

EXHIBIT 32

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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DISNEY ENTERPRISES, INC., et al.,)

Plaintiffs,) Case No.

v.) 11-20427-

HOTFILE CORP., et al.,) WILLIAMS/

Defendants.) TURNOFF

-----x

HOTFILE CORP.,)

Counterclaimant,)

v.)

WARNER BROS. ENTERTAINMENT, INC.,)

Counterdefendant.)

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VIDEOTAPED DEPOSITION OF SCOTT A. ZEBRAK, ESQUIRE

Washington, D.C.

Tuesday, December 20, 2011

9:43 a.m.

Job No.: 439702

Pages 1 - 370

Reported By: Joan V. Cain

1 Videotaped Deposition of SCOTT A. ZEBRAK,
2 ESQUIRE, held at the law offices of:

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4 STRADLEY RONON STEVENS & YOUNG, LLP

5 Suite 500

6 1250 Connecticut Avenue, Northwest

7 Washington, D.C. 20036

8 (202) 822-9611

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10 Pursuant to Notice, before Joan V. Cain, Court
11 Reporter and Notary Public in and for the District of
12 Columbia.

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1 A P P E A R A N C E S

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3 ON BEHALF OF PLAINTIFFS:

4 STEVEN B. FABRIZIO, ESQUIRE

5 JENNER & BLOCK, LLP

6 Suite 900

7 1099 New York Avenue, Northwest

8 Washington, D.C. 20001

9 Telephone: (202) 639-6000

10 E-mail: sfabrizio@jenner.com

11

12 ON BEHALF OF DEFENDANTS AND COUNTERCLAIMANT:

13 ANDREW LEIBNITZ, ESQUIRE

14 FARELLA BRAUN & MARTEL, LLP

15 Russ Building

16 235 Montgomery Street

17 San Francisco, California 94104

18 Telephone: (415) 954-4400

19 E-mail: aleibnitz@fbm.com

20

21 ALSO PRESENT:

22 Terry Michael King, Videographer

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1 my -- my answer's the same with respect to -- to each
2 of these specific questions you asked in terms of --
3 you know, I've explained what my expertise is. As to
4 a particular facet of a particular type of copyrighted
5 material that's, you know, that's not where my -- I
6 have a familiarity and I researched those quite
7 extensively here, but, you know, I'm not an expert in
8 Japanese Manga, for example, or the example you gave
9 on -- whatever the title was for that gaming tool.

10 BY MR. LEIBNITZ:

11 Q What did you do to research the Manga
12 industry for this case?

13 A Well, there's sort of general and specific
14 answers to that. You know, most of the research that
15 I did began in connection with research on a
16 particular file.

17 So, you know, on a particular file we'd
18 attempt to see who was commercializing it and who the
19 copyright owner or its licensee was, and for example,
20 you know, the definition of highly likely infringing
21 that I applied was, you know, if it was copyrighted
22 content and it was being commercialized by that, you
23 know, entity, whether it was located in Japan or the
24 creator of, you know, that sort of material elsewhere,
25 you know, if they were commercializing it and selling

1 it and it was copyrighted content, it would be
2 entirely inconsistent with how they were developing
3 and selling that content for them to have authorized
4 that content to be reproduced and distributed across
5 the web on a viral basis.

6 So, you know, my -- my research on that
7 industry generally or that specific provider
8 specifically involved looking through the sites of
9 those providers, looking at secondary research
10 material on that space as I ran across it or looked
11 for it, and I think that's probably it.

12 Q To what degree does the Japanese Manga
13 industry encourage fan translations?

14 MR. FABRIZIO: Objection, vague and
15 ambiguous.

16 THE WITNESS: I am familiar -- well, let me
17 take a step back.

18 MR. FABRIZIO: And overbroad.

19 THE WITNESS: Yeah. When you're talking
20 about the whole industry, I'm familiar with fans
21 translate certain works from one language to another.
22 Sometimes they may -- I don't -- they may do other
23 things with the content. The -- I -- probably what
24 each particular company does varies based on a -- on a
25 company.

1 won't let the witness review.

2 MR. LEIBNITZ: I'm not going to look at it

3 then.

4 BY MR. LEIBNITZ:

5 Q Mr. Zebrak?

6 A I mean, again, I'm trying to answer the

7 best -- question as best as I can. You've put forward

8 a document that -- that you I believe said was printed

9 from the file on the drive that corresponds to this

10 upload and two pages that you said correspond to the

11 links I have in my notes section. Doing the review, I

12 would have been looking at all this information along

13 with other information and doing it also in a more

14 meaningful way, not in -- in printouts, but seeing it

15 in color on a larger screen where I could zoom in, and

16 I would have been looking at other information too

17 about -- about this, including perhaps a takedown

18 notice, other information about the status of the

19 uploader perhaps. There's a whole -- you know, the

20 term I used before. There's a whole quilt of

21 information. It's very hard right now for this work

22 for me to remember more than what I've already told

23 you.

24 I can tell you the process I went through.

25 For this particular work, this doesn't jog my memory

1 as to the exact basis for my determination. But I
2 could tell you the process I would have gone through
3 to arrive at that determination.

4 Q Mr. Zebrak, there was no DMCA notice for
5 this according to Exhibit 101, right?

6 MR. FABRIZIO: Okay. Objection. Lacks
7 foundation and misstates Hotfile's own records. Let
8 him see the other document that he brought with him.

9 THE WITNESS: Should I answer the question?

10 BY MR. LEIBNITZ:

11 Q Please.

12 A This -- this document you put in front of me
13 for -- excuse me -- for 1767 says null in the Noticed
14 field. You know, again, there -- there's other
15 correlation of takedown information that -- that is
16 available both to you and to us that would further
17 inform whether this is properly designated highly
18 likely infringing. I have no reason to think that
19 it's anything other than a highly likely infringing
20 designation. If I'm wrong, I'd be the first one to
21 want to correct that, but right now I don't think that
22 that's the case. I don't -- I recall the process I
23 went through. I can't footnote the exact specific for
24 it. I could supplement the answer afterwards, and
25 that's -- really, I'm not sure what else you want me

1 read it back.

2 BY MR. LEIBNITZ:

3 Q Here's the question. Did you ask anybody to
4 confirm your findings?

5 A And I believe the answer I gave to you
6 was -- well, maybe -- maybe I didn't include this
7 portion of it within my answer. I did, for the
8 reasons we've discussed earlier, find that it was
9 feasible for me to reach out to the plaintiffs in the
10 case and they with respect to their works confirmed
11 for me that they owned them and did not authorize them
12 for distribution through Hotfile. With respect to
13 reaching out to other copyright owners, I didn't view
14 that to be necessary or feasible for the reasons we've
15 discussed.

16 So beyond that, in terms of confirming my
17 findings in answering your question a moment ago and
18 again now, the only other thing I did by way of asking
19 people to confirm my findings was -- in terms of
20 reaching out to others, I reached out in conversations
21 like the one I described to you a little while ago
22 with the head of the Free Speech Coalition.

23 Q Do you have any scientifically reliable
24 reason to believe your findings are representative of
25 anybody but yourself?

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Joan V. Cain, Court Reporter, the officer
3 before whom the foregoing deposition was taken, do
4 hereby certify that the foregoing transcript is a true
5 and correct record of the testimony given; that said
6 testimony was taken by me stenographically and
7 thereafter reduced to typewriting under my direction
8 and that I am neither counsel for, related to, nor
9 employed by any of the parties to this case and have
10 no interest, financial or otherwise, in its outcome.

11 IN WITNESS WHEREOF, I have hereunto set my
12 hand and affixed my notarial seal this 29th day of
13 December 2011.

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15 My commission expires:
16 June 14, 2014

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18 NOTARY PUBLIC IN AND FOR THE
19 DISTRICT OF COLUMBIA

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