

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MIKE HARRIS and JEFF DUNSTAN,)
individually and on behalf of a)
class of similarly situated)
individuals,)
)
Plaintiffs,)
)
-vs-) No. 1:11-cv-5807
)
COMSCORE, INC., a Delaware) Judge Holderman
corporation,)
) Magistrate Judge
) Kim
Defendant.)
)
_____)

The deposition of COLIN O'MALLEY, called by the Plaintiffs for examination, pursuant to notice and pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Liza M. Perez, Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, at 350 North LaSalle Street, 13th Floor, Chicago, Illinois, commencing at the hour of 9:44 a.m. on the 13th day of December, A.D., 2012.

1 Q. Apart from being directed to specific
2 documents to inform your opinion, did you have any
3 other -- and understanding the nature of this lawsuit,
4 did you have any other consultations that formed your
5 opinion from people at comScore?

6 A. No, not that I can recall.

7 Q. Okay. How did you decide to -- do you guys
8 need to --

9 MR. SWEDLOW: Well, for purposes of full
10 disclosure, I know that he consulted with
11 Randy McCaskill and John O'Toole. But those might
12 have been -- he might be considering those through
13 Tom Cushing. I just don't want to keep that from you
14 in the context of this discovery.

15 MR. THOMASSEN: I assumed that when you
16 consulted with Randy and John, as Stephen just
17 mentioned, they were just directing you to other
18 documents like you explained to me a second ago.

19 THE WITNESS: Yes, and the materials that you
20 see here including the installation chart.

21 BY MR. THOMASSEN:

22 Q. Exhibit 4?

23 A. Correct.

24 Q. Okay. How did you decide to use

1 RelevantKnowledge as the subject of your case study?

2 A. Of the case study, do you mean --

3 Q. Your expert report.

4 A. -- expert report?

5 Q. Yes.

6 A. It was my understanding that

7 RelevantKnowledge and the behavior of

8 RelevantKnowledge and disclosures around

9 RelevantKnowledge were the subject of the complaint.

10 Q. Where did you get that understanding from,
11 from Tom?

12 A. Correct.

13 Q. How about the decision to use MP3 Cutter as
14 the focus of your expert report or at least part of
15 your expert report?

16 A. It was one of many examples. I asked for a
17 list of more than five, and it may have been
18 substantially larger than that of examples that I
19 could see in a diverse range of contexts, so I was not
20 limited to MP3 Cutter. And I ended up selecting
21 MP3 Cutter frankly at random. My review was initially
22 intended to uncover whether or not there were
23 substantive differences in how RelevantKnowledge is
24 disclosed to the consumer based on the distribution

1 have any knowledge of this, but since you seem to have
2 some familiarity with O'Malley Exhibit 4, I'm
3 curious -- so if we turn to O'Malley Exhibit 4 and we
4 look at the notes column, it says data is from August
5 to October 2012.

6 Did I read that right?

7 A. Yes.

8 Q. So the 1,023,093 number at the bottom of the
9 CS Installs column represents the number of successful
10 installs of RelevantKnowledge between August and
11 October 2012.

12 Am I right so far?

13 A. Yes. Well, sorry. It describes the number
14 of successful installations from a particular list of
15 distribution partners, and I would not expect that to
16 be complete.

17 Q. Right. So the number is in all likelihood
18 greater?

19 A. Correct.

20 Q. Okay. Now, that's over just a three-month
21 period, over one million -- is that right, August,
22 September, October?

23 A. Correct.

24 Q. Right. I don't know if you have any way of

1 partners.

2 Q. Is MP3-cutter-splitter.com a distribution
3 partner as well?

4 A. Yes.

5 Q. All right. Let's turn back to page six, if
6 you will.

7 Under the title comScore Disclosures, there's
8 a sentence after you describe that and you're going to
9 be assessing this against the MP3 Cutter application,
10 you say, "It is my understanding and, accordingly I
11 have assumed that, the process and disclosures are
12 materially identical across all partner bundles."

13 Can you tell me your basis for that
14 assumption?

15 A. Sure. As I mentioned earlier, I asked for a
16 list of additional partners that I can review to
17 substantiate statements that were given to me from
18 comScore team. So comScore team told me so and I
19 further validated this by looking at a larger list and
20 verifying that, in fact, there was consistency across
21 that list.

22 Q. So just so I'm clear, you were told that the
23 process and disclosures are materially identical by
24 comScore, probably by Tom?

1 A. Correct.

2 Q. And then you confirm that by looking at the
3 list that you were given?

4 A. Correct.

5 Q. Okay. Thanks.

6 Now, I'm looking at the image on page six
7 here. Can you tell me what this image is of on page
8 six?

9 A. So this is the web page on which MP3 Cutter
10 offers its application for downloading.

11 Q. Can you tell me whether there's any
12 placements paged that it's disclosed to -- I'll call
13 it the enduser, the person who's eventually going to
14 be downloading the software, that RelevantKnowledge is
15 included in the download?

16 A. Well, first, I don't know that that is
17 directly relevant as it isn't included in the
18 download, but there's an opportunity that you will be
19 offered to download RelevantKnowledge as you proceed
20 with your installation of MP3 Cutter -- or should you
21 proceed with your installation of MP3 Cutter. But
22 downloading MP3 Cutter does not mean that you're
23 downloading RelevantKnowledge.

24 Q. So when you go through the -- this might just

1 be my misunderstanding of how this works. When you go
2 through the installation process as we'll go through
3 here, when you get to the point of being offered
4 RelevantKnowledge, you haven't downloaded it at that
5 point?

6 A. Correct.

7 Q. So is it incorrect to say that MP3 Cutter
8 download includes RelevantKnowledge?

9 A. Yes.

10 Q. Okay. Do you know whether it says anywhere
11 on the MP3 Cutter website that as a part of the
12 download of MP3 Cutter, you'll be provided with an
13 opportunity to either install or download
14 RelevantKnowledge?

15 A. I haven't comprehensively reviewed the
16 website for that disclosure, so I really can't tell
17 you one way or the other. I would suggest -- well, I
18 will just tell you that I'd be surprised to see it
19 there, but that's not surprising to me as it's not
20 customary in many online business models to, for
21 example, register for a website and then be offered an
22 offer from a partner. But to have prior disclosure
23 before your registration begins that you're going to
24 see an offer that you optionally can participate in

1 NORTHERN DISTRICT OF ILLINOIS)
EASTERN DIVISION)
2 STATE OF ILLINOIS)
) SS:
3 COUNTY OF COOK)

4 I, Liza M. Perez, Certified Shorthand
5 Reporter and Notary Public in and for the County of
6 Cook, State of Illinois, do hereby certify that on the
7 13th of December, A.D., 2012, the deposition of the
8 witness, COLIN O'MALLEY, called by the Plaintiffs, was
9 taken before me, reported stenographically and was
10 thereafter reduced to typewriting through
11 computer-aided transcription.

12 The said witness, COLIN O'MALLEY, was first
13 duly sworn to tell the truth, the whole truth, and
14 nothing but the truth, and was then examined upon oral
15 interrogatories.

16 I further certify that the foregoing is a
17 true, accurate and complete record of the questions
18 asked of and answers made by the said witness, at the
19 time and place hereinabove referred to.

20 The signature of the witness was not waived
21 by agreement.

22 Pursuant to Rule 30(e) of the Federal Rules
23 of Civil Procedure for the United States District
24 Courts, if deponent fails to read and sign this

1 deposition transcript within 30 days or make other
2 arrangements for reading and signing thereof, this
3 deposition transcript may be used as fully as though
4 signed, and the instant certificate will then evidence
5 such failure to read and sign this deposition
6 transcript as the reason for signature being waived.

7 The undersigned is not interested in the
8 within case, nor of kin or counsel to any of the
9 parties.

10 Witness my official signature and seal as
11 Notary Public, in and for Cook County, Illinois, on
12 this 19th day of December, A.D., 2012.

13
14
15
16 *Liza M. Perez*



17 Liza M. Perez, CSR
18 Notary Public
19 19 South LaSalle Street, Suite 1402
Chicago, Illinois 60603

20 License No. 084-004686

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