

30(b)(6) Deposition of Tufts, David

10/5/2007

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Certified Copy

FACEBOOK, INC., and MARK
ZUCKERBERG,

Plaintiffs

vs.

Docket No. 5:07-CV-01389

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

Defendants

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

In Re: IMARC LLC

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

Proskauer Rose LLP

One International Place

Boston, Massachusetts 02110

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

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

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

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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

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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 should add that."

2 Q. And those weren't features that were in the
3 original documents that they gave you?

4 MS. SCHOENFELD: Objection, misstates
5 testimony.

6 A. I think we added a number of features that
7 are not in this document or in whatever our original
8 plan was.

9 Q. Do you remember any specific features that
10 came from Facebook that the Winklevoss brothers or
11 Divya Narendra asked you to add to the ConnectU
12 website design?

13 A. I think the ones I can -- or the layout of
14 the search results they especially liked on
15 Facebook; the ability to create groups of people
16 with similar interests as you. If you're a Boston
17 Red Sox fan, you could create a group called Boston
18 Red Sox fans, and if there are other people on the
19 website who are also Boston Red Sox fans, they could
20 join that group and you could collectively email. I
21 think that's something that Facebook was doing that
22 they thought was a worthy feature to add to their
23 site.

24 Those are the two specific things. But
25 obviously, by "copy," there's no way to copy code.

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,

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1 people of like interests and to facilitate
2 communications and activities between connected
3 people" -- I don't understand that.

4 Q. So you can't answer yes or no whether
5 ConnectU does it.

6 A. Yes, correct.

7 So for O, on your profile you could post
8 information about your personal information,
9 interests, opinions, photos. You could not post
10 videos -- and things. For example, books, you could
11 do. Other personal items available for sale or
12 exchange. I think there was a form that had some
13 sort of -- you could sell stuff. And to change or
14 delete such information.

15 So that all seems true except for the
16 videos.

17 "Enable users to upload user's thesis,
18 resume, and photos": I believe the only part of
19 that that is true is photos, for ConnectU.

20 Q. When you say the only part of that that's
21 true, that was the only thing that the ConnectU
22 website could do?

23 A. Correct. I don't think that users on
24 connectu.com could upload a thesis or resume.

25 You could -- you are a registered user

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1 of ConnectU, you could invite others to register to
2 use the website. And you could send messages to
3 other people on connectu.com, the way I described
4 it: on the website, sending an alert to your
5 personal email.

6 So for 7, again, I'm not sure what "your
7 own network versus other networks" are. With
8 ConnectU it was really just -- I think of the whole
9 site as a network. I'm not sure what 8 even is. Is
10 that a -- we did a layout, design --

11 Q. The question is -- let me ask the question
12 with respect to this one. Did the ConnectU website
13 use the layout, design, and user interface of the
14 HarvardConnection code that you were provided?

15 A. No, it did not.

16 Q. It was changed.

17 A. It was completely changed. We went
18 through -- it wasn't even called HarvardConnection.
19 It was called ConnectU. So we went through rounds
20 of design for coming up with a logo and for design.
21 And yes, it had nothing to do with
22 HarvardConnection, in name or in look.

23 Q. Thank you.

24 A. For 9, I mean, I guess if you're thinking
25 of a social network as the website, we -- there was

1 an idea of creating a website and then expanding the
2 functionality of that website. But the way 9 is
3 worded, I don't understand what --

4 Q. When you say a social network -- you said
5 something like to the extent a social network is a
6 website. What do you mean by that?

7 A. I mean, I think it's -- to me, a social
8 networking website is a website that allows you to
9 post information about yourself, search for other
10 people, view other people, a dating website, a
11 match.com, MySpace.

12 Q. So any website where you can look for other
13 people is how you would define a social network?

14 A. No. I suppose you could look for other
15 people on Google, and I wouldn't consider that a
16 social network.

17 Q. So how would you define that point of
18 differentiation?

19 A. I think I said where you can create a
20 profile and search for other people's profiles.

21 Q. So a dating website like, like you said,
22 match.com.

23 A. Yeah, I think in essence, that seems like a
24 similar concept. That's one of the sites we used to
25 benchmark.

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 Alan H. Brock

October 9, 2007

24 Alan H. Brock, RDR, CRR

25