

EXHIBIT H

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

DANIEL M. MILLER

Plaintiff,

vs.

CIVIL ACTION FILE
NO. 10-00264 (WHA)

FACEBOOK, INC. and YAO WEI
YEO,

Defendants.

CONFIDENTIAL

VIDEO DEPOSITION OF ROBERT MADAYAG

Thursday, February 10, 2011

8:57 a.m.

Troutman Sanders LLP
Bank of America Plaza
600 Peachtree Street, NE
Suite 5200
Atlanta, Georgia

Reported by:
Robyn Bosworth
RPR, CRR, CCR-B-2138

JOB NO. 155434

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16 On behalf of the Deponent:

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24 (404) 885-3206

25 Also Present: Terry Wetz, Videographer

09:26:07 1

MR. AVALOS: 2049, please.

09:26:10 2

MR. REINHARDT: Thank you.

09:26:15 3

(Document marked for identification as

09:26:15 4

Defendant's Exhibit 2049.)

09:26:16 5

BY MR. AVALOS:

09:26:16 6

Q Look over this document, Mr. Madayag, and

09:26:18 7

tell me when you're done.

09:26:29 8

A Okay.

09:26:30 9

Q Have you ever seen this document before?

09:26:32 10

A No.

09:26:41 11

Q Are you aware that the copyright office

09:26:44 12

maintains a list of designated agents for purposes

09:26:48 13

of the DMCA?

09:26:53 14

A I am.

09:26:54 15

Q Are you aware of that? Okay.

09:26:57 16

Do you know how to go about finding that

09:27:00 17

list of designated agents for various companies

09:27:03 18

registered with the copyright office?

09:27:06 19

A Not specifically, no.

09:27:08 20

Q Okay. Before sending out the letter

09:27:13 21

marked as 2048, am I correct then that you did not

09:27:18 22

first investigate who the designated agent for DMCA

09:27:24 23

purposes was for Facebook?

09:27:28 24

A No.

09:27:29 25

Q Okay. So I'll represent to you,

09:27:32 1 Mr. Madayag, that 2049 is titled Amended Interim
09:27:39 2 Designation of Agent to Receive Notification of
09:27:41 3 Claimed Infringement, is the document that was filed
09:27:44 4 with the Copyright Office and that was in place with
09:27:48 5 the Copyright Office at the time that you sent this
09:27:53 6 letter. If you'd look at the line that says,
09:27:56 7 "Signature of officer or representative of the
09:28:00 8 designating service provider," do you see that line,
09:28:02 9 Mr. Madayag?

09:28:03 10 A I do.

09:28:04 11 Q And underneath that there's a date there,
09:28:07 12 and it appears to be March 12th, 2009. Is that -- I
09:28:11 13 know it's a little chicken scratch, but do you see
09:28:14 14 that?

09:28:14 15 A I do.

09:28:16 16 Q Okay. Farther up on the document one,
09:28:26 17 two -- the third field down is, "Address of service
09:28:30 18 provider." Do you see that?

09:28:31 19 A I do.

09:28:32 20 Q Okay. And the address there is 151
09:28:35 21 University Avenue, Palo Alto, California 94301. Do
09:28:40 22 you see that?

09:28:40 23 A I do.

09:28:41 24 Q Okay. Below that it says, "Name of agent
09:28:43 25 designated to receive notification of claimed

09:28:46 1 infringement." Do you see that?

09:28:48 2 A I do.

09:28:48 3 Q And it says Theodore W. Ullyot, who I'll
09:28:53 4 just represent is Facebook's general counsel.

09:28:55 5 Underneath that line it says, "Full address of
09:28:58 6 designated agent to which notification should be
09:29:02 7 sent." Do you see that, Mr. Madayag?

09:29:04 8 A I do.

09:29:05 9 Q Do you see the address that's listed
09:29:07 10 underneath that?

09:29:07 11 A I do.

09:29:08 12 Q And that says 151 University Avenue; is
09:29:11 13 that correct?

09:29:12 14 A That is correct.

09:29:13 15 Q Is that the address to which the letter
09:29:17 16 marked 2048 was sent?

09:29:21 17 A No.

09:29:21 18 Q Okay. 2048 it appears was mailed -- it
09:29:27 19 says via first class mail, e-mail, and facsimile.
09:29:31 20 Let's take each of those in part. Do you know the
09:29:33 21 address that this letter was actually mailed to,
09:29:36 22 Mr. Madayag?

09:29:38 23 A The address I imagine is the address
09:29:40 24 that's on there.

09:29:41 25 Q Okay. And that's 156 University Avenue;

09:29:44 1

is that right?

09:29:44 2

A That is correct.

09:29:45 3

Q Okay. And that's -- again, that's not the

09:29:48 4

address that's listed as the full address of

09:29:51 5

designated agent to which notification should be

09:29:53 6

sent in 2049, is it?

09:29:56 7

A No.

09:29:57 8

Q Okay. A few lines below on 2049 you'll

09:30:02 9

see it says telephone number of designated agent,

09:30:05 10

facsimile number of designated agent, and underneath

09:30:08 11

that it's e-mail address of designated agent. Do

09:30:11 12

you see that line, Mr. Madayag?

09:30:14 13

A I do.

09:30:14 14

Q Do you see the e-mail address that's

09:30:16 15

listed there as the e-mail address of Facebook's

09:30:19 16

designated agent?

09:30:20 17

A I do.

09:30:21 18

Q Was that the e-mail address to which this

09:30:23 19

letter was e-mailed?

09:30:24 20

A At which point in time?

09:30:25 21

Q Let's talk about this one in particular on

09:30:28 22

May 7th, 2009. Do you recall whether this letter

09:30:33 23

was e-mailed to ip@facebook.com?

09:30:38 24

A I do not recall.

09:30:40 25

Q Okay. If you look at the address block on

09:40:10 1

A You did.

09:40:11 2

Q Okay. So I'm sorry, I'm not trying to --

09:40:16 3

not trying to be -- not trying to be -- I'm just --

09:40:17 4

A You don't need to apologize to me either.

09:40:19 5

Q I'm just confused. Is it your testimony

09:40:22 6

then that the content that you were reporting in

09:40:25 7

this letter that existed on the ChainRxn Facebook

09:40:30 8

website that you -- the letter specifies that that's

09:40:35 9

a game on that page because of that previous

09:40:41 10

sentence, "K2xL has a large and loyal following of

09:40:44 11

customers owing to its established reputation for

09:40:47 12

its online games"?

09:40:48 13

A Also to, you know, Exhibit B is attached

09:40:52 14

as well. So attached hereto as Exhibit B are the

09:40:55 15

pertinent pages from the ChainRxn Facebook website.

09:40:59 16

Q Okay. If you flip to the second page of

09:41:17 17

the letter it's Miller 0041 there is a paragraph

09:41:21 18

there that reads, "Accordingly, on behalf of K2xL,"

09:41:24 19

do you see that?

09:41:25 20

A I do.

09:41:26 21

Q And the last sentence in that paragraph,

09:41:27 22

"K2xL seeks only to disable that portion of the

09:41:32 23

ChainRxn Facebook website containing material

09:41:36 24

infringing K2xL's rights." Do you see that?

09:41:39 25

A I do.

09:45:16 1

A No.

09:45:17 2

09:45:23 3

09:45:25 4

Q Okay. But is it fair to say that the applica -- the words "application directory" don't appear in this letter, do they?

09:45:29 5

A I don't believe so.

09:45:30 6

09:45:38 7

09:45:42 8

09:45:46 9

09:45:49 10

Q Okay. And it follows then, Mr. Madayag, that the letter doesn't make any kind of demand that any material be removed -- any listings be removed from the Facebook application directory; is that right?

09:45:50 11

09:45:54 12

A If the word "application" was not listed I imagine that wouldn't, yeah.

09:45:56 13

09:46:01 14

09:46:04 15

Q All right. According to this letter, Mr. Madayag, who -- who owns the intellectual property rights in the Boomshine video game?

09:46:11 16

A Mr. Danny Miller.

09:46:12 17

09:46:14 18

Q Okay. Does Mr. Miller's name appear anywhere in this letter, Mr. Madayag?

09:46:24 19

A Cc. In the cc line.

09:46:27 20

09:46:29 21

09:46:32 22

09:46:35 23

Q In the cc line, okay. Anywhere in this letter does it identify Mr. Danny Miller as the owner of the IP rights including the copyrights in the game Boomshine?

09:46:37 24

09:46:39 25

A You know, actually, I think it -- I'm not sure if it was Danny or -- let's see. You know,

10:05:15 1 application.

10:05:16 2 Q Okay. Do you recall -- strike that.

10:05:28 3 And at the time that you wrote this
10:05:30 4 letter, do you recall whether -- sorry. I'm just
10:05:35 5 trying to figure out whether you don't remember
10:05:37 6 whether there was a pending application now or
10:05:40 7 whether at the time that you drafted this letter you
10:05:41 8 were not aware whether there was a pending
10:05:44 9 application.

10:05:44 10 How about the second part of that, at the
10:05:47 11 time that you drafted this letter, do you recall
10:05:49 12 being aware of an application pending at the
10:05:51 13 copyright office for the copyright registration for
10:05:53 14 Boomshine?

10:05:54 15 A I was not aware at the time of writing
10:05:56 16 that letter of any pending application.

10:05:58 17 Q Okay.

10:06:04 18 A Copyright application.

10:06:05 19 Q Copyright application. That's fine.

10:06:14 20 Is it fair to say, Mr. Madayag, that in
10:06:16 21 the first sentence to this letter you distinguish
10:06:21 22 between Mr. Danny Miller and K2xL; is that fair to
10:06:25 23 say?

10:06:27 24 A No, I'm not really sure what you mean by
10:06:30 25 distinguish.

10:07:39 1 entity from K2xL.

10:07:41 2 MR. BRIDGES: Julio, if his understanding
10:07:42 3 of the difference between the two is based upon his
10:07:44 4 conversations he had with his client, Danny Miller,
10:07:47 5 then he can rightfully invoke the attorney-client
10:07:50 6 privilege.

10:07:51 7 MR. AVALOS: Okay. That's fine.

10:07:52 8 (Document marked for identification as
10:07:52 9 Defendant's Exhibit 2054.)

10:07:53 10 BY MR. AVALOS:

10:08:27 11 Q Do you recognize this document,
10:08:28 12 Mr. Madayag?

10:08:28 13 A I do.

10:08:30 14 Q Okay. And what is this document?

10:08:33 15 A This was the initial document sent to the
10:08:37 16 domain at face -- at the facebook.com e-mail address
10:08:45 17 that had the -- had the letter to Facebook.

10:08:48 18 Q Okay. So do I understand you correctly
10:08:51 19 that then the document in 2048 was attached to 2054?
10:09:00 20 The e-mail at 2054?

10:09:02 21 A As best I recall, yes.

10:09:04 22 Q Okay. And you see that in the -- in the
10:09:09 23 body of the letter, "Attached please find a
10:09:10 24 confirmation copy of our correspondence mailed to
10:09:13 25 you yesterday, May 7th, 2009." So the dates jive;

10:09:18 1 is that right?

10:09:20 2 A Yes, they correspond with each other.

10:09:22 3 Q All right. That's fine. And -- okay.

10:09:31 4 The e-mail references a send failure to

10:09:35 5 your fax number 650-543 -- do you have any

10:09:39 6 understanding what -- what that's about?

10:09:42 7 A It appears that the fax did not go

10:09:46 8 through.

10:09:47 9 Q Okay. But you didn't -- you didn't

10:09:50 10 attempt to send a fax, did you?

10:09:52 11 A No.

10:10:08 12 MR. AVALOS: 2055.

10:10:10 13 (Document marked for identification as

10:10:10 14 Defendant's Exhibit 2055.)

10:10:11 15 BY MR. AVALOS:

10:10:16 16 Q Have you ever seen this document,

10:10:16 17 Mr. Madayag?

10:10:17 18 A I -- I have.

10:10:18 19 Q Okay. What is this document?

10:10:20 20 A This appears to be a facsimile. I don't

10:10:26 21 even know if they -- the confirmation report whether

10:10:29 22 or not a -- indicating whether a fax goes through.

10:10:31 23 Q Okay. And you see that in the middle of

10:10:33 24 that first page it says send failed. So is it your

10:10:37 25 understanding that this is the copy of our facsimile

10:18:50 1 2057?

10:18:55 2 A Yes.

10:18:57 3 Q Okay. So you look at -- look at 2056 for
10:19:08 4 me, please.

10:19:11 5 A Okay.

10:19:12 6 Q So this appears to be an e-mail from you,
10:19:16 7 Mr. Madayag, to ip@facebook.com. Do you see that?

10:19:22 8 A Yes.

10:19:23 9 Q Do you -- do you recall writing this
10:19:24 10 e-mail?

10:19:25 11 A Yes.

10:19:26 12 Q Okay. And this is sent to
10:19:29 13 ip@facebook.com. Do you recall why you sent this
10:19:33 14 one to ip@facebook.com and 2058 was sent to
10:19:37 15 domain@facebook.com?

10:19:39 16 A Yes, I do.

10:19:40 17 Q Okay. Why -- why did you send this e-mail
10:19:42 18 to this address?

10:19:43 19 A Well, after -- after we tried to get a
10:19:48 20 response through domain, we weren't getting anything
10:19:52 21 back for, like, a week, so we had to dig -- there
10:19:58 22 was an issue with the -- that we felt with the
10:20:01 23 Facebook terms of service. Initially -- and I
10:20:05 24 think -- I believe it's changed now.

10:20:08 25 Initially Facebook's terms of service said

10:32:05 1 2058?

10:32:08 2 A Yes, there's a reason.

10:32:09 3 Q What is that reason?

10:32:14 4 MR. BRIDGES: I'm going to advise him not
10:32:15 5 to answer if it involves attorney-client privileged
10:32:19 6 information.

10:32:19 7 A I will not answer that on attorney-client
10:32:22 8 privilege.

10:32:22 9 BY MR. AVALOS:

10:32:22 10 Q That's fine. Looks like it was a good
10:32:27 11 story.

10:32:28 12 Did Facebook respond to this e-mail, this
10:32:33 13 letter?

10:32:36 14 A I don't recall.

10:33:00 15 MR. AVALOS: Mark this. Where are we?

10:33:02 16 THE REPORTER: 2059.

10:33:03 17 (Document marked for identification as
10:33:03 18 Defendant's Exhibit 2059.)

10:33:04 19 BY MR. AVALOS:

10:33:10 20 Q Do you recognize this document,
10:33:11 21 Mr. Madayag?

10:33:11 22 A I do.

10:33:12 23 Q What is this document?

10:33:13 24 A This is a letter sent from a person called
10:33:17 25 Kieran --

10:33:19 1

Q Okay.

10:33:19 2

A -- at user operations, Facebook, to me

10:33:22 3

regarding my -- I guess the letter.

10:33:25 4

Q Okay. I'll represent to you, Mr. Madayag,

10:33:31 5

that as far as we can tell from plaintiff's

10:33:33 6

production and from a search of Facebook's records

10:33:36 7

that this was the last communication between

10:33:38 8

Facebook and yourself or anyone else at the -- at

10:33:40 9

the Woodcock firm. Do you -- do you remember

10:33:44 10

responding to this e-mail?

10:33:46 11

A I don't recall responding to this e-mail.

10:33:48 12

Q Okay. Why didn't you respond to this

10:33:57 13

e-mail?

10:33:59 14

MR. BRIDGES: Advise the witness not to

10:34:00 15

answer to the extent it reveals attorney-client

10:34:03 16

privileged information.

10:34:04 17

A I invoke attorney-client privilege.

10:34:07 18

BY MR. AVALOS:

10:34:07 19

Q Okay. But it's fair to say that you did

10:34:09 20

not respond to this e-mail; is that right?

10:34:10 21

A I don't recall responding to this e-mail.

10:34:12 22

Q Okay.

10:34:31 23

MR. AVALOS: Can we take a break?

10:34:33 24

MR. BRIDGES: Sure.

10:34:34 25

THE VIDEOGRAPHER: Stand by, please.

11:17:21 1

CERTIFICATE

11:17:21 2

11:17:21 3 STATE OF GEORGIA:

11:17:21 4 COUNTY OF FULTON:

11:17:21 5

11:17:21 6

I hereby certify that the foregoing

11:17:21 7

transcript was taken down, as stated in the caption,

11:17:21 8

and the colloquies, questions, and answers were

11:17:21 9

reduced to typewriting under my direction; that the

11:17:21 10

transcript is a true and correct record of the

11:17:21 11

evidence given upon said proceeding.

11:17:21 12

I further certify that I am not a relative

11:17:21 13

or employee or attorney of any party, nor am I

11:17:21 14

financially interested in the outcome of this

11:17:21 15

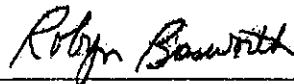
action.

11:17:21 16

This the 16th day of February, 2011.

11:17:21 17

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ROBYN BOSWORTH, RPR, CRR, CCR-B-2138

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