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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

GREAT SOCIALIST PEOPLE'S	.	
LIBYAN ARAB JAMAHIRIYA, et al.,	.	
Plaintiff,	.	
vs.	.	Docket No. CV 06-2046
	.	
AHMAD MISKI,	.	Washington, D.C.
	.	February 16, 2011
Defendant.	.	
.	

TRANSCRIPT OF BENCH TRIAL

BEFORE THE HONORABLE JUDGE REGGIE B. WALTON

UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	John Paul Szymkowicz, Esquire
	SZYMKOWICZ & SZYMKOWICZ, LLP
	2300 N Street, N.W., Suite 5310
	Washington, D.C. 20037-1122
For the Defendant:	Kamal M. Nawash, Esquire
	THE NAWASH LAW OFFICE
	1050 17th Street, N.W., Suite 1000
	Washington, D.C. 20036
	Eric James Menhart, Esquire
	CYBERLAW P.C.
	1200 G Street, N.W., Suite 800
	Washington, D.C. 20005

1 Court Reporter: Cathryn J. Jones, RPR
2 Official Court Reporter
3 Room 6521, U.S. District Court
4 333 Constitution Avenue, N.W.
5 Washington, D.C. 20001
6

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1 P R O C E E D I N G S

2 THE COURT: Are there any preliminary matters
3 before we proceed with opening statements?

4 MR. SZYMKOWICZ: No, Your Honor.

5 MR. NAWASH: Yes, Your Honor. We learned this
6 morning, Your Honor, that the opposition filed a trial
7 brief.

8 THE COURT: Right.

9 MR. NAWASH: I received it.

10 THE COURT: I haven't looked at it. I came in
11 last night, and I got in this morning. I haven't had a
12 chance to look at it.

13 MR. NAWASH: Yeah, I would move to strike that,
14 Your Honor, only because we learned, I learned of it only a
15 few minutes ago. And in just briefly skimming it, we saw
16 two major mistakes in there. And so that's something they
17 should have filed days ago, and we would have had a chance
18 to respond. Normally, we wouldn't object, but, at this
19 point, I think it's appropriate to strike it.

20 You know, the letter of the law is important in
21 this case, and if, as in this situation, it's not accurate,
22 it's just more prejudicial than it's worth. And, you know,
23 for them to turn it in at the very last minute, it's just
24 not appropriate, so really we insist that you strike it at
25 this point, Your Honor.

1 MR. SZYMKOWICZ: Your Honor, my co-counsel, whose
2 appearance was entered last night, Mr. Mitchell, is a
3 trademark attorney. We met yesterday, and we spoke on
4 Monday. We came to the decision that we should do a trial
5 brief to clarify what our arguments are for the, to aid the
6 Court in its view of this case.

7 THE COURT: Well, I mean, I agree that this should
8 have been submitted prior to now so that opposing counsel
9 would have known about it and been able to submit something
10 in response, so I'll strike it. In any event, what I'm
11 probably going to do -- I mean, maybe the evidence will be
12 so clear that I won't need to do it, but I probably won't --
13 and that is that, in all, generally in most civil bench
14 trials, what I do is I hear the evidence, hear obviously the
15 arguments, and then I have counsel submit to me post trial
16 proposed findings of fact and conclusions of law, and issue
17 either an opinion or our own findings and conclusions.

18 So, we'll probably just be able to incorporate
19 what you have from this document into that document and then
20 --

21 MR. SZYMKOWICZ: I understand. The purpose of the
22 trial brief was simply to give the Court a road map of where
23 we're going to go with our argument. We anticipated many,
24 if not most, of the conclusions of law in the trial brief
25 will end up in the, the post-hearing brief as well. And

1 what we would ask is, at the conclusion of the evidence
2 today, we'd be allowed time to get a copy of the transcript
3 before we actually produce our post-trial brief. And that
4 would allow everyone, myself, my opposing counsel, and the
5 Court, to have an accurate recitation of the facts and law
6 in order for the Court to make a decision.

7 THE COURT: That's fine. Anything else?

8 MR. NAWASH: That's fine, Your Honor. Thank you.

9 THE COURT: Any other preliminary matters?

10 MR. SZYMKOWICZ: No, thank you.

11 THE COURT: Very well, counsel for the plaintiff
12 then may proceed by way of an opening statement. Be helpful
13 if you set forth for me what your perspective is on what the
14 law is and what you have to prove to establish your case and
15 then set forth the factual allegations you believe you'll be
16 able to present in order to establish the legal burden that
17 you have. The rule on witnesses will apply. So if there
18 are any witnesses who may testify in this case, they will
19 have to remain outside during the course of the trial.

20 Okay.

21 **PLAINTIFFS' OPENING STATEMENT**

22 MR. SZYMKOWICZ: Your Honor, my opening argument
23 will be based on our trial brief that we filed. And this
24 case involves the Anticybersquatting Consumer Protection
25 Act, the ACPA. And this Act protects both registered marks

1 as well as unregistered common law marks. We have, in this
2 case, marks that are at issue, Libyan Embassy, Embassy of
3 Libya.

4 THE COURT: Are these registered or unregistered?

5 MR. SZYMKOWICZ: They're unregistered marks,
6 although we have filed for protection in -- Court's
7 indulgence, Your Honor. My trademark counsel has indicated
8 that we are in discussions with the World Intellectual
9 Property Organization, WIPO, to protect these marks
10 according to the WIPO framework.

11 And that framework is governed by the Paris
12 Convention. And Article 6 of that Paris Convention
13 prohibits, by appropriate measure, the use without
14 authorization by the competent authorities state emblems.
15 And this, we are contending, is a state emblem.

16 THE COURT: So you say there's been an application
17 made, actually made, but it hasn't been acted on?

18 MR. SZYMKOWICZ: I believe that it's in the
19 process. If my trademark counsel can state, I don't want to
20 misstate.

21 THE COURT: Yes.

22 THE DEPUTY CLERK: State your name, sir.

23 MR. MITCHELL: My name is Christopher Paul
24 Mitchell. I'm a registered patent attorney. I also
25 practice in trademark law. We have communicated with WIPO

1 regarding our requests to communicate protection of the
2 state mark to the member states to the Paris Convention.
3 The protection -- the protection is by virtue of our
4 membership to the Paris Convention within state marks.

5 The idea is that we don't want to allow people to
6 register trademarks in the United States to other country's
7 state emblems, marks, flags. We've not submitted the formal
8 registration. We've submitted the preliminary registration,
9 and we're at that point in the process where they've told us
10 what we need to do, and we'll submit it back. But we are
11 claiming common law protection and rights.

12 THE COURT: But are you alleging that, as a member
13 of this organization, that the mere application gives you
14 protection under the treaty? Or does the protection only
15 arise once your application is approved?

16 MR. MITCHELL: We stand by the proposition that
17 the protection exists automatically by virtue of the
18 country's member in the treaty. What we're trying to do is
19 to get WIPO to communicate to all the member states the
20 marks that the plaintiff would like to protect, which is not
21 just the specific mark in this case. It's all of the marks
22 that we want to protect.

23 What happens then is that the marks are
24 communicated to all the member countries, and the patent
25 office will have a record that there was a communication

1 made. But it does not change, generally speaking, the
2 substantive rights that already exist.

3 THE COURT: Well, I guess in your post-trial brief
4 you can allege that the mere membership provides protection
5 of the marks in question. And I'll have to assess whether
6 that's true or not. I've never addressed that issue, so I
7 don't know if that's the case or not.

8 MR. MITCHELL: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. SZYMKOWICZ: Your Honor, under the
11 Cybersquatting Act, a trademark owner asserting a claim has
12 to prove several things. They have to prove, number one, it
13 has a valid trademark entitled to protection. Number two,
14 it has to prove that its mark is distinctive or famous.

15 Number three, the defendant's domain name is
16 identical or confusingly similar to or, in the case of
17 famous marks, dilutive of the owner's mark. Number four,
18 the defendant used, registered, or trafficked in the domain
19 name, and finally, number five, with a bad faith intent to
20 profit.

21 And the case law is clear that you can assert a
22 claim based on a formal trademark with the patent and
23 trademark office or, alternatively, a common law trademark.
24 And right now we are claiming it's a common law trademark,
25 although we do have protection under the Paris Convention as

1 well.

2 To qualify for a trademark, a mark may be based on
3 either a bona fide intent to use, intent to use or an actual
4 use. We have actual use going back many many years to the
5 term Libyan Embassy and Embassy of Libya. And once the
6 rights are acquired in that mark, those rights are enjoyed
7 in perpetuity until that mark is abandoned.

8 And under the Lanham Act, a mark is deemed
9 abandoned when the trademark owner discontinues use with the
10 intent not to resume, or the trademark owner causes the mark
11 to become the generic mark for the goods and services. And
12 in this case, the Court will hear evidence that the Libyan
13 government was under sanctions for a period of approximately
14 20 years.

15 That does not take away the protection rights to
16 the term Libyan Embassy. Although the physical building of
17 the Embassy was closed and diplomatic relations were
18 suspended, the Libyan government did not take any action to
19 abandon their trademark rights in the name Libyan Embassy.
20 And that's important under the Lanham Act.

21 THE COURT: Any case authority out there that says
22 when sanctions of this nature are imposed that the validity
23 of a trademark remains in effect?

24 MR. SZYMKOWICZ: Your Honor, I doubt very
25 seriously if this issue has ever come up anywhere. You

1 know, it's such a strange set of circumstances that, you
2 know, I can't imagine that there has been a reported case,
3 although this would be the first one, a case of first
4 impression.

5 THE COURT: Then are you acknowledging that the
6 marks in question that you're raising an issue about were,
7 in fact, allegedly inappropriately used while sanctions were
8 in place?

9 MR. SZYMKOWICZ: Well, and that's something that
10 we don't know. We don't know when Mr. Miski started using
11 these marks. We know that they were -- he registered some
12 of the domain names after the Embassy was reopened. But, as
13 far as when he first used the very first mark, we don't
14 know. There were four websites at issue, and when he, I
15 believe that three of them were registered around the, were
16 after the Embassy reopened.

17 And I believe one of them was registered before,
18 although I could be wrong on that. The bottom line is that
19 they were being used at the time the Embassy was opened by
20 the Embassy. The Embassy was, reused those marks as soon as
21 they could.

22 THE COURT: Okay.

23 MR. SZYMKOWICZ: The Libyan Embassy offers several
24 commercial services, including document legalization and
25 authentication. And the Embassy's official, who is here to

1 testify today, will talk about the differences between
2 legalization and authentication. And the Libyan government
3 charges fees for that, and this is use in commerce of the
4 trade name Libyan Embassy, Embassy of Libya, et cetera.

5 The Libyan Embassy has, as I'm sure the Court is
6 aware, has another name that it uses, and that is the
7 People's Bureau of the Libyan Arab Jamahiriya. Whether the
8 official, quote unquote, name is the Libyan Embassy, which
9 is what we're contending that it is, more specifically, the
10 Embassy of the Libyan Arab Jamahiriya or the People's Bureau
11 of the Libyan Arab Jamahiriya, it doesn't matter for
12 trademark purposes, because, in fact, as my trademark
13 co-counsel pointed out, an alternate name other than the
14 official name might even be better, such as Lady Gaga.

15 Her real name is Stephanie something. Her trade
16 name is Lady Gaga. Lady Gaga is certainly entitled to
17 protection as much as her regular name. We have proven, and
18 we will prove that the Libyan Embassy has actually used its
19 mark in conjunction with the commercial services that are
20 rendered in commerce.

21 Moving onto the next prong, the Libyan Embassy's
22 marks are distinctive. The standard for determining whether
23 a common law mark is valid and entitled to protection is
24 generally the same standard as that whether the mark is
25 entitled to be registered at the federal patent and

1 trademark office.

2 And under that standard, trademarks are divided
3 into five general categories: Number one, generic; number
4 two, descriptive; number three, suggestive; number four,
5 arbitrary; and number five, fanciful. And examples of
6 those, a general category, a general name would be
7 automobile for automobiles or cat food for cat food, and
8 that would never be entitled to trademark protection.

9 A descriptive name, such as Vision Center for an
10 optical clinic or Forum for a business training center,
11 would be subject to a different analysis. And then
12 suggestive, arbitrary and fanciful: A suggestive name,
13 Habitat for home furnishings, Uncola for non Cola soft
14 drinks, City Bank for banking services; arbitrary, Camels
15 for cigarettes and Ivory for soap. Finally, fanciful would
16 be a made-up name that doesn't have any other definition in
17 the English language, such as Exxon or Rolex.

18 The arbitrary, fanciful and suggestive names are
19 considered inherently distinctive and are automatically
20 entitled to protection under the Lanham Act. We believe
21 that our name is suggestive, Libyan Embassy, Embassy of
22 Libya. But, even if it's found to be descriptive,
23 descriptive marks could be given trademark protection if
24 they have acquired distinctiveness or a secondary meaning.

25 And the crux of the secondary meaning doctrine is

1 that the mark it comes to identify not only the goods or the
2 services but also the source of the goods or services. And
3 the services that we're talking about are the document
4 legalization and authentication services. And, of course,
5 the source of those goods are the Libyan Embassy, the Libyan
6 government. And so, at the very least, we have the
7 descriptive, and therefore, we're entitled to trademark
8 protection in that form.

9 We believe that the Libyan Embassy's marks are
10 distinctive, and the factors that you have to look at in
11 that are the duration, extent and geographic reach of
12 advertising and publicity of the mark, the amount, volume
13 and geographic sales of the goods or services, the actual
14 recognition of the mark, and whether the mark was registered
15 under the 1881 or 1905 Act. We don't have that obviously.

16 We respectfully submit that the Libyan Embassy has
17 extensively used our trademarks for decades here in the
18 United States and all around the world, and, therefore, it
19 should be entitled to protection. And interestingly enough,
20 under Mr. Miski's website that he was using when this case
21 was filed, prominently on the top he used the term Libyan
22 Embassy, and we believe that that just proves that this mark
23 was famous and distinctive and therefore entitled to
24 protection.

25 It's obvious that the domain names at issue are

1 identical or confusingly similar to our marks. The Libyan
2 Embassy's marks include the Embassy of the Libyan Arab
3 Jamahiriya and the Embassy of Libya and the Libyan Embassy.
4 The domain names at issue are embassyoflibya.org,
5 libyaembassy.com, libyaembassy.org and Libyan, with an N,
6 embassy.com.

7 These are identical or very very closely and
8 confusingly similar to the Libyan Embassy's marks. It is
9 obvious that Mr. Miski trafficked in these marks by
10 registering, using and putting websites up that point to
11 these domains using the domain names that I just re, that I
12 just restated.

13 Finally, the bad faith argument is, involves a
14 nine-factor test, and these are non exclusive factors. The
15 Court could consider other things that, in its equitable
16 jurisdiction, it would look at bad faith, and I'll take
17 these in turn.

18 The trademark or other intellectual property
19 rights of the person in the domain name, in this case, the
20 owner of the domain names is Ahmad Miski. He's not
21 affiliated with the Libyan Embassy. He's not presumably
22 Libyan. His name does not have anything Libyan in the
23 title, and, therefore, he has no rights in the domain name
24 at issue.

25 Number two, the extent to which the domain name

1 consists of the legal name of the person or a name that is
2 otherwise commonly used to identify the person, same
3 analysis there. His name is Ahmad Miski. We're the Libyan
4 government. We're the Libyan Embassy of the Libyan
5 government.

6 Number three, the person's prior use, if any, of
7 the domain names in connection with a bona fide offering of
8 any goods and services. The defendant admits that he only
9 uses these domain names to divert traffic for commercial
10 gain and, in so, he confuses the public. Such diversion is
11 not a bona fide offering of goods and services.

12 Number four, the person's bona fide,
13 non-commercial fair use of the mark in a site accessible
14 under the domain name. That would probably be applicable if
15 Mr. Miski had a site that challenged the policies of the
16 Libyan government perhaps. But in this case, it's strictly
17 commercial. He's trying to drive traffic to his site. So
18 number four wouldn't apply.

19 Number five, the person's intent to divert
20 consumers from the mark owner's online location to a site
21 accessible under the domain name that could harm the good
22 will represented by the mark either for commercial gain or
23 with the intent to tarnish or disparage the mark by creating
24 a likelihood of confusion as to the source, sponsorship,
25 affiliation or endorsement of the site. In this case, if

1 the general public types in one of Mr. Miski's websites, it
2 very clearly believed that this was the actual Libyan
3 government site, and, therefore, prong five would be
4 satisfied.

5 Number six, the person's offer to sell or transfer
6 the domain name. Mr. Miski offered to transfer the domain
7 names in exchange for becoming the exclusive provider of the
8 document authentication services to the Embassy. He went to
9 the Embassy. He met with the Ambassador for the purpose of
10 being able to provide these services. And in exchange for
11 that, he would give the Embassy what was legally theirs, and
12 that is the domain names at issue.

13 Number seven, the person's registration or
14 acquisition of other domain names that the person knows are
15 identical or confusingly similar to other marks. And in
16 this case, Mr. Miski has admitted in deposition that he has
17 registered and is using, quote, tens of other similar names
18 with other countries. So it would be insert the country
19 name, embassy dot com. We don't have a list of those
20 countries, but it would be very similar to the
21 libyanembassy.com that's at issue here. He's not disputed
22 that that is his business model. He goes and cybersquats on
23 these embassies' domain names, and it drives traffic to his
24 site. So that's probably the most important prong right
25 there.

1 Because this is a case in equity, the Court has
2 the ability to fashion other elements that it considers to
3 be bad faith. And we would ask the Court, after hearing the
4 testimony, to consider these other factors as it sees
5 necessary.

6 There are other cases out there before WIPO, that
7 is the World Intellectual Property Organization, involving
8 foreign government departments or agencies, et cetera. We
9 have in -- we cited some Canadian government cases where,
10 under WIPO, the adjudicatory panel, which is, looks at these
11 cases in a very similar way as this Court here today must
12 do, they considered things like Canada Council to be
13 violative of the mark of the Canada Council of Canada.
14 Canadiancustoms.com was found to be similar to Canada
15 Customs and Revenue Agency.

16 I think there are about 25, and I'm not going to
17 bore the Court with going through them all. But the
18 governmentofcanada.com is another, is another one that was
19 found to be violative. Resources Canada violated the
20 Natural Resources Canada. It's a government agency.
21 Statistics Canada was the owner of the site that was being
22 infringed, statscan.com.

23 These, in this Canadian government case, the WIPO
24 adjudicatory panel ordered that the domain names be
25 transferred back to the Canadian government as we're asking

1 this Honorable Court to do here and transfer the domain
2 names at issue back to the Libyan government. And there are
3 several other countries that have prosecuted claims before
4 WIPO.

5 That would have been one avenue for us to have
6 pursued. WIPO has some current jurisdiction with this
7 Court, I believe, in handling these. But we brought the
8 case here in the United States District Court because Mr.
9 Miski lives in the D.C. area. We believe he has an office
10 here in the District of Columbia and the Embassy is here.
11 So we cut out the step of WIPO and proceeded straight to
12 court.

13 In addition, Mr. Miski has filed counterclaims
14 against the Libyan government, and we have filed a Motion
15 for Summary Judgment on those counterclaims, which the Court
16 allowed to proceed but was very clear in its direction to
17 Mr. Miski, in fact, advising Mr. Miski that, if he proceeds
18 without evidence, he's running a risk of Rule 11 sanctions.

19 Your Honor, this case is, on the counterclaim
20 aspect, is ripe for Rule 11 sanctions. Mr. Miski's
21 interrogatory responses and his deposition testimony do not
22 even come close to satisfying the cause of action of
23 tortious interference with a contract on the one hand or
24 tortious interference with a business relationship or
25 expectancy on the other.

1 First of all, in both of these very similar causes
2 of action, you have to prove that there's a contract between
3 Mr. Miski and a third party. He can't prove that there's an
4 identifiable contract. Number two, Mr. Miski has to prove
5 that the Libyan Embassy knew about these contracts, and he
6 admitted that they don't. They didn't and they don't. And
7 finally, the other one is that, the other prong of this test
8 is that the Libyan Embassy actually intentionally procured
9 the breach of the specific contract. And finally, the
10 counter plaintiff suffered damages resulting from this.

11 Mr. Miski, we've been through this, you know, ad
12 nauseam in this case. I've asked him, at deposition and
13 under his interrogatories, what contracts. How did the
14 Libyan government intentionally procure the breach of these
15 contracts or business expectancies? And he simply doesn't
16 have an answer. So, unless he's prepared to, in his opening
17 argument, withdraw these counterclaims, we ask that the
18 Court impose, after hearing all the evidence, Rule 11
19 sanctions on Mr. Miski.

20 And, with that, we will turn the stage over to Mr.
21 Nawash.

22 THE COURT: Thank you. Do you desire to make an
23 opening statement now, counsel, or reserve?

24 MR. NAWASH: Yes, Your Honor.

25 THE COURT: Very well. You may proceed.

1 owns and operates a chamber of commerce, a chamber of
2 commerce that, unlike most businesses, offers most of its
3 services for free, pro bono, as a public service, with the
4 exception of one service. The one service that they offer
5 that they take money on is they do something called
6 document, they authenticate.

7 They authenticate documents that are destined for
8 foreign countries. So, for example, if someone wants to
9 have a commercial, an American commercial document, wants it
10 to be used in Libya or in Saudi Arabia, in order to do that,
11 Your Honor, you must first get a stamp, stamp from the
12 Libyan Diplomatic Mission, which they call an Embassy and we
13 call a Bureau, or they must get it from the Saudi Embassy or
14 whatever.

15 These embassies, before they give you their stamp,
16 they require certain steps. Among the steps that they
17 require, they require that a chamber of commerce, a chamber
18 of commerce certify that the document is what it says it is.
19 This is what Mr. Miski does. This is what Mr. Miski does.
20 He looks at documents. He certifies them. He authenticates
21 them. He stamps them through his Chamber, and then it goes
22 over to the Embassy or to the Bureau where they legalize
23 these documents, and then they're able to be enforced in
24 foreign countries.

25 Mr. Miski has done this, has owned this Chamber of

1 Commerce since 1994, Your Honor. He has been serving Libya
2 since 1994, long before they became an Embassy or a Bureau,
3 long before they had diplomatic relations with this country.
4 The evidence will show that Libya has not had diplomatic
5 relations in the United States since 1981. They've had no
6 Embassy, no diplomatic status whatsoever in Washington, D.C.
7 The only thing they had was a United Nation Mission in New
8 York.

9 The evidence will show, Your Honor, that the idea
10 of purchasing these domain names came more than a decade
11 ago, when diplomats from the Saudi and Syrian Embassy
12 approached Mr. Miski as head of a Chamber telling him that
13 certain people, racist people were buying domain names of
14 Arab countries and using it for hate speech against Arabs,
15 and that was where the idea of buying these domain names.

16 Couple of years later, the evidence will show that
17 Mr. Miski started purchasing these domain names and used
18 them for a bona fide service that is related to the domain
19 names. The service that Mr. Miski offers is he serves
20 embassies of countries, so that, when the -- so, when he
21 buys domain names that says embassy of a particular country,
22 whether it's Saudi or Libya, that's absolutely related to
23 the product that he's offering, that he's selling, which is
24 he is certifying, authenticating documents for those
25 embassies to use.

1 And, in fact, Your Honor, most of the business
2 that Mr. Miski gets he gets from embassies. Since 1994,
3 more than 90 percent of their customers that Mr. Miski
4 received he received as referrals from the plaintiffs. As
5 he does today, most of his customers come from embassies
6 because embassies need him.

7 What he does is a bona fide legal service. It's
8 an indispensable service to embassies. Embassies would not
9 be able to function, would not be able to legalize their
10 documents, would not be able to say, hey, this document is
11 what it is unless Mr. Miski does what it is. So Mr. Miski,
12 in this case, Your Honor, does not compete with the Embassy.
13 He has no purpose of competing with the Embassy.

14 He's not trying to divert any business from the
15 Embassy, because he performs no service that the Embassy
16 performs. The Embassy performs no service that he performs.
17 They complement each other. They need each other. When he
18 purchased these domain names, Your Honor, he gave his name,
19 his address. It was completely transparent. These were
20 commercial sites. They host their own individual domain
21 names. Each, I'm sorry, each domain name has its own
22 website.

23 The plaintiff has stated in here a little while
24 ago that, well, Mr. Miski admitted that these domain names
25 are routed to some other website. This is not true, Your

1 Honor. Mr. Miski's domain names have their own websites,
2 and these websites sell, advertise certifications,
3 certificates of authentication. They authenticate
4 documents. That's what they do.

5 Only very recently, Your Honor, very recent,
6 during settlement negotiations, when there were accusations
7 that Mr. Miski was trying to confuse the public as being the
8 Libyan Embassy, he says, you know what, I'll make it simple
9 for you. I'm going to make it where no one even sees your
10 domain names. So then he just, their domain names he
11 started forwarding to the Chamber of Commerce. But the
12 point is here, Your Honor --

13 THE COURT: Is that relevant evidence I can
14 consider?

15 MR. NAWASH: Well, yes, yes, it is relevant
16 evidence.

17 THE COURT: Offer a compromise, is that relevant?

18 MR. NAWASH: Well, but nevertheless, I mean, it
19 goes to the intent of Mr. Miski. If his goal is to confuse
20 the public, as is alleged here, he certainly, he certainly,
21 you know, he certainly would not hide the domain names as he
22 has done, but it doesn't benefit him, Your Honor. It
23 doesn't benefit him in any way, shape or form to be confused
24 with the Embassy.

25 In fact, it hurts him. If a person was to call

1 him -- he's understaffed. He has one or two employees, and
2 they're on the phone all the time. If someone was to call
3 and say, hey, are you an embassy, I need a visa or I need a
4 passport, it slows him down. There's absolutely no benefit
5 whatsoever to be confused with an embassy or any diplomatic
6 mission anywhere in the United States.

7 Your Honor, so the evidence will show that he, not
8 only did he serve, did he, that he was the only Chamber,
9 that Mr. Miski's Chamber was the only Chamber that served
10 Libya since 1994. From 1994 to 2006, his Chamber was the
11 only Chamber that was willing to serve them. And he served
12 them pro bono, at a loss. There was no intent to profit
13 here in bad faith.

14 In fact, because they had sanctions, because there
15 was no diplomatic relations with Libya, in order for any
16 goods to be sold for Libya, you had to get the approval of
17 the United States government. In order to get the approval
18 of the United States government, you had to jump many
19 hurdles, which made the process or the job of Mr. Miski
20 extremely expensive. This is why no other chamber of
21 commerce was willing to serve Libya. They could only do so
22 at a loss.

23 So Mr. Miski, for 16 years, served them at a loss
24 for free. He paid for it as a public service because part
25 of the goals of the Chamber of Commerce that he owns, part

1 of the goals from day one is partly a public service
2 organization. It's not necessarily exclusively a for-profit
3 organization. And among their goals, Your Honor, among
4 their goals is to improve economic trade between the United
5 States and the Arab government, to reduce hostility between
6 the United States and Arab government and to reduce
7 sanctions.

8 Throughout the last 30 years, throughout the last
9 30 years there have been sanctions in more than six Arab
10 countries. That was the whole purpose of the Chamber of
11 Commerce to begin with. It was a public service
12 organization. And this is why they served Libya for 16
13 years at a loss for free. There was never an intent to
14 profit from them.

15 The only time they ever made a profit, Your
16 Honor -- he continued to be the exclusive Chamber to serve
17 them until 2006. In 2006, for a period of one month, for a
18 period of one month after Libya actually, after the United
19 States allowed Libya to establish a Diplomatic Mission,
20 which we call a Bureau and they call today an Embassy, for
21 one month, they actually made a profit. After 16 years, for
22 one month they made a profit.

23 They continued doing the business that they had
24 been doing for 16 years, certifying, authenticating
25 documents to be sent to the Libyan Bureau to be legalized

1 until one day, one day, Mr. Miski's customers started
2 calling him to say, hey, the Libyan Bureau refuses to do
3 business with me, refuses to legalize my documents because
4 your Chamber did the certification. Or they refused to
5 accept notary public certificates because you did them.

6 So then Mr. Miski reverted to serving Libyan --
7 Americans with business in Libya at a loss again. The
8 plaintiffs started using a competing Chamber of Commerce.
9 That's fine. They started using a competing Chamber. So
10 Mr. Miski started taking these documents, his customers'
11 documents, Your Honor, and taking them over to the competing
12 Chamber, paying money to have them authenticate and then
13 taking these documents over to the plaintiffs to legalize
14 and did it at a loss. The reason he continued doing it at a
15 loss, no profit motive here, Your Honor, because that's part
16 of the mission of the Chamber. It's public service
17 organization.

18 Until one day, which is the heart of this dispute,
19 one day he goes over to the Bureau to do what he's been
20 doing. He's going there with documents to have them stamp
21 them. And then the Ambassador comes out. He tells Mr.
22 Miski I'd like to talk to you. He takes him over to his
23 office and tells him I want a domain name. Miski tells him,
24 look, you just excluded me. You just excluded me from doing
25 what I've been doing for 16 years.

1 And the Ambassador tells him, well, how much would
2 you pay us for your service, for us to allow you to certify?
3 To make a long story short, Your Honor, Mr. Miski leaves
4 that day, and they file a lawsuit against him. They file a
5 lawsuit, which is the basis of what we're here today. And
6 the basis of this lawsuit is that they supposedly have a
7 trademark, and that Mr. Miski is supposed to violating some
8 cybersquatting statute.

9 Your Honor, as we mentioned earlier, they don't
10 have a trademark in the -- they do not have a trademark,
11 because at the time, at the time Mr. Miski bought, purchased
12 the domain names in 2003, not 2006 as was said here, and the
13 plaintiffs know that, in 2003, the plaintiffs did not exist.
14 They did not exist in the United States of America. They
15 hadn't existed since 1981.

16 They had no ambassador, no embassy, no diplomatic
17 mission, nothing. And even, and even if they did exist,
18 they still would not have a trademark, Your Honor. Even if
19 they did exist, even if there was diplomatic relations, they
20 still would not have a trademark, because, first of all,
21 they did not register the trademark as they have alleged.
22 And so therefore, they have to use a common law trademark.

23 Well, it's their burden to prove that they have
24 this trademark. The problem is their name is not the Libyan
25 Embassy. Their name is the Libyan Bureau, and this

1 information comes from the Department of State's website.
2 In the 1970's, when Gadhafi, after Gadhafi, a few years
3 after Gadhafi takes over, they decide that this is a
4 government by the people and that we don't have embassies.
5 We have bureaus. For some reason that's significant for
6 them.

7 And so they changed the name of all their
8 diplomatic missions from embassies to bureaus, and they've
9 been doing that since the 1970's, 40 years. We didn't make
10 up this information. This came from the Department of
11 State.

12 Your Honor, till today, till today, their website
13 prominently twice lists their name as the Bureau, the Libyan
14 Bureau. Their letterhead, of which they filed in this
15 court, says the Libyan Bureau. Their business cards says
16 Libyan Bureau. The sign on their door at the Embassy says
17 Libyan Bureau. The invitations they send people to invite
18 them to receptions says Libyan Bureau.

19 The only mention they have of embassies, the only
20 mention they have of embassies is in parentheses on their
21 website, in parentheses they have equivalent to an embassy
22 or similar to embassy. They did after this litigation begun
23 in October of 2006. Only in anticipation of this litigation
24 did they added that. But even if, let's just say -- and
25 they admitted that they have several alternative names.

1 They admitted that here today that they use Libyan
2 Bureau and Libyan Embassy. To take them at their word, Your
3 Honor, you cannot have McDavid and McDonald's and still have
4 a trademark on McDonald's. You cannot use two names and yet
5 claim a trademark on one name. If you are claiming a common
6 law trademark, you have to use that particular name.

7 They're using several names, and they're claiming
8 a trademark on it. It can't be done. But, Your Honor,
9 let's just say they do even, the evidence will show that,
10 even if they have a trademark, Mr. Miski will still not be
11 liable under the Anticybersquatting statute, because, when
12 he purchased the domain names, Your Honor, he genuinely
13 believed that what he was doing was right and legal and
14 continues to believe so today. And that is good enough.

15 Not only did he believe it was right and legal, he
16 had no bad faith intent to make a profit, which is another
17 element. He didn't make a profit. When he bought it, he
18 knew that he would do this as a pro bono function, as a pro
19 bono service.

20 It has cost him more here today than he will ever
21 make from those sites, but it's the principle. He owns
22 those sites. Those sites are his. He bought it
23 legitimately. He uses them in a transparent way. He sells
24 a bona fide, legal product. They don't have to deal with
25 him. They don't have to deal with him. But they don't have

1 the right to not deal with his customers because his
2 customers deal with him, which is what they did, which is
3 what they did.

4 Any -- and this is how they interfered with his
5 contracts with his customers. Anybody that did any business
6 with him, they refused to serve that person. So if a person
7 from the street went to Mr. Miski and told him, would you
8 notarize this document and he notarizes his document and
9 this person goes to the Embassy or the Bureau, they refuse
10 to deal with that person. Why did you go to Miski? This is
11 how they interfered with his contract.

12 If they went, if Mr. Miski, if he contracted with
13 a person to authenticate their document, that, hey, this
14 commercial paper is what it says it is and gives him a
15 stamp, and this person goes and says, hey, I have the stamp,
16 and he goes over to the Embassy to legalize, they say, we're
17 not going to deal with you. We're not going to deal with
18 you, Mr. Customer, because you are a customer of Mr. Miski.
19 This is what they did. They hurt his business.

20 It's one thing not to want to deal with him. They
21 could have excluded him, but they excluded his customers.
22 They refused to do business with his customers. They
23 interfered with his contracts with his customers. And this
24 is what they did. And this is what we will show.

25 And the last point on the issue of Embassy, Your

1 Honor, the reason no one has a trademark with the name
2 embassy is because embassy is a generic as they -- one thing
3 they did say that was correct, it's a generic term. You
4 cannot get a trademark for that. You have 190 embassies,
5 and the term is used for a bunch of reasons. You have
6 Embassy Suites hotel. They can't go sue Embassy Suites.

7 Embassy, the term embassy is a generic term. And
8 even at their own admission that the term that they use,
9 that their official name, according to them, is the Libyan,
10 the Embassy of the Libyan Arab Jamahiriya, well, if that's
11 their official name, if that's what they say that is, that's
12 different than the Embassy of Libya. And it's certainly
13 different than the name they actually use and what they're
14 known for.

15 And they're known as the Libyan Bureau. That's
16 what they're known among their community. And their
17 community is not the wide United States. Their community is
18 right here in Washington, D.C., other diplomats in
19 Washington, D.C. They're the only ones who know them. And
20 all the other diplomats, everyone else, their community
21 knows them as the Libyan Bureau because that's what Libya
22 insists that they are.

23 They're not an embassy. They don't have a
24 trademark. Mr. Miski did not violate any Anticybersquatting
25 statute because he did everything in good faith. He did it

1 legitimately. He sells a legitimate bona fide service. And
2 this is what we will prove to you, Your Honor, and thank you
3 very much.

4 THE COURT: Well, let me give the court reporter a
5 ten-minute break and then we'll proceed. How many witnesses
6 will the plaintiff have?

7 MR. SZYMKOWICZ: One on our side, Your Honor. And
8 we have three sets of the exhibits in addition to the one
9 that I'm keeping. We intend to provide one to the Court,
10 one to the Clerk and one to opposing counsel.

11 THE COURT: Very well. We'll take a ten-minute
12 break.

13 [Thereupon, recess taken at 10:42 a.m., resuming
14 at 10:57 a.m.]

15 THE COURT: Okay. Plaintiff may call its first
16 witness.

17 MR. SZYMKOWICZ: Your Honor, on our exhibits, I
18 have a exhibit with a exhibit sticker for the witness, which
19 I presume would become the original exhibit. I have a
20 courtesy copy for the other side in handwriting with the
21 numbers on the bottom and a courtesy copy for Your Honor
22 with the handwriting on the bottom. Is that how the Court
23 would like to proceed?

24 THE COURT: Very well. That's fine.

25 MR. SZYMKOWICZ: Okay. And as far as the

1 witness's copy, would the Court, to save time, like to have
2 the witness have the entire set of documents?

3 THE COURT: That's fine.

4 MR. SZYMKOWICZ: Your Honor, I'd like to clarify
5 and correct a statement that I made. It appears that all
6 four sites were registered before 2006. I believed that
7 some of them were not, but apparently, after looking at the
8 actual exhibits, they all four were registered before 2006.
9 Our first witness will be Ahmad Miski.

10 THE COURT: Very well.

11 Thereupon,

12 AHMAD MISKI,

13 having been called as a witness for and on behalf of the
14 plaintiff, and having been first duly sworn by the Deputy
15 Clerk, was examined and testified, as follows:

16 THE WITNESS: I do.

17 DIRECT EXAMINATION

18 BY MR. SZYMKOWICZ:

19 Q Mr. Miski, do you admit that you were the owner of
20 record of the domain name --

21 THE COURT: We need to have him identify himself
22 first.

23 BY MR. SZYMKOWICZ:

24 Q Please identify yourself for the record.

25 A My name is Ahmad Miski.

1 Q And you are the defendant in this case and counter
2 plaintiff?

3 A Yes, I am.

4 Q Isn't it true that you are the owner of record of the
5 domain name embassyoflibya.org?

6 A Yes, I am.

7 Q Isn't it true that you are the owner of record of the
8 domain name libyaembassy.com?

9 A Yes, I am.

10 Q Isn't it true that you are the owner of record of the
11 domain name libyaembassy.org?

12 A Yes, I am.

13 Q Isn't it true that you are the owner of record of the
14 domain name libyanembassy.com?

15 A I am.

16 Q I'm showing you what has been marked as Exhibits 1
17 through 4.

18 THE COURT: That's Plaintiffs' Exhibits 1 through
19 4?

20 BY MR. SZYMKOWICZ:

21 Q Plaintiffs' Exhibits 1 through 4.

22 A Mm-hmm.

23 Q Would you agree that these are the WHOIS reports for
24 the various domain names at issue that lists you as the
25 owner and the domain name at issue?

1 A Well, it's too small letters that I can't read, but if
2 you read for me the date of the registration, I can agree
3 with you. What is the date of the registration of each one
4 of them please?

5 Q And the text is rather small, but it appears that
6 embassyoflibya.org, which is Exhibit Number 1, was
7 registered on the 25th of December 2003. And it lists you
8 as the owner; is that correct?

9 A Yes, that is correct.

10 Q Number Two, Exhibit 2, it appears that it was created
11 on December 13th, 2002?

12 A That's correct.

13 Q And you as the registered owner?

14 A Yes, I was.

15 Q Exhibit Number 3, it appears that it was created on
16 March 12th, 2003; is that correct?

17 A Correct.

18 Q And you as the registered owner?

19 A Yes, I was.

20 Q And, finally, Exhibit Number 4 created on
21 February 10th, 2003, with you as a registered owner; is that
22 correct?

23 A That's correct.

24 MR. SZYMKOWICZ: Your Honor, I move the exhibits 1
25 through 4 into evidence.

1 THE COURT: Any objection?

2 MR. NAWASH: No objection, Your Honor.

3 THE COURT: Admitted.

4 [Thereupon, Plaintiffs' Exhibit Nos. 1 through 4
5 admitted into evidence.]

6 BY MR. SZYMKOWICZ:

7 Q Mr. Miski, I'm showing you what's been marked for
8 identification as Number Plaintiffs' Exhibit 5. Can you
9 tell me what this document is?

10 A It's, it shows the services that the Arab American
11 Chamber of Commerce was offering and is still offering.

12 Q And that's from your website?

13 A That's from my website, yes. And it shows at the
14 bottom disclaimer. "This website was" -- I can't read.
15 It's too small letters. I'm sorry. This website was -- can
16 you read the bottom?

17 Q I can read it for you, Your Honor.

18 A Yes, please.

19 Q "This website was created by Arab American Chamber of
20 Commerce to facilitate certifications of documents intended
21 for use in Libya, period. The country of Libya does not
22 have an Embassy in the United States, period. Arab American
23 Chamber of Commerce is not affiliated with the Libyan
24 liaison office in Washington, D.C., comma, or the Libyan
25 Mission office in New York, period." Is that the statement

1 that you asked me to read, Mr. Miski?

2 A Yes, please. Thank you.

3 MR. SZYMKOWICZ: Your Honor, I move Exhibit 5 for
4 identification into evidence.

5 THE COURT: Any objection?

6 MR. NAWASH: No objection, Your Honor.

7 THE COURT: Admitted.

8 [Thereupon, Plaintiffs' Exhibit No. 5 admitted
9 into evidence.]

10 BY MR. SZYMKOWICZ:

11 Q On Exhibit Number 5, Mr. Miski, you admit that the term
12 Libyan Embassy is listed in the headline at the top in big
13 letters; is that correct?

14 A Where was that?

15 Q Under the term "Legalization and certification of
16 documents from the Libya Embassy in Washington, D.C."

17 A Well, that was programmers who do these, and the
18 programmers are not aware of the one Embassy in the world,
19 they call themselves Bureau. And if I take my time to write
20 myself what you see here, I wouldn't work at all. It's the
21 programmers and designers who do website. So exactly like
22 the list, the list of the Embassy of the U.S. Department of
23 State were confused and named that Libya as Embassy of
24 Libya, same mistake happened here, and they named it
25 Embassy.

1 Q So you admit that people do sometimes refer to Libyan
2 Embassy or Libyan Bureau interchangeably including yourself?

3 A People who know what they are doing, no.

4 Q But people in the general public do, correct?

5 A No, that's not correct. Everybody knows. In
6 diplomatic have idea about what's going on, and the
7 diplomat, they know that Libya, they are Bureau. They're
8 not Embassy.

9 Q So you admit that your programmer used the term Libyan
10 Embassy in this document, do you?

11 A Yes.

12 Q And you didn't correct this, did you? It's a yes or no
13 answer. You didn't correct it?

14 A I did not read it too. I didn't get the time to read
15 what the programmer did.

16 Q You didn't correct it, yes or no?

17 A I did not look at it. It's not my job to go and read
18 word by word what they say here. I give them website to
19 design. They design it and publish it.

20 MR. SZYMKOWICZ: Your Honor, I ask that the court
21 direct Mr. Miski --

22 THE WITNESS: I did not correct it.

23 MR. SZYMKOWICZ: -- to answer the question. It's
24 a yes or no answer.

25 MR. NAWASH: Objection, Your Honor.

1 THE COURT: He said he did not correct it.

2 BY MR. SZYMKOWICZ:

3 Q Okay. I'm showing you what's been marked as Exhibit
4 Number 6 for identification. Can you tell me what this
5 document is?

6 A This is the main website of the Arab American Chamber
7 of Commerce.

8 Q And that's your current website?

9 A Yes.

10 Q And all of the websites that you have point to this
11 page; is that correct?

12 A I'm sorry. I didn't --

13 Q All of the domain names that you own point to this home
14 page; is that correct?

15 A Which domain names? What do you mean when you say all?
16 Let's be clear.

17 Q Do you own other domain names?

18 A Are we talking about these four domains, the subject of
19 this case, or every domain I have?

20 Q Well, I'll start off, the four domain names at issue
21 today, do they point to this home page?

22 A Yes, they do.

23 Q Do any other domain names that you own point to this
24 page?

25 A Some of them do.

1 Q Which ones?

2 A I don't remember, but some of them do.

3 Q Can you tell me the names of the other websites that
4 you own, the domain names?

5 A No, there are too many to remember.

6 MR. NAWASH: Objection, Your Honor, this is not
7 relevant.

8 THE COURT: How is it relevant?

9 MR. SZYMKOWICZ: It's relevant to bad faith.
10 Remember, Your Honor, one of the prongs of the bad faith
11 argument is that the defendant owns similar websites that
12 infringe on other people's trademarks. In this case, we
13 believe that he owns other websites, such as
14 ghanaembassy.us. He may own other names, other websites
15 that have similar names, such as Insert Name of Country
16 Embassy dot com.

17 THE COURT: Is there going to be any evidence
18 submitted that would, in fact, show that these names,
19 assuming he has used those domains or registered those
20 domain names, that that's being done illegally or are you
21 just going to throw out the fact that they exist and they're
22 his and then ask me what to infer if that's the case?

23 MR. SZYMKOWICZ: Well, Your Honor, we are not here
24 for a full trial on whether he's infringing on the domains
25 of any other embassies such as ours. We're just asking the

1 Court to take cognizance of the fact that he has numerous
2 domain names that all point to the same site that have the
3 word embassy in association with the name of a country in
4 the title of the domain name.

5 MR. NAWASH: And we would object to that too, Your
6 Honor, because --

7 THE COURT: Would that, in and of itself, make it
8 illegal?

9 MR. SZYMKOWICZ: Well, it would of course --

10 THE COURT: It seems to me, unless I'm able to
11 conclude that what he's done, if he's done it, is in fact
12 illegal, then it seems to me it is irrelevant.

13 MR. SZYMKOWICZ: Well, Your Honor, it's one of the
14 prongs of the test. We don't have to prove a full trial to
15 determine if the Ghana government owns trademark rights in
16 the term Ghana Embassy. We are just, I believe that we only
17 have the duty to elicit testimony from the defendant that he
18 has registered names that are similar to other, other
19 embassies.

20 THE COURT: What inference do I draw from that?
21 Obviously, you want me to draw the inference that what he's
22 done is inappropriate and, therefore, infer that, because it
23 was inappropriate in that regard that he did it, what he did
24 here with some type of ill intent too.

25 MR. SZYMKOWICZ: Well, Your Honor, if, going back

1 to the Lady Gaga example, if someone took the name
2 ladygaga.com and also owned justinbeiber.com and
3 michaeljackson.com and prince.com, then I don't think that
4 the Court would require the Lady Gaga to bring in Michael
5 Jackson, Justin Beiber and Prince and Madonna to talk about
6 whether they have trademark names in those sites. I think
7 the very nature of the fact that they're similar
8 entertainers would be sufficient.

9 THE COURT: Wouldn't you still have to bring in
10 some proof of the fact that the use of those names was not
11 authorized by those individuals?

12 MR. SZYMKOWICZ: Well, I think that Your Honor --

13 THE COURT: I couldn't just infer. I mean I don't
14 know. I mean, I guess, generally, you know, people in those
15 type of professions don't give others authorization, but I
16 don't know. Maybe that's true, but I just don't see how I
17 can conclude that, just because someone would do that, that
18 that would, in and of itself, mean that it's being done
19 without authorization. It might.

20 MR. SZYMKOWICZ: But, Your Honor, I don't think we
21 need to go in that direction for the simple reason that
22 forcing us to bring in the 20 Arab countries --

23 THE COURT: Isn't that the inference? Aren't you
24 asking me to draw the inference that, because, if it's true,
25 he has used similar domain names of other countries, that

1 that's a reflection of the fact that what he did was illegal
2 and, therefore, what he did here I can infer was done with
3 inappropriate intent?

4 MR. SZYMKOWICZ: I think that that is one
5 inference that the Court can make. But, under the equity
6 jurisdiction of this Court, this is one of the bad faith
7 prongs. And it's -- we're not attempting to prove that
8 there, that there was necessarily trademark rights in these
9 other names because that would force our entire proceeding
10 to result in mini trials on each domain name that he owns.

11 I think that the bad faith element doesn't require
12 such a mini trial for every single domain name but rather
13 allows the Court to obtain an admission for whatever purpose
14 the Court wants and for whatever weight the Court wants that
15 the defendant in a cybersquatting case is taking the name in
16 a similar context as the defendant, you know, took in the
17 case at bar that they're at trial for.

18 THE COURT: Well, I mean, I guess maybe there's no
19 problem with asking him about that and then asking him
20 whether he got authorizations from those various countries
21 or embassies to use their names, but then I guess, if you
22 don't, you're stuck with his response. If he says yes,
23 you're stuck with that. If you don't have other evidence,
24 it's going to refute it.

25

1 BY MR. SZYMKOWICZ:

2 Q Mr. Miski, do you own --

3 THE COURT: Yes, I'll hear from you.

4 MR. NAWASH: In addition, Your Honor --

5 THE COURT: You need to come up to the podium.

6 MR. NAWASH: In addition, based on a rule, he
7 cannot bring that in unless he can also show that those
8 other countries or other embassies who have those domain
9 names that they actually have trademark rights in those
10 domain names. So, for him to ask that question, he must
11 also show that those specific countries actually have
12 trademarks in those. That's what I, I just looked at the
13 rule and that's how it is. So this is completely
14 irrelevant, Your Honor.

15 THE COURT: What about that?

16 MR. SZYMKOWICZ: Your Honor, our position would be
17 that, if we don't admit this type of information into the
18 record, then you would never be able to introduce such
19 information, which would result in the prong being
20 completely useless.

21 THE COURT: It's a matter of proof. I mean, I
22 don't think I can lower the standard of proof that you have
23 to meet in order for me to be in a position to draw an
24 adverse inference in reference to what his mental state was.
25 And it seems to me that, obviously, what you're asking me to

1 do is to infer that he had ill intent in reference to what
2 is at issue in this case because he had registered or used
3 similar names. But if those names were not names that had a
4 trademark value to them, then it seems to me, without that,
5 you're asking me to infer something that I really don't have
6 any evidence that would justify me reaching that inference.

7 I mean I understand what you're trying to do, but
8 it seems to me what you probably have to do is to, I mean if
9 it's a registered mark, then obviously you could bring in
10 some type of documentary evidence to show, in fact, that it
11 was registered. And if it's not, I guess you could bring
12 somebody in from those various embassies or whatever who
13 would be in a position to say that, yes, it is in fact a
14 trademark that we use, and we never gave him authorization
15 to use it.

16 I mean I understand that's burdensome, but I don't
17 think I can lower the standard of evidence because there's a
18 burden in order to establish it.

19 MR. SZYMKOWICZ: We believe that it's showing that
20 registration is taking place of other marks that are similar
21 and that are distinctive. At least at the common law,
22 they're capable of serving as trademark rights.

23 THE COURT: I mean I just don't know. I mean,
24 again, I mean if we -- I mean, I accept the proposition that
25 I guess an embassy can have trademarks. The name can have

1 trademark status, but, you know, I'm obviously more familiar
2 with commercial establishments.

3 And I guess, if you were talking about a known
4 commercial establishment, like, you know, IBM or Motorola or
5 something of that nature, and if he were using those same
6 names, I probably would be able to infer that those are, in
7 fact, names, because of the business nature of those
8 entities, that have a trademark associated with them.

9 And maybe conceivably I could infer that there is
10 the existence of a trademark because of that. And then I
11 guess he could be asked whether he had, in fact, used those
12 names and then I guess he could be asked whether he had ever
13 gotten authorizations from those entities to do that.
14 Conceivably I could do that.

15 But with an embassy, I just have, don't have a
16 familiarity with embassies to know whether or not embassies
17 do, in fact, acquire trademark status, what those particular
18 names are associated with the embassy, and whether I could,
19 therefore, infer that, because that name was used, that
20 there was knowledge on his part that he was doing so
21 inappropriately and, therefore, infer that what he did here
22 was also inappropriate.

23 MR. SZYMKOWICZ: Your Honor, we would like to
24 respectfully note *United States of America versus The*
25 *Washington Mint*. The specific cite is 115 Federal

1 Supplement 2d 1089. It's a United States District Court
2 case in which the Court upheld the United States Mint as a
3 trademark. And I believe we've also cited in the record
4 other cases that stand for the proposition that government
5 entities are just as capable of having trademark rights.
6 And so we feel that the distinction between the two --

7 THE COURT: The United States Mint, I mean, that's
8 a common enough name. I'm familiar obviously with the
9 United States Mint. And I can agree with that, but I don't
10 know. I mean, embassies, I mean, even here, we're talking
11 about a name. Yes, you do have a Libyan Embassy, but you
12 also have other names that the Embassy purportedly uses.
13 And I wouldn't know, for example, if those names were
14 submitted to me, whether or not those were names that are
15 really associated with an embassy that would, therefore, as
16 a result of that, have trademark status.

17 So, I mean, I just, again, I just think I'm being
18 asked to infer something nefarious in reference to the use
19 of these names without really anything before me indicating
20 that those names, in fact, do have trademark status. So I'd
21 have to sustain the objection.

22 MR. NAWASH: Thank you, Your Honor.

23 THE COURT: If you can provide me some other
24 authority besides that case, I don't think the *U.S. Mint*
25 case really is analogous because I think that is a familiar

1 enough name that I could reasonably infer that it has
2 trademark status. But if you can provide me with some other
3 cases that would suggest otherwise, I'll reopen.

4 MR. SZYMKOWICZ: Your Honor, I can and that is
5 from our trial brief. We cited the Canadian government
6 cases. I believe there were 20 some --

7 MR. NAWASH: Objection to that, Your Honor.
8 That's been struck already.

9 MR. SZYMKOWICZ: But my argument hasn't been
10 struck.

11 THE COURT: I did strike it as far as a pleading
12 that I would consider. But if there's references in there
13 that counsel wants to rely upon, I don't have a problem with
14 that.

15 MR. SZYMKOWICZ: Your Honor, in case, this is
16 before WIPO. In case number D2001-047 before WIPO,
17 DomainBaron.com apparently was the owner of domain names
18 involving the Canadian government's trademarks, and I went
19 through them before: CanadaCouncil.com, Canadian
20 Customs.com, CanadianForces.com, EnvironmentCanada.com,
21 GovernmentofCanada.com. And in its decision finding for the
22 Canadian government and transferring the domain names at
23 issue to the Canadian government, the adjudication panel
24 found that these --

25 THE COURT: Was there some evidence in the case

1 other than just the mere indication of the name? I assume
2 somebody must have testified about these entities more than
3 just saying, well, these are names and, therefore, because
4 of the existence of the names, we ask the Court to infer or
5 attach trademark status to them?

6 MR. NAWASH: Your Honor, can I say one thing here?

7 THE COURT: You need to talk from the podium if
8 you want the court reporter to hear you.

9 MR. NAWASH: First of all, I'd like to take this
10 opportunity to introduce my co-counsel in this case, who is
11 an expert on cybersquatting cases. And I want to --

12 THE COURT: Are you a member of the court, of this
13 court?

14 MR. MENHART: Yes, I am, and I've filed a entry of
15 appearance, sir.

16 THE COURT: Very well.

17 MR. NAWASH: And I'd like to have him comment on
18 this issue.

19 THE COURT: Yes.

20 MR. MENHART: Your Honor, again to --

21 THE DEPUTY CLERK: What's your name?

22 MR. MENHART: Sure. My name is Eric Menhart.

23 It's on the docket. I filed an entry of appearance. No
24 problem. Thank you.

25 Your Honor, my goal in this case is to be seen and

1 not heard, but I just wanted to come up and briefly address
2 this issue. I mean, really what's going on right here is we
3 have an evidentiary objection to the suggestion that, you
4 know, adding the additional domain names comes in.

5 Look, that would be fine if they could show that
6 the domain names that they're bringing up actually infringe
7 on any trademark. They're not showing that, and so I think
8 that's the problem right here. So that's the first issue
9 is -- so I think that effectively the ruling that you just
10 made that you can't infer that these other domains are
11 infringing trademarks is absolutely correct because they
12 haven't shown any other trademark rights. So, that's the
13 first issue.

14 The second issue is this WIPO case that they're
15 relying upon, there's a couple problems with it, and I just
16 saw it this morning because it was filed at 11:59 last night
17 or 11:22 or whatever time it was. But, first, the citation
18 is wrong. The cite that they make is to a different case
19 entirely.

20 Secondly, that case is entirely under Canadian
21 trademark law. It's totally inapposite to what's going on
22 here, which is obviously United States law. And so, for
23 those two reasons, I mean I just don't think this is
24 something that should be coming in specifically at this
25 point when we're actually in the middle of an evidentiary

1 objection, but then also whether it should come in at all.
2 It's Canadian law. I mean, you know, if we came up here and
3 we offered Indian law or Pakistani law or anything like
4 that, it would be equally irrelevant because it's simply not
5 the law.

6 THE COURT: Justice Kennedy says we can rely upon
7 foreign law and some other members.

8 MR. MENHART: That is certainly true, and I'm very
9 aware of those viewpoints. I think in this case, when we
10 have a very well identifiable U.S. law that does not exist
11 in Canada, it's very difficult to apply Canadian law to
12 something that just simply doesn't --

13 THE COURT: I guess, from my perspective, I mean I
14 think I would tend to agree if we're talking about a
15 Constitutional issue that the Court should not look to
16 foreign law. It should look to the law of the United States
17 in assessing what the Constitution means and intends to say.
18 But if we're talking about a statute, I guess it would
19 depend upon how closely analogous a foreign statute is to
20 our statute in assessing to what extent that would provide
21 some type of guidance as to how our statute should be
22 interpreted.

23 I respect the laws of other countries and, if
24 there was another country that had dealt with a statute that
25 was very similar to ours or common law that was very similar

1 to ours, it seems to me it would not be inappropriate to at
2 least look at that to assess how conceivably our statute
3 should be addressed assuming the statute is vague and
4 assuming there's no legislative history or other guidance
5 that would tell me what the answer should be.

6 So, I just don't know enough about Canadian
7 trademark law and whatever the law is that deals with the
8 issue in comparison to this to say whether or not it's
9 sufficiently analogous that it would be relevant. I just
10 don't know.

11 MR. MENHART: Correct, and I think, I think
12 obviously, Your Honor, you can make the final decision on
13 this. But I think that point that you just made is exactly
14 correct. I mean, there's a real question as to how
15 analogous it is.

16 One final thought, and again, I'll go back to
17 being somewhere unseen. These WIPO cases, and I've actually
18 handled several of them, they are effectively arbitrations.
19 And there's no question there are very good trademark minds
20 working on them, but the suggestion that they have
21 concurrent jurisdiction with the United States District
22 Court is 100 percent wrong.

23 They're simply arbitrations. They're done on the
24 briefs alone. They have very specific rules that the
25 arbitrators undertake to decide the cases. So, I would be

1 very cautious about relying on anything. It's effectively
2 an arbitration case, you know, when it comes down to
3 something like this where we're dealing with very specific
4 United States law. So I just wanted to make those points,
5 and that's effectively what I have to say at this point.
6 Thank you.

7 THE COURT: I mean, my view is that, absent a
8 situation where I would be in a position to conclude that a
9 name is so familiar to me that it would be appropriate for
10 me to take judicial notice of the name and the fact because
11 of the name and its association with the market, for
12 example, that I could reasonably infer that it has trademark
13 status, it just seems to me, for me to conclude that,
14 because he was using some names of some other countries
15 associated with embassies or whatever without knowing that
16 those names, in fact, have trademark status and, therefore,
17 what he was doing was infringing on those trademarks, it
18 seems to me puts something before me that I'm being asked to
19 infer. And I don't know if it's reasonable to make that
20 inference. And, therefore, I think its probative value
21 under those circumstances is minimal, and the obvious
22 potential prejudice is significant.

23 So, absent some other proof being presented to me,
24 other than the existence of the name and the fact that he's
25 used it, I just think it would be inappropriate for me to

1 consider that, so I'll sustain the objection. Again, if you
2 can find some case authority that suggests that what I've
3 said is incorrect, I'll reconsider.

4 MR. SZYMKOWICZ: For the record, Your Honor, my
5 opposing counsel did, we did have an error in the citation
6 of the Canadian government case. I believe we transposed
7 some of the numbers. It was *Government of Canada versus*
8 *David Bedford*, B-E-D-F-O-R-D, a.k.a. *DomainBaron.com*, and it
9 was Case Number D2001-0470. I believe I, our brief said
10 0740 or something. But the correct citation is 0470.

11 THE COURT: Okay.

12 MR. SZYMKOWICZ: And there were, for the record,
13 there were some other cases that we will cite, *The Bundes*
14 *Republik*, B-U-N-D-E-S R-E-P-U-B-L-I-K space
15 D-E-U-T-S-C-H-L-A-N-D *versus John Martin, Intertrade*
16 *International Limited*, Case Number D2008-1846. Another
17 *Bundes Republik Deutschland case versus RJG Engineering Inc.*
18 *RJG Engineering, Inc.*, case 2001-1401. Another case, the
19 *State of the Netherlands versus Goldnames*,
20 G-O-L-D-N-A-M-E-S, *Inc.*, Case Number D2001-0520. They're
21 all WIPO decisions.

22 And for the record, if the Court would like, I can
23 pass the decisions up for the Court's review. And also for
24 the record, Your Honor, may I ask Mr. Miski if he owns any
25 other names, to preserve the record, if he owns any other

1 names that include the name of a country and the word
2 embassy.

3 MR. NAWASH: Same objection, that's not relevant.

4 THE COURT: All right. I assume you're, again,
5 saying for the purpose of suggesting that what he did here
6 was done with ill intent?

7 MR. SZYMKOWICZ: Again, this would show his
8 pattern and practice of -- and I believe that, again, this
9 is clearly allowed under the bad faith prong that this would
10 be part of his business practices. And I believe that we
11 can at least elicit the answer if he owns other websites,
12 domain names.

13 THE COURT: I mean if he does and you can show a
14 relationship between owning those sites and having done
15 something inappropriate, I'll permit it. But, absent that,
16 I'm just not going to make that that leap in inference.

17 MR. SZYMKOWICZ: And I'm also trying to take the
18 Court's suggestion that we ask if he obtained permission to
19 use those sites. So, it's a two-prong question.

20 THE COURT: I understand, but I think what counsel
21 said in response to that is you've got to show more than
22 that. You've got to show that those names that you're going
23 to mention had trademark status. And his use of them was in
24 violation of that status. I'll sustain the objection.

25

1 MR. SZYMKOWICZ: Your Honor, I move the admission
2 into evidence of number, Plaintiffs' Exhibit 6. That would
3 be the current website Mr. Miski is using.

4 THE COURT: Any objection?

5 MR. NAWASH: No objection, Your Honor.

6 THE COURT: Very well. Admitted.

7 [Thereupon, Plaintiffs' Exhibit No. 6 admitted
8 into evidence.]

9 BY MR. SZYMKOWICZ:

10 Q Mr. Miski, I'm showing you what's been marked as
11 Exhibit Number 7 for identification.

12 THE COURT: You need to --

13 MR. SZYMKOWICZ: Plaintiffs' exhibit.

14 THE COURT: There are going to be defense exhibits
15 too that you're talking about plaintiffs' exhibit.

16 BY MR. SZYMKOWICZ:

17 Q Plaintiffs' exhibit, have you ever seen this document
18 before?

19 A Number seven?

20 Q Correct.

21 A Yes.

22 Q And what is that document?

23 A This is explanation how to certify document from Libya.
24 This is for invoice and certificate of origin. And, in
25 fact, if you read it, you will see how much easy to

1 understand. I put a calculator here for how much it costs
2 to certify a document which the Embassy of Libya did not do.
3 Because a customer, to find out how much Embassy of Libya
4 will charge, he has to call the Embassy, stay on the line,
5 wait until they calculate it for him and understand
6 everything.

7 In here, I'm showing the customer, who wants to
8 certify a document from Embassy of Libya, the step by step,
9 what is required and how much that cost. He will put the
10 total amount of the invoice. For example, he has \$354,000.
11 He put the amount in here, and it will give him exactly how
12 much the charge of the Embassy of Libya.

13 They have three different charges going to explain
14 to them. First one, the Embassy of Libya charge \$40 for the
15 invoice. Second, they charge \$40 for the certificate of
16 origin. Third, they go with the total amount of the
17 invoice. If it is under \$50,000, they add another \$50. If
18 it is above \$50,000, they take one per thousand of the
19 amount of the value.

20 And I paid money to calculate all this and make a
21 program so the final customer will put any number of the
22 amount of the invoice that he's certifying. From there, it
23 will show him exactly the amount of the Embassy of Libya is
24 going to charge him. And it will charge him how much I'm
25 charging him to certify the document and how much the

1 Chamber of Commerce is charging him, which is now the
2 National U.S. Arab Chamber of Commerce.

3 It shows step by step everything. And nobody has
4 to use my service. They can read the number and many people
5 do. And they even call and ask. They read the number and
6 they can do it themselves. They don't have to use my service
7 in here.

8 Q And this is your website?

9 A That's my website.

10 MR. SZYMKOWICZ: Your Honor, I move the
11 introduction of Exhibit Number 7 for identification into
12 evidence.

13 THE COURT: Any objection?

14 MR. NAWASH: No objection, Your Honor.

15 THE COURT: Admitted.

16 [Thereupon, Plaintiffs' Exhibit No. 7 admitted
17 into evidence.]

18 BY MR. SZYMKOWICZ:

19 Q Mr. Miski, isn't it true that you offered to transfer
20 domain, the domain names to the Ambassador in exchange for
21 his giving you the right to use your certified things at the
22 Embassy?

23 A Switch it around, that's not true.

24 Q What is true? What is the answer?

25 A The answer, you have to start the story from the

1 beginning when I went to the Embassy of Libya and what
2 happened over there. I call it Embassy. I'm trying to use
3 your word so you can understand it or my word, Bureau of
4 Libya. It's written on the door Great Libya, Bureau of
5 Libya. Okay.

6 So, I had documents certified from the National
7 U.S. Arab Chamber of Commerce. And I was already certified
8 them from the U.S. Department of State before the National.
9 I went there to certify the document from the Bureau of
10 Libya. When I was there, it seems the Embassy of Libya
11 practically, they sold their Embassy. They are now at
12 Watergate Building, and their office has one door.

13 So when I was coming in, the Ambassador was
14 leaving from the same door. So he met with me. And he
15 told, he said he knew my face. Maybe he forgot my name
16 because we have met one time before.

17 So he said, I know you, right? I said yes. My
18 name is Ahmad Miski. Oh, Mr. Miski, I would like to have a
19 conversation with you. I said, fine. I went to his room
20 and we had that conversation. And in that conversation he
21 told me about the, we would like to get some domain name
22 from you. I told him, well, I came. I visited you over a
23 year ago.

24 Before they had the Embassy that he used to live
25 in Four Season, not to live, he used to work. They had a

1 room in Four Seasons Hotel before they got, they went to
2 Watergate. So, I went, welcomed him at Four Seasons Hotel.
3 And in between what I discussed with him, I offered him, if
4 he likes, we can design and give him a domain name if he
5 like the Embassy. And at this point, he said, it's very
6 premature to have it. We still did not have the full
7 diplomatic embassy yet.

8 So he thank me for it. So, when he asked me about
9 domain, I told him I already offered it to you, but you
10 wasn't interested. And later on, you went and used the
11 services of the National U.S. Arab Chamber of Commerce. He
12 said, what about if we go back and we use your service? How
13 much do you pay? I said, we pay 30 percent. So he asked
14 me. I did not offer it to him. So this is the answer of
15 your question. I didn't go to him and offer it to him. He
16 asked me the question. I answered.

17 Q But you offered to transfer the domain names to the
18 Embassy in exchange for providing the services; is that
19 correct?

20 MR. NAWASH: Your Honor, he's already answered
21 that. He said, no, I did not.

22 THE COURT: Okay, overruled. You can ask one more
23 time.

24 THE WITNESS: No, I did not.

25

1 BY MR. SZYMKOWICZ:

2 Q When was this? What was the date of this meeting?

3 A It was in 2006. In fact, it was just before
4 Thanksgiving Day because when he -- he agreed with me. So
5 to finish the story, he agreed with me on that, and he told,
6 I told him -- see here is where's the problem happened
7 exactly that's what leaded us to this case.

8 He told me, okay, that's fine. And I thought we
9 have agreement at this point. Then I added, so we won't
10 have any misunderstanding because I didn't, for a reason, I
11 don't want to say. I told him would we be able to write
12 this as a contract with you? I don't want to use my lawyer.
13 I can agree to use your lawyer, but we need to write what we
14 agreed on. He said, don't you trust me? I'm the
15 Ambassador.

16 I said, I'm sorry. You are the Ambassador today.
17 Maybe you won't be later, so I want that to be written. He
18 said, okay, and I left. And directly after, after
19 Thanksgiving, I called first time to just enforce the
20 contract, to write the contract, and they told he's not
21 here. He's busy for a week. After a week, I received the
22 case.

23 Q Mr. Miski, isn't it true that the Libyan Embassy
24 actually was re-established in the Summer of 2006?

25 A Around, I believe, around March 31st, I believe, 2006.

1 Q Okay. So even earlier than the summer, correct?

2 A Yes.

3 Q Isn't it true that you just told me that you had this
4 meeting with the Embassy, meeting at the Embassy with the
5 Ambassador before the diplomatic relations had been
6 re-established?

7 MR. NAWASH: He didn't say that, Your Honor. He
8 said he met with him one time before.

9 THE COURT: If he knows. Do you know?

10 THE WITNESS: Repeat your question, so I can
11 understand your question clearly please.

12 BY MR. SZYMKOWICZ:

13 Q I'm asking you if you stated that you had this
14 discussion with the Ambassador inside the Embassy building
15 before or after the Embassy was re-established?

16 A It was after absolutely.

17 Q It was after?

18 A Yes. It was before Thanksgiving and they were
19 established at March 31st.

20 THE COURT: And what year are we talking about?

21 THE WITNESS: 2006, Your Honor. But my first
22 meeting with the Ambassador was in 2005.

23 BY MR. SZYMKOWICZ:

24 Q And isn't it true that, in your deposition, you stated
25 that the Ambassador wanted to get the domain names back in

1 this meeting with you?

2 A He asked me. He asked me for it. I did not offer it
3 to him. He asked for it.

4 Q So he asked for it?

5 A Yes, he did.

6 Q And why didn't you give it to him?

7 A I told him you're not using my service, like you don't
8 know how much hurt me after I served them for long years and
9 with loss. And they come, when the day, day one, when I can
10 use, I can make money from doing the service for them, which
11 can help me for other projects, they go to the National U.S.
12 Arab Chamber of Commerce.

13 So when I was serving them, I offered to him to
14 give him domain name if he likes, but he wasn't interested.
15 And he didn't care about that like I'm talking for nothing
16 important.

17 Q So the only way you would give him the domain names is
18 if he agreed to use your services; is that correct?

19 A I --

20 Q Yes or no?

21 A No.

22 Q What was the, why didn't you give it to him then?

23 A You put words in my mouth.

24 Q Well, why didn't you give him the domain names?

25 A How many times you want me to repeat it? He asked me

1 for the domain. I did not tell him, would you like to buy
2 my domain? I didn't say that. I didn't say, would you like
3 to get my domain? I wasn't at the area of the domain. I
4 went to certify a document from the Embassy. I wasn't going
5 to talk about domains.

6 Q But let's take it back. The Ambassador wanted the
7 domain names, correct?

8 A He asked me, if we use your service, would you give us
9 a domain name?

10 Q And what did you say?

11 A I said yes.

12 Q Okay. Isn't it true that, in your deposition, you
13 admitted that you registered the domain names at issue to
14 divert traffic to your websites?

15 A That's one of the reasons. That's not all the reasons.
16 You didn't asked me about how that happened. You didn't go
17 through, but maybe we can go through the details now.

18 Q You admitted that you registered the websites?

19 A One of the reasons, one of the reason is to advertise
20 my services. That's what I said.

21 Q But I'm very specific with my question. You agree that
22 you registered the domain names at issue here in this case
23 in order to divert traffic to your websites?

24 A No.

25 Q You didn't admit that?

1 A Divert the traffic? No.

2 MR. SZYMKOWICZ: May I approach, Your Honor?

3 THE COURT: Yes.

4 BY MR. SZYMKOWICZ:

5 Q I'm showing you your deposition transcript. Have you
6 ever seen this document before?

7 A No.

8 Q Did you ever review a copy of your transcript?

9 A No.

10 Q Do you remember, on Page 19 at Lines 20 through Page
11 20, Lines 12, we had the following discussion.

12 "Q Why did you originally register these
13 domain names?

14 And you answered --

15 "A Because each domain is a word that
16 you can use it for the search engine and it
17 will help the person who is looking for that --
18 anything about that embassy to come to my
19 website.

20 "Q What do you mean by that?

21 "A What I meant, it's a key word that
22 help me to generate business.

23 "Q And what is the key word that we're
24 referring to?

25 "A Libya Embassy, Libyan Embassy. So if

1 you are searching for something about Libya
2 Embassy, that's my key word. Libyan Embassy is
3 a key word.

4 A Yes, that's right. And the reason I answered you
5 directly no because the word "divert" I don't know it. I'm
6 not strong in English. I don't use the word "divert." So
7 he asked about, you said "divert." I don't use the word
8 "divert," and he has read it again. I did not use the word
9 "divert." I don't know it.

10 MR. SZYMKOWICZ: Court's indulgence, Your Honor.

11 THE COURT: Very well.

12 BY MR. SZYMKOWICZ:

13 Q Mr. Miski, do you remember answering interrogatories in
14 this case?

15 A Yes.

16 Q Do you remember stating, in response to Interrogatory
17 Number Seven, quote, The reason the domain names were
18 registered was to increase the search ranking on the
19 Internet?

20 A Yes, that was one of the reasons.

21 Q Okay. And you also admit in Interrogatory Number Eight
22 that, quote, We have submitted the domain names to various
23 search engines, end quote?

24 A Yes, I did. When somebody is looking for services that
25 he want to certify a document from Libya Bureau or Libya

1 Embassy, whatever you want to say, this name, Libya and
2 Embassy is part of the service that I offer is certification
3 of documents.

4 Q But doesn't the Libyan Embassy also certify documents?

5 A No, that is completely different way. Like I cannot
6 certify a document from the Libya Bureau unless I go to the
7 Libya Bureau and have it stamp it, like when he saw me in
8 the room. I have to pay them the money to stamp it. In
9 fact, I'm facilitating their service.

10 They want the document to be certified from the
11 U.S. Department of State. In order to be certified from
12 U.S. Department of State, it has to be certified from the
13 State. Before that, it has to be certified from the clerk
14 of the court if it's required or the notary public and they
15 need the Chamber of Commerce.

16 So, in order for a customer to call them hundred
17 time, I did that or sent FedEx it to them, send it to him
18 back, it's not ready, your document it's not ready, send it
19 to here or send it there, I'm doing all this package of
20 service for a very low price to have that document ready for
21 certification for Libya and cut the time, because most
22 companies who ask for this service, they want it yesterday.
23 They don't -- they want it in an hour.

24 In fact, it's going to take a week, but if they
25 send it, for example, the document to the U.S. Department of

1 State by mail, the return time from U.S. Department of State
2 is guaranteed between minimum two weeks, maximum four weeks.
3 So here it is they need two to four weeks to receive the
4 document only from U.S. Department of State. Where the U.S.
5 Department of State offer from 7:30 to 11:00 walk-in
6 service. I send it with drivers. They go down there.
7 They --

8 MR. SZYMKOWICZ: Your Honor, I object to this.

9 THE WITNESS: That's exactly what I'm doing.

10 MR. SZYMKOWICZ: This is non-responsive to my
11 question.

12 THE COURT: Ask your next question.

13 THE WITNESS: I, I, I --

14 THE COURT: No, ask your next question.

15 THE WITNESS: I'm sorry, Your Honor.

16 THE COURT: No, ask your next question.

17 BY MR. SZYMKOWICZ:

18 Q Mr. Miski, you cannot prove a single third party that
19 you had a contractual relation with that the Libyan
20 government interfered with, can you?

21 A I didn't understand your question.

22 Q You cannot identify a single third party that you had a
23 contract with that the Libyan Embassy interfered with, can
24 you?

25 A I didn't get it. I'm sorry. I didn't understand you.

1 Q Mr. Miski, I will ask you --

2 A Ask it in a different style please. I don't want to
3 give wrong answer.

4 Q You cannot identify any third party, meaning another
5 person or a company, that you had a contract with that the
6 Libyan Embassy interfered with, can you?

7 A I didn't understand. I'm sorry. Because you brought
8 it in a style, difficult style, you did, you do not. You
9 brought it to --

10 Q Mr. Miski, you brought a counterclaim against my
11 client, the Libyan government?

12 A Yes, I did.

13 Q You said that they tortiously interfered with a
14 contract on the one hand and business expectancies on the
15 other hand --

16 A Right.

17 Q -- between you and somebody else, whether it's a person
18 or a company. Would you agree with that statement that
19 that's what your counterclaim says?

20 A Yes.

21 Q Who are these third parties? What are their names?

22 A That's -- I don't know. You need to ask my lawyer.
23 He's doing that, the lawyer job.

24 Q You are under oath here. I cannot ask your lawyer.
25 I'm asking you.

1 THE COURT: You've got to answer your question.

2 THE WITNESS: Okay.

3 BY MR. SZYMKOWICZ:

4 Q You have to give me a name.

5 A The name is, I believe, the Ambassador because I had
6 agreement with the Ambassador himself.

7 THE COURT: What Ambassador?

8 THE WITNESS: Aujali, Ambassador Aujali, the
9 Ambassador of the country of Libya. I had agreement --

10 THE COURT: He's talking about some other party,
11 not Libya but some other party.

12 THE WITNESS: Oh, that's why, I'm sorry, that's
13 why I couldn't understand his question. Other party?

14 BY MR. SZYMKOWICZ:

15 Q Somebody else, who are they? Who is this third party
16 that the Libyan government allegedly interfered with? What
17 are their names?

18 A I don't know.

19 Q Did the Libyan government know the names of these
20 people?

21 A I don't know.

22 Q In your deposition, you answered, no, not I don't know.
23 Would you agree with that? When I asked you the question,
24 "So the Libyan government didn't know about these contracts,
25 did they," and you answered no, would you agree that that's

1 what your answer was?

2 A Well, please go back to the beginning of of --

3 Q Answer the question. Was that your answer at the
4 deposition?

5 A No, I'm not answering without -- to explain first, then
6 I will answer.

7 Q No, I'm asking you a yes-or-no question. Was that your
8 answer at deposition?

9 A You trick me in your question when you said contract.
10 The word contract --

11 MR. SZYMKOWICZ: Your Honor, this is a
12 nonresponsive question. I'm asking him if his answer at
13 deposition was no to the question, did -- the Libyan Embassy
14 didn't know about these contracts, did they?

15 THE WITNESS: Your Honor, can I say that I want to
16 say?

17 THE COURT: Do you understand that question?

18 THE WITNESS: I understand him. But can I say
19 what I want to say first?

20 THE COURT: No, your lawyer will have a chance to
21 ask follow-up questions. You have to answer his questions.

22 THE WITNESS: My understanding at that point to
23 the word contract was wrong. So the way that I understood
24 word contract, I answered no. And I was right at that time.
25 But now, after I understood what contract means, the answer

1 is I don't know.

2 BY MR. SZYMKOWICZ:

3 Q Are you willing to withdraw your counterclaim today?

4 A I'm sorry.

5 Q Are you willing to withdraw your counterclaim today?

6 A No, I'm not.

7 Q What facts do you have to support the allegations
8 contained in your counterclaim?

9 A At the beginning of the counterclaim you ask me that
10 question. You speak English. I told you I speak good
11 English, but I'm not strong with the legal word. And the
12 misunderstanding that happened between you and I is when you
13 said, do you a contract with your customer.

14 And my understanding directly contract is a paper
15 signed and a contract like I have a contract to sell a
16 house. That's what I understood. I said directly no. And
17 I think it was a mistake from my lawyer. He did not come
18 and told me that I misunderstand you.

19 However, later on, I understand that, if a
20 customer send me a letter requesting me to certify his
21 document, this is a contract between me and him. But my
22 understanding was a contract when two parties sign it. So I
23 understood your question wrong. So I gave you a wrong
24 answer.

25 So, at this point, I really don't know, but I have

1 a contract with my customers. So that question was based on
2 the question before it. You asked me do you have a contract
3 with your customers. I said no. And practically it is yes,
4 because I have tens of documents that I received it from my
5 customers at that time that will show too many companies
6 requesting me to certify their document from the Libyan
7 Mission, whatever it was. And most of these people were
8 referred from the Libyan Mission in New York, not from me
9 because they not find me on the Internet at that time. They
10 were referred from Libyan Mission.

11 MR. SZYMKOWICZ: Your Honor, again, I move to
12 strike this testimony as being nonresponsive.

13 THE COURT: Your next question. Well, let me just
14 ask it this way.

15 THE WITNESS: Yes, sir.

16 THE COURT: Putting aside the word contract, was
17 there any type of agreement, whether it was in writing or by
18 mouth, word of mouth, between you and some other person that
19 you say the Libyan government interfered with?

20 THE WITNESS: Thank you, Your Honor. I
21 understand. Yes, my customers.

22 THE COURT: And give us a name. I think he's
23 asking you what are their names.

24 THE WITNESS: Okay. In my bag, I can show him ten
25 names. Can I get my bag?

1 MR. SZYMKOWICZ: Your Honor, these names weren't
2 identified in discovery. So, I mean, he's really stuck
3 between a rock and a hard place. And that's the whole
4 point. That's why we asked for this to be dismissed on
5 summary judgment. He doesn't have a case, and we have been
6 forced to defend a counterclaim that has no basis in fact or
7 law whatsoever.

8 And under D.C. law, the evidence of tortious
9 interference with a contract is very simple. Number one,
10 exists a contract. Number two, knowledge of the contract.
11 Three, intentional procurement of the breach by the
12 defendant, and, four, damages. He can't show any of those
13 prongs.

14 THE COURT: I guess, if at the end of his case he
15 hasn't presented any evidence in support of those elements,
16 then obviously you'd be entitled to judgment as a matter of
17 law. But I don't think I can, at this point, because he
18 still has a right during his case.

19 MR. SZYMKOWICZ: No, I understand that, Your
20 Honor, but I'm asking him to --

21 THE COURT: The fact that he made a statement in
22 response to an interrogatory might be, you know, fodder for
23 impeaching him in reference to what he says here today. But
24 I think I have to give him his opportunity to present
25 evidence in support of his counterclaim.

1 MR. SZYMKOWICZ: I think we can, Your Honor, but I
2 also have the duty, in my direct examination of him, to ask
3 him was there a contract between identifiable people.

4 THE COURT: I don't disagree with that.

5 BY MR. SZYMKOWICZ:

6 Q Was there a contract between people that you can name
7 here today?

8 A I have the information. Can I have my bag?

9 MR. SZYMKOWICZ: I don't think that he has the
10 ability to do that because he didn't turn it over originally
11 so.

12 MR. NAWASH: Objection, Your Honor. First of all,
13 Mr. Miski has already admitted, and it's obvious that he
14 told him he didn't know what he meant during the deposition,
15 so he can't really hold him to what he said then. He can
16 ask him -- Mr. Miski plans to put on his case, and, when I
17 get a chance, I will ask him about these questions.

18 Now, when Mr. Szymkowicz tells him that he -- the
19 way I understood it, he asked him, do you have a contract,
20 and he said yes towards the end when he finally understood
21 him. After you explained it to him, he says, yes, we had
22 contracts. And then, when Mr. Szymkowicz told him, do you
23 have names, Mr. Miski said, yes, we do. And he says, let me
24 go get some names.

25 THE COURT: Well, you can seek to try and do that

1 during your case.

2 MR. NAWASH: Exactly.

3 THE COURT: Okay.

4 MR. NAWASH: That's my point. I mean why is he
5 trying to dismiss it now?

6 MR. SZYMKOWICZ: Well, I'm, Your Honor, I'm asking
7 him what are the names.

8 THE COURT: If he can't respond to the question,
9 you know, based upon your -- if he can't respond to it, then
10 I'll take that into consideration in my assessment as to
11 whether these names that he says he has, that I assume
12 counsel will try and bring out, whether that's credible.

13 BY MR. SZYMKOWICZ:

14 Q Mr. Miski, so you say that there are these names that
15 you have. Why didn't you tell me this before today?

16 A Because I did not understand your question. The
17 contract, the word contract confused me.

18 Q But you brought a claim against my client that involved
19 the word contract. Did you ask your lawyer what the word
20 contract meant?

21 A I didn't know at that point that contract can be from
22 one side. I thought contract has to be signed from two
23 people. That's why I answered you no.

24 Q Number two, you admit that the Libyan government had no
25 idea who your contracts were with, do you?

1 A Based on the contract, on that misunderstanding of a
2 contract.

3 Q But we're here and you were supposed to be prepared to
4 come to court today on your claim.

5 A Yes.

6 Q Do you admit that the Libyan government had no idea who
7 you were dealing with?

8 A Now, are you talking about Libyan government after the
9 Ambassador came or before? It make big difference.

10 Q Whenever you brought -- whatever the fact pattern that
11 forms the basis of your --

12 A Okay. Before that, before this time --

13 THE COURT: If you want her to create a
14 transcript, one has to talk at a time.

15 BY MR. SZYMKOWICZ:

16 Q Whenever time period is the time period for your
17 counterclaim.

18 A Before the Ambassador to come here, the Libyan Mission
19 used to send me customers from there. So a customer will
20 call the Libyan Mission, and they give them my number in
21 order to call me to prepare their paper to make ready to be
22 certified by them. So, at that point, if you call that
23 contract, yes, they knew about my contract.

24 Q With specific people?

25 A Yes. For example, XYZ company will call the Libyan

1 Mission. They say we need to certify this document from
2 you. Can we send it to you? They will ask them, is it
3 certified by the Department of State and the Chamber of
4 Commerce. If they say yes, they will tell them, yes, send
5 it to us. If it's not, you may contact the Arab American
6 Chamber of Commerce to certify your document. They can help
7 you, and then you can send it to us.

8 Q And what are the names of these people?

9 MR. NAWASH: Objection, he asked him this. He
10 asked that question four times, and he told him I have the
11 names over here, and he didn't wanted him to get them.

12 THE COURT: Well, you can do that during either
13 your direct of him or on cross-examination.

14 THE WITNESS: You will see them later.

15 BY MR. SZYMKOWICZ:

16 Q You didn't turn the names of these people over in
17 discovery, did you?

18 A No.

19 Q Why not?

20 A You didn't ask for them.

21 Q We didn't?

22 A I believe.

23 MR. SZYMKOWICZ: Court's indulgence, Your Honor.

24 THE COURT: Let me take a five-minute break.

25

1 [Thereupon, recess taken at 11:57 a.m., resuming
2 at 12:02 p.m.]

3 THE COURT: Counsel, I understand what you're
4 trying to do. But, it seems to me, what we should be trying
5 to do in your case is make out your claim rather than
6 attacking the counterclaim. And we can deal with the
7 counterclaim if counsel opts to try and pursue it during his
8 case.

9 MR. SZYMKOWICZ: I understand, Your Honor.

10 THE COURT: Okay.

11 MR. SZYMKOWICZ: During the break, Mr. Miski was
12 speaking with his counsel. And I believe that, because he's
13 on the stand, we have the right to inquire what he discussed
14 with his counsel, because he was testifying and there was
15 no, you know -- if it had been an overnight break, he might
16 have been permitted to converse with his counsel on things
17 that are not related to his testimony. But certainly, it
18 would be incredibly improper during a five-minute break to
19 converse with counsel.

20 THE COURT: Response.

21 MR. NAWASH: Yes, it is true, Your Honor. He did
22 come. He didn't understand that, when you took a
23 five-minute break that he wasn't supposed to come. And one
24 of the things he asked is if he can take his briefcase with
25 him over there where his notes were. And I think one of the

1 clerks of the court told him, no, that you cannot do it.
2 And I think, specifically, Mr. Szymkowicz came and told him
3 that you cannot talk to your counsel. And that was the
4 whole discussion. I was busy looking at papers, and there
5 was just a whole bunch of people talking around me.

6 MR. SZYMKOWICZ: We will accept counsel's
7 representation, Your Honor.

8 THE COURT: Very well.

9 MR. SZYMKOWICZ: And, Your Honor, in light of your
10 comment about what the Court expects to see from Mr. Miski's
11 testimony, I'm only going to ask two questions related to
12 the counterclaim before I proceed.

13 BY MR. SZYMKOWICZ:

14 Q And, Mr. Miski, in Interrogatory Number 17, isn't it
15 true that you were asked to "State all facts in support of
16 your claim that plaintiffs tortiously interfered with the
17 contract involving you? For each such contract, state the
18 name, address and telephone number of the individual or
19 business entity with whom you have or had a contractual
20 relationship. State the name of the Libyan government
21 official or employee who tortiously interfered with such
22 contract. And state all facts in support of your claim that
23 the Embassy of Libya was aware of those contracts and
24 intentionally procured the contract's breach." And you did
25 not provide any name, address or telephone number of the

1 people that you had contractual relationships. Is that
2 correct?

3 THE COURT: The problem I'm having is, if you're
4 putting the cart before the horse, I don't know, I assume
5 they're going to pursue their counterclaim, but I don't
6 know. Maybe they will decide to not do so. So, it seems to
7 me, without the evidence of the counterclaim being on the
8 table, that we're treading water before we need to.

9 MR. SZYMKOWICZ: Okay. We can move on.

10 THE COURT: So, I mean if they present evidence in
11 support of their counterclaim, then obviously that would be
12 appropriate, an appropriate area to cover. But until that
13 happens, I just think we need to deal with establishing the
14 elements of your claims.

15 BY MR. SZYMKOWICZ:

16 Q Mr. Miski, you contend that the correct name of the
17 entity that's a plaintiff in this case is the People's
18 Bureau?

19 A Yes.

20 Q Why didn't you register peoplesbureau.com?

21 A That's their name.

22 Q Isn't it true that you registered the domain names
23 embassyoflibya.org, libyaembassy.org, libyaembassy.com and
24 libyanembassy.com --

25 A That's right.

1 Q -- in order to drive traffic to your website?

2 A In too many and other reason, that's right.

3 Q And isn't it true that you did that to attract people
4 to your website in connection with providing --

5 MR. NAWASH: I want to object to one thing, and I
6 think this is the cause of the confusion. Counsel has asked
7 him several times you've done this to drive customers to
8 your website, but he hasn't told him which website he's
9 talking about. And I think that's a big part of the
10 confusion that's going on between them.

11 THE COURT: I understood. I think he was talking
12 about the website related to these domain names we're
13 talking about. I think that's clear. Overruled.

14 MR. NAWASH: Okay.

15 BY MR. SZYMKOWICZ:

16 Q Isn't it true that you registered the domain names that
17 I just recited in order to drive traffic to your website?

18 A That was one of the reasons.

19 Q And you did that because you knew that people looking
20 for information about the Libyan Embassy would go to
21 libyanembassy.com, correct?

22 A When we started, it was a completely different story.

23 Q Well what was the completely different story?

24 A Well, around year 2000, I had a meeting with consulate,
25 people from the Embassy of Syria, Saudi Arabia and Bahrain.

1 And we had discussion about racist people using the word
2 embassy and the country name, Arab country name. They put
3 very bad information about the Arab and very hate websites.

4 And we had to discuss to find a way that if we can
5 stop that from working. So, later on, after meeting with
6 the President of the Chamber and discussion, we decided
7 like, if we buy these domains like people are buying them
8 and using them, we can prevent that from happening.

9 Q What domain names are you referring to?

10 A Embassy and Arab country, this Arab country. So, in
11 fact --

12 Q So what specific domain names?

13 A Embassy, like, for example, Saudi Embassy, Bahrain, and
14 the problem was exist on the most of Bahrain Embassy. And
15 if you go --

16 Q And so you registered these domain names?

17 A No, they were registered before me, before the idea.
18 So the idea of registering the domain name came from seeing
19 these websites.

20 Q So you were doing this to protect the Libyan
21 government, correct?

22 A Well, it started not for Libya. It did not, the idea
23 did not started for Libya. If you go now, for example, to
24 BahrainEmbassy.com and go access it, and you can read about
25 it all these bad words about the Saudi family. And it used

1 to be about the Saudi before, but it seems that they paid
2 them to stop it. But now, if you go access it, you'll see
3 that. So we started from that point like to buy this
4 domain. Then it was a good idea I said to just to buy them
5 and keep them. Okay. Why don't we use it to explain our
6 services, which is very good idea. And then --

7 Q Who was your target audience?

8 A I'm sorry.

9 Q Who was your target audience?

10 A Who is what?

11 Q Your target audience?

12 A Target, people who are looking for the Embassy and this
13 Arabic name, embassies, Saudi Embassy, Bahrain Embassy.

14 Q Libyan Embassy?

15 A Well, Libya, in fact, that's why I bought more domains,
16 because they had the problem of Lockerbie. And they had too
17 much pressure, too much bad thinking about them. That's why
18 I tried to buy more than, more than one of domain, like, all
19 domain can be used to put all these bad sites on them, tried
20 to save it from being used from somebody else. And when I
21 put the information about website the exhibit that we use,
22 it's a very simple thing, how to certify documents from
23 Embassy of Libya, which is not going to hurt the Embassy of
24 Libya. In fact, I'm facilitating their services.

25 Q So, you were trying to draw people that were seeking

1 information about document legalization and certification
2 services for Libya, right?

3 A Uh-huh.

4 Q And you were making money on this? You were charging
5 people for the service, correct?

6 A Well, if you -- yes, I was charging for the services
7 but --

8 Q Thank you. I answered you a yes or no -- I asked you a
9 yes or no question. And specifically, your website, which
10 is Plaintiffs' Exhibit Number 5, uses the term Libyan
11 Embassy, is that correct, right on the top?

12 A Which exhibit are you talking about?

13 Q Exhibit Number 5.

14 A Number five, Exhibit 5, legalization and certification
15 of document from Libya Embassy in Washington, D.C.

16 Q Thank you. I have no further questions.

17 THE COURT: Cross-examination.

18 CROSS EXAMINATION

19 BY MR. NAWASH:

20 Q Mr. Miski, what is your occupation?

21 A I'm the Executive Director of the Arab American Chamber
22 of Commerce.

23 Q And when did you establish the Chamber of Commerce?

24 A I did not establish it. It was established in 1984.

25 Q Okay. And are you the owner right now?

1 A Yes, I am.

2 Q Okay. And could you tell us what is the purpose of the
3 Chamber, of your Chamber of Commerce?

4 A It's to facilitate services between the United States
5 and the Arab countries.

6 Q Like what?

7 A Like somebody wants to export document from United
8 States to the Arab country, we can help them to certify
9 their document. We can help them to certify their power of
10 attorneys, articles of incorporation, minute of meetings,
11 sometime they need it. All these legal document, they need
12 to be certified, so they have to go to the U.S. Department
13 of State and the Embassy. Sometime they require the Chamber
14 of Commerce stamp. We do that.

15 Q And do you charge fees for all your services?

16 A Yes, we charge fee. Most of services are free. Some
17 services we charge for it.

18 Q And what services are for free?

19 A Well, to help company to locate, for example, another
20 interest company to do services with them, we do that for
21 free. But some services, like he was discussing, like if
22 you want to go certify a document from U.S. Department of
23 State, yes, they charge \$8, so we have to charge the \$8 that
24 they are --

25 Q And so why do you offer some free services? What's the

1 purpose?

2 A The purpose is to -- this is the principle of the Arab
3 American Chamber of commerce is to enhance and make the
4 business between, make business between the Arab country and
5 the United States growing the business and have it in better
6 relation.

7 Q You mentioned that you do document certification. Tell
8 us what that means.

9 MR. SZYMKOWICZ: Objection, Your Honor, this goes
10 beyond the scope of our direct examination.

11 MR. NAWASH: No. He specifically asked him
12 numerous questions about document certification, what he
13 does with Libya. I mean I would love to do this all on
14 direct, but he was all over the place in terms of his
15 questions that --

16 THE COURT: I think it is within, but I think it
17 would probably waste less time if we just had you do that
18 during your own case, but go ahead.

19 MR. NAWASH: Well, I mean let's suggest this
20 furthermore, Your Honor. I mean I could either sit down
21 right now and wait until, you know, just do the direct
22 examination and cover all these points, which would probably
23 be much more efficient for this Court or just do it right
24 now.

25 THE COURT: No, I think it would be better if, if

1 you're going to query him in reference to the elements that
2 they have to establish and what they sought to bring out
3 from him in that regard, I think that's appropriate. But if
4 you're seeking to try and establish your counterclaim, then
5 I --

6 MR. NAWASH: No, counterclaim, we're not. It's
7 just the claim they tried to talk about.

8 THE COURT: Very well. If it relates to what
9 their burden is, then that's fine.

10 MR. NAWASH: Yes.

11 BY MR. NAWASH:

12 Q So tell us, tell us exactly what you do with respect to
13 certification? Explain that to us, that and embassies.

14 A Let's say a power of attorney between a company here in
15 the United States going to Embassy of Libya. The power of
16 attorney will be signed and notarized from the home state
17 where it was issued. Now, we direct the company, when they
18 call us, to go ahead to send it to their secretary of state
19 to certify it.

20 Some states, they require the document to be
21 certified from the clerk of the court. Some don't. So we
22 tell them, if it needs clerk of the court certification, to
23 go ahead and send it to the clerk of the court to be
24 certified and send it to their state. Otherwise, they can
25 send it directly to their state, like Texas doesn't need

1 clerk of the court or Florida, but Maryland, New York, New
2 Jersey, they, the document has to go to the clerk of the
3 court.

4 However, after that, they send it to us. We take
5 it to the U.S. Department of State. The U.S. Department of
6 State will certify the signature of the Secretary of State.
7 Some embassy require the Chamber certification, which we
8 issue on the way after the U.S. Department of State will
9 certify it. Finally, we take it to the Embassy to certify
10 it. Now, in most cases, they are all embassies, except in
11 Libya, it's the Bureau of the Great Jamahiriya.

12 Q And what is the -- and what are you trying to get from
13 these embassies, or bureaus in terms of Libya? What are you
14 ultimately trying get from them?

15 A Their stamp, they need to stamp this document in order
16 to be legal for to use in their countries.

17 Q And who is it that requires the, your certification?
18 Who is it that requires the certification of the Chamber of
19 Commerce?

20 A The Embassy themselves, they require the Chamber of
21 Commerce.

22 Q And how do you get -- and how does the Chamber get its
23 customers?

24 A Most customer they come through referral from the
25 Diplomatic Mission from the embassies or bureau or mission,

1 whatever you call it.

2 Q And how do these embassies forward customers to you?

3 A Well, when they have a customer calling them that they
4 have power of attorney and they find out that it's not
5 certified, it's not ready to come to them, so they help them
6 on the phone that you may check with the Arab American
7 Chamber of Commerce, especially if it needed the stamp of
8 the Arab American Chamber of Commerce. And Libya is one of
9 the country that they needed the stamp of the Arab American
10 Chamber of Commerce.

11 Q And has Libya ever forwarded customers to you?

12 A Oh, too much.

13 Q And when did they start forwarding customers to you?

14 A Since I started they were in 1996.

15 Q And who was forwarding customers to you in 1996 when
16 you started?

17 A The Diplomatic Mission, I believe, to New York, the New
18 York United Nation Mission of Libya.

19 Q And after they established the Diplomatic Mission here
20 in Washington, D.C., that they call Embassy and you call
21 Bureau, after they established the Bureau, did they ever
22 forward customers to you?

23 A At the beginning, yes.

24 Q When you -- you mentioned that there were several
25 reasons why you purchased the domain names. Tell us all of

1 the reasons you purchased the domain names.

2 A I just explained. The first idea was to stop this
3 racist websites that's going on. Then we found that it's
4 good idea to advertise the services of the Arab American
5 Chamber of Commerce on these domain names. It's going to be
6 helpful for people.

7 Q And who was it that initially told you that people were
8 buying domain names to attack Arabs?

9 A Well, I had a meeting with the consulate of Bahrain and
10 a diplomat from Saudi Arabia and Syria, and we were
11 discussing websites against the Arab. We saw it on the
12 Internet.

13 Q And why would they come to you? Why would they tell
14 you that?

15 A Because I represent the Arab American Chamber of
16 Commerce.

17 Q And when you purchased the Libyan, the domain names
18 that are the subject of this lawsuit that you mentioned
19 earlier, did you use them immediately?

20 A Yes, I did.

21 Q And what did you use them for?

22 A I used it to advertise the services of the Arab
23 American Chamber of Commerce.

24 Q Did they have their own websites?

25 A At that point, yes.

1 Q And starting which year? Starting which year did you
2 buy the domain names, or when did you buy the domain names?

3 A One of them, I bought it in 2002, and the other three
4 were in 2003.

5 Q And from, and at that point, you said that they had
6 their own websites?

7 A Yes.

8 Q And until when did you have your own websites for those
9 domain names?

10 A After we have the problem here, in order to show the
11 Libyan Bureau that it's not important for me or I was doing
12 it for them practically, so I directed the domain names all
13 to the Arab American Chamber of Commerce.

14 Q What year was that?

15 A I'd say 2007 or '08, in between these two years.

16 Q Is there any relationship between the domain names and
17 the services you offer?

18 A Yes, the domain is part of my service.

19 Q Explain that. What is the relationship between the
20 domain names, Libyan Embassy or Embassy of Libya, and the
21 services you offer?

22 A Well, the domain is like I certify documents from
23 various embassies, so this domain is part of my service.
24 The embassy and the country it's what people are looking for
25 to certify documents. For example, he wants power of

1 attorney to be certified from Embassy of Saudi Arabia. He
2 will write that. So embassy, Saudi Embassy, for example, is
3 part of the domain that can help people to come to see our
4 services.

5 Q At the time, at the time you registered the domain
6 names, did you have any intention of selling them?

7 A No.

8 Q Have you ever offered to sell any domain name to
9 anyone?

10 A No.

11 Q Have you ever offered to sell any domain names to any
12 Libyan official?

13 A No.

14 Q Have you ever offered to sell a domain name to a Libyan
15 Ambassador?

16 A No.

17 Q Have you ever advertised the availability of a domain
18 for sale on any forum?

19 A No.

20 Q You mentioned that you offered to do a website -- in
21 2005 you offered to do a website for Libya, for the Libyan
22 Ambassador?

23 A Correct.

24 Q Did you ask for any money?

25 A No, I did not. It was for free.

1 Q Why would you do that for free?

2 A It's part of my services that I offer to the embassies.

3 Q Has anyone ever confused you with the Libyan, with the
4 Libyan Bureau?

5 A No.

6 Q Has anyone ever called you and said, hey, is this the
7 Libyan Embassy?

8 A No.

9 Q Do you benefit from being confused with the Libyan
10 Bureau?

11 A Not at all.

12 Q Why not?

13 A That would slow my business.

14 Q Explain that.

15 A I don't want people to call me and ask for visa, which
16 I don't do visa. I don't want people to call and ask for
17 help from Libya that they keep. Why I'm not the Embassy of
18 Libya. I don't want the hassle. I have no people enough to
19 answer the phone or give them answer. They won't be happy.
20 I won't be happy too. My service is completely different
21 than the Embassy.

22 Q Do you offer any service that is offered by the Libyan
23 Bureau?

24 A No.

25 Q Does the Libyan Bureau offer any service that you

1 offer?

2 A No.

3 Q Has the Libyan Bureau ever informed you that someone
4 confused you with them?

5 A No.

6 THE COURT: Your answer?

7 THE WITNESS: No.

8 BY MR. NAWASH:

9 Q Are there any -- have you seen the website of the
10 plaintiffs, of the Libyan Bureau?

11 A Yes, I have.

12 Q Do you know what the domain name for that website by
13 any chance?

14 A Libyabureaudc.com.

15 Q Okay. Are there any similarities between their website
16 and your website?

17 A No, they are completely different. They have their own
18 flag. They have their own logo. They have the services of
19 Libya. It's written in Arabic at the middle. It's
20 completely different website of the Bureau. I have a big
21 letterhead and it looks, if you look at mine, it shows
22 commercial use website.

23 Q Have you ever tried to divert traffic or, and I'm going
24 to explain what divert means, traffic from their website to
25 yours? Divert means have you ever tried to seek people who

1 are, who want their website and try to get them to go to
2 your websites?

3 A No.

4 Q And why don't you want to divert people to your
5 websites?

6 A Because I can't help them, and they don't help me.

7 Q Have you ever written disparaging remarks or tried to
8 tarnish the --

9 A Disparaging?

10 Q Have you ever written any bad remarks to hurt the
11 reputation of the Libyan Bureau or the Libyan government?

12 A I never did.

13 Q Do you know when the plaintiffs, the Libyan government,
14 learned of the purchase of the domain names? Do you know
15 when they -- I'll go back. I'll explain that. You said you
16 purchased the domain names in 2003, correct? Do you know --

17 THE COURT: He said two and three.

18 THE WITNESS: Two and three.

19 MR. NAWASH: Two and three, forgive me, Your
20 Honor.

21 BY MR. NAWASH:

22 Q Do you know when they learned that you purchased these
23 domain names?

24 A Even before I purchased it, after my discussion with
25 the consulates in here, I had conversation with that

1 consulate in New York Mission, and I mentioned to them that
2 I'm buying these domains and they thanked me.

3 Q The consulate for who?

4 A New York Mission.

5 Q For which country?

6 A For Libya.

7 Q You told them what?

8 A I told them that I'm buying domains.

9 Q Did you tell them why you were buying the domain names?

10 A I explained to him about my meeting with the Saudi,
11 Bahrain and Syria and what happened and told them I'm buying
12 domains.

13 Q Did he object?

14 A No. In fact, they send me, like they kept sending me
15 their customers. Like people who need my services, they
16 kept sending me and referred them to this domain.

17 Q So the plaintiffs referred people to your websites?

18 A Yes.

19 Q They used the domain names libyanembassy.com and so on?

20 A That's before the Ambassador to come to Washington,
21 D.C. That's where they had no embassy.

22 Q And how did -- I'm sorry. I guess you answered that.
23 I said, how did they know, how did they know you bought the
24 websites, the domain names?

25 A How they did know?

1 Q How did they know, yes.

2 A I told them.

3 Q You told them. And do you know who you informed or who
4 you told that you bought these domain names?

5 A Well, I used to have my conversation with Mr. Mohamed
6 El-Galadi.

7 Q Do you know --

8 A He was a consulate. Mohamed, well it was very hard for
9 me to spell his name correct.

10 Q She wants you to spell his name.

11 A El-Galadi, I think, Mohamed, M-O-H-M-A-D, last name,
12 E-L-G-A-L-A-D-I.

13 Q And who was Mr. Mohamed El-Galadi?

14 A He was the consulate of the Libyan Mission in New York,
15 and I visited him over there in New York too.

16 Q You mentioned that you had close relations with the
17 Libyan officials at the UN. How did you establish these
18 relations, or why did you establish these relations?

19 A Being I'm the only Chamber of Commerce in the United
20 States who certify their document at that point, the
21 National U.S. Arab Chamber of Commerce refused to certify
22 any document going to the country of Libya. Because they
23 don't, they don't know if they have the right to certify it
24 or not, they are afraid to be problem or something against
25 the law in the United States before they put their stamp.

1 And they have no ability to do, to take their time and
2 confirm the document before they stamped it. So, very
3 simply, they refused to deal with any document going to
4 Libya.

5 On the opposite, I used to take every document to
6 the U.S. Department of State first to certify it by them.
7 And many times they rejected document. One time, for
8 example, I remember I had a document for Johnson and
9 Johnson. They were doing job there. I had a booklet like
10 that. I took it to the U.S. Department of State, and they
11 came and they said, what is written here is against the
12 sanction of Libya, and we cannot certify it. So I wouldn't
13 certify it myself.

14 I took it back to Johnson and Johnson, explained
15 it to them what they are doing is wrong, and they fixed
16 their document, went back to the U.S. Department of State,
17 certified it, then I did. Where the National U.S. Arab
18 Chamber of Commerce, they don't go to the U.S. Department of
19 State. They don't bother to certify the Libyan documents.

20 Q And so you saying certifying documents for Libya
21 required more steps than other countries?

22 A Well, for me, as a Chamber of Commerce, I don't know
23 what is the sanction. That's really very hard to understand
24 the sanction, what is allowed at that time and what's not.
25 All what I know we were allowed to export food and drug to

1 Libya. I didn't know more than that. Well, that problem
2 was Johnson and Johnson.

3 For example, they had amount of U.S. dollars
4 written for manufacturing fees, and that's why it was
5 refused because they shouldn't mention the amount of money
6 in the document that they are sending it to there. So I
7 don't, I cannot decide if the document is good to be
8 certified or not according to the rule --

9 Q And who clarified whether sending document, sending
10 something to Libya is good or not?

11 A U.S. Department of State, when they put their stamp
12 now, I'm safe to stamp it myself, because I believe they
13 read it and they agreed on it.

14 Q Okay. And did you make money doing this?

15 A Well, in fact, I was losing money, because, by the time
16 that I certify the document, then I need to send it to the
17 New York Missions. I have to send it with FedEx and put the
18 returns, practically I'm paying for the FedEx both ways.
19 So, by the time I charge my fee, the FedEx will charge me
20 higher than my fee to certify, to bring it back to me.

21 Q Why did you do it if you were losing money?

22 A It's a principle that I'm, I held our country and plus
23 I'm against the sanction against Libya. Like, I do not
24 agree because it was hurting people, and it wasn't hurting
25 the government.

1 Q Okay. Prior to the appointment of the Ambassador, what
2 did you say his name was, the Ambassador to Libya in the
3 U.S. now?

4 A Aujali.

5 Q Yeah, prior to the appointment of Ambassador Aujali,
6 describe your relationship with the Diplomatic Mission in
7 Washington, D.C.?

8 A Well, you're wrong. There wasn't a mission to
9 Washington. He was number one person who came to
10 Washington, D.C., so I had no relation with them. He came
11 number one in the hotel. He got a room in the hotel, then
12 he established the Mission.

13 Q Okay. Tell us how you purchased the domain names in
14 question, the relevant domain names. And if you know them,
15 repeat them.

16 A I'm afraid to confuse with their names. Like, they
17 have been repeated several times.

18 Q Okay. The domain names are the subject of this
19 lawsuit. Tell us how you came to own them?

20 A Well, I went to -- there were too many website where
21 you can buy domain names. So I went to buydomains.com, and
22 I checked if these domain are available. And they were, so
23 I bought it. I registered my address in Maryland. I put my
24 name, my phone number, all my information there.

25 Q And did you put your correct name and your correct

1 address?

2 A Yes, I did.

3 Q At the time you purchased the domain names, did you
4 have any reason to believe you were doing anything wrong?

5 A No. I bought it in good faith.

6 Q Why did you think you bought them in good faith?

7 A Because I was trying to help to stop these racist
8 websites over there.

9 Q The services you offer are they legal services?

10 A Yes.

11 Q Did you know if Libya had a trademark or not at the
12 time on those names?

13 A I know they had no trademark. There was no Libya
14 Embassy. There was no Libya Bureau to start with. There
15 was -- no, they had no trademark on them.

16 Q But was that a question that you asked yourself, that
17 you considered whether they had a trademark or not?

18 A It's obvious I didn't think about it twice to think if
19 they have a trademark or not. They have no trademark on
20 them.

21 Q And you thought that because they --

22 A They did not exist.

23 Q They didn't exist, okay. Do you know when Libya
24 established diplomatic relations with the U.S.?

25 A In March 2006, March 31st.

1 Q And how did you know that diplomatic relations were
2 established?

3 A I heard that on the news. I knew that from Department
4 of State and the media, so it's everywhere.

5 Q Prior to 2006, did they have any kind of Diplomatic
6 Mission in Washington, D.C.? Did they have an Embassy in
7 Washington, D.C. prior to 2006?

8 A They had the Libya Liaison Office before it became the
9 Libyan Bureau.

10 Q You mentioned that you knew they didn't have embassies,
11 that they used bureaus. How do you know that they -- first
12 of all, did you know, at the time you bought the websites,
13 the domain names, that they used the terms bureaus as
14 opposed to embassies?

15 A I didn't understand you. I'm sorry.

16 Q At the time you -- you said, you said, and correct me
17 if I'm wrong, you said you knew they didn't have embassies.
18 They had bureaus.

19 A Right.

20 Q At the time you purchased the domain names in 2003 and
21 2002, did you know that Libya uses bureaus as opposed to
22 embassies?

23 A Yes, I did.

24 Q And how did you know that?

25 A In fact, with my discussion with the consulate over

1 there, he explained to me that, when I told him I'm buying
2 Libya Embassy, he said, we call it Libya Bureau, and I knew
3 that. That before they were closed, they were closed. The
4 U.S. government closed the Libyan Bureau in fact. They were
5 a bureau before they were closed.

6 Q Have you ever tried to verify their name anywhere?

7 A Like what, verify it where?

8 Q Have you ever tried to see whether, other than what the
9 Libyan told you, have you ever checked other sources to see
10 whether they are an embassy or a bureau?

11 A Oh, everybody knows here. Even all the Arab embassies
12 here, they know. They call it Libyan Bureau. They don't
13 call it Libyan Embassy.

14 Q Any other source?

15 A No.

16 Q Other than Ambassador Aujali, did you have discussions
17 about the domain names with anyone from plaintiff?

18 A Which period of time are you --

19 Q Before the lawsuit. Before the lawsuit began, did you
20 discuss these domain names with anyone at the Libyan Bureau?

21 A I said I discuss it in New York with a Libyan
22 consulate.

23 Q Yeah, I'm sorry. I'll specify it. Here at the Bureau
24 or Embassy as they call it?

25 A You're talking in Washington, D.C., after they opened?

1 Q In Washington, D.C., yes.

2 A Yeah, I only discuss it with the Ambassador.

3 Q And did you have discussions with anyone here in
4 Washington, D.C., at the Bureau regarding the dispute that
5 we have here before the lawsuit?

6 A I received a call from somebody who threatened me.
7 Like if you don't -- he said I'm calling from the Libyan
8 Bureau. And if you don't -- you are using, you have four
9 domain names, and if you keep it and you don't give it to
10 us, we're going to sue you. And you cannot resist us.

11 We are a rich country and we can keep you all your
12 life in the court. Well, I told him I already offered to
13 the Ambassador to make a website and give him domain if he
14 like. And I can stand up for my offer. He said, no, you
15 have to give everything you have.

16 Q Did you -- how many times did you meet the Ambassador?

17 A I met him four times.

18 Q And how many times did you discuss the domain names
19 with him?

20 A Twice.

21 Q When was the first time you discussed the domain names?

22 A First time it was in the hotel on Massachusetts Avenue.
23 We just mentioned the name, Four Seasons Hotel.

24 Q What year was that?

25 A That's in 2005.

1 Q 2005, and did you certify documents for Libya at that
2 time in 2005?

3 A Yes, I was certifying documents, and I explained that
4 to the Embassy, that we are the only Chamber who certify
5 your documents.

6 Q And up until 2005, what percentage of the certification
7 business going to Libya did you have?

8 A One hundred percent, I do it all.

9 Q You had 100 percent of the business?

10 A Yes.

11 Q And how long have you had 100 percent of the business
12 for Libya?

13 A When I started myself in 1996, until that day when I
14 met the Ambassador at Four Seasons, I was doing it
15 100 percent and few months later.

16 Q Have you ever, did you ever offer to trade the domain
17 names in return for certifying, for Libya allowing you to
18 certify documents?

19 A No.

20 Q Have you ever offered to trade the domain names in
21 return for being the exclusive certifier of documents?

22 A No.

23 Q Why not?

24 A I was the exclusive already Chamber of Commerce doing
25 it. I was already the exclusive.

1 Q What do you mean you were already the exclusive?

2 A I was already the exclusive Chamber of Commerce doing
3 the certification. So why to make offers?

4 Q Did you know that you would lose money before you
5 purchased the domain names?

6 A Yes. I knew that.

7 Q When you met -- you said you met the Ambassador at the
8 Four Seasons in 2005. Do you remember what you told him?

9 A Well, first of all, I welcomed him to come in the
10 United States. I knew he came from Canada. He used to be
11 the Ambassador in Canada. And I explained our services that
12 we did for Libya during these years, and he thanked me. And
13 we had a conversation like, for like ten minutes.

14 And I explained to him like, if he would like, I
15 will make a website for them. And I can give them one of my
16 domain if they are interested. He said, no, it's premature.
17 It's too early to do that. And he asked me, in fact, if I
18 can do translation for -- he gave me piece of newspaper, and
19 he asked me if I can do translation from English to Arabic.
20 I said sure. And next day it was there in his office.

21 Q So the Ambassador asked you to do work for him?

22 A Yes.

23 Q What did he ask you to do?

24 A He gave me part of newspaper, a subject in a newspaper,
25 and he asked me if I can do translation to Arabic.

1 Q Did he pay you for that?

2 A No, he did not.

3 Q Why did you do it?

4 A Because it's part of the services that we do it for the
5 embassies.

6 Q Was the Embassy established in May of 31 or March 31?

7 A I thought it's March. I may be wrong.

8 Q Okay. And did you continue certifying documents for
9 Libya after they established the Bureau here in Washington?

10 A Yes.

11 Q For how long?

12 A One month.

13 Q And what happened after that month?

14 A After that month, I received that call of the person
15 who is complaining about the domain name. Like after that
16 month, after that call I received, I remember like got
17 customers. They called and yelled like, if your
18 certification is not honored by the Embassy or the Bureau,
19 why are you certifying the document to hurt us? Now we
20 cannot certify the document with your stamp. They want us
21 to repeat the whole document and go to the National U.S.
22 Arab Chamber of Commerce to certify it.

23 Q Back up here a second. You said you received calls
24 from your customers saying what?

25 A That as long as you know that your certification of

1 document is not honored by the Embassy, why are you doing
2 that because that hurt us because the Embassy asked them to
3 repeat the whole document and certify it from the National
4 U.S. Arab Chamber of Commerce not from the Arab American
5 Chamber of Commerce in order for them to stamp it.

6 MR. SZYMKOWICZ: Your Honor, I object to this line
7 of questioning because, again, we asked this in discovery.
8 We were not given any names of people that, to talk about.
9 So I'd move that the previous answer be given.

10 MR. NAWASH: We haven't given any names, first of
11 all.

12 MR. SZYMKOWICZ: That's the point, Your Honor.
13 They had a duty to provide names because we asked for them
14 in discovery. They didn't do it, and, therefore, I ask this
15 answer entirely be stricken.

16 THE COURT: I don't know if this relates to the --

17 MR. NAWASH: We're not even talking about the
18 counterclaim yet.

19 THE COURT: I was trying to say something.

20 MR. NAWASH: I'm sorry.

21 THE COURT: I don't know if this relates to the
22 area that he said he had confusion about, which is why he
23 said he didn't provide names. This the same subject?

24 MR. NAWASH: Yeah, I mean, that's what I thought.

25 THE COURT: Overruled.

1 BY MR. NAWASH:

2 Q All right. I lost my train of thought, so I'm going to
3 go back a little bit. You said you certified documents for
4 your customers?

5 A Correct.

6 Q And they went to the Libyan Embassy for legalization?

7 A Uh-huh.

8 Q Then what happened?

9 A Yes, they went -- yes, yes, Your Honor. They went to
10 the Embassy of Libya, and they refused to certify it for
11 them. And they told them you have to have it certified by
12 the National U.S. Arab Chamber of Commerce.

13 Q Okay. And did you confirm with the Bureau that they're
14 not accepting?

15 A Yes. I went there and I asked them. They told me,
16 yes, we have ordered that all document must be certified
17 only from the National U.S. Arab Chamber of Commerce.

18 Q And that's a different Chamber than yours?

19 A That's a different one. That's my only competition.

20 Q And what did you do after the Bureau stopped accepting
21 your Chamber certifications?

22 A Well, because I certified the document from U.S.
23 Department of State before. So when I get customers, I
24 continue to take it to the U.S. Department of State. Then I
25 continue to go to the National U.S. Arab Chamber of

1 Commerce, myself, pay them the fee, have them certify it,
2 then take it to the Libyan Bureau.

3 Q So you -- I'm not understanding you. So you, instead
4 of you certifying, your Chamber certifying, so now the
5 other, your competing Chamber, started certifying?

6 A Right, the competing. I followed the rules of the
7 Bureau.

8 Q And you paid money?

9 A Yes, I used to pay them \$25 a stamp at the National
10 U.S. Arab Chamber of Commerce.

11 Q And did you make money having to do that?

12 A Well, practically no.

13 Q So why did you do it if you weren't making money?

14 A I don't want to lose my customers. See the customer
15 who come to me who has Libya, he may have Egypt, Saudi
16 Arabia, all these other countries, so I don't want to tell
17 them I won't do it then, find somebody else to do it, which
18 is wrong.

19 Q And did you talk to the Ambassador after the Bureau
20 stopped using your certificates?

21 A That's what you went back to where I mentioned when I
22 was doing the certification, he met with me when he was --

23 Q Did I ask you about that?

24 A Maybe he did.

25 Q Okay. Well, go ahead. So after, after the Bureau

1 stopped accepting your customers, the certificates you did
2 for your customers, did you ever talk to the Ambassador?

3 A Yes, I did.

4 Q Tell us how that came about.

5 A I was going to certify document from the Libyan Bureau.
6 When I was walking in, he was leaving the office from the
7 same door, and he met with me. He said, I knew you from
8 before. I said, yes, my name is Ahmad Miski. So he said,
9 oh, can we have meeting in my room? I said sure. So I went
10 and --

11 Q He asked you for the meeting?

12 A He asked me for the meeting.

13 Q Uh-huh, keep going.

14 A Okay. So, I went there and we spoke few minutes.

15 MR. SZYMKOWICZ: This was previously discussed at
16 length in my examination.

17 MR. NAWASH: There's a difference, Your Honor.

18 THE COURT: He has a right to go into --

19 MR. NAWASH: Well, there's a difference because
20 we, I would normally agree.

21 THE COURT: You won.

22 MR. NAWASH: Oh, I didn't hear you.

23 THE COURT: You trying to convince me otherwise?

24 BY MR. NAWASH:

25 Q Go ahead.

1 A Okay. What was the question please?

2 Q No, finish what you were saying.

3 A Well, I said, I went, we had conversation in his room.
4 And he asked me, I'm interested to get Libya Embassy from
5 you. I said, I offered it already to you. Maybe he forgot
6 that I offered it to him. He wasn't interested at that
7 point. But I told him, afterward you went and used the
8 other Chamber's services.

9 He said, what about if we use your services, would
10 you give it to us? I said, of course, I will. He said, how
11 much you pay? I said, 30 percent. Can you pay more? I
12 said no. He said, okay, that's fine. So, I told him
13 afterward, okay, and I would like to have this contract
14 written by your lawyer. At this point, he asked me, I'm the
15 Ambassador. Don't you trust me? I said no. You may be
16 Ambassador today. You may not be tomorrow.

17 He said, that's fine. So I left and I had the
18 understanding that we had agreement of who, that he came
19 back to use my services. And I kept calling the Embassy and
20 asking for him and no. They always told me he's not here,
21 he's out, until I received the case.

22 Q You mentioned though -- and this is the last question.
23 You mentioned earlier that, you know, using the domain names
24 helped attract customers to your websites. And are you
25 talking about the websites with the domain names?

1 A No, I'm talking about the Arab American Chamber of
2 Commerce.

3 Q Okay. Thank you.

4 THE COURT: Okay. We'll recess and come back at
5 two o'clock.

6 MR. SZYMKOWICZ: Your Honor, may we request here
7 that, since he's still on the stand, he cannot discuss his
8 testimony with anyone?

9 MR. NAWASH: That's fine. We're done.

10 THE COURT: Very well.

11 [Thereupon, recess taken at 12:55 p.m., resuming
12 at 2:00 p.m.]

13 THE COURT: Okay. Mr. Miski, you're still under
14 oath.

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Okay.

17 ***REDIRECT EXAMINATION

18 BY MR. SZYMKOWICZ:

19 Q Mr. Miski, your Chamber is not registered as a
20 nonprofit corporation, is it?

21 A It's for profit.

22 Q It's a for-profit enterprise?

23 A Because we do make a profit.

24 Q And it charges fees for performing its services,
25 correct?

1 A Repeat please.

2 Q It charges fees for performing its services, correct?

3 A One more time.

4 Q Your Chamber charges fees for performing its services,
5 correct?

6 A Yes, I do charge fees.

7 Q You're talking about earlier the goals of the Chamber.
8 Have you ever sponsored a event or a gathering with regard
9 to your goals?

10 A In fact, I, as a big one, no, but I do help companies
11 from the United States who are interested to find other
12 companies to work with in the Arab countries to meet them
13 together. Let's say they are some, they're looking for
14 tenders. We can help them to find that. So if you are
15 comparing me with the National U.S. Arab Chamber of
16 Commerce, every one of us does different activities.

17 Q But you've never sponsored a convention where people go
18 to as a group?

19 A No, I did not make enough profit to do that. That's my
20 dream.

21 Q Have you ever made a payment or given anything of value
22 to a diplomat or an employee of any embassy with regard to a
23 referral that they gave you?

24 A For the Libyan?

25 Q No, for any embassy.

1 MR. NAWASH: Objection. What's the relevance?

2 THE COURT: Relevance.

3 MR. SZYMKOWICZ: Your Honor, he talks about doing
4 things for referrals. I'm asking is there a quid pro quo
5 involved.

6 THE COURT: How is that relevant in the context of
7 this litigation?

8 MR. SZYMKOWICZ: Well, I believe that the evidence
9 may show that he was trying to make payments to the Libyan
10 government. He referred to a conversation with the
11 Ambassador in which he says the Ambassador asked him how
12 much he was going to get. I'm asking if he was ever paid by
13 any foreign official, whether they're a diplomat or an
14 employee of an embassy.

15 THE COURT: I could see how that might be relevant
16 in the context of the issues related to this litigation, but
17 I don't see how, if he's received some type of quid pro quo
18 from others, how that would be relevant to this litigation.
19 I'll sustain the objection.

20 BY MR. SZYMKOWICZ:

21 Q Mr. Miski, if you -- did you testify that you
22 registered the domain names at issue in this case to benefit
23 Libya?

24 A The idea started to stop the racist websites going
25 around.

1 Q Was there ever a racist website that you're aware of
2 directed toward the Libyan government?

3 A On the Libya Embassy, on the word Libya Embassy or out
4 in general on the Internet?

5 Q With the word Libyan Embassy?

6 A Libyan Embassy, no, because I bought it. I can show it
7 to you if you go to Bahrain Embassy, and you can access it
8 at the moment.

9 Q But nothing was being spread about the Libyan Embassy,
10 correct?

11 A No.

12 Q So why do you register Libyan Embassy?

13 A I said to prevent. It's a result of meeting we had.
14 In the year 2000 we have discuss it, and afterward I start
15 to think buying this domain instead of people using it, so I
16 can stop it from using. Then I found it's a good idea to
17 advertise the services of the Arab American Chamber of
18 Commerce on them as long as I'm paying the annual fee for
19 them.

20 Q But why did the term libyanembassy.com or the other
21 domain names at issue, why did that have value?

22 A I told you it start from bahrainembassy.com and
23 saudiembassy.com.

24 Q But were people searching for the words Libyan Embassy
25 or a combination of them?

1 A They may do.

2 Q How do you know?

3 A God knows how they will search.

4 Q Do you -- you're not an embassy, are you?

5 A No, I am not.

6 Q Do you know what the definition of embassy is?

7 A I believe, in my understanding, I never read it
8 somewhere to repeat it, but, in my understanding, they
9 represent their governments.

10 Q It's a place where foreign governments are represented
11 in another country?

12 A Every country, they have a representative in other
13 countries.

14 Q Okay. And does the term embassy refer, in your
15 definition, to a building or to the governmental office or
16 department?

17 A Governmental office.

18 MR. SZYMKOWICZ: I have no further questions, Your
19 Honor.

20 THE COURT: Very well. Thank you, sir.

21 THE WITNESS: Thank you, Your Honor.

22 [Witness excused.]

23 THE COURT: Next witness.

24 MR. SZYMKOWICZ: Your Honor, we call the Libyan
25 government's corporate designee, Leila Zubi.

1 Thereupon,

2 LEILA ZUBI

3 having been called as a witness for and on behalf of the
4 plaintiff, and having been first duly sworn by the Deputy
5 Clerk, was examined and testified, as follows:

6 THE WITNESS: Yes, I do.

7 DIRECT EXAMINATION

8 BY MR. SZYMKOWICZ:

9 Q Please state your name for the record.

10 A My name is Leila Zubi, Z-U-B-I.

11 Q And what is -- where are you employed?

12 A I'm employed by the Embassy of the Libyan Arab
13 Jamahiriya.

14 Q Are you a Libyan citizen?

15 A Yes, I am.

16 Q How long have you been employed by the Libyan Embassy?

17 A I've been employed by the Libyan Embassy since
18 April 2005. I was first hired by the Libyan government in
19 October of 2002.

20 Q And in what context were you first hired by the Libyan
21 government?

22 A As the legal advisor.

23 Q And what is your exact title now?

24 A I am the legal advisor to the Libyan Embassy.

25 Q What are your duties?

1 A I advise the Ambassador and senior officials and all
2 diplomats actually at the Embassy on U.S. and international
3 law matters.

4 Q How did you obtain your job?

5 A I met with, I was interviewed by the former Ambassador
6 at the Libyan Mission in New York. And they were looking
7 for a Libyan national with a U.S. law degree with a
8 specialization in commercial law as well as public
9 international law, which I had.

10 Q Are you a member of any American State Bar
11 Associations?

12 A New York, yes.

13 Q And you took the New York Bar?

14 A Yes.

15 Q You passed it?

16 A Yes. I'm admitted in New York and New Jersey.

17 Q Did any of your family members work for the Libyan
18 government?

19 A Yes.

20 Q Who?

21 A My father.

22 Q And when did he work there?

23 A He worked, he started in approximately, I believe, 1966
24 through 2003, and he worked in both a diplomatic and
25 nondiplomatic capacity.

1 Q And that would be here in the United States?

2 A Correct.

3 Q Did you ever have the occasion to discuss your father's
4 job with him?

5 A Yes.

6 Q And what generally did you discuss?

7 A We would have intellectual discussions on how the UN
8 works, how bilateral diplomacy works, how multi-lateral
9 diplomacy works, the Vienna Conventions, things like that.

10 Q And did your father's position with the Libyan
11 government influence your hiring as a legal advisor?

12 A Yes, I had a unique understanding of the issues that
13 relate to my position.

14 Q Is it your understanding that you're testifying here
15 today not in your individual and personal capacity as Leila
16 Zubi but rather as the corporate designee of the two
17 plaintiffs in this case? And I'll refer to them in
18 conjunction as the Libyan government.

19 MR. NAWASH: Your Honor, I object only because the
20 type of questions asked are all leading, and I would like
21 you to tell him to stop asking leading questions.

22 THE COURT: Don't lead the witness.

23 BY MR. SZYMKOWICZ:

24 Q In what capacity are you here to testify?

25 A I'm here as the corporate designee of the plaintiffs.

1 Q Okay. And what are the plaintiffs?

2 A They are the Great Socialist People's Libyan Arab
3 Jamahiriya and the Embassy of the Libyan Arab Jamahiriya.

4 Q Can you explain the difference between the two
5 plaintiffs?

6 A The first plaintiff is the sovereign state. It's the
7 country of Libya. And the second, the Embassy of the Libyan
8 Arab Jamahiriya is an agency and instrumentality. It is the
9 Embassy of the Libyan government in Washington, D.C.

10 Q And is there a term that we can use during your
11 testimony that would describe to both plaintiffs here today,
12 such as Libyan government? Is that an acceptable term to
13 apply to both?

14 A Absolutely or we could also refer to it as Libya or the
15 Libyan Embassy, Embassy of Libya.

16 Q Tell me what you did in your role as corporate designee
17 to prepare for your testimony today?

18 A I did a number of things. I met. I had numerous and
19 extensive meetings with officials at the Embassy as well as
20 the Mission, the Libyan Mission in New York, and I'll list
21 them. I met with Ambassador Ali Aujali. Shall I spell
22 that? Okay. Mr. Guma Fares, Counselor, I'll provide the
23 titles as well, Mr. Anwar Al-Ghusbi, Assistant to the
24 Minister of Expatriates in the United States, Mr. Abdulhamid
25 Megeirhi, who is the Second Secretary at the Libyan Embassy;

1 Katie White, Assistant to the Ambassador, Mr. Saleh
2 Bufnrina, Counselor; Mr. Fateh Elhafi, he's the Deputy
3 Ambassador; Mr. al-Sadik Essawari [phonetic], who is the
4 Administrative Attache in charge of the records; Mr. Yusuf
5 Farag, who is the financial or the former financial
6 counselor to both the Embassy and the Mission; Mr. Edward
7 Babayan, who is the management company in charge of the
8 management of the Libyan Mission; Mr. Ahmad, who is the
9 Financial Officer at the Libyan Embassy, and Essa Dia
10 [phonetic], who is his secretary.

11 THE COURT: Did you provide those names and
12 information?

13 MR. SZYMKOWICZ: I was just going to say that.
14 Your Honor, may Ms. Zubi, at an appropriate break, provide
15 the correct spellings of these names?

16 THE COURT: Yes.

17 THE WITNESS: That, so those are the officials I
18 met with. Then I reviewed all of the documents in this
19 case. I reviewed the websites of both the defendant and our
20 own websites. I reviewed the diplomatic list provided or
21 issued by the State Department. I checked our records for
22 relevant documentation and the diplomatic notes as well. I
23 reviewed all of the diplomatic -- well not all of them, but
24 the relevant ones from 2006 going forward as well as
25 actually going back in time.

1 BY MR. SZYMKOWICZ:

2 Q Did you discuss this case with anyone in preparation
3 for your testimony today at the United States State
4 Department?

5 A Yes, actually, I had an in-person meeting with the head
6 of the Libya desk, Heather Colbeck. And I had several phone
7 conversations with her as well as e-mail correspondences.

8 Q I'm showing you, Ms. Zubi, some four cases. And I will
9 ask you if you've had the opportunity to review these cases
10 with regard to finding out what your duties are as corporate
11 designee.

12 MR. SZYMKOWICZ: May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MR. SZYMKOWICZ:

15 Q Have you had the opportunity to review these four
16 cases?

17 A Yes.

18 Q And why did you review these cases in preparation for
19 your testimony today?

20 A To understand my role as the corporate designee and to
21 make sure that I fulfilled my role adequately.

22 Q And, for the record, could you identify these cases by
23 title and citation?

24 A Yes. *Sugar Hill Records Limited, Plaintiff v. Motown*
25 *Record Corporation, MCA Distributing Corp. and Rick James,*

1 *Defendant*. It's the United States District Court. The
2 citation is 105 F.R.D. 166, 1985. The next one is *United*
3 *States v. J.M. Taylor*, and the citation is 166 F.R.D. 356,
4 1996.

5 The third case is *Concerned Citizens of Belle*
6 *Haven v. Belle Haven Club*, and it's 223 F.R.D. 39, 2004.
7 And the last case is *Neurontin Antitrust Litigation*, and it
8 is 2011 U.S. District, Lexus 6977.

9 Q If I ask you something today, is it your belief, in
10 answering the question, that you're answering as the Libyan
11 government's repository of its institutional memory and
12 knowledge as opposed to your individual personal memory?

13 A Yes, that's correct.

14 Q Moving onto the case at hand, what is the Great
15 Socialist People's Libyan Arab Jamahiriya?

16 A It is the country of Libya. It's the name of the
17 sovereign country of Libya.

18 Q And what do the general public refer to that entity as?

19 A Libya.

20 Q How do you know?

21 A It is the designation that is used in the United States
22 and all around the world. It's used by the U.S. State
23 Department. It's used in Libya. It's used internally at
24 our Embassy. It's used. It's the name widely recognized by
25 the general public as the name of the country.

1 Q And how long has it been used as the name of the
2 physical land on which the country rests?

3 A Well, the actually name is -- it goes back into
4 antiquity. But in modern use, it was 1934 during the
5 Italian occupation when the Italians referred to it as Libya
6 and then in 1951 when Libya declared independence from
7 Italian occupation. And it became a country, a recognized
8 country, independent country, in 1951 so going back to 1951
9 at least.

10 Q So can you tell me, to the extent you haven't testified
11 already, a little bit about the history of Libya?

12 A Yes. The area, Libya, for all or most of it was ruled
13 by the Italians. Well, going back further, Greek, Roman,
14 Phoenician, Ottoman, Arab rule into about, through 1911 when
15 it was conquered by the Italians. And it then came under
16 British and French administration in parts together with the
17 Italians until King Idris declared it a monarchy, and it was
18 recognized as an independent state in 1951. And it
19 continued to be a monarchy until Colonel Gadhafi came to
20 power in 1969.

21 Q Has the U.S. government ever had diplomatic relations
22 with Libya?

23 A Yes.

24 Q For how long?

25 A Since approximately 1952, 1953, as soon as independence

1 was declared and the United Nations recognized it as a
2 sovereign state, bilateral diplomacy was established, yes.

3 Q And did that diplomacy continue after 1953?

4 A It has always continued.

5 Q Was it ever suspended for any reason?

6 A It was -- bilateral relations were frozen. During the
7 sanctions, the U.S. implemented imposed sanctions from 1986
8 to 2003.

9 Q And --

10 A 2004, I'm sorry.

11 Q Was this a bilateral or a unilateral decision?

12 A It was a unilateral decision imposed only by the United
13 States against Libya.

14 Q Did the Libyan government take a position with regard
15 to the suspension of diplomatic relations?

16 A Well, it was not happy about the sanctions at all. And
17 so the position was that it was, it wasn't a bilateral
18 decision. It was a unilateral decision.

19 Q And what was the effect of the sanctions on Libya?

20 A It had the effect of freezing bilateral diplomacy as
21 well as commercial activities between the United States and
22 Libya.

23 Q Were diplomatic relations between the U.S. and Libya
24 ever formally re-established?

25 A Yes. They were re-established in 2003.

1 Q Did any other country ever suspend diplomatic relations
2 with Libya during this period to your knowledge?

3 A I'm sorry. I have to go back. It was re-established
4 in 2006, May 31st, 2006. I'm sorry. Could you repeat your
5 next question?

6 Q Yes. Did any other country ever suspend diplomatic
7 relations with Libya?

8 A No. The United Nations had implemented sanctions,
9 economic sanctions, but no other country had its own
10 sanctions as the American, the U.S. government did.

11 Q During the period in which diplomatic relations between
12 U.S. and Libya were suspended, did Libya engage in any
13 diplomatic activity in the United States?

14 A Between the United States and Libya?

15 Q That's correct.

16 A No. Bilateral relations were frozen during the
17 sanctions.

18 Q If someone needed to get a document legalized or
19 certified for use in Libya and the document was physically
20 located or generated here in the United States, was there a
21 process or procedure set up so that that could happen?

22 A It would depend on what that document is because, if it
23 were in the purpose of commercial transactions, then it was,
24 it would not have a legitimate purpose because it would be
25 in violation of the U.S. sanctions. So, but if, in cases of

1 birth certificates and transcripts, as long as it didn't
2 violate U.S. sanctions, then those documents were certified
3 by the Libyan Mission in New York.

4 Q And can you tell me what the Libyan Mission is?

5 A The Libyan Mission is a mission entrusted to perform,
6 that conducts multi-lateral diplomacy at the United Nations.

7 Q And during the period in which diplomatic relations
8 between the U.S. and Libya was suspended, did Libya engage
9 in any diplomatic relations in countries other than the
10 United States?

11 A Absolutely, our Embassy has continued to exist since,
12 all around the world, since 1951.

13 Q So the U.S. government was the only one that took the
14 action to close the Embassy?

15 A Actually, the Embassy, the sanctions had the effect of
16 freezing diplomacy. However, the building of our Mission,
17 sorry, of our Embassy continued to exist that we never not
18 had an Embassy. In fact, the address was 2344 Massachusetts
19 Avenue, and that continued through to exist throughout the
20 sanctions, so we always had an Embassy in the United States.

21 Q In preparing for your testimony today, did you review
22 any international treaties or conventions with regard to
23 diplomatic relations?

24 A Yes. I reviewed the Vienna Conventions on diplomatic
25 relations and consular relations.

1 Q And can you tell me if those Conventions or treaties
2 had any impact on your testimony today based on your review
3 of what was in there?

4 A Yes. I was specifically interested in what, what
5 happens during sanctions with respect to the freezing of
6 diplomatic relations and the physical building, because the
7 thing that's important to understand here is that the name
8 embassy actually has several definitions, and they're all,
9 the definition is collective.

10 And the definition of embassy refers to the staff
11 of the embassy, which is the ambassador and his staff. It
12 refers to the function of the embassy, which is to provide,
13 to conduct bilateral diplomacy and consular services to the
14 general public, to the American public in particular here,
15 and also to the office, to the headquarters of the embassy.
16 So, I was curious to know where and how, if the Embassy
17 continued to exist throughout the sanctions.

18 Q What did your research reveal?

19 A And my research revealed that, according to the Vienna
20 Convention on Diplomatic Relations, the location, the
21 building of the Embassy, which is also the Embassy, could be
22 entrusted to the receiving states, in this case the United
23 States, or a third party state.

24 Q And was that done during the sanction period?

25 A Yes.

1 Q And who did it? Who did the building get entrusted to?

2 A The United Arab Emirates had, yes, looked at the
3 building.

4 Q Did the Libyan government ever intend to abandon the
5 Embassy?

6 A No, it never intended to abandon the Embassy or the
7 name Libyan Embassy. And it never did abandon the name
8 Libyan Embassy. The name, Libyan Embassy, continued to
9 exist throughout the sanctions since 1951. It continued to
10 exist around the world.

11 Q And why do you make such contention?

12 A Well, we, in doing my research for the trial and during
13 my preparation for the trial and also going through the
14 various correspondences that existed between the United
15 States and Libya, going back in time, and also speaking with
16 the Libya desk at the State Department, the United States
17 State Department.

18 Q Do you believe that the Libyan government has any
19 trademark rights that are at issue in this case?

20 A Absolutely. We have trademarks because our name, the
21 Libyan Embassy is directly --

22 MR. NAWASH: Objection. That's a legal
23 conclusion.

24 THE COURT: Isn't that a legal question I have to
25 answer?

1 MR. SZYMKOWICZ: No, Your Honor. I think that
2 Ms. Zubi's testimony, as the Libyan government, do they
3 believe that they have any trademark rights.

4 THE COURT: How is their belief relevant as to
5 whether or not such rights legally did in fact exist?

6 MR. SZYMKOWICZ: Well, eventually it becomes a --

7 THE COURT: I mean she can say what was going on
8 at that time as far as the Libyan government and the Libyan
9 Embassy was concerned in the United States. But it seems to
10 me the question as to whether a particular item has a
11 copyright status under the United States law becomes a legal
12 question that the Court has to answer, not a factual matter
13 for a witness to answer.

14 MR. SZYMKOWICZ: Your Honor, I believe that the
15 Libyan government also has the right to state what it
16 believes the trademarks it has rights in affirmatively, you
17 know, what are -- what does it believe its marks are? And I
18 think that is one thing that, that's a factual matter. What
19 is their belief that the marks are, you know?

20 THE COURT: I guess, I mean, I guess I don't have
21 any problem with her saying what marks existed from the
22 Libyan government's perspective but whether those marks had
23 legal rights attached to them, it seems to me, does become a
24 legal question that she can't answer. She can't say
25 legally, from the standpoint of United States law, whether

1 those marks were entitled to legal recognition.

2 MR. SZYMKOWICZ: That may be correct, Your Honor,
3 but she can state what those marks are, the names of those
4 marks.

5 THE COURT: That wasn't your question. Your
6 question was whether they believed that those marks had
7 copyright status --

8 MR. SZYMKOWICZ: Trademark status.

9 THE COURT: -- which is a legal question,
10 trademark status, which is a legal question. So you have to
11 rephrase the question. And I might think that that might be
12 appropriate if, for her to testify factually as to what
13 marks existed from their perspective but whether, again,
14 they acquired legal status, it seems to me, is a legal
15 question for the Court to answer.

16 BY MR. SZYMKOWICZ:

17 Q What marks do you contend the Libyan government has
18 with regard to trademarks?

19 A Well --

20 THE COURT: At what point in time are you talking
21 about?

22 MR. SZYMKOWICZ: Well, at all points in time from
23 1951 on.

24 THE COURT: Very well. You can answer.

25 THE WITNESS: We have an interest, an ownership

1 interest in the name Libya, Libyan and Embassy of the Libyan
2 Arab Jamahiriya and variations of that name, which is Libyan
3 Embassy, Embassy of Libya and so on. With respect to these
4 domain names, we have and we asserted ownership interest in
5 those domain names.

6 BY MR. SZYMKOWICZ:

7 Q In the four domain names that are at issue?

8 A Correct.

9 Q Okay. Did the legal -- did the Libyan government ever
10 intend to abandon any of these trademarks?

11 A No. It never intend -- the Libyan government or the
12 Libyan Embassy never intended to abandon these trademarks
13 nor did it ever abandon these trademarks.

14 Q Why do you make such contention?

15 A Because we continue to use it. The building of the
16 Embassy continued to exist. It was under trust by the
17 United Arab Emirates. And, under international law, the
18 definition of embassy extends to the headquarters of the
19 Ambassador as well. Bilateral diplomacy was frozen, but it
20 didn't eradicate the existence of an embassy. And embassies
21 continue to exist around the world, Libyan embassies.

22 Q We've heard a lot of discussion in this case already
23 today about the official name of what is referred to as
24 plaintiff, Embassy of the Libyan Arab Jamahiriya. Did you,
25 as the Libyan government, ever undertake any effort to

1 formally define what the name of that entity is?

2 A Are you referring to the country?

3 Q No, I'm referring to the second plaintiff, Plaintiff
4 Embassy of the Libyan Arab Jamahiriya?

5 A Can you ask your question again?

6 Q Yes. What is the official name of the second
7 plaintiff?

8 A It's the Embassy of the Libyan Arab Jamahiriya.

9 Q And how do you know that?

10 A Because it is the name we are accredited with by the
11 United States Department of State, and that is, that is the
12 accrediting government agency within the United States
13 government that is entrusted or in charge of accrediting
14 foreign embassies in Washington, D.C.

15 Q Why are both plaintiffs plaintiffs in this case?

16 A We -- both the Libyan government and the Libyan Embassy
17 have ownership interest in the domain names.

18 Q You've heard, I'm sure, testimony today from Mr. Miski
19 that the correct name is the People's Bureau or the People's
20 Bureau of the Libyan Arab Jamahiriya. Did you hear that
21 testimony today?

22 A I did, yes.

23 Q How do you answer his contention that that is the
24 official name?

25 A People's Bureau is an alternate alternative name to the

1 Libyan Embassy. We have a duty, for diplomatic and legal
2 purposes, to use the name that we are accredited with by the
3 U.S. State Department.

4 And we are listed in the diplomatic book, which is
5 the diplomatic, the official listing issued, published by
6 the State Department, in which all other foreign embassies
7 in the United States rely on, including the United States.
8 And it's a list of all of the embassies accredited with that
9 designation as embassy, including the Ambassador and all
10 accredited diplomats.

11 And according to the United States Department of
12 State, we are the Embassy of the Libyan Arab Jamahiriya.
13 And, as I said, we have a legal duty and a diplomatic duty
14 to go by the designation that is given to us by the United
15 States government.

16 Q So in anticipating your cross-examination, the Libyan
17 Embassy is also known by another name, such as People's
18 Bureau, correct?

19 A The Libyan Embassy is known by the Embassy of Libya,
20 the Libyan Embassy, People's -- Libyan People's Bureau,
21 People's Bureau. They are alternative names. However, if
22 you're asking for what is the official name of the Libyan
23 Embassy in the United States, it is the Embassy of the
24 Libyan Arab Jamahiriya.

25 THE COURT: When you say they're known by these

1 alternative names, are you saying that those alternative
2 names are names that the Libyan government itself has
3 attached to the Embassy or that third parties have called
4 it?

5 THE WITNESS: No. Actually, third parties are
6 consider -- the general public worldwide considers the name
7 Libyan Embassy as representative of the diplomatic functions
8 performed by the Embassy. The name People's Bureau is a
9 term that is used by the Libyan government to express that
10 foreign affairs is an expression of the popular will.

11 However, that is not something separate. The
12 People's Bureau means Embassy. It is not a separate
13 designation. And, in fact, according to the Vienna
14 Conventions, and we do have to look at them, it's very
15 important because it goes to the heart of whether our
16 Ambassador and our diplomatic staff can be accredited. And
17 we can be -- our staff can be accredited as an embassy.

18 THE COURT: I guess what I'm asking is how has the
19 Libyan government publicized the identity of the Embassy?

20 THE WITNESS: Both, Your Honor.

21 THE COURT: When you say "both," what do you mean
22 by that?

23 THE WITNESS: What we do is, in diplomatic notes,
24 which are the official correspondences between us and the
25 State Department, we will write People's Bureau of the Great

1 Socialist People's Libyan Arab Jamahiriya and then use
2 Libyan Embassy or Embassy of Libya or the Embassy of the
3 Libyan Arab Jamahiriya. And in a lot of the diplomatic
4 notes that I've looked --

5 THE COURT: You're saying the Libyan government
6 itself uses those four names alternatively?

7 THE WITNESS: Correct.

8 THE COURT: Okay.

9 BY MR. SZYMKOWICZ:

10 Q I'm showing you what's been marked as Exhibit Number 8
11 for identification. Have you ever seen this document
12 before?

13 A Number 8, yes.

14 Q Can you tell me what that document is?

15 A This is the text of the State Department diplomatic
16 note sent to the Libyan Embassy to reestablish diplomatic
17 relations between the United States and Libya.

18 Q And when was this document transmitted to the Libyan
19 government?

20 A Well, either on or sometime before May 31st, 2006.

21 Q And I note that there's no heading or letterhead on
22 this document. Can you tell me how you became in possession
23 of this document?

24 A I contacted Heather Colbeck. She is the head of the
25 Libya desk at the U.S. State Department, and this is from

1 her.

2 MR. NAWASH: Your Honor, this is -- I object.
3 This is a completely hearsay document. In addition --
4 should I come up?

5 THE COURT: No, I've seen it. Yeah, you should
6 come up here though. If you want a transcript of what
7 you're saying, you need to come up here, yes.

8 MR. NAWASH: I have been generous and courteous
9 enough to wait for him to ask some questions, but this is an
10 empty document that has no heading, nothing on it
11 whatsoever. There's absolutely no foundation for it and --

12 THE COURT: How do you avoid the hearsay
13 implications of the document?

14 MR. NAWASH: -- and it's totally hearsay.

15 THE COURT: How do you avoid the hearsay
16 implications --

17 MR. SZYMKOWICZ: Your Honor, this is clearly --
18 there's an exception to the hearsay rule, which is it's an
19 official document. And moreover, it's a document that is --

20 THE COURT: How do I know it's an official
21 document? What on it reflects it's an official document?

22 MR. SZYMKOWICZ: Because the Embassy official, Ms.
23 Zubi, testified that she received it in the ordinary course
24 of business from the U.S. government's --

25 THE COURT: She can't qualify a document as an

1 official document, can she?

2 MR. SZYMKOWICZ: Well, she can if --

3 THE COURT: If that's true, I could just, you
4 know, bring something in the court and say I received it
5 from somebody, and, if it came from the government, even
6 though there's no heading on it to say that's the fact, I
7 could say I got this from the D.C. government even though
8 there's no indication on the document that that's true. And
9 because I received it, that qualifies that as an official
10 document because I say it came from the government.

11 MR. SZYMKOWICZ: Well, Your Honor, it's --
12 certainly you can assess the credibility of Ms. Zubi at the
13 end of the day.

14 THE COURT: I'm not questioning her credibility.
15 All I'm saying is that there's nothing on this document
16 that's self-authenticating. I can't tell what, what this
17 document, where this document came from. She says she got
18 it. I suspect that she's honestly saying that she believes
19 she got it, but I assume that's based upon the fact that
20 somebody would have told her that they sent it to her.

21 MR. SZYMKOWICZ: Well, the fact that she received
22 this document in the ordinary course of her business as
23 being the legal affairs officer of the Libyan Embassy from
24 her companion at the Libya desk at the State Department,
25 that that becomes a business record. And the business

1 record is an exception to the hearsay requirement. She
2 clearly testified that she received it from that officer.

3 THE COURT: Whose business record?

4 MR. SZYMKOWICZ: It's a business record of the
5 U.S. and Libyan governments. It's a document that --

6 THE COURT: If I receive a communication from
7 another entity and, after receiving that, I make it a part
8 of my records, are you saying that that record that came
9 from somebody else that was performed related to the
10 official business of that other entity becomes a business
11 record of mine?

12 MR. SZYMKOWICZ: Well, it does if it was directed,
13 you know, to you. In this case --

14 THE COURT: What case law says that? It may be a
15 business record of the State Department, but I don't know
16 how it becomes an official record of the entity that it's
17 sent to because, obviously, the business record exception is
18 predicated on the fact that the producing entity, that
19 someone within that entity had a business record or business
20 obligation to provide that information or to record the
21 information.

22 And because of that relationship that they have
23 with the entity that produced it, you attach a level of
24 reliability to it, and therefore, under certain
25 circumstances, it could come in as an exception to the

1 hearsay rule. But for another entity to say that the
2 document that they got from some other entity qualifies as a
3 business record for that entity just because they received
4 it, I've never seen that.

5 Now, if there's case law that cuts against me, I
6 obviously will follow that. I just, in my 30 some years --
7 I hate to say it's been that long -- as a member of the Bar
8 and 28 as a judge, I've just never seen that. Okay,
9 sustained.

10 BY MR. SZYMKOWICZ:

11 Q Ms. Zubi, I'm showing you what's been marked as Exhibit
12 9 for identification. Can you tell me what this document
13 is?

14 A Yes, this is a copy of the diplomatic list issued by
15 the United States Department of State for Winter of 2009.

16 Q I'm showing you a book with a different date on it.

17 MR. SZYMKOWICZ: May I approach, Your Honor?

18 THE COURT: Yes.

19 BY MR. SZYMKOWICZ:

20 Q Can you tell me if you've ever seen this book before?

21 A Yes, this is actually the diplomatic list that Katie
22 White, the Ambassador's secretary, uses and we got from her.

23 Q And can you tell me if that book is related to Exhibit
24 Number 9, Plaintiffs' Exhibit Number 9?

25 A Yes. This is actually, it might be the last issue,

1 print issue that was printed by the State Department.
2 They're now on line. So, yes, this is an older version.
3 This is an updated copy.

4 Q Who publishes the diplomatic list book?

5 A The United States Department of State.

6 Q And why is it published --

7 THE COURT: Do you have any objection to this
8 document as an official public record?

9 MR. NAWASH: Well, yes, I do actually. I mean
10 they submit one book.

11 THE COURT: Again, if you want a transcript,
12 you've got to stand up here.

13 MR. SZYMKOWICZ: For the record, Your Honor, we're
14 not admitting into evidence the book. I showed it to
15 Ms. Zubi to show that the book was taken, that the pages
16 were taken from a similar book with a different date.

17 MR. NAWASH: But they didn't bring the actual book
18 that they brought this is from. We're not talking about
19 that particular book, and so this is an incomplete document.
20 I don't really know what it is, and there's no foundation
21 for it.

22 THE WITNESS: There's no book. It's not printed
23 anymore.

24 MR. NAWASH: Well, if it's not printed anymore --

25 THE WITNESS: It's on line.

1 MR. NAWASH: Well, I object to it as being as an
2 official document. There's nothing on it that says it's an
3 official document as they're representing.

4 MR. SZYMKOWICZ: Your Honor, it's
5 self-authenticating. It's got the State Department seal on
6 it, and if the Court --

7 THE COURT: The one that you're seeking to admit?

8 MR. SZYMKOWICZ: The one that we're seeking to
9 admit. If the Court --

10 THE COURT: Where's the seal?

11 THE WITNESS: Right on the cover, Your Honor.

12 THE COURT: You're talking about the copy --

13 MR. SZYMKOWICZ: Exhibit Number 9, Plaintiffs'
14 Exhibit Number 9.

15 THE COURT: Well --

16 THE WITNESS: According to the protocol office,
17 they don't issue it in print anymore.

18 MR. SZYMKOWICZ: And as we did in, when we had our
19 deposition of Ms. Zubi and we had the telephone conference
20 with Your Honor, I believe at that point the Court accessed
21 this very, this book or the, a newer version of this book on
22 line.

23 MR. NAWASH: I just want to point out, Your Honor,
24 that, you know, if it was a website document, usually they
25 have either at the bottom or at the top the actual address

1 of the website, and this document has nothing to indicate
2 where it came from.

3 MR. SZYMKOWICZ: Your Honor, I believe that it's
4 in PDF form, so a PDF wouldn't have the Internet headers or
5 footers or anything like that.

6 THE COURT: Which rule are you relying upon? I'd
7 have to find it, so it's 803 -- excuse me, 901.

8 THE LAW CLERK: I'm sorry, 903, 902, Judge.

9 MR. SZYMKOWICZ: Your Honor, I believe, as we did
10 back in the telephone hearing that we had, a Google search
11 of the term "diplomatic list" will pull up this document or
12 the newer version of this document.

13 THE COURT: Let me take a short break.

14 [Thereupon, recess taken at 2:46 p.m., resuming at
15 2:54 p.m.]

16 THE COURT: Counsel, what's your objection? My
17 law clerk has checked. And this document is something that
18 does, in fact, appear on the website of the United States
19 State Department, and it does contain the seal of the United
20 States. So what's your objection?

21 MR. NAWASH: While you were gone, Your Honor, and
22 I apologize for sending you out of here, I checked it out
23 myself and I found it myself, so I withdraw that objection.

24 THE COURT: Very well. I would conclude that it
25 is a self-authenticating document of the United States

1 Department of State. That doesn't necessarily mean it's
2 not -- that doesn't necessarily mean it's admissible
3 because, just because a document is self-authenticating
4 doesn't necessarily mean it's admissible. But I do also
5 find that it's admissible as an exception to the hearsay
6 rule and that it falls under Rule 803(8), Public Records and
7 Reports. So, objection has been withdraw. In any event, I
8 would admit it.

9 MR. SZYMKOWICZ: And, Your Honor, I'm a little
10 offended by my opposing counsel's exercise in arguing this
11 because we've been down this road probably five times, maybe
12 more. In fact, during our telephone hearing, we went
13 through this exercise. And to have him challenge that this
14 is not an official publication of the State Department is
15 ludicrous, and I think that the Court should be aware of
16 this.

17 THE COURT: Very well. It's admitted.

18 BY MR. SZYMKOWICZ:

19 Q Looking at Exhibit Number 9, Ms. Zubi, can you tell me
20 if this document supports your claim as to the official name
21 of the Embassy?

22 A Yes.

23 Q Upon what basis do you have this belief?

24 A The diplomatic list of the U.S. State Department lists
25 the Embassy's name as the Embassy of the Libyan Arab

1 Jamahiriya with our address and the name of the Ambassador,
2 Ambassador Aujali, and all of the accredited diplomats that
3 staff the Embassy.

4 Q I'm showing you what's been marked as --

5 MR. SZYMKOWICZ: And, Your Honor, I move this into
6 evidence as Exhibit Number 9.

7 THE COURT: I think it's already in. The same
8 document?

9 MR. SZYMKOWICZ: Yeah, the same document.

10 THE COURT: It's already in.

11 [Thereupon, Plaintiffs' Exhibit No. 9 admitted
12 into evidence.]

13 MR. SZYMKOWICZ: Your Honor, Court's indulgence
14 for one minute please.

15 BY MR. SZYMKOWICZ:

16 Q Ms. Zubi, I'm showing you what's been marked for
17 identification as Plaintiffs' Exhibit Number 10 for
18 identification. Can you tell me what this document is?

19 A This is a diplomatic note from the U.S. State
20 Department to the Embassy of Libya authorizing the use of or
21 the lease of an extension on the Embassy for consular and
22 economic services.

23 MR. NAWASH: Objection, Your Honor.

24 THE COURT: Yes.

25 MR. NAWASH: This document has the same flaw as

1 the one before the last one. It's an empty document --

2 THE COURT: What number is this now?

3 MR. NAWASH: Number 10. It's not

4 self-authenticate --

5 THE COURT: Let me find it.

6 MR. NAWASH: I'm sorry.

7 THE COURT: Okay.

8 MR. NAWASH: Yes, for all we know someone could
9 have typed it right before they came into court. It's on an
10 empty document. Quite frankly, I received a lot of things
11 from the State Department. It always has their logo on it.

12 It's the first time I've seen things here today,
13 two documents that have nothing, blank pieces of paper. And
14 even, you know, if I was to give the benefit of the doubt to
15 my colleague, this just can't come in. It's an empty
16 document. There's nothing to authenticate this, absolutely
17 nothing, and it's hearsay.

18 MR. SZYMKOWICZ: Your Honor, I still have not
19 finished inquiring of my client on this document.

20 BY MR. SZYMKOWICZ:

21 Q Ms. Zubi, can you please tell me how you received this
22 document?

23 A Either Katie White, the Ambassador's assistant, or
24 al-Sadik Essawari, who is our administrative counselor in
25 charge of records.

1 Q And in what form did this document come into the
2 possession of the Embassy?

3 A It's as a diplomatic note.

4 Q And in your experience as the Libyan government, is
5 this how a diplomatic note is transmitted?

6 A Yes, and it has a number on it.

7 Q And what does that number mean?

8 A Well, it's an identifier used for internally by the
9 State Department on top.

10 Q In your experience, does any diplomatic note ever have
11 like a seal on it or any other type of notation to indicate
12 where it came from?

13 THE COURT: Counsel, how can she authenticate it?
14 I mean I'm not questioning her credibility, but I've just
15 never seen a document like this be able to come in absent
16 some stipulation or agreement between the parties regarding
17 the authenticity of the document. I mean it is an
18 out-of-court statement that you're seeking to offer, I
19 assume, for the truth of the matter asserted, so you've got
20 a hearsay hurdle. And then you also have an authentication
21 hurdle.

22 MR. SZYMKOWICZ: Well, Your Honor, it does have
23 the words "diplomatic note." It's signed by the Department
24 of State in Washington, D.C. It has a number on it.

25 THE COURT: Anybody can type this up. I mean I

1 don't question that maybe it was the State Department, but
2 how do I know that?

3 MR. SZYMKOWICZ: Because the Embassy official is
4 testifying that it came into the Embassy as an official --

5 THE COURT: A lot of stuff come to me, but I can't
6 say who, even if there's a name. I get a lot of threats.
7 Can I say that, just because it came to me and it says
8 somebody's name on it, that that means that it's
9 authenticated that that is, in fact, that other person? I
10 think there'd have to be more to be done in order to satisfy
11 the authenticity requirement.

12 MR. NAWASH: In addition, Your Honor, she doesn't
13 know where it came from. When he asked her where did this
14 come from, she said either here or either there. She has no
15 idea where she got it from in addition to all the issues you
16 mentioned.

17 THE WITNESS: It's from Richard Massey at the
18 State Department. His initials are on the letter.

19 THE COURT: I mean I don't doubt that that maybe
20 true, but we do have Rules of Evidence. And, you know, you
21 have to have, you know, some fundamental predicate for the
22 admissibility of documents. And just because somebody says
23 I got it from a particular source doesn't make it so.

24 BY MR. SZYMKOWICZ:

25 Q Ms. Zubi, do you recognize the signature on this

1 documents?

2 A I recognize the initials on the bottom.

3 Q And whose initials are those?

4 A Richard Massey.

5 Q And how do you know that those are Richard Massey's
6 initials?

7 A He used to be the contact person we had or we would
8 communicate with with respect to leases for the Embassy.

9 THE COURT: Did you actually see him write down
10 his initials while you were in his presence?

11 THE WITNESS: No, I did not, Your Honor.

12 BY MR. SZYMKOWICZ:

13 Q And was he an official at the United States State
14 Department?

15 A Yes, he was.

16 Q And what was his title, if you know?

17 A I don't know. I don't remember, but he was involved
18 with bilateral issues.

19 THE COURT: I mean, even if that, I mean, when we
20 talk about, you know, handwriting, yeah, a lay person can
21 identify somebody else's handwriting, but they have to have
22 seen it actually written in order to say that the one
23 they're looking at is identical to the one they saw
24 previously written in their presence.

25

1 BY MR. SZYMKOWICZ:

2 Q Ms. Zubi, have you ever had the occasion to discuss a
3 document signed by Mr. Massey with Mr. Massey?

4 A I'm trying to remember. I've had several meetings and
5 discussions with him with respect to issues that came up
6 regarding our old Embassy building and the new residence,
7 the new leases. No, I have not. We have not discussed
8 this.

9 MR. SZYMKOWICZ: Your Honor, for the record, I
10 move this into evidence as Exhibit Number 10.

11 THE COURT: I mean, as I said, I don't see how it
12 qualified as being properly authenticated, and it is an
13 out-of-court statement that you're seeking to admit for the
14 truth of the matter in the statement that obviously was made
15 at a time when the person who prepared it was not under oath
16 and subject to cross-examination. So it has to fall under
17 some exception, and I can't fathom what exception it falls
18 under, at least not by way of this witness's testimony.

19 You know, if we had somebody here from the State
20 Department who could say that this is, in fact, a document
21 that was prepared by an official of the State Department
22 prepared in that person's official capacity, I could see how
23 conceivably as it might qualify as either a public record or
24 as a business record of the State Department. But this is
25 not the witness who has the capacity to do that. I'll

1 sustain the objection.

2 MR. NAWASH: Thank you, Your Honor.

3 BY MR. SZYMKOWICZ:

4 Q Ms. Zubi, have you ever had any discussions with the
5 State Department in which the State Department, outside of
6 the diplomatic book which is Exhibit Number 9, has discussed
7 the name of the second plaintiff in this case?

8 A Yes.

9 Q How many times?

10 A I reviewed -- in preparation for the trial, I reviewed
11 many many diplomatic notes between the State Department and
12 Libya. And they refer to the Embassy as the Embassy of the
13 Libyan Arab Jamahiriya within the text of --

14 MR. NAWASH: Objection.

15 THE COURT: One moment. Yes.

16 MR. NAWASH: She's referring to information that
17 she received from a person who's not here for the truth of
18 the matter asserted. This is hearsay.

19 THE COURT: How is it not hearsay?

20 MR. SZYMKOWICZ: I'm asking what the State
21 Department referred to the Embassy as. You know, how were
22 they, how were they, you know, referred to in
23 communications?

24 THE COURT: I understand that. I'm asking how is
25 it not hearsay?

1 MR. SZYMKOWICZ: I don't think that it's an
2 identification issue.

3 THE COURT: Aren't you offering it for the truth
4 of the matter asserted, i.e., that individuals at the State
5 Department refer to the Embassy by this second name?

6 MR. SZYMKOWICZ: Well, that's correct, Your Honor,
7 but, I mean, we already have that evidence in through
8 Exhibit Number 9.

9 THE COURT: Just because it comes in in one form
10 doesn't mean it comes in in some inadmissible form also.
11 I've never heard of that.

12 MR. SZYMKOWICZ: I believe that Ms. Zubi has the
13 ability to testify as far as how the Libyan Embassy
14 plaintiff is referred to in international circles in
15 general. What is the name of the Embassy in general
16 circles?

17 THE COURT: But is that the relevant inquiry?
18 Isn't the relevant issue whether that is, in fact, a name by
19 which the Embassy is known by?

20 MR. NAWASH: I think it is, Your Honor. I mean I
21 think that that's -- it goes back to the Lady Gaga problem.
22 Stephanie, whatever her last name is, is known to the public
23 as Lady Gaga. I think that that's, you know, that is part
24 of her trademark. It's what she's know as in the general
25 public.

1 THE COURT: But if somebody said, yeah, I also
2 heard her called Lady Dada?

3 MR. SZYMKOWICZ: Well, I mean --

4 THE COURT: If you were seeking to try and prove
5 that she is, in fact, known also by the name and has
6 accepted that name as her name, an alternative name, Lady
7 Dada, would the fact that somebody said I heard somebody
8 call her Lady Dada make that admissible evidence?

9 MR. SZYMKOWICZ: I think in a trademark action it
10 could, Your Honor. It's just like in McDonald's.
11 McDonald's is known as McDonald's obviously, but it's also
12 known as the Golden Arches. I think if McDonald's has
13 several alternate names, you know, somebody from the
14 McDonald's Corporation could testify this is what we are
15 known as in the general public. We're known as McDonald's.
16 We're known as the Golden Arches. We're known as whatever
17 other names they're known as.

18 MR. NAWASH: Your Honor, he's trying to tell us --
19 I'm sorry. Ms. Zubi is trying to tell us what someone at
20 the State Department told her her official name was, someone
21 who's not here, to prove to you that their official name is
22 the Embassy of the Libyan Arab Jamahiriya, which is an
23 important issue before us today what their name is.

24 And he's asking her, well, what do the people at
25 the State Department tell you your name is. Well, they tell

1 me my name is so and so. This is absolute hearsay. This is
2 a document from the State Department, which we will
3 ultimately try to bring in that talks about the name. This
4 is a self-authenticating document. This is how it would
5 work.

6 I'm not going to come here and tell you that, hey,
7 I tried that actually once before to tell you that somebody
8 at the State Department told me that their name was Bureau,
9 and you threw that out and you were right to do it. And
10 that's what they're trying to do here today. It just
11 doesn't work. How can I go question that person at the
12 State Department? How do I know that that person even
13 exists? How do I know that person told them this? I would
14 be at a serious disadvantage if you put any weight on her
15 statement.

16 MR. SZYMKOWICZ: Your Honor, I think it goes to
17 the weight of her credibility and the relevancy.

18 THE COURT: But he's right. He's not able to
19 query this individual who purportedly made this statement.
20 How is he in a position to in any way challenge that? I
21 mean that's why we have a hearsay rule that doesn't permit
22 that type of information to come in. And I don't see how
23 it's being offered for anything other than the truth of the
24 matter asserted, i.e., that the Embassy is, in fact, known
25 by this alternative name.

1 Now, she's already said that based upon other, her
2 first-hand knowledge from her review of the books. That's
3 one thing. But for her to be able to say that somebody else
4 has made a reference to them in that fashion and, therefore,
5 that means that that's, in fact, an official name that
6 they're known by alternatively, I just don't see how you do
7 it in this fashion. I'll sustain the objection.

8 MR. NAWASH: Thank you, Your Honor.

9 BY MR. SZYMKOWICZ:

10 Q Ms. Zubi, I'm showing you what's been marked for
11 identification as Exhibit Number 12 -- I'm sorry, 11,
12 Plaintiffs' Exhibit Number 11.

13 A Yes.

14 Q Have you ever seen this document?

15 A Yes. This is the website, the official website of the
16 Libyan Embassy.

17 Q And how do you know that?

18 A I'm looking at the domain name, which is on the bottom,
19 and I'm looking at the header, which says the Embassy of the
20 Libyan Arab Jamahiriya, and I recognize it from my
21 preparation.

22 Q And this is your website?

23 A This is the Embassy's website, correct.

24 Q The home page?

25 A The home page, correct.

1 MR. SZYMKOWICZ: Your Honor, I move this into
2 evidence.

3 THE COURT: Any objection?

4 MR. NAWASH: No objection.

5 THE COURT: Admitted Plaintiffs' Exhibit Number
6 11.

7 [Thereupon, Plaintiffs' Exhibit No. 11 admitted
8 into evidence.]

9 BY MR. SZYMKOWICZ:

10 Q Ms. Zubi, can you tell me if the word embassy appears
11 anywhere in this document?

12 A Yes. It appears in the header as Embassy of the Libyan
13 Arab Jamahiriya. And in the text on the top, it says the
14 Embassy of Libya in Washington, D.C.

15 Q And how does the heading on the top left-hand part of
16 the page get there? Is that something that the web creator
17 codes to put there?

18 A I believe so. I believe so, yes.

19 Q So does that become the title of the page when somebody
20 clicks through?

21 A Yes. Yes, it does.

22 Q Is there any other place on this web page, on this
23 printout that uses the term embassy or embassies?

24 A Yes. There is on the left side in the margin it's,
25 there's a section called Embassies Worldwide which lists all

1 of the Libyan embassies worldwide.

2 Q And is there any copyright placed on this document?

3 A Yes, there is.

4 Q And where is that?

5 A It's on the bottom and it says Embassy of the Libyan
6 Arab Jamahiriya.

7 Q Why was this document copyrighted?

8 A In order to protect the name of the Embassy of the
9 Libyan Arab Jamahiriya, the Libyan Embassy.

10 Q And do you know when this was placed on this website
11 this copyright?

12 A Well, it says two -- yes, this is 2006.

13 Q Was this done before or after the case was filed?

14 A This was before the case was filed. We created the
15 website before the case was filed.

16 Q And what is the website address?

17 MR. NAWASH: Objection. I'm sorry. She answered
18 that -- I thought the question that he asked her was the
19 term Embassy of the Libyan Arab Jamahiriya was before or
20 after the litigation. And then she said, we created the
21 website, so I just don't understand the answer.

22 THE COURT: Rephrase the question.

23 BY MR. SZYMKOWICZ:

24 Q When was the copyright notice placed on this website?

25 A 2006.

1 Q And do you know when the website was created?

2 A It was some time in 2006 before the initiation of this
3 lawsuit.

4 Q And was the copyright notice placed on that at the time
5 the website went live?

6 A Yes.

7 Q And how do you know that?

8 A Well, it's required. It's a protection that websites
9 place to provide notice to the public.

10 Q And why was the term Embassy of the Libyan Arab
11 Jamahiriya used rather than People's Bureau?

12 A Because that's the official name of the Embassy. It's
13 the Embassy of the Libyan Arab Jamahiriya.

14 Q Why was the term on the top left-hand corner of the
15 first page of Exhibit 11 the People's Bureau of the Great
16 Socialist People's Libyan Arab Jamahiriya in Washington,
17 D.C.? Why was that term used in that specific place?

18 A I can't -- I don't know why, from design purposes, it
19 was used in that specific place, but it's an alternative
20 name to the Embassy but it means embassy.

21 Q What is the website address of the Libyan Embassy in
22 Washington, D.C.?

23 A It's www.libyanbureaudc.org.

24 Q And why was that particular website address chosen?

25 A Because the domain names in question are -- because of

1 Mr. Miski's unauthorized use and retention of the domain
2 names, we were unable to use the name of the embassy and our
3 domain name in our URL on our website.

4 Q What was the preferred term that the Embassy had to,
5 for their domain and their website?

6 A The domain names in question here.

7 MR. SZYMKOWICZ: Your Honor, I move this into
8 evidence as Exhibit 11 if we haven't done so already.

9 THE COURT: It's already in.

10 BY MR. SZYMKOWICZ:

11 Q I direct your attention, Ms. Zubi, to Exhibit Number
12 12. Can you tell me what this document is?

13 A Yes. This is a page of our official website. It's a
14 listing of all of the Libyan embassies worldwide. I don't
15 know if it's complete, but it's most of them I guess.

16 Q And can you tell me who created this document?

17 A The Libyan Embassy.

18 Q And this is also on the web page?

19 A Correct.

20 Q And when was this document created?

21 A 2006.

22 Q Before the lawsuit was filed?

23 A Before the lawsuit because --

24 MR. SZYMKOWICZ: All right. Your Honor, I move
25 this into evidence as Exhibit Number 12 for plaintiff.

1 THE COURT: Any objection?

2 MR. NAWASH: No, Your Honor.

3 THE COURT: Admitted.

4 [Thereupon, Plaintiffs' Exhibit No. 12 admitted
5 into evidence.]

6 BY MR. SZYMKOWICZ:

7 Q Ms. Zubi, can you tell me if the Libyan People's Bureau
8 is the preferred term, as Mr. Miski alleges, why the
9 plaintiff in this case, the Libyan government, used the term
10 Embassies Worldwide?

11 A It's our name. Our name, our known worldwide by the
12 general public is the Libyan Embassy, and that is why it's
13 referred to here as Embassies Worldwide.

14 Q And was the term embassy applied on this website in
15 2006 done for any purpose of establishing its name in the
16 Miski matter?

17 A No, not at all. We've been the Libyan Embassy since
18 19, you know, since the 1950s worldwide, so it's a very
19 surprising issue quite honestly and is -- we're all very
20 confused at the Embassy why this is even an issue but here
21 we are. But, no, this was not done in connection with this
22 case.

23 Q I'm showing you what's been marked as Exhibit Number
24 13. Can you tell me what this document is?

25 A This is the website of the Libyan Embassy in Canada.

1 Q How do you know?

2 A The domain name, the URL, is libyanembassy.ca.

3 Q And why was that specific domain name used for this
4 specific Embassy?

5 A Because it's, the name is the Libyan Embassy.

6 Q In Canada?

7 A In Canada.

8 Q And what do the letters CA mean after Libyan Embassy
9 dot?

10 A Well, in this context, Canada.

11 Q Okay.

12 MR. NAWASH: Your Honor, I move into evidence
13 Exhibit 13 plaintiffs'.

14 THE COURT: Any objection?

15 MR. NAWASH: No, Your Honor.

16 THE COURT: Admitted.

17 [Thereupon, Plaintiffs' Exhibit No. 13 admitted
18 into evidence.]

19 BY MR. SZYMKOWICZ:

20 Q Moving along to Exhibit 14 plaintiffs', can you tell me
21 what this document is?

22 A That's Ambassador Aujali's business card.

23 Q And how do you know?

24 A Because I've seen it, I have it, and this is a copy of
25 it.

1 MR. SZYMKOWICZ: Your Honor, I move this document
2 into evidence, Exhibit Number 14.

3 THE COURT: Any objection?

4 MR. NAWASH: No, Your Honor.

5 THE COURT: Admitted.

6 [Thereupon, Plaintiffs' Exhibit No. 14 admitted
7 into evidence.]

8 BY MR. SZYMKOWICZ:

9 Q Can you tell me why Ambassador Aujali uses the term
10 listed on this business card Embassy of Libya?

11 A Because it's the name of the Embassy.

12 Q The term People's Bureau does not apply -- does not
13 appear on this business card, does it?

14 A No. As I said, it's in all -- those, both names are
15 alternative names, but this is the official name of the
16 Libyan Embassy in Washington, D.C.

17 Q Collectively, I've marked as Exhibits 15, a Department
18 of State letter, Exhibit 16, a letter on the Libyan Embassy
19 letterhead to Jimmy Carter, the President, and Exhibit 17, a
20 1977 letter from a Congress person. Can you tell me what
21 these documents are?

22 A Yes. The first one is a letter from 1975. It's from
23 the State Department. It's actually not a letter. It's a
24 memo, and it's addressed to the, to Mr. Ali Al-Gaed, the
25 Chargè d'Affaires at the Libyan Embassy. The second one is

1 a letter from the Embassy of the Libyan Arab Republic, which
2 is the name of Libya when Colonel Gadhafi came to power in
3 1969, and it's addressed to President Carter at the time.

4 It's -- and then the second one is a letter dated
5 March 4th, 1977, from Congressman Steven Simms addressed to
6 Mr. Shavan Gashut, who is the Counselor Chargè d'Affaires,
7 at the Embassy of Libya at the Embassy building, 2344
8 Massachusetts Avenue.

9 Q And how did you come into possession of these
10 documents?

11 A These were faxed to me yesterday by the, by a colleague
12 at the Mission of Libya to the U.N. in their records.

13 MR. SZYMKOWICZ: And, Your Honor, I believe that
14 we would like to introduce these into evidence as Exhibits
15 Number 15, 16, and 17.

16 MR. NAWASH: Yes, object, Your Honor. I don't
17 know what copies you have, but I have three copies --

18 THE COURT: I have the same thing.

19 MR. NAWASH: -- that don't make any sense to me.
20 But, in addition, they weren't produced into discovery. And
21 number -- you know, in addition to them being hearsay,
22 probably not self-authenticating. They weren't produced in
23 discovery, and they're not relevant.

24 MR. SZYMKOWICZ: Your Honor, I don't believe
25 that -- and this has been a problem in the case. I don't

1 believe that they were ever asked for in discovery. And I
2 think the burden would be on Mr. Nawash to prove that he
3 asked for documents of this nature. His -- I don't believe
4 that --

5 THE COURT: Was there any such request that would
6 have encompassed these documents?

7 MR. NAWASH: Well, first of all, depends on what
8 he's using them for, so I don't know. If he's saying that
9 he wants these to prove them --

10 THE COURT: That's not my question. Did you ever
11 make a discovery request that would have been broad enough
12 to have encompassed these documents?

13 MR. NAWASH: I suppose it would fall under issues
14 or documents regarding their name. I don't know what he's
15 trying to use these for. That's why one of my objections --

16 THE COURT: Was this such a request?

17 MR. SZYMKOWICZ: I do not believe that there was
18 ever a document request produced at all.

19 THE COURT: Do you have your discovery request
20 with you?

21 MR. SZYMKOWICZ: I think the burden is on Mr.
22 Nawash to prove that there was. It's possible there might
23 have been, but I don't think so.

24 THE COURT: Do you have your discovery request
25 with you? While you're doing that, I'll give the court

1 reporter a ten-minute break.

2 [Thereupon, recess taken at 3:22 p.m., resuming at
3 3:39 p.m.]

4 MR. SZYMKOWICZ: Your Honor, when we left we were
5 asking Mr. Nawash --

6 THE COURT: For documents, yes.

7 MR. SZYMKOWICZ: -- yes, if there was a document
8 request. I have not found one.

9 MR. NAWASH: Yes, Your Honor. And the first
10 question in my request for production of documents --

11 THE COURT: Again, I know it's difficult, but if
12 you want a record, you got to come up here.

13 MR. NAWASH: The very first question says all
14 documents you intend to introduce at trial in this matter.

15 MR. SZYMKOWICZ: Your Honor, I believe that that
16 was stricken because it was late. I think that was one of
17 those things that, and my memory might not serve me
18 correctly, but my records only indicated that the ones that
19 I have here are that we answered interrogatories, and we
20 answered interrogatories twice. Do we have any response to
21 the --

22 THE COURT: Don't talk to him. Talk to me.

23 MR. SZYMKOWICZ: I don't believe that we have any
24 response in the file on requests for production of
25 documents. At least my records -- and this case has been

1 going on for a long time, so I could be mistaken, but I
2 don't have them here today, any response to document
3 requests.

4 MR. NAWASH: Well, I don't recall what he recalls,
5 so I don't know what to tell you, Your Honor. I typed
6 requests for production on my computer and I got it.

7 THE COURT: What was the date of that?

8 MR. NAWASH: Well, let me see.

9 THE COURT: I don't know if it was stricken or
10 not. I don't recall specifically.

11 MR. NAWASH: I got, it's July 30th, 2009.

12 MR. SZYMKOWICZ: And I believe that was, that was
13 after the close of discovery. And if my memory serves me
14 correct, we had a big to do about that with motions and
15 things like that. And I don't believe we ever had to answer
16 those.

17 THE COURT: Is there anything in the docket?

18 MR. NAWASH: Your Honor, I don't want to slow down
19 the Court on this one. It's really not that big of a deal,
20 so I'll withdraw it just to move things along. At least
21 I'll withdraw that part of the objection, and the rest is on
22 relevance. And, in particular, I noticed that here the
23 timeline they call, this document says Embassy of the Libyan
24 Arab Republic. That's before it became a Jamahiriya.

25 And according to the State Department, a document

1 that I will introduce in a second, it says it was in the
2 late 1970s that they changed from embassies to bureaus. But
3 in any case, I really want to move this case along. I'll
4 withdraw this objection if it would help this Court out, but
5 I don't think it's relevant. I don't think it's relevant,
6 Your Honor, and I think it has authentication problems, and
7 I think it has a hearsay problem.

8 THE COURT: So what's your status? Are you
9 withdrawing the objection?

10 MR. NAWASH: I'm withdrawing the part that it's
11 not on discovery, that part. The rest still, are still out
12 there.

13 THE COURT: You have an authenticity challenge and
14 what other?

15 MR. NAWASH: A hearsay challenge and a relevance
16 challenge.

17 MR. SZYMKOWICZ: Your Honor, I'd like to correct
18 the record, because, again, I think my opposing counsel has
19 misstated the record. I finally found the Order. It's
20 Document Number 96.

21 THE COURT: We don't have to talk about that, do
22 we? He's withdrawn.

23 MR. SZYMKOWICZ: Well, I think it goes to his
24 honesty, Your Honor. We've been going through this for
25 months.

1 THE COURT: That's not fair. I mean, unless you
2 have actual proof that he is standing up here as an officer
3 of the court and lying to the Court, I just don't --

4 MR. SZYMKOWICZ: Well, but I think that he does --

5 THE COURT: He may have made a mistake, but to
6 say -- I mean, you know, that's why I quit practicing law.

7 MR. SZYMKOWICZ: No, I understand, Your Honor.

8 THE COURT: No, no. I have a temper, and that's
9 why I quit practicing law because the law had sort of gotten
10 into the dirt as far as lawyers taking shots at me. And I
11 knew if I didn't get out of that arena, something was going
12 to happen that was going to put me in trouble. Because if
13 somebody stood in court without actual proof that I had lied
14 and called me a liar, there might be some issues.

15 MR. SZYMKOWICZ: Well, Your Honor, I've had so
16 many -- Mr. Nawash claimed that I committed ethical
17 violations in this case, and it's just sickened me to no
18 end.

19 THE COURT: You're talking about an issue that's
20 become irrelevant. He's withdrawn that objection, so let's
21 move on.

22 MR. SZYMKOWICZ: Moving on --

23 THE DEPUTY CLERK: Does that mean that the exhibit
24 is admitted?

25 THE COURT: No, it's not in yet, but the objection

1 on the ground of whether there was discovery violation has
2 been withdrawn. We still have the issue of authenticity and
3 hearsay.

4 THE DEPUTY CLERK: Okay. Thank you.

5 MR. SZYMKOWICZ: Your Honor, these are clearly
6 ancient documents under the hearsay rule. They are also
7 official documents bearing the seals of the Department of
8 State with Number 15, the Libyan Embassy, Number 16, and
9 Congress, Number 17. And, for those reasons, I think
10 they're self-authenticating. And they're relevant because
11 they establish that the term Embassy of Libya has been used
12 for now over a generation.

13 THE COURT: The one from the Embassy of the Libyan
14 Arab Republic, where did that document come from?

15 THE WITNESS: That came from the Libyan Mission
16 because it is old.

17 THE COURT: That came from your old records?

18 THE WITNESS: Correct, yes.

19 THE COURT: And you pulled that from your own
20 record base?

21 THE WITNESS: Yes. We requested that the Mission
22 look through their records to see if we could find any
23 documents, and they were able to find it. Yesterday was a
24 holiday, so this was sort of sent to us, you know, very
25 quickly. It was, our office was closed yesterday. But,

1 yes, this is from our records.

2 THE COURT: I'll admit that one as a business
3 record, since it was found in the Libyan Embassy records
4 itself. And presumably, whoever prepared it, would have had
5 a business obligation to do that, so I'll admit that.

6 The other two I'm having problems with because,
7 even though one says it's from the Department of State and
8 the other one says it's from a Congress person, I mean the
9 problem I have is authentication. I mean letterhead can be
10 stolen. I don't know. And, again, just because it's found
11 in their records or I guess -- were these other two
12 documents found in your records or, as you said, these were
13 sent to you?

14 THE WITNESS: No, they were found in our records.

15 THE COURT: Again, just because they're found in
16 the records of an entity and a document was prepared by some
17 outside entity doesn't make necessarily those documents
18 somehow admissible under the business records exception or
19 any other exception.

20 MR. SZYMKOWICZ: But the ancient records exception
21 it does, Your Honor. And that's --

22 THE COURT: I don't know if these can be called
23 ancient. What's the law say?

24 MR. SZYMKOWICZ: I believe it's 30 years, Your
25 Honor, and these are more than 30 years old. And the reason

1 you have an ancient records exception is because of this
2 very problem. In ancient records, there may be nobody that
3 can authenticate a document such as this.

4 So, because it bears the seal of the Department of
5 State and the official Congress letterhead and it was found
6 in the Libyan government's records, I believe that it is,
7 without more, allowed to be admissible on a historical
8 document or ancient document.

9 And I have you to admit, Your Honor, as I'm
10 approaching ancient myself, I've been practicing for 16
11 years, and I don't think that I've ever had to admit an
12 ancient document. So I could be wrong on that but --

13 THE COURT: Well, it's 20 years, but it says
14 statements in a document in existence 20 years or more or
15 existence 20 years or more of the authenticity of which is
16 established. So, even though it's more than 20 years old,
17 you still have to establish authenticity. And the fact that
18 it's found in their records might suggest, I guess, that it
19 came from who it's indicated it came from, but I don't know
20 if that's true or not.

21 MR. SZYMKOWICZ: Well, I believe that that's why
22 they said or its authenticity can be established. I think
23 there was an or there in the quote. And I think that the
24 purpose of that that or is, you know, of course, if you can
25 authenticate it the normal way, it gets in under that. But

1 if it's an ancient record, there is nobody to authenticate
2 because they may be dead, they may be out of the
3 jurisdiction, whatever.

4 I think that's the whole point of an ancient
5 record that it becomes self-authenticating at that point and
6 subject to the obvious weight of the trier of fact when
7 deciding the case. I think it comes in, but it doesn't
8 necessarily, you know, be the determinative factor in the
9 case if the trier of fact doesn't believe it that it's, you
10 know, a truthful document.

11 THE COURT: Assuming it qualifies as an ancient
12 document, that only satisfies the authenticity component.
13 How does it come in as an exception to the hearsay rule?

14 MR. SZYMKOWICZ: Well, it is -- an ancient
15 document is always hearsay. But it's, there's an exception
16 to the hearsay and that exception being the ancient document
17 exception.

18 THE COURT: Yeah, but just because it qualifies as
19 an ancient document it seems to me doesn't necessarily
20 overcome the hearsay hurdle because you still have to make a
21 reliability assessment.

22 MR. SZYMKOWICZ: But the hearsay exception is an
23 exception to the hearsay rule. So, if there's an exception
24 provided in the Federal Rules of Evidence, then, despite the
25 fact that this document is clearly hearsay, it still comes

1 in. That's the point of a hearsay exception, Your Honor.

2 THE COURT: Yeah, but I've never understood the
3 law to say that, just because something happens to be an old
4 document, that that means that, because it's an old
5 document, it comes into evidence just because of that. I
6 don't think that's the law.

7 MR. SZYMKOWICZ: With all due respect, Your Honor,
8 I believe that it does, and that's the whole point of the
9 ancient records exception.

10 THE COURT: Let me just see. I don't think that
11 does it alone. I mean that would just eviscerate the
12 hearsay rule if, just because a document is 20 years older
13 or older, necessarily means it comes in regardless. I think
14 you still have to look at the document. You have to make
15 some reliability assessments in deciding whether or not this
16 is evidence that the fact finder should rely upon.

17 MR. SZYMKOWICZ: Well, that's correct, Your Honor.
18 And that's why, you know, there is testimony from Ms. Zubi
19 that, in being amongst the records that she asked for and
20 reviewed in preparation for this case, that this document
21 was found in those records. And the fact that it's been
22 there for over 30 years, the maker of this document, the
23 individual that made this statement, wasn't thinking about
24 Mr. Miski or this case or even the Internet, you know, 30
25 some years ago.

1 They were making this statement to, for the
2 purpose of, in Exhibit Number 15, discussing current, then
3 current policy with Libya, and in Number 17, you know, to
4 write a letter to, from this particular Congress person to
5 the Libyan government.

6 THE COURT: Do I know that was a Congress person?

7 MR. SZYMKOWICZ: It also could be from, you know,
8 a Chief of Staff or something, but it came --

9 THE COURT: That's the problem.

10 MR. SZYMKOWICZ: It came from that office.

11 THE COURT: It just seems, I mean again,
12 presumably there was a Congress person by that name, but do
13 I know that's the case? I know Jimmy Carter was the
14 President, but there's nothing from the document I see that
15 indicates that he signed it or anything of that nature. I
16 just don't think the law says that, just because something
17 is found in a file and just because it happens to be more
18 than 20 years old, that that satisfies all the requirements
19 of admissibility. If we do that, then seems we let any kind
20 of junk in just because it happens to be old.

21 MR. SZYMKOWICZ: But, Your Honor, as I stated
22 earlier, I've been a lawyer for 16 years. And I've never,
23 to my -- I can't recall a single case where I've had an
24 ancient document that I had, was trying to admit into
25 evidence. I think it happens so rarely that --

1 THE COURT: How many times have you sought to do
2 it and a judge let it in just because it was old?

3 MR. SZYMKOWICZ: Well, that's the thing, I can't
4 remember a single time in 16 years of litigating cases that
5 that's ever even happened.

6 THE COURT: In 30 years I've never seen it done.

7 MR. SZYMKOWICZ: Yeah, I mean, that's how rare it
8 is. And I think when Congress enacted the Federal Rules of
9 Evidence, I think that that's one of the things that it
10 looked at is it's just so rare that, you know, it
11 automatically comes in subject to the weight to be given to
12 that evidence just like any other piece of evidence by the
13 trier of fact.

14 THE COURT: See I still think that it's got to --
15 okay, it's an old document so maybe that's sufficient to
16 establish authenticity. But, again, I still think it's an
17 out-of-court document for which you're seeking to admit for
18 the truth of the matter asserted. So I think you still have
19 a hearsay issue.

20 So I think it's got to qualify under Rule 803,
21 where, the hearsay exception where availability of the
22 declarant is immaterial. I don't know. Maybe it's actually
23 the, maybe the declarant actually should have to be
24 unavailable since we're talking about an old document.

25 There are three requirements that have to be

1 satisfied for an ancient document to come in under Rule 803.
2 And that is, one, it is in such condition as to create no
3 suspicion concerning authenticity. Second, was in a place
4 where, if authentic, it was likely to be. And third, it's
5 been in existence for 20 years or more at the time of its
6 offering.

7 MR. SZYMKOWICZ: I think we met all three prongs,
8 Your Honor. I think this is -- going back to law school, I
9 think this is where you find a birth certificate in a family
10 Bible or something, you know, a notation in a family Bible
11 about who married who a long time ago. But in this case,
12 Ms. Zubi testified that it was found in the records of the
13 Mission, and it's exactly where it should be found.

14 THE COURT: I don't doubt that, if it's a document
15 that was sent by some type of government official to the
16 Embassy, to the Libyan government, that it would be found in
17 their records. I don't doubt that. My only question is the
18 first requirement if whether it's in such a condition that
19 there would be no sufficient -- no suspicion concerning its
20 authenticity.

21 MR. NAWASH: And it clearly isn't, Your Honor. I
22 mean I hate to interrupt here, but it clearly isn't. I mean
23 the documents are not complete, and that's why we're
24 probably stuck here this very second. I mean it raises --
25 your original ruling was correct and I just, I make the same

1 objection. It doesn't meet the first prong.

2 THE COURT: I mean I just don't know why -- again,
3 I don't have the entire document, so I'll let in the one
4 that's the Libyan government document itself. I'll permit
5 that to come in, but as far as the other two documents are
6 concerned, I just can't discern from them whether they are
7 not susceptible to an authenticity issue or not. So I will
8 not admit them over objection.

9 So I guess we could label those as A, B and C.

10 MR. SZYMKOWICZ: Your Honor, the State Department
11 letter was 15.

12 THE COURT: There are three here.

13 MR. SZYMKOWICZ: Yes, there were.

14 THE COURT: Very well, then I won't permit the
15 first one to come in. The second one I will. The third one
16 I will not.

17 MR. SZYMKOWICZ: And that would be 15 and 17 would
18 not come in. Sixteen, the Jimmy Carter letter would.

19 THE COURT: The Jimmy Carter letter would not.

20 MR. SZYMKOWICZ: Excuse me?

21 THE COURT: The Jimmy Carter letter would not, the
22 one that's the --

23 MR. SZYMKOWICZ: No, the Jimmy Carter letter was
24 the one that was written by the Libyan Embassy.

25 THE COURT: The one to Jimmy Carter?

1 MR. SZYMKOWICZ: The one to Jimmy Carter, yeah.

2 THE COURT: Yeah, that comes in.

3 MR. SZYMKOWICZ: Yeah, I don't believe that Jimmy
4 Carter wrote a letter in here, no.

5 THE COURT: I thought one of them did have, they
6 were from the White House.

7 MR. SZYMKOWICZ: It was the Department of State,
8 Number 15, Your Honor. And then Number 17 was from
9 Congress.

10 THE COURT: Very well.

11 [Thereupon, Plaintiffs' Exhibit No. 16 admitted
12 into evidence.]

13 BY MR. SZYMKOWICZ:

14 Q Ms. Zubi, I'm showing you what has been marked as
15 Exhibit Number 18 for identification and that's plaintiffs'
16 exhibit. Can you tell me what this is?

17 A This is material that -- it's a folder. It's a copy of
18 a folder that we use at the Embassy.

19 MR. SZYMKOWICZ: And, Your Honor, I'm showing
20 Ms. Zubi a physical folder. Would the Court prefer that the
21 Xerox copy of this folder be introduced or the actual,
22 physical folder itself?

23 THE COURT: Any objection to the copy?

24 MR. SZYMKOWICZ: Because the problem is, if we
25 ever have to refer to this in any other motion or

1 proceeding, you know, it causes a problem based on the size.

2 THE COURT: Any objection to the copy? It seems
3 to be identical to the actual original.

4 MR. NAWASH: No objection, Your Honor.

5 THE COURT: Very well.

6 BY MR. SZYMKOWICZ:

7 Q Can you tell me why this folder was created if you
8 know?

9 A This folder is used for, to put our documents in, to
10 give to, to give out, to use at meetings. It's a cover for
11 our documents used at the Embassy.

12 Q And do you know when this folder was first used?

13 A No, I don't. But it's -- because it's Washington,
14 D.C., I'm assuming when we opened the office.

15 Q And how long have you personally been aware that this
16 folder existed?

17 A For so many years that I can't even, I can't say, at
18 least a number of years since I've been there.

19 Q And do you know if that folder is widely distributed
20 within the Embassy?

21 A Absolutely. It's also distributed outside of the
22 Embassy.

23 Q For what purpose?

24 A Well, it's used as a folder. There are pockets inside
25 where we can put other documents. So it is an official

1 folder given out that's prepared by the Libyan Embassy given
2 out by the Libyan Embassy.

3 Q To members of who, the general public?

4 A The general public, to the State Department, for
5 commercial reasons, for consular services, for any of the
6 functions that we provide at the Embassy for any of the
7 services we provide.

8 MR. SZYMKOWICZ: Your Honor, I move the admission
9 of this document into evidence as Plaintiffs' Exhibit Number
10 18.

11 THE COURT: Any objection?

12 MR. NAWASH: No objection, Your Honor.

13 THE COURT: Admitted.

14 [Thereupon, Plaintiffs' Exhibit No. 18 admitted
15 into evidence.]

16 BY MR. SZYMKOWICZ:

17 Q Ms. Zubi, did you review any internal policies or
18 procedures within the Libyan government --

19 A Yes.

20 Q -- concerning the subject matters upon which you were
21 expected to testify today?

22 A Yes, I did.

23 Q And do you know if there's a policy regarding the
24 establishment of a contract between the government and/or
25 embassy and a third party?

1 A Yes. There is a policy. Our policy is that, if there
2 is to be a transaction between the Libyan government via the
3 Libyan Embassy, it always has to be in a written contract
4 format.

5 Q And does this policy allow for the establishment of an
6 oral contract?

7 A No, absolutely not.

8 Q Why not?

9 A Because the purpose of a contract, as in any commercial
10 transaction, is to provide transparency, accountability, to
11 prevent any uncertainty in terms, and also institutional
12 memory. We -- our diplomats are reposted and, when new
13 diplomats come in, there has to be a way that we can
14 continue the obligations, the rights and obligations of the
15 Libyan Embassy with respect to third parties.

16 Q Does the Libyan government have any policy with regard
17 to testimony in the foreign court by a Libyan diplomat?

18 A Yes. We abide by international law, which is that our
19 diplomats have diplomatic immunity.

20 Q And does such policy have any implications in this
21 case?

22 A Yes.

23 Q What is that?

24 A That we are, we invoke our diplomatic immunity in terms
25 of being asked to come into court to provide testimony.

1 Q And that's with regard to the Ambassador's testimony?

2 A Yes.

3 Q How did the Libyan government become aware of this case
4 in the first place?

5 A In the Fall of 2006, Anwar Al-Ghusbi, one of my
6 colleagues at the Embassy, was doing an online search of
7 Libya and discovered these websites and called Mr. Miski to
8 ask about the use of the websites, what he was using them
9 for, why he was using them. And that was the first time
10 that the Embassy was made aware that these, that Mr. Miski
11 had these domain names and were using it were without the
12 Embassy's authorization.

13 Q In your testimony earlier about Mr. Miski saying he
14 received a call and that caller, you know, discussed these
15 domain names, were you here in court when he said that?

16 A Yes, I heard him say that.

17 Q Do you have any reason to believe that that was, in
18 fact, Mr. Al-Ghusbi and that was the discussion?

19 MR. NAWASH: Objection. He's asking her to
20 speculate.

21 THE COURT: Sustained.

22 MR. SZYMKOWICZ: She's testifying as the Libyan
23 government, so that would include Mr. Al-Ghusbi's knowledge
24 of this case and if he made the call.

25 THE COURT: It still doesn't -- I mean, just

1 because she's a corporate representative, doesn't mean that
2 she can speculate.

3 MR. SZYMKOWICZ: Well, she may not be speculating.
4 She may know with certainty that it was Mr. Al-Ghusbi that
5 made such a call.

6 THE COURT: That wasn't your question and that
7 wasn't the response she was giving. She was giving a
8 response that sounds to me to be speculative.

9 BY MR. SZYMKOWICZ:

10 Q Do you know if this was, if Mr. Al-Ghusbi was the
11 person that Mr. Miski was referring to in his testimony?

12 MR. NAWASH: Objection, she would have no way of
13 knowing that, impossible. That's another way of asking her
14 to speculate.

15 MR. SZYMKOWICZ: She could have asked him were you
16 the person that called Mr. Miski?

17 THE COURT: I don't know if that's the case.

18 MR. SZYMKOWICZ: It might be the case, Your Honor.
19 I don't know. I mean, that's why I'm asking.

20 THE COURT: You're shooting in the dark, and if
21 you shoot in the dark, sometimes you get what you don't
22 want.

23 MR. SZYMKOWICZ: Well --

24 THE COURT: And it sounds to me like she was
25 speculating that it might in fact be the case.

1 BY MR. SZYMKOWICZ:

2 Q Do you know for a fact that it was Mr. Al-Ghusbi from
3 the Libyan Embassy that contacted Mr. Miski?

4 MR. NAWASH: Objection, and it's also leading. He
5 doesn't know what to say. I mean it's just a terrible
6 question.

7 MR. SZYMKOWICZ: Your Honor, again, I object to
8 the terms that Mr. Nawash uses. This is in court. I mean
9 there has to be some cordiality here.

10 THE COURT: I've never had this issue before, but
11 are you suggesting that a corporate representative can
12 testify as to what somebody would have told her who's a part
13 of the entity?

14 MR. SZYMKOWICZ: I believe that the corporate
15 officer is part of their duties as elicited in the four
16 cases that Ms. Zubi --

17 THE COURT: Do any of those cases specifically say
18 that someone, who's testifying on behalf of the corporation,
19 can present to the Court what otherwise would be
20 inadmissible hearsay, i.e., what somebody told them?

21 MR. SZYMKOWICZ: Well, I believe that the --

22 THE COURT: I've never seen that happen before.

23 MR. SZYMKOWICZ: Because, and this is a more
24 theoretical matter, because the corporate designee is the
25 repository of the institutional information, I think that

1 the corporate designee can testify that the official
2 position --

3 THE COURT: Do any of the cases? I understand you
4 had her say that she had looked at these four cases that set
5 the parameters of what a corporate representative can say.
6 My question specifically is that do any of those cases
7 specifically say that a person, who qualifies as a corporate
8 rep, can testify about what somebody told them?

9 MR. SZYMKOWICZ: I'm not sure, Your Honor. I mean
10 I could take Court's indulgence and --

11 THE COURT: It seems to me that, if that's true,
12 we might as well throw the hearsay rule out of the books
13 because every corporation would just call a corporate rep,
14 and the corporate rep would come in and say this person told
15 me that. This person told me this, and rely upon that in
16 order to establish their case. I don't think so.

17 MR. SZYMKOWICZ: Well, Your Honor, again, this is
18 a -- we can strike that question because this is only really
19 a side issue that was only brought up by Mr. Miski. Whether
20 Mr. Al-Ghusbi talked to Mr. Miski or somebody else, it
21 really doesn't affect the case in any way, shape or form.
22 So, we'll withdraw the question.

23 THE COURT: Okay. That's fine --

24 MR. SZYMKOWICZ: I mean, it's simply immaterial.

25 THE COURT: -- because there was no objection to

1 when he testified about it. If there had been some
2 objection, conceivably, I would have sustained the objection
3 if he was giving testimony about what somebody said to him,
4 unless it came in under some other predicate other than for
5 its truth. But I think, here, I just don't know of any
6 authority that says, just because somebody qualifies as a
7 corporate rep, that they can come in and present to the
8 Court what otherwise would be blatant hearsay. Very well.
9 It's withdrawn.

10 BY MR. SZYMKOWICZ:

11 Q Ms. Zubi, can you please tell me what Mr. Al-Ghusbi did
12 when he learned that Mr. Miski was the owner of record of
13 the domain names at issue?

14 A He contacted Mr. Miski and asked him what he was doing,
15 why he was using the domain names for his own commercial
16 purposes when the names --

17 MR. NAWASH: Objection, Your Honor. I mean
18 there's several, there's a foundation.

19 THE COURT: Again, I know it's a hassle, but if
20 you want a record, you do have to come up.

21 MR. NAWASH: There's a foundation objection and
22 there's a hearsay objection. He asked her, could you tell
23 me what Mr. -- I forgot his name, what he said. I mean he
24 should have asked her first do you know what he said.
25 That's the first part of the question. Then he would say,

1 well, can you tell me what he said, at which point I would
2 have objected to it being hearsay.

3 And just for the record, Your Honor, that person
4 that they're trying to bring his testimony in here, they
5 fought tooth and nail not to bring him in here as a witness
6 today. They didn't want to bring him in. So they choose
7 not to bring a -- they chose to bring a person who has no
8 personal knowledge of this case. And they just can't do
9 that and then expect this person to tell us about what the
10 people who did have personal knowledge actually said to her
11 when they're the ones --

12 THE COURT: Who is this person?

13 MR. NAWASH: He's one of the three people. His
14 name is Anwar Al-Ghusbi. He's one of three people that they
15 fought to prevent him from coming here to testify. I
16 tried --

17 THE COURT: On the grounds of diplomatic immunity?

18 MR. NAWASH: He actually didn't have it. They
19 just didn't want to bring him. There were two that had
20 diplomatic immunity. He's the third person that didn't have
21 it, and they chose not to produce him and that's their
22 right. They chose to bring a person that has absolutely no
23 personal knowledge about anything in this case, and that's
24 their right. But they cannot sit there and say what other,
25 as you pointed out, what other people told her. They just

1 can't do that.

2 THE COURT: How does this come in?

3 MR. SZYMKOWICZ: Your Honor, in the *Taylor* case,
4 and that's 166 F.R.D. 356, the Court stated on page --
5 Court's indulgence -- looks like 361, that the designated
6 witness is speaking for the corporation, and this testimony
7 must be distinguished from that of a mere corporate
8 employee's deposition is not considered that of the
9 corporation and his presence must be obtained by subpoena.

10 Obviously, it is not literally possible to take
11 the deposition of a corporation. Instead, when a
12 corporation is involved, the information sought must be
13 obtained from natural persons who can speak for the
14 corporation. The corporation appears vicariously through
15 its designee. If the persons designated by the corporation
16 do not possess personal knowledge of the matters set out in
17 the deposition notice, the corporation is obligated to
18 prepare the designee so that they may give knowledgable and
19 binding answers for the corporation.

20 So thus, the duty to present and prepare a Rule
21 30(b)(6) designee goes beyond matters personally known to
22 that designee or to matters in which that designee was
23 personally involved.

24 THE COURT: But we're not talking about acts of
25 the corporation or acts of the entity. We're talking about

1 the acts or statements of an individual who is a part of
2 that corporation. So again, I'm having problems with this.
3 I mean because, you know, GM decides to file a lawsuit, a
4 part of that lawsuit is predicated upon maybe what the
5 president of the corporation said to somebody. And you're
6 suggesting to me that you ought not to call the president
7 who made the statement but you call somebody who qualifies
8 as the corporate rep for GM. And that corporate rep, you
9 say, I guess, can then testify as to what the corporate
10 president said and get that in and you avoid the
11 implications of an oath where the person, i.e., the
12 president that's in court testifying, and the ability of the
13 other side to cross-examine that person.

14 MR. SZYMKOWICZ: Well, the purpose again,
15 continuing on Page 361 of that case, the designee presents a
16 corporation's position on the topic. The position that
17 Ms. Zubi is testifying to is that Mr. Al-Ghusbi notified the
18 Ambassador, who indicated that the course of action should
19 be to file a lawsuit. That's where we're going with this
20 testimony.

21 THE COURT: Maybe she could say that the Embassy
22 does not, as a matter of its internal policies, permit
23 outside third persons to use their trademark name. That's
24 one thing. But it's quite another to say, well a specific
25 person within the corporation made a statement. What was

1 that statement?

2 I don't think you can do that because you might as
3 well throw out the hearsay rule and just qualify anybody
4 from a corporation who qualifies as a corporate rep and have
5 them testify about all these hearsay statements that people
6 made within the hearsay under the rubric that they can do
7 that because they're the corporate rep. I don't think the
8 law says that.

9 MR. SZYMKOWICZ: Okay. Well, we'll continue
10 with --

11 THE COURT: I think I'd get reversed at the drop
12 of a dime if I let that type of evidence in and it goes up
13 to the Court of Appeals and we'll be back here two or three
14 years later after they decide it retrying this case again.
15 Sustained.

16 BY MR. SZYMKOWICZ:

17 Q Ms. Zubi, can you tell me what the government's
18 position is with regard to Mr. Miski's use of the domain
19 names at issue?

20 A Yes, that he's violating our trademarks for the
21 following reasons. He is using our name or a combination of
22 names in four different domain names to redirect consumers
23 to his site for commercial purposes. And the consumer, the
24 general public, the American public going to his website
25 would believe that his website originates from or from the

1 Libyan Embassy or that there's a, that the source of the
2 website is the Libyan Embassy or that there's an affiliation
3 that exists between Mr. Miski and the Libyan Embassy, which
4 does not exist or that the Libyan Embassy sponsors Mr.
5 Miski's website, which it does not, or that there's an
6 affiliation, a connection between Mr. Miski --

7 MR. NAWASH: Objection, Your Honor.

8 THE COURT: Yes.

9 MR. NAWASH: A corporation also cannot speculate,
10 and everything she said here is speculative. She's
11 saying -- I'll come up there. What she's testifying to here
12 is she's saying that the corporation thinks that, if a
13 consumer out there looks at his website, he will think X, Y
14 and Z. So what she's testifying is that the corporation is
15 basically speculating. She's given us nothing but
16 speculative testimony that an individual cannot give and
17 certainly a corporation cannot give.

18 THE COURT: Yeah, I don't think she can speculate
19 as to how the general public would perceive Mr. Miski's use
20 of the domain names. I think she can testify as to their
21 policy and why, if they in fact have a valid domain name
22 that qualifies as a trademark, why they do not permit others
23 to use it. And I think that's quite different from her
24 opining about how conceivably somebody would perceive Mr.
25 Miski's use of the trademark, so I'll sustain the objection.

1 MR. SZYMKOWICZ: I believe that I asked her what
2 their policy is with regard to the --

3 THE COURT: Merely because you asked the question,
4 if she then ventures into speculation about how somebody
5 else would perceive his use, that doesn't avoid the problem.

6 MR. SZYMKOWICZ: Well, but it does present the
7 government's position on why they believe that this action
8 in court was undertaken.

9 THE COURT: Well, I mean, she can obviously say
10 they have a policy of not permitting third persons to do it
11 because they don't want the use of that to be somehow used
12 to mislead the public. That's quite different than her
13 saying exactly what the public would perceive as a result of
14 his use of it. Maybe a subtle difference, but I see a
15 difference.

16 She can say internally what their policy is and
17 why they don't permit it and why they have this prohibition,
18 but she can't say how somebody out in the public would
19 perceive Mr. Miski's use of it. I'll sustain the objection.

20 BY MR. SZYMKOWICZ:

21 Q Ms. Zubi, why -- does the Embassy have a policy on
22 trademark issues, and, if so, what is the policy and why is
23 the policy?

24 A Yes. We do have a policy that we would not authorize,
25 we do not authorize third parties to use our name or the

1 Embassy's name with respect to services provided to the
2 general public. We have, our policy or our website presents
3 official information and services to the general public that
4 only our Embassy, the Libyan Embassy, can provide.

5 So it is our policy that we do not allow others to
6 present information that could be affiliated or connected or
7 appear to be sponsored by or originate from the Libyan
8 Embassy. There is only one entity called the Libyan
9 Embassy. We are it, and we do not authorize a third parties
10 to perform official or present official services or services
11 that could be connected to the Libyan Embassy.

12 Q Do you contend that the Libyan Embassy owns any
13 trademarks?

14 A Yes, the domain names in question we own. We --

15 Q And --

16 A Yes.

17 Q And what is that belief based upon?

18 A We've been using -- our name is the Libyan Embassy, and
19 we have been using the name Libyan Embassy, as you can see
20 from all of the documents that we've presented that have
21 been presented, since 1951 in connection with the specific
22 services that are provided by the Embassy, which are
23 bilateral diplomatic relations and consular services to the
24 general public.

25 The general public is our consumer. And, so we've

1 been using this for over 60 years. It is -- not only is it
2 our official name, but we have been also using it in the
3 general public for over 60 years.

4 Q Do you think that the Embassy also has trademark rights
5 in derivatives of the People's Bureau?

6 A We might. I mean we are under --

7 MR. NAWASH: Objection, Your Honor. It's just
8 going to make a legal conclusion.

9 MR. SZYMKOWICZ: Do they take a position with
10 regard to the words People's Bureau, Your Honor?

11 THE COURT: Overruled as to that question.

12 THE WITNESS: We might. We're under no obligation
13 to pursue all of the potential, you know, litigation matters
14 that may or may not exist at the time. But we are
15 considering all of our options with respect to all of our
16 names. And the official name of the Embassy is the Libyan,
17 the Embassy of the Libyan Arab Jamahiriya and the domain
18 names in question are exactly identical to our name and in
19 combination of our name. So that is why we're here today.

20 BY MR. SZYMKOWICZ:

21 Q We've heard the terms legalization, authentication and
22 certification today many times; is that correct?

23 A Correct.

24 Q Can you tell me about why the Embassy would be involved
25 in legalizing, authenticating and certifying documents or

1 any combination thereof?

2 A Yes. The purpose of legalizing or the process of
3 legalization is required when a sending country's national
4 wants to use a document in the receiving country. And in
5 this case it would be Libya, so that the recipient in Libya
6 can recognize the documents as valid, as complete and
7 accurate.

8 And the process of a certify -- or legalization
9 actually begins with the execution of the documents, so the
10 company submitting the document for legalization has to
11 execute it. It is then notarized. Upon execution, it is
12 attested to by the county clerk where it's executed then
13 authenticated by the Secretary of State in the state of
14 execution. Then it is authenticated with an apostille of
15 the U.S. Department, U.S. State Department. Then it is
16 certified by the National U.S. Arab Chamber of Commerce, and
17 then we, the Libyan Embassy, legalizes it by placing a
18 stamp, by stamping it.

19 Q And is there any requirements under Libyan law that
20 such legalization occur before a document can be used in
21 Libya?

22 A Yes, this is our policy that it must, documents must be
23 legalized, commercial and legal documents.

24 Q And why is that? What's the purpose of this law or
25 policy?

1 A Well, again, so that documents are recognized as valid
2 so that the recipients in Libya, if there's a shipment of
3 goods, then the documents that are associated with that
4 transaction are legitimate or at least the validity is --
5 you know, the legalization provides the validity.

6 Q Do you know if this legalization policy is standard in
7 the Arab world?

8 A Yes.

9 Q How do you know that?

10 A I know it through the officials that I've spoken with
11 at the Libyan Embassy, and I also know it from my colleagues
12 at various Arab embassies in Washington, D.C.

13 Q I'm showing you what's been marked for identification
14 as Exhibit Number 19 plaintiffs'. Can you tell me what this
15 document is?

16 A This is the page on our home page, the Libyan Embassy's
17 website, I'm sorry, that lists the documentation, the
18 legalization fees charged by the Libyan Embassy with respect
19 to legalization of documents.

20 Q And how long has this part of the website been on the
21 Libya government's website?

22 A Since we created the website in 2006.

23 MR. SZYMKOWICZ: Your Honor, I move the admission
24 into evidence of Exhibit 19 plaintiffs' for identification.

25 THE COURT: Any objection?

1 MR. NAWASH: No, Your Honor.

2 THE COURT: Admitted.

3 [Thereupon, Plaintiffs' Exhibit No. 19 admitted
4 into evidence.]

5 BY MR. SZYMKOWICZ:

6 Q What document legalization services are performed by
7 the Libyan Embassy as referenced in Exhibit Number 19?

8 A Well, as I mentioned before, all commercial and legal
9 documents are legalized. So this is the page that lists the
10 fees associated with the legalization. So, for example, if
11 you had a certificate of origin that required or let's take
12 a commercial invoice, that would cost the consumer or the
13 person seeking legalization \$40 plus \$1 per \$1,000 of the
14 value of the exported goods. So that would be just those
15 kinds of documents. Then if we go down to commercial
16 contracts, it would be \$300.

17 Q And who is the person that pays these fees that are
18 charged?

19 A It is the person seeking legalization of their
20 documents. It could be an American individual or a foreign
21 individual or a business entity.

22 Q How does the Embassy use these fees?

23 A The Embassy uses these fees to offset it's operating
24 expenses and then the rest is remitted back to the treasury
25 in Libya.

1 Q As a profit if there is one?

2 A If there is a profit, yes, if there is one.

3 Q Do you know how many documents are legalized within the
4 Embassy every year?

5 A We don't. It's numerous. We don't have an exact
6 number because we don't keep records. We don't keep copies
7 of the documents that are legalized.

8 Q Why not?

9 A Because it's not, it's not something that we need to
10 maintain in our records because the purpose of legalization
11 is done for the consumer, the person seeking it, the
12 business or the individual. So, once it's, the original is
13 legalized and then returned to the, to the seeker of the
14 legalization, the consumer. And I believe the National U.S.
15 Arab Chamber of Commerce may keep a copy, but we do not.
16 The Embassy does not.

17 Q What is that National U.S. Arab Chamber of Commerce?

18 A The National U.S. Arab Chamber of Commerce is the
19 Chamber of Commerce that the Libyan Embassy uses to certify
20 documents for legalization.

21 Q And why is the National U.S. Arab Chamber of Commerce
22 listed on the Libyan government's website, which is Exhibit
23 Number 19?

24 A Because we, the National U.S. Arab Chamber of Commerce
25 is recognized by the Arab League. It's a known entity.

1 It's a trusted entity. It's used by most, if not all, Arab
2 embassies in Washington, D.C., so it is the Chamber of
3 Commerce that the Embassy uses for certification of
4 documents.

5 Q Does the Libyan Embassy accept documents from Mr.
6 Miski?

7 A No.

8 Q Why not?

9 A Because we don't trust him. Because of his
10 unauthorized use and retention of the domain names and
11 because of this litigation.

12 Q Is Mr. Miski allowed in the Embassy?

13 A No.

14 Q Why not?

15 A Because of this litigation. Because of his
16 unauthorized use and retention of the domain names.

17 Q To the best of the Embassy's information and belief,
18 what services does Mr. Miski attempt to provide with regard
19 to documents to be used in Libya?

20 A From his website, certification services.

21 Q Okay. How does that differ, if at all, with regard to
22 what the Embassy does?

23 A We don't provide certification services. So his, what
24 the Chamber of Commerce does or any entity that provides
25 certification acts as an expediter for the legalization of

1 the documents.

2 Q And does -- is it required that a Chamber of Commerce
3 perform this function or could somebody on their own go to
4 the Embassy and do this?

5 A We could also provide that service, the Embassy itself.
6 We just don't, and we happen to use the Chamber of Commerce,
7 the National U.S. Arab Chamber of Commerce.

8 Q Do you know if Mr. Miski's website changed since this
9 case was filed?

10 A Yes.

11 Q And how has it changed?

12 A When the lawsuit was initially, when it was filed in
13 2006, it appeared it was entirely different, the website.
14 And up until November of 2009, it said legalization -- on
15 the home page, it said legalization and certification of
16 documents from Libya Embassy in Washington, D.C., and the
17 domain names appeared in the header.

18 Q And that would be Exhibit Number 5?

19 A Yes, I am looking at Exhibit Number 5.

20 Q And how has his website changed since then?

21 A His --

22 Q For example, if somebody were to go to one of the
23 domain names at issue in this case, what would they find
24 today?

25 A Today it appears different. It's a list of all of the

1 countries, including Libya, which is Mr. Miski -- it is our
2 policy, the Libyan Embassy's policy not to accept his
3 certification services. And since 2006, there's a record
4 that he is presenting to the general public that he can
5 provide these services with respect to Libya. So, and he
6 calls the Libyan Embassy the Libyan Embassy on his own
7 website. So, it's now a listing of all of the countries
8 that he serves, including Libya.

9 Q And what document were you referring to just now?

10 A Exhibit 6.

11 Q How has the Libyan government been damaged, if at all,
12 by Mr. Miski's registration, retention and use of the domain
13 names at issue?

14 A Well, it's our policy, as I said before, that
15 information that's presented by the Libyan Embassy is
16 official information, and services that are presented by
17 the, offered to the general public are services that only
18 the Libyan Embassy can provide.

19 So when there is a website that uses our name, our
20 identical name or a combination of names to divert or
21 redirect consumers to another website that appears to
22 expedite services for the Libyan Embassy but it has no
23 connection to the Libyan Embassy, is not sponsored by the
24 Libyan Embassy, is absolutely completely separate and never
25 had any connection to the Libyan Embassy, and, in fact, does

1 not serve the Libyan Embassy since 2006, this is infringing.
2 It is violating our trademarks. It is misleading the public
3 into thinking that there's a connection.

4 MR. NAWASH: Objection. Objection. She's
5 speculating saying it is misleading the public. How would
6 she know it's misleading the public? And then she talks
7 about violating a trademark as if it's been proven that they
8 have a trademark. That's also a legal conclusion.

9 THE COURT: Obviously, that's an issue I have to
10 address as to whether or not there was, in fact, a valid
11 trademark and whether it was in some way infringed. I don't
12 think it's speculative, however, for her to say there's
13 misleading taking place if, in fact as she said, the website
14 previously specifically said that the services were being
15 provided by the Libyan Embassy. Overruled as to that.

16 MR. NAWASH: Thank you.

17 THE WITNESS: May I add something? Our name is
18 specifically associated with our function. And, as I
19 defined before the term embassy, the term embassy refers in
20 part to the function of an embassy, which is to provide or
21 conduct bilateral diplomacy and consular services.

22 It has been conducting and offering consular
23 services to the public, the general public since the '50s.
24 And it is connected. It is -- it identifies the Libyan
25 Embassy as providing those services. And it also identifies

1 the source of those services, which is the government of
2 Libya. And there can be no other Libyan Embassy. There can
3 only be one Libyan Embassy.

4 BY MR. SZYMKOWICZ:

5 Q Is there any way to quantify those damages that you've
6 suffered?

7 A Aside from --

8 Q As far as monetary, monetarily?

9 A Aside from the legal fees and --

10 Q And the statutory damages?

11 A Yes. It's actually difficult to quantify. It's not
12 possible to quantify because we just don't, you know, keep
13 records of the amount of -- yeah, it's hard to quantify.

14 Q So are you claiming any statutory damages in this case?

15 A Yes.

16 Q Okay. And the statutory damages would be those
17 provided in 15 U.S.C. 1117(d)?

18 A Correct, those that are listed in the Complaint.

19 Q And that would be for \$400,000?

20 A Yes.

21 Q What about your legal fees you testified to? Did you
22 incur any legal fees as a result of this case?

23 A Yes, absolutely.

24 Q Did you pay any legal fees in this case?

25 A Yes. This case has been going on since 2006, so

1 absolutely.

2 Q Do you know if you've -- how much you've actually paid
3 thus far, as far as, you know, what you've paid in legal
4 fees?

5 A I don't know.

6 Q I direct your attention to Page 20, I'm sorry,
7 Plaintiffs' Exhibit for Identification 20, the last page.
8 Does that refresh your recollection?

9 A Yes. But this is only through from --

10 Q I'm asking you specifically about payments that you've
11 actually made thus far.

12 A Oh, I'm sorry. Yes.

13 Q How much has the Libyan government paid out in legal
14 fees, not what they've been billed but rather what they've
15 paid out?

16 A In 2009, in February 2009, we paid \$10,000. In 2010,
17 through October of 2010, it was another 10,000. Through
18 January 2011, it was 34, approximately \$35,000. So total
19 payments thus far equals 54,000, approximately \$55,000. And
20 then there's an outstanding balance of approximately \$13,000
21 and then another legal bill for approximately, I believe,
22 \$13,000.

23 Q I direct your attention to Exhibit Number 21. Would
24 that refresh your recollection on the other bill that may be
25 due?

1 A Yes. I'm looking for it. Yes, sorry. Oh, I'm sorry.
2 It's approximately \$6,150.

3 MR. SZYMKOWICZ: Your Honor, I move the admission
4 into evidence of Exhibits 20 and 21.

5 THE COURT: Any objection?

6 MR. NAWASH: What's 20, I'm sorry?

7 MR. SZYMKOWICZ: The two legal bills, 20 and 21.

8 MR. NAWASH: Yes, I object to that based on
9 foundation. Ms. Zubi, clearly doesn't, didn't know the
10 details about these bills. And we don't know if these bills
11 reflects time and services that were actually performed.

12 MR. SZYMKOWICZ: Your Honor, I think that these,
13 Mr. Nawash -- I think that, Your Honor, the fact that the
14 Libyan government paid the majority of these bills shows
15 that Ms. Zubi had a chance to look at them.

16 THE COURT: What's her predicate for saying that
17 they were in fact paid?

18 BY MR. SZYMKOWICZ:

19 Q How do you know the bills were paid? Did you have any
20 input into the payment of these bills?

21 A Yes, absolutely. I am responsible for reviewing all of
22 the legal fees that come to the Libyan Embassy from outside
23 counsel to ensure that they are accurate. And if we have
24 any issues, I'm the one who would correct them with outside
25 counsel. So I do know for a fact, because I was

1 instrumental in getting payment to outside counsel, and
2 especially in this case.

3 Q So even though the bills may be on my letterhead and
4 Mr. Mitchell's letterhead, were you involved in the
5 preparation of these documents as far as, you know,
6 establishing what should go on the bill and what should not?

7 A No. I'm not involved in the preparation of the
8 invoices. I'm involved in the approval of the invoices.

9 Q Okay. And did you review and approve all of the
10 invoices presented today?

11 A Yes.

12 Q And did you do that today or did you -- have you done
13 this all along as the bills were being generated?

14 A I've done them all along.

15 THE COURT: Any objection?

16 MR. NAWASH: No, Your Honor.

17 THE COURT: Very well. Admitted.

18 [Thereupon, Plaintiffs' Exhibit Nos. 20 and 21
19 admitted into evidence.]

20 MR. SZYMKOWICZ: Your Honor, I have no further
21 questions.

22 THE COURT: Very well. Cross-examination. Let me
23 just ask, for scheduling purposes, I assume this is your
24 last witness?

25 MR. SZYMKOWICZ: That is our last witness, Your

1 Honor.

2 THE COURT: And besides the cross-examination, how
3 many witnesses do you anticipate?

4 MR. NAWASH: Just Mr. Miski.

5 MR. SZYMKOWICZ: What is the Court's preference on
6 time both today and tomorrow?

7 THE COURT: Well, we're going to go until
8 5:00 o'clock. I stop at five. I don't go beyond five
9 because my staff doesn't get paid beyond five, and I don't
10 believe in slavery.

11 MR. SZYMKOWICZ: And then tomorrow we would be
12 expected back here at 9:00 or 9:30?

13 THE COURT: I'm going to check, 9:15. And
14 hopefully, we can finish up the case tomorrow. I don't have
15 anything else on my calendar. I have a 1:30 sentencing, a
16 2:00 o'clock sentencing. Hopefully, we can finish in the
17 morning, but, if we can't, we have the afternoon from
18 probably about 2:30 until 5:00.

19 MR. SZYMKOWICZ: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. NAWASH:

22 Q Ms. Zubi, isn't it true that your website contains, it
23 describes your Embassy as the People's Bureau?

24 MR. SZYMKOWICZ: Your Honor, we've been through
25 this in the direct examination that there are both terms

1 used.

2 THE COURT: No, but just because you got a chance
3 to ask your questions doesn't prohibit him on
4 cross-examination from doing the same thing. Overruled.

5 THE WITNESS: Would you repeat the question
6 please?

7 BY MR. NAWASH:

8 Q Isn't it true, would you agree that your web, on the
9 front page of your website, your website is described as the
10 People's Bureau?

11 A That's not the only name that appears on our website.

12 Q I understand that, but does that name appear on the
13 front page of your website?

14 A Yes, that name does appear.

15 Q And would you agree it appears twice on the front page
16 of your website?

17 A One second. Which exhibit are you looking at?

18 Q Well, it would be your exhibit --

19 A I got it.

20 Q Is that Number 7, yours?

21 A Do you want -- can you point out what you're asking
22 about specifically?

23 Q Well, I'm going to give you -- I'll make it easy for
24 you. Excuse me a second.

25 THE COURT: Be easier I think if you just refer

1 her to the exhibit number that you're referencing.

2 THE WITNESS: I have it.

3 MR. NAWASH: No, she has the exhibit. She just
4 wants me to tell her where.

5 THE COURT: I think she was asking which exhibit
6 you're talking about, were you?

7 THE WITNESS: Are you talking about 11?

8 BY MR. NAWASH:

9 Q Your website, your website, your website.

10 A Okay.

11 Q Top left corner right here, would you agree that this,
12 that the name, the People's Bureau, appears on your website?

13 A Yes.

14 Q And would you agree that it also appears a second time
15 right below that in the center?

16 A Yes, along with the Embassy of Libya.

17 Q And the Embassy of Libya appears in parentheses?

18 A Yes.

19 Q Correct. And isn't it true, you testified that your
20 website was actually created in 2006, correct?

21 A Yes.

22 Q Isn't it a fact that you didn't -- and you mentioned
23 that you put the trademark in 2006 on your website, the
24 trademark?

25 A Yes.

1 Q Isn't it a fact though that you actually created your
2 website and put the trademark in 2008?

3 A No, it's impossible.

4 Q In January 15th of 2008?

5 A No. That's when the domain name was purchased.

6 Q What was purchased?

7 A That's not when the website was created.

8 Q So the domain name was purchased in 2008?

9 A Yes. It's official information, but we created the
10 website long before the domain name was purchased.

11 Q But didn't you testify that you purchased the domain
12 name in 2006?

13 A I did not testify that I purchased the domain name. I
14 testified that the website was created in 2006.

15 Q And what was the purchasing entity that purchased that
16 domain name, do you know, that purchased your domain name?

17 A The purchasing entity?

18 Q Yes. Was it the Embassy of the Libyan Arab Jamahiriya?

19 A I can check. We'll have to do a search. I don't have
20 it here. I would have to check. I'm assuming it's the
21 Libyan Embassy.

22 Q Would you be surprised if the purchasing entity was the
23 Libyan Bureau?

24 A No.

25 Q You wouldn't be surprised?

1 A I wouldn't be surprised. I told you they are
2 alternative names.

3 Q And so how do you decide which name do you use? When
4 do you use the Libyan Embassy and when do you use the Libyan
5 Bureau?

6 A We use both.

7 Q All right. But the question is when do you use which?

8 A As I said, we use both.

9 Q Okay. You mentioned that the term, the term Embassy of
10 Libyan Arab Jamahiriya appears on the top left portion of
11 your website, correct?

12 A Correct.

13 Q But isn't it a fact that a person who's watching this
14 online would not see the term Embassy of the Libyan Arab
15 Jamahiriya?

16 A Are you asking me to speculate?

17 Q No, I'm asking you --

18 THE COURT: It sounds like you're asking her what
19 somebody --

20 BY MR. NAWASH:

21 Q Do you know, do you know that the term Embassy of the
22 Libyan Arab Jamahiriya does not appear online? When someone
23 is watching, when someone watches your website online, the
24 term Embassy of the Libyan Arab Jamahiriya does not appear.
25 Did you know that?

1 A That's not true.

2 Q Okay. Would you bring it up?

3 A That's not true because I have a printout of the
4 Embassy in my hand.

5 MR. NAWASH: I have, I don't know if all of you
6 can see this, but I have on the screen --

7 THE COURT: If you ask her to do it, she can do
8 it.

9 MR. NAWASH: Yeah, I have it on my screen. What
10 we're looking at here, Your Honor, is the front page of
11 their website.

12 THE COURT: Well, you can't testify.

13 MR. NAWASH: Oh, I apologize. You're right.

14 BY MR. NAWASH:

15 Q Do you agree this is your website, Ms. Zubi.

16 MR. SZYMKOWICZ: Your Honor, I have to object. I
17 just looked it up on my iPhone and it's clearly at the top
18 as the title Embassy of the Libyan Arab Jamahiriya.

19 MR. NAWASH: We're looking at it right now. We
20 don't need to look at it to your iPhone.

21 THE WITNESS: Mr. Nawash, you knew --

22 THE COURT: Hold on.

23 THE WITNESS: I'm sorry.

24 THE COURT: I don't know what this is. Is this in
25 fact?

1 THE WITNESS: Yes, but, Your Honor, and Mr. Nawash
2 knows this, depending on what computer you pull it up and
3 the parameters of your screen, it could shrink the page or
4 it could broaden the page. And, you know, that's the issue.
5 It's not that we don't have it on our site. It just doesn't
6 appear on this computer screen.

7 MR. SZYMKOWICZ: Your Honor, it does appear on
8 this computer screen. It's on the tab as witnessed --

9 MR. NAWASH: Your Honor, shouldn't there be an
10 official objection?

11 THE COURT: Hold on. Hold on. One at a time.

12 MR. SZYMKOWICZ: If I may, Your Honor.

13 THE COURT: Yes.

14 MR. SZYMKOWICZ: If I may point over here where it
15 is, on the big screen it's right here. It says Embassy
16 right here. It also appears -- it's a little bit more clear
17 because I think that, with all due respect, the court's
18 computers are old. On my iPhone it shows up as Embassy of
19 the Libyan Arab Jamahiriya. And if I may approach, Your
20 Honor, you can see clearly what I'm talking about.

21 THE COURT: You say our computer is old?

22 MR. SZYMKOWICZ: With all due respect, Your Honor.

23 THE COURT: I don't know if that's --

24 THE WITNESS: It's the upper left-hand corner,
25 Your Honor, the very top, right next to the Firefox icon.

1 THE COURT: The fire, where is that? If you can
2 point to it.

3 THE WITNESS: Sure, it's the very left corner.

4 THE COURT: I see it, Embassy of the -- yeah, I
5 see it.

6 BY MR. NAWASH:

7 Q Isn't it a fact that that is not the main screen?
8 That's not the screen of your website?

9 A You just asked me to -- you just said this was by
10 website, so I'm confused.

11 Q No, but, all right. The actual screen -- let's go
12 back. Are we looking at the front page of your website? Do
13 we agree on that?

14 A Okay. It appears to be the website, yes.

15 Q Okay. And we've agreed already that the name, the
16 People's Bureau, appears on your website, correct?

17 A Correct.

18 Q And on the page itself, before we get into the icons
19 and the address, the name, Embassy of the Libyan Arab
20 Jamahiriya, does not appear?

21 A It's right there in the middle of the home page,
22 Embassy of Libya in Washington, D.C.

23 Q Okay. But that's not the Embassy of the Libyan Arab
24 Jamahiriya.

25 A It is the Embassy of the Libyan Arab Jamahiriya.

1 That's the Embassy of Libya.

2 THE COURT: Yes.

3 MR. SZYMKOWICZ: I object. The web page if I
4 might.

5 THE COURT: Yes.

6 MR. SZYMKOWICZ: The web page, this portion of it
7 is the header. The mark is clearly displayed in the header.
8 When you're looking at HTML code, it would be included in
9 the header section. There would be a header HTML tag. That
10 is the most prominent display you could possibly get in a
11 web page in this counsel's opinion.

12 THE COURT: Okay. I'll have to make that factual
13 assessment based upon what's admitted to me. If there is
14 some other perspective as to what actually would show up,
15 obviously, on redirect, counsel can do that.

16 BY MR. NAWASH:

17 Q Okay. The last question, before we move on from this,
18 and I asked you but you didn't give me an answer. I said
19 when do you use the People's Bureau and when do you use the
20 term Embassy?

21 A We use both. As I said to you earlier, we use both.
22 In our diplomatic notes, we use both. There are times when
23 we use just the Embassy of the Libyan Arab Jamahiriya or the
24 Embassy of Libya. But if there is a time when we use
25 People's Bureau, we always use Libya, Embassy of Libya at

1 the same time. And I assure you that, if you go out of this
2 hall and you say to someone, People's Bureau, they're going
3 to say, oh, you mean Libyan Embassy. So the answer to your
4 question, Mr. Nawash, is that we use both.

5 THE COURT: Is there any demarcation?

6 THE WITNESS: There is absolutely, no, and I asked
7 the Ambassador that many many times, and we use both.

8 BY MR. NAWASH:

9 Q And there's no demarcation whatsoever?

10 A There is no demarcation, but we go by the official
11 name, which is the Embassy of Libya, Libyan Arab Jamahiriya
12 in the United States.

13 Q Okay. All right. Do you agree that you use the term
14 Libyan Arab Jamahiriya on your letterhead?

15 A Yes.

16 Q You do agree to that?

17 A Do I --

18 Q Do you agree that you use the term, the People's
19 Bureau, on your letterhead?

20 A Yes.

21 MR. NAWASH: Okay. And we'd like to submit as an
22 exhibit, Your Honor.

23 THE COURT: She's not here.

24 MR. NAWASH: Okay. I'll do it after she comes
25 back. I'll put it here. Oh, and just for the record, I

1 wanted to put their letterhead in as an exhibit.

2 THE COURT: Well, you could go ahead and mark it.
3 What exhibit number?

4 MR. NAWASH: No, I'll ask you one question before
5 that, Your Honor. I was going to put in as an exhibit their
6 website, but, since they put it in themselves, I don't need
7 to do it again.

8 THE COURT: It's up to you.

9 MR. NAWASH: Okay. Well, in that case, I'll put
10 as Exhibit 1, as Exhibit 1 their website, a copy of their
11 website.

12 THE COURT: You need to have her authenticate it
13 as actually being it.

14 MR. SZYMKOWICZ: May I approach, Your Honor, to
15 take a look at it?

16 THE COURT: Yes.

17 THE DEPUTY CLERK: Is this Defendant's Exhibit?

18 MR. NAWASH: Yes, Defendant's Exhibit 1.

19 THE DEPUTY CLERK: What is it again? Sorry.

20 MR. NAWASH: It is the front, the first and second
21 page of their website.

22 THE DEPUTY CLERK: Of whose website?

23 MR. NAWASH: Of the plaintiffs' website. Here's a
24 copy.

25 MR. SZYMKOWICZ: Your Honor, I object to the

1 inclusion of this website because it is not -- first of all,
2 it's already been introduced in our case-in-chief. But,
3 second of all, what's interesting is that Mr. Nawash has
4 provided -- again, in a misleading manner, he provides two
5 versions of the same website. The first clearly
6 establishes, as ours does, Embassy of the Libyan Arab
7 Jamahiriya, which is the title page that shows up when a web
8 page is printed. On the document Mr. Nawash handed me,
9 there is no such thing, so these documents don't even match.

10 MR. NAWASH: Well, I'll make life easy.

11 MR. SZYMKOWICZ: And if I may approach, Your
12 Honor, I can show you.

13 MR. NAWASH: I'll make life easy for him, Your
14 Honor. Obviously, I don't know how this came about, I'll
15 enter the one that says it in the record.

16 THE COURT: Very well. You can, even though it
17 may be in the record through the plaintiffs as an exhibit,
18 you can still present your own exhibit if you so choose.
19 Which one is it?

20 MR. NAWASH: Their website would be my Exhibit 1.
21 The first page of their website would be my Exhibit 1.

22 THE COURT: Is that the one that they agree to?

23 MR. NAWASH: Yes.

24 THE COURT: Very well.

25 THE WITNESS: I didn't agree to it actually.

1 THE COURT: I'm talking has counsel agreed to
2 that. Are we talking about -- which one are we talking
3 about?

4 MR. NAWASH: I'll show it to her again.

5 THE COURT: Yes.

6 MR. SZYMKOWICZ: Your Honor, I don't have a
7 problem with this document other than that it's duplicative
8 now that Mr. Nawash has submitted it.

9 THE COURT: Very well.

10 THE WITNESS: Your Honor, can I say one thing? It
11 is slightly different in terms of the margins being
12 different, and I do feel more comfortable --

13 THE COURT: Is the content any different?

14 THE WITNESS: Well, I'd have to read the full
15 page, but I would feel more comfortable just referring to
16 our own website that we know is our website as opposed to
17 trying to figure out word for word if it's the same website.
18 And --

19 THE COURT: If it's -- I'll reserve a final
20 ruling. If it's misleading and that's determined overnight
21 to be the case, you can let me know, but otherwise I'd admit
22 it.

23 THE WITNESS: Okay. Thank you, Your Honor.

24 MR. NAWASH: Thank you, Your Honor.

25

1 [Thereupon, Defendant's Exhibit No. 1 admitted
2 into evidence.]

3 MR. NAWASH: And I'd like to also introduce into
4 evidence, Your Honor, their letterhead as Exhibit 2. This
5 is also at Docket Number 52 on the record.

6 THE DEPUTY CLERK: They are whose exhibit? I have
7 to write it down.

8 MR. NAWASH: I got you. Exhibit 2, Defendant's
9 Exhibit 2, is the letterhead for the plaintiffs. It's
10 plaintiffs' letterhead.

11 THE COURT: Okay.

12 MR. NAWASH: And it also happens to be Document
13 Number 52 on the docket.

14 MR. SZYMKOWICZ: I have no objection, Your Honor.

15 THE COURT: What's the question?

16 MR. NAWASH: There's no question. I'm just --
17 this is their, it refers to them as the Libyan Bureau as
18 opposed to Libyan Embassy and this is their letterhead.

19 THE COURT: Do you agree?

20 THE WITNESS: Yes. It's one of the -- it is our
21 letterhead. But, Your Honor, throughout the letter we also
22 do refer to ourselves as the Libyan Embassy.

23 THE COURT: Okay. Very well.

24 MR. NAWASH: And you had --

25 THE COURT: It will be admitted without objection.

1 MR. NAWASH: Okay, Your Honor. Thank you very
2 much.

3 [Thereupon, Defendant's Exhibit No. 2 admitted
4 into evidence.]

5 BY MR. NAWASH:

6 Q You had mentioned you had given into evidence a phone
7 directory or the equivalent of a phone directory, and I
8 don't have the name of it, from the State Department that
9 refers to you as the Libyan Arab Jamahiriya, correct?

10 A Yes.

11 Q And are you aware that the State Department also refers
12 to you as -- the State Department also refers to you as the
13 Libyan Bureau?

14 A They may, but our official name is the Libyan Arab --
15 the Embassy of the Libyan Arab Jamahiriya. And, Mr. Nawash,
16 by the way, your Exhibit 2, you've redacted for some reason
17 the content of the letter.

18 Q No, the court did. Thank you.

19 MR. SZYMKOWICZ: Your Honor, it was redacted, I
20 believe, by Magistrate Judge Robinson. It was a letter from
21 the Ambassador regarding the settlement conference. And I
22 think that she redacted it because there was some
23 confidential information it contained. I don't think there
24 was any badness to the --

25 THE COURT: I had nothing do with that. If she

1 redacted it for some legitimate reason, so be it.

2 BY MR. NAWASH:

3 Q I want to show you, Ms. Zubi, the document that I
4 printed from the State Department, which says "Background
5 Note on Libya."

6 A Oh, yeah, I've seen it.

7 Q Yes, and I'd like you to read what's highlighted on
8 Page Four.

9 THE COURT: This will be the last question and
10 answer.

11 MR. NAWASH: Okay, Your Honor.

12 THE WITNESS: "In the 1970s, Libya claimed
13 leadership of Arab and African revolutionary forces and
14 sought active roles in international organizations. Late in
15 the 1970s, Libyan embassies were redesignated as People's
16 Bureaus as Gadhafi" -- shall I go on?

17 BY MR. NAWASH:

18 Q That's fine, yes. And since this is the end, I just
19 want to skip to Page Seven.

20 A Hm-hmm.

21 Q Look at the underlined portion under the heading
22 principal government officials.

23 A Yes.

24 Q Go to the bottom and please tell us how the State
25 Department refers to you.

1 A This is not the State Department by the way. This is a
2 fact sheet on Libya.

3 Q Mm-hmm.

4 A But this is not the official listing by the State
5 Department.

6 Q I understand that.

7 A It says, "The Libyan People's Bureau Embassy equivalent
8 is located at 2600 Virginia Avenue, Northwest," and then it
9 gives the full address.

10 Q Okay.

11 THE COURT: Okay. We'll have to recess since it
12 is almost 5:00 o'clock.

13 MR. NAWASH: Should we at least try to submit this
14 into evidence or do we wait until tomorrow?

15 THE COURT: Any objection?

16 MR. SZYMKOWICZ: We have no objection, Your Honor.

17 THE COURT: Very well. It will be admitted.

18 MR. NAWASH: This would be Exhibit 3. And this
19 would be the State Department background notes on Libya.

20 THE COURT: Very well. It's admitted.

21 [Thereupon, Defendant's Exhibit No. 3 admitted
22 into evidence.]

23 THE COURT: Okay. We'll pick up at 9:15 tomorrow
24 morning.

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[Thereupon, the proceedings adjourned at 4:58
p.m.]

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