

EXHIBIT BB

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE CORPORATION, A	:	
DELAWARE CORPORATION, ORACLE	:	
USA, INC., A COLORADO	:	
CORPORATION, AND ORACLE	:	
INTERNATIONAL CORPORATION, A	:	
CALIFORNIA CORPORATION,	:	
	:	
Plaintiffs	:	CA NO. 07-CV-01658 (MJJ)
	:	
V.	:	
	:	
SAP AG, A GERMAN,	:	
CORPORATION, SAP AMERICA,	:	
INC., A DELAWARE CORPORATION,	:	
TOMORROWNOW, INC., A TEXAS	:	
CORPORATION, AND DOES 1-50,	:	
INCLUSIVE,	:	
	:	
Defendants	:	

"HIGHLY CONFIDENTIAL"
VIDEOTAPED AND ORAL DEPOSITION OF
TOMORROWNOW BY AND THROUGH SHELLEY NELSON
VOLUME 3
APRIL 18, 2008

VIDEOTAPED AND ORAL DEPOSITION OF SHELLEY NELSON,
produced as a witness at the instance of Counsel for the
Plaintiffs, and duly sworn, was taken in the
above-styled and numbered cause on the 18th day of
April, 2008, from 8:27 a.m. to 5:00 p.m., before JANE E.
DEMARS, Certified Shorthand Reporter in and for the
State of Texas, reported by machine shorthand, at the
Law Offices of Graves, Dougherty, Hearon & Moody, 401
Congress Avenue, Austin, Travis County, Texas, pursuant
to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

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14 Q Did you, nevertheless, tell people at

11:19 15 TomorrowNow that you thought that customers could give

16 TomorrowNow a copy of their software pursuant to their

17 license agreement with PeopleSoft?

18 MR. LANIER: Object to form.

19 THE WITNESS: Possibly. I'm not sure.

20 Q (BY MR. HOWARD) And what was the basis of that

21 statement?

22 A Well, we, we signed support agreements with

23 customers which include language relating to the need

24 for software in order to support them. So and the

25 presumption is that a client is reviewing that language,

11:19 1 probably reviewing their license with PeopleSoft before
2 signing on with us, just as that particular company did,
3 and that they are doing what, what's in their right in
4 terms of getting support for their software.

5 Q Nevertheless, you purported to tell people at
6 TomorrowNow that customers could give TomorrowNow
7 software, pursuant to the customer's license agreement
8 with PeopleSoft, even though you'd never read a
9 PeopleSoft license agreement, you'd never consulted
10 counsel?

11 MR. LANIER: I'm going to object to form,
12 and to the extent there were any consultations with
13 counsel in that, don't disclose the results of any of
14 those.

11:20 15 THE WITNESS: It's possible I, I had had
16 an e-mail forwarded to me, at one point in time, where,
17 during the sales cycle, a client had questioned whether
18 or not it was okay to send software, and had, had asked
19 PeopleSoft themselves if it was okay, and I had the
20 e-mail forwarded to me where PeopleSoft had said yes,
21 it's, it's fine for you to send the software to
22 TomorrowNow to support you. So, you know, on that
23 basis, and the fact that we have in our agreement that
24 we need the software, you know, my presumption was that
25 any of our customers who work with us have gone through

11:21 1 their own due diligence.

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1 I further certify that I am neither attorney nor
2 counsel for, related to, nor employed by any of the
3 parties to the action in which this testimony was taken;
4 and, further, that I am not a relative or employee of
5 any attorney or counsel employed by the parties hereto
6 or financially interested in the action.

7 I further certify that the deposition transcript
8 was submitted on _____ to the witness or
9 to the attorney for the witness for examination,
10 signature and return to me by _____;

11 The original deposition was/was not returned to the
12 deposition officer on _____;

13 If returned, the attached Changes and Signature
14 page contains any changes and the reasons therefor;

15 If returned, the original deposition was delivered
16 to _____, Custodial Attorney;

17 That \$ _____ is the deposition officer's
18 charges to the Plaintiffs for preparing the original
19 deposition transcript and any copies of exhibits;

20 WITNESS MY HAND AND SEAL OF OFFICE, this 22nd
21 day of April, 2008.

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Jane Demars
Jane E. Demars, Texas CSR No. 2789
Expiration Date: 12-31-09
DepoTexas, Austin

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a Delaware)
corporation, ORACLE USA, INC., a)
Colorado corporation, and ORACLE)
INTERNATIONAL CORPORATION,)
a California corporation,)
Plaintiffs,)
vs.) CASE NO. 07-CV-01658PJH (EDL)
SAP AG, a German corporation,)
SAP AMERICA, INC., a Delaware)
corporation, TOMORROWNOW, INC., a)
Texas corporation, and DOES 1-50,)
inclusive,)
Defendants.)

"HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"

ORAL VIDEOTAPED DEPOSITION

SHELLEY NELSON

VOLUME 4

SEPTEMBER 3, 2009

ORAL VIDEOTAPED DEPOSITION OF SHELLEY NELSON, produced as
a witness at the instance of the Plaintiffs and duly sworn,
was taken in the above-styled and numbered cause on the 3rd
day of September, 2009, from 8:04 a.m. to 12:26 p.m., before
Dana Richardson, Certified Shorthand Reporter in and for the
State of Texas, reported by computerized stenotype machine at
the Jones Day, 717 Texas Avenue, Suite 3300, Houston, Texas
77002, pursuant to the Federal Rules of Civil Procedure and
the provisions stated on the record or attached hereto.

Job No. 1603-92416

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MR. HOWARD: Let's mark as Exhibit 1569 an

08:47:53 14

e-mail from Martin Breuer dated March 11, 2008, to Shelley

08:47:57 15

Nelson and others.

16

(Exh.1569 marked)

08:48:39 17

Q. (By Mr. Howard) Ms. Nelson, I'm looking at the lower

08:48:44 18

part of Exhibit 1569 on the first page, which appears to be an

08:48:46 19

e-mail from you to Mr. Breuer on March 11, 2008? Do you see

08:48:51 20

that?

08:48:52 21

A. Yes.

08:48:52 22

Q. And is that an e-mail from you to him?

08:48:54 23

A. It appears to be.

08:48:55 24

Q. All right. And does this reflect the results of one

08:48:58 25

of these download audits that we've just been discussing?

08:49:02 1 A. It appears to, yes.

08:49:04 2 Q. And then, here, are you requesting approval to return

08:49:07 3 downloads to Wendy's International?

08:49:11 4 A. Yes.

08:49:13 5 Q. In your -- and then in your e-mail, you refer to the

08:49:16 6 following research that's been completed to validate that

08:49:19 7 Wendy's is entitled to receive the -- certain items from their

08:49:25 8 download library. Do you see that?

08:49:28 9 A. Yes.

08:49:28 10 Q. And then you list four things, a, b, c, d, right?

08:49:30 11 A. Yes.

08:49:30 12 Q. And was that an accurate reflection of the research

08:49:33 13 that had been done to validate that Wendy's was entitled to

08:49:38 14 receive its downloads from TomorrowNow?

08:49:41 15 MR. FUCHS: Objection, form.

08:49:42 16 A. It's a summary of what was done, yes.

08:49:48 17 Q. (By Mr. Howard) How did you determine that the --

08:49:50 18 that -- referring to (a), how did you determine that the

08:49:53 19 download library was downloaded using the sign-on credentials

08:49:56 20 from Wendy's International?

08:50:01 21 A. We determined that Wendy's had sent credentials prior

08:50:08 22 to that date and that an assignment was made to do the

08:50:12 23 downloads with those credentials.

08:50:16 24 Q. Because -- because there's no way to actually verify

08:50:19 25 that that credential was used to download those particular

08:50:24 1 items, right?
08:50:28 2 A. I don't know of a way.
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1 STATE OF TEXAS

2 COUNTY OF HARRIS

3 REPORTER'S CERTIFICATE

4 I, Dana Richardson, a Certified Shorthand Reporter in and
5 for the State of Texas, do certify that this deposition
6 transcript is a true record of the testimony given by the
7 witness named herein, after said witness was duly sworn by me.
8 The witness was requested to review the deposition.

9 I further certify that I am neither attorney or counsel
10 for, related to, nor employed by any parties to the action in
11 which this testimony is taken and, further, that I am not a
12 relative or employee of any counsel employed by the parties
13 hereto or financially interested in the action.

14 I further certify that the amount of time used by each
15 party at the deposition is as follows:

16 Mr. Geoff Howard - 03:58

17 Mr. Josh Fuchs - 00:00

18 Mr. Reid Witliff - 00:00

19 SUBSCRIBED AND SWORN TO under my hand and seal of office
20 on this the 9th day of September,
21 2009.

22 Dana Richardson

23 Dana Richardson, CSR

24 Texas CSR 5386

25 Expiration: 12/31/09

Merrill Legal Solutions, Firm No. 210

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