

EXHIBIT 2

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

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5
6 FACEBOOK, INC., and MARK
7 ZUCKERBERG,

8 Plaintiffs

9 vs. Docket No. 5:07-CV-01389

10 CONNECTU, INC. (formerly known as
11 CONNECTU, LLC), et al.,

12 Defendants

13 -----

14 VIDEOTAPED 30(b)(6) DEPOSITION OF DAVID TUFTS

15 In Re: IMARC LLC

16 Friday, October 5, 2007, 9:20 a.m.

17 Proskauer Rose LLP

18 One International Place

19 Boston, Massachusetts 02110

20

21 -----Reporter: ALAN H. BROCK, RDR, CRR-----

22 FARMER ARSENAULT BROCK LLC, for:

23 LiveNote World Service, 221 Main Street, Suite 1250

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25 ALSO: Rosa Fox-Ogg, Jared Drewniak, Videographers

1 October 5, 2007 9:20 a.m.

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

3 THE VIDEOGRAPHER: Here begins the
4 30(b)(6) deposition of David Tufts, Tape 1, Volume
5 1, in the matter of Facebook, Inc., et al. versus
6 ConnectU, et al. in the United States District
7 Court, Northern District of California, San Jose
8 Division, Case No. 5:07-CV-01389-RS. Today's date
9 is October 5th, and the time on the video monitor is
10 9:21. The video operator today is Rosa Fox-Ogg,
11 representing LiveNote World Service, located at 221
12 Main Street, San Francisco, California 94105, phone
13 number 415-321-2300. The court reporter is Alan H.
14 Brock, of the firm Farmer Arsenault Brock, on behalf
15 of LiveNote World Service. Today's deposition is
16 being taken on behalf of the plaintiffs and is
17 taking place at One International Place, Boston,
18 Massachusetts.

19 Counsel, please introduce yourselves and
20 state whom you represent.

21 MR. CHATTERJEE: This is Neel Chatterjee
22 and Theresa Sutton, representing Facebook, Inc., and
23 Mark Zuckerberg.

24 MR. HAMPTON: My name is Dan Hampton. I
25 don't represent a party in the California case, but

1 addresses were at iMarc. Mr. Bushee, do you know
2 what his email address was?

3 A. B-i-l-l@imarc.net.

4 Q. And Nick Grant?

5 A. Nick@imarc.net.

6 Q. Fred LeBlanc?

7 A. Fred@imarc.net.

8 Q. And Marc Pierrat?

9 A. Marc, M-a-r-c, @imarc.net.

10 Q. So emails with those email headers would be
11 emails that originated from the people that you
12 identified?

13 A. If the header was the "from" address.

14 MR. SCHULTZ: Sorry. Objection, calls
15 for speculation.

16 Q. So if it said bill@imarc.net, it would be
17 an email that came -- if it said from Bill at
18 imarc.net, it would be an email from Bill Bushee.

19 MR. SCHULTZ: Same objection.

20 A. This is what I don't understand: Should I
21 still answer the question?

22 Q. Yes.

23 A. Yes.

24 Q. As I said, when he lodges an objection or
25 anybody lodges an objection, as long as the question

1 is clear to you, you can go ahead and answer it.

2 A. All right.

3 Q. Is there a general practice at iMarc for
4 people to use each others' email addresses?

5 A. I don't understand that question.

6 Q. So, for example, would Mr. LeBlanc
7 generally be allowed to use Mr. Bushee's email
8 address?

9 MR. SCHULTZ: Objection, vague.

10 A. I don't know of any case where that's
11 happened.

12 Q. Now I'm going to turn to a different topic.
13 I want to talk to you about ConnectU, Cameron and
14 Tyler Winklevoss, and Divya Narendra. Do you
15 recall --

16 Well, let me start with this: Have you
17 ever met, either electronically, through an email or
18 the like, or live, Divya, Cameron Winklevoss, or
19 Tyler Winklevoss?

20 MR. SCHULTZ: Object to the form.

21 A. Yes.

22 Q. When was the first time that you met any
23 one of those people?

24 MR. SCHULTZ: Object to the form.

25 A. This is including electronically, you said?

1 Q. Yes.

2 A. Whenever the first email is.

3 Q. Can you give me an estimate as to time?

4 A. 2003.

5 Q. Do you recall the first time you met them
6 via a telephone call or in person?

7 MR. SCHULTZ: Object to the form.

8 A. I don't recall the first time. I'm
9 guessing it was probably after that.

10 Q. And do you recall who it was that contacted
11 iMarc?

12 MR. SCHULTZ: Objection, foundation.

13 A. I believe one of the Winklevosses.

14 Q. One of the Winklevoss brothers?

15 A. Yes.

16 Q. Do you recall why they said they were
17 contacting iMarc?

18 MR. SCHULTZ: Objection, foundation.
19 Assumes facts not in evidence.

20 A. I was not part of the original. That would
21 be typical of a client. Specifically, in this case,
22 the client contacts our sales department. That
23 would have been Marc -- to talk about a probable
24 job. And then after it was ironed out, it would go
25 to me or the production team. So I don't recall who

1 contacted us first and why, but I'm guessing it's
2 all in those emails.

3 Q. And when you said you were contacted --
4 iMarc was contacted about a possible job, what did
5 you understand the job ultimately to be?

6 A. By the time Marc presented it to me, I
7 believed it to be a social networking site.

8 Q. What do you mean by "social networking
9 site"?

10 A. A website where people can create profiles
11 about themselves to interact with or network with
12 other people on the website, either for personal
13 dating reasons or professional reasons.

14 Q. Please explain a little bit more what you
15 mean by that.

16 MR. SCHULTZ: Objection, vague.

17 A. I'm not sure. Can you ask me a specific
18 question?

19 Q. Sure. You described the scope of the
20 project being a social networking website. Did I
21 get that right?

22 A. Yes.

23 Q. And you said that it was a website where
24 people can create profiles to interact with others
25 for dating or professional reasons.

1 A. Correct.

2 Q. Maybe I can probe a little bit more into
3 what you mean by "dating and professional reasons."

4 Let me ask the question, first: What
5 did you mean when you said "for dating reasons"?

6 A. I believe that they wanted to allow their
7 users to create profiles so they could meet, connect
8 with other people for personal reasons --
9 friendship, dating. The website was really just
10 about bringing people together, and from then on,
11 it's not going to impose any rules about dating or
12 something like that. It's mostly about just
13 meeting.

14 Q. That was the scope of the project they
15 presented.

16 A. Yes.

17 Q. And what about professional reasons? What
18 do you mean when you said that?

19 A. Perhaps someone would create a profile much
20 like a resume. Other people in a company could
21 search through or look for specific people to hire,
22 to work with, things like that -- professional
23 business.

24 Q. And were you given any guidance when you
25 were given the scope of this project about what to

1 look at to develop this website?

2 A. Yes.

3 Q. And what guidance were you given?

4 A. By the time it came to me with a proposal,
5 there was a number of benchmarking sites --
6 match.com, I believe, rise.com, thefacebook.com,
7 friendster.com -- and then also some -- so those
8 were all, especially friendster.com -- those were
9 all social networking sites that were already out on
10 the Internet that did something similar. And they
11 also gave us a number of benchmarking sites for the
12 visual look and feel. Most of those sites were
13 really stripped down and technical. And they sent
14 us, I believe, YSL, which might be a fashion
15 company, a couple of sites that we had actually
16 developed they liked the look at -- look of. So
17 they gave us a couple other, maybe four sites --
18 again, it's in those emails -- of benchmarking sites
19 which they liked the look of. So we had a couple of
20 sites that they liked features from, a couple of
21 sites that they liked the look of.

22 Q. You mentioned these benchmarking sites.
23 Were you told to do anything specifically with
24 respect to your review of the match.com website?

25 A. No. I think that they pointed out features

1 that they liked. Again, this is just from me
2 recently looking through these emails. I noticed
3 that on match.com there was a feature where, I think
4 you could wink at someone. If you had a profile and
5 -- if I had a profile and you had a profile and I
6 found you attractive, I could wink at you and send
7 you a little email. They liked something like that,
8 and I think we ended up implementing something
9 similar to that. That was something from match.com
10 that they found appealing.

11 Q. And what about rise.com? Do you remember
12 anything specific that they identified that they
13 wanted?

14 MS. SCHOENFELD: Objection, relevance.

15 A. I believe rise.com did a good job of
16 presenting professional profiles, much like, you
17 know, a resume, but online.

18 Q. Anything else?

19 MS. SCHOENFELD: Same objection.

20 A. No.

21 Q. What about thefacebook.com? What did they
22 identify from that?

23 MS. SCHOENFELD: Same objection.

24 A. Some of the features that -- I think the
25 Facebook had more of a mix of the professional and

1 Q. Was this the mockup that you were talking
2 about?

3 A. I think this was more of the concept.
4 There actually was -- yeah, this is not HTML, I
5 don't think. This looks like it might have been,
6 you know, a text document or a Word document.

7 Q. And if you look at the top part of this
8 document, it says "My date profile" and "My connect
9 profile." Do you see that?

10 A. Yes.

11 Q. When you originally learned of the project
12 that iMarc was being hired for, were those the terms
13 that you recall being used?

14 A. No. If you had mentioned "My connect
15 profile," that would not ring a bell with me.

16 Q. Do you ever remember discussing this
17 document with anybody?

18 A. No. I remember looking at it and seeing
19 it. Typically, a client comes to iMarc, works with
20 the sales team -- in this case Marc Pierrat. They
21 go through a couple of revisions of site maps --
22 basically, the organization of all the pages; maybe
23 some wire frames, sometimes is what we call this,
24 which looks like what the Web page would look like,
25 just represented in text.

1 Usually it goes through a couple of
2 revisions, and then when it's finalized, we started
3 building it.

4 We never actually built -- I don't think
5 we ever built anything with "My connect profile,"
6 terms like that. There's like 15 pages of forms to
7 fill out for your profile, and we never actually
8 built a form this complex.

9 Q. Did you ever receive code that had already
10 been written before you started work, from the
11 Winklevoss brothers or Divya Narendra?

12 A. Yes. Well, there was HTML, which I'm not
13 sure if you call that code. I wouldn't. There's no
14 back-end code. There's no database, no scripting
15 code. There was HTML and graphics.

16 Q. Describe what you were given from the
17 Winklevoss brothers or Divya Narendra before you
18 started work.

19 MS. SCHOENFELD: Objection, vague.

20 A. They gave us a CD with some -- again, I'm
21 calling them HTML mockups, nonworking -- HTML
22 versions of what they thought the Web page would
23 look like. I'm not sure if they actually came with
24 like a request -- you know, an RFP or anything like
25 that -- or if they just talked about it with Marc

1 and they collaboratively developed this document.
2 But typically, I think by the time it came to us,
3 there was like a plan that was like, "Here's what
4 we're going to build."

5 Q. And do you know if the plan that was
6 created by Marc Pierrat -- and I'm going to use the
7 name Marc Pierrat because there are two Marks in
8 this case. There's Mark Zuckerberg and Marc
9 Pierrat.

10 A. Uh-huh.

11 Q. Do you know if the plan that was developed
12 by Marc Pierrat with the Winklevoss brothers and
13 Divya Narendra was based upon anything that had been
14 previously done?

15 MR. SCHULTZ: Objection, vague and
16 overbroad.

17 A. I wouldn't say that Marc Pierrat developed
18 the plan. I would say that Marc Pierrat worked with
19 HarvardConnection, helping them develop a plan and
20 coaching them on what might work. But regardless,
21 there was a plan developed. I'm not sure who
22 developed it. But typically, it's not us who
23 invents the website for the client. We coach them
24 and help them and tell them what we think will work.

25 So I think when -- again, the HTML

1 mockup that they showed us on a CD had, maybe it was
2 called connect profile and date profile; but by the
3 time we actually started creating a website, I
4 believe that there was a single profile at that
5 point. So, again, I'm not sure.

6 Q. A single profile for both?

7 A. Yes. We didn't build a website that had my
8 date profile and my connect profile.

9 Q. Now, the CD that you talked about that you
10 received, was it ever represented to you that it
11 included the HarvardConnection code?

12 A. What do you mean by "code"?

13 Q. Were you ever told that "This is the code
14 that we've developed so far for HarvardConnection"?

15 MR. SCHULTZ: Objection, vague.

16 A. I'm not sure if they -- I'm not sure if
17 anyone told us that.

18 Q. Do you know if these HTML mockups that you
19 received had any database structures associated with
20 the website?

21 A. I do not -- I mean, no, I don't think so.

22 MR. CHATTERJEE: Let's mark this as
23 Exhibit 65.

24 (Exhibit 65 marked for identification.)

25 Q. After you've reviewed it, let me know when

1 you're done.

2 A. I've reviewed it.

3 Q. Mr. Tufts, do you recognize what I've
4 handed to you as Exhibit No. 65?

5 A. Yes. It is "my personal rent."

6 Q. And when you say "my personal rent," that's
7 an email that you've written?

8 A. It was an email that I authored, sending it
9 to myself, Nick Grant, and Nils Menten, collectively
10 known as partners@imarc.net.

11 Q. And you authored this on about June 22nd,
12 2005?

13 A. I would say exactly on that date.

14 Q. If you look at the third paragraph of the
15 email, it starts with "ConnectU." Do you see that?

16 A. Yes.

17 Q. "ConnectU came to us with a specification
18 and design for harvardconnection.com which did not
19 look or act anything like Facebook." Do you see
20 that?

21 A. Yes.

22 Q. Could you describe what you meant when you
23 wrote that?

24 A. I meant that they came to us with something
25 really complicated, like this, and by the time we

1 It's more concepts. But friendster.com was doing
2 groups, and Friendster was a really similar layout
3 as well.

4 Q. Had a similar layout to whom?

5 A. Facebook and ConnectU.

6 Q. And any other websites that had some
7 similar features to Facebook and Friendster that
8 you're aware of?

9 A. I think I touched on match.com had a wink
10 feature, and they liked that. We implemented a
11 feature called like Wave, I think. Facebook had
12 something called Poke. I think that all the social
13 networking sites had similar features.

14 Q. This HTML code that you received from the
15 Winklevoss brothers or Divya Narendra, do you know
16 which of those three people it came from?

17 A. No.

18 Q. Do you remember anyone ever telling you
19 that someone named Vic was sending you a CD of code?

20 A. I don't remember that.

21 Q. Of the materials that were originally given
22 to you or given to iMarc by the ConnectU founders,
23 Divya Narendra, Winklevoss -- let me restate that.

24 Of the materials that were originally
25 given to you by the ConnectU founders -- Divya

1 Narendra, Tyler Winklevoss, and Cameron
2 Winklevoss -- were any of those materials ultimately
3 used to build the ConnectU website?

4 A. No.

5 Q. Do you know if they're in use today?

6 A. I don't know if they're in use today.

7 Q. As of -- well, let me step back. Was there
8 a time when the relationship between ConnectU and
9 iMarc ended?

10 A. Was there a time?

11 Q. Yes.

12 A. Yes.

13 Q. And approximately when was that time?

14 A. By the tone of voice of this personal rant
15 here, I would say it was before June 22nd, 2005. I
16 think sometime in 2004 we wanted -- we moved them
17 off our server, that we were having some issues with
18 them. So yeah, I mean, I'd say at least a year
19 before this.

20 Q. And as of a year before this email, June
21 2004, were any of the ideas that were originally
22 provided to you by the ConnectU founders -- Divya
23 Narendra, Cameron Winklevoss, and Tyler
24 Winklevoss -- being used on the ConnectU website?

25 MR. SCHULTZ: Objection, vague and

1 overbroad; also vague as to time.

2 A. I think the only thing -- the only
3 technical materials that they provided us was a CD
4 with some HTML on it and some graphics that looked
5 like a Web page. It was unusable, and we never used
6 it. I don't even -- we glanced at it and realized
7 that it was not -- you know, it's not functioning.
8 It's easier to start -- we're well ahead of that
9 using our own tools.

10 So no, we never -- iMarc never used any
11 technical materials that ConnectU provided us.

12 Q. And what about Exhibit 64? Was any of the
13 information in Exhibit 64 used in the ConnectU
14 website?

15 A. Yes. I mean, so, well, the concepts were.
16 So it looks like this first thing, Link 9, it says
17 "date recommendation." It shows me "I'm a man,
18 woman, looking for a man, woman." So this is
19 telling me I can search for the people based on
20 their gender and age. That was implemented.
21 "Connect to a student," the second one, it looks
22 like I can look for people based on their major in
23 school. So that concept was also implemented.

24 Down this left column, "friend request,"
25 that was implemented. "My pictures," that concept,

1 the ability to upload pictures, was implemented.
2 "Comments," that was also implemented. "Messages,"
3 emailing people back and forth through the website,
4 as opposed to traditional email clients, that also
5 was implemented.

6 "Shopping cart," I don't think it was.
7 "Matchmaker," I'm not sure what that is.

8 But yeah, a number of these concepts
9 were actually implemented in the final -- on the
10 first version of the website.

11 Q. And those concepts that you just walked
12 through, were they concepts that you had seen on
13 other publicly available websites?

14 A. Yes, and -- yeah, yes.

15 Q. Could you give some examples, please?

16 MS. SCHOENFELD: Objection, relevance.

17 A. Any of the benchmarking websites --
18 match.com, rise.com, friendster.com,
19 thefacebook.com.

20 Q. Did any of the ConnectU founders ever tell
21 you that Mark Zuckerberg had stolen their idea?

22 A. Yes.

23 Q. When was the first time they told you that?

24 A. The first time -- again, they may have
25 talked about this earlier with Marc Pierrat. The

1 they delete them all. IMarc does not -- it's a POP
2 mail server, so you download it and it's up the POP
3 mail server.

4 Q. Well, iMarc doesn't go and erase emails
5 that people have that they've kept.

6 A. No.

7 Q. So the emails --

8 A. IMarc does not do that.

9 Q. That would have to be an individual choice.

10 A. Correct.

11 Q. Are you aware that iMarc produced a source-
12 code compact disk in this case?

13 A. I think so, yes.

14 MR. CHATTERJEE: Let's mark this as
15 Exhibit 67.

16 (Exhibit 67 marked for identification.)

17 Q. Mr. Tufts, you don't have to study this CD
18 carefully. I'll represent to you that it is a copy
19 of the source code that was produced in this case.
20 I want to go back to something we talked about
21 earlier, where you mentioned that you'd received
22 some HTML code.

23 A. Uh-huh.

24 Q. Do you know if any PHP code was provided to
25 iMarc by any of the founders of ConnectU?

1 A. I don't think so. I remember looking at
2 two to three HTML pages.

3 Q. I'm going to give you some documents and
4 see if it refreshes your recollection; and if it
5 does, it does, and if it doesn't, it doesn't.

6 MR. CHATTERJEE: Let's mark this as
7 Exhibit 68.

8 (Exhibit 68 marked for identification.)

9 A. This does not -- this doesn't mean anything
10 to me.

11 Q. Do you know what TreeSize Professional is?

12 A. No.

13 Q. What I've handed you, Exhibit No. 68, are
14 the folder contents of a document that was produced
15 to us in this litigation. It's actually on that
16 source-code CD. Do you recognize any of the file
17 names that are listed?

18 A. No.

19 Q. And you don't recall receiving any
20 documentation with respect to these files from the
21 founders of ConnectU?

22 A. No. I can give you an educated guess,
23 based on the directory structure here.

24 Q. I don't want you to give an educated guess.
25 Are you talking about this last-change indicator?

1 A. No, the 2004 0101-client_supply_site. I am
2 guessing that ConnectU gave us the CD, we threw it
3 up on our Web server in that folder. I think this
4 is where we probably looked at some of these pages
5 and realized that this is just a complete mess and
6 not worth looking into.

7 Q. So you don't remember looking at this at
8 all.

9 A. Again, like I said before, we looked at a
10 couple of pages. By looking at this directory
11 structure, it would take longer to figure out what's
12 going on here than to just, you know, figure out
13 what the client wants and solve their problem. So
14 we probably got the CD from them, threw it in our
15 file server for archive purposes, and that's what
16 this is. But no, we didn't -- I certainly --
17 there's no code in here that we could have --
18 there's nothing in here that we used.

19 Q. It was all abandoned?

20 A. It wasn't even -- it wasn't even -- we
21 didn't even use it to abandon.

22 MR. SCHULTZ: Object to the term
23 "abandoned."

24 A. To abandon it, you have to start using it
25 and then abandon it.

1 Q. That's a fair point. That's a fair point.
2 You never made use of it in developing the
3 connectu.com website.

4 A. Correct.

5 Q. So if I were to show you excerpts of that
6 code, you don't think it would refresh your
7 recollection as to anything.

8 A. I think visually if you showed me the front
9 page, it said like "HarvardConnection" with some
10 sort of brown picture, visually -- that's what we
11 looked at, and we said this doesn't look good, the
12 code isn't good, we're not using any of this. "If
13 you want to make a website with us, we're going to
14 make a Website our way."

15 Q. And let me drill down a little bit on that.
16 For example, I have here some excerpts of PHP codes
17 and table structures that are based upon files in
18 those directories.

19 A. Uh-huh.

20 Q. And what you're telling me is you never
21 looked at any of that.

22 A. No.

23 Q. What was the financial arrangement between
24 iMarc and the ConnectU founders?

25 MS. SCHOENFELD: Objection, relevance;

1 objection, vague.

2 A. What was the financial obligation?

3 Q. Arrangement.

4 A. Arrangement?

5 Q. Let me state it a different way: Describe
6 to me what you understood the contractual
7 relationship between iMarc and the ConnectU founders
8 or anybody with respect to the ConnectU website.

9 MS. SCHOENFELD: Same objection.

10 MR. SCHULTZ: Objection, foundation.

11 A. We -- they came to us, described a website
12 that they wanted. Our sales, business-development
13 team worked with ConnectU to roughly define a scope.
14 They put a time line and a budget on that. We get
15 either 30 or 50 percent upfront. If it's 30
16 percent, we get another 30 percent in the middle,
17 and a final payment at the end. We build the
18 website. And there's no ongoing contract. If they
19 want to add updates after the fact, it's either
20 hourly, or if it's a really large update -- again,
21 we define what it's going to be, how long it's going
22 to take, and put a price to it.

23 Q. Who did iMarc sign a contract with?

24 A. I don't know if it was -- I don't know.

25 Q. Do you know if it was with ConnectU, LLC?

1 contract with Mark Zuckerberg?

2 MR. SCHULTZ: Objection, outside the
3 scope of the deposition.

4 A. Not that I remember.

5 Q. Did they ever tell you that Mark Zuckerberg
6 was a partner in their project?

7 MR. SCHULTZ: Same objection.

8 A. Not that I remember.

9 Q. Do you remember at any point in time any of
10 the ConnectU founders telling you to keep
11 information confidential that they were sharing?

12 MR. SCHULTZ: Objection, outside the
13 scope of the 30(b)(6) topics.

14 A. I don't remember that, no.

15 Q. We'll go through a few more names, not
16 iMarc names.

17 Are you familiar with someone by the
18 name of David Guca?

19 A. Again, I'll probably -- if I saw his name
20 printed -- the pronunciation doesn't sound familiar.
21 If I saw it printed -- a lot of these people are
22 just email addresses to me, so if you showed me his
23 name printed --

24 Q. He's not actually in any emails that I
25 recall. I just wondered if you'd heard the name.

1 A. No.

2 Q. It's G-u-c-w-a.

3 A. I don't know.

4 Q. What about John Taves, T-a-v-e-s?

5 A. Yes, I believe that he was sort of the new
6 webmaster, maybe. He was technically in charge of
7 the site after we -- he took over after we were
8 done.

9 Q. Have you ever had conversations with
10 Mr. Taves?

11 A. Yep.

12 Q. And when do you remember having your first
13 conversation with him?

14 A. I'm not sure of the exact -- maybe late
15 2004, or summer 2004. When we were -- we -- iMarc
16 moved ConnectU off of our servers, onto their own
17 server, he seemed to be the one who was going to
18 take over, technically take over. So there was a
19 couple of conference calls, talking about where
20 files were, where stuff was.

21 Q. Why was ConnectU being taken off of your
22 servers?

23 A. We just weren't happy with stuff they were
24 asking us to do, and we just weren't happy with our
25 relationship with them.

1 Q. Describe what you mean by that.

2 A. They asked us to do a couple of things that
3 we deemed unethical, and they actually seemed to do
4 something -- seemed to send out emails that we saw,
5 and we didn't want that happening on a server that
6 we managed.

7 Q. Anything else?

8 A. Just in general we just weren't happy
9 working with them any more.

10 Q. Other than the email issue, when you say
11 you generally weren't happy, what was prompting
12 those feelings?

13 A. I think I touched on in that personal rant,
14 where they were just telling us to "Do this, add
15 this, add this," and that's not really how we work
16 and like to work. We were growing and had enough
17 other clients that we just really didn't want to
18 work that way with them. Compound that with a
19 couple of unethical things that they seemed to be
20 doing, we just didn't want any part of managing
21 their server or working with them any more.

22 Q. Were you concerned at all for iMarc's
23 liability associated with some of those activities?

24 A. Oh, yeah, sure, yep.

25 Q. Describe what you mean by that.

1 A. If it's a server that we manage that might
2 have other clients on it and someone sends out mass
3 emails from it and the server gets blacklisted --
4 which would mean that it's known to send spam, so
5 email clients won't accept mail from that -- if
6 they're sending spam, it gets the whole server
7 blacklisted, and we have other clients that suddenly
8 their email stops working. So we didn't want to
9 deal with that. That's not what we do.

10 Q. You used the term "spam." What do you mean
11 by that?

12 A. Sending out email without someone signing
13 up for it or requesting it.

14 Q. Did you ever tell the Winklevoss brothers
15 or Divya Narendra that you didn't -- that you found
16 these emails unethical?

17 A. Yes.

18 Q. Tell me when you first discussed that issue
19 with any of them.

20 A. It's in one of the emails. It's referenced
21 in the bullet list in the back of the thing, where
22 they sent out a number of emails, 6:00 a.m. by
23 a.m. we saw, what are they doing, and we disabled
24 the ability to do that and talked with them about
25 it.

1 Q. I'll ask a little bit more about that a
2 little bit later today.

3 I want to go back to John Taves. So
4 after migrating the ConnectU website from the iMarc
5 servers to John Taves --

6 Does he have a business?

7 A. I think originally -- so iMarc hosted a
8 number of websites on shared servers. So we buy one
9 single piece of hardware and can fit, you know, 40
10 to 50 websites on it. Step No. 1, when we saw that,
11 you know -- when we started to question their
12 ethics, we told them, "You guys get your own server.
13 You sign up for it, and we'll help you move stuff
14 there." I don't know if John Taves had anything to
15 do with that, if he actually owned the server or
16 whatnot. So it's not saying it's John Taves'
17 server. It's a server that ConnectU set up. They
18 gave us the log-in information to move everything
19 to. So I think that was before there was any talk
20 of John Taves.

21 Q. And so what was the first circumstance you
22 remember having an interaction with John Taves?

23 A. I think he wanted to add a feature to the
24 website, and he was obviously taking over the
25 webmastering stuff. We were not as responsive with

1 CERTIFICATE OF COURT REPORTER

2 I, Alan H. Brock, Registered

3 Professional Reporter and Certified Realtime

4 Reporter, do certify that the deposition of David

5 Tufts, in the matter of Face Book, Inc., and Mark

6 Zuckerberg v. ConnectU, Inc., et al., on October 5,

7 2007, was stenographically recorded by me; that the

8 witness provided satisfactory evidence of

9 identification, as prescribed by Executive Order 455

10 (03-13) issued by the Governor of the Commonwealth

11 of Massachusetts, before being sworn by me, a Notary

12 Public in and for the Commonwealth of Massachusetts;

13 that the transcript produced by me is a true and

14 accurate record of the proceedings to the best of my

15 ability; that I am neither counsel for, related to,

16 nor employed by any of the parties to the above

17 action; and further that I am not a relative or

18 employee of any attorney or counsel employed by the

19 parties thereto, nor financially or otherwise

20 interested in the outcome of the action.

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23 _____ October 9, 2007

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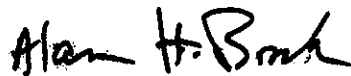
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