



1 APPEARANCES: (CONTINUED)

FOR THE PLAINTIFF:

IRELL & MANELLA

2 BY: BRIAN D. LEDAHL  
STEVEN A. MARENBERG  
3 ANJULI MC REYNOLDS  
ATTORNEYS AT LAW

4 1800 AVENUE OF THE STARS  
SUITE 900  
5 LOS ANGELES, CALIFORNIA 90067

6

FOR THE DEFENDANTS:

WINSTON & STRAWN

7 BY: JENNIFER A. GOLINVEAUX  
ATTORNEY AT LAW

8 101 CALIFORNIA STREET  
39TH FLOOR  
9 SAN FRANCISCO, CALIFORNIA 94111

10

WINSTON & STRAWN

11 BY: REBECCA LAWLOR CALKINS  
ATTORNEY AT LAW

12 333 SOUTH HOPE STREET  
38TH FLOOR  
LOS ANGELES, CALIFORNIA 90071

13

WINSTON & STRAWN

14 BY: THOMAS P. LANE  
ATTORNEY AT LAW

15 200 PARK AVENUE  
16 NEW YORK, NEW YORK 10166

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

CASE NO. CV 07-5744-AHM(AJWX)

AUGUST 25, 2008

PROCEEDINGS: PLAINTIFF'S MOTION TO COMPEL DISCOVERY  
RESPONSES FROM VEOH  
DEFENDANTS' MOTION TO COMPEL FURTHER RESPONSES  
AND FOR PRODUCTION OF DOCUMENTS FROM  
PLAINTIFFS.

1 GOING TO REQUIRE BOTH SIDES TO EXCHANGE CUSTODIANS AND SEARCH  
2 TERMS ACROSS THE BOARD SO THAT EVERYONE WILL HAVE THAT  
3 INFORMATION. SO, LET'S TAKE THAT AS A GIVEN.

4 MS. CALKINS: OKAY.

5 THE COURT: NOW, WOULDN'T IT MAKE SENSE FOR ME TO  
6 DENY YOUR MOTION WITHOUT PREJUDICE AND LET YOU BRING SUCH  
7 PARTS OF IT AS ARE STILL RELEVANT AFTER YOU'VE REVIEWED THEIR  
8 PRODUCTION.

9 MS. CALKINS: I WOULD ASK THAT YOUR HONOR -- I  
10 THINK IN MY OPINION IF WE CONTINUED THE HEARING PERHAPS AND  
11 IN THE MEANTIME IN ADDITION TO THE SEARCH TERMS, UMG WOULD  
12 PROVIDE US --

13 THE COURT: HERE'S THE PROBLEM I HAVE WITH THAT. I  
14 THOUGHT ABOUT THAT BECAUSE I DON'T WANT TO INCONVENIENCE YOU  
15 OR CAUSE DELAY.

16 THIS JOINT STIPULATION EXCEEDS 300 PAGES. IT'S GOT  
17 HUNDREDS OF REQUESTS IN THERE. AND IT WAS MY SENSE THAT MANY  
18 OF THEM PROBABLY HAVE BEEN LARGELY SATISFIED AT THIS POINT.  
19 PERHAPS NOT ALL. IT'S VERY CUMBERSOME FOR ME TO DEAL WITH  
20 SOMETHING LIKE THIS.

21 SO, I THINK REALLY IF YOU REDID IT IN LIGHT OF WHAT  
22 YOU'VE LEARNED NOW THAT YOU'VE REVIEWED THEIR PRODUCTION, WE  
23 CAN FOCUS ON WHAT REALLY NEEDS TO BE DECIDED WITHOUT HAVING  
24 TO WADE THROUGH THIS VERY LENGTHY PIECE OF PAPER.

25 MS. CALKINS: I WOULD JUST ASK THEN ANOTHER WAY TO

1 EXPEDITE IT IN ADDITION TO THAT, YOUR HONOR, WOULD BE FOR UMG  
2 TO PRODUCE A LIST OR IDENTIFY WHICH OTHER DOCUMENTS CORRELATE  
3 TO WHICH OF OUR REQUESTS. THAT WOULD BE -- THAT WAY WE CAN  
4 AT LEAST UNDERSTAND WHAT THEY HAVE PRODUCED IN RESPONSE TO  
5 PARTICULAR REQUESTS. THEY CAN BE CATEGORIZED FOR THAT  
6 MATTER.

7 OTHERWISE, WE'RE LEFT WITH AN EXTREMELY LARGE  
8 VOLUME OF DOCUMENTS WITHOUT KNOWING WHERE THEY HAVE DECIDED  
9 TO PRODUCE IN RESPONSE TO REQUESTS THEY PREVIOUSLY REFUSED.

10 WE JUST HAVE NO SENSE FOR WHERE THEY HAVE COMPLIED  
11 AND WHAT TO BRING BEFORE YOUR HONOR SUBSEQUENTLY.

12 THE COURT: WELL, THAT'S NOT VERY HELPFUL TO ME.  
13 YOU HAVE NO SENSE OF WHERE THEY'VE COMPLIED AND WHERE THEY  
14 HAVEN'T.

15 MS. CALKINS: WELL --

16 THE COURT: OTHER THAN HAVING THEM ORGANIZE THE  
17 WHOLE PRODUCTION IN THE WAY THAT YOU WOULD FIND MOST  
18 CONVENIENT, WHICH PROBABLY IS NOT REALISTIC, WHAT ELSE COULD  
19 I DO TO SIMPLIFY THE SITUATION?

20 MS. CALKINS: NO, YOUR HONOR, PERHAPS THEY COULD  
21 JUST IDENTIFY -- FOR EXAMPLE, THIS BATES RANGE RELATES TO  
22 VIRAL MARKETING, AND THAT IS OUR PRODUCTION ON VIRAL  
23 MARKETING. THAT WAY --

24 THE COURT: ISN'T THAT A MATTER OF INTERPRETATION  
25 IN PART? AND WOULD YOU THEN NECESSARILY AGREE WITH THEIR

1 CHARACTERIZATION?

2 MS. CALKINS: WELL, THERE IS A LARGE -- VIRAL  
3 MARKETING IS LARGELY UNDISPUTED. THEY HAVE A DIVISION THAT'S  
4 DEVOTED TO VIRAL MARKETING. THEY HAVE DOCUMENTS ENTITLED,  
5 "VIRAL MARKETING."

6 FOR THOSE AT A MINIMUM THEY COULD IDENTIFY, YES,  
7 THESE ARE -- THIS IS WHERE YOU GO TO LOOK TO SEE -- TO TEST  
8 THE QUALITY OF OUR PRODUCTION IN THIS PARTICULAR CATEGORY.

9 AND I DON'T THINK THAT WOULD BE UNREASONABLE. THEY  
10 HAD TO ORGANIZE AND COLLECT AND GATHER THE DOCUMENTS IN A  
11 SIMILAR FASHION. AND THEY KNOW WHERE THEY WENT AND WHICH  
12 DOCUMENTS THEY PRODUCED TO WHICH --

13 THE COURT: WELL, THAT'S NOT THE WAY THEY DESCRIBE  
14 WHAT THEY DID, IS IT? DIDN'T THEY SAY THEY USED SEARCH TERMS  
15 -- WHICH WE DON'T KNOW WHAT THOSE TERMS ARE YET. AND THEY  
16 SEARCHED ON THOSE. AND WHEN THEY FOUND HITS, THEY PRODUCED  
17 THEM.

18 MS. CALKINS: WELL, I THINK YOUR HONOR MAKES A GOOD  
19 POINT. THEY DON'T DESCRIBE WHAT THEY DID. THEY --

20 THE COURT: ALL RIGHT. WELL, WE'RE GOING TO HAVE--  
21 WE'LL GET PAST THAT BARRIER.

22 OKAY. I THINK THE BEST THING, ALTHOUGH I DO IT  
23 WITH SOME RELUCTANCE, IS TO DENY YOUR MOTION TO COMPEL  
24 WITHOUT PREJUDICE TO YOUR RENEWING SUCH PARTS OF IT AS ARE  
25 NECESSARY TO RENEW AFTER YOU'VE COMPLETED YOUR REVIEW OF

1 THEIR PRODUCTION.

2 MS. CALKINS: YOUR HONOR, THERE ARE CERTAIN  
3 CATEGORIES OF REQUESTS ALSO THAT THEY COMPLETELY REFUSED TO  
4 PRODUCE DOCUMENTS IN RESPONSE TO THAT WOULD ALSO BE  
5 INDEPENDENT OF -- I APPRECIATE YOUR HONOR'S --

6 THE COURT: I'M HAPPY TO ADDRESS THAT, BUT I'M NOT  
7 GOING TO WADE THROUGH OVER 300 PAGES TRYING TO FIND THEM.  
8 AND I'M NOT GOING TO ASK YOU TO TRY TO LIST THEM FOR ME ON  
9 THE RECORD.

10 AND IN RESPONSE TO MOST OF THE REQUESTS -- I MEAN,  
11 I THINK IN ONE OF THE CATEGORIES YOU PROVIDED -- I LIKE  
12 CATEGORIES, BUT YOURS WERE SO BROAD THAT THEY REALLY WEREN'T  
13 MEANINGFUL. YOU KNOW, GROUPINGS OF RELATED REQUESTS. YOU  
14 HAVE 50, 60 PAGES OF REQUESTS AND THEN ONE PAGE OF ARGUMENT.

15 AND THAT REALLY DOES NOT HELP ME IN UNDERSTANDING  
16 WHAT YOUR CONCERN IS AND TRYING TO GET A HANDLE ON WHAT I  
17 SHOULD OR SHOULDN'T DO.

18 I'M SURE YOU'LL DO A BETTER JOB WITH THIS NEXT  
19 TIME, AND IT WILL BE MORE CONCISE. AND FOCUS THE COURT  
20 BETTER ON WHAT'S REALLY AT ISSUE.

21 THANK YOU.

22 MS. CALKINS: YOUR HONOR, MAY I JUST ADDRESS ONE  
23 MORE THING?

24 THE COURT: YES.

25 MS. CALKINS: WE HAVE INTERROGATORIES ALSO THAT ARE

1 A PART OF THE MOTION TO COMPEL. THEY -- PLAINTIFF REFUSED TO  
2 ANSWER 24 OF OUR 18 INTERROGATORIES --

3 THE COURT: 24 OF YOUR 18?

4 MS. CALKINS: EXCUSE ME. 18 OF OUR 24.

5 THE COURT: OKAY.

6 MS. CALKINS: AND THE REMAINING SIX CONTAINED  
7 RESPONSES THAT IN OUR VIEW ARE EXTREMELY DEFICIENT.

8 MAY WE PROCEED WITH THAT PORTION OF THE --

9 THE COURT: YOU CAN FILE A SEPARATE MOTION ON THAT.

10 I WANT YOU TO MAKE THIS -- THIS IS AN UNMANAGEABLE  
11 PACKAGE FOR ME OF THIS LENGTH OF THINGS GROUPED IN THESE VERY  
12 BROAD, UNHELPFUL CATEGORIES. I'M NOT TRYING TO BE UNKIND,  
13 BUT THIS IS REALLY POOR IN TERMS OF PRESENTING IT TO THE  
14 COURT.

15 SO, PLEASE, IF YOU'RE NOT SATISFIED WITH THEIR  
16 INTERROGATORY RESPONSES, FILE A MOTION. BUT DO IT IN A  
17 SENSIBLE WAY NEXT TIME. OKAY?

18 MS. CALKINS: THANK YOU, YOUR HONOR.

19 THE COURT: ALL RIGHT. LET'S TALK ABOUT  
20 PLAINTIFFS' MOTION.

21 MR. LEDAHL: YOUR HONOR, I'M HAPPY TO PROCEED  
22 CATEGORY BY CATEGORY IF THE COURT WOULD PREFER. OR IF THERE  
23 ARE PARTICULAR AREAS YOU'D LIKE ME TO FOCUS ON, I'M HAPPY TO  
24 DO THAT AS WELL.

25 I THINK BASICALLY ONE OF OUR PRIMARY CONCERNS, AS



1 MOST OF WHAT THEY'RE SEEKING IN THIS MOTION FRANKLY. AND HE  
2 NEVER RESPONDED AT ALL.

3 WHEN WE'RE ON THE PHONE SEVERAL WEEKS LATER, I  
4 REMINDED HIM THAT WE WERE WAITING FOR A RESPONSE, AND THAT WE  
5 WEREN'T GOING TO GO THROUGH AND REVIEW EMAIL COMMUNICATIONS,  
6 A VERY LARGE BODY OF EMAIL COMMUNICATIONS MULTIPLE TIMES SO I  
7 WANTED TO MAKE SURE WE HAD COME TO REASONABLE COMPROMISES.  
8 AND HE SAID HE UNDERSTOOD THAT WE WERE WAITING FOR A  
9 RESPONSE.

10 BUT WE NEVER GOT A RESPONSE. INSTEAD, THEY FILED  
11 THEIR MOTION TO COMPEL I THINK THE DAY AFTER THEY DID THEIR  
12 MASSIVE DOCUMENT PRODUCTION. SO, THERE'S BEEN NO EFFORT TO  
13 DELAY HERE. WE'VE BEEN TRYING -- WE TRIED TO BE VERY  
14 REASONABLE ON THESE --

15 THE COURT: WELL, THE ONLY THING I WOULD SAY IS I  
16 THINK THAT SOME OF WHAT YOU AGREE TO DO IN YOUR LETTER YOU  
17 SHOULD HAVE DONE FROM THE VERY BEGINNING. AND I DON'T KNOW  
18 WHY YOU'RE STILL WAITING TO DO THAT. I MEAN, THAT'S MY TAKE  
19 ON IT.

20 I KNOW YOU TRIED TO WORK THINGS OUT. YOU DON'T  
21 WANT TO DO THING MULTIPLE TIMES. I UNDERSTAND THOSE  
22 CONCERNS. BUT SOME OF THIS MATERIAL IS VERY PLAINLY  
23 RELEVANT.

24 WHAT ABOUT THE VIDEOS?

25 MS. GOLINVEAUX: WELL, YOUR HONOR, WITH THE VIDEOS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT  
TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE  
PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

DOROTHY BABYKIN

AUGUST 29, 2008

\_\_\_\_\_

\_\_\_\_\_

FEDERALLY CERTIFIED TRANSCRIBER

DATED

DOROTHY BABYKIN