

EXHIBIT 37

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DISNEY ENTERPRISES, INC., : CIVIL ACTION
ET AL., Plaintiffs, :
vs. :
HOTFILE CORP., ANTON TITOV, :
ET AL., :
Defendants. : NO. 11-20427

- - -
Tuesday, November 29, 2011
- - -

Videotaped deposition of RICHARD WATERMAN,
Ph.D., taken at the Law Offices of STRADLEY, RONON,
STEVENS & YOUNG, LLP, 2005 Market Street, Suite
2600, Philadelphia, Pennsylvania, on the above date,
beginning at 9:33 a.m., before Theresa Kepler, CCR,
RPR-Notary Public, there being present.

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LOVE COURT REPORTING, INC.
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1 A P P E A R A N C E S:

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12 Also Present: Daniel Levy

13 Videographer: Scott Rowland

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1 seeing in this particular time or, you know, area
2 for which the population was drawn would have no
3 particular reason for believing that it was
4 different from some other one. And that, you know,
5 wouldn't be a statistical statement that was driving
6 that because you need data to make a statistical
7 statement but one I would say of general expertise.

8 Q. Did you do that here in the Hotfile
9 case?

10 MR. POZZA: Objection. The question
11 is vague.

12 THE WITNESS: My statements in the
13 Hotfile case refer to what was hap -- in
14 terms of the analysis that I did refer to
15 January 2011.

16 BY MR. LEIBNITZ:

17 Q. Do you purport to opine in this case,
18 Dr. Waterman, about any behavior outside
19 January 2011?

20 MR. POZZA: Object as to the meaning
21 of behavior.

22 THE WITNESS: My numbers that I
23 present in the report are definitely
24 statements specifically about January, and

1 then I would say to the extent that the world
2 was similar before January, for example,
3 December, that if in -- if I had no reason to
4 believe that the world had changed
5 dramatically, you know, that there was no
6 event of interest that would change behavior,
7 then that the results that I provided would
8 give one a sense of what was likely happening
9 prior to that point.

10 BY MR. LEIBNITZ:

11 Q. Let's be very clear, sir. Do you
12 purport in this case to opine about behavior outside
13 January 2011?

14 MR. POZZA: Object -- same objection,
15 and asked and answered.

16 THE WITNESS: I would just reiterate
17 that the statements that I make are
18 absolutely related to January 2011, I mean,
19 because that was the population from which
20 the log file -- you know, we drew samples
21 from the January log file, so this is a
22 statement about January 2011. And the extent
23 to which a month of December of 2010 or
24 November 2010 would be expected to be similar

1 or, as I would say, I have no reason to
2 believe that the world changed in some
3 dramatic fashion, there was no massive event
4 of interest, then my sense would be that this
5 would give me good understanding of what was
6 -- what was likely to have happened
7 beforehand. But I wouldn't say that that
8 statement -- I wouldn't put that statement in
9 the same category as I would the one about
10 the population for which I drew the sample.

11 BY MR. LEIBNITZ:

12 Q. Dr. Waterman, in your opinion how
13 much infringement has happened by virtue of the
14 Hotfile website in the last 24 hours?

15 A. The last 24 hours I would not want to
16 provide an opinion on that because what I learned
17 about was January 2011, prior to the case being
18 brought. I think that once the case is brought, you
19 know, then behavior can change. That would be
20 exactly one of those instances, a kind of waterfall
21 or watershed type of event where I would anticipate
22 behavior to change, potentially change quite
23 dramatically once the case is brought.

24 And so I -- and I have no strong

1 basis to say one way or another what the result of
2 that would be, but typically when someone is told,
3 you know, that they are doing something illegal
4 their behavior changes, fundamentally changes. And
5 so we don't have -- I do not have information prior
6 to the case, so I don't want to say anything about
7 what happened. I think it was sometime in February
8 after that point in time.

9 Q. So you can't opine as you sit here
10 today that there was a non-zero level of
11 infringement in the last 24 hours on Hotfile?

12 MR. POZZA: Objection. Vague.

13 THE WITNESS: I have collected no
14 data on the last 24 hours. I, to be honest,
15 don't even know if the site exists in the
16 last 24 hours.

17 BY MR. LEIBNITZ:

18 Q. Can you provide an opinion today
19 about the level of infringement over the last week?

20 A. I would repeat the same answer as I
21 provided before that any time after the case was
22 brought and when defendants understood that this
23 litigation was going to happen that the behavior of
24 the site would have -- could have changed radically

1 as compared to before it was brought and since my
2 data is from the pre time period that is the time
3 period for which I'm most comfortable in making
4 statements. So I don't know whether the site exists
5 in all honesty so I don't know whether there's been
6 a download.

7 Q. So there may be a zero percent level
8 of infringement using Hotfile's technology in the
9 last week?

10 A. Likewise there could be 100 percent,
11 I agree that both are possibilities.

12 Q. So you can't testify that it's not
13 zero percent in the last week, right?

14 MR. POZZA: Objection. Asked and
15 answered.

16 THE WITNESS: As I say, my -- my
17 study's absolutely clear as to the where the
18 log file was drawn from which was January of
19 2011 and my report pertains to that period in
20 terms of the conclusions that I draw.

21 BY MR. LEIBNITZ:

22 Q. Can you testify as you sit here today
23 that there was a non-zero level of infringement in
24 the last week on Hotfile?

1 MR. POZZA: Objection. Asked and
2 answered. You're just asking the same
3 question.

4 THE WITNESS: As I said, it may have
5 been a hundred percent, it may have been
6 99 percent, it may have been 0 percent.

7 BY MR. LEIBNITZ:

8 Q. You can't tell one way or the other?

9 MR. POZZA: Objection. Asked and
10 answered.

11 THE WITNESS: As I've said, my data
12 set, the one that I've analyzed is to do with
13 January and so in terms of the numerical
14 quantities that I present in my report they
15 will refer to January 2011.

16 BY MR. LEIBNITZ:

17 Q. You can't testify as you sit here
18 today that there was a non-zero level of copyright
19 infringement using Hotfile's technology in the last
20 six months, can you?

21 MR. POZZA: Objection. Misstates
22 testimony. Vague.

23 THE WITNESS: Six months takes us
24 back to May of 2011. May of 2011 is after

1 the time period for which I have the log file
2 which is January. So as I noted in my
3 statements, the numerical statements that I
4 provided relate to January of 2011. The
5 amount of infringement that happened
6 subsequent to that event we have -- I have no
7 information on to make a determination as to
8 whether it's a hundred percent, 90 percent,
9 50 percent or your hypothetical of
10 zero percent.

11 I have not drawn a conclusion
12 about -- in my report didn't draw a
13 conclusion about what happened yesterday on
14 Hotfile.

15 BY MR. LEIBNITZ:

16 Q. Or in the last week, or in the last
17 month, or in the last six months, or indeed since
18 the Complaint was filed in this case.

19 MR. POZZA: Objection.

20 Argumentative.

21 THE WITNESS: That it correct, I --
22 I -- as I keep stating the data, the log file
23 that was used in this analysis was the log
24 file for January 2011. The sample was drawn

1 from file downloads in January of 2011 and
2 therefore the quantitative inferences pertain
3 to January 2011.

4 BY MR. LEIBNITZ:

5 Q. To be clear, you state no opinion as
6 to the level of infringement using Hotfile's
7 technology since the filing of the Complaint in this
8 case in February 2011, right?

9 A. By virtue of the data that I have
10 collected or the log file that I have had access to,
11 the January log file, the statements that I made
12 pertain up to the end of January. And as I said, in
13 general if there is a watershed type event, and the
14 bringing of the case would be such a type of
15 watershed type event, then I would acknowledge that
16 human behavior can change. Exactly in which way it
17 would change, I mean I wouldn't speculate, but I'm
18 confident that people do change their behavior.

19 And if I felt that behavior, that I
20 had no reason to believe that fa -- the ultimate
21 behavior had not changed, then I feel that my study
22 did give some sense of what was likely to be
23 happening. And so I would be more comfortable going
24 retrospectively behind January 2010 in just, you

CERTIFICATE OF DEPONENT

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I do hereby certify that I have read the foregoing pages, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

RICHARD WATERMAN, Ph.D.

DATE

Subscribed and sworn to before me this _____ day of _____, 2011.

My commission expires: _____

Notary Public

Waterman deposition errata

Page 30. Line 23. "point of" → "pointer to".

Page 103. Line 23. "not of" → "not".

Page 121. Line 24. "Not aware" → "I am not aware".

Page 142. Line 13. "refers to" → "refers".

Page 146. Line 8. "that the" → "the".

Page 158. Line 13. "only" → "own".

Page 205. Line 24. "cold" → "coal".

Page 206. Line 5. "knowledge" → "acknowledge".

Page 209. Line 6. "or" → "as".

Page 248. Line 21. "state" → "stated".

Page 254. Line 16. "down" → "does".

CERTIFICATE OF DEPONENT

I do hereby certify that I have read the foregoing pages, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

Richard Waterman

RICHARD WATERMAN, Ph.D.

1/17/2012.

DATE

Subscribed and sworn to before me this 17th day of January, 2011.2012

Gwen E. Lentine
My commission expires: 08/11/2012

Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
GWEN E. LENTINE, Notary Public
Rockledge Boro., Montgomery County
My Commission Expires August 11, 2012

