapterhouse has copied?

19 A On the left-hand side, we're looking at --

20 Q I'm sorry. Page -- yes, 21.

21 A Okay.

22 On the left-hand side we're looking at images from  
23 the Chapterhouse website, and the one image, the lower image,  
24 is a photograph that shows a series of resin components of  
25 various shapes and sizes.

Merrett - direct

1           And the photograph on the top left shows a partly-  
2 assembled Games Workshop land raider kit, partly assembled  
3 because it doesn't have all of its track fitted in. And it  
4 actually shows the Chapterhouse components from the lower  
5 photograph being used to create a variant on the Space Marine  
6 land raider.

7 Q   What you're pointing at?

8 A   I'm pointing to the top left picture, and I'm pointing at  
9 this component here, which is the side sponson on the  
10 Chapterhouse land raider variant.

11           And this white component in the center of that  
12 photograph, there's a white component on the top of the land  
13 raider kit. And though you can't see it, this set of  
14 components at the bottom illustrate that the kit is supplied  
15 with two side sponsons. So this is a side sponson. I think  
16 these are part of the subassembly for that, for that side  
17 sponson, and I think that on the lower photograph, the  
18 left-hand sets of five components creates a subassembly for a  
19 sponson to go on the opposite side of the land raider kit.

20           And what is of concern to us with this and what we  
21 think is copying original components is that the Space Marine  
22 land raider -- the Games Workshop Space Marine land raider  
23 shown on the right-hand side of the exhibit is a specific  
24 upgrade product that our -- that we sell, and it is exactly  
25 the same configuration. It consists of two side sponsons,

Merrett - direct

1 subassemblies and a central -- a central modification.

2 And that is marketed as a Mach IIB, Mach II, as in  
3 Roman numeral IIB land raider conversion kit through our  
4 ForgeWorld line. So this is basically a copy of our -- of our  
5 expansion kit.

6 Q Not of the tank itself but of the conversion kit?

7 A Of the conversion kit, yes. We actually make one that has  
8 -- that does exactly that, exact configuration.

9 Q Let's turn to the next product on page of Exhibit 1011,  
10 and, again, tell us both what we're looking at and what you  
11 think may have been copied from the Games Workshop materials.

12 A Same form as before. On the left-hand side, we have the  
13 Chapterhouse product, and on the right-hand side some  
14 photographs of a Games Workshop product for comparative  
15 purposes.

16 On the left-hand side, the Chapterhouse photograph  
17 shows three turrets. It calls them magnetic turret kit for  
18 Space Marine Storm Raven. These turrets are intended to  
19 replace the turrets assembly on a Space Marine Storm Raven.  
20 And we are concerned about these because these are effectively  
21 repurposed turrets from another kit.

22 Q Why don't you jump ahead and show --

23 MS. HARTZELL: Objection.

24 THE COURT: Hang on a second. What's the objection?

25 MS. HARTZELL: The objection is that no other kit is

Merrett - direct

1 identified in the claim chart.

2 THE COURT: Why don't you try to clarify that before  
3 I rule on the objection.

4 BY MR. MOSKIN:

5 Q Let's go to the next product, and I think you can show  
6 what we're talking about.

7 Yes. Is this what you were referring to, Mr.  
8 Merrett? Is this showing here the turret that you are  
9 referring to?

10 A Yes, I am looking at page 23, the claim chart on the  
11 left-hand side. You have got a magnetic turret kit for Space  
12 Marine Razorback. On the right-hand side we have some  
13 pictures, some pictures of the Space Marine Razorback kit and  
14 an illustration from Space Marines Codex of a Space Marine  
15 Razorback.

16 And on the left, the space -- the Chapterhouse  
17 turrets have a specific kind of configuration, which is  
18 basically two guns next to each other attached to a central  
19 grand turret thing, and then a boxy, angled-shape armor plate  
20 that sits over the top of it, and then on top of that a small  
21 kind of sensor box of some description.

22 The way this is configured is that the box, the  
23 housing, and the central attachment is common to these, to the  
24 four pieces shown in the Chapterhouse picture, and the guns  
25 are separate components so you can swap them around.

Merrett - direct

1           And then if you look on the top right, you can see  
2 the Space Marine Razorback from Games Workshop. It has the  
3 same configuration for its turret, and if you look at the  
4 illustration on the bottom right, Games Workshop, you can see  
5 that the armored housing has the same configuration as the  
6 armored housing on here.

7           The other thing of concern is that the guns on two of  
8 the Chapterhouse products are very similar to guns on the  
9 Games Workshop products. So these multi-barreled --

10 Q The one --

11 A -- guns on the top left-hand side component are very  
12 similar to our assault cannons.

13 Q Would you call them assault cannons?

14 A Assault cannons.

15           And on the top right-hand subassembly for the  
16 Chapterhouse product, this has two lascannons which are very  
17 similar to the Games Workshop Razorback lascannons.

18 Q Now, if we flip back up a page to the product 130, does  
19 that help you explain the turret design that you were  
20 referring to?

21 A Yes. And you can see --

22           We are back on page 22, page 22 of the Chapterhouse  
23 product on the left, Games Workshop Space Marine Storm Raven  
24 kit illustration on the right.

25           And the Chapterhouse product here shown on the left

Merrett - direct

1 is very similar to or the same as the exhibit we just  
2 examined, and it has the same --

3 It has the same style of central area, double guns,  
4 and very specifically shaped cowling or armor plates housing  
5 for the guns.

6 And, in fact, on this comparison, you can see even  
7 down to the fact that the upper surface has this beveled edge  
8 on the Chapterhouse components. You can see that's a copy of  
9 the beveled edging on the Games Workshop equivalent component.

10 Q And what are the guns shown, if we can back up to the  
11 Chapterhouse product 130?

12 A On here we have three configurations of guns and the  
13 Chapterhouse -- the bottom left ones are the doubled up  
14 assault cannons as before.

15 The lower right are vague and nondescript but have no  
16 concern over those. And the upper one is a single lascannon  
17 and what are intended to be two little plasma guns. And  
18 that's a specific configuration that actually we used to  
19 market on our previous exhibit on the -- on our Razorback.

20 But we -- when we did the new Razorback, the modern  
21 Razorback kit, the designers missed off that configuration  
22 rather foolishly.

23 Q Let's move on to the next product on page 24 of  
24 Exhibit 1011. And, again, tell us what we're looking at and  
25 if there are any concerns whether you think Chapterhouse has



Merrett - direct

1 barred any original elements from anything that Games Workshop  
2 created.

3 A Okay. What we're looking at here is, as before, on the  
4 left we have the Chapterhouse product which they call the  
5 javelin class imperial jetbike.

6 And on the right-hand side, we have two images. On  
7 the upper right, we have a painting of a Heresy era jetbike  
8 which is taken from the Collected Visions book, and in the  
9 lower right we have a photograph of a Space Marine bike model.

10 And we feel that the javelin class imperial jet bikes  
11 uses elements from both of these sources to create this thing.

12 So the jetbike, the Chapterhouse jetbike, the front  
13 of it has a kind of a cow-catcher shape with this very  
14 distinctive grille on the front which is very similar to the  
15 painting.

16 Q Maybe we can expand that painting a little bit to see.

17 Okay.

18 A And the -- if we go back to the painting down here.

19 MR. MOSKIN: Minimize the shape.

20 THE WITNESS: Of concern, the jetbike is the  
21 configuration of the engine block and the fuel tank and the  
22 arrangement of the exhausts which are very similar to the  
23 detail on the Space Marine bike. It is the same.

24 So you can see the hint of the fuel tank there and  
25 the twin exhausts, the same kinds of area here as they are on

Merrett - direct

1 the Chapterhouse product.

2 It took us quite a while to configure the  
3 Chapterhouse product because we couldn't tell if it was using  
4 a mixture of Chapterhouse products and Games Workshop  
5 components to create this effect.

6 But we're particularly concerned about the legs.

7 BY MR. MOSKIN:

8 Q The legs of the Chapterhouse product?

9 A The legs of the Chapterhouse product because we believe  
10 those are Chapterhouse components, but they are very, very,  
11 very close copies of our Space Marine legs.

12 They share the same -- all the sort of pertinent  
13 details, the same flared leg, the two-part foot, the knee pad.  
14 You can see that's very --

15 Q Are any other features of the rider shown on the left  
16 Chapterhouse products or are they all -- are they your  
17 products or just --

18 A I don't know. We found it jolly hard to work out.

19 So on the shoulder pads, we think Chapterhouse --  
20 Chapterhouse components, arms. The arms, we -- I can't  
21 remember if the arms are Games Workshop components or not.

22 We think the chest might be a Chapterhouse component.  
23 It's actually listed on the side, I think.

24 Q And let's look at the next product on page 25, and is this  
25 different from what the Chapterhouse product that you

Merrett - direct

1 acknowledge is different from the previous one?

2 A Yes. Okay. I'm looking at page 25. On the left  
3 Chapterhouse pilum class imperial jetbike, and on the right,  
4 some of the same images from Games Workshop that we were  
5 looking at before, including that photograph from -- the  
6 picture from the photograph of this Space Marine bike.

7 This is the same kit. It just has some additional  
8 components added to it. Of particular note are the gun  
9 arrangements that sit at the back, over the back of the  
10 exhausts on the Chapterhouse product, and these are  
11 configured. These look a little bit like our guns.

12 Q Is that it?

13 A Yes, that's it.

14 Q Now, is there --

15 You say they look a little bit like -- the guns look  
16 a little bit like Games Workshop guns.

17 Is there -- are there any particular types of guns  
18 that are called for in the rules of the Space Marines?

19 A I'm sorry. Can you repeat the question, please?

20 Q Do the guns, do they look somewhat like the Games Workshop  
21 guns? Do they reflect anything in the rules for what sort of  
22 weapons Games Workshop can use?

23 A Yes. As before, all the different armies in the game have  
24 different sets of guns and different types of guns available  
25 to them.

Merrett - direct

1           And so these are very -- the guns have been -- on the  
2 Chapterhouse products are very typical of the Space Marines,  
3 and the designs are very similar.

4           So the lower left-hand image has a heavy bolter, and  
5 this is -- the games on the right-hand side is the Games  
6 Workshop heavy bolter, and they're very similar shape and  
7 arrangement of components and pieces on those to make them  
8 look very similar.

9       Q    And what is it about the other gun?

10       A   The other gun is called a -- it's a multi-melta, and the  
11 Chapterhouse product is similar to the Games Workshop version  
12 of that product.

13       Q    Let's look at the next product, the last in the series of  
14 exhibits.

15           And, again, can you tell us both what we're looking  
16 at and if there is anything you think is original to Games  
17 Workshop that Chapterhouse has taken?

18       A    Okay. On the left-hand side, as always, photographs from  
19 the Chapterhouse website showing what they call Heresy marine  
20 jump packs, and on the right-hand side a relevant piece of  
21 Games Workshop intellectual property, which is another  
22 painting taken from our Collected Visions book.

23           And I think our title is wrong on that exhibit. What  
24 you can see here on the left is the Chapterhouse product which  
25 I think is shown on the left-hand side of the left-hand

Merrett - direct

1 photograph, and that's a bottom view, that's a top view, and  
2 then there's some isometric views of the same component.

3 So I don't know whether it's actually made in more  
4 than one part, but it's effectively a backpack for a Space  
5 Marine that has two giant turbines on it, and they've  
6 conveniently shown it stuck on the back of a Games Workshop  
7 Space Marine miniature.

8 And as you can see on the right-hand side, the  
9 right-hand side illustrates Space Marines from the Heresy era,  
10 actually with the primitive style of jump packs which are  
11 basically two great big turbines attached to their back  
12 through the backpack that look just like that.

13 Q Is there anything about the name of concern to you?

14 A Well, again, the Heresy marine jump packs is kind of a  
15 pretty direct reference to the Heresy era depicted in the  
16 Collected Visions book.

17 Q Let's move on to Plaintiff's Exhibit 1014. And as we have  
18 been doing, if you could both show me what we're looking at  
19 and whether you think that Chapterhouse has taken anything  
20 original from Games Workshop.

21 A Okay. On the left again, a Chapterhouse product that they  
22 have called a Tyranid Tervigon conversion kit. On the  
23 right-hand side, we have a picture from the Tyranid Codex and  
24 then a photograph of a Tyranid Carnifex miniature or kit that  
25 we sell.

Merrett - direct

1           And what the Chapterhouse photograph shows is it  
2 shows some components that Chapterhouse have created assembled  
3 with elements of our Tyranid Carnifex kit in order to create a  
4 thing they call a Tyranid Tervigon, which is actually a copy  
5 of our picture.

6           So this is the --

7           On the left the Chapterhouse photograph actually  
8 shows the Games Workshop kit with Chapterhouse pieces  
9 assembled onto it. There's a big lumpy bit on the top of the  
10 miniature and some unpleasant lumpy stuff stuck on the lower  
11 surface of the model.

12           The upper component that Chapterhouse produced  
13 effectively gives this model a -- it changes the pro -- it  
14 changes the silhouette from having two rows of bony  
15 protuberances on its back to having three rows, which is  
16 actually exactly like the product -- the creature that we  
17 illustrated in our Codex with the Tyranids. You see, it's got  
18 three bony protuberances.

19           And in the intellectual property for this Tervigon  
20 that we created, the Tervigon spores lesser creatures that  
21 come kind of -- they emerge from the hideous, organic, lumpy  
22 stuff on its belly, and which is kind of illustrated there.  
23 And so that's presumably why Chapterhouse chose to put stuff  
24 on the underside of the kit.

25 Q   Are the legs shown in the left side, are those part of the

Merrett - direct

1 Games Workshop original or are those part of the Chapterhouse  
2 conversion?

3 A No. All these legs are all part of the original Games  
4 Workshop kit, as is the head.

5 I think the major components here are the things that  
6 go on the back of the Games Workshop product and the things  
7 that -- the piece that sticks or pieces that stick on the  
8 chest plate.

9 And the components are specifically tailored to go on  
10 that kit. I mean, they are -- they're literally being  
11 sculpted, so it's two almost seamless -- to be seamlessly  
12 seamless extensions of our kit.

13 Q Let's look at the next product. Again, on page 3 of  
14 Exhibit 1014, tell us what we're looking at.

15 A On the left-hand side, we're looking at a product that  
16 Chapterhouse marketed as a mycetic spore pod. And on the  
17 right-hand side, we have a piece taken from an illustration of  
18 a Games Workshop product of a Tyranid mycetic spore, an  
19 illustration that we looked at yesterday, in fact.

20 Q And where is that? Let's look at, if we can, and call up  
21 from Plaintiff's Exhibit 47 the Tyranid Codex page 1424.

22 (Brief interruption.)

23 MR. MOSKIN: Page 1424. Stop. You went back. You  
24 went a little past it. Okay.

25 (Brief interruption.)

Merrett - direct

1 BY MR. MOSKIN:

2 Q There we go. Is that the page you were talking about?

3 A Yes.

4 Q Do you remember we talked yesterday about -- a little bit  
5 about the back story?

6 A Yes.

7 MR. MOSKIN: Now, if we can also call up the image  
8 from Exhibit 1020, the claim chart for this product. Product  
9 95.

10 (Brief interruption.)

11 BY MR. MOSKIN:

12 Q Is there anything of concern about the way it's described  
13 by Chapterhouse?

14 A Yes. I mean, the particular paragraph in question on the  
15 claim chart, which is the lower left-hand side, it  
16 describes -- the Chapterhouse description says:

17 Each spore is large enough to realistically hold a  
18 swarm of models or even a large monstrous creature like the  
19 Games Workshop model Carnifex or Koronescape monsters.

20 The Tyranids are organized in two swarms, and the big  
21 creatures are called monstrous creatures. And it's just -- it  
22 might as well be described in the entry from the Games  
23 Workshop Codex. But if you go back to the model in  
24 comparison --

25 We're concerned about the fact that this is a big



Merrett - direct

1 round thing with trailing tentacles. It's the big round thing  
2 with trailing tentacles. This implies it's covered in  
3 Tyranid-esque detail, detail pertaining to the Tyranids and in  
4 the style of Tyranids, and this is covered in detail that is  
5 similar to and redolent of our Games Workshop Tyranid models.

6 But the main thing about this is the name. It's the  
7 mycetic spore pod. The Tyranid mycetic spore is one of our  
8 original names, I believe.

9 Q Now, let's turn to the next product on page 4 of  
10 Exhibit 1014, and can you tell us again both what we're  
11 looking at and if there is anything original from the Games  
12 Workshop side of the ledger that you think Chapterhouse has  
13 taken?

14 A Okay. We're looking at -- on the left-hand side the  
15 Chapterhouse -- some Chapterhouse products which are heads.  
16 So there's three heads called -- and I apologize for the  
17 pronunciation -- Ymgarl heads or Ymgarl. We can't decide how  
18 to say it because it's the only thing we have ever written  
19 down.

20 And on the right-hand side, the Games Workshop Ymgarl  
21 genestealer. The genestealer is a type of Tyranid monster,  
22 and the Ymgarl variety of the Tyranid, of this Tyranid  
23 monster, has tentacled -- has a tentacled head, and these --  
24 the Chapterhouse set of three heads are monstrous heads that  
25 have been designed to fit onto the genestealer body, and they

Merrett - direct

1 have a tentacally-type face thing.

2 But the main concern for us on this is that word  
3 "Ymgar1."

4 Q Let's turn to the next product, and this is page 5 of  
5 Exhibit 1014.

6 And, again, as we have been doing, can you tell us  
7 both what we're looking at and if you believe Chapterhouse has  
8 taken any original elements from Games Workshop?

9 A Okay. On the left-hand side, we have the Chapterhouse  
10 product from their website showing, in this case, a thing  
11 called a Shrike conversion kit.

12 And on the right-hand side we have Games Workshop  
13 products which are from our ForgeWorld line showing Tyranid  
14 warriors with wings, which is effectively what a Shrike is.  
15 It's how a Tyranid warrior in our Codex is described as a  
16 Shrike.

17 And we're concerned about a number of elements here.  
18 The head is a --

19 Again, the Chapterhouse photograph shows a  
20 combination of Chapterhouse components and Games Workshop  
21 components. The Chapterhouse components are the head, the  
22 lower legs and the wings. And the head of the Chapterhouse  
23 product is very similar in style, rendering, and size to the  
24 heads in the Games Workshop Tyranid warrior models.

25 And the wings are of a similar character to the wings

Merrett - direct

1 on the Games Workshop model. So they are -- they have the  
2 impression of being gigantically enlarged hands with elongated  
3 finger bones with stretched skin between those components to  
4 create the wing, some sort of hideous battle, hideous dragon  
5 of sorts.

6 And you can see on the lower right-hand side, the  
7 Games Workshop component has similar arrangements: Elongated  
8 finger bones, stretched skin to create a wing, a wing  
9 membrane.

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1           And they even have other features in common, the  
2 claws that extend to the bottom, three claws here, three  
3 claws here, the hooked upper claw, thumb-like claw, which you  
4 can see clearly on the Games Workshop product here, on the  
5 right-hand side sticking up.

6           Q.   Let's move on to the next exhibit, Plaintiff's  
7 Exhibit 1015.  And of the first product shown on Page 2, can  
8 you, again, tell us both what we're looking at and if there  
9 are any concerns that Chapterhouse has taken anything  
10 original from Games Workshop's works.

11           A.   Okay.  On the left-hand side, as always, we have the  
12 Chapterhouse images taken from the Chapterhouse website.  
13 That's four -- it's a composite of four photographs.

14                   The upper two photographs show the components that  
15 are at issue, which are six alternative heads for the Games  
16 Workshop Tau Crisis Suit -- sorry, Crisis Battlesuit  
17 miniature, which again conveniently Chapterhouse have shown a  
18 Games Workshop miniature here with its component, and here  
19 with its component -- I'm pointing to the two lower  
20 photographs on the exhibit from -- on the left-hand side.

21                   We feel that these heads are similar to the Games  
22 Workshop Tau Crisis Battlesuit heads, the same basic  
23 configuration.

24                   The front of the heads is a face which is comprised  
25 of various types of lenses covered in a cowl of -- a

1 rectangular boxy cowl, and then some of these heads have  
2 these little ear-like projections, which suggests some kind  
3 of sensor ray such like.

4 Q. Let's look at the next product. And once again, tell us  
5 both what we're looking at and if there's anything that you  
6 think Chapterhouse has taken that is original from the Games  
7 Workshop original -- from the Games Workshop works.

8 A. Okay. I'm looking at Page 3. On the left-hand side of  
9 the photograph there's a thing called an SXV-141 Super Heavy  
10 Walker.

11 On the right-hand side I'm looking at some pictures  
12 from Games Workshop of some Tau vehicles from the Games  
13 Workshop line. There's a couple of illustrations, some  
14 details of the Tau and a photograph of the Tau tank.

15 What's at issue here for us is not the overall  
16 looking shape. This vehicle is clearly nothing like either  
17 of the Games Workshop ones, but when you examine some of the  
18 small details there are some similar -- well, similarities  
19 that we're very uncomfortable with. Particularly the guns  
20 and then the use of some of -- which are a little bit tiny --  
21 the use of some of our symbolatry for Tau's --

22 Q. Is that shown somewhere else here on the Games Workshop  
23 product? There was just something you were pointing at on  
24 sort of the knee --

25 A. The symbol here on the sort of knee of the Super Heavy

1 Walker. Here's a copy of the symbol shown on the door of the  
2 Games Workshop tank model shown at the bottom right.

3 Q. And you were talking about the guns, I think?

4 A. Yeah. The guns on the Super Heavy Walker --

5 Q. I think we may have some clearer picture of those, if we  
6 jump down two pages.

7 A. Okay. What we're looking at here on Page 5, on the  
8 left, are two photographs from -- of the Chapterhouse  
9 components, and on the right photographs of the equivalent  
10 Games Workshop components. And as you can see, the  
11 Chapterhouse components share all the pertinent salient  
12 details of the Games Workshop product.

13 Q. What are those called?

14 A. The top gun, the Games Workshop gun, we call a rail gun.  
15 The rail gun has basically two -- an upper and a lower  
16 section, so boxy sections, and it ends with a sleeve with  
17 incised grill detail venting. And it has a sort of bracket  
18 part of the way down, and it looks like it holds these things  
19 together a bit, and a boxy rear end, the same details on the  
20 Chapterhouse rail gun.

21 The lower gun is called a burst canon, burst canon,  
22 and it basically has a roundish back end but a very, very  
23 characteristic arrangement of barrels which are two thin,  
24 slightly tapering barrels with sleeves at either end. And  
25 again, you can see this detail replicated on the Chapterhouse

1 version of said gun.

2 Q. And if we could jump back up a page, and I will ask you  
3 if there are any other details -- if the overall design is  
4 not the same, are there other details --

5 A. Yeah, the overall design is not of interest to us but  
6 it's the use of all the styling and the detailing from our  
7 Tau model range.

8 So this round hatch here has very distinctive  
9 paneling, distinctive shape, and that's kind of replicated on  
10 the Chapterhouse hatch, similar kind of incised styling on  
11 it.

12 This grill set within an engraved panel line, and  
13 same grill here. It's not especially clear from this picture  
14 -- could we blow that top left Chapterhouse component up?

15 You can -- okay, yeah. That's -- on this component  
16 -- now I'm pointing at the Chapterhouse component from the  
17 top left of the page. You see it's a very characteristic  
18 shape of the engraving on the surface of the tank. And if we  
19 enlarge the Games Workshop tank component, you see that same  
20 style of engraving used there.

21 It's not the overall shape of that vehicle but it's  
22 the -- some of the -- and particularly the guns that are of a  
23 --

24 Q. Okay. Speaking of guns, I think we have one more gun to  
25 look at. If we could jump to the next exhibit, 1016.

1           And this is Page 2 of Exhibit 1016, and again, show  
2 us what we're looking at and any concerns about the taking of  
3 any original elements from Games Workshop.

4       A.   Okay. On the left-hand side we have a set of six guns;  
5 it's a photograph from Chapterhouse's website.

6           The right-hand side we have some pictures of space  
7 -- of Games Workshop's Imperial Guard models and an  
8 illustration of a Games Workshop Lasgun.

9           I've lost particularly -- of particular interest to  
10 us on this is -- it sounds crazy to us, but it's that detail  
11 there which we think is sort of characteristic of a Games  
12 Workshop Lasgun.

13       Q.   The end of the muzzle?

14       A.   The end of the muzzle, yeah. I'm pointing to the end of  
15 the muzzle break on the Games Workshop Lasgun illustration.

16           And it's -- imagine it's a sleeve with an angled  
17 side and a cut-out on one side, and it -- it lends the whole  
18 gun a specific kind of profile. That's what our issue is  
19 with these, because every one of the Chapterhouse guns  
20 illustrated here has that same kind of muzzle break.

21       Q.   Let's look at the next product on Page 3. And again,  
22 explain what -- what we're looking at and any concerns about  
23 the taking of anything original from Games Workshop.

24       A.   Okay. What we're looking at here is a thing called Hot  
25 Shot Lasgun Pack.



1           On the left-hand side we have the Chapterhouse kit,  
2 which is these two components. The upper component is the  
3 gun and the -- it has a long piece growing out of it, a long  
4 kind of thin structure which is shown running at a 45-degree  
5 angle down from the gun.

6           Next to this is actually a boxy shaped component.  
7 And I think the intention is that the boxy component sits on  
8 the back of the miniature. The gun is held in the  
9 miniature's hands and the long thin 45-degree angle thingy,  
10 or piece that's sticking out from it, wraps around the  
11 miniature and attaches the -- to the thing on its back, the  
12 backpack, implying that the gun is powered by the backpack.

13           Well, this is actually exactly the configuration of  
14 the thing that we -- that Games Workshop has on its Imperial  
15 Guard Storm Trooper models, is that they have a Lasgun that  
16 has a cabled attachment to a power pack that the model has on  
17 its back.

18           And the gun is a modified version of the Lasgun, so  
19 the Lasgun has the same characteristic muzzle break as we saw  
20 on the previous example. And again, on the Chapterhouse  
21 miniature you can see that it has that characteristic muzzle  
22 break on the front of it.

23 Q. The thing that's extending at 45 degrees down to the  
24 left on the Chapterhouse product, how does that get attached  
25 if it's at that -- to the bag? Is it bendable?

1 A. I don't know. I assume it must be, yeah. I mean, it  
2 would serve no other function.

3 Q. Is that common, to have resin products that bend that  
4 way?

5 A. I don't know.

6 Q. Okay. Let's look at one last --

7 A JUROR: I'm sorry to interrupt, but is there a  
8 chance we could take a quick break?

9 THE COURT: Yes, we can. That's fine. That's  
10 good. We'll break right now.

11 (Brief recess was taken.)

12 THE COURT: Okay. You can all have a seat.

13 Okay. Mr. Moskin, go ahead.

14 BY MR. MOSKIN:

15 Q. Okay. One last product. Let's look at Plaintiff's  
16 Exhibit 1017. And as we've been doing, can you tell us what  
17 we're looking at in Exhibit 1017 and if there are any  
18 concerns about whether Chapterhouse has taken anything  
19 original from Games Workshop's works?

20 A. Okay. We're looking at a typical summary of the  
21 exhibit.

22 Page 2, on the left-hand side is -- are two  
23 photographs showing what Chapterhouse Studios call Werecroc,  
24 and there's a photograph from the Chapterhouse website.

25 On the right-hand side we have photographs of Games

1 Workshop Lizardmen Kroxigor on the upper right-hand side. On  
2 the lower right-hand side we have some drawings from Games  
3 Workshop of Lizardmen weaponry.

4 Q. And this -- what fiction does this come from?

5 A. This is actually from the world of Warhammer Fantasy.

6 Q. Not Warhammer 40,000?

7 A. Not Warhammer 40K, no.

8 Of concern to us here are the shape, the anatomy,  
9 the general kind of size and the features of the Werecooc  
10 model on the left-hand side. Interesting that these  
11 photographs from Chapterhouse have -- it originally would  
12 show it as Lizardmen --

13 Q. I'm sorry, could you say that again? I didn't hear you.

14 A. Originally described as Lizardmen because these photos  
15 still have lizards-something on them.

16 But if -- I would like to draw your attention to  
17 the weapons of these two Chapterhouse miniatures. And as you  
18 can see, the weapons are of a very specific kind of  
19 character. They are a blocky, club-like character with black  
20 insets into the sort of weapon ends.

21 And what concerns us about these is that in Games  
22 Workshop's Warhammer Fantasy environment the Lizardmen have  
23 large bipedal monstrous characters called Kroxigor. The  
24 Kroxigors stand much taller than a man would stand and they  
25 wield gigantic club-like weaponry from big axes made of

1 stone. In fact, the drawings here illustrate what these  
2 things kind of look like.

3 On the left-hand illustration on the lower  
4 right-hand side you can see a thing which has a squarish boxy  
5 end with a row of spikes, actually held together with some  
6 banding which may be metal or some other material. And you  
7 can see this is very similar to the weaponry carried by the  
8 Chapterhouse model on the left.

9 The overall character, the styling of our Lizardmen  
10 range, is actually -- we call it mesoamerican. The Lizardmen  
11 live in the Warhammer version of South America, and the  
12 flavor of our Warhammer Fantasy Lizardmen race is actually  
13 kind of Aztec, Mayan, that kind of thing. It's sort of a  
14 whole fusion of images that are very redolent of that  
15 culture. So they don't have steel, so their weapons are made  
16 of obsidian, like a hard black stone.

17 Q. Did you say obsidian?

18 A. Obsidian. And as you can see here, he's got black stuff  
19 where these weapons are.

20 But it's the style of these weapons and it's the  
21 overall flavor of that that we -- sorry. It's the style of  
22 the weapons that is very similar to the Games Workshop's  
23 weapons.

24 And we think the Kroxigor -- sorry. We think the  
25 Werecock miniatures are actually copied from our Kroxigor

1 design there. Similar large humanoid lizard creatures that  
2 got big, kind of crocodile-like heads. You notice on the  
3 front of these models they've got that kind of -- they got a  
4 fleshy scaling. It's kind of a soft scaling, not rigid and  
5 hard, and that's very similar to the Games Workshop Kroxigor.  
6 And the backs of these miniatures is actually -- the  
7 implication on the sculpting is it's hard, bony -- harder  
8 kind of scaling, and it's the same on the backs of the Games  
9 Workshop models.

10 Another characteristic of the Games Workshop  
11 Kroxigor is they have golden banded jewelry, and there's some  
12 evidence of that on the Chapterhouse models. This model in  
13 particular has got some golden banding on its arms.

14 The Kroxigor have been in our Lizardmen range since  
15 we introduced them into the Warhammer in 1997. And I think  
16 these might be the second or possibly third iteration of our  
17 Kroxigor designs. And they are all fundamentally the same  
18 kind of idea. And as they've grown we've added more texture,  
19 more detail to them. But the early ones -- our early  
20 Kroxigor miniatures were -- had -- were smoother and less  
21 ornate. In fact, they looked pretty much exactly like these  
22 models do.

23 Q. Okay. Does Games Workshop contend it owns all -- some  
24 sort of exclusive rights in lizards?

25 A. No, we don't.

1 Q. Does it contend it owns exclusive rights in mesoamerican  
2 weapons?

3 A. No.

4 Q. Is there something about the combination of those things  
5 that make the Kroxigor distinctive?

6 A. Well, we think that's a pretty unusual combination for  
7 our Lizardmen range, to have that kind of styling. I mean,  
8 there are how many cultures on the planet earth and how many  
9 different ways through history have human beings altered  
10 their environment and made different kinds of things.

11 So we always try to give every -- every kind of  
12 race its own unique flavor and its own unique style. And in  
13 the case of Lizardmen we chose to make them feel very much  
14 like they were from that sort of mesoamerican culture and  
15 style. And we think that's pretty distinctive.

16 Q. And, to your knowledge, do real lizards have hands like  
17 that?

18 A. I don't think so. And they don't wave big clubs around  
19 either.

20 Q. Now, let's change gears. And to draw to a conclusion of  
21 your testimony, can you tell me -- you know, we've looked at  
22 a lot of products. Do all these Chapterhouse products, do  
23 they harm Games Workshop in any way?

24 A. Yes, we believe they do.

25 Q. And how so?

1 A. Well, we -- I can't give any evidence of the harm they  
2 might do to, say, ourselves because that would be almost  
3 impossible to track down. But we actually live by our  
4 reputation. We take enormous pride not only in the standards  
5 and the style -- the quality of the products that we produce  
6 and the way that they're manufactured and the way they are  
7 designed. We actually take huge pride in the originality of  
8 our designs.

9 I've been working for Games Workshop for 31 years  
10 and counting and I have no intention of stopping any time  
11 soon, I can tell you that. And actually, in all those years  
12 it's been the first and foremost thought in our heads every  
13 time we approach a design project -- every single time we  
14 approach it we are looking to do something original, creative  
15 and spectacular for our customers. And that's been the  
16 entire sort of essence of everything we do.

17 And, sure, there are things in our range that we  
18 can't claim to be completely original. That would be insane  
19 and stupid of me to even claim that. But there's actually a  
20 mass of stuff that we have sweated -- I would say blood,  
21 sweat and tears but it's not quite that important. But, you  
22 know, I mean, it's actually stuff that we really care about  
23 and we really feel offended by people copying our models,  
24 copying our IP, using our IP illicitly, using it without  
25 permission.

1 Q. What do you mean by IP?

2 A. Our intellectual property. Taking all that stuff that  
3 we've invented, that we've created, that we've put together  
4 and using it. I say it makes us jolly cross indeed, if I can  
5 use that English expression.

6 Q. Does it affect your relationship with, for example, your  
7 licensees?

8 A. Yes, it does.

9 Q. How so?

10 A. We've -- gosh! I don't know when the first time we  
11 licensed somebody to do a computer game based on 40K or on  
12 Warhammer, but it's been an ever present part of the Games  
13 Workshop offer since the early 1990s.

14 And actually, big companies have paid us a lot of  
15 money to have access to our intellectual property. And not  
16 little companies, not fly-by-night little games companies or  
17 little computer companies, but I mean big -- the top names in  
18 the business have actually come to us and given us money to  
19 use our intellectual property because they understand the  
20 value of it. They can see the work that we've put into it  
21 and the investment we've made in it.

22 Actually, so, yeah, this kind of stealing or  
23 illicit use of our IP is hugely threatening to our  
24 relationship with those big companies and those other  
25 companies doing other things. And we -- smaller businesses,



1 too, companies like Fantasy Fly and Fantasy Flight Games, who  
2 we license board games to and card games.

3 And I could go on about that -- yes, I think this  
4 is some -- the reason why we can't just sit back and let this  
5 happen. We have to challenge it, we have to draw the line  
6 and say, no, we are not prepared to take this. We must  
7 ensure that our intellectual property is protected and is  
8 only used legitimately.

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Merrett - direct

1 Q Does it affect your own product development?

2 A Yes, it does.

3 The Tyrannid Termagant kit I'm -- I hadn't even  
4 realized this myself until I spoke to Jes Goodwin only this  
5 week whilst we've been in Chicago, and he told me that the  
6 entire design project had been derailed by what Chapterhouse  
7 had done and that our initial design plans had to be  
8 restructured in order for us to actually create something  
9 unique and distinctive. Because they've spoiled what we've  
10 done. They've spoiled our plans. They've put a spoke in our  
11 wheels by doing it and unfairly used our IP, I think.

12 Q What do you mean by that?

13 A Well, without permission. I mean, Mr. Villacci might  
14 claim to be a fan of our products. He might claim to be an  
15 actual -- a hobbyist. He might claim to be someone who  
16 actually understands what it is to collect and play our games.  
17 But if he had any notion, any inkling of what it means to be a  
18 fan, he'd know darn well that every single thing we put in  
19 every single one of our books, every single one of our codex,  
20 every unit, every character, every model, every vehicle is a  
21 model that we intend to make and sell.

22 So when you hear his counsel telling you, oh, there  
23 are gaps, he's doing our fans a favor, let me tell you, he's  
24 not doing our fans a favor. He's lining his own pockets at  
25 our expense. Where's his 31 years of development of our IP?

Merrett - cross

1 Where is it? He can't show you any creative of his own  
2 creations.

3 MS. HARTZELL: Objection, narrative, your Honor.

4 THE COURT: Let's ask another question at this point.

5 MR. MOSKIN: I think we can conclude the testimony  
6 now.

7 THE COURT: Okay.

8 MR. MOSKIN: I have no further questions for this  
9 witness.

10 THE COURT: All right. Ms. Hartzell.

11 MS. HARTZELL: Good afternoon, Mr. Merrett.

12 My name is Julianne Hartzell, and I'm one of the  
13 attorneys for Chapterhouse.

14 Your Honor, may we approach with the exhibit binder?

15 THE COURT: That's fine.

16 CROSS EXAMINATION

17 BY MS. HARTZELL:

18 Q So, Mr. Merrett, you spent most of the day testifying  
19 about the elements of the Games Workshop products that you  
20 believe are original. You were not personally a designer on  
21 any of the images that were shown this morning, were you?

22 A I don't know if I was personally involved. What do you  
23 mean by that?

24 Q Did you draw any of those pictures that you showed us  
25 today?

Merrett - cross

1 A I drew some of those pictures that we've seen today, yes.

2 Q Which ones?

3 A The tactical squad markings from the Insignium Astartes  
4 book, for example.

5 Q And what others?

6 A Without going through the whole list again, I couldn't  
7 say. But, no, generally speaking, my role at Games Workshop's  
8 not to draw the pictures or to sculpt the models.

9 Q So the vast majority of the products you testified about  
10 today you were not involved in designing?

11 A I was involved in designing, yes, because I've been head  
12 of intellectual property for the last 13 years at Games  
13 Workshop, and for the previous 27 -- no, 17 years I was the  
14 miniatures design manager in the studio and production -- had  
15 production and design management responsibilities, so  
16 virtually everything you've seen I've had an impact and  
17 involvement and actually had some responsibility for in all  
18 that time. So, yes, I have been involved in the design of  
19 virtually all of those products.

20 Q In the course of this litigation Games Workshop identified  
21 the names of the designers for each of the products that are  
22 at issue here today, right?

23 A It did, yes.

24 Q And your name was not included on the vast majority of  
25 those products?

Merrett - cross

1 A As I just told -- I just told you that my role was  
2 actually to manage the design, manage the designers.

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

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

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

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

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

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

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

24 A Can you qualify what you mean by rely on?

25 Q I'll rephrase it.

Merrett - cross

1           You can't state -- you can't testify as to what  
2 materials the designers looked at for any of these products,  
3 to design any of the products that are allegedly infringed  
4 here today?

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

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

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

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

17           Do you recall testifying about this product?

18    A    Yes.

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

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

24    Q    On the right-hand side?

25    A    Yes.

Merrett - cross

1 Q And you testified that it was fantastical?

2 A Slightly improbable as well, yes.

3 Q And not something that anyone would build?

4 A To my best of my knowledge, I can't imagine why anyone  
5 would build one.

6 Q Chapterhouse asked Games Workshop to produce reference  
7 materials in its possession in connection with this lawsuit.  
8 You're aware of that, right?

9 A Yes.

10 Q And you know that one of the books that was produced is a  
11 book called Arms and Armor?

12 A It may very well be. I don't know.

13 Q And is that a book that you've ever seen?

14 A Can't recall.

15 MS. HARTZELL: May I approach the witness, your  
16 Honor?

17 THE COURT: That's fine.

18 BY MS. HARTZELL:

19 Q Is that a book that you've seen before?

20 A No.

21 MS. HARTZELL: May I retrieve the book?

22 THE COURT: That's fine. People don't have to ask  
23 permission to go up there and back. Just go. If I think  
24 you're hanging around up there too long, I'll let you know.

25 BY MS. HARTZELL:

Merrett - cross

1 Q You were asked earlier about the creation of the Tau,  
2 correct?

3 A Correct.

4 Q And the Tau were created in 2011? Is that your testimony?

5 A No. Tau were created in 2000 and released in 2001.

6 Q You testified that the Tau race presented a departure in  
7 style from the already existing 40K races; is that correct?

8 A Yes.

9 Q So the designers of the Tau race did not draw inspiration  
10 from the look -- for the look of the Tau from within Games  
11 Workshop?

12 A That's correct. They looked for it inside their own  
13 imaginations.

14 Q You also testified that you wanted to look very sci-fi,  
15 correct?

16 A Yes, probably.

17 Q And by sci-fi you were referring to science fiction?

18 A As popularly understood, yes.

19 Q And specifically science fiction created by third parties?

20 A No, I didn't say that.

21 Q It was not any science fiction that existed within the Tau  
22 universe -- or within the Warhammer 40K universe, you've  
23 already testified, correct?

24 A Yes. It is perfectly possible for us to invent something  
25 from scratch, you know. That's our stock in trade. That's



Merrett - cross

1 what we do for a living.

2 Q So you don't believe that any external robots were  
3 considered by any designer of any Tau product?

4 A Not to my knowledge, no.

5 Q But do you have knowledge what they referred to?

6 A Well, they didn't refer to anything. What we did is we  
7 generated concept drawings, and the guys that were working on  
8 the project brainstormed concepts of -- for the Tau idea.

9 Q And none of them had ever seen a robot?

10 A Well, that's preposterous to suggest, isn't it?

11 Q It is.

12 A Yeah, of course it is.

13 Q So the designers could have drawn inspiration from  
14 existing robots?

15 A They could have done. They could have drawn inspiration  
16 from the clouds in the sky.

17 Q So you can't say which elements of the Tau race were  
18 original?

19 A To the best of my knowledge, all the elements of the Tau  
20 race -- of the Tau mortals were original.

21 Q But we've already established that you don't have  
22 knowledge of what the designers looked to in creating their  
23 design?

24 A No, no. A lack of knowledge doesn't imply a positive  
25 affirmation of another fact. That's not logical. Just

Merrett - cross

1 because I don't know that they didn't look at any -- cause I  
2 can't say they didn't look at anything else doesn't mean that  
3 they did look at something else. It just means that I don't  
4 know whether they looked at it or not.

5 Q So you don't know what was original?

6 A The brief was to create original ideas, and our guys  
7 generated concept work. I've got no way of absolutely  
8 completely one hundred percent knowing if those -- if the  
9 elements in the conceptual work that they did were original,  
10 but that was the objective. That was the brief. That's what  
11 they were all actually working towards doing. And that's what  
12 they all said they were doing.

13 So to the best of my knowledge, that's what we got  
14 to. The attempt was to create something new and original.

15 Q And you described the Tau battle suit as being in the  
16 shape of a robot, correct?

17 A Can't quite recall. Possibly. But it is clearly in the  
18 shape of a robot, yes.

19 Q And Chapterhouse does not sell a robot figure, right?

20 A No, Chapterhouse does -- not to my knowledge, no. I have  
21 not looked at their website today, so I couldn't say for sure  
22 if they've introduced one overnight possibly.

23 Q And the idea for the Tau battle suit was that a warrior  
24 was inside of a vehicle that looks like a robot?

25 A It's called a battle suit. The idea is it's a

Merrett - cross

1 technological suit that the warrior wears. Quite -- I don't  
2 know how you'd describe it. You could describe that lots of  
3 different ways, couldn't you? You could describe it as a  
4 vehicle and he's the pilot of it, or the alien that's making  
5 it work is a pilot, or it's a suit they're wearing. They're  
6 called battle suits, so my assumption is that inside he's  
7 making the arms move by moving his arms around. I might be  
8 wrong, though.

9 Q But that idea, the idea of having a warrior inside a robot  
10 battle suit, that's not original to Games Workshop?

11 A No, that's not original to Games Workshop.

12 Q And the idea behind the Eldar was Elves in Space? You  
13 testified to that yesterday?

14 A Yes.

15 Q And you also testified about in the development of  
16 Warhammer 40K the creation of rankings within chapters, and  
17 you said, "it's intended to feel like the kind of organization  
18 that a real military unit might have," correct?

19 A Yes. That's correct.

20 Q So you were aware of real military units when you decided  
21 to incorporate that idea into Games Workshop's Warhammer  
22 40,000?

23 A Yes, of course.

24 Q And you drew inspiration from the hierarchy of real  
25 military units?

Merrett - cross

1 A Yes. I would say that would be fair.

2 Q And at the time you were working to create the Space  
3 Marines, you were familiar enough with the military to know  
4 that they use a hierarchy?

5 A Yes.

6 Q And when you were designing products for Warhammer 40K,  
7 you were familiar with the military's use of tanks?

8 A Of course.

9 Q And Games Workshop's tanks are intended to feel like the  
10 kind of tanks that a real military unit might have?

11 A No. They're intended to be fantastical, other worldly,  
12 bizarre, strange, futuristic interpretations of what military  
13 tanks could be.

14 Q But did you draw inspiration from real tanks used by the  
15 military?

16 A I wouldn't say that deliberately, but, yes, I think that's  
17 fair to say, inspiration from.

18 Q And that would be true for guns as well, that you drew  
19 inspiration from real world guns?

20 A Yes, both things would be true.

21 Q Did you -- and you referenced real guns when designing  
22 products for Games Workshop?

23 A No. Not especially, no.

24 Q You don't believe that any designer in Games Workshop ever  
25 looked at a picture of a real world gun when --

Merrett - cross

1 A I didn't say --

2 Q -- designing guns --

3 A I didn't say that.

4 Q -- for Games Workshop?

5 A What you asked me is if they drew references from real  
6 guns.

7 Q I asked if they referenced any real guns.

8 A Asked if they referenced real guns. What do you mean by  
9 reference? Qualify the question.

10 Q Look at during the design process.

11 A I can't swear to that. I can't say that under oath.

12 I know our designers looked at guns, and I know  
13 they're involved in the design process. But when they're  
14 designing a thing, I can't testify that they looked at guns or  
15 they looked at anything whilst they were designing that thing  
16 because that's -- I don't know what they looked at whilst they  
17 were designing it.

18 Q But do you know that the designers were aware of real life  
19 guns when designing guns for Games Workshop?

20 A Yeah. Our designers are clued up chaps, and they are  
21 aware of such things, I suppose. It's impossible to not be  
22 aware of things like guns and robots and tanks and military  
23 formations.

24 Q So would you go so far as to say that they are  
25 knowledgeable about weaponry?

Merrett - cross

1 A No, I wouldn't go that far because I don't think they all  
2 are knowledgeable about weaponry.

3 Q In your role as head of intellectual property, you've  
4 reviewed documents in relation to this case?

5 A Yes.

6 Q And in the five years that Chapterhouse has been in the  
7 marketplace selling products, you have not personally seen any  
8 documents exhibiting confusion between Chapterhouse Studios  
9 and Games Workshop?

10 A No.

11 Q And in the five years since Chapterhouse has been in the  
12 marketplace selling products, you were not aware of any  
13 product sold by Chapterhouse being returned to Games Workshop  
14 because the customer was confused?

15 A I'm not aware of that, no. But then I'm not aware of any  
16 of the things that get returned as product -- is returned to  
17 us as -- for whatever reason because that's not what the head  
18 of intellectual property gets to do. Customer service  
19 departments ran the business, deal with all that stuff.

20 Q You don't think you would hear about it as the head of  
21 intellectual property if someone else's product was returned  
22 to your company?

23 A Not necessarily, no.

24 Q Even someone whose company you were involved in litigation  
25 with?

Merrett - cross

1 A No. The people that are in the business who are aware of  
2 and are familiar with the litigation case are the people that  
3 are coming over here for testimony, the people that you  
4 deposed from Games Workshop and the small group of people that  
5 work in our legal department and so some senior managers, but  
6 most of the people at Games Workshop know very little about  
7 the lawsuit.

8 Q You mentioned when you were discussing concerns about the  
9 quality of products sold by Chapterhouse as a potential cause  
10 of harm to Games Workshop. Have you ever received any product  
11 from a customer complaining that it was a poor quality Games  
12 Workshop product that was in fact a Chapterhouse product?

13 A No.

14 Q And you're here today testifying as an employee of Games  
15 Workshop?

16 A Yes.

17 Q And you've been employed there for more than 30 years?

18 A Yes. I said I started working for Games Workshop in  
19 September 1981.

20 Q And you're a senior member of the Games Workshop executive  
21 management team?

22 A Yes, I am.

23 Q And in that job you have a broad responsibility for all of  
24 the people that work in the business?

25 A A very broad responsibility, yes.

Merrett - cross

1 Q And you are also the author of the text of the Horus  
2 Heresy books?

3 A Of the Horus Heresy Collected Vision books, Collected  
4 Visions book.

5 Q And you are -- you were involved in the decision to bring  
6 this lawsuit?

7 A Yes.

8 Q And since the lawsuit was filed you've been actively  
9 involved in overseeing the litigation?

10 A No.

11 Q You're testifying here today for your employer of more  
12 than 30 years as part of your job?

13 A Sorry. Can you repeat that again so I can make sure I --

14 Q You're testifying here today for your employer of more  
15 than 30 years as part of your job?

16 A I'm testifying here because I'm a key witness for Games  
17 Workshop because of my -- yeah, I suppose because of my long  
18 experience with the business and what we do and how we create  
19 our intellectual property and the products and such like.

20 Q So your testimony here is part of doing your job as the  
21 head of intellectual property?

22 A I think it's an extension of my job.

23 Q You learned about the existence of Chapterhouse in 2008,  
24 correct?

25 A You know, I can't remember when I became aware of



Merrett - cross

1 Chapterhouse, to be honest. It might have been prior to 2008.

2 Sorry. That's silly of me to say that. I honestly  
3 can't remember when I became aware of Chapterhouse. Honestly  
4 can't remember the -- it seems like we've known about  
5 Chapterhouse forever, but of course that --

6 Q But you waited until 2010 to file the lawsuit?

7 A Waited. My understanding is that our small but very  
8 hard-working legal team had been working on the case for quite  
9 a long time before that.

10 Q But you waited to file it until December 21st of 2010?

11 A As I said, my understanding is that the team had been  
12 working on the case for a long time up to that point, but I  
13 don't know the specifics of why that date and why that time.

14 Q You also testified as part of your direct examination that  
15 word of mouth marketing is very important for Games Workshop,  
16 correct?

17 A It certainly is, yes.

18 Q And that includes online forums?

19 A They are a facet of word of mouth. We don't deliberately  
20 cultivate forums or blogs such because we don't need to  
21 because so many of our fans do that -- use those places to  
22 talk about the products and to talk about that stuff, so we  
23 don't actively play a part in interacting with them.

24 Q At some point Games Workshop owned or ran its own online  
25 forum, correct?

Merrett - cross

1 A At various times. We've had lots of different ones in  
2 different parts of the world.

3 Q But you do not currently have any?

4 A No. We've stopped doing them.

5 Q And at one point Games Workshop had a Facebook page?

6 A It still has Facebook pages.

7 Q Do Games Workshop employees post on Internet forums?

8 A The vast majority of Games Workshop staff are not  
9 permitted to post on forums or run blog sites or contribute to  
10 those. We give permission to certain people for certain  
11 purposes to do it, but generally speaking we ask -- I think we  
12 instruct our staff not to.

13 I'm not sure if it's actually a contract -- part of  
14 the contract, but every one of our Games Workshop's hobby  
15 center managers is expected to run a Facebook site or has to  
16 run a Facebook site for the store that they actually run. So  
17 we have approximately 400 Facebook sites, one for each one of  
18 the hobby centers. And those guys post on the Facebook sites  
19 because, obviously, clearly that's what they're -- that's what  
20 they use. They use -- that's what they do.

21 Q For the forums run by third parties, those also include  
22 discussions of other miniature companies, correct?

23 A Some of them do, yes.

24 Q And those miniature companies include companies that make  
25 miniatures for worlds other than Warhammer 40K?

Merrett - cross

1 A I believe they do, yes, some of them.

2 Q Let's talk more specifically about some of the products  
3 that you've accused of infringement. Let's look at Exhibit  
4 PEX 690. This is the website page that -- from Chapterhouse's  
5 website where the Tau Heavy Walker is advertised, correct?

6 A Looks like it.

7 Q And you have brought a trademark infringement claim based  
8 upon this advertisement, correct?

9 A I think it's based on the fact that it was called a Tau  
10 Super Heavy Walker before. As you just mentioned it, it's a  
11 Tau.

12 Q So it is not called a Tau Heavy Walker?

13 A Not anymore. I think subsequent to us actually launch the  
14 website I think Chapterhouse made changes to the website and  
15 they've taken off the word Tau.

16 Q So since the website has been changed, you no longer have  
17 a trademark infringement claim against the current website?

18 A You'd have to talk to our trademark experts.

19 Q I believe you testified regarding some of the trademarks  
20 that were highlighted and identified and the concerns you had  
21 about the names that Chapterhouse uses in its -- in its --  
22 that are identified in the claim chart, right?

23 A Yes.

24 Q So you have reviewed, as you said, nearly every page of  
25 Chapterhouse's website, right?

Merrett - cross

1 A Yes.

2 Q And you are the head of intellectual property?

3 A Yes.

4 Q But you can't identify any trademark claim with respect to  
5 this page?

6 A That's right, because there's quite a lot of information  
7 on that website, and there's quite a lot of information about  
8 the copyrights and the details of the miniatures and the  
9 details of the history of our design and production and all  
10 the other things, and so actually that's why we've got  
11 different witnesses to talk about different things. And  
12 Mr. Jones is our witness to talk about trademarks and  
13 specifics about the trademark infringement claims.

14 Q I'll ask you a couple of specifics about the things that  
15 you testified about.

16 Turning to Plaintiff's Exhibit 1020 at page 52. When  
17 you were discussing the generic power armor shoulder pad, you  
18 mentioned that the name of the product was a concern for you?

19 A Yes.

20 Q But you have no trademark claim for power armor, correct?

21 A I don't know if we do or not.

22 Q Well, you testified that the yellow highlighting  
23 identifies the Games Workshop.

24 A Oh, okay. Okay. So the trademarks were considered by  
25 Hero Space Marine and Tactical Space Marine.

Merrett - cross

1 Q In the generic power armor shoulder pad product?

2 A In the description of that product, 53.

3 Q 54 is the generic power armor shoulder pad. That's the  
4 product I'm asking you about.

5 A Yeah. You just mentioned the highlighted yellow stuff.

6 Q Yes, that's my point. There's no highlighted yellow stuff  
7 in item 54, correct?

8 A The reason why I said the name's of concern because it  
9 actually is a direct reference to our power armor and the  
10 shoulder pad. And if you want to go, okay, so, if I need to  
11 understand what that product is, the label on it really,  
12 hopefully, provides that information for me and makes me go,  
13 oh, what other power armor shoulder pads do I know and where  
14 are they sitting, and that's why the name is a concern.

15 Q But you're not claiming that you own a trademark in power  
16 armor, right?

17 A I don't think we are claiming that at all, no.

18 Q So when you testified this morning about items in the  
19 names that were of concern to you, you don't know whether or  
20 not you were asserting that you have a trademark in those  
21 names?

22 A I'm not personally, no, because I'm not testifying on the  
23 trademark stuff. Sorry. Sorry. Yeah. Some of the names are  
24 of concern because they're trademark infringement. Some of  
25 the names are of concern because they're actually our names.

Merrett - cross

1 Whether or not there are trademark or not, they're actually --  
2 they're identifying -- they're helping us to identify which  
3 Games Workshop products are actually we think are infringe --  
4 are being infringed.

5 Q But if you don't have trademark rights in the name, then  
6 you don't have any legal remedy for anyone -- or even a basis  
7 for a legal claim for anyone else using those words, right?

8 A Well, technically I have a copyright claim in it if it was  
9 using our names in a form that was -- but I'm not sure  
10 that's -- that's by the by, isn't it? There's no point going  
11 down that road. No, I suppose not.

12 Q So you have no basis to complain that Chapterhouse has  
13 used the word power armor in this product title?

14 A No. That's why it's not highlighted in yellow.

15 Q But you brought it up as a concern even though it's not  
16 relevant to a trademark claim?

17 A Oh, okay. I concede that. Yes. Sorry.

18 Q And you were testifying about the copyright claims,  
19 correct?

20 A Yes.

21 Q But whether that word was used does not change the design  
22 of the Chapterhouse product, correct?

23 A No. But sometimes you have to look at -- you look at  
24 things in the round, don't you, though? It's that  
25 accumulation of the name, the specifics of the piece, the

Merrett - cross

1 presentation, the associated text all point towards a Games  
2 Workshop product.

3 Q But it's not --

4 A And it's the collection of all -- it's the accumulation of  
5 all that information.

6 Q So if you look only at the product itself, for those  
7 products where you brought in the concerns about the name, if  
8 you look only at the product itself, that's not sufficient to  
9 establish a claim?

10 A No, I didn't say that. I said it's the accumulation of  
11 all those things makes the product the thing that -- it  
12 highlights the importance of the product to us. It's what  
13 makes us focus on those products and look them, isn't it?

14 Q But that's not an element of the copyright infringement  
15 analysis, whether you think it's important or not.

16 A We're not claiming that it is, though.

17 Q You're not claiming copy infringement with respect to --

18 A Sorry. Trademark infringement.

19 Q I'm asking you now about the copyright infringement. You  
20 testified about the names that were used. But whether or not  
21 a name is used does not make the product that's accused of  
22 infringing any more or less similar to the image that you've  
23 shown on the right-hand side?

24 A That's correct.

25 Q And that's the test for copyright infringement, whether or

Merrett - cross

1 not the products are substantially similar?

2 A Well, in this case we think the product is substantially  
3 similar.

4 Q But for -- in making that conclusion, the name of the  
5 product played no role in that analysis, right?

6 A In the analysis, no, but in the discovery, yes.

7 Q So when you testified this morning for copyright purposes  
8 about the similarities between the products, the mentions of  
9 the names that were used in the product descriptions are  
10 irrelevant to the analysis of whether the products are  
11 substantially similar?

12 A That's correct.

13 Q Let's turn now to the mycetic spore, Exhibit 47 at page  
14 56.

15 You testified earlier that this exhibit, a page from  
16 the Tyranids Codex is inside of a book, right?

17 A Yes.

18 Q And the book's about a hundred pages in length?

19 A I think it should be 96 pages in length.

20 Q Impressive.

21 And nothing on the cover of this book mentioned the  
22 mycetic spore, correct?

23 A Not on the cover, no.

24 Q And that name does not appear anywhere on the outside of  
25 the book?



Merrett - cross

1 A I can't testify to that without looking at the book and  
2 reading all the text to see because some books of our books  
3 have a substantial amount of text on the back, don't they. At  
4 least it's conceivable it could be mentioned. I don't think  
5 it is, but it could be.

6 MS. HARTZELL: Is it possible to pull up the last  
7 page of this exhibit? Thank you.

8 BY MS. HARTZELL:

9 Q Games Workshop does not sell a mycetic spore product,  
10 correct?

11 A Not currently.

12 Q And the only reference that you've identified as being  
13 your representation of a mycetic spore is the image that is  
14 shown on the screen, correct?

15 A Yes. To the best of my knowledge that's correct.

16 MS. HARTZELL: And that's Exhibit 47 at GW0001424 for  
17 the record.

18 BY MS. HARTZELL:

19 Q As described on this page, you testified that the mycetic  
20 spore is a vehicle that has a living being inside it, correct?

21 A I'm not sure that's what I testified to.

22 Q You testified that in the photograph shown on the  
23 right-hand side, the creature that was riding inside the  
24 mycetic spore was emerging from the spore itself, correct?

25 A That one, yes.

Merrett - cross

1 Q Okay. And on the right-hand side of the image you can see  
2 the shell of the mycetic spore, correct?

3 A Of the remnants of it after it smashed into the ground.

4 Q The exterior of the mycetic spore?

5 A I don't know. I think it's one that smashed into the  
6 ground and the thing is climbing out of it.

7 To the left of it there's another one that's kind of  
8 cracked open like an egg.

9 Q But you've not identified either of those on the ground as  
10 being the ones that are infringed, correct?

11 A No. It was the one flying through the air above the  
12 creature shown.

13 Q So not the one in the foreground that's close up that we  
14 can see?

15 A No, because that's a smashed up, broken one that's crashed  
16 into the ground.

17 Q And the remnants that you can see on the side are linear?  
18 Would you say they are straight pieces?

19 A I think the artist was trying to imply it was kind of like  
20 wet goo.

21 Q What's your basis for that understanding?

22 A Because I just don't -- after looking at it, thinking it's  
23 kind of indistinct, isn't it, and I think it looks like wet --  
24 it looks like it's -- the way that it's stretching and stuff  
25 around the creature's legs, I just thought it was -- I've

Merrett - cross

1 always assumed it was supposed to be kind of like horrible  
2 sort of sticky, sticky goo.

3 Q So you agree that the sole image that is your basis for  
4 copyright infringement is rather indistinct with respect to  
5 the design of the mycetic spore?

6 A It is rather indistinct, yes.

7 Q And you have seen the Games Workshop's mycetic spore  
8 product, correct?

9 A No, because we haven't made one.

10 Q Oh, I apologize.

11 You've seen the Chapterhouse mycetic spore product,  
12 haven't you?

13 A It kind of helps if you know which products are which, of  
14 course, which side's made them.

15 That's a Chapterhouse mycetic spore product.

16 Q It is.

17 A I was handed one in deposition. I wasn't particularly  
18 fond of handling it because I don't know what the resin's made  
19 of.

20 Q But you have seen it before?

21 A I have, yes. Just the once.

22 MS. HARTZELL: I'm going to place it on the ELMO.

23 THE WITNESS: Don't smash it down because it will  
24 turn into goo.

25 MS. HARTZELL: That seems likely.

Merrett - cross

1 THE COURT: Yeah, I wasn't particularly optimistic  
2 that putting it on the ELMO is going to get you anything.

3 MS. HARTZELL: Yeah, nothing is happening, so I guess  
4 I'll hold it up.

5 BY MS. HARTZELL:

6 Q On the Chapterhouse product you see an oval opening on  
7 three sides?

8 A Yes.

9 Q Where can I find that in the image that it is allegedly  
10 copied from?

11 A If you close your eyes and scrunch your face up, you might  
12 be able to image there's one there, but you can't see it, can  
13 you?

14 Q On the outside of the Chapterhouse product are rounded  
15 fist-like structures. Do you see those?

16 A Yes.

17 Q And where can I find that on the Games Workshop allegedly  
18 infringed picture?

19 A There are indistinct lumps on the picture that suggest  
20 Tyranid detail, and Tyranid detail being that horrible  
21 combination of fleshy, lumpy, strayed bits and tubing and  
22 stuff.

23 Q Do you still have your laser pointer?

24 A I do, yes.

25 Q Could you point to where those are on the spore?

Merrett - cross

1 A Well, yeah. I mean, this is a -- it's fuzzy and  
2 indistinct, but that's what the artist was referring to.

3 Q You're not the artist?

4 A No.

5 Q So you don't know what the artist was referring to?

6 A You know that's what they were referring to because that  
7 was their instruction, refer to Tyrannid detail and information  
8 on it.

9 Q So it's your position that Chapterhouse copied that image  
10 to create this work?

11 A If that -- yeah. I've got to admit it's not the strongest  
12 of our claims, but if our picture didn't exist and if this  
13 thing didn't exist, that wouldn't exist. So Chapterhouse was  
14 inspired by this picture. It looked at this picture, and it  
15 made a model to fulfill that thing. That's what our case is  
16 there.

17 Q But it didn't copy that picture to make this?

18 A Well, I don't know, did it copy that picture to make it?

19 Q Is there any basis for you to allege that it copied that  
20 picture to make this?

21 A Yeah, because this is a picture, a vague and indistinct,  
22 of a Tyrannid -- of a Tyrannid thing falling from the sky that's  
23 roughly the size of an American softball and if it were scaled  
24 to the size of our games, and that's what that is. That's the  
25 basis of our claim.

Merrett - cross

1 I say it's not to strongest claim that we've got, but  
2 that's -- if our picture didn't exist, if this page in our  
3 codex didn't exist, that model would not exist.

4 Q You talked about the difference between referencing and  
5 copying. Is that difference that referencing is only using  
6 the underlying idea?

7 A I don't -- sorry, I can't remember making that distinction  
8 between referencing and copying.

9 Q When we were talking about whether or not Chapterhouse  
10 copied this product.

11 A Oh, I see. Sorry.

12 Q They referenced it.

13 A Now I don't know how I'd describe it. They looked at this  
14 picture and they make a model to -- to not -- not look like  
15 that, like our picture, I suppose.

16 Yeah, as I said, it's not our strongest copyright  
17 case, but that's --

18 Q Turning to PEX 1010 at page 31, this is a chart that you  
19 testified about that identifies all of the shoulder pads that  
20 you accuse of infringement in this case, the whole multi-page  
21 chart, right?

22 A Yeah, we -- yeah, we went over this very briefly, didn't  
23 we?

24 Q For the products on this page, you've not identified any  
25 Games Workshop product that includes the decorations that

Merrett - cross

1 appear on these shoulder pads, correct?

2 A That's correct.

3 Q And that's because you don't allege that Chapterhouse  
4 copied surface designs for these products?

5 A That's certainly true of the products on the right-hand  
6 side. I'm not sure about the ones on the left. I don't think  
7 they are ones that we're claiming that.

8 Q And the same is true, turning back to page 30, correct?  
9 For these products Games Workshop has not identified any  
10 shoulder pad that includes a surface design that you allege  
11 infringes the design -- is infringed by the design of these  
12 products?

13 A A surface design, that's correct.

14 Q And turning back to page 27 of this exhibit, you  
15 identified on the left-hand side a Chapterhouse product and on  
16 the right-hand side two Games Workshop images from books,  
17 correct?

18 A Correct.

19 Q And you believe that the products -- the product on the  
20 left-hand side is copied from the images from the books on the  
21 right-hand side?

22 A I can't testify that they were directly copied from those  
23 specific images, but they're copied from -- those are the best  
24 images we could find that corresponded to that piece, so our  
25 inference is those were the pieces that were copied from.

**Merrett - cross**

**1 Q. So, the Chapterhouse product is not a direct copy of either**  
**2 of the book images on the right-hand side?**

**3 A. I didn't say that. I can't testify to that. I'm just**  
**4 suggesting that they're copied -- I think they're copied from**  
**5 those images.**

**6 Q. But it's not a literal copy in that every detail of it is**  
**7 exactly?**

**8 A. Not literally every detail because there's all kinds of**  
**9 extraneous details on --**

**10 Q. On which?**

**11 A. On the Games Workshop pictures.**

**12 Q. So, the pictures, the Games Workshop pictures, include a lot**  
**13 more imagery than what is shown in the Chapterhouse shoulder**  
**14 pad?**

**15 A. Yes. But there are other things that are stuck on the**  
**16 shoulder pad part of the shoulder pad.**

**17 Q. So, it's only a small part of the images from the books that**  
**18 you allege is substantially similar to the Chapterhouse product?**

**19 A. No. I think it's the shoulder pad that's illustrated in the**  
**20 picture. I mean, if you took the extra bits of stuff that's**  
**21 stuck on there, there's artistic licenses and sort of extra**  
**22 details and things on them making them come to life.**

**23 Q. So, looking at the picture on the top right-hand side**  
**24 identified as PX969 and GW018575, you are taking a position**  
**25 that the Chapterhouse product is substantially similar to the**



**Merrett - cross**

**1 shoulder pad shown in that picture?**

**2 A. Yes.**

**3 Q. And you are taking the same position with respect to the**  
**4 lower picture?**

**5 A. Yes. Well, what that shows is the top picture, as I recall,**  
**6 I said was the concept art that John Blanche had done for that**  
**7 style of shoulder pad, and the lower picture is a fully rendered**  
**8 derivation from that concept drawing.**

**9 Q. The style of this armor is the Roman era style, correct?**

**10 A. There is no Roman era.**

**11 Q. Of armor? There's no Roman armor?**

**12 A. There is on Romans, but not on Space Marines. We don't call**  
**13 it Roman era.**

**14 Q. But there did exist armor Romans wore.**

**15 A. Well, apparently so. They conquered the known world.**

**16 Q. And the style of that armor includes multi-level shoulder**  
**17 pads?**

**18 A. Possibly, yes. I mean, the Roman era lasted a long time,**  
**19 and they had all manner of different kinds of armor.**

**20 Q. And --**

**21 A. Which particular Roman armor are you talking about?**

**22 Q. Any Roman armor.**

**23 A. Any.**

**24 Q. Yes.**

**25 A. Well --**

**Merrett - cross**

1 **Q. You agree that Roman armor existed that had two-level**  
2 **shoulder pads.**

3 **A. Of course Roman armor existed.**

4 **Q. That had two bilevel shoulder pads?**

5 **A. I don't know. I don't know. I know that there's stuff**  
6 **called lorica segmentum, which is a type of Roman armor, but**  
7 **they had lorica -- all kinds of different armors that were all**  
8 **different styles and things and armor made out of links of chain**  
9 **and all manner of stuff. And I believe that some Roman armor**  
10 **may have had overlapping plates and stuff, but they never had**  
11 **any armor that looked like that, like any of these images.**  
12 **Frankly, I don't think a Roman subject could have walked with**  
13 **that amount of metal on his shoulder.**

14 **Q. Let's turn back to Page 9 of the exhibit. Again, the**  
15 **Chapterhouse products that you're accusing of infringement are**  
16 **shown on the left-hand side of the exhibit, right?**

17 **A. Yes.**

18 **Q. And the two Games Workshop images that you contend are**  
19 **infringed are on the right-hand side, correct?**

20 **A. Yes.**

21 **Q. And both of the images on the right-hand side are from a**  
22 **book?**

23 **A. I don't know that they're from a book, but they're certainly**  
24 **from Games Workshop publications.**

25 **Q. And they're not physical products?**

**Merrett - cross**

1     **A. Sorry. I'm just trying to think if we've ever done any**  
2     **physical representations of the Blood Ravens.**

3     **Q. I'm only asking you about those that are identified here.**

4     **A. Then I would say yes, there probably are of the lower, the**  
5     **lower icon.**

6     **Q. And yes, the lower icon is a physical exhibit?**

7     **A. No, that's a picture, but I'm sure we must have created**  
8     **physical exhibits that look like that, as well. I can't say for**  
9     **sure.**

10    **Q. But there's no physical product identified here.**

11    **A. No, there isn't here, identified here, no.**

12    **Q. The image at the top is a raven, correct, on the Games**  
13    **Workshop picture identified as PX844?**

14    **A. It's a -- well, they're called the Blood Ravens, and the**  
15    **symbol is a silhouette of a black bird with outstretched wings**  
16    **with a blood drop on it. So, the inference is that it's a**  
17    **raven, but it's just a black bird with outstretched wings.**

18    **Q. And neither of the birds in the Chapterhouse products have**  
19    **outstretched wings, correct?**

20    **A. No, they have wings that sweep around in a sort of an arc.**

21    **Q. And neither of them is a black bird?**

22    **A. No, that's correct.**

23    **Q. And in the bottom Games Workshop image identified as PX858,**  
24    **there is no head for a bird in that image?**

25    **A. No.**

**Merrett - cross**

**1 Q. And it also has outstretched wings?**

**2 A. That's correct.**

**3 Q. And the Chapterhouse products have a bird head?**

**4 A. Oh, yes, I suppose they do.**

**5 Q. And they do not have outstretched wings?**

**6 A. No, they have -- I don't know how you describe it. Wings  
7 that are curving round to the fore.**

**8 Q. Turning to Page 8 of this exhibit, again this is the  
9 Chapterhouse product on the left-hand side and the Ganes  
10 Workshop allegedly infringed images on the right-hand side,  
11 correct?**

**12 A. Yes.**

**13 Q. And you've identified two pictures on the right-hand side  
14 from Ganes Workshop that you argue have been copied by  
15 Chapterhouse, right?**

**16 A. Yes.**

**17 Q. And neither of those pictures disclose a shield on a  
18 shoulder pad, correct?**

**19 A. That's correct.**

**20 Q. And neither of those pictures describe a chain on top of a  
21 shoulder pad?**

**22 A. No, they don't.**

**23 Q. And neither of those pictures show the combination of a  
24 chain and a shield and studs and a cross on a shoulder pad?**

**25 A. No, they don't.**

**Merrett - cross**

1 **Q. Let's look at another exhibit. Turning to Exhibit 1020 at**  
2 **Page 4. This is the same picture or the same product that we**  
3 **were talking about previously. On the left-hand side, you can**  
4 **see the unpainted Chapterhouse product as it's actually sold,**  
5 **correct? You agree that it's sold unpainted?**

6 **A. It's sold unpainted, and I suppose that looks like it is**  
7 **that product, yes.**

8 **Q. So, as it's sold, it does not include the imagery that is**  
9 **shown in the bottom right-hand side of the Games Workshop**  
10 **product identified as PEX858 at GW0015353?**

11 **A. That would appear to be correct, yes.**

12 **Q. And both of the images identified as being infringed are**  
13 **pages from a book?**

14 **A. Yes.**

15 **Q. Let's look at the product marked product seven at Page 13.**  
16 **Let's turn back to Page 12.**

17 **All right. This is a product that you testified about.**  
18 **The right arm tactical shoulder pad for Celestial Lions players,**  
19 **correct?**

20 **A. Correct.**

21 **Q. And you testified that the Celestial Lions have lion**  
22 **imagery, correct?**

23 **A. Yes.**

24 **Q. And that's identified in the right-hand side on the listing**  
25 **of the Games Workshop product from PEX427 at GW001503?**

**Merrett - cross**

1       **A. Yes.**

2       **Q. And you allege that the lion shown in the Chapterhouse**  
3       **product infringes the imagery of the Celestial Lions?**

4       **A. No, I didn't.**

5       **Q. So, the copyright claim is limited only to the shape and**  
6       **size of the shoulder pads for this product?**

7       **A. Correct.**

8       **Q. And the image that you've shown here as what is being**  
9       **infringed does not include the rim that is shown on the**  
10       **Chapterhouse product, correct?**

11       **A. It doesn't show a rim**

12       **Q. Turning to the next page of this exhibit, let's look at**  
13       **the -- which is Page 3 of Exhibit 1020, and look at the product**  
14       **identified as product nine. On the left-hand is the shoulder**  
15       **pad product from Chapterhouse, correct?**

16       **A. Yes, I suppose. I'm not familiar with that one.**

17       **Q. And on the right-hand side is an image from Games Workshop?**

18       **A. Yes.**

19       **Q. Is it your contention that the Chapterhouse product copies**  
20       **from this Games Workshop product?**

21       **A. No. I can't remember -- that's probably --**

22       **Q. So, you don't believe -- so, there is no copyright**  
23       **infringement claim as to this product?**

24       **A. No. I didn't talk about that product. This is the first**  
25       **time today that that product's been on the screen.**

**Merrett - cross**

1 **Q. So, you have no copyright claim against that product?**

2 **A. No. It's not in the claim**

3 **Q. Going back to -- just a second. I think we can move on.**

4 **You're familiar with the concept of a conversion kit in**  
5 **the world of miniatures, right?**

6 **A. Yes.**

7 **Q. And that means making changes to a miniature to be different**  
8 **from the standard model that's sold, right?**

9 **A. Yes.**

10 **Q. And in order to do that, you need to make sure that whatever**  
11 **you're adding to it is the right size to fit, correct?**

12 **A. It kind of depends, but yes, I suppose.**

13 **Q. You talked a bit about how Warhammer 40K is played. We had**  
14 **a little demo. It's true that one aspect of the game is**  
15 **personalizing parts for use in the game, right?**

16 **A. Oh, yes.**

17 **Q. And it's accurate that during competition players are**  
18 **awarded points for the appearance of their army?**

19 **A. It varies from competition to competition. It's certainly**  
20 **not a standard feature of competitions, and it's certainly not**  
21 **universal.**

22 **Q. But in some competitions points are awarded for appearance?**

23 **A. That may very well be true. For some competitions, that is**  
24 **one of the things that you get points for.**

25 **Q. And in considering what goes into the appearance, many of**

**Merrett - cross**

**1 the models can be posed; is that correct?**

**2 A. Yes.**

**3 Q. And in different poses?**

**4 A. Yes.**

**5 Q. And custom sculpting can be added to the figures?**

**6 A. It depends entirely on the rules of the specific  
7 competition.**

**8 Q. But as a general matter when dealing with Warhammer 40K,  
9 custom sculpting can be added to them?**

**10 A. It depends entirely on the conditions of the competition,  
11 the guidelines or the rules of the specific competition. When  
12 you say in the general case, there is no general case when it  
13 comes to things like the competitions because they're all  
14 different and organized by different folks. There's no  
15 overarching rule.**

**16 Q. Well, Games Workshop itself awards a prize called the Golden  
17 Demon, right? You testified about that?**

**18 A. Yes.**

**19 Q. And that prize is intended to reward innovation and  
20 creativity?**

**21 A. It's intended to reward fine painting.**

**22 Q. It is only focused on painting?**

**23 A. It's the first and foremost criteria for judging the Golden  
24 Demon. It's a painting competition.**

**25 Q. The contest also welcomes conversions based upon Warhammer**



**Merrett - cross**

1       **40K, but those conversions have to be consistent with the**  
2       **atmosphere of the world of the game, right?**

3       **A. That's correct, yes.**

4       **Q. And Games Workshop suggests that players sculpt their own**  
5       **pieces, correct?**

6       **A. No, Games Workshop doesn't suggest that. What it says is**  
7       **that, actually, if you're going to convert, adapt, or amend a**  
8       **miniature, then you kind of have to do that. There's no other**  
9       **way to do it if you're not using Games Workshop parts.**

10      **Q. And players are -- Games Workshop encourages players to**  
11      **create their own chapters of Space Marines?**

12      **A. No. We facilitate it.**

13      **Q. So, you facilitate players in creating their own chapters of**  
14      **Space Marines?**

15      **A. The way that it is set up is that it's possible for players**  
16      **to do that if they choose to.**

17      **Q. And Games Workshop allows players to write their own rule**  
18      **sets?**

19      **A. Well, people do what they want to in the privacy of their**  
20      **own private goings about. It's not -- we're not creating**  
21      **something -- it's not like the Bill of Rights that we created.**  
22      **It's a game. It's a pastime. It's a hobby for people to enjoy.**  
23      **So, we can't dictate what people do in their own private rooms**  
24      **or, you know, things with it.**

25      **Q. But you publish books like How to Paint Space Marines,**

**Merrett - cross**

**1 right?**

**2 A. Yes.**

**3 Q. And the purpose is to give players ideas about customizing**  
**4 their Space Marines?**

**5 A. No. The How to Paint Space Marines book is to give them**  
**6 instructions on how to paint Space Marines. Most of the How to**  
**7 Paint Space Marines book explains how to paint them blue, funny**  
**8 enough, and to look like Ultramarines.**

**9 Q. Turning to Page 5 of the Exhibit PEX421, this is the**  
**10 introduction of How to Paint Space Marines, and it encourages --**  
**11 I think I have the wrong page. So, I'll move on.**

**12 Many of the models sold by Chapterhouse are conversion**  
**13 kits, aren't they?**

**14 A. Some of them are.**

**15 Q. And you testified about the conversion kit for the Storm**  
**16 Raven?**

**17 A. Oh, yes.**

**18 Q. And that's a product that is designed to fit on the Storm**  
**19 Raven itself, correct?**

**20 A. Which product?**

**21 Q. The conversion kit for Storm Raven.**

**22 A. Oh, it must be then because you just said it's for Storm**  
**23 Raven. But the contention is that it's been designed**  
**24 specifically for that one purpose. So, yes.**

**25 Q. And you've already shown a picture of the Storm Raven, but**

**Merrett - cross**

1 to refresh the jury's memory, we will pull up a picture at  
2 PEX1020, product 111, Page 102. The Games Workshop product is  
3 on the right-hand side, correct?

4 A. Correct.

5 Q. And it has a bit of a unique shape, where it's larger in the  
6 front and it's skinnier in the back?

7 A. I wouldn't say it's a unique shape. It's a fairly  
8 traditional kind of aircraft shape. We think of like  
9 helicopters and helicopter gun ships, and they're sort of fat  
10 and bulbous at the front and short and skinny at the back. The  
11 difference with helicopters, of course, they don't have a big  
12 pair of wings on them. They have a rotor blade on the top.

13 Q. And you testified that the Chapterhouse product on the  
14 left-hand side adds additional pieces at the back of the Storm  
15 Raven, correct?

16 A. Yeah. I believe it moves the tail assembly back, as well.

17 Q. And the parts sold by Chapterhouse are essentially flat  
18 pieces of plastic, aren't they?

19 A. No, they're not flat pieces of plastic.

20 Q. They don't have any iconography on them

21 A. They have panel lines, but -- are they made of plastic --  
22 are they made -- I didn't think Chapterhouse made any plastic  
23 product.

24 Q. They don't have icons of any Games Workshop that you can  
25 see --

**Merrett - cross**

1     **A. If you didn't know what they were, you'd be hard-pressed to**  
2     **figure out what they were for. It's a bit random if you didn't**  
3     **know what purpose they were intended for.**

4     **Q. So, in order to sell them, Chapterhouse has to identify the**  
5     **purpose for which they are intended.**

6     **A. Well, clearly, that's what they're doing. The question is**  
7     **whether that's legal and whether that's appropriate for them to**  
8     **use the trademarks, which I don't know. You'd have to talk to**  
9     **Mr. Jones about that later on because he'll have a better idea**  
10    **about whether that's -- whether or not we think that's --**

11    **Q. But as you mentioned when you --**

12    **A. -- a fair use of our trademark.**

13    **Q. As you mentioned when I read the name, conversion kit for**  
14    **Storm Raven, it's apparent from that name that the product being**  
15    **sold is intended for use with the Games Workshop product.**

16    **A. Yes.**

17    **Q. So, the use of the words Storm Raven in the name actually**  
18    **refers to Games Workshop's product.**

19    **A. I'm not aware of anybody else that makes a Storm Raven, and**  
20    **I certainly wouldn't imagine that these pieces would fit to, if**  
21    **they did, because clearly it would have to be the same -- it**  
22    **would have to have the same interface as our Storm Raven, and**  
23    **that would be almost improbable, wouldn't it, to imagine that**  
24    **could exist.**

25    **Q. So, that's a yes. It's apparent from the way that**

**Merrett - cross**

1 Chapterhouse uses the word Storm Raven that it's referring to  
2 the Games Workshop product.

3 A. Yeah, very clearly referring to the Games Workshop product.

4 Q. And as you said, the parts are specifically designed to fit  
5 on a Storm Raven product. So, there is no other word that  
6 Chapterhouse could use to identify what the parts go onto.

7 A. That's correct. Of course, they could design parts that  
8 didn't need to have that specific level of interaction with the  
9 kit.

10 Q. But to the extent that one is selling a product for use with  
11 the Storm Raven, there's no other word that they could choose to  
12 make that clear.

13 A. Because they've made pieces that can only be used in  
14 conjunction -- well, I mean, you could technically use the  
15 pieces in any other way if you wanted, if you cared to add more  
16 stuff to them. But because they've tailored them to fit to our  
17 kit, then, yeah, but that's because they've tailored the pieces  
18 to fit to our kit.

19 Q. And when you were describing -- or when you identified the  
20 parts that are added to the Storm Raven by the Chapterhouse  
21 product, once those are put together, the overall shape of the  
22 Storm Raven is different, correct?

23 A. Yes.

24 Q. It changes the look of the product?

25 A. In my opinion, it spoils the look of the product, yes.

**Merrett - cross**

1 Q. And it no longer has that somewhat distinctive helicopter  
2 type shape that you mentioned?

3 A. That's correct. It doesn't.

4 Q. And in looking at this product, if I were comparing these  
5 two photographs, if I were looking at the tail fins and thinking  
6 that those looked similar, that would be because those are both  
7 the Games Workshop products, correct?

8 A. Sorry. The tail fins?

9 Q. Yes.

10 A. Yes.

11 Q. And the essentially front half of the product, if I were  
12 comparing the two pictures and looking at the front halves of  
13 those two products and thinking that they looked similar, that  
14 would be because they are both the Games Workshop product,  
15 correct?

16 A. Yes, they are the Games Workshop product. The Games  
17 Workshop products are actually the bits that are in the sort of  
18 darker gray on that photograph on the left.

19 Q. Thank you.

20 THE COURT: Pause one second. I told the jurors I was  
21 going to turn to them at this point and ask does anybody want a  
22 break between now and 5:00 o'clock. I said it's fine if you do.  
23 If so, raise your hand. If I don't see any hands -- okay. Go  
24 on straight through 'til 5:00. Go ahead.

25

**Merrett - cross**

**1 BY MS. HARTZELL:**

**2 Q. And Chapterhouse does not sell the tail fins for the Storm**  
**3 Raven.**

**4 A. No.**

**5 Q. And Chapterhouse does not sell the body of the Storm Raven.**

**6 A. You have to be a bit more specific because the bit they make**  
**7 is an extension of the body, isn't it?**

**8 Q. Chapterhouse does not sell any of the parts that were**  
**9 identified as dark gray in the photograph of the Chapterhouse**  
**10 image.**

**11 A. From what I could tell from that, then no, that's right,**  
**12 they don't.**

**13 Q. Okay. You testified earlier that you had seen essentially**  
**14 every page of the Chapterhouse website. Do you remember that?**

**15 A. I think I've looked at every page of the Chapterhouse**  
**16 website, yes.**

**17 Q. And every page of that website has a Chapterhouse logo at**  
**18 the top of it, correct?**

**19 A. I believe so, yes.**

**20 Q. And every page of the Chapterhouse website contains a**  
**21 disclaimer at the bottom of it?**

**22 A. I can't actually testify to that because I can't remember**  
**23 looking at the disclaimer on every page.**

**24 Q. Turning to the stretch conversion kit for the Tyrannid**  
**25 Warrior, you've seen this product. You've testified about this**

**Merrett - cross**

1 product. It's at PEX690 at Page 278. Correct you've seen this  
2 product?

3 A. Yes.

4 Q. And you claim both copyright and trademark infringement for  
5 this product?

6 A. I'm claiming copyright infringement. That's the bit I'm  
7 testifying on.

8 Q. The description of this product, if we can turn your  
9 attention to the last sentence of the first paragraph, the  
10 paragraph at the top of the page. It says, "Please note. This  
11 set does not include a Games Workshop Tyranid Warrior and is not  
12 a Games Workshop model," correct? That's what it says?

13 A. Correct.

14 Q. And it also says it fits with the current Games Workshop  
15 Tyranid Warrior's kit, correct? So, for a product that is  
16 designed to be used with the Tyranid Warrior's kit, there are no  
17 other words that could be used to identify what it is to be used  
18 with, correct?

19 A. But it's the same argument, isn't it? If you design  
20 something to specifically fit the kit, then yes. But the  
21 question is -- for us isn't that. It's what was it designed to  
22 specifically adapt the Games Workshop work kit to do that thing,  
23 when the thing it's doing is a Games Workshop invention or  
24 creation.

25 Q. But there's no other phrase that could be used to identify



**Merrett - cross**

1 the Tyranid Warrior's kit other than that phrase.

2 A. No, there's lots of other ways you could phrase it.

3 Q. That would be able to identify the product it is to go on?

4 A. Yeah. I'm sure if you give me enough time, I could come up  
5 with some other ways of phrasing that.

6 Q. Without using the words Tyranid Warriors?

7 A. Not to make it specifically known to the person that it  
8 would -- that it's been designed to fit to a Tyranid Warrior's  
9 kit. You couldn't -- well, you would phrase it in lots of  
10 different ways.

11 Q. And the Chapterhouse product is not a model by itself. It's  
12 only usable when combined with the Games Workshop Tyranid  
13 Warrior model, correct?

14 A. Well, no. Again, that's speculative. It could be used with  
15 other models. Other models could be created that had the fit --  
16 the fits in this instance aren't that special or particular.  
17 You could make a crocodile type shape that had attachments where  
18 you could put those components. You could make something like a  
19 big long snake and have those wings on it. There's lots of  
20 different models that you could fit those products to.

21 Q. So, there are uses other than in Warhammer 40K for this  
22 product?

23 A. For this set of wings and -- well, yes. Or products like  
24 it.

25 Q. Some of the products that you testified about were doors

**Merrett - cross**

**1 that go onto Games Workshop products, right?**

**2 A. Yes.**

**3 Q. And in order to fit on those products, they would need to be**  
**4 the right size, correct?**

**5 A. But the size could be quite varied.**

**6 Q. The size could be what?**

**7 A. They'd have to be a size, but they could be many different**  
**8 sizes.**

**9 Q. To fit onto the Games Workshop product?**

**10 A. Yes. The Games Workshop product is just a plastic box. You**  
**11 could glue any number of shapes and other sizes of things to it.**

**12 Q. And the purpose of the Chapterhouse doors is to change the**  
**13 look of the Games Workshop product?**

**14 A. The purpose of the Chapterhouse doors is to replace**  
**15 components on the Games Workshop product.**

**16 Q. To change the look?**

**17 A. To replace the door. Well, yes. Obviously, to change the**  
**18 look, but by replacing specific components.**

**19 Q. And each of those products sold by Chapterhouse requires**  
**20 that the user also purchase a Games Workshop Limited product?**

**21 A. Not necessarily.**

**22 Q. Again, this is the --**

**23 A. Well, no. Your assumption is that the only reason someone**  
**24 would buy this would be to fit it to a Games Workshop product,**  
**25 but --**

**Merrett - cross**

1       **Q. But you don't believe that that's true?**

2       **A. No. You could make all manner of products that were of a**  
3       **similar nature that didn't infringe Games Workshop's copyright**  
4       **that could be fitted to Games Workshop vehicles or anybody**  
5       **else's vehicles. It's only because he's designed to**  
6       **specifically replace Games Workshop components that they**  
7       **actually are only then usable on a Games Workshop thing. But,**  
8       **actually, why couldn't you stick panels or doors on any kind of**  
9       **boxy science fiction tank vehicle thing or building or anything.**  
10       **It's only because he's chosen to made them specifically those**  
11       **shapes and literally replace -- substitute parts for parts that**  
12       **we supply.**

13       **Q. But as substitute parts for the parts that you supply, they**  
14       **can only be used for customers who have already purchased a**  
15       **Games Workshop product.**

16       **A. Not necessarily, because you might do other things with**  
17       **them You might stick them to other shapes. You might stick**  
18       **them to other things. You might build other things around them**

19               **But the point being that because -- because he said,**  
20       **oh, I'm going to do these for this very specific purpose,**  
21       **therefore, he's made them a very specific shape, so they can**  
22       **only be used for that very specific purpose. And even then**  
23       **that's not true. You could use them in all manner of things.**  
24       **There's all sorts of ways you could use them Just because it's**  
25       **not very easy for him to think about what the uses could be.**

**Merrett - cross**

1     **It's a slightly weird argument because it's like -- because it's**  
2     **just wrong. It's just not true.**

3     **Q. Well, I think you've answered my question.**

4             **Looking at --**

5     **A. Of course you think that.**

6     **Q. -- Plaintiff's Exhibit 435 at Page 16, these are alternate**  
7     **heads sold by Chapterhouse to be used with the figures sold by**  
8     **Games Workshop, correct?**

9     **A. That's how they're presented.**

10    **Q. And the kit comes with three different looking heads? You**  
11    **agree?**

12    **A. Well, the old website suggests that there's six heads, but**  
13    **there are three different designs.**

14    **Q. Correct. And the gray image in that picture is a Games**  
15    **Workshop product, correct?**

16    **A. Yes.**

17    **Q. And that's a body to which the heads are designed to be**  
18    **attached?**

19    **A. That's the body to which the heads have been designed to be**  
20    **attached, yes.**

21    **Q. Looking at product number 43 on Page 38 of Plaintiff's**  
22    **Exhibit 1020, these are the same -- this is the same product**  
23    **that we were just looking at, correct, on the left-hand side?**

24    **A. Correct.**

25    **Q. And on the right-hand side at the bottom of the page, there**

**Merrett - cross**

**1 is an image from Warhammer 40,000 Tyrannids. Do you see that?**

**2 A. Yes.**

**3 Q. And what year was that published?**

**4 A. 2010.**

**5 Q. And do you know when in 2010 it was published?**

**6 A. No.**

**7 Q. Prior to the date of publication, Chapterhouse would not  
8 have had any way of seeing that drawing, correct?**

**9 A. No. Well, no, I can't imagine how they would have seen that  
10 drawing before then.**

**11 Q. And --**

**12 A. But it says 2009 next to the David Gallagher. So, does that  
13 mean that it was published earlier than that? I don't know.**

**14 Q. Looking at the Chapterhouse product on the left-hand side  
15 and the three different heads, as compared to the product, the  
16 miniature designed by Jes Goodwin and Mark Harrison identified  
17 as PEX117 at GW001439, which of the Chapterhouse heads do you  
18 contend is a copy of the head on that figure?**

**19 A. Well, they're all basically the same idea on this. It's a  
20 monstrous head with horrible tentacly attachments in sort of a  
21 normal jaw. There's no specific literal exact copy of that  
22 head.**

**23 Q. So, it's the idea of the monstrous head, tentacly head, that  
24 you allege is infringed?**

**25 A. Yes.**

**Merrett - cross**

1 **Q. But the expressions of the different heads vary from the**  
2 **Games Workshop product?**

3 **A. This is a trademark issue, this one, for us. This is a**  
4 **trademark issue first and foremost. I mean --**

5 **Q. So, there's no copyright claim as to product 43?**

6 **A. I don't know. Yes. No. I'm sorry. I don't know what --**  
7 **I'm tired. I'm not sure what I'm thinking here at the moment.**  
8 **What I'm thinking is actually they're octopussy -- octopussy**  
9 **kind of tentacle heads, but it's not a literal copy.**

10 **Q. So, there's no copyright claim as to product 43?**

11 **A. I think there's some form of copyright claim I think that**  
12 **needs to be tested.**

13 **Q. So, which of the Chapterhouse heads do you contend is copied**  
14 **from the PEX117 product?**

15 **A. I don't know which ones are copied, but they actually are --**  
16 **I can't say any of them are directly copied from the head.**

17 **Q. So, of the three, which one is most similar?**

18 **A. The one with the splayed out tentacles. The one in the**  
19 **middle is the closest.**

20 **Q. But you agree that none of them is a literal copy of the**  
21 **Games Workshop.**

22 **A. None of them is a literal copy of the Games Workshop.**

23 **Q. And your primary concern is with respect to trademark?**

24 **A. I think there's a very, very strong trademark infringement**  
25 **here. But, again, that's something that I'm not -- sorry. I'm**

**Merrett - cross**

**1 not testifying on the trademarks.**

**2 Q. As of the date that Chapterhouse released this product,**  
**3 Games Workshop had not released any product under the name**  
**4 Yngarl, correct?**

**5 A. That's correct.**

**6 Q. And the only --**

**7 A. Well, sorry. Sorry. No. That might not be correct. It**  
**8 might not be -- no. Okay. Yeah. No, that's correct. Sorry.**

**9 Q. And the first image of an Yngarl that Games Workshop created**  
**10 is the image in the bottom right-hand corner of this picture,**  
**11 correct?**

**12 A. No, that's not correct.**

**13 Q. You've identified on this page of the claim chart the Games**  
**14 Workshop products that you allege are infringed by the products**  
**15 sold by Chapterhouse, correct?**

**16 A. Yes.**

**17 Q. And the top image is not an Yngarl, correct?**

**18 A. Yes. No, that's incorrect. It is an Yngarl.**

**19 Q. That product is sold under the name Tyraniid Genestealer,**  
**20 correct?**

**21 A. Correct.**

**22 Q. Games Workshop also accused Chapterhouse of infringement**  
**23 based on the Lizard Ogre, correct? You testified about that**  
**24 earlier?**

**25 A. No Lizard Ogre.**

**Merrett - cross**

1 **Q. Before we leave the Yngarl product, is there a copyright**  
2 **claim as to that product? Are you claiming copyright**  
3 **infringement by Chapterhouse's Yngarl head?**

4 **A. Yes, we are claiming that.**

5 **Q. When you testified about the Lizard Ogre, you admitted that**  
6 **Games Workshop does not own a copyright on the idea of a lizard**  
7 **man, right?**

8 **A. I'm sorry. Which product are we talking about?**

9 **Q. The product that's sold on Chapterhouse's website under the**  
10 **name Lizard Ogre.**

11 **A. I don't believe there currently is a product in the**  
12 **Chapterhouse website called Lizard Ogre.**

13 **Q. I think we'll have to come back to that one.**

14 **You also testified about the Chapterhouse Dark Elf**  
15 **Torturess, product 160, at PEX1013 at Page 2. Do you remember**  
16 **testifying about these products?**

17 **A. I do.**

18 **Q. And you see differences between those two products, don't**  
19 **you?**

20 **A. There are differences between these two products.**

21 **Q. The Chapterhouse product has a larger head?**

22 **A. I don't know. I haven't been able to compare the two**  
23 **products side by side. So, I don't know if the head is larger**  
24 **than the head on the Workshop model.**

25 **Q. So, in order to determine if these products are similar or**



**Merrett - cross**

1 different, you would need to see the physical products side by  
2 side?

3 A. No. You asked me a specific question about whether the head  
4 was larger, and I can't tell from these pictures.

5 Q. So, in order to determine the relative size between them  
6 you would need to see the physical products themselves?

7 A. Yes.

8 Q. And in order to compare the overall look of the two  
9 products, you would need to see the physical products  
10 themselves?

11 A. No, I couldn't get a good impression and therefore look at  
12 the products from the pictures.

13 Q. But not the proportional size. You can't tell that?

14 A. Well, yes. We've got specific size of the head. You said  
15 is the head larger than. I can't tell from that literally  
16 putting them together or having a measurement because these  
17 pictures aren't to scale to each other, are they?

18 Q. In proportion to the rest of the body --

19 A. Well, that's a different question.

20 Q. -- the Chapterhouse product has a larger head, correct?

21 A. Yes.

22 Q. And in proportion to the rest of the product, the  
23 Chapterhouse product has larger instruments, correct?

24 A. I suppose I could talk about their instruments in court, but  
25 no, I don't -- no. The Games Workshop model's got quite large

**Merrett - cross**

1 instruments from the look of it, large curvy one there.

2 Compared to the illustration, they're different, yes.

3 Q. And the Chapterhouse upper arms are much longer, correct?

4 A. I think that's a matter of interpretation. So, I think -- I  
5 don't know.

6 Q. And the face of the Chapterhouse product varies from any of  
7 the images provided by Games Workshop?

8 A. The face is different.

9 Q. And the Chapterhouse product is a female sculpt? Is it a  
10 female sculpt?

11 A. I don't know. I don't know what the designer's intent is.  
12 So, it's just got like -- it's got a female -- a feminine name.  
13 Torturess. So, yes, I suppose. The implication is it's a  
14 female.

15 Q. Turning to PEX 1012 at Page 4, you testified about these  
16 jetbikes, correct?

17 A. Correct.

18 Q. And the Chapterhouse jetbike is on the left-hand side,  
19 correct? Or the Chapterhouse jetbike conversion kit is on the  
20 left-hand side?

21 A. I think there are two.

22 Q. There are two. They are on the left-hand side.

23 A. They are on the left-hand side.

24 Q. And if I were comparing these two products and felt that the  
25 pointed nose of the jetbikes looked similar, that would be

**Merrett - cross**

1       **because they are both a Games Workshop product, correct?**

2       **A. Correct.**

3       **Q. And if I looked at the back of the product where there**  
4       **seemed to be perhaps landing pieces and thought that those**  
5       **looked similar, that would be because they are both Games**  
6       **Workshop products, correct?**

7       **A. Correct.**

8       **Q. And when you were testifying about this product, you**  
9       **testified that the face of the Games Workshop product is almost**  
10       **defining of Eldar, correct?**

11       **A. That particular style of helmet with the inset faceplate is**  
12       **a very strong characteristic of our Eldar helmets, almost**  
13       **defining of the Eldar helm, yes.**

14       **Q. And turning to the next page of this exhibit.**

15               **Let's talk more generally about the scope of your**  
16       **copyright infringement claims. It's true that Chapterhouse**  
17       **sells products that Games Workshop is not accusing of copyright**  
18       **infringement, right?**

19       **A. Yes, I suppose that must be true.**

20       **Q. And, in fact, there are products included in the charts that**  
21       **are only accused of being advertised in a way that you believe**  
22       **infringes on your trademarks, correct?**

23       **A. I think so.**

24       **Q. At least 40 of the products in this case are accused only of**  
25       **trademark infringement, but not copyright infringement, correct?**

**Merrett - cross**

1       **A. I don't know what number it would be.**

2       **Q. So, Chapterhouse sells at least 40 products that you're not**  
3       **accusing of being copies of Games Workshop's copyrighted works?**

4       **A. No, we're not saying that. What we're saying is that there**  
5       **are some products where we don't think our copyright claim is**  
6       **particularly strong, but for the sake of simplifying the case,**  
7       **we took them out of the case.**

8       **Q. So, my question was that you are not accusing them of**  
9       **copyright infringement.**

10       **A. Well, I think we're accusing them of copyright infringement**  
11       **on the ones we're accusing them of copyright infringement on.**  
12       **I'm not speculative about the other ones.**

13       **Q. There are at least 40 products that you are not accusing of**  
14       **copyright infringement at this time.**

15       **A. Where? In the case or outside of the case?**

16       **Q. That were in the case.**

17               **THE COURT: He's asking you a question.**

18       **BY THE WITNESS:**

19       **A. I'm asking you a question because I'm confused at what**  
20       **you're saying. You started off by saying Chapterhouse sells**  
21       **some products that you're not --**

22               **THE COURT: He's asking if you're asking about the**  
23       **lawsuit or if you're asking about accusations generally. Right?**

24               **THE WITNESS: Yes, that's correct, your Honor.**

25

**Merrett - cross**

**1 BY MS. HARTZELL:**

**2 Q. In the lawsuit.**

**3 A. In the lawsuit.**

**4 Q. Yes. Well, and even generally you are not accusing them of**  
**5 copyright infringement.**

**6 A. There are some products that we've taken out of the case**  
**7 because we didn't -- or that we didn't include in the lawsuit**  
**8 because we have concentrated on the products that we thought our**  
**9 copyright claims were stronger and where actually we were**  
**10 instructed, I believe, to simplify the case. So, we took out**  
**11 quite a few products we didn't think were -- or the case was as**  
**12 strong on the copyright. So, yes, there are some products that**  
**13 we're not accusing Chapterhouse of infringing on the copyright.**  
**14 Of course, yes.**

**15 Q. So, for those products that you're accusing only of**  
**16 trademark infringement, any allegations of copyright**  
**17 infringement would be even less strong than the Mycetic Spore**  
**18 copyright claim?**

**19 A. Well, I don't know. I'm not an expert in the strength in**  
**20 that way because that's what we're here for, isn't it, to**  
**21 determine that.**

**22 Q. But you kept Mycetic Spore in the case, although you admit**  
**23 that it's a weak claim**

**24 A. Yes.**

**25 Q. And there are 40 products that you have chosen not to assert**

**Merrett - cross**

1     **because they were not strong enough for you to keep them in the**  
2     **case.**

3     **A. Not necessarily. We chose to take some out because to**  
4     **simplify the case. And so, we've concentrated on the ones that**  
5     **are actually -- to be perfectly frank, are the most important**  
6     **products to us, the ones that actually would have been most**  
7     **sensitive in the context of our range and the way that we market**  
8     **it.**

9     **Q. So, by taking them out of the case, those are products that,**  
10    **at least as to copyright infringement, Chapterhouse is allowed**  
11    **to sell?**

12    **A. Well, the stuff that's not -- the things that aren't part of**  
13    **the lawsuit are not part of the lawsuit. We've bent over**  
14    **backwards to try and resolve this not in court. We've tried**  
15    **everything to not have to get to this place, and we've been**  
16    **quite accommodating about streamlining the case.**

17    **Q. So, you brought --**

18    **A. There's a lot more than a hundred and however many products**  
19    **we've been through today.**

20    **Q. So, you consider that bringing a claim against this Mycetic**  
21    **Spore is being accommodating? A copyright infringement claim**  
22    **based on that blurry picture that you showed, that's being**  
23    **accommodating?**

24    **A. Because it's a very sensitive product to us because of what**  
25    **it represents.**

**Merrett - cross**

1 **Q. Almost a quarter of the products on your claim chart are not**  
2 **accused of copyright infringement in this lawsuit, correct?**

3 **A. I don't know. I haven't actually totaled it up. I don't**  
4 **know what the percentage would be or the number would be. You**  
5 **keep asking me. I'll just keep saying I don't know because I**  
6 **don't know. I'd have to go away and (inaudible) them up and**  
7 **work it out and sit down with --**

8 **THE REPORTER: I'm sorry. Say it again.**

9 **BY MS. HARTZELL:**

10 **Q. It's your understanding that each --**

11 **THE COURT: Hang on a second. Did you need him to**  
12 **repeat something?**

13 **THE REPORTER: I didn't hear his last sentence that he**  
14 **said.**

15 **THE WITNESS: I can't even remember now what --**

16 **THE REPORTER: I have no idea what it was.**

17 **BY THE WITNESS:**

18 **A. I said if you want me to go away and count them and work it**  
19 **out with my team I could do. I don't know the exact number or**  
20 **percentage.**

21 **BY MS. HARTZELL:**

22 **Q. It's your understanding that each of the Chapterhouse**  
23 **products that are not accused of copyright infringement are**  
24 **designed for use with 28 millimeter miniatures, correct?**

25 **A. I can't testify to that. I don't know. But in what way?**

**Merrett - cross**

1     **You mean the way they're claimed to be used for or --**

2     **Q. That they are designed to be used for 28 millimeter**  
3     **miniatures.**

4     **A. Well, I can't testify to the purpose of the design because I**  
5     **didn't design them**

6     **Q. And the same way that you can't testify to the references**  
7     **relied on by Games Workshop's designers because you didn't**  
8     **design those products.**

9     **A. No. I was involved in the management of the design of those**  
10    **products. But I wasn't involved in the management of the design**  
11    **of the Chapterhouse products. So, I'd say are you asking me are**  
12    **they designed for use for 28 millimeter miniatures, and I can't**  
13    **answer that question because I wasn't -- there's nothing to do**  
14    **with me what they were designed for. I can say how they're**  
15    **marketed. And I was asking the question. Is that the way that**  
16    **they're marketed? Was that the question you were asking me?**

17    **Q. I asked if it was your understanding. So, if you don't**  
18    **know, then we'll move on.**

19    **A. My understanding is --**

20           **THE COURT: I'll tell you what. We don't need to ask**  
21    **questions about what the questions were. Then we'll have**  
22    **questions about what the questions were about what the questions**  
23    **were. Besides which, it's five minutes to 5:00. So, let's move**  
24    **ahead to a different topic.**

25



**Merrett - cross**

**1 BY MS. HARTZELL:**

**2 Q. Games Workshop does not claim that it owns a copyright on**  
**3 the 28 millimeter scale miniatures, correct?**

**4 A. That's correct. And that's my fault because back in 1980**  
**5 whenever it was, I didn't decide to go off and copyright 28**  
**6 millimeter, which I wish with hindsight I had trademarked it,**  
**7 there you go, thirty years ago, and you make mistakes, don't**  
**8 you? But we invented the term for these miniatures.**

**9 Q. And you believe that the change in size from 25 millimeter**  
**10 to 28 millimeter scale was a creative contribution?**

**11 A. Very creative one.**

**12 Q. And Chapterhouse's TRU-Scale products changed items from**  
**13 28 millimeter to a larger size, correct?**

**14 A. I don't think that's Chapterhouse's change.**

**15 Q. But that's the whole point of them to change the size,**  
**16 correct?**

**17 A. I think it's to try and find a way to make and sell things**  
**18 that look just like our Space Marines.**

**19 Q. So, the size of it you say is irrelevant to the TRU-Scale**  
**20 product?**

**21 A. In terms of the intellectual property that they are using,**  
**22 yes, I think the size is irrelevant. It doesn't matter if**  
**23 someone illicitly makes a Space Marine 500 millimeters tall or**  
**24 five millimeters tall. It's still a Space Marine. It's still**  
**25 our intellectual property. It doesn't change the fact that it's**

**Merrett - cross**

1       **made of our imagery and stuff. That is irrelevant.**

2       **Q. And Games Workshop does not --**

3       **A. And I'm quite sorry. And by the way, I don't think that**  
4       **is -- I think that is creative.**

5       **Q. So, the change from 25 millimeter to 28 millimeter was**  
6       **creative.**

7       **A. Yes, because it wasn't just a change in the size. It was a**  
8       **change in the proportionality and the dimensions and the**  
9       **relative proportions of the elements that go to make a**  
10       **miniature. I could talk to you at great length about all of**  
11       **this, but I'm not sure the jury would want me to.**

12       **Q. But you testified that your purpose was to make them bigger.**  
13       **You wanted them to be bigger.**

14       **A. To make it more impressive on the tabletop, to give them**  
15       **more presence and make them more dynamic. And as I said before,**  
16       **it wasn't a literal change in scale because it's not literally**  
17       **changing them adding three millimeters to the height. It was**  
18       **changing the whole dynamic of those pieces.**

19               **MS. HARTZELL: If your Honor would like, I'm moving to**  
20       **a new topic. Would you --**

21               **THE COURT: No. We're going to use up the whole**  
22       **four minutes. Sorry.**

23               **MS. HARTZELL: That's okay.**

24       **BY MS. HARTZELL:**

25       **Q. Games Workshop does not say that its copyright prevents**

**Merrett - cross**

1 anyone else from creating a tabletop miniature fantasy game?

2 A. It certainly doesn't.

3 Q. And your copyright does not prevent -- tabletop miniature  
4 fantasy games existed prior to Games Workshop's creation of  
5 Warhammer?

6 A. That's an interesting one. I can't remember any. There  
7 must have been some, or there might have been some, but I can't  
8 really remember any. There were sets of rules, and there were  
9 fantasy miniatures, but no one had ever marketed, I don't think,  
10 a combination of rules and miniatures before Warhammer for  
11 fantasy gaming.

12 Q. Dungeons & Dragons did not precede Warhammer?

13 A. That wasn't a tabletop war game. That was a role playing  
14 game.

15 Q. You testified that you were personally involved in the  
16 creation of Warhammer 40K, correct?

17 A. Correct.

18 Q. And at the time you were creating it, the only place that  
19 the back story for Games Workshop's characters existed was in  
20 the minds of the creators, correct?

21 A. Correct.

22 Q. So, at some point an author came up with each story for the  
23 characters in Warhammer 40K?

24 A. What do you mean by each story?

25 Q. Each back story for the characters in Warhammer 40K.

**Merrett - cross**

1     **A. Yeah. At some point a Games Workshop employee came up with**  
2     **the story for 40K.**

3     **Q. And prior to that there was no other source for information**  
4     **about that character?**

5     **A. I'm just trying to think if we published any information**  
6     **about Space Marines before 40K because we made Space Marine**  
7     **models before we made -- before 40K existed. So, I can't**  
8     **remember.**

9     **Q. And you mentioned the names of several individuals that were**  
10    **involved in the development of Warhammer 40K. Was Robert**  
11    **Naismith one of those people?**

12    **A. Robert Naismith was one of the designers, one of the figure**  
13    **designers, that we employed at the time, and he was quite**  
14    **heavily involved in designing elements of the 40K range, yes.**

15    **Q. You've also testified that Chapterhouse does not sell --**  
16    **that you understand that neither Chapterhouse nor Games Workshop**  
17    **sells any product that's painted, correct?**

18    **A. Yes.**

19            **THE COURT: This is where we're stopping.**

20            **MS. HARTZELL: Okay.**

21            **THE COURT: Okay. 9:40, nine four zero, tomorrow is**  
22    **when we'll start. All rise.**

23            **(Whereupon, the within trial was adjourned to Wednesday,**  
24    **June 5, 2013, at 9:40 o'clock a.m.)**

25