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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

|                                |   |                           |
|--------------------------------|---|---------------------------|
| APPLE INC., a California       | ) |                           |
| corporation,                   | ) |                           |
|                                | ) |                           |
| Plaintiff,                     | ) |                           |
|                                | ) |                           |
| vs.                            | ) | NO. C 08-03251-WHA        |
|                                | ) |                           |
| PSYSTAR CORPORATION, a Florida | ) |                           |
| corporation, and DOES 1-10,    | ) |                           |
| inclusive,                     | ) |                           |
|                                | ) | San Francisco, California |
| Defendants.                    | ) | Monday                    |
|                                | ) | May 5, 2009               |
|                                | ) | 11:02 a.m.                |

**TRANSCRIPT OF PROCEEDINGS**

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**BY: COLBY B. SPRINGER**

**Reported By: Lydia Zinn, CSR #9223, RPR**  
**Official Reporter - U.S. District Court**

1           **THE COURT:** Have a seat, please.

2           **THE CLERK:** Calling Civil Action C. 08-3251, Apple  
3 versus Pystar.

4           Counsel, can you please state your appearances?

5           **MS. CHUNG:** Your Honor, my name is Megan Chung, for  
6 Townsend, Townsend, and Crew, representing plaintiff, Apple,  
7 Inc.

8           **THE COURT:** Welcome.

9           **MR. SPRINGER:** Colby Springer, of Carr & Ferrell,  
10 L.L.P., for Psystar Corporation.

11           **THE COURT:** For the record, we're here on a discovery  
12 dispute. And it's now 11:00 o'clock this morning. Earlier the  
13 two sides met in the jury room. So whose motion is this?  
14 Ms. Chung, this is your motion?

15           **MS. CHUNG:** Yes. This is Apple's motion.

16           **THE COURT:** Have any agreements been reached.

17           **MS. CHUNG:** I am happy to report that we have been  
18 able to reach agreement on most of the issues.

19           **THE COURT:** Why don't you come up here, so the court  
20 reporter can hear you?

21           All right. Well, then, let's go through the  
22 agreements then one at a time, and make sure that Mr. Springer  
23 agrees that you have reached an agreement. Okay? Go ahead.

24           **MS. CHUNG:** So we have been able to reach an  
25 agreement that Mr. Springer will check and get confirmation

1 that they have produced everything regarding sales and revenue  
2 information from April to September of 2008.

3 And we have been able to also reach an agreement that  
4 they will request the bank's four statements from April to  
5 September of 2008.

6 We have been able to reach an agreement that they  
7 will check to determine whether they have tabulations of vendor  
8 invoices from Ms. Perez, and whether they have produced that;  
9 and if not, they will produce that.

10 **THE COURT:** All right. Let me stop you there.

11 So far do you agree, Mr. Springer?

12 **MR. SPRINGER:** That is correct.

13 **THE COURT:** All right. Continue.

14 **MS. CHUNG:** We have also an agreement that by the end  
15 of the day, Pystar will produce or reproduce Bates-numbered  
16 documents 1383 through 2000, which Apple had never received.

17 **THE COURT:** Correct?

18 **MR. SPRINGER:** That's correct.

19 **THE COURT:** All right.

20 **MS. CHUNG:** We have also agreed that Mr. Springer  
21 will check on the status of the aggregated financial statement  
22 information that they are creating, and also check on the  
23 underlying documents to make sure that they have been produced  
24 in this case. And he'll let me know when the aggregated  
25 information will come to us.

1           **THE COURT:** True?

2           **MR. SPRINGER:** That is correct.

3           **THE COURT:** All right.

4           **MS. CHUNG:** He will check on the underlying documents  
5 for the balance statements and profit and loss statements that  
6 were attached as Exhibit B to the motion, and whether those  
7 underlying documents were produced; and if not, produce them.

8           **MR. SPRINGER:** And that is correct.

9           **THE COURT:** All right.

10          **MS. CHUNG:** He confirmed that they -- Pystar -- have  
11 produced all the payroll information; that there is no  
12 information or documents on lease payments; that they have  
13 produced all of the vendor invoices that they have to date.

14          **MR. SPRINGER:** And that is correct.

15          **MS. CHUNG:** And then the two other issues are -- we  
16 have discovered during the meet-and-confer session --

17          **THE COURT:** These are issues that you agreed on, or  
18 things that you want me to decide?

19          **MS. CHUNG:** No. These two issues are still  
20 outstanding.

21                 And we have agreed, in the sense that Mr. Springer  
22 will check on the attachments to the e-mails which have not  
23 been produced.

24                 And now I understand that some of the e-mails  
25 attachments were corrupted, as well as some of the attachments.

1 In the conversion from Psystar to its counsel, the export did  
2 not function or did not work correctly.

3 **MR. SPRINGER:** That's generally correct, your Honor.

4 The document attachments to e-mails that -- Psystar  
5 has produced a number of e-mails. A number of those e-mails  
6 that have been produced reference the existence of an  
7 attachment. In a number of instances, those attachments have  
8 not been produced. It is a result of -- not because Psystar is  
9 withholding the attachments for any reason, but because the  
10 attachments have been corrupted. And it appears that that  
11 corruption of the attachment has something to do with the  
12 e-mail system that they use as a whole.

13 So we have identified the make and model of the  
14 e-mail system, as it were. And we're going to try to work to  
15 do something. Either the file itself -- the original file is  
16 still present with Psystar, we believe. And we're going to try  
17 to find some way that we can get Apple to have access to those  
18 original attachments, those original documents somehow, because  
19 there's a problem moving the file from the electronic form into  
20 the form that is actually produced to them. The corruption  
21 occurs somewhere between there.

22 **THE COURT:** But if you went to Psystar now and went  
23 on their e-mail system and sat in one of the employees' desks  
24 and called up that e-mail and opened the attachment, would it  
25 be gobbledygook, or would it be a real -- you know, would it

1 read properly?

2           **MR. SPRINGER:** I don't want to say for certain. My  
3 understanding is that if they were able to open -- if someone  
4 was sitting in front of a terminal and clicked on a file, or  
5 whatever the case might be, some indication of -- that there's  
6 an attachment -- my understanding is that they would be able to  
7 open the attachment.

8           The issue --

9           **THE COURT:** Why don't you just open them up and print  
10 them out in hard copy?

11           **MR. SPRINGER:** Because we've been producing documents  
12 in electronic copy.

13           **THE COURT:** You can either do this. Produce them in  
14 hard copy or electronically. You've got to do it one way or  
15 the other.

16           **MR. SPRINGER:** Absolutely.

17           **THE COURT:** When are you going to do this?

18           **MR. SPRINGER:** It's not an issue of are we not going  
19 to do it. It's an issue of: what's the best way to do it?

20           **THE COURT:** And also when?

21           **MR. SPRINGER:** If Apple would like us to go back and  
22 manually print out e-mails, to the extent that that's possible,  
23 if that's the solution they want us to do, that's the solution  
24 we'll take. If they'd rather have an electronic format --

25           **THE COURT:** The discovery cutoff in this case is

1 June 26th.

2 **MS. CHUNG:** Yes.

3 **THE COURT:** If it turns out this is a delay, I'm  
4 going to let them take depositions the rest of the year --

5 **MR. SPRINGER:** Understood.

6 **THE COURT:** -- because it sounds like a stall to me,  
7 Mr. Springer.

8 **MR. SPRINGER:** It's absolutely not, your Honor.

9 **THE COURT:** I'm going to take it as a good-faith  
10 sign, but you -- that's it's not a stall. I've never herd of  
11 such a thing; of documents being corrupted. This is a new one  
12 on me. So you'd better fix it, and fix it promptly.

13 And, Ms. Chung, if it turns out you need more time to  
14 take depositions, your side's going to get an extension if it  
15 relates to these documents.

16 **MS. CHUNG:** I understand.

17 **THE COURT:** Now, if it's not relating to these  
18 documents, you don't get an extension; but this doesn't sound  
19 right to me. All right.

20 **MS. CHUNG:** Well, regarding this issue we are also  
21 still talking about how we could get the attachments so that  
22 they come with the e-mail, because right now, they produce --  
23 some are separate.

24 **THE COURT:** If they have to write -- print it out,  
25 they're going to put on top of it, "This went with e-mail dated

1 June 28th," or whatever.

2           Look. In the old-fashioned way, we used to do this  
3 all the time: hard-copy documents. You could live with that  
4 system, if you need to.

5           **MS. CHUNG:** Right.

6           **THE COURT:** What's your next problem?

7           **MS. CHUNG:** That would be great, your Honor.

8           And then the last is -- well, the other issue is: we  
9 need dates for reopening the deposition for topic two on the  
10 financial information. And I asked for dates. And he will get  
11 back to me.

12           **THE COURT:** All right. I'm going to just give you a  
13 date right now.

14           **MS. CHUNG:** Okay, but we would like a date  
15 sufficiently far enough so that we could review all of these  
16 documents, and especially the attachments.

17           **THE COURT:** When are you the documents going to be  
18 produced?

19           **MR. SPRINGER:** Produced to them on Monday. And then  
20 there's also a question of whether or not they need to review  
21 additional documents as well.

22           **THE COURT:** Well, when are you going to finish up all  
23 the production of these open items that you just mentioned to  
24 me in the last ten minutes?

25           **MR. SPRINGER:** So --



1           **MS. CHUNG:** Well, by the end of the day, I'm supposed  
2 to get confirmation.

3           **THE COURT:** Yeah, but that was just -- a lot of those  
4 items.

5           **MS. CHUNG:** Right.

6           **THE COURT:** But you're not going to get -- you  
7 weren't intending to say that Mr. Springer's going to produce  
8 all of these documents by the end of the day?

9           **MS. CHUNG:** No, no. And --

10          **THE COURT:** So when is the day he's going to produce  
11 them?

12          **MR. SPRINGER:** By the end of the day, Bates range  
13 1383 through 2000.

14                I am going to confirm with Psystar Corporation today  
15 with respect to the existence of -- this kind of reiterates  
16 some of the things that Ms. Chung already mentioned. I'm going  
17 to check and confirm by the end of the day with respect to --

18          **THE COURT:** I heard all of those things, but a lot of  
19 them, where you were going to be producing more materials if  
20 they existed --

21          **MR. SPRINGER:** So the documents --

22          **THE COURT:** -- when is that going to occur?

23          **MR. SPRINGER:** If there are additional documents that  
24 need to be produced, I believe those documents are -- the  
25 e-mail-system issue aside -- are bank statements which they are

1 going to get back on line and see if they can go further back  
2 for these bank statements.

3 **THE COURT:** All right. When is that going to happen?  
4 When are we going to get all of that material?

5 **MR. SPRINGER:** I will tell them. I propose they go  
6 back in time if they're available on line. If not, have sent a  
7 letter to those banks for those accounts requesting those  
8 documents to be produced in hard copy by the end of this week.

9 **THE COURT:** So you'll get the documents. Ms. Chung  
10 will get the material by the end of -- the material by the end  
11 of the week if it exists, or they can get it from the bank?

12 **MR. SPRINGER:** The issue with some of these  
13 on-line -- statements may no longer exist on line because  
14 they're too far back in time. I'm going to have them by the  
15 end of the day tomorrow.

16 **THE COURT:** Look. Here's what I'm going to do.  
17 Today's May 5.

18 **MR. SPRINGER:** Correct.

19 **THE COURT:** I'm going to give you until Monday, May  
20 18th, at noon to absolutely finish all of the completion  
21 that -- that you've agreed to undertake.

22 In other words, if they've got to do several steps  
23 and they're contingent whether they exist or they don't exist,  
24 you've got to find all of that out and actually make the  
25 productions by the 18th of May.

1           **MR. SPRINGER:** understood.

2           **THE COURT:** Is that good enough time?

3           **MS. CHUNG:** Yes, your Honor.

4           **THE COURT:** Well, Mr. Springer, is that enough time  
5 for you?

6           **MR. SPRINGER:** It is not an issue with respect to  
7 Psystar making that inquiry, and then immediately sending  
8 notice to the bank.

9           I would ask for some, presuming that we -- that  
10 Psystar takes care of business today and tomorrow with respect  
11 to, A, can they download, and if not, immediately informing the  
12 bank to send those documents, at that point, the issue is where  
13 the bank stands. So --

14           **THE COURT:** Well, but the customer can go, you know,  
15 and complain. Maybe it's not enough to just ask once. They've  
16 got to ask, you know, every other day, "Where is it? Where is  
17 it," until they finally get it to you.

18           **MR. SPRINGER:** If that is what the Court --

19           **THE COURT:** Every other day you've got to bug the  
20 bank; otherwise, it goes at the bottom of the stack.

21           **MR. SPRINGER:** We'll harass them every other day.

22           **THE COURT:** May 18th at nine. I'm going to stick  
23 with that.

24           June 3rd, Wednesday, is the date of the deposition at  
25 9:00 a.m., unless you two agree in writing to a different day

1 of the week of June 1. So you've got five daze to choose from,  
2 but if you can't reach an agreement, June 3rd, Wednesday,  
3 9:00 a.m., is the day.

4 Where did you take this deposition last time?

5 **MR. SPRINGER:** San Francisco, your Honor.

6 **THE COURT:** In whose office?

7 **MS. CHUNG:** At Townsend's office.

8 **THE COURT:** It will be at the same place on June 3rd.

9 Does that work?

10 **MR. SPRINGER:** Correct.

11 **THE COURT:** Is that okay? You both agree to that?

12 **MS. CHUNG:** It will be fine.

13 **THE COURT:** All right. That will give you the  
14 flexibility to change it, if you both agree in writing.  
15 Otherwise, if there's -- please don't do this to me. Say, "Oh,  
16 it's not convenient. We'll still working on a date." If  
17 June 3rd comes and this person doesn't show up, there will be  
18 trouble. So that is the date, June 3rd, unless you agree in  
19 advance, beforehand, in writing to some other date; but it has  
20 to be the week of June 1.

21 All right. So that solves that problem.

22 See how easy it is to solve these problems?

23 **MS. CHUNG:** Just for clarification, your Honor, for  
24 May 18th -- is that the date by which Psystar's to produce all  
25 of the attachments in hard copy?

1           **THE COURT:** Well, okay. Yeah. That's what I was  
2 thinking.

3           **MS. CHUNG:** Okay.

4           **THE COURT:** Let's address that specifically. Is that  
5 going to be enough time for you, Mr. Springer, to get those  
6 attachments produced, either in hard copy or electronically?  
7 But one way or the other, you've got to have them produced.

8           **MR. SPRINGER:** Today's date is the 5th?

9           **THE COURT:** Identified as to which e-mail they went  
10 with.

11           **MR. SPRINGER:** That will be fine. May 18th.

12           **THE COURT:** That will give you about a week and a  
13 half, two weeks, to review all of those documents. And then  
14 you can finish up your deposition.

15           What else do you want me to solve today?

16           **MS. CHUNG:** Apple is seeking its attorneys' fees and  
17 expenses for having to bring this motion. This defers time.  
18 We've discovered that there might be these issues with  
19 attachments. We've been asking for these attachments. We've  
20 about been asking for all these files since December, if not  
21 February of this year, your Honor. So the last issue before  
22 you is our request for sanctions.

23           **THE COURT:** Well, it's not really sanctions.

24           It's -- under the rule, it's -- what does it say? No  
25 longer -- you don't have to find bad faith anymore?

1           **MS. CHUNG:** No.

2           **THE COURT:** What rule am I looking at here?

3           **MS. CHUNG:** I believe it's 37(c).

4           **THE COURT:** 37(c).

5           Mr. Springer, what do you say? I'm not finding the  
6 part that I used to remember, but --

7           **MR. SPRINGER:** Are you asking me what my stance is?

8           **THE COURT:** What do you say about the attorneys'-fees  
9 part?

10           **MR. SPRINGER:** I would disagree, in the sense that  
11 Psystar is a small company. They have limited resources.  
12 They've made every effort to produce documents. This is the  
13 first and only real discovery dispute that we've had. We've  
14 been able to come to an amicable conclusion on it.  
15 Unfortunately, it was unnecessary to do it at the Court's  
16 request.

17           We did inform Apple during the deposition of  
18 Roberto Pedraza that additional documents and deposition dates  
19 would be forthcoming. Those were produced.

20           Obviously, there still are issues outstanding, but  
21 there's a good-faith effort between the parties. We may  
22 resolve it.

23           There are are no efforts here to hide the ball of any  
24 sort with respect to the e-mail issue. We're working with  
25 Apple this morning. As of this morning, we're working with

1 Apple, you know, to come to a remedy that allows them to get  
2 those attachments.

3 So there clearly is a good-faith effort on behalf of  
4 Psystar and their limited resources and the abilities they have  
5 to produce documents and, at the same time, carry on their  
6 business.

7 **MS. CHUNG:** If I may respond, your Honor, just two  
8 points.

9 We have been -- Mr. Springer and I have been meeting  
10 and conferring about the financial documents, I can attest,  
11 since February. This is the first time today that I heard that  
12 documents were lost during a move, and that the e-mail  
13 attachments could not be produced due to the corruption.

14 Now, if he had said that to me way back when when we  
15 were talking about these documents, we could have worked that  
16 out before; but he never raised that before.

17 So to bring that up now as evidence of good faith or  
18 diligence, I believe, is not accurate. And it mischaracterizes  
19 the record. And so it is due to Psystar's lack of diligence  
20 that we're before you.

21 **THE COURT:** All right. Here's the answer.

22 If you completely comply with this May 18th date and  
23 the deposition, there will be no attorneys' fees.

24 **MR. SPRINGER:** Fair enough.

25 **THE COURT:** But if you don't do that, I think

1 Ms. Chung is probably entitled to them; but to give you an  
2 incentive to bring this to closure and to solve these problems,  
3 I'm going to say no. If you get it done and you've done it all  
4 right and meet all these deadlines and there won't be things  
5 like, "Oh, the bank won't respond. Oh, the corruption. The  
6 corruption won't respond" -- no, no.

7 In other words, no more excuses. Just get it done.  
8 Then, no attorneys' fees.

9 **MR. SPRINGER:** Thank you, your Honor.

10 **THE COURT:** All right? Are we done now?

11 **MS. CHUNG:** Yes. Thank you, your Honor.

12 **THE COURT:** Okay. Thank you for coming in and for  
13 working hard to solve the problems you did solve this morning.  
14 See you soon, I guess.

15 This is on the record.

16 No. You two need to meet and confer and do a form of  
17 order that will capture what the Court ruled today. Then  
18 submit that as an agreed-upon form of order. I should have  
19 said that earlier. I'm sorry. In other words, you write down  
20 what it is the Court ruled.

21 **MR. SPRINGER:** Okay.

22 **THE COURT:** And then we will go through it. My law  
23 clerk will go through it to make sure that it tracks what we  
24 did today. So usually, the lawyers can at least agree on what  
25 the court ruled. Okay?



1           **MS. CHUNG:** Okay.

2           **MR. SPRINGER:** Okay.

3           **THE COURT:** Thank you. Please do that. Try to  
4 submit that by Friday at noon.

5                   (At 11:20 a.m. the proceedings were adjourned.)

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CERTIFICATE OF REPORTER

I, LYDIA ZINN, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in C.08-3251-WHA, Apple v. Pystar, were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

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/s/ Lydia Zinn, CSR 9223, RPR

Thursday, May 7, 2009