



1 Pursuant to Notice and the Federal Rules of  
 2 Civil Procedure, the deposition of DAVID LAUGHLIN,  
 3 called by Defendant, was taken on Monday, March 1,  
 4 2010, commencing at 9:35 a.m., at 1700 Lincoln  
 5 Street, Suite 3200, Denver, Colorado, before Carolyn  
 6 Leathers, Registered Merit Reporter, Certified  
 7 Realtime Reporter and Notary Public within and for  
 8 the State of Colorado.

9  
10 I N D E X

11 DEPOSITION OF DAVID LAUGHLIN

12	EXAMINATION BY:	PAGE
13	Mr. Smith	--
14	Ms. Robertson	--
15	Mr. Levy	5
16	Mr. Briant	--

17	EXHIBITS	PAGE
18	Exhibit 1	Notice of Deposition of
19		Video Professor, Inc.
20		Pursuant to Fed.R.Civ.P.
21		30(b)(6) dated 2-19-10
21	Exhibit 2	Video Professor order page 44
22	Exhibit 3	How It Works page from 44
23		VideoProfessor.com
24	Exhibit 4	Google search results, 96
25		keywords "learn microsoft windows"

## 1 PROCEEDINGS

2 (Mr. Briant was not present at the  
3 commencement of the proceedings.)

4 (Exhibit 1 marked.)

5 DAVID LAUGHLIN,  
6 being first duly sworn in the above cause, was  
7 examined and testified as follows:

## 8 EXAMINATION

9 BY MR. LEVY:

10 Q Could you please state your full name for  
11 the record.

12 A David Michael Laughlin.

13 Q And what's your address, Mr. Laughlin?

14 A 23351 Morning Rose Drive in Golden.

15 Q Okay. You understand that you were just  
16 placed under oath?

17 A Yes, I do.

18 Q And therefore, the testimony you are about  
19 to give in this deposition has the same force and  
20 effect as if you were giving it in a court of law.  
21 Do you understand that?

22 A I understand.

23 Q Our court reporter, Carolyn here, is  
24 taking everything that you and I and your attorney  
25 says down on a transcript, and for that reason, it's

1 very important that all of us give verbal answers,  
2 responses, statements, so that Carolyn can get that  
3 all down. Do you understand that?

4 A I understand.

5 Q Also, some verbal responses can be a  
6 little vague or ambiguous, such as um-hum or huh-uh  
7 and things of that sort, and so I would encourage you  
8 to try to avoid those, and if any of us starts  
9 falling into that, I'll do my best to try to  
10 recognize that, okay?

11 A Okay.

12 Q I'm going to try my best to ask you clear  
13 questions that you understand. I will probably fail  
14 on more than one occasion to do that, and if I do and  
15 you do not understand a question I'm asking, will you  
16 please let me know?

17 A Certainly.

18 Q Is there any reason why you cannot give  
19 your best, truthful, accurate testimony here today?

20 A I can't think of a reason.

21 Q Have you ever been deposed before?

22 A No, I don't believe I have.

23 Q Okay. I'm handing you what's been marked  
24 Exhibit 1, which is the notice of deposition of Video  
25 Professor, Inc. pursuant to Federal Rule of Civil

1           A       That would be the radio station could get  
2 a paid spot, so we default out.

3           Q       I see. So the PI marketing is kind of the  
4 filler marketing for radio; is that it?

5           A       Exactly.

6           Q       Okay. Let me go back to television for a  
7 minute.

8           A       Um-hum.

9           Q       Today, where would I see -- what channels  
10 would I see a Video Professor ad?

11          A       National cable markets predominantly. You  
12 would see us on CNN, Headline News, MSNBC, CNBC,  
13 ESPN, the major -- well, also the minor ones, Animal  
14 Planet, History Channel, the Military Channel.

15          Q       All cable?

16          A       National, all cable.

17          Q       Okay. So you don't advertise on any of  
18 the national broadcast networks like NBC or CBS or  
19 ABC?

20          A       If we make an appearance on NBC or ABC or  
21 CBS the way you are thinking of it, we would do it  
22 locally.

23          Q       Through a local affiliate?

24          A       Yes.

25          Q       Not on a national basis?

1 points, whatever we were offering on TV or on our Web  
2 sites. We would not have deviated from that price  
3 point.

4 Q All right. But regardless whether or not  
5 VPI currently has its own store on eBay, are you  
6 aware that Video Professor products are available  
7 from third parties offering them on eBay?

8 A I am aware that there are individuals who  
9 attempt to sell Video Professor products on eBay. I  
10 would also add that I also understand that is a  
11 violation of our terms and usage policy.

12 Q Your understanding is you have a policy  
13 when somebody buys Video Professor that they can't  
14 resell the product?

15 A Correct.

16 Q Does Video Professor enforce that policy  
17 against consumers?

18 A Yes.

19 Q Has Video Professor attempted to take down  
20 eBay auctions on the grounds that the users are  
21 violating these terms of usage?

22 A I believe we have.

23 Q Has Video Professor been successful in  
24 taking down eBay auctions on that basis?

25 A I believe we have, yes.

1 Q And yet there's still -- people still sell  
2 Video Professor products on eBay?

3 A That's correct, but we do attempt to  
4 police that.

5 Q If I were to buy a Video Professor  
6 product, say, on the phone, I call in, where would I  
7 see these terms of usage that talk about the fact  
8 that I can't resell the product? Where would I learn  
9 of that?

10 A It's two places, I believe. One, there is  
11 an insert in the packaging, and two, there are terms  
12 and conditions when you put the CD in that you have  
13 to agree to.

14 Q When I actually install the software in my  
15 computer?

16 A Um-hum.

17 Q Yes?

18 A Yes. Sorry.

19 Q Are you aware of Video Professor products  
20 available for sale, whether from Video Professor or  
21 anybody else, anywhere other than your 800 number,  
22 your Web site and eBay?

23 A To the point of Amazon, certainly, we're  
24 aware that they get sold there.

25 Q And for a significant period of time,

1 Video Professor itself was an Amazon vendor, right?

2 A That's correct.

3 Q So beginning in approximately 2003 --

4 A Correct.

5 Q -- Video Professor sold Video Professor

6 products to Amazon for Amazon to sell on the

7 Amazon.com Web site, correct?

8 A Yes.

9 Q All right. And in addition to that, are  
10 you aware that there are third parties who sell Video

11 Professor products on the Amazon.com Web site,

12 parties other than Amazon?

13 A To my knowledge, the only authorized  
14 sellers of Video Professor products on Amazon would  
15 be those who have it new, and that would be, in the  
16 past, Amazon and then Video Professor itself.

17 Q All right. But I didn't ask about  
18 authorized.

19 A Sorry.

20 Q I asked about anybody. So are you aware  
21 that there are third parties, parties not including  
22 Amazon, that currently sell Video Professor products  
23 on the Amazon.com Web site?

24 A Yes.

25 Q Okay. And you --



1           A       And those are unauthorized, right.

2           Q       I understand that. From Video Professor's  
3 view, those are unauthorized, and they are violating  
4 these terms of usage, right?

5           A       Exactly.

6           Q       Okay. Are you aware of any other Web  
7 sites or retail stores, brick and mortar stores for  
8 that matter, where a consumer could find Video  
9 Professor products, other than your 800 number, your  
10 Web site, eBay and Amazon?

11          A       You know, there are probably sites like a  
12 Craigslist or something like that where you might run  
13 into that, but again, I think for our part, we  
14 attempt to go after those third parties and take them  
15 down.

16          Q       Yeah. Why do you do that?

17          A       We don't like our product being resold by  
18 anyone other than Video Professor.

19          Q       I understand that, but why don't you like  
20 that?

21          A       As a CD ROM product, it can be duplicated.  
22 It can be -- you know, there's piracy issues related  
23 to it, and so we -- by virtue of your having  
24 purchased and bought the product and using it, we  
25 don't allow you to then take that and resell it.

1 offered the Video Professor product, right?

2 A Not to my knowledge.

3 Q That would -- yeah. Better not, right?

4 A That would be interesting.

5 Q I guess also Video Professor has been  
6 aware that Amazon was bidding on "video professor" as  
7 a keyword. You are aware of that?

8 A We had an agreement.

9 Q What do you mean by that?

10 A The vendor manual, vendor agreement, I  
11 believe, specifically allowed them to utilize the  
12 "video professor" keyword in order to sell Video  
13 professor product.

14 Q And if I understand this right, I mean,  
15 that was Video Professor's understanding so long as  
16 the vendor agreement remained in effect; is that  
17 right?

18 A Correct.

19 MR. LEVY: I see that it's 12:30, and I  
20 probably should have mentioned this earlier, but  
21 would this be a good time to take our lunch break?

22 MR. SMITH: That's fine with me.

23 (The deposition recessed at 12:30 p.m.,  
24 to be reconvened at 1:30 p.m.)

25

1 for a moment, is VPI seeking damages in this case  
2 from Amazon purely because of the fact that the  
3 Professor Teaches product happens to be available for  
4 sale on the Amazon Web site, just like it's available  
5 for sale at Best Buy or available for sale at any of  
6 the other stores?

7 A It's seeking damages because Amazon would  
8 appear to represent to consumers who type in "video  
9 professor" in a search engine that they are going to  
10 have the opportunity to buy a Video Professor product  
11 when, in fact, they are presented with a Professor  
12 Teaches offer.

13 Q So it's linked to the keyword aspect?

14 A Correct.

15 MR. LEVY: Okay. That's it. I don't have  
16 any other questions.

17 MR. SMITH: Okay.

18 (Discussion off the record.)

19 MR. SMITH: I would like the entire  
20 transcript, every page, marked, pursuant to the  
21 protective order in this case, highly confidential,  
22 attorneys' eyes only.

23 (The deposition concluded at 5:20 p.m.,  
24 March 1, 2010.)

25

1 I, DAVID LAUGHLIN, do hereby certify that I  
2 have read the foregoing transcript and that the same  
3 and accompanying amendment sheets, if any, constitute  
4 a true and complete record of my testimony.

5  
6  
7  
8

\_\_\_\_\_  
Signature of Deponent

9

( ) No Amendments  
( ) Amendments Attached

10

11 Subscribed and sworn to before me this  
12 \_\_\_\_\_ day of \_\_\_\_\_, 2010.

13

14 Notary Public: \_\_\_\_\_

15 Address: \_\_\_\_\_

16 \_\_\_\_\_

17 My commission expires \_\_\_\_\_

18 Seal:

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1 STATE OF COLORADO)

2 ) ss. REPORTER'S CERTIFICATE

3 COUNTY OF DENVER )

4 I, Carolyn Leathers, do hereby certify that  
5 I am a Registered Merit Reporter, Certified Realtime  
6 Reporter and Notary Public within and for the State  
7 of Colorado; that previous to the commencement of the  
8 examination, the deponent was duly sworn to testify  
9 to the truth.

10 I further certify that this deposition was  
11 taken in shorthand by me at the time and place herein  
12 set forth, that it was thereafter reduced to  
13 typewritten form, and that the foregoing constitutes  
14 a true and correct transcript.

15 I further certify that I am not related to,  
16 employed by, nor of counsel for any of the parties or  
17 attorneys herein, nor otherwise interested in the  
18 result of the within action.

19 In witness whereof, I have affixed my  
20 signature and seal this 11th day of March, 2010.

21 My commission expires September 18, 2013.

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CAROLYN LEATHERS

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