

Golden Gate Reporting

<p>1 you referring to?</p> <p>2 A. Page Murray, Rose Rodd and myself.</p> <p>3 Q. And why did Palm give its approval to</p> <p>4 develop the ad campaign in Spring of 2006?</p> <p>5 MR. STERN: Objection, foundation.</p> <p>6 THE WITNESS: At that time, I felt it was</p> <p>7 appropriate given the launch of an upcoming product</p> <p>8 called the Treo 680.</p> <p>9 BY MR. TROCK:</p> <p>10 Q. Who -- who at Palm was involved in the</p> <p>11 decision to make -- to give approval to develop the</p> <p>12 ad campaign in the Spring of 2006?</p> <p>13 A. The team that was mentioned.</p> <p>14 Q. That would be you, Rose and Page; is that</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. Is Page a man or woman?</p> <p>18 A. Man.</p> <p>19 Q. Okay. Forgive me if I've asked this</p> <p>20 question before, but what is Rose's position at</p> <p>21 Palm?</p> <p>22 A. She's a senior director of corporate</p> <p>23 communications now.</p> <p>24 Q. And she -- you report to her; is that</p> <p>25 correct?</p> <p style="text-align: right;">Page 18</p>	<p>1 THE WITNESS: I'm a little bit confused,</p> <p>2 I'm sorry.</p> <p>3 BY MR. TROCK:</p> <p>4 Q. Well, I'm assuming that they're not going</p> <p>5 to spend your money unless you give them approval;</p> <p>6 is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. Who did you give the approval to to</p> <p>9 develop the ad campaign in the Spring of 2006?</p> <p>10 A. We engaged them to develop a new ad</p> <p>11 campaign for us in the Spring of 2006.</p> <p>12 Q. Right?</p> <p>13 A. Julie Patterson.</p> <p>14 Q. Julie -- so you communicated it to Julie</p> <p>15 Patterson; is that right?</p> <p>16 A. Yes.</p> <p>17 MR. STERN: My objection is, I don't think</p> <p>18 it's established that this person was the person who</p> <p>19 communicated it, but maybe you have established</p> <p>20 that.</p> <p>21 BY MR. TROCK:</p> <p>22 Q. Yeah, my question was more general, who at</p> <p>23 AKQA did they communicate it to, whether it was</p> <p>24 Scott or somebody else at Palm.</p> <p>25 Do you know who at Palm communicated that</p> <p style="text-align: right;">Page 20</p>
<p>1 A. Correct.</p> <p>2 Q. Okay. What is Page's position?</p> <p>3 A. He was at the time vice president of</p> <p>4 marketing.</p> <p>5 Q. And did Rose report to him?</p> <p>6 A. Yes.</p> <p>7 Q. So the two of you, you and Rose were both</p> <p>8 supervised by Page; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Who at AKQA did you communicate Palm's</p> <p>11 approval to develop the ad campaign in Spring of</p> <p>12 2006?</p> <p>13 MR. STERN: No foundation, objection.</p> <p>14 THE WITNESS: Can you repeat that</p> <p>15 question?</p> <p>16 BY MR. TROCK:</p> <p>17 Q. Sure. We're talking about Palm making the</p> <p>18 decision to develop the ad campaign in Spring of</p> <p>19 2006; correct?</p> <p>20 A. We -- we're talking about developing an ad</p> <p>21 campaign in Spring of 2006, correct.</p> <p>22 Q. Okay. Now, who at AKQA did you</p> <p>23 communicate that decision to, to give them the</p> <p>24 authority to go ahead and develop the ad campaign?</p> <p>25 MR. STERN: Same objection.</p> <p style="text-align: right;">Page 19</p>	<p>1 to AKQA, that decision?</p> <p>2 A. I don't recall if it was either Rose or I.</p> <p>3 Can I ask for some water?</p> <p>4 THE VIDEOGRAPHER: Go off the record for a</p> <p>5 moment?</p> <p>6 MR. TROCK: Sure.</p> <p>7 THE VIDEOGRAPHER: Going off record. The</p> <p>8 time is 10:15 a.m.</p> <p>9 (Brief recess.)</p> <p>10 THE VIDEOGRAPHER: We're going back on</p> <p>11 record. The time is 10:16 a.m. We're ready to</p> <p>12 proceed.</p> <p>13 BY MR. TROCK:</p> <p>14 Q. So in the Spring of 2006, when AKQA got</p> <p>15 approval to begin developing Palm's ad campaign,</p> <p>16 were there any other slogans besides "Not a cell</p> <p>17 phone, a Treo" being considered for the campaign?</p> <p>18 A. Besides "Not a cell phone, a Treo" you</p> <p>19 said?</p> <p>20 Q. Yes.</p> <p>21 A. I don't recall.</p> <p>22 Q. Who at Palm had the final approval for use</p> <p>23 of a slogan in its ad campaign?</p> <p>24 A. Final approval would rest with probably</p> <p>25 that team, but Page Murray was the senior-most</p> <p style="text-align: right;">Page 21</p>

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1 person.
 2 Q. So is it fair to say that until Page
 3 Murray gave his approval for the slogan, that it
 4 wouldn't be used in the campaign?
 5 MR. STERN: Objection, no foundation.
 6 THE WITNESS: Is it - I'm sorry?
 7 BY MR. TROCK:
 8 Q. Is it fair to say, in other words, until
 9 you got Page's approval, is it fair to say that the
 10 slogan in the ad campaign wouldn't be used?
 11 MR. STERN: Same objection.
 12 THE WITNESS: I had to get approval from
 13 Page before we proceeded, yes.
 14 BY MR. TROCK:
 15 Q. Okay. Do you know - well, did you talk
 16 with Page about the slogan that was finally approved
 17 for the campaign?
 18 MR. STERN: Objection, vague as to time.
 19 THE WITNESS: Yes, I spoke to Page about
 20 the theme line that we were using in the
 21 advertising.
 22 BY MR. TROCK:
 23 Q. Do you recall when Page finally gave his
 24 approval for the use of that slogan?
 25 A. Which slogan?

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1 Q. Well, the one that was finally used in the
 2 campaign, "Not just a cell phone, a Treo"?
 3 A. I don't recall the exact date.
 4 Q. But you and Page had a conversation about
 5 that; is that right?
 6 A. Yes.
 7 Q. Do you recall whether or not that
 8 conversation took place on the phone or through
 9 e-mail or in person?
 10 A. There were several conversations about it,
 11 some via e-mail, some in, you know, discussions.
 12 Q. Now, correct me if I'm wrong about this,
 13 but I believe the reason that you stated that Palm
 14 didn't go forward with the campaign that AKQA had
 15 presented in January 2 - 2005 was that Palm didn't
 16 believe that it had an appropriate product that was
 17 ready for that campaign. Is that about right?
 18 A. Yes.
 19 Q. What is it about the Treo 680 that led
 20 Palm to believe that that product was appropriate
 21 for that ad campaign?
 22 MR. STERN: Objection, question is vague.
 23 The question lacks foundation.
 24 THE WITNESS: Can you be more specific?
 25 BY MR. TROCK:

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1 Q. Well, we'll take it a step at a time.
 2 Palm didn't give approval to AKQA to the ad campaign
 3 that it had presented in January of 2005; is that
 4 correct?
 5 A. Correct.
 6 Q. And I believe part of the rationale for
 7 not giving approval at the time was that Palm didn't
 8 believe it had a product that was suitable for that
 9 campaign; is that right?
 10 A. Yes.
 11 Q. Okay. Then sometime in the Spring of
 12 2006, Palm gives AKQA approval for developing that
 13 ad campaign because Palm is getting ready to launch
 14 the Treo 680; is that right?
 15 A. We felt that that line was appropriate for
 16 the Treo 680, yes.
 17 Q. Okay. What is it about the Treo 680 that
 18 made it more appropriate for that ad campaign than
 19 Palm's prior products?
 20 A. It's an improved product.
 21 Q. It's, sorry?
 22 A. An improved product.
 23 Q. How is it improved?
 24 A. There's a number of improvements that were
 25 embedded in that product.

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1 Q. What are they?
 2 A. Better user interface, a little bit
 3 slimmer.
 4 Q. Anything else?
 5 A. No antenna.
 6 Q. Sorry?
 7 A. No antenna.
 8 Q. Anything else?
 9 A. No. No, I'm sorry.
 10 Q. How is the user interface better?
 11 A. There are just a couple of improvements to
 12 some of the applications.
 13 Q. What are the improvements - well, first,
 14 let me ask you this, what applications were
 15 improved?
 16 A. I believe Versamail, which allows you to
 17 get e-mail wirelessly.
 18 Q. What else?
 19 A. I believe the camera functionality.
 20 Q. What is it about the interface which was
 21 improved for Versamail or for the camera utility?
 22 A. I don't know the specifics, it's just a
 23 better experience.
 24 Q. Well, how is it better?
 25 A. It's easier to use.

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7 (Pages 22 to 25)

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1 Q. Can you give me example of how it's easier
 2 to use?
 3 A. On the photo function you can view your
 4 photos a little bit easier now.
 5 Q. How is it easier to view the photos?
 6 A. I'm not sure, but I think there are fewer
 7 steps.
 8 Q. And what about the Versamail, how is that
 9 easier to use?
 10 A. Same, I think that there are fewer steps.
 11 Q. So other than the -- the better interface,
 12 the fact that it's slimmer, and the fact that there
 13 is no antenna, can you think of anything else that
 14 made this an im -- an improved product which made
 15 the 680 more appropriate for this ad campaign?
 16 A. It's also the length of time that Treos
 17 have been offered in the marketplace.
 18 Q. How is that relevant?
 19 A. Treo has more of a presence in the
 20 smartphone market -- smartphone category.
 21 Q. And how does that make that relevant to
 22 this ad campaign?
 23 A. We weren't -- as I said, we just weren't
 24 ready for that line, "Not just a cell phone, a Treo"
 25 in 2005, but we felt we were in 2006.

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1 word "just" into that slogan that AKQA had first
 2 presented to Palm in January of 2005?
 3 A. I believe it was Page Murray.
 4 Q. Did Page ever express to you why he wanted
 5 to include that word in the phrase?
 6 A. Yeah, he did.
 7 Q. What did he tell you?
 8 A. I'm not sure exactly what he had said.
 9 Q. What's your recollection?
 10 A. There are a number of reasons, one of
 11 which was, you know, Palm's heritage in the handheld
 12 category and not in the cell phone or smartphone
 13 category.
 14 Q. Any other reasons that he told you?
 15 A. At the time when he first had mentioned
 16 it, I don't recall exactly, but that and subsequent
 17 conversations, there were -- there was mention of
 18 the Treo 680 not having an antenna could be
 19 confusing to the customers that could actually take
 20 "Not a cell phone, a Treo" literally that it wasn't
 21 a cell phone.
 22 Q. Any other reasons?
 23 A. Not that I can recall.
 24 Q. By the way, what is a smartphone?
 25 A. My definition of a smartphone is a cell

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1 Q. And the reasons that you felt you were
 2 ready in 2006 were because the 680 was an improved
 3 product?
 4 A. As well as time and market -- well, as
 5 well as the time that Treos have been in market.
 6 Q. How long had Treos been in the market up
 7 to that point in January of 2005?
 8 A. I'm not sure of the first launch date of
 9 the Treo.
 10 Q. What's your best estimate?
 11 A. Treo was launched by a company that was
 12 acquired by Palm, so I don't know exactly when they
 13 were in the market.
 14 Q. Okay. I'm not asking you exactly. I'm
 15 just asking for your best estimate. I don't want you
 16 to guess, but if you have some information that
 17 would lead you to believe a certain time period, I'd
 18 appreciate that.
 19 A. It would be about a year and a half,
 20 perhaps. I'm not exactly sure.
 21 Q. So somewhere in the middle of 2003; is
 22 that right?
 23 A. Again, I'm not sure of the exact date, but
 24 that would be my best guess.
 25 Q. Do you recall who suggested adding the

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1 phone that has a Qwerty keyboard, that has web
 2 capabilities, wireless e-mail capabilities, and
 3 multimedia capabilities.
 4 Q. Are all Treos smartphones?
 5 A. Yes, I believe so.
 6 Q. Are there any products on the marketplace
 7 that compete against the Treo which are not
 8 smartphones?
 9 MR. STERN: Objection, no foundation.
 10 THE WITNESS: I'm not sure.
 11 BY MR. TROCK:
 12 Q. Well, what's your belief?
 13 A. That there are -- are there cell phones
 14 out there that compete with us that are not
 15 considered smartphones, you're asking?
 16 Q. Let me rephrase the question. Are there
 17 any product in the marketplace that you believe
 18 compete with the Treo which are not smartphones?
 19 MR. STERN: Same objection, no foundation.
 20 THE WITNESS: Not that I know of.
 21 BY MR. TROCK:
 22 Q. Are there any products on the marketplace
 23 that compete with the Treo that do not have Qwerty
 24 keyboards?
 25 MR. STERN: Same objection, no foundation.

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1 THE WITNESS: I'm not sure.
 2 BY MR. TROCK:
 3 Q. What's your belief?
 4 MR. STERN: Same objection.
 5 THE WITNESS: I'm not sure.
 6 BY MR. TROCK:
 7 Q. Do you have a belief, or don't you have a
 8 belief?
 9 A. Can you repeat the question?
 10 Q. Do you believe there are any products in
 11 the marketplace that compete against the Treo that
 12 do not have Qwerty keyboards?
 13 MR. STERN: Objection, no foundation.
 14 THE WITNESS: The only one I can think of
 15 may be the Blackberry Pearl.
 16 BY MR. TROCK:
 17 Q. The Blackberry Pearl does not have a
 18 Qwerty keyboard; is that correct?
 19 A. Correct.
 20 Q. But you believe it still competes against
 21 the Treo; is that correct?
 22 A. Correct.
 23 Q. Have you ever heard the word Camino being
 24 used in one of Palm's advertising campaigns?
 25 A. I'm sorry, in the context?

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1 Q. Of Palm's advertising campaigns?
 2 A. Camino is a code name for the Treo 680.
 3 MR. STERN: I have an objection to the
 4 question as vague. Did you mean the word Camino was
 5 used in the ad campaign?
 6 MR. TROCK: Is that your objection,
 7 Claude?
 8 MR. STERN: I just want to make sure that
 9 my -- I understood the question differently.
 10 MR. TROCK: You can make an objection if
 11 you'd like.
 12 MR. STERN: I did.
 13 MR. TROCK: Okay.
 14 BY MR. TROCK:
 15 Q. When did Palm launch -- let me rephrase
 16 the question. When did Palm first publish
 17 advertisements using the slogan "Not just a cell
 18 phone, a Treo"?
 19 A. I'm not sure of the exact date.
 20 Q. What's your best estimate?
 21 A. Late summer, early fall of 2006, I believe
 22 is when it was launched.
 23 Q. What geographic markets was it launched
 24 in?
 25 A. I believe the first use of it was in New

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1 York at a conference.
 2 Q. Do you know the name of the conference?
 3 A. Digital Life.
 4 Q. Do you know when that occurred?
 5 A. No.
 6 Q. Did you attend?
 7 A. No.
 8 Q. Why not?
 9 A. I believe Page went instead.
 10 Q. When did Palm first publish outdoor
 11 advertising using the slogan "Not just a cell phone,
 12 a Treo"?
 13 MR. STERN: Objection, the question is
 14 vague.
 15 THE WITNESS: I'm not sure of the exact
 16 date.
 17 BY MR. TROCK:
 18 Q. What's your best estimate?
 19 A. If you mean outdoor as in billboards, or
 20 can you explain what you mean by outdoor?
 21 Q. What do you -- what do you take the phrase
 22 outdoor advertising to mean?
 23 A. Billboards, wild postings, taxi tops.
 24 Q. Using your definition, when did Palm first
 25 publish the slogan or the phrase, "Not just a cell

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1 phone, a Treo" in outdoor advertising?
 2 A. That was in late November of 2006.
 3 Q. What geographic markets was that
 4 publication done in?
 5 MR. STERN: I'm sorry, I missed that.
 6 BY MR. TROCK:
 7 Q. What geographic markets was that
 8 publication done in?
 9 A. The publications are --
 10 Q. Well, when I'm using the phrase publish, I
 11 mean some media that you use -- that you distribute
 12 that advertising to the public in, does that make
 13 sense to you?
 14 A. No.
 15 Q. No?
 16 A. We're talking about outdoor a second ago,
 17 is this still about outdoor, or about other mediums?
 18 Q. Outdoor is to the public; is it not?
 19 A. Yes.
 20 Q. Okay. So in late November 2006, which
 21 geographic markets did Palm publish the advertising
 22 using the slogan, "Not just a cell phone, a Treo" in
 23 outdoor advertising?
 24 A. There are several markets. I don't know
 25 all of them off the top of my head.

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1 Q. What information is that?
 2 A. Demographics of those buyers' age, income
 3 level.
 4 Q. So is the ad – the market that you
 5 targeted for the 680 the same as the market that you
 6 previously targeted for Treo devices?
 7 A. It was that market plus a little bit
 8 broader.
 9 Q. All right. How is it a little bit
 10 broader?
 11 A. We – for this buy, we dropped the age
 12 slightly and dropped the household income slightly.
 13 Q. How much did you drop the age by?
 14 A. I'm not sure of the exact previous
 15 demographics, if it was – I'm not sure.
 16 Q. What's your best recollection?
 17 A. I believe we dropped it by five years.
 18 Q. How much did you drop the household income
 19 by?
 20 A. I'm not sure.
 21 Q. What's your best recollection?
 22 A. It varied, we had several other media buys
 23 before this one. I'm not sure.
 24 Q. I know you're not sure. But I'm asking
 25 for your best recollection. If you – if you don't

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1 Q. Had Palm advertised in Gentlemen's
 2 Quarterly prior to this campaign?
 3 MR. STERN: Same objection.
 4 THE WITNESS: I believe.
 5 BY MR. TROCK:
 6 Q. Do you recall which products Palm
 7 advertised in Gentlemen's Quarterly?
 8 A. I don't recall.
 9 Q. You had mentioned that AKQA is your former
 10 advertising agency; is that right?
 11 A. Yes.
 12 Q. When was your relationship with them
 13 terminated?
 14 A. The official end date was in mid January
 15 of 2007.
 16 Q. Why did the relationship end?
 17 A. We've simply outgrown them. We needed a
 18 global agency, and they didn't have the -- that
 19 offering.
 20 Q. When did you first advise them that you
 21 were considering going with another agency?
 22 A. I don't know the exact date.
 23 Q. What's your --
 24 A. It would be --
 25 Q. What's your best recollection?

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1 have a recollection, it's okay to tell me that.
 2 A. It may be -- it may be dropping it from 75
 3 to 60.
 4 Q. So your -- you have a recollection that
 5 you may have dropped it by about \$15,000; is that
 6 correct?
 7 A. Yes.
 8 Q. Okay.
 9 A. Essentially it's the same audience as
 10 before from a psychographic, but not necessarily a
 11 demographic.
 12 Q. Can you explain the difference between
 13 psychographic and demographic for me?
 14 MR. STERN: I knew that was coming up.
 15 THE WITNESS: Psychographic is terms you
 16 would use to describe a person versus -- that's not
 17 a demographic. A demographic are more factual, I
 18 guess. And psychographics are more interests, you
 19 know, lifestyle interests, business interests.
 20 BY MR. TROCK:
 21 Q. Had Palm advertised in Sports Illustrated
 22 prior to this campaign?
 23 MR. STERN: Objection, no foundation.
 24 THE WITNESS: I don't recall.
 25 BY MR. TROCK:

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1 A. October-ish.
 2 Q. October 2006?
 3 A. Correct.
 4 Q. So am I correct in my belief that you
 5 advised them that you were going to be looking for a
 6 new advertising agency before you published this
 7 outdoor advertising in November of 2006; is that
 8 right?
 9 A. I don't know if it was before or after.
 10 Q. Well, I believe your testimony was that in
 11 late November of 2006 you began publishing your
 12 outdoor advertising in New York, Los Angeles, San
 13 Francisco, Chicago and Atlanta, is that about right?
 14 A. Yes.
 15 Q. And I believe you just said that you had
 16 advised them that you were going to consider using
 17 another advertising agency in October of 2006; is
 18 that right?
 19 A. Yes.
 20 Q. So and am I correct in concluding that you
 21 had advised them you were going to use -- consider
 22 using another advertising agency before you began
 23 publishing this outdoor advertising in late November
 24 of 2006?
 25 A. Yes.

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1 Q. Have you ever heard of a company by the
 2 name of Helio?
 3 A. Yes.
 4 Q. When did you first hear of them?
 5 A. I'm not sure when.
 6 Q. What's your best recollection?
 7 A. Fall of 2006.
 8 Q. Under what context did you first hear of
 9 them?
 10 A. I believe is a T.V. commercial I saw.
 11 Q. Which T.V. commercial was it?
 12 A. I'm not sure what -- which one.
 13 Q. What do you recall about the T.V.
 14 commercial?
 15 A. It was about a young couple, and she was
 16 introducing her boyfriend to her family.
 17 Q. Have you ever seen any Helio print
 18 advertising?
 19 A. Yes.
 20 Q. When is the first time you saw any Helio
 21 print advertising?
 22 A. I'm not sure.
 23 Q. What's your best recollection?
 24 A. I'm not sure when I first saw it. It
 25 would be after that -- after seeing that T.V. spot,

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1 though.
 2 Q. Did you ever become familiar with any of
 3 the slogans that Helio had used in its
 4 advertising -- advertisements?
 5 A. I saw what they were using.
 6 Q. Do you recall what it was?
 7 A. "Don't call it a phone, don't call us a
 8 phone company" I believe is what they were saying.
 9 Q. Did you ever have an occasion to discuss
 10 either of those slogans with anyone at Palm?
 11 A. No.
 12 Q. Did you ever have occasion to discuss
 13 either of those slogans with anyone at AKQA?
 14 A. Yes.
 15 Q. Who did you discuss them with?
 16 A. Julie Patterson.
 17 Q. When did you have that discussion with
 18 her?
 19 A. I'm not sure.
 20 Q. What's your best recollection?
 21 A. Again, the Fall of 2006.
 22 Q. What did you and Ms. Patterson discuss
 23 about those slogans?
 24 A. We didn't discuss the slogan; we discussed
 25 the T.V. spot in general.

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1 Q. What did you discuss about the T.V. spot?
 2 A. That they were -- we kind of laughed it
 3 off that they were using some -- you know, the line
 4 "Don't call it a phone, don't call us a phone
 5 company" was -- was used.
 6 Q. What do you mean by you laughed it off?
 7 What does that mean?
 8 A. Well, given that we had discussed "Not a
 9 cell phone, a Treo" and they were using "Don't call
 10 it a phone, don't call us a phone company",
 11 conceptually the -- you know, the -- the high level
 12 concept can -- could have been seen as similar if we
 13 were coming from the same types of companies.
 14 Q. Did you have any discussions about Helio
 15 with anyone other than Julie Patterson at AKQA?
 16 A. Not to my knowledge.
 17 Q. Did you have any discussions with -- about
 18 Helio with anyone at Palm?
 19 A. Not to my knowledge.
 20 Q. Did you ever become familiar with any of
 21 the products that Helio was offering?
 22 A. What do you mean by "familiar with"?
 23 Q. Well, do you know what products they
 24 offer?
 25 A. They are -- they're a service provider.

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1 Q. What do they provide?
 2 A. Based on the T.V. spot that I saw, they
 3 provide services like Beacon Buddy, multimedia, you
 4 know, MP3 capabilities, I don't recall the others.
 5 Q. Do they provide cell phone services?
 6 A. They provide wireless service, yes, for
 7 cell phone.
 8 Q. How is it that you know this phrase Beacon
 9 Buddy? Where did you hear that?
 10 A. I don't recall where I heard it from.
 11 Q. Was that in the T.V. spot you saw?
 12 A. I'm not sure if it was in the T.V. spot.
 13 Q. So what print advertising did you see
 14 about Helio?
 15 MR. STERN: That includes during the
 16 lawsuit, or after the lawsuit was filed?
 17 MR. TROCK: Before the lawsuit was filed.
 18 THE WITNESS: I don't recall exactly what
 19 it was.
 20 BY MR. TROCK:
 21 Q. Do you recall in general?
 22 A. A lot of white space and their logo with
 23 the services that they were offering.
 24 Q. Do you recall what media that was
 25 published in?

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1 A. What media?
 2 Q. Yeah.
 3 A. No.
 4 Q. Is it something that somebody gave you
 5 while you were at Palm, or is it something you came
 6 across on your own?
 7 A. Something I came across on my own.
 8 Q. Do you recall where you were when you came
 9 across this, or what the context was when you came
 10 across it?
 11 A. I believe I was just flipping through a
 12 magazine.
 13 Q. Do you recall what magazine it was?
 14 A. I don't.
 15 Q. Do you recall whether or not Palm
 16 advertised in that magazine?
 17 A. I don't recall the magazine, I get tons of
 18 magazines sent to me.
 19 Q. Do you know whether or not Helio and Palm
 20 advertise in some of the same magazines?
 21 A. I don't know.
 22 Q. You don't know?
 23 A. I don't know what Helio -- where Helio
 24 advertises.
 25 Q. Well, I thought you just said you saw a

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1 print advertising in a magazine for Helio?
 2 A. I don't recall what the publication was.
 3 Q. But you don't recall whether or not there
 4 was a Palm ad in there; do you?
 5 A. No, I don't.
 6 Q. Would it surprise you to learn that Palm
 7 and Helio advertise in some of the same print
 8 magazines?
 9 MR. STERN: Objection, foundation.
 10 THE WITNESS: I didn't say that we did.
 11 BY MR. TROCK:
 12 Q. I didn't say that. But I'm asking you
 13 would it surprise you?
 14 A. You're saying, sorry, would it?
 15 Q. Would it surprise you?
 16 A. Would it surprise me?
 17 Q. Yes.
 18 A. No.
 19 Q. No, why not?
 20 A. There are so few good publications out
 21 there to reach these audiences.
 22 Q. Which audience is Helio trying to reach?
 23 MR. STERN: Objection, no foundation.
 24 THE WITNESS: I'm not familiar.
 25 BY MR. TROCK:

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1 Q. You're not sure. What's your best
 2 estimate as to what audience they're trying to
 3 reach?
 4 MR. STERN: Objection, no foundation.
 5 THE WITNESS: I'm not sure what they're
 6 trying to reach -- who they're trying to reach.
 7 BY MR. TROCK:
 8 Q. Well, you've seen some of their
 9 advertisements; haven't you?
 10 A. I have, yes.
 11 Q. What is your belief as to which audience
 12 they're trying to reach?
 13 A. The -- based on my impressions, it's the
 14 younger -- younger crowd, 18 to early 20s.
 15 Q. Do you know whether or not Helio publishes
 16 in the Onion?
 17 A. I'm sorry, can --
 18 Q. Do you know whether or not Helio publishes
 19 in the Onion?
 20 A. I don't know.
 21 Q. Palm publishes in the ov -- Onion; isn't
 22 that right?
 23 A. We placed a media -- we did an advertising
 24 buy in The Onion, yes.
 25 Do you mind if I get more water, please.

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1 MR. STERN: Why don't we take a break.
 2 MR. TROCK: Let's stay on the record.
 3 We've been going about an hour, do you want to take
 4 a break? Do you want to take a break?
 5 THE WITNESS: Yeah, if we could.
 6 THE VIDEOGRAPHER: Going off the record,
 7 the time is 11:00 a.m.
 8 (Recess taken.)
 9 THE VIDEOGRAPHER: We're going back on
 10 record. The time is 11:15 a.m. We're ready to
 11 proceed.
 12 MR. TROCK: Let's go with 27 for that.
 13 ---
 14 (Whereupon the document was marked,
 15 for identification purposes, as Exhibit
 16 Number Twenty-Seven.)
 17 ---
 18 BY MR. TROCK:
 19 Q. I'm going to hand you what the court
 20 reporter has marked Exhibit 27. Have you take a
 21 look at that and tell me whether or not you
 22 recognize that.
 23 A. It looks like an org chart. Yes, I do.
 24 Q. Is this an organization chart for Palm in
 25 the year 2006?

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1 A. Yes.
 2 Q. Is it accurate, based upon your --
 3 MR. STERN: Objection, foundation.
 4 BY MR. TROCK:
 5 Q. -- understanding of the organization of
 6 the marketing department at Palm?
 7 A. As far as I know, yeah, this would -- this
 8 would have been Page's organization.
 9 Q. So Page Murray is listed there at the top
 10 as the vice president of marketing; is that right?
 11 A. Correct.
 12 Q. And then one of the individuals reporting
 13 to Mr. Murray is Rose Rodd who you had mentioned
 14 before; is that right?
 15 A. Right.
 16 Q. And then down underneath the individuals
 17 reporting to Rose, you're listed there; is that
 18 correct?
 19 A. Yes.
 20 Q. And that's under marketing communications;
 21 is that right?
 22 A. Marcom, yes, marketing communications.
 23 Q. Okay. Now, were there any other
 24 individuals other than you, Rose and Page who were
 25 part of the team that was working with AKQA?

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1 Bates numbers Palm 20458 through 20493.
 2 MR. STERN: By the way, have the parties
 3 in the case been doing deposition exhibits seriatim
 4 so we each take --
 5 MR. TROCK: You start, I think, at a
 6 thousand.
 7 BY MR. TROCK:
 8 Q. Do you recognize Exhibit 28?
 9 A. No.
 10 Q. Are you familiar with this publication,
 11 Mobile Services Watch?
 12 A. No.
 13 Q. This one -- this issue is dated, looks
 14 like May of 2006. Do you see that in the upper
 15 right-hand corner?
 16 A. Yes.
 17 Q. And in the center of the page there are
 18 three columns with what look -- appear to be little
 19 headlines of articles.
 20 In the center column, the second entry
 21 down there under Industry, it says "Helio, the U.S.
 22 youth oriented MVNO, officially launched, but there
 23 were questions over the high price of its bundled
 24 tariffs."
 25 Do you see that?

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1 MR. STERN: Objection, vague.
 2 BY MR. TROCK:
 3 Q. For this advertising campaign we've been
 4 discussing?
 5 A. You mean working with as in --
 6 Q. Well, because you had -- remember when we
 7 were discussing the communications between AKQA and
 8 Palm, you had used the word "team" in reference to
 9 individuals at Palm who were involved with the
 10 advertising campaign.
 11 So I am wondering whether or not aside
 12 from the three of you, there were other people at
 13 Palm who were working with AKQA on the advertising
 14 campaign?
 15 A. Not to my knowledge.
 16 MR. TROCK: Let's mark that as 28.
 17 ---
 18 (Whereupon the document was marked,
 19 for identification purposes, as Exhibit
 20 Number Twenty-Eight.)
 21 ---
 22 BY MR. TROCK:
 23 Q. I'm going to hand you what the court
 24 reporter has marked as Exhibit 28, which is a
 25 document titled "Mobile Services Watch" which bears

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1 A. Yes.
 2 Q. And that's referring, I think, to Pages 14
 3 and 15. So if I could get you to turn to Page 14,
 4 which has in the lower right-hand corner the numbers
 5 20471, do you see this page? Have you ever seen
 6 this page before?
 7 A. No.
 8 Q. No. Do you know whether anyone at Palm
 9 subscribes to this publication Mobile Services
 10 Watch?
 11 A. I don't know.
 12 Q. Were you aware that Palm was launching its
 13 advertising campaign in the United States in May of
 14 2006?
 15 MR. STERN: I'm sorry, you just said Palm.
 16 BY MR. TROCK:
 17 Q. Oh, sorry, Helio.
 18 MR. STERN: The same question with the
 19 word Helio in it.
 20 THE WITNESS: No.
 21 BY MR. TROCK:
 22 Q. Did you ever become aware prior to this
 23 lawsuit when Helio had first launched its
 24 advertising campaign in the United States?
 25 A. No.

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1 Q. Did you ever discuss Helio with Rose Rodd?
 2 MR. STERN: This is all before the lawsuit
 3 commenced?
 4 MR. TROCK: Yes, everything is before the
 5 lawsuit.
 6 THE WITNESS: It's everything before the
 7 lawsuit.
 8 BY MR. TROCK:
 9 Q. Yes.
 10 A. Not to my knowledge.
 11 Q. Did you ever discuss Helio with Page
 12 Murray?
 13 A. Not to my knowledge.
 14 MR. STERN: This is also before the
 15 lawsuit obviously.
 16 BY MR. TROCK:
 17 Q. So is it your belief that prior to -
 18 well, let me ask you this question: Prior to your
 19 seeing the television advertisement, the Helio
 20 television advertisement we were talking about
 21 earlier, was that your first - let me rephrase the
 22 question.
 23 Prior to the television advertise - the
 24 Helio television advertisement we were discussing
 25 earlier, had you heard of the - of Helio before

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1 vague.
 2 THE WITNESS: What do you mean by big
 3 push?
 4 BY MR. TROCK:
 5 Q. Well, when did you spend your most media
 6 dollars publishing the advertisement?
 7 MR. STERN: Same objection.
 8 THE WITNESS: When did we spend our media
 9 dollars?
 10 BY MR. TROCK:
 11 Q. Yes.
 12 A. I'm not sure of the exact date.
 13 Q. Well, what's your best estimate?
 14 A. Well, we started the UK.
 15 Q. Let's just restrict it to the United
 16 States.
 17 A. November.
 18 Q. Okay. So do you believe that prior to
 19 November of 2006 you saw this Helio television
 20 advertisement?
 21 A. I believe so, yes.
 22 Q. Let me show you what's been previously
 23 marked as Exhibit Number 2.
 24 MR. TROCK: This is the only copy I have.
 25 BY MR. TROCK:

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1 then?
 2 A. No.
 3 Q. Do you have a recollection as to when, I
 4 believe you said it was the Fall of 2006 that you
 5 saw that television commercial?
 6 A. Late summer or early fall.
 7 Q. Late summer?
 8 A. I'm not sure exactly.
 9 Q. Now, was this before or after Palm had
 10 launched its advertising campaign?
 11 A. Which, I'm sorry?
 12 Q. The television commercial that you saw
 13 from Helio?
 14 A. Mm-hmm.
 15 Q. Did you see that before or after Palm had
 16 launched its advertising campaign?
 17 A. I honestly don't recall.
 18 Q. Now, putting aside the Digital Live
 19 Conference, is it fair to say that Palm made its -
 20 its big push in advertising of this campaign in
 21 November of 2006?
 22 MR. STERN: Objection.
 23 BY MR. TROCK:
 24 Q. Is that a fair statement?
 25 MR. STERN: Objection. The question is

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1 Q. And ask you whether or not you recognize
 2 that?
 3 MR. STERN: Excuse me, can I just see that
 4 before you -
 5 Okay. Go ahead.
 6 THE WITNESS: I remember seeing some of
 7 these concepts, yes.
 8 BY MR. TROCK:
 9 Q. When do you recall seeing them?
 10 A. I don't know the exact date.
 11 Q. What's your best recollection? When I ask
 12 you these questions, Scott -
 13 A. Mm-hmm.
 14 Q. - when do you recall, I'm not asking for
 15 exact dates. I'm asking for your best recollection.
 16 In fact, on all the questions that I ask you, I'm
 17 asking for your best recollection.
 18 A. Got it.
 19 Q. It's okay if you can't be exact. But you
 20 can just tell me whatever it is you recall.
 21 A. I believe early 2005.
 22 Q. Was this part of the proposal that AKQA
 23 gave to Palm in January of 2005, if you can recall?
 24 A. These concepts came from AKQA.
 25 Q. Let me show you what's been previously

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1 marked as Exhibit 3, and ask you whether or not you
 2 recognize that.
 3 A. Yes, I remember seeing this.
 4 Q. Can you tell us what this is?
 5 A. It's part of a concept presentation that
 6 AKQA presented to myself and Rose and Page.
 7 Q. And that was -- did it make the
 8 presentation roughly on the date of the first page,
 9 June 21st, 2006?
 10 A. I believe so.
 11 Q. Now, if you'll turn to the page that has
 12 Palm 41 in the lower right-hand corner, so you'll
 13 notice that here in the presentation the slogan is
 14 "Not a cell phone, a Treo"; correct?
 15 A. Correct.
 16 Q. So is it fair to say that as of June 24,
 17 2006, this was the slogan that AKQA was working on
 18 at the time for the advertising campaign?
 19 A. Yes.
 20 MR. STERN: When you've finished with the
 21 document, you can just fold it up and put it on top
 22 of that stack right next to you. Right there.
 23 BY MR. TROCK:
 24 Q. Let me show you what's been previously
 25 marked as Exhibit 4, if you can take a look at that

1 Q. Why was Christmas important?
 2 A. It's our most significant selling season.
 3 Q. If I could get you to turn to the Page
 4 Palm 131. This page discusses partner strategy.
 5 Could you explain to us what partner strategy is?
 6 MR. STERN: Objection, foundation.
 7 THE WITNESS: For the campaign we
 8 identified passion brands that became partners as
 9 part of the advertising.
 10 BY MR. TROCK:
 11 Q. What do you mean by "passion brands"?
 12 A. Passion brands are those companies who
 13 have loyal users or customers.
 14 Q. Was there some reason that Palm wanted to
 15 partner with those kinds of brands?
 16 A. Yes.
 17 Q. What were the reasons?
 18 A. We wanted to tap into that passion and
 19 demonstrate that you can do these things that you're
 20 passionate about while you're mobile.
 21 Q. Now, they list Tier I, Tier II and Tier
 22 III partner groupings here. Do you see that?
 23 A. Correct.
 24 Q. Can you explain to me what the difference
 25 between the three tiers is?

1 and tell me whether or not you recognize it.
 2 A. Yes.
 3 Q. Can you tell me what this is?
 4 A. It's a presentation from AKQA.
 5 Q. And did they give this presentation to
 6 you?
 7 A. Yes.
 8 Q. On or about the date that it bears,
 9 July 19th, 2006?
 10 A. I believe so.
 11 Q. If you'll turn to the Page Palm 128. In
 12 the middle of the Campaign Parameters under the
 13 bullet point Timing, do you see that?
 14 A. Yes.
 15 Q. It says, A launch of November 1st, to
 16 begin building awareness prior to the holiday.
 17 Did the campaign launch on November 1st,
 18 or was it afterwards?
 19 A. The media was purchased for the month of
 20 November. I'm not sure of the exact start date.
 21 Q. Okay. And then it says "To begin building
 22 awareness prior to the holiday." What was the
 23 purpose of that?
 24 A. Make prospects aware of the Treo 680 prior
 25 to Christmas.

1 A. Tier I are really those customer -- those
 2 potential partners that have a large loyal
 3 following.
 4 Tier II is one that I guess would be kind
 5 of medium.
 6 And then Tier III could be the smaller
 7 players that still have passionate followers, just
 8 not as many maybe.
 9 Q. So is that based upon -- what factor is
 10 that size based upon? I mean, are you talking about
 11 the number of customers each of these brands has, or
 12 the number of -- the amount of their revenue, how
 13 are you distinguishing between the size here?
 14 A. There were a number of things that we took
 15 into consideration. Those that are given favorable
 16 press as well as those that have quite a bit of
 17 traffic if it's a website, lots of traffic to their
 18 site.
 19 Q. So of the ones in Tier I, do you recall
 20 which of these that you partnered with?
 21 A. Yes.
 22 Q. Which ones?
 23 A. eBay and Google.
 24 Q. Prior to this advertising campaign, had
 25 you ever partnered with eBay or Google as part of an

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1 ad campaign?
 2 MR. STERN: Objection, foundation.
 3 THE WITNESS: What do you mean by partner
 4 in the same --
 5 BY MR. TROCK:
 6 Q. Well, this -- this page says partner
 7 strategy.
 8 A. Right.
 9 Q. Whatever context you understand it to
 10 mean.
 11 A. We have worked with eBay and Google in the
 12 past, not in this exact same capacity.
 13 Q. All right. So my question to you is had
 14 you partnered with eBay or Google in the past for
 15 purposes of a Palm advertising campaign?
 16 A. Yes, for Google and I believe so for eBay.
 17 Q. Right. How did you partner with Google in
 18 the past for purposes of a Palm advertising
 19 campaign?
 20 A. Purchased space on their site.
 21 Q. You call that a partnership?
 22 A. No.
 23 Q. Okay. How about eBay?
 24 A. Same.
 25 Q. How have you -- okay. So is it fair to

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1 A. Up to this point, or --
 2 Q. For the entire campaign, how much has Palm
 3 spent on this campaign?
 4 A. We've spent approximately 10 million.
 5 Q. If I could get you to turn to page Palm
 6 327. Palm 327, I believe, has a list of print
 7 publications Palm was considering for advertising;
 8 is that correct?
 9 A. Correct.
 10 Q. Do you know which of these publications
 11 Palm ended up advertising in?
 12 A. Not all of them, but some of them, yes.
 13 Q. Okay. Could you tell me the ones that you
 14 know Palm advertised in, why don't we start with
 15 Men's Lifestyle?
 16 A. I don't believe any of those.
 17 Q. So of the ones listed under Men's
 18 Lifestyle, you don't believe that Palm advertised in
 19 any of these?
 20 A. Are these for the current campaign we're
 21 speaking of?
 22 Q. Yes. Is that correct?
 23 A. To my knowledge, no.
 24 Q. Okay. How about under Women's Lifestyle?
 25 A. I believe Real Simple made the cut.

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1 say, then, that prior to the launch of this
 2 advertising campaign, that Palm had not partnered
 3 with eBay or Google in the past in the same sense?
 4 A. Partnered, correct.
 5 Q. Let me show you what's been previously
 6 marked as Exhibit 13. Have you take a look at that,
 7 tell me whether or not you recognize it.
 8 A. Yes.
 9 Q. Can you tell me what this is?
 10 A. Media recommendation from AKQA.
 11 Q. Was this a presentation that was given to
 12 you?
 13 A. Yes.
 14 Q. On or about the date it bears,
 15 October 23rd, 2006?
 16 A. I believe so.
 17 Q. Do you recall what the total amount of
 18 media spend was by Palm for this campaign?
 19 MR. STERN: You mean through the end of
 20 the campaign or up to this period of time? The
 21 question is vague as to time.
 22 THE WITNESS: What is -- what's the time
 23 frame?
 24 BY MR. TROCK:
 25 Q. For the entire campaign.

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1 Q. And under entertainment, which ones did
 2 Palm advertise in?
 3 A. Entertainment Weekly.
 4 Q. Any others?
 5 A. I believe Rolling Stone.
 6 Q. Okay. Any others?
 7 A. Not that I can remember.
 8 Q. Had Palm -- had, prior to this advertising
 9 campaign, had Palm advertised in Entertainment
 10 Weekly before?
 11 A. Yes.
 12 Q. Okay. Prior to this advertising campaign,
 13 had Palm advertised in Rolling Stone before?
 14 A. I believe so.
 15 Q. If I could get you to turn to Palm 338, I
 16 believe Palm 338 is a list of online sites that AKQA
 17 was recommending that Palm advertise on; is that
 18 correct?
 19 A. To consider, yes.
 20 Q. Yes. Do you recall whether any of the
 21 sites listed on this page ended up being used for
 22 advertising for this campaign by Palm?
 23 A. Yes.
 24 Q. Can you tell me which ones?
 25 A. The Onion, the Yelp, I believe

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1 Weather.com, Orbitz, Flickr. That's it.
 2 Q. Okay. Prior to this advertising campaign,
 3 had Palm ever advertised online at the Onion?
 4 MR. STERN: Objection, no foundation.
 5 THE WITNESS: I don't believe so.
 6 BY MR. TROCK:
 7 Q. And prior to this advertising campaign,
 8 had Palm ever advertised online with Yelp?
 9 MR. STERN: Same objection.
 10 THE WITNESS: No, I don't think so.
 11 BY MR. TROCK:
 12 Q. Prior to this advertising campaign, had
 13 Palm ever advertised online with Flickr?
 14 A. I don't recall.
 15 Q. If you'll take a look at page Palm 339,
 16 there are some additional candidate sites.
 17 A. Mm-hmm.
 18 Q. Did Palm ever end up advertising on any of
 19 these sites for this campaign?
 20 A. Yes.
 21 Q. Which ones?
 22 A. SI.com.
 23 Q. Any others?
 24 A. I can't remember which exactly were --
 25 which ones made the cut.

1 MR. TROCK: Okay.
 2 MR. STERN: -- conference call --
 3 MR. TROCK: Give me a couple more minutes.
 4 THE VIDEOGRAPHER: That's fine.
 5 MR. TROCK: Would you mark this one the
 6 next exhibit.
 7 ---
 8 (Whereupon the document was marked,
 9 for identification purposes, as Exhibit
 10 Number Twenty-Nine.)
 11 ---
 12 BY MR. TROCK:
 13 Q. I'm going to hand you what the reporter
 14 has marked as Exhibit 29, which is an e-mail from
 15 Julie Patterson to you dated June 14th, 2006
 16 bearing Bates numbers Palm 3329 through 3333, ask
 17 you to take a look at that and see whether or not
 18 you recognize it.
 19 A. Yes.
 20 Q. Do you recall receiving this e-mail from
 21 Julie Patterson on or about the date that it bears?
 22 A. Yes.
 23 Q. If you look through the document, it
 24 appears to be a series of -- it's a string of
 25 e-mails.

1 Q. Prior to this advertising campaign, had
 2 Palm ever advertised on SI.com?
 3 A. I don't recall.
 4 Q. Is the market that you were trying to
 5 reach with the Palm 680 the same market that you had
 6 been trying to reach with the prior Palm products?
 7 A. It's the same core but just expanded a
 8 bit. In other words, it's targeting people who
 9 value, you know, their wireless e-mail from work and
 10 their personal e-mail as well as the other features
 11 the phone offers.
 12 THE VIDEOGRAPHER: Would this be a good
 13 time to change the tape?
 14 MR. TROCK: What I got, five?
 15 THE VIDEOGRAPHER: Yeah.
 16 MR. TROCK: How long do you think your
 17 conference call is going to take?
 18 MR. STERN: If -- well, whenever the
 19 lunch, what are you thinking?
 20 MR. TROCK: I don't know how much -- how
 21 long you think your call could have been. Just
 22 trying to --
 23 MR. STERN: Probably a half hour, 45. I'm
 24 not going to go to lunch in addition to that. I'm
 25 just --

1 A. Right.
 2 Q. And I believe the earliest one is the one
 3 that starts last in the document, which appears to
 4 be an e-mail where you're inviting people to an
 5 E-conference on June 8th, 2006. Do you see that?
 6 A. Yep.
 7 Q. A web conference?
 8 A. Yes.
 9 Q. Do you recall what the purpose of that
 10 conference was?
 11 A. AKQA is going to present the fall concepts
 12 to this team.
 13 Q. Okay. Now, did you have people from Palm
 14 participating in this conference from outside the
 15 United States?
 16 A. Yes.
 17 Q. Who were those people?
 18 A. Avril Murphy, Lorraine Legros, Sergine
 19 Dupuy, or Dupuy, Lorrie Bedlow, and within the
 20 regional marketing managers, there was Sharon Ee.
 21 Q. Now, we had -- we discussed earlier
 22 that -- or you had discussed earlier that there was
 23 some advertising that was -- that was used for this
 24 campaign that was outside the United States; is that
 25 correct?

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1 A. Correct.
 2 Q. Which countries was that advertising
 3 taking place in?
 4 A. UK, Germany, Canada, parts of Latin
 5 America, I'm not sure of the exact countries.
 6 Q. Now, with respect to the slogan, was the
 7 only difference in the slogan that was used outside
 8 of the United States the fact that the word "phone"
 9 was replaced by the word "mobile"?
 10 A. The ads were leveraged in those countries.
 11 They didn't just, you know --
 12 Q. But I'm just -- I'm just referring to the
 13 slogan itself now.
 14 What was the difference between the slogan
 15 as opposed to the slogan used in the United States?
 16 A. In the UK and Germany, they used "Not just
 17 a mobile, a Treo."
 18 Q. In the other countries it was the same?
 19 A. Latin America may have also used "mobile".
 20 Q. What was the reason for changing that?
 21 A. It's just in those countries they don't
 22 refer to Treos as cell phones. They refer to them
 23 as mobiles, or mobile devices.
 24 MR. TROCK: Okay. Let's change the tape.
 25 THE VIDEOGRAPHER: We're going to go off

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1 A. He's a marketing manager for Latin
 2 America.
 3 Q. Latin America, okay. If you turn to Palm
 4 3331, there's a paragraph in his e-mail that says,
 5 "I agree on the tag line issue."
 6 Do you know what he was referring to
 7 there?
 8 A. I believe it was during this discussion
 9 about whether or not we should incorporate the word
 10 "just".
 11 Q. So that was a discussion that was
 12 occurring sometime in June of 2006; is that right?
 13 A. I believe so.
 14 Q. Now, you see how he goes on and says: "I
 15 would also prefer to include something like, Not
 16 just a cell phone."
 17 Do you see how he capitalizes the word
 18 "just"?
 19 A. Uh-huh, yes.
 20 Q. Do you have -- do you have an
 21 understanding as to why he did that?
 22 A. He preferred to incorporate the word
 23 "just" in the tag line.
 24 Q. Okay. So prior to this time, the working
 25 tag line was "Not a cell phone, a Treo"; is that

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1 record. Again today's date is February 27th, the
 2 year 2007. We're completing tape number one, Volume
 3 Number I in the deposition of Scott Hancock in the
 4 matter of Helio LLC versus Palm Inc., the time on
 5 the monitor is 11:55 a.m. We're going off the
 6 record concluding tape number one.
 7 ---
 8 (Discussion held off the record.)
 9 ---
 10 THE VIDEOGRAPHER: We're going back on
 11 record. Again today's date is February 27th, the
 12 year 2007. We're beginning tape number two in
 13 Volume Number I in the deposition of Scott Hancock
 14 in the matter of Helio LLC versus Palm, Inc., the
 15 time on the monitor is 11:59 a.m. We're back on
 16 record right now.
 17 BY MR. TROCK:
 18 Q. If you go to Palm 3, 3330 in Exhibit 29,
 19 there is an e-mail there from Frederico --
 20 A. Mm-hmm.
 21 Q. -- to Rose and yourself, do you see that
 22 one that's sent Friday, June 9th?
 23 A. Yes.
 24 Q. And which -- what is Frederico's
 25 relationship with Palm?

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1 right?
 2 A. I'm not sure of the dates of when we were
 3 debating the, you know, the need to incorporate
 4 "just", but it was around this time.
 5 Q. So if you'll look at the next paragraph
 6 down, he says, "The idea behind not a cell phone, a
 7 Treo," do you see that?
 8 A. I believe that is not from him, though.
 9 This was in line with the -- with the discussion.
 10 So that -- it's hard to tell from this printout.
 11 Q. Are you -- do you believe that he may be
 12 inserting comments here in somebody else's e-mail?
 13 A. Yes.
 14 Q. I see, okay. Well, is it fair to say,
 15 then, at least as of the date of his e-mail which is
 16 June 9th, 2006, that Palm had not yet decided
 17 whether to go with tag line "Not a cell phone, a
 18 Treo", or the tag line "Not just a cell phone, a
 19 Treo"?
 20 MR. STERN: Hold on a second. Objection,
 21 foundation.
 22 THE WITNESS: So just to be clear,
 23 although it says tag line, it's used interchangeably
 24 with slogan and theme line and things like that.
 25 BY MR. TROCK:

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1 Q. I know you don't think of the tag line,
 2 but –
 3 A. Right.
 4 Q. – I just used that phrase, that word
 5 because he did here.
 6 A. Mm-hmm.
 7 Q. So back to my question, then, is it fair
 8 to say that as of the date of his e-mail,
 9 June 9th, 2006 that Palm had not just decided
 10 which of the two slogans or tag lines it was going
 11 to use?
 12 A. Correct.
 13 Q. Okay. And then if you go back up to the
 14 first page, which is Palm 3329, Julie's –
 15 Patterson's comment to you on June 14th is: FYI
 16 we've discussed this as a team and feel that the
 17 line still works if it says "Not a mobile, a Treo."
 18 Do you see that?
 19 A. Yes.
 20 Q. Okay.
 21 MR. STERN: I think it's the leather of
 22 the chair rubbing up against the table.
 23 BY MR. TROCK:
 24 Q. Do you know a person by the name of Fiona
 25 Knowles?

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1 that right?
 2 A. Right.
 3 Q. So the e-mail that Julie sent says: All,
 4 we've made a few changes through Camino revised
 5 creative deck which you can find in the Camino
 6 folder on the FTP site. Speak to you shortly.
 7 Do you know what she was referring to when
 8 she refers to the Camino folder on the FTP site?
 9 A. It's a file – or folder full of files on
 10 the FTP site.
 11 Q. What's an FTP site?
 12 A. It's a site where they house large files
 13 for us, or AKQA housed large files for us.
 14 Q. So is this an online site that you have
 15 access to at Palm that AKQA provides?
 16 A. Yes.
 17 Q. And does it contain documents and other
 18 materials relating to the Palm advertising campaign
 19 that AKQA created?
 20 A. Yes.
 21 Q. When Julie is referring to the Camino
 22 creative deck, do you know what she is referring to?
 23 A. The presentation that goes through a
 24 revised creative concepts for Camino.
 25 Q. And Camino, again, just for the record,

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1 A. Yes.
 2 Q. Do you know who that is, could you explain
 3 to me who that is?
 4 A. She's a woman that works at Gyro in the
 5 UK, who was the agency for our London office.
 6 ---
 7 (Whereupon the document was marked,
 8 for identification purposes, as Exhibit
 9 Number Thirty.)
 10 ---
 11 BY MR. TROCK:
 12 Q. I'm going to hand you what the court
 13 reporter has marked as Plaintiff's Exhibit 30. Ask
 14 you to take a look at it and tell me whether or not
 15 you recognize it.
 16 A. Yes.
 17 Q. Can you tell me what this is?
 18 A. Part of an e-mail.
 19 Q. The last e-mail here appears to be sent
 20 Friday, July 14th, from Rose Rodd to you and Page
 21 Murray; is that right?
 22 A. Yes.
 23 Q. And underneath it, it appears that Rose is
 24 forwarding on and commenting on an e-mail she
 25 received from Julie Patterson on July 13th; is

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1 that's the code word you were using for the Treo
 2 680; is that right?
 3 A. Correct.
 4 Q. Now, Rose forwards on this e-mail to both
 5 you and Page and has some comments on July 14th.
 6 And she says, Okay. "Now I finally was able to
 7 download the revised preso."
 8 Does she mean presentation?
 9 MR. STERN: Objection.
 10 THE WITNESS: I'm assuming.
 11 BY MR. TROCK:
 12 Q. That's your understanding? Is that a yes
 13 or a no?
 14 A. I'm assuming yes.
 15 Q. Okay. She says, "I really like where
 16 we're headed on this. Few comments: I like the
 17 treatment on slide three for Treo and Palm, but I'd
 18 prefer to add a qualifier: Not just a cell phone, a
 19 Treo. {Palm logo} What are your thoughts on this
 20 treatment versus the others?"
 21 What's your recollection as to what other
 22 treatments were being considered on July 14th,
 23 2006?
 24 A. I believe at that time we were looking at
 25 how "Not just a cell phone, a Treo" would be

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20 (Pages 74 to 77)

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1 presented in connection with the Palm logo.
 2 Q. Well, how is that different than what
 3 she's referring to here? She refers to that as "Not
 4 just a cell phone, a Treo" with a Palm logo. How
 5 was her treatment in this e-mail different from ones
 6 that -- other ones that were being considered, if
 7 you recall?
 8 MR. STERN: Foundation.
 9 THE WITNESS: I'm sorry, I'm not sure I
 10 follow.
 11 BY MR. TROCK:
 12 Q. Well, let's look at what she says. She
 13 says: "I'd prefer to add a qualifier, Not just a
 14 cell phone, a Treo." And then in parentheses, it
 15 has "Palm logo".
 16 But now she asks you the question, what
 17 are your thoughts on this treatment? Obviously it
 18 must be the one just preceding here, versus the
 19 others.
 20 So my question to you is, how is the
 21 treatment that she's describing in this e-mail
 22 different from the others that were being considered
 23 at the time?
 24 A. It's the relation of the Palm logo with
 25 the -- with the slogan. So whether the Palm logo

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1 is, you know, above it, and the words below it or to
 2 the right of it.
 3 Q. So it was just a positional issue?
 4 A. She was combining the positional issue
 5 with the qual -- adding a qualifier of "just".
 6 Q. Okay, okay. So as of July 14th, then,
 7 is it fair to say that Rose was considering adding
 8 the qualifier, or the word "just" into the slogan,
 9 "Not a cell phone, a Treo"?
 10 MR. STERN: Objection, no foundation.
 11 THE WITNESS: That's what she's saying
 12 here, yes.
 13 BY MR. TROCK:
 14 Q. Okay. And then she says: "Would be great
 15 for us to lock in on a preference quickly."
 16 Does this help refresh your recollection
 17 as to when the preference was locked in on as to
 18 which slogan to go with for the campaign?
 19 A. It would be around this time, I mean,
 20 everything is quick.
 21 Q. So is it fair to say that as of
 22 July 14th, Palm had not yet locked in on which
 23 slogan it was ultimately going to use in this
 24 advertising campaign?
 25 A. It was -- we were debating whether or not

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1 to incorporate the word "just" in this theme line,
 2 yes.
 3 Q. Okay. Then she goes on and says, I like
 4 the treatment they did with Treo by Palm but I worry
 5 about losing the "not just..." line which feels so
 6 much stronger.
 7 Which treatment is she referring to in
 8 that sentence?
 9 A. I'm not sure.
 10 Q. Do you recall a treatment that AKQA
 11 created using the slogan "Treo by Palm"?
 12 A. I believe we investigated that.
 13 Q. Is it your understanding that that was
 14 part of the Camino creative deck as of July 14th,
 15 2006?
 16 A. I don't know if it was in that deck or the
 17 several other ones that I've seen.
 18 Q. She goes on and says: That being said,
 19 one challenge of including not just in many of the
 20 executions will be the size of that line relative to
 21 the headline.
 22 Do you see that?
 23 A. Yes.
 24 Q. Do you have an understanding of what she
 25 was referring to there?

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1 A. I take that to mean as the line itself,
 2 "Not just a cell phone, a Treo", is relatively long.
 3 Q. And how does that effect the execution of
 4 the advertisement, if at all?
 5 A. It's just memorability, you know, from
 6 prospects, whether they remember the headline,
 7 whether they remember this theme line.
 8 Q. Does it also have an effect on the size of
 9 the type that can be used?
 10 MR. STERN: Objection, foundation.
 11 THE WITNESS: What do you mean?
 12 BY MR. TROCK:
 13 Q. Well, does the number of words in a slogan
 14 affect the size of the type that can be used on the
 15 advertising?
 16 A. Sure, yes.
 17 Q. How does it affect it?
 18 A. Well, it -- if it's longer, then you have
 19 a, you know, finite amount of space, then the font
 20 size has to be reduced to accommodate that.
 21 MR. TROCK: Mark this one next.
 22 ---
 23 (Whereupon the document was marked,
 24 for identification purposes, as Exhibit
 25 Number Thirty-One.)

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1 ---
 2 BY MR. TROCK:
 3 Q. I show you what's been marked as
 4 Plaintiff's Exhibit 31.
 5 MR. STERN: Do you have a copy for me?
 6 Great, thanks.
 7 BY MR. TROCK:
 8 Q. Which is a document bears Bates numbers
 9 AKQA 4661 through 4663. And ask you if you
 10 recognize this document?
 11 A. Yes.
 12 Q. This appears to be an e-mail from Julie
 13 Patterson to you dated July 17th, 2006; is that
 14 correct?
 15 A. Yes.
 16 Q. Now, if you'll look on the second page of
 17 this exhibit, this appears to be a further e-mail
 18 string of the Exhibit 30 which we just took a look
 19 at, because you'll see that down here at the bottom
 20 of Page 4662, there is the e-mail from Rose to both
 21 you and Page in which she's got the same text that
 22 we just referred to.
 23 A. Correct.
 24 Q. I'd like to start with the e-mail that's
 25 on Page 1 from Page to both Rose and yourself dated

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1 July 17th. And Page writes, Hi Rose, then has
 2 some comments in here.
 3 And on the next page, 4662, about the
 4 third paragraph from the end, it says: We should
 5 hammer out the line, the weighting of the brand, and
 6 the short list and meet with Ed.
 7 Who is Ed?
 8 A. Ed Culligan, our CEO.
 9 Q. Does Ed have to approve of the advertising
 10 campaign before it gets published by Palm?
 11 MR. STERN: Objection, foundation.
 12 THE WITNESS: No.
 13 BY MR. TROCK:
 14 Q. Do you know what Page was referring to
 15 when he wrote here, We should hammer out the line?
 16 A. I don't know specifically what he was
 17 referring to, but it appears he would be focused on
 18 whether or not we should incorporate the word "just"
 19 in the theme line.
 20 Q. Now, you then send Page's e-mail and the
 21 previous ones to Julie Patterson on July 17th, do
 22 you see that? That's in the middle of the first
 23 page?
 24 A. Yes.
 25 Q. And then in the second paragraph, you're

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1 discussing next steps and the first line says:
 2 Launch ad for Groovy II. Do you see that?
 3 A. Yes.
 4 Q. What is that referring to?
 5 A. Groovy II is a code name for the product
 6 that launched in Europe.
 7 Q. And then the next line says: First phase
 8 of You Can Campaign. What is the You Can Campaign?
 9 A. As part of the -- some of the ads in the
 10 Camino campaign where you can -- blank -- on Treo.
 11 And that's where -- when we insert a partner, like
 12 You can Yahoo on Treo.
 13 Q. And then the last e-mail in the string is
 14 from Julie Patterson to you dated July 17th, 2006.
 15 And the last paragraph she writes as follows:
 16 Regarding the Treo branding issue in the tag line, I
 17 thought you were all pushing to omit "just" in the
 18 U.S. versions of the creative.
 19 Do you see that?
 20 A. Yes.
 21 Q. Is that your understanding of what the
 22 situation was as of July 17th, 2006?
 23 A. Yes.
 24 Q. And then she goes on and says: However,
 25 Rose and Page's feedback below dictates otherwise.

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1 So is it fair to say that as of
 2 July 17th, 2006, AKQA understood that the word
 3 "just" was not going to be in the U.S. versions of
 4 the creative?
 5 MR. STERN: Objection, foundation.
 6 THE WITNESS: I'm not sure of when AKQA
 7 was brought into the conversation about
 8 incorporating the word "just", but I believe it was
 9 before this.
 10 BY MR. TROCK:
 11 Q. Do you know when before this?
 12 A. I don't know exactly.
 13 Q. Well, is Julie Patterson mistaken when she
 14 says: I thought you all were pushing to omit "just"
 15 in the U.S. versions of the creative?
 16 A. No.
 17 Q. And then she goes on and says: Please
 18 clarify which line we should be using because I had
 19 Bob start changing them to read "Not a cell phone, a
 20 Treo" per your direction on Friday.
 21 Do you see that?
 22 A. Yes.
 23 Q. So did you provide Julie with the
 24 direction on Friday that the slogan was going to be
 25 "Not a cell phone, a Treo"?

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1 A. According to this, yes.
 2 Q. Okay. You don't dispute that; do you?
 3 A. No.
 4 Q. Then she goes on at the bottom and says:
 5 FYI, I know I had a concern with the inclusion of
 6 "just" in part because it impacted how big the type
 7 could get since the line became so long it competed
 8 with the space near the product shot. Please just
 9 be aware that the longer the line is, the harder it
 10 is to make the type bigger.
 11 That's what you were referring to just a
 12 little while ago; is that right?
 13 A. Right, just to clarify, she's saying, FYI
 14 I know he had a concern, she wasn't saying that
 15 she --
 16 Q. Oh, I see. I know, right. And "he",
 17 she's referring to Bob; right?
 18 MR. STERN: Objection, foundation.
 19 THE WITNESS: I'm not sure which he.
 20 BY MR. TROCK:
 21 Q. Well, is there any other he -- is there
 22 any other he in the paragraph that she's talking
 23 about here, other than this guy by the name of Bob?
 24 A. It probably was Bob.
 25 Q. Do you know who Bob is?

1 A. It looks familiar.
 2 Q. It looks like what's happening here is
 3 that you received an e-mail from Fiona Knowles on
 4 Tuesday, June 27th, and then you're forwarding
 5 that on to Julie Patterson on the same day.
 6 Is that about right?
 7 A. Yes.
 8 Q. So if we go to Fiona's e-mail to you, she
 9 says: Hi, Scott, thanks for your patience. We have
 10 consolidated our feedback with the Palm team and
 11 I've detailed the salient points below.
 12 And two paragraphs down, she says: I've
 13 split our feedback out under various headings, but
 14 first, I have a couple of questions. Are you no
 15 longer using "It's time for Treo"?
 16 Do you see that?
 17 A. Yes.
 18 Q. Is that a slogan that Palm had used in its
 19 advertising?
 20 A. Yes.
 21 Q. In what advertising campaigns had Palm
 22 used that slogan?
 23 A. I'm sorry, in what -- in what?
 24 Q. Advertising campaigns?
 25 A. It was in a ad campaign that we had done

1 A. Yes.
 2 Q. Okay.
 3 MR. TROCK: Okay. Why don't we break for
 4 lunch.
 5 THE VIDEOGRAPHER: We're going to go off
 6 record. The time is 12:25 p.m.
 7 MR. TROCK: 1:30.
 8 MR. STERN: That's great.
 9 (Luncheon recess.)
 10 THE VIDEOGRAPHER: We're going back on
 11 record. The time is 1:40 p.m. We're ready to
 12 proceed.
 13 MR. TROCK: Mark that as our next in
 14 order.
 15 ---
 16 (Whereupon the document was marked,
 17 for identification purposes, as Exhibit
 18 Number Thirty-Two.)
 19 ---
 20 BY MR. TROCK:
 21 Q. I'm handing you what the court reporter
 22 has marked as Exhibit 32, which is a series of
 23 e-mails bearing Bates numbers Palm 917 through 919.
 24 Ask you to take a look at this and see whether or
 25 not you recognize it.

1 before.
 2 Q. When?
 3 A. I don't know exactly when, I don't know.
 4 Q. Do you know what devices --
 5 MR. STERN: Excuse me, I'm sorry.
 6 BY MR. TROCK:
 7 Q. -- what devices it involved?
 8 A. I believe Treo 650.
 9 Q. Can you give me an estimate as to during
 10 what time period that came -- ad campaign was being
 11 used?
 12 A. I believe it was in the Fall of 2005,
 13 perhaps the summer, I'm not -- I'm not exactly sure
 14 when.
 15 Q. Of 2005?
 16 A. Correct.
 17 Q. Had you -- during what time period were
 18 you working with Fiona Knowles?
 19 A. I wasn't working directly with her. She
 20 worked -- she reported to Avril Murphy in the UK
 21 office.
 22 Q. And she would on occasion send you
 23 e-mails?
 24 A. Yes.
 25 Q. I take it that this e-mail she sent you in

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1 June was in response to the presentation that AKQA
 2 gave on the advertising campaign they were
 3 developing for Palm?
 4 A. I believe so, yes.
 5 MR. STERN: Oh, my God. What happened?
 6 BY MR. TROCK:
 7 Q. Did Palm develop a relationship with
 8 YouTube for purposes of this advertising campaign?
 9 A. A relationship?
 10 Q. Yeah.
 11 A. No.
 12 Q. No? No partnership?
 13 A. No partnership.
 14 Q. Did you explore a partnership with
 15 YouTube?
 16 A. Briefly.
 17 Q. Briefly?
 18 A. Yes.
 19 Q. Can you -- can you explain what you recall
 20 about that exploration?
 21 A. There -- I believe they were one of the
 22 partners considered but quickly dismissed because at
 23 the time YouTube didn't work on our devices.
 24 Q. Do you know what time period you explored
 25 this partnership?

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1 A. Same as the other partners, but I don't
 2 know exactly when, late summer.
 3 Q. Of 2006?
 4 A. Of 2006, yes.
 5 MR. TROCK: Let's mark this one.
 6 ---
 7 (Whereupon the document was marked,
 8 for identification purposes, as Exhibit
 9 Number Thirty-Three.)
 10 ---
 11 BY MR. TROCK:
 12 Q. Handing you what's been marked as Exhibit
 13 33?
 14 MR. STERN: This is a disaster.
 15 Thank you very much.
 16 BY MR. TROCK:
 17 Q. Which is a series of e-mails bearing Bates
 18 numbers Palm 2826 through 2827.
 19 If you take could take a look at this and
 20 tell me whether or not you recognize it.
 21 A. I do.
 22 Q. The e-mail string appears to start on the
 23 second page via e-mail sent from Dave Daetz,
 24 D-A-E-T-Z, to Page Murray on July 24th.
 25 Do you see that?

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1 A. Mm-hmm.
 2 Q. Do you know who Dave is?
 3 A. Dave Daetz.
 4 Q. Yes.
 5 A. Yes.
 6 Q. Who is he?
 7 A. He works at Palm.
 8 Q. What does he do?
 9 A. I don't know his exact title.
 10 MR. STERN: Don't guess if you don't know.
 11 THE WITNESS: I honestly don't know his
 12 title.
 13 BY MR. TROCK:
 14 Q. What does he do at Palm?
 15 A. I don't know.
 16 Q. How is it that you know him, then?
 17 A. I see him in the hallways.
 18 Q. Have you ever worked with him?
 19 MR. STERN: Objection. The question is
 20 vague.
 21 THE WITNESS: Not directly.
 22 BY MR. TROCK:
 23 Q. Well, if you look at his e-mail to Page,
 24 he says, I'm working with Matt Crowley on an
 25 interesting opportunity that could have some

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1 marketing and PR sizzle, and wanted to get the right
 2 creative marketing person from your team involved as
 3 soon as possible. We've been in contact with
 4 YouTube over the last couple of weeks, which as you
 5 know has emerged as a top site for Internet video
 6 downloads.
 7 So this July 24th, 2006 time period, is
 8 that the time you were exploring a potential
 9 relationship with YouTube?
 10 A. I believe so.
 11 Q. If you look at the third paragraph in the
 12 e-mail to Page, the last sentence says: If we are
 13 able to pull this off, we'd have a great marketing
 14 opportunity to creatively promote this perhaps even
 15 on Camino. And given the nature of the content,
 16 help drive our appeal and consideration to a
 17 broader, younger customer base.
 18 Do you see that?
 19 A. Yes.
 20 Q. Is that the customer base that you were
 21 trying to reach with the 680?
 22 MR. STERN: Objection, vague. Also no
 23 foundation.
 24 THE WITNESS: Which customer base?
 25 BY MR. TROCK:

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24 (Pages 90 to 93)

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1 Q. Whatever one Dave is referring to here.
 2 A. It would be appealing to an audience that
 3 I'd previously mentioned that would be the core
 4 mobile – mobile professionals with a slight
 5 expansion. So going from, you know, someone in
 6 the – or the previous buyers of Treo were in their
 7 high 40s on average, so we were looking to go a
 8 little bit younger than high 40s.
 9 Q. So is his statement here correct that
 10 you're trying to drive – with the 680 you're trying
 11 to drive your appeal and consideration to a broader,
 12 younger customer base?
 13 A. Younger than that, yes.
 14 Q. Broader as well; is that right?
 15 A. Correct.
 16 Q. And your comments to Dave on the first
 17 page of Exhibit 33 says: Dave, this is great to
 18 hear.
 19 Why was that great to hear?
 20 A. They – YouTube would be – would have
 21 been a great property.
 22 Q. And why is that?
 23 A. They have a lots of eyeballs on their
 24 sites. They got a lot of – a lot of visits to
 25 their site.

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1 Q. It says: I spoke to Matt about YouTube a
 2 week and a half ago and briefed him on our desire to
 3 work with them.
 4 And who is Matt that you're referring to
 5 here?
 6 A. Matt Crowley.
 7 Q. Our agency, AKQA is in contact with
 8 YouTube about our fall ad campaign already.
 9 Do you see that?
 10 A. Mm-hmm.
 11 Q. How did you know that?
 12 A. We spoke about YouTube when we were
 13 talking about partners. It was in consideration.
 14 Q. You spoke to AKQA about it?
 15 A. About YouTube?
 16 Q. Yes.
 17 A. Yes.
 18 ---
 19 (Whereupon the document was marked,
 20 for identification purposes, as Exhibit
 21 Number Thirty-Four.)
 22 ---
 23 BY MR. TROCK:
 24 Q. Handing you a document which has been
 25 marked by the reporter as Exhibit 34.

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1 MR. STERN: Thirty-three?
 2 MR. TROCK: Thirty-four.
 3 MR. STERN: Thirty-four, thank you.
 4 BY MR. TROCK:
 5 Q. Which is titled Palm Fall 2006 Ad Campaign
 6 Review.
 7 Would you please take a look at this
 8 document and tell me whether or not you recognize
 9 it.
 10 A. Yes.
 11 Q. Can you tell me what this is?
 12 A. It's a summary of the ad campaign that we
 13 were reviewing at the time.
 14 Q. Do you know who prepared this?
 15 A. I don't.
 16 Q. Was it prepared by Palm?
 17 A. Yes.
 18 Q. If you look at the first – I mean, the
 19 second page, Page 1791, under the Treo ad campaign,
 20 the first bullet point on the global campaign, the
 21 second entry there says the U.S. launch was
 22 October 30th or 11/6.
 23 Do you see that?
 24 A. Yes.
 25 Q. Is that your understanding as to when the

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1 U.S. launch was to occur?
 2 MR. STERN: Objection – well, as phrased,
 3 it's all right.
 4 THE WITNESS: I'm not sure the time of
 5 this particular presentation, it was somewhat of a
 6 moving target given the launch date of the product
 7 was moving.
 8 BY MR. TROCK:
 9 Q. Why was the launch date of the product
 10 moving?
 11 A. There was many factors, and I'm not sure
 12 of all the specifics around why the launch was
 13 push – pushed back, but it was.
 14 Q. What was your understanding of why the
 15 launch was pushed back?
 16 A. There were several reasons, the product
 17 just wasn't ready yet.
 18 Q. Well, what were the reasons?
 19 A. Again, there were several, one of which
 20 was the carrier certification.
 21 Q. Anything else?
 22 A. I'm sure there were more, but I don't know
 23 off the top of my head.
 24 Q. If you go on to Page 1796, you'll see an
 25 ad example here that says "You can get eBay on it,"

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25 (Pages 94 to 97)

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1 and it indicates a slogan "Treo by Palm" in the
 2 lower right-hand corner.
 3 Do you see that?
 4 A. Yeah, I see that.
 5 Q. Yeah. And it says: Tag line to be
 6 replaced with, "Not a cell phone, a Treo."
 7 Do you see that?
 8 A. Correct.
 9 Q. So if this is created by Palm, somebody at
 10 Palm is using the word "tag line" to refer to that,
 11 do you see that?
 12 A. Yes.
 13 Q. But you don't agree that that's a tag
 14 line; is that right?
 15 A. Right.
 16 ---
 17 (Whereupon the document was marked,
 18 for identification purposes, as Exhibit
 19 Number Thirty-Five.)
 20 ---
 21 BY MR. TROCK:
 22 Q. Handing you what the court reporter has
 23 marked as Exhibit 35, which is a document titled
 24 "Treo Online Advertising" dated August 2nd, 2006,
 25 would you please take a moment to briefly look

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1 assumption is this a mock-up that AKQA created to
 2 show you what your partnership or advertisement
 3 would look like on this Netflix website. Is that
 4 right, or am I mistaken?
 5 MR. STERN: Objection, foundation.
 6 THE WITNESS: The -- it is a mock-up of
 7 what it could potentially look like on Netflix's
 8 website.
 9 BY MR. TROCK:
 10 Q. Okay. You'll notice there that the slogan
 11 that's being used here is "Not a cell phone, a
 12 Treo", do you see that?
 13 A. Yes.
 14 Q. In the right-hand corner?
 15 A. Yes.
 16 Q. You'll notice that even -- this is
 17 presented in August 2nd, 2006, but the slogan
 18 they're using has not incorporated the word "just"
 19 into it; is that right?
 20 MR. STERN: Objection, foundation,
 21 mischaracterizes the document.
 22 THE WITNESS: This was part of the
 23 presentation on August the 2nd.
 24 BY MR. TROCK:
 25 Q. Mm-hmm. Do you see the slogan on Page

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1 through this and tell me whether or not you
 2 recognize it.
 3 A. Do you want me to go through all of it or
 4 just tell you in general?
 5 Q. Just in general tell me whether or not it
 6 appears familiar to you.
 7 A. Yes, it does.
 8 Q. Can you tell me what this is?
 9 A. It's a presentation given to -- given to
 10 us from AKQA.
 11 Q. And was it given to you on or about the
 12 date that it bears, August 2nd, 2006?
 13 A. I believe so.
 14 Q. This presentation involves the advertising
 15 campaign that we've been discussing; is that right?
 16 A. Yes.
 17 Q. If you take a look at the Page 1651, which
 18 is a couple pages in --
 19 A. Mm-hmm.
 20 Q. -- this appears to be a mock-up of a
 21 Netflix website. Do you see that?
 22 A. I see that, I see the page that you're
 23 talking about, the screen shot on the device is
 24 Netflix.
 25 Q. Can you explain to me what this is, my

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1 1651?
 2 A. Yes.
 3 Q. It's "Not a cell phone, a Treo"; right?
 4 A. I see that, yeah.
 5 Q. The word "just" has not been incorporated
 6 into the slogan there; has it?
 7 MR. STERN: Objection, mischaracterizes
 8 the document.
 9 THE WITNESS: What is on the page, it
 10 says, "It's not a cell phone, a Treo".
 11 BY MR. TROCK:
 12 Q. You don't see the word "just" there; do
 13 you?
 14 A. It's not on there.
 15 Q. Okay. If you go to Page 1657. Can you
 16 tell me what's been shown on Page 1657?
 17 A. It's a mock-up of what a -- an ad could
 18 look like on a site.
 19 Q. If you look at the center of the top of
 20 the web page, the slogan reads, "Not a cell phone, a
 21 Treo"; is that right?
 22 A. Yes.
 23 Q. And that's a Sports Illustrated website;
 24 is that right?
 25 A. I believe so, yes.

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1 Q. If you go to Page 1658, can you tell us
 2 what's being shown on this page?
 3 A. This is what an ad could look like on
 4 another site.
 5 Q. And this is an Orbitz website; is that
 6 correct?
 7 A. Yes.
 8 Q. And the slogan that's being used there is,
 9 "Not a cell phone, a Treo"; is that right?
 10 A. The theme line is "Not a cell phone, a
 11 Treo" in this particular one, yes.
 12 ---
 13 (Whereupon the document was marked,
 14 for identification purposes, as Exhibit
 15 Number Thirty-Six.)
 16 ---
 17 BY MR. TROCK:
 18 Q. Let me show you what's been marked as
 19 Exhibit 36 by the court reporter, which is a
 20 document titled, "Not just a Cell Phone Campaign,
 21 Fall '06, October 9th, 2006."
 22 Take a look at this, tell me whether or
 23 not you recognize it.
 24 A. Yes, I recognize it.
 25 Q. Can you tell me what this is?

1 A. I'm sorry, can you repeat that?
 2 Q. When was this out of home advertising
 3 that's indicated here going to stop?
 4 A. The majority of it were -- was stopping at
 5 the end of -- or almost all of it stopping the end
 6 of December, so December 31st.
 7 Q. What happens to the outdoor advertisements
 8 when it stops?
 9 MR. STERN: Objection, foundation.
 10 THE WITNESS: We no longer -- we're no
 11 longer paying for it.
 12 BY MR. TROCK:
 13 Q. What happens to the advertisement?
 14 A. The actual material?
 15 Q. Yes.
 16 A. It's removed.
 17 Q. Okay. Do you know when it gets removed?
 18 A. No. My assumption is that it's removed
 19 when the media company sells that space again.
 20 Q. So it's your understanding that it could
 21 stay up until the space is sold for -- again
 22 afterwards; is that right?
 23 A. Yes.
 24 Q. So that could be for another month, two
 25 months, or however long it takes that company to

1 A. It's another presentation on the -- on the
 2 campaign.
 3 Q. Do you know who prepared this
 4 presentation?
 5 A. I don't know who prepared this version, it
 6 was worked on by myself and Page.
 7 Q. Okay. So you worked on this one?
 8 A. Yes.
 9 Q. Okay. If you look at Page 1434 for a
 10 second. It has Budget and Timing. And under
 11 November it says: U.S. online and print to start
 12 11/16/06 through 4/30/07.
 13 Do you see that?
 14 A. Yes.
 15 Q. Is that your understanding as the time of
 16 when the online and print advertising was to run for
 17 this campaign?
 18 A. That was the plan at that time, yes.
 19 Q. Okay. And then in December, it indicates
 20 that the U.S. out of home advertising in these
 21 various markets was to start on December 1st.
 22 Do you see that?
 23 A. Yes.
 24 Q. When was this out of home advertising
 25 going to stop?

1 sell that space; is that right?
 2 A. I'm not sure how long.
 3 Q. It's your understanding that that's
 4 possible; is that right?
 5 A. Yes.
 6 Q. Were you aware of any advertising in the
 7 outdoor San Francisco market that remained up after
 8 December 31st, 2006?
 9 A. Can you repeat the question?
 10 Q. Were you aware of any Palm outdoor
 11 advertising in the San Francisco market that
 12 remained up after December 31st, 2006?
 13 MR. STERN: Relating to this campaign.
 14 Objection, question is vague.
 15 THE WITNESS: Specific to this campaign,
 16 not to my knowledge.
 17 BY MR. TROCK:
 18 Q. Did you ever see any of the Palm outdoor
 19 advertising in the San Francisco area for this
 20 campaign?
 21 A. Yes.
 22 Q. When did you see it?
 23 A. I'm not sure.
 24 Q. Do you recall?
 25 A. In December.

Golden Gate Reporting

1 Q. Do you recall seeing any in January?
 2 A. Yeah.
 3 Q. What do you recall that you saw in
 4 January?
 5 A. I saw a – what we call a wall scape
 6 outside our new agency's office.
 7 Q. Where is that located?
 8 A. Actually, I don't know where the wall is,
 9 but their office is on 2nd Street.
 10 Q. Did you see any other Palm outdoor
 11 advertising for this campaign in January, other than
 12 that wall scape?
 13 A. I don't recall.
 14 Q. Do you know whether or not any of the Palm
 15 outdoor advertising for this campaign in the
 16 San Francisco market is still up?
 17 A. As of right now, I'm not sure.
 18 Q. Are you aware of any that is, in any of
 19 the markets in which you've advertised?
 20 A. I'm not sure.
 21 Q. Has anybody brought any of those to your
 22 attention since December 31st?
 23 A. That they're still running?
 24 Q. Yes.
 25 MR. STERN: You mean –

Page 106

1 BY MR. TROCK:
 2 Q. I'm talking about outdoor advertising.
 3 MR. STERN: Objection to the extent that
 4 it calls for communications with counsel. Well,
 5 actually, I'll let him answer the question yes or no
 6 without talking about source at this point.
 7 THE WITNESS: I'm sorry, can you repeat
 8 the question?
 9 BY MR. TROCK:
 10 Q. Has anybody brought to your attention any
 11 Palm outdoor advertisement with respect to this
 12 campaign in any of the markets in the United States
 13 that's still up after December 31st?
 14 A. Yes.
 15 Q. Which markets were those in?
 16 A. I heard about one in New York.
 17 Q. Any other markets besides New York?
 18 A. That were brought to my attention, no.
 19 Q. So other than the New York one that was
 20 brought to your attention and the one that you saw
 21 in San Francisco, are you aware of any other Palm
 22 outdoor advertising for this campaign that was still
 23 up after December 31st?
 24 A. No.
 25 ---

Page 107

1 (Whereupon the document was marked,
 2 for identification purposes, as Exhibit
 3 Number Thirty-Seven.)
 4 ---
 5 BY MR. TROCK:
 6 Q. Handing you what's been marked as Exhibit
 7 37, which is a publication at Brandweek.com dated
 8 December 12th, 2006, and ask you whether or not
 9 you recognize this document?
 10 A. Yes.
 11 Q. Can you tell me what this is?
 12 A. It's an article from Brandweek.
 13 Q. Did you read this when it was published?
 14 A. I think soon thereafter.
 15 Q. The author here, Gregory Solman, starts
 16 out and says: "Palm is launching a \$25 million
 17 campaign today featuring the Treo 680, according to
 18 Scott Hancock, director of marketing communications
 19 for the company."
 20 Do you see that?
 21 A. Yes.
 22 Q. Did you speak with Mr. Solman?
 23 A. I spoke to a reporter from Brandweek, I do
 24 not recall his name.
 25 Q. So it's possible it could have been

Page 108

1 Mr. Solman; is that right?
 2 A. Yes.
 3 Q. He says here in the middle of the article:
 4 The tag line is "Not just a cell phone, a Treo", do
 5 you see that?
 6 MR. STERN: Objection. Where -- where are
 7 you pointing?
 8 MR. TROCK: (Indicating).
 9 THE WITNESS: I see that.
 10 BY MR. TROCK:
 11 Q. And then he goes and says: "Hancock
 12 acknowledges similarity to the positioning of rival
 13 Helio."
 14 Did you do that?
 15 A. No.
 16 Q. So Mr. Solman is incorrect with that
 17 statement?
 18 A. Yes.
 19 Q. And then he says you noted that the two
 20 devices pursued different markets. We're going
 21 after the multimedia player.
 22 Do you see that?
 23 A. I do.
 24 Q. And that's in quotes, do you see that?
 25 A. I do.

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Golden Gate Reporting

1 Q. Did you say that?
 2 A. I'm not sure I said those exact words.
 3 Q. Well, if you didn't say those exact words,
 4 what words did you say?
 5 A. I don't know specifically.
 6 Q. You can't recall?
 7 A. No.
 8 Q. Well, do you believe that you're pursuing
 9 different markets from Helio?
 10 A. Yes.
 11 Q. Okay. Which market do you believe Helio
 12 is pursuing?
 13 A. The younger, you know, late teens, early
 14 20s crowd.
 15 Q. And you believe that market is different
 16 than the one that Palm is pursuing?
 17 A. With our campaign, our media buys were
 18 addressed to an audience that was different than
 19 that, yes.
 20 Q. And who is this multimedia player you're
 21 going after?
 22 MR. STERN: Objection, foundation.
 23 THE WITNESS: I don't remember saying
 24 that, so I don't know.
 25 BY MR. TROCK:

Page 110

1 Q. So you don't know one way or the other,
 2 you can't recall one way or the other?
 3 MR. STERN: Objection, vague.
 4 THE WITNESS: What do you mean "one way or
 5 the other"?
 6 BY MR. TROCK:
 7 Q. Well, you don't recall saying this to him;
 8 is that right?
 9 A. Right.
 10 ---
 11 (Whereupon the document was marked,
 12 for identification purposes, as Exhibit
 13 Number Thirty-Eight.)
 14 ---
 15 BY MR. TROCK:
 16 Q. Showing you what's marked Exhibit 38 which
 17 is an article from Mediapost Publications dated
 18 December 14th, 2006, take a look at this and tell
 19 me whether or not you recognize it?
 20 A. I don't recall seeing this.
 21 Q. Did you ever have any discussions with
 22 Emily Burg, the author of this article?
 23 A. I don't recall. I spoke to a lot of
 24 reporters.
 25 Q. How many reporters did you speak to?

Page 111

1 A. I don't know exactly.
 2 Q. What's your best estimate?
 3 A. A dozen.
 4 Q. It says in the last full paragraph on that
 5 first page: Palm seeks to widen the appeal of its
 6 Treo 680 smartphone beyond a traditional customer
 7 base of business users.
 8 Do you see that?
 9 A. Correct.
 10 Q. Is that Palm's traditional base for its
 11 Treo product?
 12 MR. STERN: You're referring to business
 13 users?
 14 THE WITNESS: So the question is?
 15 BY MR. TROCK:
 16 Q. Are business users the traditional
 17 customer base for the Treo product?
 18 A. Yes.
 19 Q. And is it true that with the Treo 680,
 20 Palm was seeking to widen the appeal of the -- that
 21 product beyond its traditional customer base?
 22 A. Beyond and including those -- those folks.
 23 Q. Fair enough. It goes on and says: And
 24 narrow the competition between itself and Blackberry
 25 whose top selling Pearl has targeted the same hybrid

Page 112

1 business lifestyle wireless consumer for who the
 2 Treo 680 is designed.
 3 Do you agree with that statement that the
 4 Treo 680 is designed for a hybrid business
 5 life-style wireless consumer?
 6 MR. STERN: Objection, foundation.
 7 THE WITNESS: I believe that, yeah,
 8 that --
 9 BY MR. TROCK:
 10 Q. Okay. The next paragraph goes on and
 11 says: The tag line "Not just a cell phone, a Treo"
 12 rings familiar to that of wireless upstart Helio,
 13 whose tag line is "Don't call it a phone."
 14 Do you see that?
 15 A. I see that.
 16 Q. Do you agree with that statement?
 17 A. No.
 18 MR. STERN: Objection. Well, I was going
 19 to say foundation, but --
 20 ---
 21 (Whereupon the document was marked,
 22 for identification purposes, as Exhibit
 23 Number Thirty-Nine.)
 24 ---
 25 BY MR. TROCK:

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Golden Gate Reporting

1 Q. I show you what's been marked as Exhibit
 2 39, which is a series of e-mails bearing Bates
 3 numbers Palm 2540 through 2544. Take a look at this
 4 and tell me whether or not you recognize it.
 5 MR. STERN: Do you want to get some
 6 tissues?
 7 MR. TROCK: It's not going to help.
 8 THE WITNESS: I recognize this, yeah.
 9 BY MR. TROCK:
 10 Q. Can you tell me what this is?
 11 A. It's an e-mail thread.
 12 Q. Did you receive this on or about the date
 13 that it bears, December 14th, 2006?
 14 A. I believe so.
 15 Q. This is an e-mail from Colleen Werner to
 16 Robin Witty and you're being copied on it. Who is
 17 Colleen Werner?
 18 A. Colleen works on my team.
 19 Q. She works at Palm?
 20 A. Correct.
 21 Q. And who is Robin Witty?
 22 A. She also works at Palm.
 23 Q. Colleen starts and writes out: While it
 24 sounds like there was some confusion, Scott may be
 25 better able -- sorry, Scott may be able to better

Page 114

1 Palm issued?
 2 A. I believe so.
 3 Q. When did you learn that the budget for the
 4 advertising campaign was going to be cut?
 5 A. I don't remember the exact date.
 6 Q. What's your best estimate?
 7 A. I honestly don't know. It's -- I don't
 8 know.
 9 Q. You have no recollection whatsoever when
 10 you learned there was going to be a cut in the
 11 advertising budget for this campaign?
 12 A. It was -- it was discussed several times.
 13 I just don't know when that conversation first
 14 started.
 15 Q. Okay. When was it discussed?
 16 MR. STERN: Objection, foundation. Vague.
 17 THE WITNESS: I'm not sure.
 18 BY MR. TROCK:
 19 Q. Well, was it discussed in the summer of
 20 2006?
 21 A. Not that I really know.
 22 Q. Was it discussed in the Fall of 2006?
 23 A. Depends on the definition of fall, but
 24 it's fall or winter of 2006.
 25 Q. Was it discussed before the campaign was

Page 116

1 address this since it was his baby, but here are a
 2 few facts.
 3 She goes and says in that third paragraph,
 4 with 25 million being the -- being put behind this
 5 effort, this is the biggest piece of your marketing
 6 plan.
 7 Do you know what \$25 million she was
 8 referring to here?
 9 A. The reported budget we had for this
 10 campaign.
 11 Q. Was that the budget?
 12 A. Originally.
 13 Q. And what did you end up spending on the
 14 entire campaign?
 15 A. To date it's been about ten million.
 16 Q. Do you know why it was less than what the
 17 original budget was?
 18 A. We got budget cuts.
 19 Q. If you go back to Exhibit 37 for a second,
 20 you'll see in the opening line of Mr. Solman's
 21 article, he says: "Palm is launching a \$25 million
 22 campaign today featuring a Treo 680."
 23 Do you see that?
 24 A. Yes.
 25 Q. Was that figure in the press release that

Page 115

1 launched in November of 2006?
 2 A. I don't believe so.
 3 Q. Who made the decision to cut the budget
 4 for the advertising campaign?
 5 MR. STERN: Objection, foundation.
 6 THE WITNESS: I'm not sure.
 7 BY MR. TROCK:
 8 Q. Well, who did you have discussions with
 9 about cutting the budget in the advertising
 10 campaign?
 11 A. I believe it was Rose.
 12 Q. Did you have these discussions in her
 13 office?
 14 A. I'm not sure where it was.
 15 Q. Do you recall in what context you had the
 16 discussions?
 17 A. Probably during a discussion about the
 18 campaign.
 19 Q. Other than this advertising campaign, were
 20 you working on any other advertising campaigns for
 21 Palm during that time period?
 22 A. Which time period, sorry?
 23 Q. This time period here, the fall of 2006,
 24 winter of 2006?
 25 A. No, not at the time.

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Golden Gate Reporting

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CERTIFICATE OF REPORTER

I, KENNETH T. BRILL, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties hereto.



KENNETH T. BRILL
CSR 12797

EXHIBIT 3

JULIE PATTERSON - FEBRUARY 2, 2007

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

HELIO LLC,)	
)	
Plaintiff,)	Case No.: C06-7754 SBA
)	
vs.)	
)	VOLUME I
PALM, INC.,)	
)	Pages 1 to 183
Defendant.)	
)	

VIDEOTAPED DEPOSITION OF JULIE PATTERSON
Friday, February 2, 2007

Reported by:
HEIDI BELTON, CSR #12885, RPR

COPY

JAN BROWN & ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
701 Battery Street, 3rd Floor, San Francisco, CA 94111
(415) 981-3498

JULIE PATTERSON - FEBRUARY 2, 2007

18:38

1

(Whereupon, the witness, JULIE PATTERSON,

09:18:38

2

having been duly sworn, testified as follows:)

09:18:38

3

EXAMINATION

09:18:46

4

BY MR. TROCK:

09:18:46

5

Q. Good morning. Could you please state and spell

09:18:49

6

your name for the record?

09:18:50

7

A. Yes. It's Julie Patterson. J-U-L-I-E,

09:18:52

8

P-A-T-T-E-R-S-O-N.

09:18:56

9

Q. Have you ever been deposed before, Julie?

09:18:58

10

A. No, I have not.

09:19:00

11

Q. Let me just explain the deposition process for

09:19:02

12

you a little bit just so you can understand. Your

19:05

13

attorney may have already talked to you about it.

09:19:08

14

So we're taking this deposition so that we can

09:19:14

15

preserve your testimony for trial in the case. And it's

09:19:18

16

an informal proceeding, although you should treat it as if

09:19:22

17

you were testifying in a court. I will ask you questions,

09:19:27

18

give your attorney time to make objections for the record,

09:19:30

19

and answer the questions to the best of your ability.

09:19:33

20

The court reporter takes down everything that's

09:19:35

21

said in the room. So it's important that only one of us

09:19:38

22

speak at a time. If you have difficulty understanding a

09:19:41

23

question, don't hesitate to ask me to clarify it and I'll

09:19:45

24

try and do my best for you.

19:47

25

If at any time you need to take a break, just

JULIE PATTERSON - FEBRUARY 2, 2007

19:49 1 let us know and we'll take a break.

09:19:53 2 Could you tell me what your position is at -- do
09:19:56 3 you refer to this as AKQA --

09:19:58 4 A. Yes.

09:19:59 5 Q. So there's no way to say it as a name?

09:20:01 6 A. It's AKQA.

09:20:02 7 Q. So I can't refer to it as Aqua [sic]?

09:20:05 8 A. No, you cannot.

09:20:06 9 Q. Can you tell me what your position is at AKQA?

09:20:09 10 A. Yes. I'm an account director.

09:20:11 11 Q. What are your responsibilities as an account
09:20:15 12 director?

20:15 13 A. As an account director you lead on a piece of
09:20:18 14 business for -- on behalf of the agency, you lead a
09:20:21 15 client's business and you basically act as the liaison
09:20:24 16 between the client and the agency.

09:20:27 17 Q. Do you report to anybody at AKQA?

09:20:30 18 A. Yes, I do.

09:20:31 19 Q. Who do you report to?

09:20:32 20 A. I report to Stuart Sproule.

09:20:35 21 Q. How do you spell his last name?

09:20:37 22 A. S-P-R-O-U-L-E.

09:20:44 23 Q. How do you spell his first name?

09:20:45 24 A. S-T-U-A-R-T.

20:47 25 Q. Do you report to anyone else other than Stuart

JULIE PATTERSON - FEBRUARY 2, 2007

20:51 1 Sproule?

09:20:52 2 A. To date Stuart has been my primary manager. Now
09:20:55 3 that I'm moving on to another account, I have a new
09:20:58 4 supervisor. But it's specific to my new account which is
09:21:01 5 McDonald's.

09:21:03 6 Q. How long -- when did you first become employed
09:21:05 7 at AKQA?

09:21:07 8 A. In September of 2002.

09:21:13 9 Q. Have you always been an account director there?

09:21:15 10 A. No, I have not.

09:21:16 11 Q. What was your first position there?

09:21:17 12 A. Account executive.

21:22 13 Q. What are the responsibilities of an account
09:21:23 14 executive at AKQA?

09:21:27 15 A. Responsibilities of an account executive are to
09:21:30 16 again act as a liaison between client and agency but your
09:21:34 17 primarily responsibility is for individual projects. So
09:21:38 18 basically manning a specific campaign and not as
09:21:42 19 responsible for the overall well-being of the account.

09:21:57 20 Q. During what time period were you an account
09:21:59 21 executive at AKQA?

09:22:06 22 A. I don't know the exact date which I was
09:22:08 23 promoted, but I want to say it was roughly 9 to 12 months
09:22:13 24 after I began. And then I was promoted to account
22:18 25 supervisor.

JULIE PATTERSON - FEBRUARY 2, 2007

26:25 1 Q. Is it your understanding that you're here to
09:26:26 2 testify on behalf of AKQA with regard to the subject
09:26:29 3 matter of those requests?

09:26:31 4 MR. COLT: If I could interrupt for a moment,
09:26:32 5 Kevin. I'm glad you brought this up. The subpoena that
09:26:35 6 was served in the notice of deposition requested testimony
09:26:38 7 from AKQA on a supposed Schedule A. The only documents
09:26:43 8 that were attached to the subpoena is this Exhibit A,
09:26:46 9 which, as you just noted, is a series of document
09:26:50 10 requests.

09:26:51 11 In AKQA's responses and objections, AKQA stated
09:26:55 12 that it was unclear as to the topics on which testimony
26:58 13 was being requested. And if the document requests were
09:27:01 14 indeed to be treated as the deposition topics, they did
09:27:05 15 not state with reasonable particularity the topics on
09:27:08 16 which testimony was requested. We asked Helio to meet and
09:27:11 17 confer on the issue. We did not hear anything from Helio.

09:27:14 18 So for the purposes of today's deposition, this
09:27:17 19 witness is being presented on behalf of AKQA to testify
09:27:20 20 regarding the development and implementation of Palm's Not
09:27:25 21 Just a Cell Phone campaign and no additional topics at
09:27:29 22 that time. However, I believe that this is a very broad
09:27:31 23 topic and I think you would be hard-pressed to look at any
09:27:36 24 of the -- of these document requests that would not fall
27:38 25 under the umbrella of that topic.

12

JULIE PATTERSON - FEBRUARY 2, 2007

27:40

1 BY MR. TROCK:

09:27:41

2 Q. So could you respond to my question.

09:27:46

3 A. Can you please repeat it?

09:27:49

4 MR. TROCK: Sure. She'll read it back for you.

09:28:02

5 (Record read.)

09:28:02

6 THE WITNESS: Yes, it is.

09:28:07

7 BY MR. TROCK:

09:28:07

8 Q. Are you --

09:28:09

9 MR. COLT: I'm sorry, Kevin. If we could take a

09:28:11

10 quick break.

09:28:12

11 THE VIDEOGRAPHER: The time is 9:28 a.m. And

09:28:15

12 we're going off the record.

29:54

13 (Recess taken from 9:28 a.m. to 9:31 a.m.)

09:31:07

14 THE VIDEOGRAPHER: The time is 9:31 a.m. And

09:31:09

15 we're going back on the record.

09:31:13

16 THE WITNESS: Can I please clarify my last

09:31:16

17 response?

09:31:17

18 MR. TROCK: Sure.

09:31:18

19 THE WITNESS: It's my understanding that I'm

09:31:19

20 here to represent AKQA regarding the development and

09:31:22

21 implementation of the Not Just a Cell Phone at Treo

09:31:27

22 campaign.

09:31:28

23 BY MR. TROCK:

09:31:28

24 Q. When did you come to that understanding?

31:29

25 MR. COLT: Objection to the extent this calls

JULIE PATTERSON - FEBRUARY 2, 2007

31:31 1 for attorney-client communications.

09:31:35 2 THE WITNESS: I came to this understanding
09:31:38 3 initially when discussing this documentation with the
09:31:42 4 legal team and then was reminded during a break.

09:31:47 5 BY MR. TROCK:

09:31:47 6 Q. Was that the break that you just took with
09:31:49 7 Mr. Colt right now?

09:31:50 8 A. Yes, it was.

09:31:54 9 Q. Because it appears as if your testimony's now
09:31:56 10 different than it was just a moment ago; is that right?

09:31:58 11 A. It is not different. I just forgot to clarify
09:32:01 12 that which I'm here for, which is basically the
32:05 13 development of this specific campaign.

09:32:06 14 Q. So you're now testifying that you are not here
09:32:10 15 to testify on behalf of AKQA on the subject matter of the
09:32:13 16 requests that are in the subpoena before you?

09:32:15 17 A. I'm here to testify regarding the pieces of
09:32:19 18 information that are specific to the development and
09:32:21 19 implementation of our campaign.

09:32:22 20 Q. Well, let me ask you the question again: Are
09:32:25 21 you here on behalf of AKQA to testify about the subject
09:32:28 22 matter of the requests in that subpoena?

09:32:31 23 MR. COLT: Objection. It's vague and ambiguous
09:32:32 24 in that the subject matter of the subpoena also includes
32:36 25 the development and implementation of the campaign.

JULIE PATTERSON - FEBRUARY 2, 2007

44:12 1 been terminated?

09:44:14 2 A. Meaning that AKQA and Palm are no longer working
09:44:16 3 together. Palm has since hired a new advertising agency.

09:44:22 4 Q. When did that happen?

09:44:23 5 A. The decision was made around early October. But
09:44:32 6 the decision to put the business in review was made much
09:44:37 7 sooner than that.

09:44:48 8 Q. Now going back to the selection and approval of
09:44:55 9 this theme line for this campaign, I believe you had
09:45:00 10 mentioned that AKQA had made several proposals to Palm, is
09:45:05 11 that correct, for a theme line? Or did I misunderstand
09:45:10 12 you?

45:10 13 A. I think you might have misunderstood.

09:45:12 14 Q. Was there only one theme line that was ever
09:45:14 15 proposed to Palm for this campaign?

09:45:16 16 A. Initially there was only one theme line.

09:45:18 17 Q. All right. What was that theme line?

09:45:20 18 A. Not a Cell Phone at Treo.

09:45:28 19 Q. When was that proposed to Palm?

09:45:30 20 A. The first time it was proposed to Palm was
09:45:32 21 actually in January of 2005 for a previous campaign.

09:45:42 22 Q. When were advertisements for this campaign first
09:45:45 23 published?

09:45:51 24 A. In -- I believe the first time it was published
45:53 25 was in October.

JULIE PATTERSON - FEBRUARY 2, 2007

45:54 1 Q. October of when?

09:45:55 2 A. I'm sorry. October of 2006.

09:46:02 3 Q. Was the theme line Not a Cell Phone at Treo ever
09:46:06 4 published?

09:46:11 5 A. No, it was not.

09:46:12 6 Q. What was the theme line that was published?

09:46:13 7 A. Not Just a Cell Phone at Treo.

09:46:22 8 Q. When was it changed?

09:46:27 9 A. I'm sorry. I don't understand the question.

09:46:28 10 Q. Well, those two theme lines are different,
09:46:29 11 aren't they?

09:46:31 12 A. Not Just a Cell Phone at Treo.

46:32 13 Q. Yeah, isn't that different from Not a Cell Phone
09:46:36 14 at Treo?

09:46:36 15 A. Well, Not a Cell Phone at Treo was never
09:46:40 16 published.

09:46:40 17 Q. I understand that. I'm asking when was it
09:46:42 18 changed?

09:46:43 19 A. I'm sorry. You're asking the development
09:46:45 20 process.

09:46:46 21 Q. Yes.

09:46:46 22 A. I'm sorry. I misunderstood.

09:46:48 23 Q. That's okay.

09:46:49 24 A. I'm trying to remember the first time it was
46:51 25 suggested that we explore an alternative. It was

JULIE PATTERSON - FEBRUARY 2, 2007

46:54 1 relatively early on in the campaign development. I would
09:46:57 2 say maybe in May perhaps early June.

09:47:06 3 Q. Of what year?

09:47:12 4 A. Of '06.

09:47:13 5 Q. Do you recall who suggested the change?

09:47:21 6 A. Well, I believe that it was Page Murray who
09:47:24 7 first brought up the fact that -- you know, we had
09:47:26 8 basically presented this as a direction, and they weren't
09:47:29 9 really comfortable with the direction because they felt
09:47:32 10 that it may actually lead consumers to think that this
09:47:35 11 wasn't a cell phone at all. And that was something that
09:47:38 12 was of great concern for Palm because this is the first
47:41 13 time they'd launched an antennaless device. So there was
09:47:46 14 some concern about ensuring that people knew it was a cell
09:47:50 15 phone first.

09:47:55 16 Q. Did you have discussions with Page Murray about
09:47:57 17 this concern?

09:47:57 18 A. Yes. It was brought up in a client review
09:48:00 19 initially and then communicated via e-mail that we should
09:48:05 20 explore some alternatives to the line.

09:48:09 21 Q. Did you have e-mail communications with Page
09:48:11 22 Murray about this issue?

09:48:16 23 A. I believe my e-mail communications with Page on
09:48:17 24 the topic were indirect. Meaning, that they were e-mail
48:21 25 correspondence internally at Palm which were then

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48:25 1 forwarded to me.

09:48:26 2 Q. Who at Palm forwarded them to you?

09:48:28 3 A. Scott Hancock.

09:48:44 4 Q. Now, you -- I believe you mentioned that this

09:48:47 5 suggestion to change the theme line initially occurred

09:48:52 6 during a client review; is that right?

09:48:56 7 A. The issue was raised during a client review as

09:48:58 8 to whether the line was misleading or not.

09:49:01 9 Q. Can you explain to me what a client review is.

09:49:05 10 A. A client review is when we as an agency present

09:49:09 11 creative ideas to the client and have some discussion

09:49:13 12 regarding specific direction and/or executions.

49:18 13 Q. Do you recall when this client review occurred?

09:49:24 14 A. Which client review? Can you please clarify.

09:49:26 15 Q. The one we're talking about, where there was a

09:49:29 16 concern that was expressed regarding the theme line and

09:49:34 17 the need to possibly change it.

09:49:36 18 A. Okay. I don't remember the date. I know that

09:49:38 19 it took place sometime in either late May or early June.

09:49:46 20 Q. How -- can you describe for me how this client

09:49:51 21 review occurred physically?

09:49:55 22 A. Yes. This client review took place at Palm.

09:50:06 23 And that particular review was done via PowerPoint.

09:50:13 24 Q. So it was done at a face-to-face meeting at

50:16 25 Palm?

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55:42 1 to best communicate the idea visually that we want to get
09:55:45 2 across in the early stages of a campaign's development. A
09:55:50 3 comp doesn't necessarily translate to what the end product
09:55:53 4 is going to look like. It's just meant to help
09:55:56 5 communicate the emotions or messages that we want to get
09:56:00 6 across.

09:56:00 7 Q. So you're talking about an advertisement? Is
09:56:04 8 that what we're referring to here?

09:56:06 9 A. For -- well, a comp is an early stage -- it can
09:56:08 10 be many things. It can basically be the versioning of an
09:56:11 11 ad. But in the early stages it's also the communication
09:56:14 12 of an idea in a tangible form.

56:17 13 Q. I understand. And what is Adam's
09:56:21 14 responsibilities for the campaign?

09:56:24 15 A. Adam is the copywriting side of the creative
09:56:29 16 team and as well as the group creative director. So he
09:56:35 17 also manages the development of creative executions that
09:56:38 18 other individual teams are responsible for. But he comes
09:56:42 19 up with a lot of the lines themselves, copy lines.

09:56:47 20 Q. So the words?

09:56:48 21 A. Correct.

09:56:55 22 Q. And how about Courtney Kile? What were her
09:56:58 23 responsibilities for the campaign?

09:57:00 24 A. Courtney is the -- or was the associate media
57:03 25 director. She's no longer with AKQA. She is -- her

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57:06 1 primary responsibility is identifying media strategies and
09:57:10 2 making recommendations on how best to spend Palm's money
09:57:16 3 against identified targets.

09:57:20 4 Q. How about Kate Harris? What were her duties?

09:57:23 5 A. Kate Harris is the director of account planning.
09:57:26 6 So her primary role is really understanding target
09:57:31 7 audiences and helping make recommendations on optimal
09:57:35 8 targets for Palm and development of the creative brief,
09:57:40 9 which is basically the strategy that the creative comes
09:57:44 10 out of.

09:58:07 11 Q. I may have asked you this question before,
09:58:09 12 but -- so forgive me. I'm just trying to clarify this. I
58:13 13 believe it's your testimony that during this client review
09:58:16 14 which occurred in May or June of 2006, the issue was
09:58:20 15 raised that the current theme line Not a Cell Phone at
09:58:26 16 Treo might miscommunicate a concept and there was a
09:58:35 17 concern that it should be changed or altered in some
09:58:38 18 fashion. Is that a fair statement?

09:58:39 19 A. Let me clarify a little bit. That meeting that
09:58:42 20 took place in late May or early April was the first time
09:58:47 21 that we had presented creative ideas that were based off
09:58:52 22 of the strategy Not a Cell Phone at Treo. And so the
09:58:57 23 purpose of that initial meeting was to provide them with a
09:59:00 24 variety of creative directions, one of which had Not a
59:04 25 Cell Phone at Treo in it as the theme line. And so during

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59:09 1 that initial meeting, the clients felt that that was the
09:59:15 2 best creative direction to go in of the two or three that
09:59:18 3 we had presented to them. And at that point said, you
09:59:24 4 know, we may want to think about this a little bit more.
09:59:26 5 But the primary purpose of that meeting was to pick a
09:59:29 6 direction.

09:59:31 7 Q. So you mentioned there were two or three
09:59:34 8 creative ideas that were presented to Palm in May or June
09:59:38 9 of 2006; is that correct?

09:59:39 10 A. Correct.

09:59:40 11 Q. You also mentioned that this was the first time
09:59:42 12 that AKQA presented these creative ideas to Palm in this
59:45 13 campaign; is that right?

09:59:47 14 MR. COLT: Misstates prior testimony.

09:59:51 15 THE WITNESS: This was the first time that we
09:59:53 16 had presented this campaign direction to Palm. But we had
10:00:00 17 presented the line Not a Cell Phone at Treo to them
10:00:05 18 previously.

10:00:06 19 BY MR. TROCK:

10:00:10 20 Q. What were the other campaign directions aside
10:00:14 21 from the one we've been discussing that were presented to
10:00:17 22 Palm at that time during that client review?

10:00:25 23 A. There was one campaign direction which I believe
10:00:26 24 the theme line was It Only Looks Serious. And then there
00:35 25 were some promotional-type ideas. One was called Flash

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00:41 1 Mobs.

10:00:51 2 Q. So these promotional ideas you're referring to,
10:00:54 3 would you characterize them as a campaign direction or no?

10:01:06 4 A. The two primary campaign directions were It Only
10:01:09 5 Looks Serious and Not a Cell Phone at Treo. And then we
10:01:14 6 had some ideas that we felt were really strong, isolated
10:01:21 7 program ideas that if Palm liked them we could kind of
10:01:30 8 work them into either direction.

10:01:31 9 Q. When did Palm communicate to AKQA its decision
10:01:40 10 as to which of these two campaign directions it wanted to
10:01:44 11 pursue?

10:01:50 12 A. During the course of the meeting they verbally
01:52 13 told us that they felt it was the right direction of the
10:01:55 14 two.

10:01:56 15 Q. The direction Not a Cell Phone at Treo?

10:01:58 16 A. That campaign direction Not a Cell Phone at
10:02:00 17 Treo, as far as the campaign strategy. But we were way
10:02:05 18 too early on to be really making decisions about specific
10:02:08 19 creative elements.

10:02:10 20 Q. So after that meeting in May or June of 2006, is
10:02:17 21 it fair to say that AKQA did not continue to pursue the
10:02:23 22 campaign direction It Only Looks Serious?

10:02:28 23 A. Yes, that is safe to say.

10:02:31 24 Q. And that was Palm's decision not to pursue that
02:34 25 campaign direction; is that right?

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02:35 1 A. That is correct.

10:02:41 2 Q. Do you recall who at Palm communicated that
10:02:45 3 decision?

10:02:51 4 A. I don't remember which individual we worked
10:02:54 5 with. The three members of the marketing team, rather,
10:03:04 6 routinely did so.

10:03:12 7 Q. You attended that meeting, right?

10:03:14 8 A. Correct.

10:03:14 9 Q. Was it your understanding at that meeting that
10:03:16 10 the three Palm representatives were all in consensus that
10:03:20 11 Palm wanted to pursue the campaign direction Not a Cell
10:03:27 12 Phone at Treo?

03:30 13 MR. COLT: Objection. Lacks foundation. Calls
10:03:31 14 for speculation.

10:03:34 15 THE WITNESS: At that time my understanding from
10:03:36 16 their feedback was that they felt that that campaign
10:03:40 17 direction and strategy of -- because basically the
10:03:44 18 campaign wasn't just about the line in the sense of how we
10:03:47 19 presented it to them; it was also about partnerships with
10:03:51 20 what we had considered to be passion brands. So their
10:03:55 21 feedback was based on pursuing that as a strategy.

10:04:05 22 BY MR. TROCK:

10:04:05 23 Q. What do you mean by "passion brands"?

10:04:09 24 A. I guess the best way to define how we had sort
04:12 25 of defined passion brands were other consumer-friendly

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04:18 1 brands that had a loyal following -- user-based sort of
10:04:25 2 following -- and that seemed to have a brand that was
10:04:28 3 favorable among consumers.

10:04:36 4 Q. Did you discuss particular passion brands at
10:04:38 5 that time with Palm?

10:04:40 6 A. We did in part because we had this -- we had
10:04:44 7 begun the discussion in the context of some focus group
10:04:47 8 research that we had done. And prior to that at the
10:04:55 9 conclusion of 2005 we ran a campaign for Palm, which the
10:05:00 10 line in that campaign was It's Time for Treo. And during
10:05:03 11 the course of that campaign, we had started to run on
10:05:07 12 certain web properties where we showcased their content on
05:10 13 the screen of the device. And it seemed to be a favorable
10:05:15 14 strategy for us.

10:05:17 15 Q. Which brands did you discuss during that client
10:05:21 16 review?

10:05:24 17 A. During this first client review or the focus
10:05:27 18 group research?

10:05:27 19 Q. The client review in May or June of 2006.

10:05:35 20 A. I believe -- I'm trying to remember all the
10:05:37 21 comps that we had. I believe we had included Orbitz,
10:05:41 22 eBay, Yahoo, Google, Fandango, maybe NetFlix. I don't
10:05:55 23 think that's the exhaustive list, but it's pretty
10:05:59 24 representative.

06:44 25 Q. Do you recall when Palm approved use of the

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06:52 1 theme line Not Just a Cell Phone at Treo?

10:07:01 2 A. I don't recall. Because it was the topic of a

10:07:03 3 lot of discussion for many months.

10:07:31 4 Q. Did you have discussions with people at Palm

10:07:33 5 about that change to the theme line?

10:07:38 6 A. Yes.

10:07:39 7 Q. Who at Palm did you have those discussions with?

10:07:42 8 A. Again, Scott, Rose, and Page.

10:07:50 9 Q. Did you have discussions with any of them about

10:07:54 10 changing that theme line by e-mail?

10:08:00 11 A. Yes.

10:08:03 12 Q. Did you have discussions with Scott about

08:05 13 changing the theme line by e-mail?

10:08:07 14 A. Yes.

10:08:09 15 Q. Did you have discussions with Rose about

10:08:13 16 changing that theme line by e-mail?

10:08:18 17 A. Again, not directly, but indirectly through

10:08:21 18 e-mails forwarded to me by Scott.

10:08:24 19 Q. Did you have discussions with Page about

10:08:28 20 changing that theme line by e-mail?

10:08:31 21 A. Again, indirectly via e-mails that were

10:08:34 22 forwarded to me by Scott.

10:08:55 23 Q. Did you ever have direct communications with

10:08:58 24 Rose by e-mail about the campaign?

09:05 25 A. On occasion.

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11:25 1 Q. Did there come a time where specific ad
10:11:28 2 executions with this revised theme line were presented to
10:11:39 3 Palm for approval?
10:11:40 4 A. With "just" in the line?
10:11:43 5 Q. Yeah. When I say "revised," I mean with the
10:11:46 6 addition of "just" in the theme line.
10:11:49 7 A. So are you asking me did there come a time when
10:11:52 8 they had to approve those individual executions?
10:11:54 9 Q. Yes.
10:11:55 10 A. Yes.
10:11:55 11 Q. Do you recall when that time period was?
10:12:03 12 A. I believe individual execution approval began --
12:07 13 and let me clarify. When I say individual execution
10:12:10 14 approval, that's to the point where we have a media buy in
10:12:15 15 place where we're building to specific dimensions or
10:12:18 16 requirements. And so we were at the point -- we were that
10:12:22 17 far down the path of approving individual executions, I
10:12:27 18 believe we started that in late August, perhaps.
10:12:36 19 Q. Of '06?
10:12:37 20 A. Yes.
10:12:43 21 Q. Who at Palm would give approval for those
10:12:45 22 individual executions?
10:12:47 23 A. Scott Hancock.
10:13:12 24 Q. Did AKQA ever publish execution without the
13:17 25 approval of Palm?

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13:23 1 A. No.

10:14:02 2 Q. During your communications with Palm, did Helio

10:14:22 3 ever come up?

10:14:25 4 MR. COLT: Objection. It's vague as to time.

10:14:27 5 THE WITNESS: Yeah, can you please clarify.

10:14:28 6 BY MR. TROCK:

10:14:29 7 Q. At any time while you were at AKQA.

10:14:32 8 A. Did Helio come up?

10:14:33 9 Q. Yes.

10:14:34 10 A. Yes, Helio's advertising campaign came up.

10:14:38 11 Q. When did that happen?

10:14:43 12 A. At the end of July. July 31.

14:50 13 Q. What year was that?

10:14:51 14 A. 2006.

10:14:51 15 Q. Can you describe for me the context under which

10:14:57 16 it came up?

10:14:58 17 A. Yes. That was on a Monday. And one of the

10:15:02 18 members of our team came in and mentioned that he had seen

10:15:06 19 a TV spot for Helio that aired over the weekend and asked

10:15:14 20 if anyone else had seen it.

10:15:20 21 Q. Who was that person?

10:15:20 22 A. Brendon Robertson.

10:15:23 23 Q. What is Brendon's position at AKQA?

10:15:26 24 A. He's a senior account planner and he reports to

15:29 25 Kate Harris.

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15:41 1 Q. Did he have this discussion with you or with
10:15:42 2 somebody else at Helio? Sorry. At AKQA.

10:15:49 3 A. I don't know whether or not he mentioned it to
10:15:52 4 Kate before me, but then he came and mentioned it to me.

10:15:56 5 Q. Did you know who Helio was when he mentioned the
10:15:59 6 name?

10:15:59 7 A. I didn't know much about them, but I had heard
10:16:01 8 their name somewhat in passing in industry trades.

10:16:06 9 Q. What -- at that time when Brendon had this
10:16:09 10 conversation with you, what was your understanding of who
10:16:12 11 Helio was?

10:16:13 12 A. Honestly I didn't have a great understanding
16:15 13 other than to know that they were going to have -- be --
10:16:21 14 try to be sort of a combination of service provider and
10:16:23 15 manufacturer.

10:16:26 16 Q. Service provider and manufacturer of what?

10:16:28 17 A. Of a multimedia device.

10:16:46 18 Q. The device -- the Palm device or devices that
10:16:49 19 are the focus of the ad campaign you're discussing, which
10:16:55 20 devices are those?

10:16:56 21 A. The Treo?

10:16:57 22 Q. Yeah, are there particular Treos that were the
10:16:59 23 focus of that campaign or just Treos in general?

10:17:02 24 A. We were launching the campaign in conjunction
17:06 25 with the launch of their latest product which was the Treo

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17:09 1 680. However, we didn't specifically call the model name
10:17:14 2 out in the advertising.

10:17:18 3 Q. Is the Treo 680 a multimedia device?

10:17:22 4 MR. COLT: Objection. Lacks foundation. Calls
10:17:23 5 for speculation.

10:17:27 6 THE WITNESS: We would consider it to be a
10:17:29 7 smartphone.

10:17:30 8 BY MR. TROCK:

10:17:33 9 Q. What's a smartphone?

10:17:34 10 MR. COLT: Same objections.

10:17:35 11 THE WITNESS: A smartphone is, I guess, best
10:17:38 12 described as having cell phone and e-mail capabilities
17:43 13 first and foremost. And then oftentimes they're sprinkled
10:17:48 14 with other types of feature sets. But when we talk about
10:17:53 15 smartphones, they often are clarified -- classified as
10:17:58 16 cell phone, e-mail, and oftentimes as QWERTY keyboard as
10:18:03 17 well.

10:18:09 18 Q. Are you familiar with the Treo 680?

10:18:10 19 A. Yes, I am.

10:18:11 20 Q. What features does it have?

10:18:14 21 A. It has phone; e-mail; QWERTY; e-mail, which is,
10:18:23 22 as I mentioned, why it's a smartphone; camera; video; MP3;
10:18:28 23 voice recorder; web; and then calendaring contacts,
10:18:45 24 address book-type features.

18:50 25 Q. You used the terminology "multimedia device."

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18:54 1 What's a multimedia device?

10:18:56 2 A. A multimedia device would, in my opinion, be
10:19:00 3 something where some of the multimedia features such as
10:19:04 4 camera and music and video are at the forefront of what
10:19:12 5 they describe their products to be. So they're the
10:19:19 6 primary features of the device. So, for example, like a
10:19:21 7 PS- -- port- -- a PSP would be something I would consider
10:19:25 8 to be a multimedia device.

10:19:33 9 Q. What's a PSP?

10:19:34 10 A. The Play Station Portable.

10:19:58 11 Q. So after Mr. Robertson mentioned this television
10:20:03 12 spot of Helio's, what happened next?

20:07 13 A. So after that I had actually asked -- I think I
10:20:13 14 asked Bob Pullum if he had seen it. And he mentioned that
10:20:18 15 he had also seen a print ad which he -- I can't remember
10:20:24 16 if it was in Details or GQ, one of the two men's lifestyle
10:20:33 17 magazines. And so not everyone on the team was aware of
10:20:38 18 the campaign of Helio and we had a client review scheduled
10:20:40 19 for two days later. So I called an internal meeting to
10:20:45 20 make sure that everyone was aware of this campaign and
10:20:49 21 talk about preparation for our creative review.

10:21:02 22 Q. Why did you do that?

10:21:03 23 A. At that point in time we were still going back
10:21:05 24 and forth with Palm regarding various campaign elements,
21:11 25 one of which was the line Not a Cell Phone at Treo. And

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21:20 1 they had asked us on a couple of occasions to explore
10:21:24 2 alternatives, consider "just." And we had put it in,
10:21:28 3 taken it out, put it in, taken it out on a couple of
10:21:31 4 occasions on comp work. And there was still the lingering
10:21:34 5 concern that the line without the use of "just" might
10:21:40 6 imply that this was not a phone at all. And so in light
10:21:43 7 of the Helio campaign, I thought it was something that we
10:21:47 8 should discuss as a group.

10:21:54 9 Q. Why did you care about the Helio campaign?

10:21:58 10 A. Well, for one, I think we were trying to
10:22:00 11 understand what exactly they were offering. Because it
10:22:05 12 was -- their line was Don't Call Us a Phone Company, Don't
22:10 13 Call It a Phone. So we were discussing what exactly they
10:22:13 14 were. And had some discussion regarding whether there
10:22:21 15 were similarities to the line Not a Cell Phone at Treo and
10:22:29 16 Don't Call It a Phone.

10:22:39 17 Q. What was the nature of those discussions about
10:22:41 18 similarities between the lines?

10:22:47 19 A. I think that in general the feeling was that,
10:22:50 20 again, the line -- which we knew was a topic of discussion
10:22:55 21 with Palm, the line Not a Cell Phone at Treo might make
10:22:59 22 people in the marketplace think that it was indeed not a
10:23:02 23 cell phone, which was not what we were trying to
10:23:05 24 communicate. And so basically the discussion was around
23:10 25 the fact that there's a product in the marketplace that

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23:15 1 has a line Not a Cell Phone -- I'm sorry -- Don't Call It
10:23:17 2 a Phone, Don't Call Us a Phone Company. And then this
10:23:22 3 line of Not a Cell Phone at Treo and really wanting to
10:23:26 4 make sure that we distinguish the fact that Palm is a cell
10:23:31 5 phone first and more than that.

10:23:37 6 So we felt as -- basically we felt as a
10:23:41 7 responsible marketing partner, that we wanted to bring it
10:23:45 8 to Palm's attention that -- that there was a line that
10:23:51 9 said Don't Call It a Phone, Don't Call Us a Phone Company.

10:24:08 10 Q. Do you recall about when this meeting took
10:24:10 11 place?

10:24:14 12 A. The internal discussion or the meeting with
24:16 13 Palm?

10:24:16 14 Q. The internal discussion.

10:24:17 15 A. Yeah. I believe it took place on July 31.

10:24:29 16 Q. Who at AKQA attended the meeting?

10:24:37 17 A. It was myself, Kate, Bob, and Adam, Stuart, and
10:24:45 18 Brendon. And I don't recall if Courtney was in there, but
10:24:53 19 I -- actually, I don't think she was in there.

10:25:02 20 MR. COLT: Kevin, we've been going a little over
10:25:04 21 an hour. If we could take just a short break, I'd
10:25:07 22 appreciate that.

10:25:09 23 MR. TROCK: Sure. That would be fine.

10:25:11 24 MR. COLT: Great.

25:11 25 THE VIDEOGRAPHER: The time is 10:25 a.m. And

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25:14 1 we're going off the record.

10:25:23 2 (Recess taken from 10:25 a.m. to 10:48 a.m.)

10:47:52 3 THE VIDEOGRAPHER: The time is 10:48 a.m. And

10:47:56 4 we're going back on the record.

10:47:58 5 BY MR. TROCK:

10:48:49 6 Q. Okay. Just to clarify something.

10:48:53 7 A. Okay.

10:48:53 8 Q. As of the time of the meeting on July 31 that we

10:48:57 9 were talking about in which the Helio campaign was

10:49:01 10 discussed internally at AKQA, had Palm decided by that

10:49:11 11 point to go with the theme line Not Just a Cell Phone at

10:49:20 12 Treo?

49:21 13 MR. COLT: Objection. It lacks foundation. And

10:49:24 14 calls for speculation.

10:49:25 15 You can answer if you know.

10:49:29 16 THE WITNESS: By that time they had asked us to

10:49:32 17 explore alternatives and had suggested "just," but we had

10:49:36 18 not agreed upon the final line yet.

10:49:38 19 BY MR. TROCK:

10:49:43 20 Q. With respect to this meeting on July 31, do you

10:49:47 21 recall seeing any written documentation about what was

10:49:50 22 discussed at that meeting?

10:49:56 23 A. Is there -- sorry. Can you repeat your

10:49:57 24 question.

49:58 25 Q. Do you recall seeing any written documentation

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49:59 1 about what was discussed at that meeting, whether it be in
10:50:02 2 e-mail form, notes, or anything of that nature?

10:50:07 3 MR. COLT: Objection. It's vague as to time.

10:50:10 4 THE WITNESS: Our internal?

10:50:10 5 BY MR. TROCK:

10:50:10 6 Q. Yes.

10:50:11 7 A. There was no documentation. It was just
10:50:13 8 conversation.

10:50:13 9 Q. Do you recall anybody taking any notes at the
10:50:15 10 meeting?

10:50:16 11 A. No.

10:50:16 12 Q. So you don't recall seeing any e-mails about the
50:19 13 discussions of that meeting; is that correct?

10:50:21 14 A. During the 7/31 meeting, no.

10:50:25 15 Q. Not during the meeting itself.

10:50:26 16 A. Oh.

10:50:26 17 Q. At any time do you recall seeing any written
10:50:29 18 communications regarding the discussions that occurred
10:50:32 19 during the meeting?

10:50:33 20 A. I'm sorry. I misunderstood your question.

10:50:35 21 Q. Okay.

10:50:38 22 A. Following that discussion and before we
10:50:40 23 presented to the client, I sent an e-mail to Bob and Adam.

10:50:45 24 Q. Do you recall the content of that e-mail?

50:48 25 A. It was -- the topic was essentially some

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50:51 1 creative revisions that we needed to make in preparation
10:50:57 2 of our creative review with the clients the following day.

10:51:11 3 Q. Now, I believe you testified that there were
10:51:13 4 some discussions in that meeting as to whether the Helio
10:51:19 5 tag line -- do you think -- I just want to clarify this
10:51:22 6 because we're using two terms of art here. We're using
10:51:28 7 the term "tag line" and we're using the term "theme line."
10:51:29 8 And I take it by the time of this July 31 meeting you had
10:51:33 9 seen the Helio television advertisement; is that correct?

10:51:37 10 A. I had not seen that TV advertisement. I
10:51:39 11 personally had seen the print advertisement.

10:51:42 12 Q. You had seen the print advertisement. So by the
51:45 13 time you attended the meeting, you were familiar with the
10:51:48 14 slogan that was being used in the advertising, though, is
10:51:51 15 that correct?

10:51:53 16 MR. COLT: Objection. It's vague as to
10:51:54 17 "slogan."

10:51:56 18 THE WITNESS: I was familiar with the fact that
10:51:57 19 they were using the line Don't Call Us a Phone Company,
10:51:58 20 Don't Call It a Phone.

10:52:02 21 BY MR. TROCK:

10:52:02 22 Q. Are you comfortable if I use the word "line" as
10:52:04 23 opposed to "slogan" or "tag line" or "theme line"?

10:52:07 24 A. That's fine.

52:08 25 Q. Because I just want to clarify the terms of art

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52:11 1 we're using here.

10:52:12 2 A. Well, and I can't speak to what Helio considered
10:52:14 3 using that line in part because in that advertisement
10:52:17 4 specifically they had called out Don't Call Us a Phone
10:52:18 5 Company in the legal. And so I don't know if that meant
10:52:24 6 to them that this was their tag line.

10:52:27 7 Q. So we can use the word line and we'll both know
10:52:30 8 what we're discussing here? Is that fair enough?

10:52:32 9 A. Yes.

10:52:34 10 Q. Now, I believe you had mentioned that there was
10:52:38 11 some discussion at that July 31 meeting about whether or
10:52:41 12 not there were similarities between the line in the Helio
52:45 13 advertisements and the line being proposed for the Palm
10:52:50 14 campaign; is that correct?

10:52:52 15 MR. COLT: Objection. Misstates prior
10:52:53 16 testimony.

10:52:55 17 THE WITNESS: The similarity that we saw was
10:52:57 18 with the line Not a Cell Phone at Treo and Don't Call It a
10:53:03 19 Phone -- Don't Call Us a Phone Company, Don't Call It a
10:53:11 20 Phone.

10:53:13 21 BY MR. TROCK:

10:53:14 22 Q. And what were the similarities that were being
10:53:15 23 discussed?

10:53:18 24 A. Essentially the fact that Don't Call It a Phone
53:22 25 implies that it's not a phone at all. And Palm's issues

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53:28 1 that they had raised with Not Just -- Not a Cell Phone at
10:53:31 2 Treo was that they felt it might mislead consumers to
10:53:35 3 thank it wasn't a cell phone.

10:53:42 4 Q. So is it fair to say that to your mind these two
10:53:46 5 lines were similar to each other?

10:53:48 6 MR. COLT: Objection. Misstates prior
10:53:49 7 testimony.

10:53:51 8 THE WITNESS: I think that there were
10:53:52 9 similarities between Not a Cell Phone at Treo and Don't
10:53:57 10 Call It a Phone.

10:54:21 11 BY MR. TROCK:

10:54:33 12 Q. At AKQA was there any concern that you became
54:40 13 aware of about Palm using the line Not a Cell Phone at
10:54:49 14 Treo?

10:54:53 15 A. I'm sorry. Can you restate your question.

10:54:56 16 Q. Well, is it fair to say that there was
10:55:05 17 sufficient -- you had sufficient concern about Helio's
10:55:12 18 advertisements and the line it was using to call this
10:55:16 19 meeting internally at AKQA to discuss it? Is that a fair
10:55:21 20 statement?

10:55:22 21 A. No.

10:55:22 22 MR. COLT: Objection. Misstates prior
10:55:23 23 testimony.

10:55:24 24 THE WITNESS: I wouldn't use the word "concern,"
55:26 25 no.

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55:26 1 BY MR. TROCK:

10:55:27 2 Q. What word would you use?

10:55:29 3 A. The first purpose was really to make everyone
10:55:32 4 aware of it because there was a lack of awareness about
10:55:35 5 it. And then secondly, to discuss if we felt that there
10:55:39 6 were any similarities. And, again, knowing that this
10:55:44 7 line -- our theme line was under so much debate prior to
10:55:49 8 us having any knowledge and Palm having asked us to
10:55:55 9 explore other alternatives, we thought that it was
10:55:58 10 something that we should discuss.

10:55:59 11 Q. Was there any concern amongst the team members
10:56:03 12 at AKQA about Palm going forward with using this line?

56:10 13 MR. COLT: Objection. It's vague as to "line."

10:56:14 14 BY MR. TROCK:

10:56:14 15 Q. You understand what I mean by the word "line"?

10:56:16 16 A. Can you clarify which line you're referring to,
10:56:18 17 though.

10:56:19 18 Q. Well, Palm's line, the one that you were
10:56:20 19 proposing at the time, Not a Cell Phone at Treo, in light
10:56:24 20 of Helio's advertisements and the use of its line, was
10:56:29 21 there any concern at AKQA about Palm going forward with
10:56:32 22 the use of the line Not a Cell Phone at Treo?

10:56:37 23 A. We had already established by that point that
10:56:40 24 Palm was uncomfortable with the line Not a Cell Phone at
56:41 25 Treo and had been exploring alternatives previously.

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56:51 1 Q. Okay. But did the knowledge of Helio's campaign
10:56:58 2 and Helio's slogan cause anyone at AKQA any concern about
10:57:06 3 Palm going forward and using this line?

10:57:11 4 A. No.

10:57:21 5 Q. Do you recall anyone at Palm expressing a
10:57:22 6 concern about using this line Not a Cell Phone at Treo in
10:57:26 7 light of Helio's use of its line Don't Call It a Phone?

10:57:31 8 A. I'm sorry. I think the -- the last question
10:57:34 9 that you asked me, my response was to the line -- was
10:57:37 10 there any concern with moving forward Not Just a Cell
10:57:40 11 Phone at Treo. And my response was no. So I think maybe
10:57:43 12 we need to clarify when you say line for Palm if you're
57:46 13 considering the inclusion of "just" or not.

10:57:51 14 Q. Well, let's start with the line Not a Cell Phone
10:57:52 15 at Treo.

10:57:54 16 A. Okay.

10:57:57 17 Q. Was there any concern at AKQA about Palm using
10:58:03 18 that line in light of Helio's use of its line Don't Call
10:58:06 19 It a Phone?

10:58:08 20 A. So by that time we knew that we would not be
10:58:11 21 proceeding with Not a Cell Phone at Treo. Because we
10:58:18 22 needed to come up with something that more clearly
10:58:18 23 articulated that this was a cell phone first; a next
10:58:24 24 generation cell phone, if you will.

58:33 25 Q. I believe you testified that a couple days later

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58:36 1 you had a meeting with Palm; is that correct?

10:58:37 2 A. Correct.

10:58:37 3 Q. Was that a face-to-face meeting?

10:58:40 4 A. Yes.

10:58:40 5 Q. And Palm had asked you at that point to explore
10:58:43 6 alternatives to the line Not a Cell Phone at Treo; is that
10:58:47 7 right?

10:58:51 8 A. They had asked us to do that previously, and we
10:58:52 9 had discussions regarding incorporating "just." And we
10:58:57 10 also had a couple of other treatments.

10:58:59 11 Q. What were the other treatments?

10:59:03 12 A. We had a treatment that was -- just said Treo by
59:09 13 Palm.

10:59:11 14 Q. Any others?

10:59:12 15 A. No.

10:59:13 16 Q. So you were proposing two different treatments
10:59:16 17 to Palm at that time, Not Just a Cell Phone at Treo and
10:59:20 18 Treo by Palm; is that right?

10:59:21 19 A. Yes. And also movement of the Palm logo.

10:59:38 20 Q. What was Palm's response to the proposal Treo by
10:59:41 21 Palm?

10:59:42 22 MR. COLT: Objection. Vague as to time.

10:59:48 23 THE WITNESS: They didn't want to move forward
10:59:49 24 with it because they felt that it didn't help communicate
59:52 25 to consumers that the Treo was a cell phone first.

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59:56 1 BY MR. TROCK:

11:00:02 2 Q. When did they express that to you?

11:00:08 3 A. I don't remember when that meeting was, but I
11:00:10 4 want to say it was in mid- to late June.

11:00:13 5 Q. Well, the internal meeting you had you believe
11:00:17 6 was July 31.

11:00:19 7 A. Well, we had presented -- as I mentioned, we --
11:00:21 8 the issue had been raised about exploring alternative
11:00:25 9 lines for Not a Cell Phone at Treo in early June. So
11:00:31 10 then -- and in subsequent creative review we came back
11:00:36 11 with various treatments of Not a Cell Phone at Treo -- Not
11:00:40 12 Just a Cell Phone at Treo and Treo by Palm, all of which
00:44 13 occurred well before the 7/31 meeting.

11:00:46 14 Q. So sometime -- had you proposed those different
11:00:48 15 line treatments sometime in June; is that right?

11:00:51 16 A. Yeah. I don't remember exactly when. I'm
11:00:53 17 sorry.

11:01:10 18 Q. This meeting that you had with Palm, that was a
11:01:11 19 face-to-face meeting?

11:01:13 20 A. Yes.

11:01:13 21 Q. Where did that occur?

11:01:14 22 A. At Palm.

11:01:17 23 Q. That was sometime in August; is that right?

11:01:19 24 A. August 2, I believe.

01:31 25 Q. Did you discuss with Palm at that meeting the

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01:35 1 Helio campaign?

11:01:38 2 A. Yes, we did.

11:01:40 3 Q. Who attended the meeting for Palm?

11:01:44 4 A. It was Page Murray, Rose Rodd, and Scott

11:01:48 5 Hancock.

11:02:16 6 Q. Did any of those three say anything to -- say

11:02:21 7 anything during the meeting about the Helio campaign?

11:02:28 8 A. Yes.

11:02:28 9 Q. What did they say?

11:02:29 10 A. In response to us showing them a print ad.

11:02:33 11 Q. What did they say?

11:02:39 12 A. I don't remember if Rose said anything. But we

02:43 13 shared the print ad with them. I believe Scott mentioned

11:02:47 14 he had seen a TV spot. And then Page Murray said, "Thank

11:02:58 15 you for bringing this to our attention, but we feel that

11:03:03 16 Not Just a Cell Phone at Treo means something different."

11:03:19 17 Q. Do you recall any other discussions by the

11:03:20 18 people at Palm about the Helio campaign or line?

11:03:27 19 A. No. Honestly it was a less-than-five-minute

11:03:32 20 conversation out of our roughly 90-minute creative review.

11:03:37 21 Q. Did you leave a copy of the print ad with them?

11:03:39 22 A. I think we brought it back with us. I don't

11:03:42 23 recall.

11:03:50 24 Q. Do you recall whether or not Rose said anything

03:53 25 about the Helio campaign or line during the meeting?

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03:57 1 MR. COLT: Objection. Asked and answered.

11:04:00 2 THE WITNESS: I don't believe she did. But I --
11:04:02 3 again, I can't remember.

11:04:03 4 BY MR. TROCK:

11:04:05 5 Q. Who attended the meeting from AKQA?

11:04:10 6 A. It was myself, Stuart, Bob, Adam, and a woman
11:04:22 7 named Krista Knable, K-N-A-B-L-E, who reports to me.

11:04:33 8 Q. What is her position?

11:04:34 9 A. She's account supervisor.

11:04:44 10 Q. Did you make a PowerPoint presentation to Palm
11:04:47 11 during this meeting?

11:04:48 12 A. Yes, we did. It may have been a PDF, but
04:56 13 basically a video presentation.

11:05:27 14 Q. So just to clarify, then, after this August 2
11:05:30 15 meeting with Palm, was it your understanding that Palm
11:05:39 16 wanted you to pursue use of the line Not Just a Cell Phone
11:05:42 17 at Treo?

11:05:46 18 A. It was our understanding, actually, a little
11:05:49 19 before that that they wanted us to use "just" in the line.

11:05:57 20 Q. But during that meeting did you discuss the
11:06:00 21 other alternatives?

11:06:01 22 A. No.

11:06:02 23 Q. So you just discussed Not Just a Cell Phone at
11:06:04 24 Treo. That was the only line you discussed during that
06:08 25 meeting; is that right?

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20:20 1 it's only through -- I don't know if it has its own e-mail
11:20:24 2 client or it's through accessing Yahoo and Google via the
11:20:28 3 Web -- accessing the e-mail account via the Web.

11:20:35 4 BY MR. TROCK:

11:20:35 5 Q. Do you know whether or not the Helio devices
11:20:37 6 have a camera?

11:20:38 7 MR. COLT: Same objections.

11:20:43 8 THE WITNESS: I don't, actually.

11:20:43 9 BY MR. TROCK:

11:20:44 10 Q. Do you know whether or not the Helio devices
11:20:46 11 have video capability?

11:20:47 12 MR. COLT: Same objections.

20:48 13 THE WITNESS: I don't.

11:20:49 14 BY MR. TROCK:

11:20:50 15 Q. Do you know whether or not the Helio devices
11:20:51 16 have MP3 or music capability?

11:20:56 17 MR. COLT: Same objections.

11:20:57 18 THE WITNESS: I believe yes. Yes, I believe so.

11:21:01 19 BY MR. TROCK:

11:21:02 20 Q. Do you know whether or not the Helio devices
11:21:03 21 have Web access capability?

11:21:05 22 MR. COLT: Same objections.

11:21:06 23 THE WITNESS: Yes.

11:21:06 24 BY MR. TROCK:

21:09 25 Q. By yes you mean it's your understanding that

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21:11 1 they do have that capability; is that correct?

11:21:14 2 A. It's my understanding that they have Web
11:21:16 3 capability.

11:21:26 4 Q. Did you have a belief as to whether or not Helio
11:21:29 5 was a competitor of Palm?

11:21:31 6 MR. COLT: Same objections.

11:21:33 7 THE WITNESS: We do not consider Helio to be a
11:21:35 8 competitor.

11:21:36 9 BY MR. TROCK:

11:21:37 10 Q. If you don't consider Helio to be a competitor,
11:21:39 11 then why would you bring its advertising campaign to
11:21:49 12 Palm's attention?

21:49 13 A. We brought it to their attention because there
11:21:49 14 was a product in the marketplace that seemed to be taking
11:21:52 15 an approach to say that it was not a phone. And we knew
11:21:59 16 that that was of great consideration to Palm, to really
11:22:02 17 distinguish themselves in the marketplace. And so we felt
11:22:05 18 that it was appropriate to bring it to their attention.

11:22:13 19 Q. Did you have a belief as to whether or not Palm
11:22:15 20 needed to distinguish itself from Helio in the
11:22:16 21 marketplace?

11:22:19 22 A. No, I did not think that they needed to
11:22:22 23 distinguish themselves from Helio.

11:22:23 24 Q. Did you have a belief as to whether or not Palm
22:27 25 needed to distinguish itself from Helio's advertising line

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22:36 1 in the marketplace?

11:22:38 2 A. No, I did not.

11:22:55 3 Q. During your work on the Palm advertising

11:22:57 4 campaign, did you ever bring any competitor's advertising

11:23:05 5 line to their attention?

11:23:08 6 A. During this specific campaign?

11:23:10 7 Q. Yes.

11:23:10 8 A. We brought the Motorola Q launch campaign to

11:23:17 9 their attention.

11:23:23 10 Q. Why did you do that?

11:23:24 11 A. In the case of the Motorola Q campaign, we

11:23:28 12 actually did consider the Q to be a competitor and were

23:31 13 interested in seeing and sharing how they were positioning

11:23:36 14 their products.

11:23:40 15 Q. When did you bring that Motorola Q campaign to

11:23:42 16 Palm's attention?

11:23:48 17 A. I believe that campaign broke sometime in April.

11:23:51 18 I don't recall exactly, but I would guess sometime around

11:23:57 19 April.

11:23:57 20 Q. Of '06?

11:23:59 21 A. Yes.

11:24:03 22 Q. What kind of a product is -- was the focus of

11:24:07 23 Motorola's Q campaign?

11:24:09 24 A. A smartphone.

24:21 25 Q. Other than the Motorola Q campaign, did you ever

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24:26 1 bring any other competitor's advertising campaigns to
11:24:31 2 Palm's attention?

11:24:32 3 A. We did discuss a Microsoft campaign, but
11:24:38 4 actually I believe that campaign was promoting a Treo
11:24:43 5 product. But AKQA was not responsible for that
11:24:45 6 advertising campaign.

11:24:52 7 Q. All right. Now I want to expand those questions
11:24:54 8 because I used the word "competitor."

11:24:56 9 During the time period that you worked on Palm's
11:24:59 10 advertising campaign that we've been discussing here, have
11:25:01 11 you ever brought anyone else's advertising campaign to
11:25:05 12 their attention? Other than the two we've already
25:07 13 discussed: Helio and Motorola.

11:25:11 14 A. Have we brought any other ad campaign?

11:25:13 15 Q. Yes.

11:25:13 16 A. No.

11:25:15 17 Q. So just to make sure the record is clear, during
11:25:21 18 the entire time period that you worked on Palm's
11:25:25 19 advertising campaign, you have only brought two ad
11:25:28 20 campaigns to their attention, one for the Motorola Q
11:25:32 21 campaign and one for the Helio campaign; is that right?

11:25:34 22 A. Yes.

11:26:09 23 Q. Now, I may have asked you this question and I
11:26:11 24 just want to make sure I cover it. So I'm not trying to
26:14 25 ask it a second time.

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26:17 1 After the August 2 meeting that you had with
11:26:20 2 Palm in which you discussed the Helio campaign, were you
11:26:25 3 aware of any other discussions at AKQA about Helio other
11:26:31 4 than these news articles that may have been shared?

11:26:38 5 A. No. I believe after we had that meeting with
11:26:41 6 Palm the only discussion -- or, actually, I don't even
11:26:44 7 believe that there was necessarily a verbal discussion,
11:26:47 8 only communication was through sharing of industry
11:26:51 9 articles or mentions.

11:26:56 10 Q. So after August 2, nobody at AKQA ever brought
11:27:00 11 to your attention any other Helio advertisements; is that
11:27:05 12 right?

27:08 13 A. Not that I can recall.

11:27:12 14 Q. And you don't recall any other discussions with
11:27:14 15 anyone at AKQA about any Helio advertisements after
11:27:18 16 August 2; is that right?

11:27:20 17 A. Not that I can recall.

11:27:54 18 Q. Now, I believe you mentioned earlier that you
11:27:56 19 had gone through some of your materials to see whether you
11:28:00 20 had documents that were relevant to this deposition; is
11:28:06 21 that correct?

11:28:07 22 A. Yes.

11:28:10 23 Q. Could you please tell me where you looked for
11:28:15 24 these materials.

28:16 25 MR. COLT: Objection to the extent this calls

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20:47 1 Q. Did you use any advertising copy with any of
13:20:59 2 these focus groups?
13:21:01 3 A. No. We used what are called adcepts.
13:21:07 4 Q. Explain what those are.
13:21:11 5 A. Adcepts are essentially meant to be
13:21:16 6 communications of an idea basically through picture and/or
13:21:20 7 copy to try and get across a specific positioning
13:21:24 8 statement without the consumer -- or the focus group
13:21:30 9 really understanding the underlying theme of those
13:21:33 10 messages. So you wouldn't necessarily use that as a
13:21:36 11 headline in an ad.
13:22:55 12 MR. TROCK: Let's go off the record for just a
22:57 13 second. I'll be right back.
13:23:00 14 THE VIDEOGRAPHER: The time is 1:23 p.m. We're
13:23:02 15 going off the record.
13:27:32 16 (Recess taken from 1:23 p.m. to 1:28 p.m.)
13:27:58 17 (Plaintiff's Exhibit 2 marked
13:27:58 18 for identification.)
13:28:05 19 THE VIDEOGRAPHER: The time is 1:28 p.m. And
13:28:09 20 we're going back on the record.
13:28:10 21 BY MR. TROCK:
13:28:10 22 Q. The court reporter has marked and handed to you
13:28:14 23 Exhibit 2, which are a series of documents bearing Bates
13:28:19 24 numbers AKQA2661 to 2674. Could you take a look at that
28:29 25 and tell me whether or not you recognize it.

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28:33 1 A. This page is unrecognizable. I don't know what
13:28:35 2 that is.

13:28:56 3 Yes, I recognize this document.

13:28:58 4 Q. Can you explain to me what this is we're looking
13:29:01 5 at?

13:29:01 6 A. Yes. This is essentially one of the creative
13:29:09 7 campaign directions that we had presented to Palm in
13:29:13 8 January of 2005.

13:29:48 9 Q. Were there other campaign directions presented
13:29:50 10 to Palm at this time?

13:29:51 11 A. Yes, there were.

13:29:52 12 Q. What were those?

29:56 13 A. The only one I remember offhand is the one we
13:29:58 14 ended up producing, which was a campaign with the line
13:30:02 15 It's Time for Treo.

13:30:14 16 Q. So what do you mean that "we ended up
13:30:16 17 producing"? What does that mean?

13:30:18 18 A. It means that we -- that the client selected
13:30:20 19 that campaign direction, we produced it, and then ran the
13:30:24 20 campaign to the public.

13:30:26 21 Q. When was that run?

13:30:32 22 A. That ran in the fall of 2005. And, actually,
13:30:37 23 some into early 2006.

13:30:45 24 Q. So this campaign direction uses the line Not a
30:51 25 Cell Phone at Treo. Do you see that?

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30:54 1 A. Yes.

13:30:54 2 Q. So in January of 2005, this was not selected by

13:30:59 3 Palm to be used; is that correct?

13:31:01 4 MR. COLT: Objection. Misstates prior

13:31:02 5 testimony.

13:31:05 6 THE WITNESS: That's correct.

13:31:05 7 BY MR. TROCK:

13:31:16 8 Q. So what did you do -- what did AKQA do with this

13:31:20 9 campaign direction after Palm decided not to use it in

13:31:25 10 January 2005?

13:31:30 11 MR. COLT: Objection. It's vague and ambiguous.

13:31:30 12 You may answer.

31:30 13 THE WITNESS: I don't know what you mean what

13:31:30 14 did we do with it?

13:31:33 15 BY MR. TROCK:

13:31:34 16 Q. Did you do anything with it?

13:31:36 17 MR. COLT: Same objection.

13:31:37 18 THE WITNESS: We kept the files and moved on to

13:31:40 19 the next campaign.

13:31:44 20 BY MR. TROCK:

13:31:44 21 Q. So the files just sat there, correct?

13:31:47 22 A. Correct.

13:31:47 23 Q. Was this campaign ever reactivated by Palm?

13:31:52 24 A. You mean for the campaign in 2005?

31:55 25 Q. At any time.

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50:52 1 that list, BlackBerry RIM.

13:50:54 2 Q. I'm sorry. What was the -- Blackjack? RIM. I
13:50:57 3 see.

13:50:58 4 So does Rim provide smartphones?

13:51:01 5 MR. COLT: Same objections.

13:51:02 6 THE WITNESS: Yes.

13:51:02 7 BY MR. TROCK:

13:51:03 8 Q. Do you know which smartphones RIM provides?

13:51:06 9 A. BlackBerry.

13:51:20 10 Q. Does a smartphone have to be a QWERTY keyboard
13:51:25 11 to be considered a smartphone?

13:51:27 12 MR. COLT: Same objections.

51:28 13 THE WITNESS: There's not a real clear
13:51:30 14 definition. We typically look at models that do. But
13:51:33 15 there are some manufacturers who are now creating products
13:51:36 16 that don't have QWERTY keyboard.

13:51:38 17 BY MR. TROCK:

13:51:38 18 Q. But would still be considered a smartphone; is
13:51:42 19 that right?

13:51:42 20 A. Yes.

13:51:42 21 MR. COLT: Same objections.

13:51:43 22 BY MR. TROCK:

13:51:43 23 Q. Do you know which manufacturers those are?

13:51:45 24 MR. COLT: Same objections.

51:48 25 THE WITNESS: BlackBerry is a good example where

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51:49 1 the earlier devices have QWERTY keyboards. And then they
13:51:53 2 went to the "SureType" or whatever it's called.

13:51:56 3 BY MR. TROCK:

13:51:59 4 Q. What does that mean, SureType?

13:52:01 5 A. I don't know because I'm not a BlackBerry user.

13:52:03 6 But I think it's that they have -- they have fewer keys

13:52:08 7 where the letters read -- I think there's two letters per

13:52:12 8 key or something along those lines.

13:52:22 9 Q. Any other manufacturers of smartphones without

13:52:24 10 QWERTY keyboards that you can think of?

13:52:27 11 MR. COLT: Same objections.

13:52:31 12 THE WITNESS: The Nokia Communicator has an

52:34 13 open-up keyboard.

13:52:36 14 BY MR. TROCK:

13:52:42 15 Q. Any others?

13:52:43 16 MR. COLT: Same objections.

13:52:44 17 THE WITNESS: No.

13:52:45 18 BY MR. TROCK:

13:52:50 19 Q. The next page, 38, there's a statement,

13:52:56 20 "Redefine the category." And underneath it says,

13:52:58 21 "Smartphones are not just for career-obsessed workaholics

13:53:01 22 anymore." If smartphones are not just for career-obsessed

13:53:06 23 workaholics, who are they for now?

13:53:10 24 A. Smartphones are for people who want to have a

53:14 25 better balance in their work and personal life and also