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Ex. 17

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.,

Defendant.

AND RELATED COUNTER ACTION.

DEPOSITION OF MICHAEL PALAGE

PAGES 1 to 91

DATE: FRIDAY, NOVEMBER 4, 2011

TIME: 10:05 A.M.

LOCATION: 601 CALIFORNIA AVENUE
PALO ALTO, CA

REPORTED BY: LOUISE MARIE SOUSOURES,
Certified LiveNote Reporter
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OPPAPP003140

::: A P P E A R A N C E S :::

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FOR THE PLAINTIFF:

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1 A. I do not know.

2 Q. You have no idea?

3 A. I don't know.

4 Q. You're being paid to be here today?

5 A. Correct.

6 Q. Who is paying you to be here?

7 A. GoDaddy.

8 Q. Have you rendered any opinions in this case?

9 A. Yes.

10 Q. Okay. Please describe the conduct of GoDaddy
11 on which your opinions are based.

12 MR. SLAFSKY: I'm going to object as to form.

13 THE WITNESS: So can you rephrase the question
14 on -- as I said, I set forth a number of opinions in
15 my -- both expert report as well as my rebuttal.

16 So if we want to take this one on one, if you
17 want to point to a specific opinion and then we can
18 discuss the actions GoDaddy has taken.

19 BY MR. CLARK:

20 Q. Sure. So without looking at the documents,
21 without looking at your expert reports, you can't
22 describe the conduct of GoDaddy on which the opinions
23 you rendered are based?

24 MR. SLAFSKY: Objection, you're
25 mischaracterizing his statement.

1 THE WITNESS: So -- I --

2 BY MR. CLARK:

3 Q. You can go ahead and answer.

4 MR. SLAFSKY: You can answer subject to my
5 objection. I don't think the question is clear enough
6 and specific enough.

7 THE WITNESS: So GoDaddy is a registrar and
8 they provide domain name registration services and the
9 domain -- two of the domain names at issue here are both
10 registered -- GoDaddy is the registrar of record in
11 connection with those domain names.

12 BY MR. CLARK:

13 Q. Those domain names are petronastower.net and
14 petronastowers.net?

15 A. Correct, the singular and plural.

16 Q. When did GoDaddy first begin providing services
17 with respect to those domain names?

18 MR. SLAFSKY: Objection.

19 THE WITNESS: I would refer to the records
20 that -- the records that were provided in your experts
21 that would show when the domain name was transferred in.
22 I believe it was shown in GoDaddy's records. It was
23 originally registered with another registrar,
24 transferred into GoDaddy.

25 That specific date, I don't know off the top of

1 my head.

2 BY MR. CLARK:

3 Q. Okay. So why don't we -- well --

4 MR. CLARK: Why don't we mark as Palage
5 Exhibit 1 the document entitled "The expert report of
6 Michael Palage."

7 (Exhibit No. 1 was marked.)

8 BY MR. CLARK:

9 Q. Exhibit No. 1 is your expert report in this
10 case?

11 MR. SLAFSKY: Is that a question?

12 MR. CLARK: Yes.

13 THE WITNESS: It appears to be, yes.

14 BY MR. CLARK:

15 Q. Please point out the conduct of GoDaddy on
16 which the opinions contained in Exhibit 1 are based.

17 MR. SLAFSKY: Object to the form.

18 If you understand the question, answer his
19 question. If you don't understand the question --

20 THE WITNESS: Could you try again, perhaps?

21 BY MR. CLARK:

22 Q. Sure. So could you please turn to page 4 of
23 your expert report, Exhibit 1?

24 A. Yes.

25 Q. It says "Based on my professional expertise as

1 set forth above, it is my opinion that the services
2 provided by GoDaddy in connection with the domain names
3 petronastower.net and petronastowers.net are consistent
4 with core registrar services routinely provided by all
5 the leading registrars."

6 Do you see that?

7 A. Yes.

8 Q. What are these services provided by GoDaddy in
9 connection with the domain names petronastower and
10 petronastowers.net to which you refer in paragraph 17 of
11 page 4 of your report?

12 A. So in that opinion, I -- I did two things.

13 One, I read the -- started off with the amended
14 complaints which talked about the allegations in
15 connection with this matter.

16 I then, as far as determining whether GoDaddy's
17 actions were consistent with other ICANN-accredited
18 registrars, I then undertook an analysis in this initial
19 report of looking at the top ten ICANN-accredited
20 registrars based upon market share and looking at the
21 core bundled services they provide in connection with
22 the domain name registration services.

23 Q. Okay. So what are the services of GoDaddy to
24 which you refer in paragraph 17?

25 A. So the services that are provided -- that would

1 be domain name registration, they provide registration,
2 they provide DNS resolution and they also provide, in
3 this case for free, what is it, URL forwarding.

4 There are a number of other free services and
5 bundled services that ICANN-accredited registrars such
6 as GoDaddy provide as part of their bundled services.

7 Those, I would say, are the three out of --
8 that is not meant to be the exact enumerated list.
9 There are others.

10 Those are, I think, the three that are most
11 relevant in connection with the subject matter.

12 Q. Okay. Please describe what GoDaddy did with
13 respect to domain name registration of petronastower.net
14 and petronastowers.net.

15 A. My understanding of what would have occurred is
16 a registrant -- so again, let me qualify this. This is
17 based on my understanding of traditional domain name
18 practices and I've seen nothing inconsistent with the
19 records to prove otherwise, what would happen here would
20 be a domain name registrant would generally go to the
21 GoDaddy web interface, would request a transfer in. The
22 records in this case reveal this was not a new
23 registration but an existing registration that was
24 transferred in.

25 Under current practices, that registrant would

1 have to provide an auth code to enable the transfer of
2 that registration from the existing registrar to the new
3 registrar of record.

4 So that would be GoDaddy's first actions taken
5 in connection with these two domain names.

6 Again, off the top of my head, I do not know
7 when these transfers in were processed. It's
8 generally -- it generally does not happen
9 instantaneously.

10 There's some protocols regarding certain
11 periods of time as far as auto ACK, NAC and other
12 protocols.

13 Q. What else did GoDaddy do with respect to the
14 domain name registration of petronastower and
15 petronastowers.net?

16 MR. SLAFSKY: I'm going to object to these
17 series of questions on the ground you're asking him
18 questions about what GoDaddy did and you're not limiting
19 the questioning to his understanding based on the
20 allegations in this case.

21 He has identified in his expert report a number
22 of documents he relied on in coming to his opinion and
23 in particular, he cited your first amendment complaint
24 as the basis for his opinion.

25 So he can speak to what's in the first amended

1 Now, that limitation on liability doesn't
2 relate to any of the conduct of GoDaddy in this case,
3 does it?

4 MR. SLAFSKY: Object as to form.

5 THE WITNESS: Just a quick question here.
6 We're reading the Congressional record. Is this the
7 actual text of the implemented language of the Lanham
8 Act?

9 BY MR. CLARK:

10 Q. It is, yes.

11 A. Just to make sure.

12 MR. SLAFSKY: Stop for a second. This whole
13 paragraph is --

14 MR. CLARK: Let's assume it is.

15 THE WITNESS: I don't want to assume that
16 statement.

17 MR. SLAFSKY: Do you want me to get a copy of
18 the ACPA and we can look at it at the same time? It's
19 up to you.

20 MR. CLARK: Why don't we do that.

21 MR. SLAFSKY: Can we take a break?

22 MR. CLARK: Good idea.

23 (Recess taken 11:11 to 11:21.)

24 BY MR. CLARK:

25 Q. If you could refer to Exhibit 1, please, which

1 is your initial expert report.

2 A. Yes. What page?

3 Q. Page 4, please.

4 A. Page 4.

5 Q. And in numbered paragraph 19, it states "It is
6 my further opinion that, based upon the allegations set
7 forth in the first amended complaint and my analysis of
8 GoDaddy's conduct, there has been no bad faith exhibited
9 by GoDaddy; in particular, there has been no bad faith
10 in connection with the domain name registration and
11 resolution services that it has provided in connection
12 with the domain names petronastower.net and
13 petronastowers.net."

14 Do you see that?

15 A. Yes, I do.

16 Q. Okay. What documents did you rely on in
17 determining what GoDaddy's conduct was in rendering your
18 opinions in this case?

19 A. The first amended complaint.

20 I read the allegations.

21 Q. Anything else?

22 A. In rendering this report, that would be the --
23 that would be the principal document that I relied upon
24 as well as the broader context of the services GoDaddy
25 provided in relation to the top ten registrars.

1 Q. Okay. Focusing on exactly what GoDaddy did,
2 you reviewed the first amended complaint.

3 Were there any other documents on which you
4 rely that described GoDaddy's conduct?

5 A. In this report?

6 Q. Right, yes.

7 A. I would believe it would be the first amended
8 complaint -- referring to page 3 of my expert report,
9 the first bullet point is plaintiff's first amended
10 complaint, the second bullet point would be GoDaddy's
11 notice of motion, motion and Memorandum of Points and
12 Authorities in support of defendant's motion to dismiss
13 first amended complaint and then it would be the court
14 order denying the motion to dismiss.

15 That is where the three documents that provided
16 the factual basis for my opinion in connection with
17 GoDaddy's actions in connection with the domain names.

18 Q. Okay. You didn't review Petronas' opposition
19 to GoDaddy's motion and Memorandum of Points and
20 Authorities related to its motion to dismiss the first
21 amended complaint?

22 MR. SLAFSKY: Object as to form.

23 THE WITNESS: In forming this opinion in this
24 document, no.

25 BY MR. CLARK:

1 Q. No, you did not?

2 A. No.

3 Q. Right.

4 So you did not review that opposition in
5 forming your opinions set forth in Exhibit 1, right?

6 MR. SLAFSKY: Objection.

7 THE WITNESS: In this report, no.

8 BY MR. CLARK:

9 Q. You did not review it?

10 A. Did not review it in connection with this
11 report.

12 Q. When were you first contacted regarding this
13 case?

14 A. The week of the U.S. Junior National Tae Kwon
15 Do championships, held in end of June, beginning of
16 July.

17 Q. Who contacted you?

18 A. John Slafsky.

19 Q. And did he contact you by phone?

20 A. Yes.

21 Q. And what did he say?

22 MR. SLAFSKY: So I'm just going to object to
23 the extent the question calls for any protected
24 communications.

25 So anything other than compensation or facts or