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Ex. 15

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

PETROLIAM NASIONAL BERHAD,

Plaintiff,

-vs-

Case No. 09-CV-5939 PJH

GODADDY.COM, INC.,

Defendants.

/

DEPOSITION OF YEOH SUAT GAIK

PAGES 1 to 142

THURSDAY, SEPTEMBER 15, 2011

Reported by: LOUISE MARIE SOUSOURES, CSR NO. 3575

Certified LiveNote Reporter

A P P E A R A N C E S

1
2
3
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THE VIDEOGRAPHER:

GARY BREWER, CYRUS PRODUCTIONS

I N D E X

1
2
3
4
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7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXAMINATION BY:	PAGE
BY MR. LANSKY	8

EXHIBITS:	PAGE
Exhibit 1 Notice of deposition of plaintiff Petroliam Nasional Berhad pursuant to Federal Rule of Civil Procedure 30(b)(6)	11
Exhibit 2 First amended complaint, jury trial demanded	24
Exhibit 3 Document entitled "WIPO Arbitration and Mediation Center, administrative panel decision," dated 3-1-01	34
Exhibit 4 Document entitled WIPO Arbitration and Mediation Center, administrative panel decision," dated 5-16-01	36

I N D E X (CONTINUED)

EXHIBIT		PAGE
Exhibit 5	Document entitled "WIPO Arbitration and Mediation Center, administrative panel decision," dated 9-18-02	37
Exhibit 6	Document production No. PET GD 000162	44
Exhibit 7	Document production No. PET GD 001701	45
Exhibit 8	Document production No. PET GD 001878	46
Exhibit 9	Document production Nos. PET GD 000943 to 985	58
Exhibit 10	Document production Nos. PET GD 000640 to 642	72
Exhibit 11	Document production Nos. PET GD 000645 to 647	72
Exhibit 12	Document production Nos. PET GD 000650 to 652	73
Exhibit 13	Document production Nos. PET GD 000621 to 622	73
Exhibit 14	Document production Nos. PET GD 001945 to 2015	105

I N D E X (CONTINUED)

EXHIBIT		PAGE
Exhibit 15	Document production No. PET GD 002318	106
Exhibit 16	Document production No. PET GD 002319	109
Exhibit 17	Document production Nos. PET GD 001522 to 526	109
Exhibit 18	Document production Nos. PET GD 001527 to 564	117
Exhibit 19	Document production Nos. PET GD 001579 to 584	117
Exhibit 20	Document production Nos. PET GD 002320 to 335	117
Exhibit 21	Document production Nos. PET GD 001565 to 569	120
Exhibit 22	Document production No. PET GD 001570	121
Exhibit 23	Document production No. PET GD 001571	121
Exhibit 24	Document production No. PET GD 001572	121
Exhibit 25	Document production No. PET GD 001573	121

I N D E X (CONTINUED)

1	EXHIBIT	PAGE
2		
3	Exhibit 26 Document production Nos.	121
4	PET GD 001574 to 578	
5	Exhibit 27 Document production Nos.	125
6	PET GD 001585 to 594	
7	Exhibit 28 Document production Nos.	125
8	PET GD 001595 to 611	
9	Exhibit 29 Document production Nos.	129
10	PET GD 002016 to 2024	
11	Exhibit 30 Document production Nos.	133
12	PET GD 002025 to 2028	
13	Exhibit 31 Document production Nos.	136
14	PET GD 002344 to 357	
15	Exhibit 32 Document production Nos.	136
16	PET GD 002358 to 2463	
17	Exhibit 33 Document production Nos.	136
18	PET GD 002464 to 465	
19		
20		
21		
22		
23		
24		
25		

1 BE IT REMEMBERED that, pursuant to Notice
2 of Taking Deposition, commencing at the hour of 10:20
3 a.m. thereof, at 601 California Avenue, Palo Alto,
4 California, before me, LOUISE MARIE SOUSOURES, a
5 Certified Shorthand Reporter, the following
6 proceedings were had:

7 PROCEEDINGS

8 THE VIDEOGRAPHER: Good morning. We are 10:17:59
9 going on the record. 10:20:09

10 Here marks the beginning of videotape number 10:20:10
11 1, volume 1 in the deposition of Yeoh Suat Gaik, in 10:20:13
12 the matter of Petronas versus GoDaddy.com in the 10:20:17
13 United States District Court, Northern District of 10:20:23
14 Oakland, case 09-CV-5939 PJH. 10:20:29

15 Today's date is September 15th, 2011 and the 10:20:32
16 time is 10:20 a.m. 10:20:38

17 My name is Gary Brewer of Cyrus Productions, 10:20:41
18 2827 55th Avenue, Oakland, California, telephone 10:20:45
19 number 510-326-9332. 10:20:51

20 The court reporter is Louise Sousoures of 10:20:55
21 Grossman & Cotter. 10:20:58

22 Would counsel please identify themselves and 10:20:58
23 state whom they represent. 10:21:02

24 MR. LANSKY: David Lansky of Wilson Sonsini 10:21:03
25 Goodrich & Rosati on behalf of GoDaddy, the defendant 10:21:08

1 in this case. 10:21:14

2 MR. CLARK: My name is Perry Clark, I 10:21:14

3 represent the plaintiff in this case, Petronas. 10:21:16

4 THE VIDEOGRAPHER: If there are no 10:21:18

5 stipulations, the court reporter may administer the

6 oath. 10:21:31

7 --oOo--

8 YEOH SUAT GAIK,

9 having been first duly sworn by the

10 Certified Shorthand Reporter to tell

11 the truth, the whole truth, and nothing

12 but the truth, testified as follows:

13 EXAMINATION BY MR. LANSKY:

14 Q. Good morning. As I just said, my name is 10:21:32

15 David Lansky and I represent defendant GoDaddy.com or 10:21:35

16 GoDaddy in this litigation. 10:21:41

17 I'll explain how we're going to proceed 10:21:42

18 today. 10:21:44

19 I'm going to ask you a number of questions 10:21:45

20 regarding the litigation between GoDaddy and 10:21:46

21 Petroliam Nasional Berhad or Petronas. 10:21:50

22 Is it okay if I call them Petronas for the 10:21:51

23 rest of the day? 10:21:54

24 A. (Witness moves head up and down.) 10:21:55

25 Q. Great. If you don't hear or understand any 10:21:56

1 part of my questions, please just ask me to rephrase 10:22:00
2 or repeat it. 10:22:02

3 Do you understand? 10:22:03

4 A. Yes. 10:22:03

5 Q. Great. And if you answer a question, I'm 10:22:04
6 going to assume that you've heard it and that you 10:22:06
7 understand it. 10:22:08

8 We have a court reporter taking down 10:22:09
9 everything you say so I'm going to need audible 10:22:13
10 responses from you today. 10:22:15

11 So when you nod your head, that doesn't 10:22:16
12 really pick up on the written record. 10:22:18

13 So every time I ask you, please try to 10:22:20
14 respond audibly, okay? 10:22:23

15 A. Yes. 10:22:24

16 Q. Great. Also, if you say uh-huh or huh-uh, 10:22:25
17 that doesn't really pick up well on the written 10:22:27
18 transcript. Please try to say yes or no, whatever is 10:22:31
19 appropriate. 10:22:34

20 Also, I want to remind you you're under oath 10:22:34
21 today, testifying under penalty of perjury and it's 10:22:37
22 just the same as if you were sworn in in a courtroom. 10:22:41

23 Do you understand that? 10:22:45

24 A. Yes, I understand. 10:22:45

25 Q. From time to time, we're going to want to 10:22:46

1 take breaks. 10:22:49

2 If you need a break, let me know. As long 10:22:49

3 as there's no question pending, we can take a break. 10:22:52

4 Also, your counsel might make objections 10:22:56

5 from time to time. You still have to answer unless 10:22:59

6 he instructs you not to do that. 10:23:01

7 Do you understand? 10:23:03

8 A. Yes, I understand. 10:23:04

9 Q. Great. Is there anything that would prevent 10:23:05

10 you from testifying truthfully and accurately today? 10:23:09

11 A. There is nothing. 10:23:11

12 Q. Great. Can you state your full name and 10:23:13

13 address for the record, please? 10:23:15

14 A. My name is Yeoh Suat Gaik, my address is 10:23:16

15 B2-8 Menara Mutiara Taman, TAR, T-A-R, 68000 Ampang, 10:23:22

16 Selangor, S-E-L-A-N-G-O-R, Malaysia. 10:23:41

17 MR. CLARK: Just to be clear, I do represent 10:23:47

18 both the witness and Petronas and any inquiries to 10:23:49

19 the witness would go through me as her attorney. 10:23:54

20 So that's a personal address. She also has 10:23:57

21 a corporate address. 10:24:00

22 So I just -- also, I would like to designate 10:24:01

23 that personal address as confidential on the record. 10:24:04

24 We can work out the transcript later. 10:24:08

25 MR. LANSKY: No problem. 10:24:11

1 AFTERNOON PROCEEDINGS 13:22:36

2 THE VIDEOGRAPHER: We are back on the 13:22:37

3 record, the time is 1:25 p.m. 13:25:23

4 BY MR. LANSKY:

5 Q. Could you take a look at Exhibit 13, please, 13:25:28

6 which is the U.S. registration. 13:25:30

7 A. Yes. 13:25:34

8 Q. And do you see on Exhibit 13 where it says 13:25:35

9 for and then it says chemicals and petrochemicals and 13:25:38

10 there's a list of a variety of things? 13:25:42

11 A. Yes. 13:25:45

12 Q. So I'm going to work through the various 13:25:45

13 goods and services that are listed there and ask you 13:25:48

14 some questions about it. So I just wanted to let you 13:25:51

15 know where I'm starting and hopefully, you can follow 13:25:55

16 along. 13:25:58

17 Do you see where it says "Chemicals and 13:25:59

18 petrochemicals for use in the manufacture of 13:26:02

19 pharmaceuticals, cosmetics, detergents, packaging, 13:26:05

20 wire and cable installation, cassette tapes, pipes, 13:26:10

21 toys, films, floorings, synthetic rubber, paints and 13:26:14

22 coatings, adhesives, fuel additives and lubricants, 13:26:20

23 textiles, agriculture, electrical and electronic 13:26:24

24 components, automotive parts, aerospace and aviation, 13:26:29

25 building and construction materials, plastics, foods 13:26:33

1 and diagnostic equipment." 13:26:37

2 Do you see that? 13:26:40

3 A. Yes. 13:26:41

4 Q. Okay. Has Petronas ever sold that in the 13:26:42

5 United States? 13:26:47

6 MR. CLARK: Ever sold any products that meet 13:26:48

7 that description? 13:26:50

8 MR. LANSKY: Correct. 13:26:51

9 THE WITNESS: Yes. 13:26:53

10 BY MR. LANSKY:

11 Q. What types of -- can you give some examples 13:26:55

12 of those products? 13:26:57

13 MR. CLARK: I'm sorry, object, it's vague. 13:27:07

14 You mean a description other than -- 13:27:09

15 MR. LANSKY: Let's move on, that probably 13:27:11

16 sums it up. 13:27:14

17 BY MR. LANSKY:

18 Q. Has Petronas sold those in the United States 13:27:15

19 within the last three years? 13:27:17

20 A. Last three years, yes. 13:27:18

21 Q. Do you know the volume or any estimates of 13:27:28

22 the volume of the products that fit that description 13:27:30

23 sold in the United States within the last three 13:27:33

24 years? 13:27:35

25 A. I don't know the volume. 13:27:35

1 Q. Do you know who buys those products in the 13:27:44
2 United States? 13:27:47

3 A. From the documents that we sent, I believe 13:27:50
4 there's this company called Viscosity Oil that's one 13:27:53
5 and there's a couple of others I can't remember, but 13:27:58
6 there are documents. 13:28:02

7 Q. How was Petronas' design mark used in 13:28:03
8 connection with those products? 13:28:06

9 A. The products was sold in bulk and therefore, 13:28:08
10 the documents in the sale of the -- of the products 13:28:11
11 had the Petronas logo. 13:28:21

12 Q. Was the logo on the packaging? 13:28:24

13 A. I don't know. 13:28:29

14 Q. Do you know if the logo was on the product? 13:28:30

15 MR. CLARK: Objection, vague, asked and 13:28:34
16 answered. 13:28:39

17 BY MR. LANSKY:

18 Q. You said it was on documents that 13:28:39
19 accompanied the product, correct? Do you know what 13:28:42
20 type of documents? 13:28:46

21 A. Invoices, I believe. 13:28:48

22 Q. How about on user manuals, if there were 13:28:53
23 any? 13:28:56

24 A. I don't know of any user manuals. 13:28:58

25 Q. Do you know if Petronas has produced 13:29:00

1 documents showing the use of that design mark for 13:29:03
2 products that fit within that description? 13:29:06

3 A. Yes. 13:29:08

4 Q. And is the answer yes, you know, or yes, 13:29:10
5 they have? Sorry, that wasn't a great question. 13:29:14

6 A. Yes, they have. 13:29:17

7 Q. Okay. Let's look at the next phrase, which 13:29:19
8 is "chemical and petrochemical in the nature of 13:29:22
9 methanol, ethylene, methyl tertiary butyl ether or 13:29:27
10 MTBE, vinyl chloride monomer, polyvinyl chloride, 13:29:36
11 polyethylene, polypropylene, propylene, ethyl benzene 13:29:41
12 and styrene monomer all for use in industrial, 13:29:50
13 forestry, agricultural, horticultural and scientific 13:29:54
14 applications." 13:30:00

15 Do you know if Petronas has sold that within 13:30:00
16 the United States or in the United States? 13:30:04

17 A. I don't know. 13:30:07

18 Q. You don't know, okay. 13:30:09

19 Next up is "photographic chemicals, 13:30:15
20 artificial and synthetic resins for use in the 13:30:18
21 manufacture of fibers, polymers and coatings and 13:30:21
22 molding compounds." 13:30:26

23 Has Petronas sold that in the United States? 13:30:27

24 A. I don't know. 13:30:30

25 Q. Next up, "plastic molding compounds for use 13:30:33

1 for a second. 14:50:12

2 So I'm concerned you don't have a set of 14:50:13

3 documents that we produced and Holly has them, I 14:50:16

4 know. 14:50:23

5 MR. LANSKY: What sort of documents? 14:50:28

6 MR. CLARK: Additional use in the United 14:50:29

7 States documents. 14:50:32

8 Why don't we go off the record to clean this 14:50:33

9 up. 14:50:38

10 THE VIDEOGRAPHER: Time to change tapes as 14:50:39

11 well. 14:50:41

12 Going off the record, the time is 2:50 p.m., 14:50:41

13 here marks the end of videotape number 2, volume 1 in 14:50:45

14 the deposition of Yeoh Suat Gaik. 14:50:49

15 (Recess taken.) 14:50:53

16 (Exhibits Nos. 31 to 33 were marked.) 15:36:42

17 THE VIDEOGRAPHER: Good afternoon. We're 15:36:42

18 going back on the record, the time is 3:36 p.m., here 15:36:57

19 marks the beginning of videotape number 3, volume 1 15:37:02

20 in the deposition of Yeoh Suat Gaik. 15:37:05

21 BY MR. LANSKY:

22 Q. We've handed you what is marked as 15:37:10

23 Exhibit 31, which is Bates numbered PET GD 2344 15:37:13

24 through 57. 15:37:18

25 Have you seen this type of document before? 15:37:26

1 A. Yes. 15:37:28

2 Q. What are these? 15:37:28

3 A. These are invoices for the sale of base oil 15:37:29

4 to the United States by Petronas, subsidiary of 15:37:38

5 Petronas. 15:37:42

6 Q. Were these generated by Petronas or one of 15:37:44

7 its subsidiaries? 15:37:48

8 A. Yes. 15:37:49

9 Q. Which subsidiary? 15:37:50

10 A. Petronas Marketing Netherlands BV. 15:37:52

11 Q. And what do these invoices reflect? 15:38:01

12 A. The sale of base oil to a customer in United 15:38:12

13 States. 15:38:20

14 Q. Was the Petronas mark used in connection 15:38:20

15 with these transactions? 15:38:22

16 A. Yes. 15:38:25

17 Q. How? 15:38:25

18 A. It's on the top right-hand corner of the 15:38:26

19 invoices. 15:38:34

20 Q. Is there any other way it was used in 15:38:35

21 connection with these transactions? 15:38:37

22 A. The Petronas design is on the rubber stamp 15:38:43

23 on some of these invoices. 15:38:48

24 Q. Do you know if the Petronas mark or the 15:38:50

25 Petronas and design mark was ever passed along to the 15:38:53

1 consumer of the products represented in these 15:39:00

2 invoices? 15:39:02

3 MR. CLARK: Objection, vague. 15:39:03

4 THE WITNESS: These products are sold in 15:39:03

5 bulk so I wouldn't know whether the end consumer 15:39:09

6 would have -- whether the end product would have a 15:39:12

7 mark and design. 15:39:17

8 BY MR. LANSKY:

9 Q. Okay. Let's move on to what's been marked 15:39:22

10 as Exhibit 32, which is Bates numbered PET GD 002358 15:39:24

11 through PET GD 002463. 15:39:34

12 After you've had a chance to take a look, 15:39:44

13 can you tell me what this is? 15:39:46

14 A. These are samples of bills of lading for 15:40:04

15 shipment of various products from Petronas to a 15:40:12

16 customer in the United States. 15:40:18

17 Q. Which customer or is it several customers? 15:40:20

18 A. Several customers. 15:40:25

19 Q. Is the consignee the customer? 15:40:30

20 A. That's correct. 15:40:34

21 Q. Was the Petronas mark used in connection 15:40:35

22 with any of these transactions? 15:40:40

23 MR. CLARK: Objection, vague. 15:40:44

24 THE WITNESS: The name of the company 15:40:45

25 appears here and there could be supporting documents 15:41:04

1 for each of this bill of lading like the ones that 15:41:09
2 were shown earlier. 15:41:14

3 BY MR. LANSKY:

4 Q. Do you know if the Petronas design and mark 15:41:18
5 was used in connection with these transactions? 15:41:20

6 A. In the examples given earlier, the mark was 15:41:22
7 used on the invoices. 15:41:24

8 Q. With respect to these specific transactions, 15:41:30
9 do you know if the design and mark was used? 15:41:34

10 A. There's one here on page 2377 as an example. 15:42:03

11 I believe there was an invoice for this transaction 15:42:08

12 where the Petronas mark is being used. 15:42:12

13 Q. Who generated these bills of lading? 15:42:15

14 MR. CLARK: Objection, lack of foundation. 15:42:22

15 THE WITNESS: These documents were extracted 15:42:26

16 from a service that Perry found on the Internet. 15:42:29

17 BY MR. LANSKY:

18 Q. What's that service called? 15:42:37

19 A. Zepol. 15:42:39

20 Q. Is that a service Petronas uses in 15:42:43

21 connection with the sale of goods? 15:42:45

22 MR. CLARK: Objection, vague. 15:42:52

23 THE WITNESS: I'm not sure. 15:42:53

24 BY MR. LANSKY:

25 Q. What is Zepol? 15:42:54

1 A. Not entirely sure myself. 15:42:56

2 Q. Let's look at the very next Exhibit, PET GD 15:43:08

3 2464 and 2465. 15:43:17

4 Up in the upper left corner, it says Zepol. 15:43:17

5 Is that the service you just referred to? 15:43:23

6 A. That's correct. 15:43:26

7 Q. Have you seen this document before? 15:43:26

8 A. Yes. 15:43:27

9 Q. What is it? 15:43:28

10 A. That's the glossary. 15:43:29

11 Q. Does that relate to the terms used in the 15:43:30

12 bills of lading? 15:43:34

13 A. That's correct. 15:43:35

14 MR. LANSKY: I don't have any other 15:43:40

15 questions. Thank you. 15:43:41

16 THE VIDEOGRAPHER: Is that it? 15:43:45

17 MR. CLARK: Let's just go off the record for 15:43:46

18 five minutes. I think it should be it, yeah. 15:43:48

19 THE VIDEOGRAPHER: Off the record, the time 15:43:50

20 is 3:43 p.m. 15:43:51

21 (Recess taken.) 15:43:54

22 THE VIDEOGRAPHER: We are back on the 15:47:07

23 record, the time is 3:47 p.m. 15:47:19

24 This concludes the deposition of Yeoh Suat 15:47:22

25 Gaik, the number of tapes used today is three. 15:47:26