

FEDERAL TRADE COMMISSION

I N D E X

IN RE POM WONDERFUL, ET AL.

TRIAL VOLUME 4

PUBLIC RECORD

MAY 27, 2011

WITNESS:	DIRECT	CROSS	REDIRECT	RE CROSS	VOIR
Leow (Hendry)		414			

EXHIBITS	FOR ID	IN EVID	IN CAMERA	STRICKEN/REJECTED
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None

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None

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None

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None

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
POM WONDERFUL LLC and)
ROLL GLOBAL LLC,)
as successor in interest to)
Roll International Corporation,)
companies, and) Docket No. 9344
STEWART A. RESNICK,)
LYNDA RAE RESNICK, and)
MATTHEW TUPPER, individually)
and as officers of the)
companies.)
)
-----)

FRIDAY, MAY 27, 2011

12:00 p.m.

TRIAL VOLUME 4

PUBLIC RECORD

BEFORE THE HONORABLE D. MICHAEL CHAPPELL
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C.

Reported by: Susanne Bergling, RMR-CRR-CLR

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P R O C E E D I N G S

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JUDGE CHAPPELL: Back on the record in Docket
9344. Next witness.

MS. NACH: Good morning, Ms. Leow.

Whereupon--

ELIZABETH LEOW HENDRY

a witness, called for examination, having been first
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. NACH:

Q. Good morning, Ms. Leow.

A. Good morning.

Q. Please state and spell your full name for the
record.

A. Elizabeth Leow Hendry. Hendry is H-E-N-D-R-Y.

Q. And you are employed by Roll Global LLC, right?

A. Correct.

Q. Until recently, Roll Global was Roll
International Corporation. Is that correct?

A. I'm not sure.

Q. For simplicity, I'll refer to Roll Global LLC as
"Roll," okay?

A. Um-hum.

Q. You've worked for Roll since January 2005,

right?

A. Correct.

Q. And your job at Roll since January 2005 has been that of creative director?

A. Correct.

Q. Currently, what is your formal title at Roll?

A. VP and executive creative director.

Q. You came to Roll in 2005 with over 20 years of experience in the advertising and marketing industry.

Is that right?

A. Yes.

Q. And your experience in the advertising and marketing industries included positions at advertising agencies, right?

A. Correct.

Q. And you worked at Foote, Cone and Belding, an ad agency?

A. Yes.

Q. As an art director?

A. Yes.

Q. And that was from 1990 to 1994, approximately?

A. I'm sorry. I didn't hear you.

Q. That was from approximately 1990 to 1994?

A. Approximately.

Q. And after that, you worked at the Joey Reiman

Agency. Is that right?

A. Correct.

Q. And also as an art director, correct?

A. Yes.

Q. From 1994 to '95, approximately?

A. Yes.

Q. And after that, you worked at DDP?

A. Correct.

Q. And that is also an ad agency?

A. Yes.

Q. And you were the senior art director there?

A. Yes.

Q. Approximately from 1995 to '96?

A. Yes.

Q. And after that, you worked for -- is it HAJA?

A. HAJA Kauffman.

Q. HAJA Kauffman. That's now called JSM?

A. They are no longer in business.

Q. Okay. But when you were at HAJA Kauffman, you were associate creative director. Is that right?

A. Correct.

Q. And that was approximately from 1996 to 2001, right?

A. Yes.

Q. And after that, you were a freelance art

director for ad agencies?

A. That's correct.

Q. And those agencies included Ogilvy and --
Ogilvy, for instance?

A. Yes. That was one of them.

Q. And what other ones, if you could name a few?

A. Saatchi, Ideology, J. Walter Thompson.

Q. Okay. And that was from approximately 2002 to
2005, right?

A. Yes.

Q. And after that, you moved -- came to Teleflora.
Is that right?

A. Correct.

Q. And Teleflora is part of Roll, right?

A. Yes.

Q. And you were creative director of Teleflora's
in-house ad agency. Is that right?

A. Yes.

Q. And Teleflora's in-house ad agency also handled
advertising for POM Wonderful LLC, right?

A. Correct.

Q. And, again, for simplicity, I'll refer to POM
Wonderful LLC as "POM."

Okay. Currently, as you mentioned -- as you
testified, you're VP and executive creative director at

Fire Station, right?

A. Correct.

Q. And Fire Station is Roll's in-house advertising agency?

A. That is right.

Q. And Fire Station is located in the same building as Teleflora and POM. Is that correct?

A. Yes.

Q. When did you transition from working for Teleflora's in-house agency to working for Fire Station? Approximately is fine.

A. I don't know the exact date.

Q. Do you recall perhaps the year?

A. No.

Q. Currently, POM is one of Fire Station's clients, correct?

A. Yes.

Q. And, currently, Teleflora is also one of Fire Station's clients, correct?

A. Yes.

Q. Currently, who is your supervisor at Fire Station?

A. Michael Perdigao.

Q. And what is Mr. Perdigao's title at Fire Station?

A. Agency president.

Q. How long has Mr. Perdigao been your supervisor?

A. I believe he started in 2007.

Q. As creative director of Fire Station, do you interact with Lynda Resnick?

A. Sometimes, yes.

Q. Could you describe your interaction with Ms. Resnick?

A. I present creative campaign concepts to her.

Q. Do you present them to her for her approval?

A. Sometimes, yes.

Sorry.

Q. And as creative director of Fire Station, do you interact with Stewart Resnick?

A. No, I do not.

Q. And when you were at Teleflora, who was your supervisor there?

A. The president of Teleflora.

Q. Do you remember his name?

A. Phil Klavanaugh, initially, and then Shaun Weidman.

Q. And we talked about Fire Station, but as creative director at Teleflora, did you interact with Lynda Resnick?

A. Yes.

Q. And, again, could you describe your interactions with Lynda Resnick?

A. Presenting creative concepts to her.

Q. Presenting them to her for her approval?

A. Sometimes, yes.

Q. Did you work with Ms. Resnick to create ads?

A. I don't understand the question. Could you please be more specific?

Q. So, you said that you would make presentations to Ms. Resnick, but would you ever interact with her in terms of putting the ads together or --

A. No.

Q. And as creative director of Teleflora, did you interact with Stewart Resnick?

A. No, I did not.

Q. In your capacity as creative director at Roll, first at Teleflora and at Fire Station, you helped to oversee the creation of advertising for several Roll companies. Is that right?

A. Yes.

Q. And could you describe what the creation of advertising entails?

A. Coming up with ideas for print, outdoor or television concepts, campaigns.

Q. Does that include writing copy for ads?

A. It might.

Q. Does it include creating art and graphics for ads?

A. It might.

Q. Does that include putting all of these elements together to make the final execution?

A. Yes.

Q. And could you define what is meant by a final execution? Is that a term of art in your field?

A. I'm not quite sure what that means.

Q. How did you interpret it when I just asked about putting all the elements together?

A. Are you asking me what we call an ad when it -- after it's been approved?

Q. Well, we can start there. What do you call an ad that has been approved?

A. Approved.

Q. Oh, okay. Are there other terms that relate to -- that you would call the ad when it's in other stages of development?

A. When it's ready to be shipped out to the publications, if it's a print ad, we call it a mechanical.

Q. And are there any other terms?

A. If it's television and it's preapproval, we call

it a rough cut.

Q. Any others?

A. Layout for a print ad.

Q. And these are all --

A. For POM.

Q. And these are all things that are part of creating an advertisement, correct?

A. Yes.

Q. As creative director at Fire Station, do you help to create consumer advertising for POM?

A. Yes.

Q. And POM has been one of your clients throughout your entire time with Roll. Is that right?

A. Yes.

Q. And, currently, does Fire Station create all of POM's consumer advertising?

A. Most of it.

Q. What part does it not create?

A. In other countries, we've employed other advertising agencies.

Q. And, as creative director, you also review the execution of creative -- creative or ideas?

A. Yes.

Q. And, in overseeing the creation of all the consumer ads for POM, do you review ad copy?

A. Yes, usually, at some stage.

Q. Is that usually in the final stage?

A. It might be. Primarily, I'm more involved in the early stages.

Q. Okay. And who is involved in the later stages?

A. Marketing.

Q. Marketing at POM?

A. Yes.

Q. And who specifically in the marketing department at POM?

A. It would depend on the project.

Q. On the project, you said?

A. Yes.

Q. Could you give me a few examples?

A. Could you please --

Q. Could you give me a couple of examples of different projects and who -- how that might change who would be involved from POM marketing?

A. It could be the marketing VP or someone who works for them, or it could be Matt Tupper, who is the president of POM, depending on the project and what would be appropriate.

Q. And this is all pertaining to reviewing ad copy, correct, what we're discussing?

A. Well, ad copy is part of an ad. They don't, you

know, review copy in its document format, but as part of a -- of an ad, they would.

Q. POM does advertising in a variety of media, correct?

A. Correct.

Q. In your time at Roll, you have participated in creating print advertisements for POM, right?

A. That's correct.

Q. And in what types of print media have POM's ads appeared?

A. Could you please be more specific?

Q. For instance, have POM's ads appeared in newspapers?

A. Which product are you referring to?

Q. I was speaking in general, but let's focus on POM Juice and POMx Pills and POMx Liquid.

A. POMx Pills ads have appeared in newspaper ads, yes.

Q. And how about POMx Liquid?

A. I don't recall.

Q. And POM Juice?

A. I don't recall.

Q. And when I say "POM Juice," I mean to refer to POM Wonderful 100 percent pomegranate juice.

And, still staying on the subject of print

media, have POM's ads appeared in magazines?

A. Yes.

Q. What sorts of magazines have these ads appeared in?

A. Consumer print.

Q. And we're just talking about the three products that we've been discussing, right?

A. I was primarily referring to Juice.

Q. Okay. And you said consumer magazines? Is that what you said?

A. Correct.

Q. Any particular types of consumer magazines?

A. You'd have to ask me about a specific ad.

Q. For instance, have POM's ads run in health-related consumer magazines, such as Health Magazine?

A. I believe so.

Q. How about Men's Fitness?

A. Yes.

Q. Men's Health?

A. Yes.

Q. And other similar magazines --

A. Correct.

Q. -- for both men and women? Correct?

A. Yes.

Q. And is it true that POM ran ads in these publications because these publications are geared toward the health-conscious consumer?

A. Yes.

Q. Do you know if POM has -- if POM's ads have appeared in -- as cover wraps?

A. Occasionally.

Q. Could you explain what a cover wrap is?

A. It wraps around the outside of the magazine.

Q. And what magazines have POM ads appeared as -- in the form of cover wraps?

A. Time Magazine.

Q. Any others?

A. Not that I recall.

Q. Have you participated in creating outdoor ads for POM?

A. Yes.

Q. Could you give some examples of outdoor advertisements?

A. Could you please be more specific?

Q. Maybe I can -- how about billboards, for instance?

A. Yes.

Q. And now, does outdoor -- is that the same as I've seen the term "OOH," or it's an abbreviation, I

guess? Could you explain that term?

A. That means out of home.

Q. Is that the same as outdoor advertising?

A. Yes.

Q. And, besides billboards, are there other types of OOH advertising that POM uses?

A. There might be, such as bus shelters.

Q. Bus shelters? So, posters in bus shelters?

A. Ah, correct.

Q. How about at health clubs? Would that be OOH?

A. I'm not sure if that's included in that -- no, that wouldn't be -- that's a specific media buy, health clubs.

Q. Specific media buy, okay.

But has POM advertised in health clubs?

A. Yes.

Q. And do you know in what forms? Posters?

A. I believe so.

Q. And in any other ways?

A. Not that I know of.

Q. How about advertising in doctors' offices? Is that OOH?

A. That wouldn't be -- that wouldn't be in my definition of OOH, but I could be wrong. I am not the media buyer, so that's out of my area of expertise.

Q. Do you know if POM has -- if POM's ads have appeared in doctors' offices?

A. In what form?

Q. For instance, talking about posters in health clubs. Are there posters in doctors' offices?

A. Not that I'm aware of.

Q. How about the -- going over some other things we discussed already, cover wraps?

A. Cover wraps, yes.

Q. And would those be placed in the waiting rooms, where there are often magazines?

A. That's correct.

Q. Have you participated in creating Internet ads for POM?

A. Yes.

Q. And where did POM run Internet ads, such as banner ads?

A. I'm not sure off the top of my head. If you show me a specific ad, I might be able to answer.

Q. But POM has used banner ads --

A. Correct.

Q. -- to advertise?

A. Um-hum.

Q. Would you mind explaining what a banner ad is?

A. It's an advertisement that appears on a webpage.

Q. Is it animated?

A. It could be or it could be static.

Q. And it can appear anywhere on the webpage?

A. Yes.

Q. Can you name any sites on which POM's banner ads have appeared?

A. Again, that's not my area of expertise, so I -- I don't want to say thing that wouldn't be correct.

Q. Sure. Well, for example, let's take WebMD. Has POM placed banner ads on WebMD?

A. I believe they have.

Q. Do you recall which banner ads -- and you can give me the name of the campaign or if you remember a specific --

A. I'm sorry. I don't recall.

Q. And on the subject of banner ads, which products do these banner ads relate to? Which POM products? POM Juice?

A. Yes, the juice.

Q. How about the pills?

A. I'm not positive if we did pill ads for online or not. Again, you would have to show me and I would be able to be more specific.

Q. And how about POMx Liquid?

A. I don't believe so.

Q. And you design some of the layout and graphics on POM Wonderful Web sites, right?

A. Members of my team do, correct.

Q. And which Web sites are these, which POM Web sites?

A. Pomwonderful.com.

Q. Any others?

A. There was a microsite that we worked on called POM Truth.

Q. And what is a microsite?

A. It's a smaller site that has a more focused purpose.

Q. And when you say smaller site, does that mean there are fewer pages involved? What does that mean?

A. Correct.

Q. And is a microsite something that you have to access through pomwonderful.com?

A. It might have its own URL.

Q. Do you know if that URL appeared in any other POM advertisements, like in print ads, for instance?

A. Which URL specifically?

Q. Well, let's take the microsite one you mentioned, I think you said pomtruth.com.

A. Um-hum.

Q. Do you know if that was referenced in any other

types of POM advertising?

A. In outdoor, and I'm not sure about print.

Q. Um-hum. So, on billboards or all of --

A. There was one billboard. That was -- I believe it was -- yes.

Q. And how about pomwonderful.com? Does that appear on any other types of POM advertisements?

A. It might.

Q. It has appeared on other types of --

A. Correct.

Q. Could you give me an example?

A. Print ads.

Q. Are there any other POM Web sites? POM-managed Web sites.

A. Not that I recall.

Q. How about pompills.com?

A. I believe that leads you to a section of the POM Web site.

Q. The pomwonderful.com Web site?

A. Correct.

Q. So, can you access the POM Pills Web site directly?

A. I'm not an expert on the Internet either, I'm sorry, and I --

Q. Nor am I.

A. Yeah.

Q. But you said that you can -- that the POM Pills Web site leads you to pomwonderful.com?

A. I don't want to say for sure. I'm not positive.

Q. Well, I guess, what were you -- what did you mean, just explain generally how that works? Does it link to the POM Wonderful or automatically direct you to the POM Wonderful --

JUDGE CHAPPELL: I think she has told us she is not in a position to have perceived how that works.

MS. NACH: Okay. So, I --

JUDGE CHAPPELL: So, without any more foundation, you need to move on regarding the Web site.

BY MS. NACH:

Q. May I ask, then, if you have used or gone on the POM Pills Web site yourself?

A. During what period of time?

Q. Well, to the extent that that would change your answer, I'm interested in each different answer. So, perhaps we could start at the beginning. So, what would be the first year that this would be a relevant question?

A. I'm sorry. I don't -- I'm not quite sure what you're asking.

Q. Well, when is the first time you recall going on

the POM Pills Web site?

A. I am not sure.

Q. Are there any years, then, that you remember?

Because you mentioned or -- you mentioned it depends on the time.

A. Um-hum.

Q. So, when do you recall accessing the POM Pills Web site?

A. I don't recall specifically a date. I'm sorry. It's very out of context for me.

Q. Okay. So, we talked about pomwonderful.com, pomtruth.com, pompills.com. Are there any other Web sites that POM manages or has?

A. Not that I can recall.

Q. And Fire Station has a media department, right?

A. Correct.

Q. And what does the media department do?

A. They purchase the media for advertising.

Q. And do you know who's in charge of the media department?

A. At the top level, Mike Perdigao, because he's the agency president, and Brian Fisher is head of the media department.

Q. Are you familiar with media buyers?

A. In general, yes.

Q. And are you -- could you explain what that refers to, a media buyer? I guess that's self-explanatory.

A. I think it's self-explanatory. And, again, that's not my area of expertise.

Q. Have you worked with media buyers?

A. I don't work directly with media, no.

Q. And for POM's advertisements, who does the buys? Is it Fire Station or -- I guess when you were at Teleflora -- or POM?

A. It would vary, depending on the period of time.

Q. Could you explain what you mean?

A. There was a period of time where POM purchased the media for their advertising before Fire Station.

Q. And so when Fire Station was created, is that when Fire Station started buying?

A. I believe so. But, again, media is not my area of expertise.

Q. And Fire Station has a traffic department. Is that correct?

A. Yes.

Q. Is this -- is the traffic department the same as the media department?

A. No.

Q. What does the traffic department do?

A. They are responsible for routing the advertisements.

Q. Does the traffic department keep track of where it has routed advertisements?

A. I'm sorry. What was your question?

Q. Does the traffic department keep track of where it has routed advertisements?

A. Yes.

Q. And when you say "routed advertisements," what does that mean?

A. It means bringing them to the appropriate places for approval.

Q. And you said that the traffic department at Fire Station keeps track of where it has routed POM's advertisements, right?

A. Correct.

Q. How -- do you know how it keeps track?

A. No, I don't. I don't manage the traffic department.

Q. Have you ever seen documents from the traffic department that perhaps summarize or have information on where POM's advertisements have been routed, as creative director?

A. Sometimes.

Q. And if you could explain what sorts of

information have you seen on the occasions on which you have seen this information.

A. I can't really speak to the -- traffic's processes and procedures, because that's really a separate department within the agency.

Q. Sure. But when you have received documents from the traffic department pertaining to where POM's ads have been routed, does that information include confirmations that an ad has been accepted by a publication or other type of media?

A. No. I'm not quite sure what you're asking, but that -- that stage that you're asking me about would not be within my realm of responsibility.

Q. How about just --

A. Because I deal with the ads before they go to the publication.

Q. Okay. And who at Roll would be familiar with the traffic department process?

A. Mike Perdigao.

Q. So, he would be informed on all aspects of that process and --

A. Correct.

Q. Um-hum. How can Fire Station -- if you know, how can Fire Station or Roll verify if an ad actually was disseminated?

A. That would be a question for the traffic department.

Q. Or Mr. Perdigao?

A. I would imagine.

Q. So, do you receive any sorts of -- I know I asked about confirmations, but do you receive any sorts of reports regarding media placement, any at all?

A. No. I mean, except that if we're going to do an ad, it's usually on the creative brief where it's going to appear, but -- and, again, that might change during the time that we're creating it, too. They usually have a direction in mind for the placement.

Q. And, over the past six years, in your time at Teleflora and Fire Station, you have interacted with persons who have served as the director of POM's marketing department, right?

A. Correct.

Q. And have these persons included John Regal?

A. Yes.

Q. And was there anyone before John Regal?

A. John Regal was with POM when I started with the company.

Q. And who was after John Regal as head of POM's marketing department?

A. I believe it was Jennifer Simms.

Q. And after Jennifer Simms?

A. Grant Beggs.

Q. And after Grant Beggs?

A. Diane Kuyoomjian, and there might have been someone in between, but I can't recall specifically.

Q. And so over the period of time we've covered so far, were there any other gaps in -- was that position vacant at any other time?

A. There -- you mean no one would be holding the position?

Q. Right. So, for example, after John Regal left and before Jennifer Simms came on, something like that, where there was just a period in between where there was no head of marketing.

A. If there were gaps, they would have filled them with a consultant. It was never, as I recall, an empty position.

Q. And which -- do you remember any particular consultants?

A. There was somebody between Paul Coletta and Jan Hall, I believe.

Q. And that was recently.

A. Yes.

Q. Do you recall when?

A. I don't know the dates.

Q. Do you know who that person was?

A. Her name was Sydney.

Q. Do you remember her last name?

A. I'm sorry. I don't.

Q. And so in the period of time preceding -- well, let's just say between John Regal being there and Paul Coletta, starting, were there any gaps?

A. Not that I recall, no.

Q. So, Matt Tupper has never had to lead the marketing department at any point in time? Like, for instance, before POM was -- POM hired a consultant.

A. He may have. I don't recall specifically.

Q. And you have worked with other POM marketing personnel on specific projects, correct?

A. Yes.

Q. Have you worked with Claire Nelson?

A. Yes.

Q. How about -- well, if you could briefly describe what types of projects you worked with her on.

A. Claire and I worked together on photo shoots for POM recipes.

Q. Anything else?

A. That was our primary interaction.

Q. How about Roni Pfeffer?

A. Roni Pfeffer worked on POMx Pills.

Q. And what was her title?

A. I don't know what her title was, sorry.

Q. Do you remember Claire Nelson's title?

A. No, I do not.

Q. And what aspects of POMx Pills did you work with Roni Pfeffer on?

A. Could you please be more specific?

Q. What types of POMx Pills projects did you work with Roni on, Roni Pfeffer? Sorry.

A. I oversaw the work for the POMx Pills while Roni was working in the marketing for Pills. I didn't interact directly with her a lot. It was more my team members.

Q. Oh. So, you would oversee work that she and your team members produced?

A. Correct.

Q. You would review their work?

A. Correct.

Sorry. Let me get my phone to be quiet.

JUDGE CHAPPELL: Did counsel not see the memo to instruct witnesses to turn off devices?

MS. NACH: I did see the memo, Your Honor. I'm sorry.

JUDGE CHAPPELL: Did you talk to this witness?

MS. NACH: If you could please silence your

phone.

THE WITNESS: I'm trying. I don't know what's wrong with it.

MS. NACH: Or perhaps turn it off.

JUDGE CHAPPELL: That needs to be done before she takes the stand.

MS. NACH: Sure. Understood.

BY MS. NACH:

Q. Were you able to turn off your phone?

A. I hope so.

Q. So, we were discussing Roni Pfeffer and POMx Pills projects, correct?

A. Yes.

Q. Do you recall any specific projects pertaining to POMx Pills?

A. Could you please be more specific?

Q. Well, earlier, you said you had reviewed work that Ms. Pfeffer and your team members had produced for POMx Pills.

A. Correct.

Q. Can you tell me a little bit more about specifically what types of work you reviewed?

A. Print ads.

Q. Anything else?

A. That was the primary focus.

Q. How about brochures?

A. Yes, also brochures.

Q. And when we use the word "brochure," does that include, for instance, the insert in the POMx Pills package?

A. Yes.

Q. Are there other brochures?

A. I believe there was a mailer.

Q. Could you tell me a little bit more about the mailer?

A. I don't really recall it that specifically.

Q. Or what a mailer is, just in general?

A. It's a direct-mail correspondence.

Q. Would that be in a letter?

A. Yes.

Q. And from whom was -- was the letter?

A. I would have to see the correspondence in order to speak to it more accurately.

Q. Um-hum. Have you worked with Staci Glovsky?

A. Again, she worked with members of my team. I was supervising the advertising.

Q. So, similar to your experience with Ms. Pfeffer?

A. Yes.

Q. Do you recall her title?

A. No, I don't.

Q. Were Ms. Pfeffer and Ms. Glovsky there at the -- at POM at the same time?

A. I am not sure.

Q. And, similar to what we just went through concerning Ms. Pfeffer, what sorts of projects do you recall working on with or reviewing -- you know, projects that Ms. Glovsky and your team had worked on?

A. I'm not really sure which projects were her specifically. You would have to again, I'm sorry, show me an example, because that was a while ago.

Q. Okay. But these projects pertained to POMx Pills?

A. I believe so.

Q. How about POM Juice?

A. I really am not sure about Staci and what her exact responsibilities were. I'm sorry.

Q. So, you worked on POM marketing -- with POM marketing on ads for POM Juice, POMx Pills, and POMx Liquid. Is that accurate?

A. I don't recall Liquid.

Q. Okay. Does that mean you don't recall ever discussing it in a meeting with POM, anyone at POM?

A. It was discussed in meetings.

Q. Do you recall what the discussions were about?

A. Not specifically now. The focus of the

advertising was for Juice and then for POMx Pills.

Q. And do you know why the liquid didn't get as far as POMx Pills, for instance?

A. No, I don't.

Q. Do you recall the names of any POM marketing staff who worked with your team on juice products -- projects? Sorry. POM Juice projects.

A. Could you please be more specific?

Q. Who, at POM, in the marketing department, worked with your Fire Station team on POM Juice projects that you may have reviewed?

A. The heads of POM marketing, like Diane Kuyoomjian, for example, Paul Coletta, and Jan.

Q. Would that just be the heads of the marketing department or other members of the marketing department?

A. There may have been other members as well.

Q. Do you recall any of their names?

A. Molly, Jason --

Q. Do you remember any --

A. It depends on the project.

Q. Is that Molly Flynn?

A. I'm not sure of the last name right now.

Q. And do you recall Jason?

A. No, I'm sorry.

Q. Do you know Mark Dreher?

A. I know who he is.

Q. Does that mean that you never interacted with Mark Dreher?

A. I didn't interact with him directly.

Q. And when you say "directly," what do you mean?

A. I mean having meetings with him, you know, individual meetings.

Q. So, you attended meetings at which he was also present?

A. Sometimes.

Q. What sorts of meetings would these be, if you can categorize them?

A. Sometimes the Lynda meetings.

Q. And what's a Lynda meeting?

A. A POM meeting where Lynda Resnick was in attendance.

Q. Is that what's also referred to as an LRR meeting?

A. Sometimes, yes.

Q. Because LRR is for Lynda Rae Resnick?

A. Correct.

Q. And how often did you attend these meetings?

A. It varies, and it varied, you know, through the course of time.

Q. Um-hum. So, if you were to give me a concrete

period, for instance, where -- was it weekly that Lynda meetings would occur?

A. It -- it might have been. It might have been monthly. It just depended on her schedule.

Q. And that's when they occurred in general or is that -- does that relate to when you attended the meetings?

A. When I attended.

Q. So, sometimes there were meetings that you didn't attend?

A. Not that I'm aware of. I can only speak to my own knowledge, though, so...

Q. Going back to Mark Dreher, what did you understand his role to be at POM?

A. Mark Dreher is a research scientist.

Q. Did he have a title at POM?

A. I don't know what his title was.

Q. And as a research scientist, what's your understanding of what he did at POM?

A. I can't speak to his duties. I'm sorry.

Q. So, you never worked with him on POM marketing projects?

A. No.

Q. Do you know if he ever reviewed -- well, let's say after ads were created by Fire Station, do you know

if they were ever sent to Mr. Dreher for review?

A. I don't know.

Q. So, not for approval either, or you don't know?

A. I don't know.

Q. So, at the meetings with Lynda Resnick that you attended and Mark Dreher also attended, what role did Mr. Dreher play?

A. Sometimes, he would give updates on studies.

Q. Could you explain what you mean by "updates"?

A. He would give information to Lynda about scientific studies that were in progress that he was overseeing.

Q. So, he would report on the progress of the study?

A. Sometimes.

Q. Would he ever make recommendations?

A. No, not that I know of.

Q. So, it was --

A. I mean, I don't really understand that question, because, again, the science is very much out of my realm of expertise.

Q. Sure. So, you said that he reported on the studies, but --

A. Well, he gave a very brief -- he would give very brief overviews to Lynda in the meetings. And I'm sure,

you know, it was just top-line information.

Q. And did Lynda ever ask questions about the studies when he reported on them?

A. I am -- I don't know.

Q. Did Matt Tupper ask questions in these meetings of Mr. Dreher?

A. I don't recall.

Q. And, at the Lynda meetings with Mr. Dreher that you attended, was there discussion of references to these studies in ad copy or marketing for POM?

A. No.

Q. And you referred to Mr. Dreher as a research scientist. Were there other scientists at POM, to your knowledge?

A. Not in the meetings, that I recall.

Q. So, outside of the meetings, who do you recall?

A. I don't know. That's out of my realm of expertise.

JUDGE CHAPPELL: Ms. Leow -- is it Leow?

THE WITNESS: Leow.

JUDGE CHAPPELL: Even though something is not in your area of expertise, when questioned, you will still need to tell us what you know, what you saw, even though it's not in your experience area.

THE WITNESS: Okay.

MS. NACH: Thank you.

BY MS. NACH:

Q. So, you don't know of any other scientists at POM?

A. Not personally, no.

Q. Did you ever see their names, for instance, on email correspondence or otherwise came to know of the presence of other scientists at POM?

A. There were other names on email correspondences.

Q. Do you recall any of those names?

A. Dr. Heber.

Q. Is that David Heber?

A. I believe so.

Q. Anyone else?

A. Not that I can recall off the top of my head.

Q. And you said that you saw or you recall his name from emails. Is that right?

A. Um-hum. Yes.

Q. And --

A. Perhaps. I'm not sure, but I am aware of his connection with POM.

Q. Um-hum. Do you remember, in general, what the subject matter of those emails were that you saw Dr. Heber's name?

A. No, I do not.

Q. Any other names that you recall of scientists?

A. No.

Q. How about Harley Liker?

A. Yes. He writes a newsletter for The Roll companies.

Q. First, can you identify who Harley Liker is?

A. He is Lynda's physician, and as I said, he writes a newsletter for The Roll companies.

Q. And could you describe what this newsletter is?

A. It's on health and wellness.

Q. And it's distributed to all Roll companies?

A. I don't know that, but I see it.

Q. It goes to POM -- it goes to Fire Station?

A. Correct.

Q. And POM, do you know?

A. I don't know.

Q. So, besides being Ms. Resnick's physician and writing this newsletter, does he -- is he involved in POM's business in any way?

A. Not that I'm aware of.

Q. How about Bradley or Brad Gillespie. Do you recognize that name?

A. No, I don't.

Q. So, now, getting back to your area of expertise, would you mind walking me through the creative process

at Roll? So, maybe we can start here. Would it be accurate to say that POM marketing would provide Fire Station with a creative brief for any advertising project?

A. Correct.

Q. And is it accurate that that would be the first place to start in this creative process?

A. That would be the starting point, yes.

Q. And what is a creative brief?

A. A creative brief is a document that outlines the assignment.

Q. The assignment from POM marketing?

A. Correct.

Q. And what is a creative brief's purpose?

A. To give an overview of the assignment.

Q. And what is the information in a creative brief, in an overview of the assignment?

A. A creative brief might include the following: The single-most important concept to be communicated, a suggested target audience, information on the demographics, perhaps media, things like that.

Q. So --

A. It may also have information on the competitive marketplace for the product.

Q. So, you said that it contains a description of

the target audience. Is that right?

A. It might.

Q. And is it accurate to say that it has the purpose of describing the intended messaging or message of the advertisement or project?

A. Correct.

Q. And when you say "target audience," that means -- that's an audience to which the ad would appeal, right?

A. Yes, or the audience that you would like to address.

Q. Can you think of any other information that's in a creative brief?

A. Information about the product, perhaps.

Q. So, after Fire Station receives the creative brief -- oh, I'm sorry.

First, who at Fire Station would receive the creative brief?

A. Traffic.

Q. Is there one person in traffic who gets the creative brief?

A. I don't know. I think it depends on the project, and I -- again, I'm not sure how their specific procedure is.

Q. Are you ever CC'd on -- well, how does traffic

get the brief? Through an email, for instance?

A. I don't know.

Q. So, you've never been copied on an email from POM marketing sending a creative brief to Fire Station's traffic department?

A. Not at that stage, no. I mean, normally -- I mean, maybe there's an exception, but the normal process would be that they would receive the brief from traffic, and then traffic would hand out the brief.

Q. And traffic would hand out the brief to everyone at Fire Station?

A. No. They would ask me who it goes to.

Q. And then what would you do when you received the brief and --

A. We might have a meeting to go over it. It would depend on the assignment.

Q. And who would be at the meeting?

A. Again, it would depend on the assignment. It might be just the creative team. It might be the associate creative directors. It might be multiple teams working on the project. You know, if it's a big assignment, there might be a more formalized brief, where marketing and Mike Perdigao would be present. It just -- you know, it's very assignment-dependent.

Q. And you said sometimes if there's a bigger

assignment, that might include Mr. Perdigao, for instance. Can you think -- recall any specific assignments that would fit that description?

A. New campaigns, TV assignments.

Q. And what new campaigns do you recall?

A. For example, at the start of our TV campaign.

Q. I'm sorry? What was that?

A. At the start of our TV campaign.

Q. Oh, the start of...

Were there any other large campaigns?

A. There probably are. If you ask me about specific assignments, I can tell you if I remember if we had a briefing and who would be in attendance.

Q. Okay. Well, for instance, the Comic Book or Superhero -- I'm not sure which one you call it --

A. Um-hum.

Q. -- if you recognize that campaign.

A. I recognize the campaign.

Q. Is it a Comic Book Campaign? Is that what it's called?

A. It's called the Superhero Campaign.

Q. Superhero Campaign.

And why is it called a Superhero Campaign?

A. Because it falls in the tradition of Superhero icons.

Q. So, would you consider that a big campaign?

A. Yes.

Q. In the manner in which we have been discussing these campaigns that would have involved Mr. Perdigao and POM marketing?

A. Yes.

Q. Would Ms. Resnick ever be at those meetings, the bigger ones, for these larger campaigns, for instance, that Mr. Perdigao would attend?

A. For creative briefings?

Q. Yes.

A. No.

Q. For any -- for anything else?

A. I'm sorry. Could you please be more specific?

Q. You said not for creative briefings pertaining to the campaigns, but do you remember other meetings at which she was present?

A. Other than the Lynda meetings, no.

Q. So, we've talked about Superhero. Do you recall any other large campaigns?

A. Trust in POM.

Q. And what was the creative concept behind Trust in POM?

A. That POM is a healthy brand, an authentic brand that grows its own fruit.

Q. Any other big campaigns?

A. The history campaign that's currently running.

Q. How about the Dress Bottle Campaign?

A. The Dress Bottle Campaign was conceived before I started there.

Q. But did you participate in creating advertisements for that campaign when you started?

A. Yes.

Q. And throughout your time at POM?

A. Yes.

Q. Is that campaign still going on?

A. Not to my knowledge.

Q. Do you know if it's been discontinued?

A. If you're asking me if it's running anywhere currently, I don't believe it is.

Q. But that's not the same as being discontinued, right?

A. Correct.

Q. And how about the Superhero Campaign, is that still running?

A. Not to my knowledge.

Q. Do you know when that was initiated, the Superhero Campaign?

A. I don't know the exact dates.

Q. Can you give me a rough estimate?

A. I'm not sure.

Q. Sometime between 2005 and present, correct?

So, we've reviewed the Superhero Campaign, Trust in POM, History -- what was the History Campaign?

A. It's the TV campaign that's currently running.

Q. And it's only TV?

A. Correct. And some point-of-sale.

Q. We also discussed the Dress Bottle Campaign.

A. Correct.

Q. Do you recall when you last worked on the Dress Bottle Campaign?

A. Several years ago, maybe three years ago, as far as concepting.

Q. So, around 2008?

A. Um-hum.

Q. Okay. So, we were going through the creative process, and I think we stopped at the stage where you and your team receive the creative brief and were deciding how to execute the creative brief, right?

A. I'm sorry. Can you please repeat your question?

Q. Yes. So, just to pick up where we left off before in discussing the steps in the process -- in the creative process, I believe we left off at the point at which Fire Station received the creative brief --

A. Um-hum.

Q. -- correct?

A. Yes.

Q. And when you received it, correct?

A. Yes.

Q. And had whatever meetings were necessary to decide how to proceed?

A. Yes.

Q. So, what would happen after that in the creative process?

A. The creative team members worked together to start creating advertisement concepts.

Q. And what would happen after they created advertising concepts?

A. They would review them with me.

Q. And in creating these concepts, would your team ever consult with POM marketing?

A. Sometimes.

Q. And how about in the instance of bigger campaigns, as we were discussing before? Would POM marketing and your creative team work together to come up with concepts?

A. Well, the creative part of the agency comes up with the creative concepts, but it's a fluid process with a lot of people involved. And if we wanted input from marketing at any step along the way, we would ask

them, and, you know, there are just a number of stages and steps.

It goes to me for approval. I might have them make revisions. Then, once I'm happy, it would go to Mike Perdigao, then to marketing. Then there might be more revisions and more revisions after that. And then, depending on the assignment, it might or might not go to Matt and it might or might not go to Lynda.

Q. Okay.

A. And that's just the concept stage. That's prior to body copy or any specifics.

Q. Sure. So, at the concept stage, if you had a question for POM marketing, for instance, whom -- who at POM marketing would you call or speak with?

A. It would depend on the project.

Q. So, would it be the head of marketing usually?

A. On a big project, yes.

Q. Okay. But sometimes others in the -- in the marketing department?

A. If it was a minor question or if it was a lesser project.

Q. Would you ever consult Ms. Resnick at this stage, the concept stage?

A. No.

Q. How about Matt Tupper?

A. Sometimes, yes.

Q. Do you recall any occasions on which you consulted Mr. Tupper at the concept stage?

A. I recall that he reviewed work on each of the large campaigns before they were shown to Lynda. I wasn't always present at that time, but...

Q. And, just to clarify the concept stage, what sort of work products are in play here? Are we talking about body copy, for example?

A. Not usually, or it might be, but not necessarily.

Q. How about --

A. When you're talking about a big campaign, you're talking more about the general creative direction, idea, the look, the tone.

Q. Would that ever result -- this back and forth, sometimes would that ever result in changing the creative brief?

A. It might.

Q. Or re -- redoing the creative brief and starting over again?

A. It might. I can't recall specifically, but that could be part of the advertising process.

Q. And sometimes that happened?

A. I don't recall specifically, but it certainly

might.

Q. So, at the concept stage, let's --

JUDGE CHAPPELL: How much more time do you think you'll need?

MS. NACH: I guess my best estimate, conservatively, maybe 2 1/2 to 3 hours.

JUDGE CHAPPELL: Okay.

MS. NACH: Shall I continue?

JUDGE CHAPPELL: Go ahead.

BY MS. NACH:

Q. So, let's continue from the concept stage. What happens next?

A. Again, it depends on the project. If everyone approves the concepts and it's a big campaign, it would ultimately go to Lynda for approval.

Q. And how would you go about getting her approval?

A. Presenting it to her in a Lynda meeting.

Q. And you mentioned that for bigger campaigns and projects. How about smaller ones?

A. It would depend. Sometimes we presented smaller things to her, you know, just individual ads, in meetings as well.

Q. For her approval?

A. Um-hum.

Q. Once Fire Station prepares a draft ad, is it

sent back to POM Wonderful for review?

A. At what stage are you referring?

Q. Well, what stage comes after the concept stage?

A. It goes -- you know, as I said, if it's a big campaign, it would usually go to Lynda for approval.

Q. Um-hum. And what if it's just a -- for instance, an ad for a magazine?

A. It would depend on the ad.

Q. And how would it depend on the ad?

A. If it's something that had run before, you know, that just had a minor change, it might or might not go to Lynda.

Q. And you mentioned before that at the concept stage, body copy isn't really in play yet. Is that correct?

A. Not usually.

Q. So, when is the body copy added?

A. After the concepts are approved or the general direction is approved.

Q. And who adds the body copy?

A. Members of my team.

Q. Does your team draft the body copy?

A. They do, with help from marketing.

Q. Oh, and first, could you define what "body copy" refers to?

A. It's the smaller print usually at the bottom of an ad.

Q. Is that different from the headline? Is that the appropriate term?

A. Yes.

Q. Could you define a headline?

A. The headline is the main message of the ad, in larger type usually.

Q. And you said that your team drafts the body copy in consultation with marketing. Is that accurate?

A. Not in consultation, but with direction provided by marketing.

Q. What type of direction?

A. With the creative brief, it's sort of used as an outline, and any additional input that they might add.

Q. So, which parts of the creative brief would go into the body copy?

A. It would vary.

Q. Can you give me a couple of examples?

A. I'd have to look at a specific creative brief, but since the -- it's such a long process, sometimes things might evolve past the time when the creative brief was written, so marketing might request, you know, specific changes or additional input.

Q. And who in marketing would make these requests

typically?

A. Once we had written -- once we -- well, if the writers had questions while they're formulating the copy, they forward those questions to marketing. And then after they've written the copy, it goes to marketing for approval. And, again, it would depend on the project who in marketing, you know, would look at it and at what stage.

Q. And when it goes to marketing -- when body copy goes to marketing for approval, would that be the head of marketing's approval?

A. Generally, yes.

Q. How about Matt Tupper's approval?

A. I -- it would depend on the project. I don't know that Matt is always reviewing body copy.

Q. But he does review body copy?

A. It would depend on the project.

Q. Do you recall projects in which he's reviewed body copy?

A. I can't tell you the specific ones, but I know that he has, yes.

Q. Do any -- we were talking about scientists. Do you have any scientists on your staff at Fire Station?

A. No, we don't.

Q. Or technical writers?

A. No, we don't.

Q. So, when the body copy might contain -- for instance, you had mentioned before that -- meetings at which there were reports on studies. So, if body copy were to contain that type of information on the studies, who would draft the body copy?

A. It would be provided by marketing if they wanted specific wording.

Q. And would you make the changes to the wording?

A. Me?

Q. Or your team, Fire Station.

A. Not if it was coming directly from marketing in that manner, no.

Q. Would Mr. Tupper ever request that changes be made to science-related discussions in the body copy?

A. I don't recall specifically.

Q. Do you recall any instances?

A. Not specifically.

Q. But he has?

A. I believe so.

Q. Do you know if Ms. Resnick has made comments to the science content of body copy?

A. Not that I recall.

Q. And I know you said that you didn't interact with Mr. Resnick, but did you ever receive any emails or

were copied on any emails that perhaps referenced his involvement in reviewing body copy?

A. Not that I know of.

Q. So, we have the concepts, the drafting of the body copy. Then what happens? I'm sorry, the drafting of the body copy and then the approval of body copy by marketing.

A. Right.

Q. And what happens next?

A. There might be a final review of the completed ad by marketing.

Q. Also by Mr. Tupper?

A. By me. Again, it depends on the project, if he would review a final ad. And then it would go into our studio, our production department, for the creation of the mechanical.

Q. And how about Ms. Resnick, would she be involved at this point?

A. She would never review mechanicals, and as far as if she reviewed finished ads, sometimes; but she was really primarily more involved at the conceptual level.

Q. And what is a mechanical?

A. A mechanical is the completed ad that's in an electronic file form that's prepared to be sent out to the publications.

Q. So, that's when it's ready to go straight to the media, correct?

A. Correct. Oh, and I forgot, there's a proofreading stage as well.

Q. And who does the proofreading?

A. Fire Station has proofreaders.

Q. Okay. Oh, and we didn't go over specifically graphics and headlines, but where do those come in in the creative process?

A. Did you say headlines?

Q. Yeah.

A. Headlines are part of the concept.

Q. Okay. And do they go through a similar process of drafting review, approval, as the body copy that we were discussing?

A. Headlines are part of the original concept presentation that I described.

Q. Um-hum.

A. That happens prior to the body copy.

Q. Um-hum. And how about graphics?

A. Graphics are part of the original concept presentation as well, although they can be revised, refined, and changed many times before they're finalized.

Q. And are the graphics -- is it only Fire Station

that comes up with the graphics and art, or has POM marketing ever suggested certain graphics?

A. Primarily, Fire Station comes up with them, but there are times when a client will give input.

Q. And POM has done that, POM marketing has done that?

A. Not that I can recall specifically, but it wouldn't be unusual for a client to do that.

Q. Do you recall if POM marketing, in a creative brief, ever specified that a certain image be used in an advertisement?

A. They may have. I don't recall.

Q. But if they wanted to include a certain image, that's something they would put in the creative brief, correct?

A. They might.

Q. You don't recall any examples or instances of that happening?

A. Not usually.

Q. But it might have happened?

A. Um-hum.

Q. Earlier, you mentioned Lynda meetings.

A. Um-hum. Correct.

Q. Also called LRR meetings. Is that correct?

A. Correct.

Q. To your knowledge, were notes ever made of these meetings?

A. Sometimes.

Q. I'd like to show you CX 276, and this is the first page of CX 276. Oh, I'm sorry. We've prepared a binder of the exhibits that we'll be looking at today, and so we can have that for you.

If we can approach the witness?

JUDGE CHAPPELL: Go ahead.

BY MS. NACH:

Q. And those exhibits should be in numerical order. So, if you could turn to CX 276, please.

A. Okay.

Q. Is this an example of the notes that you said were taken from -- from a Lynda meeting?

A. I don't recall these specifically, but it looks like meeting notes.

Q. Okay. So, let's just take a look at the column headers here, because we're going to flip to some other pages. In the second column, do you see that, the category is "Decision Made"?

A. Correct.

Q. And then the column next to it is labeled "Follow-up Actions."

A. Right.

Q. And then "Responsibility" is the last column, right?

A. That's what it says, yes.

Q. So, the Decision Made column, does this refer to decisions made by Ms. Resnick?

A. I don't know.

Q. Do you know who else would have made decisions that would be reflected in Lynda meeting notes?

A. I'm just looking through what's under the column now.

Q. Oh, sure.

A. (Document review.) Okay.

Q. So, the Decision Made column, would that refer to decisions made at the meetings where Ms. Resnick was present?

A. In this case, it appears to.

Q. But you don't know for sure whether it would have been her decision?

A. It appears to.

Q. It appears to be Ms. Resnick's decision that's reflected in the Decision Made column?

A. Yes, in this document.

Q. And for other meeting notes that are set up in this manner, in this format, would that apply as well?

A. It may.

Q. Now, if you could turn to page 2 of Exhibit CX 276. If I could direct your attention to the bottom row, in the "Decision Made" column -- that's the second column -- and it's the entry that begins with "Subheads/body copy," and it -- this pertains to POMx Pills. Is that correct?

A. That's what it says, yes.

Q. And when it says that "Subheads/body copy approved for all five ads:" For example, "401K headline/'modern' layout," and another example is the "Healthy Wealthy headline/'modern' layout."

Those were subheads/body copy that were approved by Ms. Resnick?

A. That's what it says, yes.

Q. Would Ms. Resnick approve layouts, too? I see these references to headline and modern layouts.

A. Yes.

Q. Could you explain what a layout refers to?

A. It's the graphic design of the ad.

Q. And, just as an example, what's a modern layout?

A. That was one of the designs that we presented for the Pills ads.

Q. And how is that different from Mondrian layout?

A. Mondrian layout was a little bit more of a busy grid.

Q. And do you recall whether the ads that are connected to these headlines ran?

A. I believe they did.

Q. Now, if you could turn to page 3 of CX 276.

A. Um-hum.

Q. This is the second row. It's under "POMx Pills: Small Space Newspaper Ads" row. Can you see that?

A. Yes.

Q. And then do you see, it's a few lines down, it states, "Add 'for more information, go to pompills.com.'" Did -- and these are small-space newspaper ads, correct?

A. That's what it says.

Q. Could you explain what a small-space newspaper ad is?

A. A small number of column inches purchased in the newspaper.

Q. And how many inches, approximately?

A. I don't know.

Q. How many words, approximately, were in these ads?

A. I don't recall. You would have to show me a printout of the ad.

Q. Um-hum. Could you estimate, say, 50 words?

A. I don't want to estimate. I'm sorry.

Q. Okay. But small, right?

A. Yes.

Q. And did most print ads, including the small-space newspaper ads, for instance, include text such as what I just read about for more information go to pompills.com? Did most ads direct the reader to a POM Web site?

A. Most of POM's ads, in general, include a Web site.

Q. And, moving down a few lines in the same cell that we're looking at here, the last bullet reads, "One a day keeps the hearse away. Third direction (Wonder Pill, Life Saver and Miracle Cure) approved in meeting but subsequently cancelled by SAR."

Do you know what "SAR" stands for?

A. Stewart Resnick.

Q. Does that mean that he attended this meeting?

A. No, it does not.

Q. Does that mean that he would have reviewed concepts in order to be able to cancel something?

A. I don't know the context of his involvement with the advertising. That wouldn't have involved me.

Q. Do you ever recall instances in which Mr. Resnick wanted any advertising -- POM advertising to be cancelled?

A. Not specifically, no.

Q. How about in general?

A. No.

Q. And earlier we discussed POM's various advertising campaigns, right, and one of them was the Dress Bottle Campaign, right?

A. Correct.

Q. And that campaign was already ongoing when you came to Teleflora. Is that right?

A. Correct. It had been started.

Q. Pardon?

A. It had been started.

Q. Do you know how long it had been running for before you came on to Teleflora?

A. I don't know.

Q. Do you know if there were any campaigns, besides Dress Bottle, that were going on before you started with the company?

A. There had been another one as well.

Q. And what was the other campaign?

A. I don't know what they called it.

Q. Or just what it involved, if you could explain briefly.

A. It was an outdoor campaign.

Q. Did it have a particular creative concept like

Dress Bottle?

A. It really didn't. That was the problem.

Q. Okay. Fair enough.

I'd like to show you an ad. It's CX 36. CX 36 is a print ad with the headline "Cheat death." Do you recognize this ad?

A. Yes. Am I supposed to look at it in the book or on the screen?

Q. Oh, whatever is easier for you.

A. Okay.

Q. That's for your reference if you need it.

A. Okay.

Q. Now, you said you recognized this, correct?

A. Yes.

Q. Do you know if POM ran this ad?

A. This specific version of it, I don't know, but I know that they ran "Cheat death" ads.

Q. And what was the concept behind Dress Bottle from a creative perspective?

A. Personifying the product.

Q. Personifying?

A. The product.

Q. And how would the product be personified?

A. By the props.

Q. What sorts of props?

A. Life preservers, sails, depending on the concept.

Q. So, here, it would probably be the noose?

A. Correct.

Q. And what was the concept behind dressing the bottle in the noose?

A. As I said, this ad was created before I started at Fire Station, so I don't know what the creator's specific intent was.

Q. Do you know if this ad was controversial?

A. Could you be more specific?

Q. Did POM ever receive complaints about this ad?

A. I believe they did.

Q. From consumers?

A. I believe so.

Q. Do you know if POM received complaints about the ad from anybody else, not a consumer?

A. No, I don't.

Q. Do you know if the ad was ever discontinued?

A. I don't know. I -- are you asking me if it's currently running?

Q. Is it currently running?

A. Not that I'm aware of.

Q. When do you last remember the ad running?

A. I believe it was a couple years ago.

Q. And you said that there were consumer complaints. Did that result in stopping the dissemination of the "Cheat death" ad at any point?

A. I -- could I just correct one thing? The complaints were in regard not to this ad, and I don't know of any consumer complaints in regard to this print ad. There were consumer complaints in regard to the outdoor board version of it.

Q. Oh. So, like, on a billboard?

A. Correct, where there was no body copy. Yes.

Q. So, was it ever discontinued while you were there?

MS. DIAZ: Objection, Your Honor.

JUDGE CHAPPELL: Are you objecting for asked and answered?

MS. DIAZ: No.

JUDGE CHAPPELL: What's your basis? You'll need to stand up, please.

MS. DIAZ: It's vague and ambiguous, Your Honor. The ad appears in various forms, and the questioner could be clearer with respect to whether the question is with respect to headline or headline and visual or with respect to the entire ad here. I think there is confusion here.

JUDGE CHAPPELL: Or the billboard or magazine

or --

MS. DIAZ: So that --

JUDGE CHAPPELL: That objection is sustained.

BY MS. NACH:

Q. Okay. You can take that exhibit down.

Ms. Leow, POM had -- you testified that POM had already initiated the Dress Bottle Campaign when you started working at Teleflora in January 2005.

A. Correct.

Q. And it continued the Dress Bottle campaign while you were at Teleflora?

A. Correct.

Q. Now, when you started as creative director at Teleflora, did you seek to familiarize yourself with the Dress Bottle Campaign ads POM had run previously to understand the look and feel of the ads --

A. Correct.

Q. -- so that you could -- you did?

And how did you go about familiarizing yourself with the ads that had run?

A. I don't recall specifically, but I believe members of the creative department presented the work to me.

Q. And these are ads that were placed in media, correct, not drafts?

A. I think they showed me drafts as well.

Q. Did you also seek to familiarize yourself with the creative briefs for the Dress Bottle ads when you started at Teleflora?

A. I'm not completely clear on that question. I'm sorry. You mean, did I go back through the archives to look at the briefs that had initiated this work?

Q. Yes.

A. I don't recall doing that.

Q. Do you know if Teleflora, now Fire Station, keeps copies of the ads that it had run?

A. At that time? Are you asking me about in 2005?

Q. If the time affects your answer, then --

A. They had copies of the ads, yes.

Q. In Teleflora or Fire Station, both?

A. Correct.

Q. This was true when you were at --

A. The agency, yes.

Q. Okay. And when you say "the agency," that can refer to both Teleflora and Fire Station?

A. Yes.

Q. Okay. So, the agency keeps copies of the ads it runs in the media.

A. At that time, they had copies -- hard copies.

Q. Oh, and you're talking about when you first

started as creative director?

A. Correct.

Q. How about now?

A. Archiving the ads is a function of the traffic department.

Q. And does the traffic department archive its ads in a systematic way?

A. I don't know how they have their archives set up, but most of the ads are on our servers.

Q. So, if you wanted to look at an ad from, say, 2006, February, you could describe that to them and they could pull it up, correct?

A. Correct.

Q. And that would go for any ad that POM has disseminated. Is that right?

A. Correct.

Q. Do you know who, in the traffic department, archives the ads, POM's ads?

A. No, I do not. I don't know exactly how the system works.

Q. Okay. And do you know if the agency keeps copies of the creative briefs it receives from POM marketing?

A. I don't know.

Q. Do you know if POM marketing keeps all of the

creative briefs that it creates?

A. I don't know.

Q. Have you ever had to request copies of older creative briefs, perhaps to inform your work for future ad campaigns?

A. Not that I recall.

Q. And on the subject of creative briefs, I'd like to show you an exhibit. It's CX 409. Are you on 409? This is 409-10, page 10.

So, at CX 409 --

A. I am just going to look at the screen.

Q. Oh, okay. So, CX 409, page 10, is a creative brief dated February 16, 2005, with the project name, "Women's Lifestyle Print/Outdoor concept." Is that right?

A. Correct.

Q. And February 2005 would be after you started working at Teleflora. Is that right?

A. Yes.

Q. Do you have any recollection of this project, of the women's lifestyle print/outdoor concept?

A. Generally, you know, yes, in broad terms, I do.

Q. Do you recognize this creative brief?

A. Not specifically, but it looks familiar.

Q. Even if you don't remember specifically, is this

creative brief in the typical format in which you receive creative briefs?

A. I believe so. I can't see the whole page. Can you scroll up?

Q. Oh.

A. It -- it looks like the format for that era.

Q. And when you say "era," when are you referring to?

A. 2005, yeah.

Q. 2005?

A. Um-hum.

Q. Did it change over time? Were there other eras?

A. I think the terminology may have changed a little bit.

Q. Okay. Do you recall developing ads based on this creative brief?

A. I remember this brief. I don't remember specifically the ads that were the result of it. I'd have to see them.

Q. Well, just looking at the brief separate from the ads, in the middle of page 409 -- I'm sorry, CX 409, page 10, under the subheading "Benefit," do you see that?

A. Yes.

Q. Okay. Under "Benefit," there appears to be a

choice -- there's an "or" here -- between "General Health OR Heart Health." Is that right?

A. Correct.

Q. And under "Heart Health," it says, "If you drink POM Wonderful DAILY, you will have clean & healthy arteries (i.e. Floss Your Arteries Daily)."

Within a creative -- is that right? I'm sorry.

A. That's what the document says.

Q. Okay. Within a creative brief such as this, what does "Benefit" refer to?

A. Benefit refers to how the consumer might benefit.

Q. So, it's a consumer benefit?

A. Correct.

Q. So, here, for example, heart health, and if you look at the second option specifically, "clean & healthy arteries," for example, is that a consumer benefit?

A. That's the direction that they wanted the work to go in.

Q. So, that's the consumer benefit they wanted to convey in the advertisement or advertisements that --

A. Generally. That doesn't seem to me like what we would have ended up with, but it seems like that was the start -- you know, the starting thought for the genesis of this assignment.

Q. Finally, let's see, below the section on benefit is another subheading, titled "Reasons to Believe." Do you see that?

A. Yes.

Q. And among the reasons are -- let's take the third bullet, for instance (as read): "Drinking POM daily can help reduce plaque in your arteries up to 30%."

How did Fire Station use the "Reason to Believe" section in the creative brief?

A. In general, are you saying?

Q. Yeah. Let's start in general.

A. In general, it can, you know, inform the requested concept on the brief, help to inform.

Q. So, would you use the reason to believe statement, such as the bullet that I read, bullet number three, "Drinking POM Wonderful daily can help reduce plaque in your arteries up to 30%," would you use that in advertising?

A. No, not necessarily. I mean, it might be something that you'd consider as you start the concept, but it doesn't mean that you would go in that direction ultimately or that you would focus on that particular reason to believe.

I mean, this is an example of how it's a fluid

process and why we would meet with marketing, because they have too much information really on this brief for an ad to embody. They have two benefits, and they have four reasons to believe, and that's probably too much for most creative people to absorb.

Q. And at the bottom of the page is the subheading "Mandatories."

A. Um-hum.

Q. What are mandatories in this context of creative briefs?

A. Could you please scroll up so I can see them?

Q. Oh. So, we're -- the first page just has the subheading "Mandatories," and the rest of it is on the next page. Would you like to move to the next page?

A. Yes, please.

The mandatories are marketing's wish list. It's like at the start of the assignment, that's what they think they might like to see included somewhere in the ad. It doesn't mean it will be, but it's what they're thinking they might like to see in the ad.

Q. Okay. So, in this brief, there was -- we'll come back to that, but -- so, when you said earlier that you thought that there was too much information on this brief --

A. Um-hum.

Q. -- are you saying that you'd pare down the benefits and reasons to believe to one or two for the ad?

A. There were probably subsequent discussions with marketing as we evolved the creative to find out, you know, what the single-most important thought would have been.

Q. And who in marketing would you discuss what the single-most important thought would be -- should be?

A. The head of marketing. If it was John Regal at that time, then it would have been him.

Q. Do you remember any conversations with John Regal about --

A. Not on this specifically.

Q. Um-hum. And how about Ms. Resnick? Would you discuss what the single-most important things to communicate from the creative brief would be?

A. Not usually.

Q. But you would on occasion -- you would? You have?

A. There, I think, is maybe one, two at the most, instances that I recall of Lynda being involved with a creative brief, but normally, she is not.

Q. And could you describe those instances that you mentioned when she got involved with the creative brief?

A. I don't recall specifically.

Q. How about just in general, what -- what was -- what did you generally discuss with her?

A. I -- I don't recall discussing it with her, but I know there's an email that was shown to me in the deposition where she did reference a creative brief. But that isn't the normal process.

Q. So, in this creative brief, under the "Benefits" section, there is a reference to "Floss your arteries daily." I am going to show you an ad, and this is CX 31, page 1.

A. Okay.

Q. The "Floss your arteries" ad. Do you recognize this ad?

A. Yes.

Q. Did POM run this ad?

A. I believe they did, but I really don't know for sure. And I believe this was originally created before I started.

Q. And how do you know that -- what leads you to believe that they did run this ad?

A. It's just my recollection. I believe it's one of the ads that ran.

Q. Um-hum. So, maybe perhaps while you were reviewing prior ads, like when we were talking earlier,

when you started as creative director?

A. Perhaps.

Q. And I'll show you another ad. It's CX 33, "Life Support." Do you recognize this ad?

A. I do recognize the main visual. I don't recall seeing it with that color background, but I -- again, that's another ad that was created before I started at the agency.

Q. And did POM run this ad?

A. I don't know.

Q. And you had mentioned that you -- you had referred to the visual, and are you talking about the bottle on an IV drip?

A. Correct. I've seen that before.

Q. Had you seen this visual or did you use this visual in other subsequent advertisements?

A. Not in advertisements, but it did appear on the Web site.

Q. And let's take a look at another ad. This is CX 34, and it's the "Amaze your Cardiologist." Do you recognize this ad?

A. Yes.

Q. Did POM run this ad?

A. I don't know. It was before I started at the agency.

Q. Let's take a look at another ad. And all of the ads that we've reviewed so far are part of the Dress Bottle Campaign, right?

A. Correct.

Q. So, the next ad is CX 459, page 1, "Decompress." Do you recognize this ad?

A. Yes.

Q. Did POM run this ad?

A. Yes.

Q. And how do you know that POM ran this ad?

A. It was created when I was at the agency, and I believe that, as far as I know, it ran.

Q. And what was the purpose in dressing the bottle in the blood pressure cuff?

A. To show that or to suggest that POM may be healthy for your heart and your arteries, and --

Q. That was the message the blood pressure cuff was intended to convey?

A. Yes.

Q. Have creative briefs ever directed Fire Station to use -- I am going to call it medical imagery, if that's accurate?

A. Not that I recall.

Q. Now, if we could take a look at the body copy, and -- actually, let's just move on. We'll move on to

another ad.

This is CX 1426, page 29. It's also Complaint Exhibit C. This is an ad that ran in Men's Fitness Magazine in February 2009. Is that right?

A. I don't know exactly when and where it ran.

Q. But you recognize the ad?

A. Correct.

Q. Would Fire Station have received a creative brief to produce this ad?

A. At the start of the campaign, we received creative briefs for all work in the Superhero Campaign, yes. I don't know if there was a specific brief for this particular ad or not. But, yes, all work does have a related creative brief.

Q. And you said you received all the creative briefs. Do you -- can you estimate how many there were?

A. For this campaign?

Q. Um-hum. Yes.

A. I don't know. They go through revisions, and sometimes they're -- they may issue a separate brief. So, I -- I don't know.

Q. If we could look at the body copy. Can you see that okay? Okay.

Did the creative brief contain this body copy?

A. You would have to show me the specific brief.

Q. And if you could take a moment just to read through the body copy, and let me know when you're done.

A. (Document review.) Okay.

Q. Is this copy the kind of body copy that would likely be in a creative brief, all -- included in a creative brief?

A. I'm not sure what you're asking. Are you -- could you please rephrase the question?

Q. So, in the form in which this copy appears, would this have come straight from a creative brief?

A. No.

Q. And who would draft the body copy?

A. A member of my team. The tone of the body copy would come from the creative department. The scientific information would be provided by marketing.

Q. Okay. How about -- there's a reference to "backed by \$25 million in vigilant medical research." Where would that information come from?

A. That would be provided by marketing.

Q. Anyone specifically in marketing?

A. In this particular instance, I can't say for sure, but I know Diane was the head of marketing during the genesis of this campaign.

Q. And would the body copy be based on the benefit and reason to believe sections of the creative brief?

A. You know, the benefit is generally more -- informs more the overall concept of the ad, and the reason to believe are support points, and the specific facts may or may not come from the creative brief.

Q. And this advertisement references the POM Web site for prostate study details. Do you see that?

A. Yes.

Q. Where would that information come from?

A. Do you mean the information contained in that section of the Web site?

Q. No, just this line, "Prostate study details at," and the Web address indicated here.

A. That would have fulfilled a request given by marketing.

Q. Let's go to another ad.

JUDGE CHAPPELL: Before we do that, we are going to a break soon, and before we take a break, I have a couple questions.

I don't know what witnesses are going to be called here, so while you're here, I have a few questions.

I heard -- I heard Fire Station, I've heard POM, I've heard Roll. If I ask you what company do you work for, what's your answer?

THE WITNESS: Fire Station.

JUDGE CHAPPELL: Okay. And can you tell me what the status is? Is that a wholly owned subsidiary? Is that a captive firm? Is that a division? What is the entity Fire Station?

THE WITNESS: Fire Station is the in-house advertising agent for the Roll brands, and Roll is Fire Station's parent company.

JUDGE CHAPPELL: Parent company, all right. And I heard you refer to POM and Teleflora as clients. Is that correct?

THE WITNESS: Yes.

JUDGE CHAPPELL: What other clients do you have?

THE WITNESS: I'm sorry. What other?

JUDGE CHAPPELL: What other clients?

THE WITNESS: Paramount Farms, Teleflora, Fiji Water.

JUDGE CHAPPELL: Okay. And Fiji Water, I -- are your clients always within the family, the Roll family, or do you have outside clients?

THE WITNESS: They're always within the family. That's why we're called an in-house agency, because we only work for the Roll brands.

JUDGE CHAPPELL: And what percent of your work, just generally, is POM-related?

THE WITNESS: Probably 30 percent, but that's a

guess.

JUDGE CHAPPELL: Okay. It might vary, depending on the --

THE WITNESS: It does vary.

JUDGE CHAPPELL: And we saw this ad that you said you worked on with the -- the blood pressure cuff around the bottle.

THE WITNESS: Um-hum, correct.

JUDGE CHAPPELL: I'm trying to ascertain just what your job is relating to these ads. With that ad, what did you do? What came in? What happened? What did you do regarding that ad?

THE WITNESS: I supervised the art director and the copywriter that came up with the idea to put a blood pressure cuff on the bottle; and then I would have most likely been present when it was presented to marketing and then to Lynda. And I supervised the hiring of a photographer to create that visual, and I supervised the retouching to make it look nice. And those were my primary responsibilities.

JUDGE CHAPPELL: Would you say what you do is related to aesthetics more than content?

THE WITNESS: I -- in some ways, yes. It's very strongly related to aesthetics, and it's related to content in terms of the headline. But, for POM,

because, you know, we do have medical information, that -- I'm not responsible for, you know, that scientific information. So, POM is unique in that it's a little bit different than, you know, some of the other brands, because they have that medical component.

JUDGE CHAPPELL: Let's talk about a POM ad, then. Do you do anything creative as far as changing the wording, the content, the information, or do you take what's given to you and turn that into an ad?

THE WITNESS: Can we go back to the slide with the body copy, the one you just had up?

MS. NACH: Um-hum.

THE WITNESS: If you could enlarge it.

JUDGE CHAPPELL: For the record, what's that exhibit number?

THE WITNESS: Could you just enlarge the body copy?

MS. NACH: CX 469 is the decompressed ad.

THE WITNESS: No, this is fine.

MS. NACH: Oh, sorry.

THE WITNESS: So, for example, the creative part of this ad is really the lead-in and the overall tone to express the information in the voice of a comic book superhero. So, I would, you know, be involved in that direction. But as far as the wording of the medical

research or if there is a specific scientific fact, I wouldn't be involved in that wording.

JUDGE CHAPPELL: Okay, thank you.

We are going to take a recess. How much more time do you think you need?

MS. NACH: An hour and a half, a couple hours. Hour and a half.

JUDGE CHAPPELL: Okay. We are going to reconvene at 2:35. We're in recess.

(A brief recess was taken.)

JUDGE CHAPPELL: Okay. Back on the record in Docket 9344. Next question.

BY MS. NACH:

Q. Ms. Leow, I'd like to show you another ad. This is CX 470, page 1. The headline is "The only antioxidant supplement rated X." Do you recognize this ad?

A. Yes.

Q. Did this ad run in Playboy Magazine?

A. I believe it did.

Q. Let's take a look at another advertisement. It's CX 236, page 1. This is a Time Magazine cover wrap, correct?

A. It appears to be, yes.

Q. Did Fire Station create this Time cover wrap for

POM?

A. Yes.

Q. And do you know if POM ran this ad?

A. Yes.

Q. And if we could just -- there are four pages here. We'll just go through them. If you could turn to the second page, CX 236, page 2. Do you recognize this as being part of the Time cover wrap, this page?

A. Correct. It appears to be, yes.

Q. And how about the third page, the next page?

A. Yes.

Q. And let's go to the last page.

JUDGE CHAPPELL: You need to speak into the microphone. You're leaning in.

THE WITNESS: Yes.

BY MS. NACH:

Q. Do you recall who approved the headline on the ad "Drink to prostate health"?

A. I believe that Lynda did.

Q. Now I'd like to show you Exhibit CX 126, page 2. If it's easier to read, you can also refer to the binder. It's in there as well.

CX 126, page 2, is an email from Lynda Resnick to you, correct? I'm sorry. I'm looking at the second email on this page. It starts in about the middle of

the page.

A. Okay.

Q. And it's dated June 23rd, 2007. Do you see where I'm reading?

A. Yes.

Q. And you received this email, correct?

A. Yes.

Q. And the subject is the ad for POM Pills, right?

A. Yes.

Q. And, here, Ms. Resnick expressed her dissatisfaction with how the POM Pills ad presented in the copy. Is that right?

A. I'm sorry. Would you repeat your question?

Q. Sure. And, here, in this email, Ms. Resnick expressed her dissatisfaction with how the POM Pills ad was presented in the copy. Is that right?

A. She says she thinks the copy is fine. She had problems with the graphics.

Q. Okay. And if I could direct you to the third paragraph, "Let's start completely over," that paragraph?

A. Correct.

Q. She writes, in the next sentence, "I think I want you to try an advertorial."

Could you explain what an advertorial is?

A. It's a form of advertising that has a little bit more copy than most ads.

Q. Now, if we could skip a few lines down to the sentence beginning with, "Then a paragraph on the juice and its healing properties." Do you see that?

A. Yes.

Q. What is your understanding of what healing properties refers to?

A. I think she wanted some of the health benefits included.

Q. And, continuing to the next paragraph, it starts with, "Then a paragraph about the science with a graph visual and all the science we are allowed to talk about."

What is your understanding of the reference to "all the science that we are allowed to talk about"?

A. I'm not sure which science that included.

Q. Do you remember discussing science that you would put into advertisements in this context of the POM Pills ad?

A. That would have been provided by marketing.

Q. And what is your understanding of the purpose of adding a graph visual?

A. I would have to guess.

Q. And just backtracking to "all the science we are

allowed to talk about," let's just look at the "allowed to talk about" part of it. What's your understanding of that phrase?

A. I don't know.

Q. And, continuing down the page, Ms. Resnick states, "There would also be another approach which would show the POM Juice bottle next to the pill bottle with the headline 'the power of POM -- now in one little pill' and create an ad that goes somewhat with our existing POM Juice Campaign. I would like to see that approach worked out as well."

Do you recall discussing what Ms. Resnick has written in her email here, with her?

A. Discussing with whom?

Q. With Ms. Resnick.

A. No, I do not.

Q. Do you recall discussing Ms. Resnick's email with Matt Tupper, who's copied on this email message?

A. No, I do not specifically.

Q. How about just generally?

A. I believe I discussed this with Jennifer Stein.

Q. And Jennifer Stein was head of marketing at that time?

A. Correct.

Q. Do you recall presenting ideas to Ms. Resnick in

response to her email, as she's asked for here?

A. Yes.

Q. And did new ads result from those presentations -- presentation?

A. Yes.

Q. And these were ads that ran, correct?

A. You would have to show me the specific ad.

Q. Well, in general, do you recall POM running ads that would have been a product of this exchange here about POMx Pills?

A. Yes.

Q. I'd like to show you an ad. It's Exhibit CX 471, page 40. It has the headline, "The power of POM, in one little pill."

Do you recognize this ad?

A. Yes.

Q. Do you know if it ran?

A. I believe it did.

Q. Do you know where?

A. It may be The New York Times. I'm not sure.

Q. Do you know if this ad, with the headline "The power of POM, in one little pill," was described in Ms. Resnick's email that we just reviewed?

A. That's the messaging that she requested, but I can't specifically say if this particular layout is the

one that resulted from the conversation. I don't actually believe it is.

Q. Was there a creative brief that resulted from Ms. Resnick's email about the POMx Pill ad and your subsequent discussions and presentation of ideas?

A. I can't say for sure.

Q. Let's look at the next exhibit. It's CX 409, page 91. This is a creative brief with a project name "POMx Revised Print Ad," and it's dated June 28th, 2007, a few days after Ms. Resnick's email that we reviewed just now.

Is this Exhibit 409, page 91, the creative brief based on Ms. Resnick's request to revise the print ad?

A. It may have been.

Q. But you recognize this document?

A. Not specifically.

Q. Is this a document that you've seen at all in the course of business at creative director of Fire Station?

A. It appears to be a creative brief, and based on the context that you're showing them to me, it appears to be in response to her email.

Q. Now, if we could turn to the next page of this exhibit, page 92 of CX 409, if you could focus on the bottom half of the page, beginning with the subheading,

"Ad Version 2: Per LRR: Advertorial."

Do you see that?

A. Yes.

Q. A few lines down, there is a line stating, "Additional copy (per LRR)," and that would refer to Ms. Resnick, correct?

A. Correct.

Q. The LRR.

And then two bullets -- the second to last bullet states, "Pick up existing paragraph about the science, if there is room include additional heart and prostate from brochure copy."

Do you know what the brochure referenced here is?

A. No.

Q. Do you know what -- if it could be the one inside the packages of POMx Pills?

A. It might have been.

Q. Now, if we could go to the top of this page, page 92, do you see the heading "Media"? There's a reference to a "Full-page 4/C Ad," and then in parentheses, it says, "We may also want to show a couple of other options, spread, 1/2 page, B&W."

Does the creative brief typically provide guidance on the size of an ad?

A. Usually, yes.

Q. And in creating ads, do you take into account where an ad should be positioned in a print publication?

A. I don't know what you mean by that.

Q. For instance, if you were to put the advertisement on the right -- the right-hand page versus the left-hand, or at the top of the page versus the bottom of the page.

A. That's a media decision.

Q. So, you do not participate in those decisions?

A. Not usually.

Q. Are you familiar with the term "positioning"?

A. Yes.

Q. And what does positioning mean in the context of advertisements in print publications?

A. Are you talking about positioning of product?

Q. Positioning of the advertisement.

A. I don't know.

Q. And so when I asked are you familiar with the term "positioning," what was your understanding of that term?

A. How the product is positioned from a strategic standpoint.

Q. Um-hum.

A. It's not a term that's commonly used for media

placement references.

Q. And so the media department would handle the positioning of print ads?

A. Correct.

Q. Do you know if POM has requirements as to where to position ads in print publications?

A. Sometimes, they do.

Q. And if POM does have requirements, do you know if publications will guarantee the positioning of ads in the publication?

A. I don't know.

Q. In general, are you familiar with the concept of publications guaranteeing that ads be placed in certain parts of the publication?

A. Yes.

Q. So, when publications do guarantee placement of these ads, what happens if a publication doesn't meet the guarantee?

A. I don't know. That's a question for the media department.

Q. Are you familiar with the term "make-good"?

A. Yes.

Q. Could you explain what make-good refers to?

A. Make-good is a free placement offered by the media company if for some reason the advertiser was

unhappy with the ad.

Q. So, that would apply, for instance, in the circumstance where a publication guaranteed that an ad would be placed in a certain part of the publication and wasn't able to meet that guarantee, correct?

A. I don't know.

Q. I'd like to show you Exhibit 248, page 2. This is an email from Michael Perdigao, dated October 20th, 2008, to Diane Kuyoomjian and CC to Heather Mizrahi, Molly Flynn, yourself, Kim Genkinger, and Andrea Hernandez.

Could you identify the people who are CC'd here, along with you, on this email?

A. Andrea Hernandez works in the traffic department. Kim is an associate creative director. Molly works for POM. And Heather, I believe, worked for POM.

Q. And the email pertains to -- has the subject, "LRR approved headlines," correct?

A. That's what it says.

Q. And you were copied on this email, along with the other Fire Station employees you identified, because it's important to know which headlines were approved by Ms. Resnick for use in ad copy. Is that right?

A. Yes. But also, as a side note, Molly and

Heather are not Fire Station employees.

Q. Okay, thanks. And these headlines that Mr. Perdigao lists were for OOH and print advertisements, right?

A. That's what it says.

Q. I'd like to show you Exhibit 243, page 1, and this is an email from Diane Kuyoomjian, dated October 8th, 2008, and it was sent to you and Mr. Perdigao. Is that right?

A. That's what it says.

Q. And the subject is, "POM Comic Book headline directions."

If we could go to the third paragraph, it begins with, "Of the lines." Do you see that?

A. Yes.

Q. It states, "Of the lines presented to Lynda and then Stewart last week, these are the ones we should keep on the table."

Were both -- well, does this indicate that Mr. Resnick was involved in ad concepts?

A. Mr. Resnick was not involved in ad concepts while I was present.

Q. So, perhaps there were other discussions --

A. Perhaps. I don't know.

Q. -- in which he may have been involved.

On the bottom half of the page, under the bullet "Health oriented," do you see that? It's the second to last bullet.

A. Yes.

Q. It states under that, "Lynda asked for ideas related to erectile function."

Do you see that?

A. Yes.

Q. Did Fire Station ever prepare ideas related to erectile dysfunction?

A. At various times, yes.

Q. Could you elaborate on what these ideas were?

A. You would have to show me the ads and then I could speak to them.

Q. Just on a general level, though, could you share what you recall as far as ideas related to erectile dysfunction?

A. I don't feel comfortable with that.

Q. Do you recall any -- do you recall any of the ideas on this page?

A. I don't understand your question.

Q. Regarding ED.

A. Okay, regarding ED, and what's the rest of the question?

Q. Well, I'm sorry. Let rephrase that.

Do you recall -- do you recall any ideas regarding ED?

A. Regarding ED? We worked on many different ads, most of which never ran.

Q. But some did?

A. Not that I recall. I think -- yes, one specifically did run that I recall, but it wasn't part of this campaign. Again, if you could show me the ad, I could speak to it more specifically.

Q. The one ad that you just mentioned, though, could you tell us generally what that was about, perhaps the headline?

A. I don't recall the headline, but it was part of the Dress Bottle Campaign, in a way.

Q. Do you remember the image, perhaps, how the --

A. It had the neck of the bottle extended.

Q. And how about the -- the ad that we looked at before, that was CX 470, "The only antioxidant supplement rated X," did that pertain to erectile dysfunction at all?

A. Could you please enlarge it? (Document review.) Okay.

Q. And I asked whether this ad pertained to erectile dysfunction. Does it?

A. Part of the copy references it, yes.

Q. Moving on. Under the "Health oriented" bullet -- I'm sorry, we're going back to CX 243, page 1.

Under "Health oriented," the second subbullet states, "Other lines related to heart health also ok -- though we have too [sic] good ones now."

Which were the two lines you were referring to as -- I'm sorry. Which were the two lines referred to here as "good ones," if you recall?

A. I don't know.

Q. I'd like to show you Exhibit 214, page 1, and this exhibit is an email, dated July 18th, 2008, from Mr. Perdigao to you, regarding POM Juice. Is that right?

A. That's what it says.

Q. Do you recognize this email?

A. Yes.

Q. And it's a list of headlines from the Super Power Campaign that Lynda approved, correct?

A. That's what it says.

Q. Is the purpose of this email so that the -- that Fire Station knew what ads or ad copy would be approved?

A. It appears that the purpose of this email was to let the creatives know which ads might move forward into the body copy stage. It doesn't mean that they ran.

Q. So, for instance, if you look at the top of the

email, Mr. Perdigao has written "One other line that my notes indicate that Lynda approved," and it states, "Give prostate cancer the finger." Is that an example of what you just said?

A. Yes.

Q. I'd like to look at the next exhibit, CX 95, page 1. It's another email. It's an email exchange, actually, between you and Robin Jones, and the date here is January 17th, 2007. Is that right?

A. That's what it says.

Q. And if you look at the second email heading here, because there's a lot of back and forth, it's the email timestamped 6:37 Pacific time. Do you see that one?

A. No, I don't.

Q. Or do you see the subject line at the top of the page, "Please call Liz ASAP"?

A. Yes.

Q. So, right below that is what I'm looking at.

A. Okay.

Q. The subject line says "AARP."

A. Okay.

Q. Do you know what that refers to?

A. No.

Q. And who is Robin Jones?

A. A copywriter.

Q. At Fire Station?

A. She was at that time.

Q. If we could turn to the second page of CX 95 --

JUDGE CHAPPELL: Hold on a second. I noticed that this Robin Jones email address was at teleflora.com, and it appeared yours was Yahoo. Is that common, to be using Yahoo for business email where you were?

THE WITNESS: I think I was at home on that day. It was a weekend, I believe.

JUDGE CHAPPELL: Always on the clock?

THE WITNESS: Correct.

BY MS. NACH:

Q. So, looking at CX 95, page 2, a few lines down from the top of the page, at the end of this email -- and this is an email you wrote, right?

A. It appears to be, yes.

Q. You state, "The scientific info is what will help sell the stuff." What did you mean by that?

A. To include whatever scientific information was appropriate for the assignment.

Q. And how would you know what scientific information was appropriate for the assignment?

A. It would have been on the creative brief or

provided by marketing.

Q. And why would the scientific info sell this stuff?

A. Because it's a reason to believe.

Q. If we could go to the next exhibit, CX 409, page 23. CX 409, page 23, is a -- is titled "Creative Strategy/Brief for POMx Pill Print Ads," and it's dated September 1st, 2006. Is this an example of a creative brief for POMx Pills print ads?

A. It appears to be, but it's not in the usual format.

Q. How is it different from the usual format?

A. It's typeset differently.

Q. When you say "typeset differently," could you explain what that means?

A. It just looks different.

Q. Okay.

A. I would have to compare it with another brief to tell you specifically.

Q. Do you recognize this brief?

A. Not specifically, no.

Q. Is it a creative brief you received in the regular course of business as creative director?

A. Pardon me?

Q. Is it a creative brief you had received in the

regular course of business as creative director at Fire Station?

A. It might be. I don't know. And, as I said, it doesn't look like the same format as most of them.

Q. Earlier today, we were talking about campaigns, POM's various campaigns. Was there ever a campaign for POMx?

A. Do you mean that we have named, like a Super Hero or something like that?

Q. Correct.

A. Not like that, no.

Q. And, just to back up a little bit, when we were talking about the formatting of this brief, CX 409, page 23, does it have the same substantive elements?

A. Could you please pull out of it a little bit?

Q. Sure.

A. For the most part, it appears to.

Q. And when you said that there wasn't a main campaign for POMx like the Superhero and the Dress Bottles -- Dress Bottle, otherwise, was there a campaign, as we've been using the term today?

A. There were print ads that we created and they followed different formats, but it wasn't a campaign in the same way that the Dress Bottle or the Superhero was.

Q. Was there an overarching strategy for these POMx

print ads?

A. I would have to look at the individual creative briefs.

Q. How about the brief that we're looking at now, CX 409, page 23? Does this creative brief address an overarching strategy, at least with respect to print ads, for POMx?

A. Yes. It's under "Concept."

Q. Now, the very top of the brief, under the title, the first line states, "LRR likes to run multiple ads in one issue with various headlines."

What is your understanding of this sentence?

A. She might have wanted to run a test on two different executions.

Q. If you could turn to -- if you could turn to the second page of this brief, CX 409, page 24, at the bottom of the page. There's a subheading, "Tentative 1st Round Media Plan," and then publications are listed.

A. Correct.

Q. Does this indicate that one of the publications under consideration was AARP?

A. That's what it says.

Q. And I actually didn't read the full title -- subheading here. It says, "Tentative 1st Round Media Plan from 8-31-06 LRR Meeting (under consideration until

entire media plan with other media is created and approved)."

So, just looking at AARP as an example, was this indicating that Ms. Resnick had this magazine under consideration?

A. That's what this says.

Q. And I know we were talking about an overarching strategy with POMx before, and you had mentioned that the creative strategy was under the heading "Concept." Is that right?

A. Correct.

Q. Is it also stated under "Benefit"?

A. No.

Q. I'd like to show you another exhibit. This is CX 320, page 2, and CX 20 -- 320, page 2, is an email from Michael Perdigao, dated June 11th, 2009, to you, copying Diane Kuyoomjian and Matt Tupper, with the subject line, "POM claims inventory." Is that correct?

A. Yes.

Q. And, just starting from the top of the body of the email, Mr. Perdigao writes, "Liz: Attached is a recent list of claims that have been made in past POM communication.

"Per the meeting today, we are still being asked to develop a humorous TV campaign (ideally, at least two

commercials), but we cannot reference: Heart/cardio health and prostate health."

What is your understanding of the phrase, "But we cannot reference: Heart/cardio health and prostate health"?

A. Mike Perdigao would have to speak to that.

Q. Well, when you read his email, how did you interpret that phrase?

A. To not focus on those areas creatively.

Q. Does that mean not referencing anything related to heart/cardio health and prostate health?

A. I don't know exactly what he meant when he wrote this email.

Q. And continuing with this email, Mr. Perdigao also writes, "The consumer benefit is not nearly as compelling as we had hoped, but our focus should be on the fact that POM is healthy."

So, what was the consumer benefit before or what was the consumer benefit that Mr. Perdigao is referring to?

JUDGE CHAPPELL: Keep in mind, this is an email to her, not from her. So, lay the foundation that she has some idea of what you're asking her.

BY MS. NACH:

Q. Did you ever discuss this email with

Mr. Perdigao after you received it?

A. Not that I can recall, no.

Q. Did you have any general discussions about this email, about the subjects that Mr. Perdigao raises in it regarding what cannot be referenced in advertisements?

A. I don't know.

Q. And just going back to the phrase "we cannot reference," so for heart/cardio health -- actually, I am going to ask a different question.

Did you have an understanding of what consumer benefit Mr. Perdigao was referring to?

A. No.

Q. Do you know if POM had to pull back from mentioning specific benefits, such as treating or preventing cardiovascular disease or prostate cancer?

A. Yes.

Q. And could you elaborate on your answer, please?

A. I know that we had to change or modify some of the messaging in the advertising.

Q. And why was that?

A. It was as a result of requests made by the FTC, I believe. Now, I don't know if that's what he's referring to in this particular email or not.

Q. Before we took a break, Judge Chappell asked about your employer, who you considered your employer.

From whom do you receive your paycheck?

A. From Roll, I believe.

Q. So, not from Fire Station, right?

A. Correct.

MS. NACH: Thank you. No further questions.

JUDGE CHAPPELL: Okay. Cross?

MS. DIAZ: None, Your Honor.

JUDGE CHAPPELL: Thank you, ma'am. You're
excused.

THE WITNESS: Thank you.

JUDGE CHAPPELL: Anything further today?

MR. HOPPOCK: Nothing further today, Your Honor.

MR. GRAUBERT: Nothing from us.

JUDGE CHAPPELL: So, this trial will reconvene
when?

MR. GRAUBERT: The 5th of June. Is that
correct?

MS. JOHNSON: The 6th of June.

MR. GRAUBERT: Whatever the Monday is.

MR. HOPPOCK: The Monday. I believe it's June
6th, Your Honor.

JUDGE CHAPPELL: Okay. Until June 6th at 9:30.

MR. HOPPOCK: Yes, Your Honor.

JUDGE CHAPPELL: Okay. We're in recess.

(Whereupon, at 3:27 p.m., trial was adjourned.)

C E R T I F I C A T I O N O F R E P O R T E R

DOCKET/FILE NUMBER: 9344

CASE TITLE: In Re POM WONDERFUL LLC, et al.

DATE: MAY 27, 2011

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: 6/2/2011

SUSANNE BERGLING, RMR-CRR-CLR

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation, and format.

MARY CLARE OCHSNER-HAMMOND