

EXHIBIT 36

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 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 ConnectU. We were pushing them to schedule work.
2 And I think that they contacted John to actually
3 implement stuff, maybe. We ended up talking with
4 John about, "Here's where the server is. Here's the
5 log-in. Here's what's going on" -- just an overview
6 of what's happening. I'm not sure what date it was.
7 I'm guessing 2004, summer to winter of 2004.

8 Q. Other than those discussions, did you have
9 any further discussions with John Taves?

10 A. Off the top of my head, no.

11 Q. Are you familiar with the company Pacific
12 Northwest Software?

13 A. I think that that is his company, or a
14 company he works for.

15 Q. Other than the discussions you've described
16 with John Taves, do you recall any other discussions
17 with anyone from Pacific Northwest Software?

18 A. Well, yeah, I don't -- there was -- he
19 seemed to have this team of people that he was
20 working with, and I'm not sure if they worked at
21 Pacific Northwest Software. We had no official
22 dealings with a company called Pacific Northwest
23 Software, but we had dealings -- John Taves and
24 other people seemed to be starting to take over work
25 on the site. So I'm not sure if they worked for

1 (Exhibit 75 marked for identification.)

2 Q. After you're done looking at it, let me
3 know.

4 A. I'm done.

5 Q. Do you recognize what's been marked as
6 Exhibit 75?

7 A. Yes.

8 Q. And what is that?

9 A. This is an email from myself with a
10 previous thread between me, Nils Menten, Cameron
11 Winklevoss, and Nick Grant.

12 Q. And in the middle of this email is the
13 remark, "I deleted all ConnectU email accounts from
14 our servers." Was that from a statement you made or
15 someone made to you?

16 A. I believe that was something I made.

17 Q. And what did you mean when you wrote that?

18 A. Well, so, Cameron had sent me an email
19 saying -- so this is a week after this other one.
20 Basically the other one says, "We're turning off the
21 Web server. Do you want to leave email and DNS on?"
22 And Cameron says, "I'll let you know when we decide
23 to change email or DNS." So I'm guessing a week,
24 week and a half later he decided to turn those off.

25 So if I don't actually remove the DNS

1 and email accounts from my own server, when I send
2 email to anything at ConnectU, it will go to my
3 server, it will bypass the real route to the new
4 one. So the only way to avoid having a lame DNS or
5 lame email record, you need to completely remove
6 those. So now when I type in "ConnectU," it goes to
7 the real DNS and finds its way to the real address,
8 instead of stopping at my own server.

9 Q. So what exactly did you delete when you
10 said you deleted all ConnectU email accounts?

11 A. Just the pointer to the account. Like you
12 said, it's a delivery system. So it was -- at this
13 point it was not doing anything. It would only be
14 basically messing up or intercepting my iMarc email
15 to ConnectU. So removing that sort of like pointer,
16 as you called it, a delivery method, it finds its
17 way to the real one. And the same thing with DNS.

18 Q. Earlier today -- I'm going to move now to
19 the topics of data that may have been obtained from
20 the Facebook website and the sending of email
21 messages to people based upon information obtained
22 from Facebook.

23 You mentioned earlier today that there
24 were several or a number -- I don't remember the
25 exact word that you used -- of unethical actions

1 that you felt were taken by ConnectU. Could you
2 please list what those actions were.

3 A. The two primary ones are what's listed in
4 this document. Those are something about like
5 screen-scraping Facebook, asking us if we would do
6 that, and something about sending out a whole bunch
7 of unsolicited emails.

8 Q. Anything else? Okay, sorry.

9 A. So June and July of 2004. And right after
10 that is when we took their Web hosting off of our
11 Web server. They set it up on their own server.
12 And then in that other email we were suggesting,
13 "Instead of you managing on your own server, move to
14 Wayne" whatever.

15 But yeah, that is what, June 11 and July
16 6, those two instances are what promoted us not
17 wanting to host their website or really do anything.

18 Q. Is there anything else that you recall,
19 other than those two instances?

20 A. No.

21 Q. Are you aware of whether any additional --
22 after the website was moved to another hosting
23 provider, are you aware of whether there was any
24 further efforts to obtain email addresses from
25 Facebook?

1 A. I don't know. At that point we kind of
2 washed our hands of it. I didn't know, nor did I
3 care.

4 Q. And are you aware of whether after the
5 hosting ended whether any further sending of
6 unsolicited emails occurred?

7 A. I don't know.

8 MR. CHATTERJEE: Let's mark this as
9 Exhibit 76.

10 (Exhibit 76 marked for identification.)

11 Q. After you're done looking at this, let me
12 know.

13 A. Uh-huh. Yep.

14 Q. Do you know someone named Marc M. Pierrat,
15 P-i-e-r-r-a-t?

16 A. Yes.

17 Q. Who is that?

18 A. He's the person we discussed at the
19 beginning of this meeting. He was the salesperson
20 for iMarc at the time.

21 Q. Are you familiar with any discussions
22 between anyone at iMarc and any of the ConnectU
23 founders about creating something called a parser?

24 A. No.

25 Q. And do you have any reason to believe that

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,

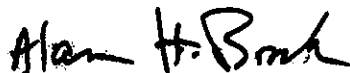
16 nor employed by any of the parties to the above

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.

21
22
23 

October 9, 2007

24 Alan H. Brock, RDR, CRR

25