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Ex. 5

CLARK DECL. ISO OPP. SUMMARY JUDGMENT
Case No: 09-CV-5939 PJH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

PETROLIAM NASIONAL BERHAD
(PETRONAS),

       Plaintiff,

                    CASE NO. 09-CV-5939PJH

   vs.

GODADDY.COM, INC.,

       Defendant.
_____/

::: CONFIDENTIAL :::

30(b)(6) DEPOSITION OF JESSICA HANYEN

DATE: Wednesday, October 12, 2011

TIME: 11:58 a.m.

LOCATION: BALLARD SPAHR, LLP
               1 East Washington Street, Suite 2300
               Phoenix, Arizona 85004

REPORTED BY: JANICE HARRINGTON, RPR, CRR, CLR
               AZ Certified Court Reporter No. 50844
               Registered Professional Reporter
               Certified Realtime Reporter
               Certified LiveNote Reporter

               MBreporting

               111 Deerwood Road, Suite 200

               San Ramon, California 94583

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 1                  ::: APPEARANCES :::

 2


 3    FOR PETROLIAM NASIONAL BERHAD (PETRONAS) PLAINTIFF:

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 8    FOR GODADDY.COM, INC., DEFENDANT:

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   PAGE   LINE   REQUEST
9

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1   ::: INDEX OF EXHIBITS :::

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 1   JESSICA HANYEN,

 2   being duly sworn by the Certified Shorthand Reporter

 3   to tell the truth, the whole truth, and nothing but

 4   the truth, testified as follows:

 5   EXAMINATION BY MR. CLARK

 6   Q.   Good morning. My name is Perry Clark.

 7   I'm a lawyer. I represent the plaintiff in this case

 8   Petroliam Nasional Berhad who I will refer to as

 9   Petronas.

10   MR. LANSKY: I'm David Lansky of Wilson

11   Sonsini Goodrich & Rosati appearing on behalf of the

12   deponent.

13   MR. CLARK: Defendant or --

14   MR. LANSKY: Deponent.

15   BY MR. CLARK:

16   Q.   Can I ask you what your job title is at

17   Go Daddy?

18   A.   Domain Services Supervisor.

19   Q.   Okay. And what are your job

20   responsibilities?

21   A.   I supervise the trademark claims on

22   hosted websites process and other processes such as

23   CCTLDs.

24   Q.   What are CCTLDs?

25   A.   Country code top level domains. It's

1   Q.   Okay.   So if you turn to page 8, there is

2   topic 11 is on page 8.   And that topic is, "Any

3   trademark of Petronas, including when Go Daddy first

4   became aware of the foregoing and who at Go Daddy

5   became aware of the foregoing."   Do you see that?

6   A.   Yes.

7   Q.   Okay.   So when did Go Daddy first become

8   aware of any trademark of Petronas?

9   A.   We would have become aware when we

10   received the complaint.

11   Q.   Okay.   And that's the complaint related

12   to petronastower.net?

13   A.   Yes.

14   Q.   In December 2009?

15   A.   Yes.

16   Q.   So before that, Go Daddy didn't have any

17   knowledge of any Petronas trademark?

18   A.   Not to my knowledge.

19   Q.   Okay.   Does Go Daddy have any commercial

20   interest in any Petronas trademark?

21   MR. LANSKY: Object to the form.   You can

22   go ahead and answer.

23   THE WITNESS: No.

24   BY MR. CLARK:

25   Q.   Does Go Daddy have any commercial

 1   interest in any Petronas trademark registration?

 2   MR. LANSKY: Object to the form.

 3   THE WITNESS: No.

 4   BY MR. CLARK:

 5   Q.   Now, prior to December 2009, was Go Daddy

 6   aware of any use of just the word Petronas in

 7   connection with any of Go Daddy's activities?

 8   MR. LANSKY: Object to the form.

 9   THE WITNESS: Not to my knowledge.

10   BY MR. CLARK:

11   Q.   Okay. So did Go Daddy rely in any way on

12   Petronas' enforcement or lack thereof of its

13   trademark rights in taking any business decisions?

14   MR. LANSKY: Object to the form of the

15   question.

16   THE WITNESS: Can you rephrase that?

17   BY MR. CLARK:

18   Q.   Yeah.

19   A.   Thanks.

20   Q.   So did Go Daddy base any business

21   decisions on any apparent lack of enforcement by

22   Petronas of its trademark rights?

23   MR. LANSKY: Object to the form.

24   THE WITNESS: I don't know how to answer

25   that because I'm not quite sure what you're in --

1   BY MR. CLARK:

2   Q.   Okay. So I understand that Go Daddy is

3   alleging that Petronas failed to timely enforce its

4   trademark rights. And I'm wondering if you're aware

5   of any business decision or business action taken by

6   Go Daddy based on that alleged inaction?

7   MR. LANSKY: Object to the form.

8   THE WITNESS: Not that I'm aware of.

9   BY MR. CLARK:

10   Q.   Okay. So when Go Daddy became aware of

11 Petronas' trademark, what did it do?

12   A.   In that case when we evaluated it,

13 because the website content wasn't hosted with us

14 from a trademark claims perspective, we didn't take

15 any action. What we did was advise that it wasn't

16 hosted and also advise that it would be appropriate

17 to direct that type of complaint towards the hosting

18 provider to have it addressed. There wasn't anything

19 received in regard to an arbitration going on or a

20 court case going on that would be appropriate for

21 domain disputes to be involved at that time.

22   Q.   Okay. And so the Petronas notification

23 of trademark infringement regarding petronastower.net

24 was handled according to Go Daddy's standard policy;

25 is that correct?

1   regarding websites that Go Daddy determines are not

2   hosted by Go Daddy, Go Daddy doesn't investigate

3   whether or not there is identifiable trademark

4   infringement; is that correct?

5   MR. LANSKY: Object to the form. Asked

6   and answered.

7   THE WITNESS: Since it's not actionable,

8   we don't make a determination.

9   BY MR. CLARK:

10   Q.   Okay. So if a website is not hosted at

11 Go Daddy, there very well may be trademark

12 infringement; is that correct?

13   MR. LANSKY: Object to the form.

14   THE WITNESS: There could be something

15 that would be identified by the hosting company as

16 trademark infringement, but we don't make a

17 determination as to whether or not that it exists.

18 We simply give them the proper channels to pursue the

19 issue.

20 BY MR. CLARK:

21   Q.   Okay. And do you know why Go Daddy will

22 not -- Go Daddy doesn't carry out any of these steps

23 regarding trademark infringement if the website is

24 not hosted by Go Daddy?

25   MR. LANSKY: Object to the form.

 1   THE WITNESS: Because we don't have

 2   control over being able to stop the content when it

 3   is hosted with us. We can place a suspension. We

 4   don't have a similar step that we can take with that.

 5   BY MR. CLARK:

 6   Q.   Okay. With respect to domain name

 7   forwarding, could Go Daddy just stop providing the

 8   domain name forwarding if it determined that there

 9   was trademark infringement?

10   A.   Using the trademark claims process,

11   that's not something that we would do because it's

12   not going to address the issue of the content itself.

13   The content issue has to be directed to the hosting

14   provider. If we're in receipt of a UDRP or a court

15   order or something to that effect, then that would be

16   when we can take some action in regard to the domain

17   name registration itself.

18   Q.   But what about for domain name

19   forwarding? Couldn't Go Daddy just stop providing

20   domain name forwarding for a particular domain name?

21   A.   It's a service so it could be stopped,

22   but in the context of trademark claims and what we

23   are and are not able to do under our procedures and

24   policies, it's not a step that we would take.

25   Q.   Okay. Now, for hosted websites, websites

 1   hosted by Go Daddy, do you have any sense of the

 2   number of claims of trademark infringement that Go

 3   Daddy gets in a given year?

 4   A.   In reference to ones that are actually

 5   hosted with us?

 6   Q.   Uh-huh.

 7   A.   It varies year by year. A few hundred

 8   would probably be fair to say.

 9   Q.   Okay. And how many of those -- roughly

10   how many of those does Go Daddy determine that it

11   should open a valid trademark claim?

12   A.   Of your previous question it was about

13   ones that are actually hosted. So the few hundred,

14   that would be ones that would be ultimately

15   actionable.

16   Q.   I see. So I'm trying to get a sense of

17   the number of claims that you get where Go Daddy does

18   determine the content is hosted. How many of those

19   initial complaints does Go Daddy determine not to

20   open a valid trademark claim?

21   MR. LANSKY: Object to the form.

22   THE WITNESS: If they provide us a

23   complete complaint which is on websites that are

24   hosted with us, then we will take action.

25   BY MR. CLARK:

1   A.   Yes.

2   Q.   So Go Daddy wouldn't have -- in

3   evaluating the complaint for petronastowers.net, Go

4   Daddy wouldn't have considered the domain name

5   petronastower.net had been ordered transferred by a

6   court?

7   A.   No, because it would have been the same

8   thing where we would have followed our standard

9   operating procedure.

10   Q.   And it wouldn't have mattered that the

11   domain name petronastower.net was transferred by a

12   court because the court found trademark infringement?

13   A.   No.

14   MR. LANSKY: Object to the form.

15   BY MR. CLARK:

16   Q.   And it wouldn't matter that the

17   petronastower.net domain name listed the same

18   registrant?

19   MR. LANSKY: Object to the form.

20   THE WITNESS: No.

21   BY MR. CLARK:

22   Q.   And that it was forwarding to the same

23   website?

24   MR. LANSKY: Object to the form.

25   THE WITNESS: No.

 1 infringement when it receives complaints regarding

 2 websites that are not hosted by Go Daddy?

 3   A.   That's difficult to answer yes or no

 4 because there's a lot of nots in there. I can say

 5 that it's our policy to investigate and see if things

 6 are actionable and that we will take action if we

 7 can. If we can't, we'll give advice as to how to try

 8 to get assistance.

 9   Q.   Okay. If Go Daddy -- well, in the case

10 of petronastowers.net, a court found that Go Daddy

11 was providing domain name forwarding services to a

12 domain name that was infringing Petronas' trademarks.

13 Do you understand that?

14   MR. LANSKY: Object to the form.

15   THE WITNESS: Yes.

16 BY MR. CLARK:

17   Q.   And in responding to Petronas' complaints

18 regarding petronastowers.net, did Go Daddy do

19 anything to determine whether or not the website to

20 which that domain name was being forwarded was

21 committing trademark infringement?

22   A.   Not to my knowledge.

23   Q.   And for petronastower.net, did Go Daddy

24 do anything to determine whether or not the website

25 to which that domain name was being forwarded was

 1   committing trademark infringement?

 2   A.   Not to my knowledge.

 3   Q.   Do you know how many complaints a year Go

 4   Daddy gets regarding trademark infringement for

 5   domain names for which Go Daddy's offering domain

 6   name forwarding services?

 7   A.   No.

 8   (DEPOSITION EXHIBIT 16 WAS MARKED.)

 9   BY MR. CLARK:

10   Q.   I'm going to go ahead and mark -- I'm

11   going to hand you a document that has been marked

12   Hanyen Exhibit 16. It's a document bearing Bates

13   numbers GD-000564 to 566. And once you've had a

14   chance to look at that document, can you tell me what

15   it is?

16   A.   This is Go Daddy's Trademark and/or

17   Copyright Infringement Policy.

18   (DEPOSITION EXHIBIT 17 WAS MARKED.)

19   BY MR. CLARK:

20   Q.   Okay. I'd like to hand you Exhibit 17

21   which is the document bearing Bates numbers GD-00567

22   to 569. And when you've had a chance to look at

23   that, can you tell me what that document is?

24   A.   This is a different version of the Go

25   Daddy Trademark and/or Copyright Infringement Policy.

1   pretty steady.

2   Q.   Okay. And do you have any idea how many

3   trademark infringement claims Go Daddy receives each

4   year?

5   A.   I don't know a specific number, but it is

6   in the thousands.

7   Q.   And of those claims -- I'm sorry if you

8   already told me this, but what's your estimate of how

9   many of those relate to hosted accounts?

10   A.   Actionable claims are in the hundreds.

11   Q.   Okay. And of the actionable claims, give

12   a sense of what percentage of those actually result

13   in a hosting account being cancelled or suspended?

14   A.   It would be suspended and any actionable

15   claim that we get a valid complete complaint for

16   we're going to take action on. So a majority, vast

17   majority. I couldn't really give you a specific

18   number.

19   Q.   And when you have the -- when there is a

20   valid trademark claim for a hosted website, the Go

21   Daddy customer has the opportunity to provide a

22   counter-notification; is that correct?

23   A.   Yes.

24   Q.   And can you describe what a

25   counter-notification is?

1   A.   Yes.   Counter-notification is actually on

2   Exhibit 16.   And basically what they have to do is

3   they have to provide 1A through 1D.   If they provide

4   1A through 1D, then in 10 business days if we don't

5   receive anything from the complainant to prevent us

6   from reinstating the site or removing the suspension,

7   then the suspension is removed.

8   Q.   Okay.   And do you have a sense of in what

9   percentage of the cases where an account is suspended

10   the suspension is removed after counter-notification?

11   A.   It's extremely low.

12   Q.   In implementing this trademark policy for

13   hosted content, does it require that Go Daddy

14   actually determine whether or not a particular hosted

15   website is infringing a trademark?

16   A.   Can you clarify that a little?

17   Q.   In other words, is what Go Daddy's doing

18   under this trademark policy, is it actually looking

19   at complaints and determining whether or not there

20   actually is infringement or something else?

21   MR. LANSKY: Object to the form.

22   THE WITNESS: We're determining whether

23   or not we've got all the elements that we need in

24   order to take action.   We're determining that we can

25   actually view the trademark.   We're determining that