

EXHIBIT Y

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11923-DPW

CONNECTU LLC
Plaintiff

V.

MARK ZUCKERBERG, et al
Defendants

BOSTON, MASSACHUSETTS
OCTOBER 24, 2006

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TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE ROBERT B. COLLINGS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 A I believe we did include him, yes.

2 Q And the position of ConnectU was that all of the actions
3 taken by ConnectU or taken by Mr. Narendra were on behalf of
4 ConnectU, right?

5 A Yes, but I think I should probably clarify that, that
6 that--

7 Q Your counsel can ask you that.

8 A Okay.

9 Q That was the position--

10 A Sure.

11 Q --taken by ConnectU, right?

12 A Yes.

13 Q And the actions that were taken by Mr. Narendra were in
14 2004, right?

15 A Some actions may have been, yes.

16 Q The actions were taken in 2004 that ConnectU is taking the
17 position they should have responsibility for it because
18 Mr. Narendra was doing it on its behalf?

19 A I think some actions, yes, were taken on 2004.

20 Q Thank you very much.

21 Now there was discovery in that case?

22 A I believe there's been some discovery, yes.

23 Q Okay. And in that case there was discovery about the
24 membership of ConnectU, right?

25 A I'm not sure I recall exactly.

1 Q Well, let's take a look at the hearing Exhibit No. 80.
2 And if my colleagues could provide Mr. Narendra the copy of the
3 exhibit number.

4 (Pause)

5 BY MR. CHATTERJEE:

6 Q Do you see that Mr. Winklevoss?

7 A Yes, No. 8?

8 Q 8-0.

9 A Or 8-0, 80. Okay.

10 Q Is Exhibit No. 80's a declaration from you?

11 A Sorry, that's a question or?

12 Q Yes.

13 A You're asking me if it's a declaration?

14 Q Yes.

15 MR. CHATTERJEE: 80's a--

16 A It does not look to be a declaration.

17 BY MR. CHATTERJEE:

18 Q Oh. Well let me give you - if you take a look at request
19 for production No. 19.

20 A Okay.

21 THE COURT: This is in Exhibit 80 or not?

22 MR. CHATTERJEE: This is in Exhibit 80, I'm sorry.

23 THE COURT: Okay.

24 MR. CHATTERJEE: Mine were organized slightly
25 differently.

1 THE WITNESS: Okay, so I'm a little confused
2 where to go. I'm looking at 80 right now.

3 BY MR. CHATTERJEE:

4 Q If you look at request No. 19--

5 A Oh, okay.

6 Q Okay. There's a request in there. This is Exhibit No.
7 80.

8 A Okay.

9 Q Now request for production No. 19 asked you to produce all
10 documents related to current and former directors, officers,
11 employees and agents of ConnectU, including members, managers
12 and board managers as defined in the limited liability company
13 operating agreement of ConnectU LLC. We gave some Bates
14 ranges, Harvard Connect and Winklevoss companies, including
15 documents relating to dates in these positions, duties,
16 authorities and responsibilities. Do you see that?

17 A Yes, I do.

18 Q Okay. Now in response to that there was a motion to
19 compel filed, right? Are you aware of that?

20 A Yes.

21 Q And following that there was a court order?

22 A Yes.

23 Q You know that, right?

24 A Yes.

25 Q And in fact in that court order there was a requirement

1 that you produce a declaration that set forth that you had
2 made a complete production in response to that document
3 request, right?

4 A Yes.

5 Q And Exhibit 83 is that declaration, right?

6 A That's correct, yes.

7 Q And you specifically reference in paragraph 19 your
8 response, right? This is the--

9 A Yes.

10 Q --this is following quarter.

11 A Yes.

12 Q You did a diligent search. You produced all of the
13 relevant documents that were responsive to that request, right?

14 A Yes.

15 Q Now, what I've done with Exhibit 83, Mr. Winklevoss, is I
16 took all of the documents that were cited there by Bates
17 number. You now what a Bates number is, right?

18 A Sort of.

19 Q Okay. A Bates number are these actual numbers that are
20 identified on here. You find them typically on the bottom
21 right hand corner of the document.

22 A Right.

23 THE COURT: You know if you're going to use that
24 would you focus it--

25 MR. CHATTERJEE: Yes.

1 THE COURT: --and stop moving it around.

2 MR. CHATTERJEE: And I'm sorry, Your Honor, this is
3 kind of sliding off.

4 THE COURT: You're getting me dizzy.

5 MR. CHATTERJEE: I apologize.

6 BY MR. CHATTERJEE:

7 Q Now, Mr. Winklevoss, with respect to Exhibits 41 - 40, 41
8 and 42, can you show me where in that collection of documents
9 any of those documents can be found?

10 A I--

11 Q Feel free to look through them.

12 A I don't know the Bates numbers off the top of my head. Is
13 that what you're asking me?

14 Q I'll represent to you Mr. Winklevoss, I've gone--

15 A Okay.

16 Q --through each and every one of the Bates numbered
17 documents and I put them in that stack right there. You can
18 look through them and see if you can find Exhibit 40, 41 or 42.

19 A So you want me to look through the whole binder?

20 THE COURT: Is there any dispute that these are not
21 contained in there?

22 MR. HORNICK: Your Honor, these documents that I
23 believe that Mr. Chatterjee is going to be talking about were
24 produced after this discovery request was signed, and we have
25 an agreement in the two cases that any documents from any case

1 can be used in either case. So even if they weren't
2 produced in the California case--

3 THE COURT: No--

4 MR. HORNICK: --they can be used.

5 THE COURT: --no, I just want to know - let him do
6 want he wants to do. Is there any dispute that these are not
7 within that category of documents?

8 MR. CHATTERJEE: Your Honor, I'll represent to you--

9 THE COURT: No, I'm asking Mr. Hornick.

10 MR. CHATTERJEE: Oh.

11 MR. HORNICK: I don't know, Your Honor. I don't know
12 what these documents here are. I'm not really working on that,
13 I'm not working on that case. I don't know what these
14 documents are just by looking at these numbers.

15 MR. CHATTERJEE: Your Honor, the premise here is
16 quite simple.

17 THE COURT: Oh, I understand what you're trying to
18 do. I'm just, rather than having him look through all of them
19 to see if they're there, which might take a little bit of time,
20 and I was trying to shortcut things.

21 MR. CHATTERJEE: And I'll represent to Your Honor not
22 a single one of them is.

23 THE COURT: Well, I know, but you don't get - you're
24 not testifying and you're not under oath and you're not going
25 to be testifying, you're not going under oath. So how do you

1 want to do it?

2 MR. CHATTERJEE: Well, I would like him to confirm
3 that not a single one of these documents that he's now relying
4 on as a member is it that, in the production that he made under
5 court order.

6 MR. HORNICK: Then, Your Honor, I would have to ask
7 that the witness be able to look at each one of those documents
8 that he is being asked are not there, and then he should be
9 able to testify as to when those documents were produced
10 because they hadn't been produced at the time this document
11 request had been submitted.

12 THE COURT: What do you mean they hadn't been
13 produced?

14 MR. HORBICK: They hadn't been found. These
15 documents were not covered by discovery requests in the - they
16 were not covered by discovery requests in this case, this
17 Massachusetts case.

18 MR. CHATTERJEE: Your Honor--

19 THE COURT: No, wait a minute, wait a minute, wait a
20 minute.

21 MR. HORNICK: And then when this--

22 THE COURT: No, he's asking about a discovery
23 request, an order that was made in California, the California
24 case. Now, what do you--

25 MR. HORNICK: I understand that, Your Honor, but

1 documents - they did the search they did and they produced
2 the documents they had and these documents were found later and
3 they were produced later.

4 THE COURT: So they were not, so you're agreeing that
5 they're not within--

6 MR. HORNICK: I think I know which one he's talking
7 about, but I don't really now which documents he's getting at.
8 And I also don't know whether these documents in this discovery
9 request, these Bates numbers are California case Bates numbers
10 or Massachusetts case Bates numbers.

11 MR. CHATTERJEE: Your Honor, frankly, I don't know
12 what to do here. The issue is the membership of Divya
13 Narendra. The only documents that they're relying upon were
14 things that Mr. Winklevoss did not find under court order for a
15 reasonable diligent search.

16 THE COURT: All right, well, I don't think there's
17 any - wait a minute, wait a minute, I don't think there's any
18 need for him - I mean they're either in there or they're not in
19 there, and I think that can be established without him sit,
20 without us sitting here at 10 of four having him go through
21 each--

22 MR. CHATTERJEE: Okay.

23 THE COURT: --each document. He may have the
24 opportunity to do so, and we'll bring him back if necessary to
25 testify but I'm not going to sit here and have him do it now.

1 So let's move on.

2 MR. CHATTERJEE: Okay. Thank you, Your Honor. And
3 the reason for that just so we're clear--

4 THE COURT: Oh you don't have to tell me the reason.

5 MR. CHATTERJEE: Well--

6 THE COURT: I know what the reason is. I know where
7 you're going.

8 MR. CHATTERJEE: Okay.

9 THE COURT: Let's move on.

10 MR. CHATTERJEE: Okay. And, Your Honor, so we're
11 going to have to maintain our objection to the admission of the
12 documents that have not yet been admitted because he said
13 they're business records. If they're business records they'd
14 be in that production.

15 THE COURT: Well, I don't think that objection - if
16 that's your only objection then I'm going to overrule it. The
17 only one I think that hasn't been admitted is 41, right?

18 COUNSEL: Right.

19 THE COURT: Right. Well I - if that's your
20 objection, I overrule it and I admit Exhibit 41.

21 MR. CHATTERJEE: Thank you, Your Honor.

22 THE COURT: Now was that the only purpose for which
23 you were going through this exercise or you had another purpose
24 in mind I take it?

25 MR. CHATTERJEE: I think I made my purpose, Your

1 THE COURT: Any objection? I can take them now?

2 MR. HORNICK: Your Honor, the witness was not able to
3 authenticate the letters that were being asked about in the
4 testimony.

5 MR. CHATTERJEE: I'm sorry, Your Honor, I misspoke.
6 It's Exhibit 65 and 64.

7 THE COURT: 65 and 64, which is--

8 MR. HORNICK: In fact there was never any foundation
9 laid on those letters.

10 THE COURT: They weren't the letters, they were
11 complaints.

12 MR. HORNICK: Well, they were attached to the
13 complaints.

14 MS. ESQUENET: They were attached. It was all--

15 MR. HORNICK: The letters were attached to the
16 amended complaint.

17 THE CHATTERJEE: Your Honor, they were cc'd to
18 ConnectU LLC and it was on behalf of ConnectU.

19 THE COURT: Yeah. They're being offered against
20 ConnectU, they're attached to ConnectU's complaint. I'm going
21 to admit them.

22 (Defendant's Exhibit Nos. 64 and 65, admitted)

23 MR. CHATTERJEE: Your Honor, I'd also like to offer
24 into evidence Exhibit 67, which was the interrogatory response
25 from this case that I referred to.

1 THE COURT: All right, any objection to that?

2 MR. HORNICK: No, Your Honor. No objection.

3 THE COURT: All right, that's admitted.

4 (Defendant's Exhibit No. 67, admitted)

5 MR. CHATTERJEE: And then, Your Honor, my
6 understanding is you were going to submit Exhibit 83 which was
7 the declaration with the attached documents. I'd like to offer
8 that into evidence.

9 THE COURT: All right, wait a minute now.
10 Eighty--

11 MR. CHATTERJEE: Exhibit 83 was the declaration of
12 ConnectU LLC for all of the documents that were--

13 THE COURT: Oh right, right, right. Yeah, I'm going
14 to ask that - I'm not going to excuse Mr. Cameron Winklevoss as
15 a witness overnight. He's to go through the documents as
16 Mr. Hornick wished him to do and then to answer the question as
17 to whether they were included in the documents he listed in
18 response to that interrogatory.

19 MR. CHATTERJEE: Thank you very much, Your Honor.

20 MR. HORNICK: What documents particularly do you want
21 to know are in there?

22 MS. HURST: Your Exhibits 40, 41 and 42.

23 MS. CHATTERJEE: And particularly the handwritten
24 documents that he's relied upon to show membership.

25 THE COURT: Well wait a minute, wait a minute. We

1 want - is it forty--

2 MS. HURST: It is, Your Honor, Ms. Hurst--

3 THE COURT: Let's get the specific documents you're
4 referring to. Exhibits--

5 MS. HURST: Plaintiff's exhibits 40, 41 and 42--

6 MS. CHATTERJEE: Correct.

7 MS. HURST: --which are the two Connecticut
8 registration applications and the bank card.

9 MR. CHATTERJEE: Correct.

10 THE COURT: All right, 40, 41 and 42, Mr. Hornick.

11 MR. HORNICK: And whether they're in Exhibit 83 is
12 the question?

13 THE COURT: No, the question is whether they are
14 among the documents listed in that declaration as having been
15 produced.

16 MR. HORNICK: In 83?

17 THE COURT: Yeah.

18 MR. HORNICK: Yes.

19 THE COURT: It is 83, isn't it? Mr. Chatterjee--

20 MR. CHATTERJEE: Yes.

21 THE COURT: --83?

22 MR. CHATTERJEE: Yes.

23 THE COURT: Okay.

24 MR. HORNICK: Your Honor, we can stipulate that
25 they're not there.

1 THE COURT: Well, that's what I was asking you
2 about earlier.

3 MR. HORNICK: That's what I was saying, they were
4 produced after this was created so they couldn't have been
5 there.

6 THE COURT: All right. Then we don't have to worry
7 about that. It's stipulated that they're not included in the
8 documents listed in the declaration.

9 MR. CHATTERJEE: Thank you, Your Honor.

10 THE COURT: Okay. That takes care of that problem.
11 Okay, questions by counsel for Saverin?

12 MR. HURST: Yes, briefly, Your Honor.

13 BY MS. HURST:

14 Q Good afternoon, Mr. Winklevoss. My name is Annette Hurst,
15 and I'm an attorney for defendant Saverin. I think we've met
16 before, hello.

17 A Hi.

18 Q If you could turn to Exhibit 12 in the defendant's exhibit
19 binder.

20 (Pause)

21 A Okay.

22 BY MS. HURST:

23 Q In or about April 2004 were you familiar with a person
24 named Mark Perot?

25 A Yes.

1 Q And who was Mr. Perot?

2 A He was an employee of Imark.

3 Q And you were involved with him in connection with Imark's
4 work in developing first the Harvard Connection then later the
5 ConnectU website, correct?

6 A That's correct.

7 Q I've marked or we've marked as Exhibit 12 an email from
8 Mr. Perot to you and Mr. Narendra. Do you see that, that email
9 at the bottom of Exhibit 12?

10 A Yes.

11 Q And is that an email that you received from Mr. Perot on
12 or about April 5, 2004?

13 A That's correct.

14 Q In the email Mr. Perot was making a recommendation to you
15 that you create a legal entity for your business, correct?

16 A Yes.

17 Q He actually went on to describe a procedure whereby you
18 could do it online and recommended the specific form of entity
19 of an LLC, correct?

20 A That's correct.

21 Q And then that very same day, in fact shortly thereafter
22 you responded to his email, correct?

23 A Yes.

24 Q And your response on April 5, 2004 at approximately
25 10:12 a.m. is marked at the top of Defendant's Exhibit 12,

CERTIFICATION

I, Maryann V. Young, court approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter.

November , 2006

Maryann V. Young_____