

EXHIBIT 12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Certified Copy

CONNECTU, INC., CAMERON WINKLEVOSS,)
TYLER WINKLEVOSS, and DIVYA NARENDRA,)

Plaintiffs,)

vs.) Index No.

FACEBOOK, INC., MARK ZUCKERBERG,) 107-CV-10593-DPW
EDUARDO SAVERIN, DUSTIN MASKOVITZ,)
ANDREW MCCOLLUM and FACEBOOK, LLC,)
Defendants.)

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VIDEOTAPED DEPOSITION OF VICTOR GAO

New York, New York

Monday, December 3, 2007

Reported by:

ERICA L. RUGGIERI, RPR

Job No: 13783

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December 3, 2007
9:14 a.m.

Deposition of VICTOR GAO, held at the
offices of Orick, Herrington & Sutcliffe, LLP,
666 Fifth Avenue, New York, New York, pursuant
to ^ notice, before Erica L. Ruggieri,
Registered Professional Reporter and Notary
Public of the State of New York.

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25 ALSO PRESENT: HENRY MARTY, Videographer

1
2 THE VIDEOGRAPHER: Good morning.

3 Here begins tape 1, Volume I in the
4 videotape deposition of Victor Gao, in the
5 matter of ConnectU, et al. against Facebook
6 et al., defendants, in the United States
7 District Court, for the District of
8 Massachusetts, case number
9 107-CV-10593-DPW. Today's date is
10 December 3rd, 2007. The time on the video
11 monitor is now 9:14 a.m.

12 The video operator is Henry Marty,
13 representing LiveNote World Services,
14 located at 221 Main Street, suite 1250, San
15 Francisco, California. The court reporter
16 is Erica Ruggieri, also on behalf of
17 LiveNote World Services.

18 Today's deposition is being taken by
19 the defendant and is taking place at
20 666 Fifth Avenue, New York, New York.

21 At this time will counsel please
22 introduce yourselves, starting with the
23 party taking the deposition.

24 MR. COOPER: This is Monte Cooper of
25 the law firm Orrick, Herrington &

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Sutcliffe, representing all defendants except Eduardo Saverin. With me is Neel Chatterjee of my office, also of Orrick, Herrington & Sutcliffe.

MR. HAMPTON: Hi. This is Dan Hampton of the law firm Holland & Knight. I represent the defendant Eduardo Saverin. Thank you.

MS. BEA: Renee Bea and Adam Wolfson, appearing for Victor Gao, of Quinn Emanuel.

THE VIDEOGRAPHER: Thank you.

Now will the court reporter please administer the oath.

V I C T O R G A O , called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. COOPER:

Q. Good morning, Mr. Gao. Thank you for joining us today.

Have you ever had your deposition taken before?

A. I have not.

1
2 referred to would actually, technically, be the
3 host domain for www.Harvardconnection.com,
4 correct?

5 A. It would be the host, yes.

6 Q. And that means that, just so the
7 record is clear, that means that's where the IP
8 address for that particular domain would be
9 generated from, correct?

10 A. Yes.

11 Q. How extensive, if you recall, were
12 your modifications, between the time you went on
13 line after the Facebook launched and when you
14 downloaded the code?

15 MS. BEA: Objection, vague.

16 A. To the best of my knowledge, not
17 much; maybe a day's worth.

18 Q. Okay. What did you do, at a high
19 level, just tell us what you did in that day's
20 work.

21 A. I don't remember.

22 Q. All right. Did you delete any work
23 that you believed had been performed by Mark
24 Zuckerberg?

25 A. No.

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2

Q. Did you modify any work that you believe had been performed by Mark Zuckerberg?

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A. I may have, yes.

5

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Q. Did you complete any work that you believe was left incomplete by Mark Zuckerberg?

7

A. I performed additional work.

8

9

Q. All right. To the best of your recollection, what is the additional work you did?

10

11

A. I don't remember.

12

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Q. Now, you said you may have modified some work that had been performed by Mark Zuckerberg.

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What modifications do you have in mind that you think you may have done?

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A. May have been registration, profile, handshake.

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Q. All right. Did you create any new part of the database schema?

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A. I don't remember.

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Q. All right. Would you agree that the Harvard Connection code had what was known as a date side?

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A. Yes.

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Q. All right. Would you agree the Harvard Connection code also had what is known as a connect side?

A. Yes.

Q. All right. Did you create any new portion of the database schema to address changes to the date side?

A. I don't remember.

Q. Did you create any new portions of the database schema to address changes to the connect side?

A. I don't remember.

Q. Do you recall if, at a high level, if your work that you performed was directed to one or the other, the date or the connect side?

A. It would have been mostly to connect side.

Q. All right. And why do you say that?

A. The date side was -- the date side was effectively functional.

Q. All right. After you addressed the connect side, was the whole website functional?

A. No.

Q. All right. What -- why wasn't it, to

1
2 the best of your recollection?

3 A. Because I didn't finish it.

4 Q. All right. Did you -- how much time,
5 in your estimation, would have been necessitated
6 to finish the code, after you've worked on it?

7 A. According to the design parameters at
8 the time?

9 Q. Yes.

10 A. About a week.

11 Q. All right. A week, as in 40 hours?

12 A. Thereabouts.

13 Q. All right. I don't mean to be
14 facetious. We all know coders can work
15 extraordinary hours. I just want to know what
16 you mean by a week.

17 Or programmers can.

18 So is 40 hours a safe estimate, in
19 your mind?

20 A. I would say between 40 to 80.

21 Q. Okay. What were the critical
22 problems that remained, that necessitated 40 to
23 80 hours of work?

24 A. Where do I begin?

25 Q. Wherever you feel --

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A. Uploading files, uploading resumes, probably were still some design issues, handshaking, registration, searching, full text searching of resumes, full text searching of theses.

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Q. All right. I just want to make something clear. When you say "uploading files," you are talking about a function, not the actual process of needing to upload a file?

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A. That's correct, yes.

12

13

Q. All right. All right. So this was a function that needed to be coded into this site, not something you actually needed to upload a file, correct?

14

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16

A. Yes.

17

18

Q. When you say something like "handshaking," what are you referring to?

19

20

A. The mechanics by which two interested -- one interested party could connect with the other party, for professional reasons, employment, et cetera.

21

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Q. All right. So by that you mean a communication protocol by which one party could become aware of another party?

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you quickly reviewed, correct?

A. Yes.

Q. Would you turn to 5398. It should be begin with registerlaction.PHP.

A. Yes.

Q. This is on the connect side, correct?

A. No.

Q. It is not?

A. No.

Q. All right. This is on the date side?

A. No. This is a combined page.

Q. All right. And what's a combined page?

A. The registration process was designed to be used by both sides.

Q. All right. Who created this script, if you know?

Would it have been you?

A. Myself or Sanjay.

Q. All right. This was created before Mark Zuckerberg ever worked on the site, if you know?

A. This file, definitely.

Q. Okay.

1

2 A. Yes.

3 Q. How much of the connect side was
4 developed, before Mark Zuckerberg had ever
5 worked on the site?

6 MS. BEA: Objection, vague.

7 A. Relatively little.

8 Q. All right. Would you turn to 5292.
9 Do you see a connecthome.php?

10 A. Yes.

11 Q. That is the connect side, correct?

12 A. Yes.

13 Q. All right. Is that a script that, if
14 you know, that Mark Zuckerberg you would
15 anticipate have worked on?

16 A. Yes.

17 Q. All right. So this is an example of
18 what you saw when you went on the site,
19 following -- for the first time after you had --
20 in February or so, 2004, correct?21 MS. BEA: Objection, misstates the
22 witness's prior testimony.

23 A. This looks more like it, yes.

24 Q. All right. So you did, in fact, see
25 attributions of code, for instance, 5292

1
2 connecthome.php, that, to the best of your
3 knowledge, had been added on by Mark?

4 MS. BEA: I'm sorry, counsel, where
5 is the path you just referred to?

6 MR. COOPER: 5292, connecthome.php.

7 A. Sorry. Can you repeat the question.
8 I forgot the question.

9 Q. Let me try and restate it another
10 way.

11 Would you agree that connecthome.php
12 appearing on 5292, the script function runs all
13 the way, approximately, to page 5312, where
14 there is a print function?

15 A. Yes.

16 Q. All right. Would you agree that the
17 entire code section there would have been one of
18 the sections you attributed to Mark Zuckerberg's
19 work?

20 A. This code is the code that I had
21 worked on. That is not connect.

22 Q. All right. But connecthome.php you
23 agreed was?

24 A. It was a copy of datehome.php.

25 Q. That's not what I'm asking.

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MS. BEA: Objection. Calls for a legal conclusion.

A. I don't understand the question.

Q. Well, you said you weren't even there to recruit him, correct?

A. I was there to inform him.

Q. You were there to inform him, but you weren't there to recruit him, correct?

A. Fair.

Q. Is it fair to say whatever choice Mark ultimately was going to make about what role he had with Harvard Connection would have to be expressed by him to the founders, rather than to you?

MS. BEA: Objection. Argumentative and misleading.

A. Yes.

Q. All right. So it's fair to say you weren't there to offer or accept whatever contract was going to ever be formed between Harvard Connection and Zuckerberg, correct?

MS. BEA: Objection. Calls for a legal conclusion.

A. That was my understanding.

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2 Q. And you met with him for two hours to
3 go over the technical details?

4 A. Yes.

5 Q. And then you say, "During the meeting
6 I showed Zuckerberg the website in its then
7 current stage of development."

8 A. Yes.

9 Q. What was the current stage of
10 development?

11 MS. BEA: Objection, vague.

12 A. There were parts that worked and
13 parts that didn't.

14 Q. What parts worked and what parts
15 didn't?

16 A. Most of the dating parts worked. But
17 not -- if not all.

18 Q. And what didn't work on the dating
19 side?

20 A. I don't know. I have not bug tested
21 it.

22 Q. What had to be done on the connect
23 side?

24 A. A fair amount.

25 Q. All right. Turning to your February

1

2 17th, 2004 e-mail from Cameron Winklevoss.

3 Would you turn to the page GAO154.

4 A. Yes.

5 Q. There are quotes from Victor Gao,
6 second programmer on the HC team.

7 Do you see that?

8 A. Yes.

9 Q. All right. These are relating to
10 your review of the code as it existed after
11 February 1st, 2004, when you reviewed it again,
12 correct?

13 A. Sometime in February.

14 Q. All right. When was the first time
15 after the January 25th letter from, or e-mail
16 from Cameron that you actually looked at the
17 site?

18 A. Beginning of February.

19 Q. You still had access to the site,
20 correct?

21 A. I still have the password and user
22 name.

23 Q. All right. And it was still under
24 Hurricane Electric's server, correct?

25 A. Yes.

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Q. All right. It says -- where do these quotes come from?

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A. Various newspaper articles.

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Q. All right. The various newspaper articles, were they The Crimson?

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A. Amongst others.

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Q. Did you, in fact, talk to a reporter from The Crimson?

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MS. BEA: Objection. Asked and

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answered.

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A. I don't think so.

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Q. So do you have any reason to think the quotes are inaccurate?

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A. No.

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Q. So they are accurate, in your mind?

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A. Yes.

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Q. All right. The first quote says, "When I looked at the code and architecture of Harvard Connection in the beginning of February, after Mark was no longer with the project, I discovered, one, key parts of the connect side did not work, such as the full search; two, minor parts of the connect side still incomplete, such as a fully working registration

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2 process; and three, some parts implemented
3 incorrectly, such as the connect handshaking
4 procedure."

5 Do you see that?

6 A. Yes.

7 Q. All right. What key parts of the
8 connect side did not work, besides full search?

9 A. This is overstating what worked.
10 Effectively, nothing worked.

11 Q. All right. When you say
12 "Effectively, nothing worked," are you sure
13 nothing worked?

14 A. When I looked at the site, that was
15 my conclusion.

16 Q. How long did you look at the site?

17 A. 30 minutes.

18 Q. Then you said, "Minor parts of the
19 connect side were still incomplete, such as
20 fully working registration process."

21 A. Yes.

22 Q. That implies that some parts of the
23 registration process were complete, correct?

24 A. Yes.

25 Q. All right. And some parts were

1
2 implemented incorrectly, such as a connect
3 handshaking procedure?

4 A. Yes.

5 Q. How was it implemented incorrectly?

6 A. The handshaking procedure is not the
7 same as the dating handshaking procedure.

8 Q. And how do you know that to be the
9 case?

10 A. It's not meant to be the same
11 procedure, but it was.

12 Q. And why do you say it wasn't meant to
13 be?

14 A. That was part of the design.

15 Q. Isn't it a coder's -- was the design
16 of the site solely yours?

17 A. No.

18 Q. So the programmers have discretion,
19 correct?

20 MS. BEA: Objection. Vague.

21 A. I designed it with Divya.

22 Q. That's not my question.

23 Programmers still have discretion,
24 correct?

25 A. Yes.

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Q. All right. Did Divya understand -- did Divya look at the code to understand the problems?

MS. BEA: Objection. Calls for speculation.

A. I don't remember.

Q. So the only person that you know for sure looked at the code was yourself, correct?

A. Yes.

MR. COOPER: I think he needs to change the tape.

THE VIDEOGRAPHER: Sure. Stand by.

The time is 5:41 p.m., and this completes tape number five. We are going off the record.

(Whereupon, there is a recess in the proceedings.)

THE VIDEOGRAPHER: This marks the beginning of videotape number six, Volume I, in the deposition of Victor Gao. The time is 5:50 p.m. On the record.

Q. Mr. Gao, before the break I was having you look at Exhibit -- what was it, 20 -- 19. On page 154, middle paragraph, there's a

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quote from you. "I have looked at theFacebook.com, using a friend's account."

Do you see that?

A. Yes.

Q. And then it says, "although theFacebook.com has the look and feel of Friendster, there is no doubt that the idea of introducing a web-based social network exclusively for the Harvard community, with intentions of packaging the service to be plugged in at all universities, was copied directly from Divya's original idea."

Do you see that?

A. Yes.

Q. Is that an accurate quote from you?

A. Yes.

Q. When you say you've looked at theFacebook.com, using a friend's account, what friend were you referring to?

A. No recollection.

Q. Do you know someone named Paul Arthur Fili, F-I-L-I?

A. Yes.

Q. Is that a friend?

1

2 A. Yes.

3 Q. Is that the friend whose account you
4 used to look at the Facebook?

5 A. No recollection.

6 Q. All right. Who is Paul Arthur Fili?

7 A. A friend of mine.

8 Q. All right. Does he live in the same
9 dorm as you?

10 A. No.

11 Q. All right. You say that it was --
12 was there a reason you used a friend's account
13 to look at the Facebook, rather than register
14 yourself?

15 A. No reason.

16 Q. You indicate, "Although the Facebook
17 has the look and feel of Friendster."18 What do you mean, it had the look and
19 feel of Friendster?20 A. It had very similar functionalities
21 to Friendster.

22 Q. It had functionalities.

23 The graphical user interface didn't
24 look the same, though, correct?

25 A. I would say it did. The layout did.

1

2 Q. All right. Did it look exactly the
3 same?

4 A. No.

5 Q. The functionality, are you referring
6 to the fact that Friendster and Facebook
7 permitted friends lists?

8 A. Yes.

9 Q. And they both permitted contact by
10 e-mail?

11 A. Contact by whom?

12 Q. You could list your e-mail, and
13 friends could contact you at that e-mail
14 address, correct?

15 A. Yes.

16 Q. All right. They both permitted you
17 to list profile information about yourself,
18 correct?

19 A. Yes.

20 Q. And they both permitted you to allow
21 yourself to leave messages to friends, correct?

22 A. I don't remember that function was in
23 Facebook at the time.

24 Q. All right. It was at some point in
25 time, correct?

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A. Yes.

Q. All right. How soon after Facebook launched did you look at it?

A. I don't have a recollection.

Q. All right. When you say -- what other look and feel of Friendster did you see similar between it and the Facebook?

A. The ability to search.

Q. All right. Anything else?

A. That's all I recollect.

Q. Could you upload multiple profile pictures?

A. I don't remember.

MS. BEA: Objection, vague.

Q. Do you recall if the Facebook permitted to you to allow you to upload multiple photos of yourself?

A. No recollection.

Q. You indicate, "There is no doubt that the idea of introducing a web-based social network exclusively for the Harvard community, with intentions of packaging the service to be plugged in at all universities, was copied directly from Divya's original idea."

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As of February 17th, did you have some sense the Facebook would be packaged as a service to be plugged in at all universities.

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A. I don't recall right now.

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Q. In fact, as of February 17, 2004,

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wasn't the Facebook only available at three universities?

6

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MS. BEA: Objection, lack of

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foundation.

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A. I don't recall.

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Q. Do you recall if the three

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universities that Facebook was available at --

12

would you agree that Facebook initially launched

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only at Harvard?

14

A. I knew that Harvard was one of, if

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not the only, first.

16

Q. Were the other two Columbia and

17

Stanford?

18

A. I don't know.

19

Q. Do you know if Columbia and Stanford

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had their own social networks, even if

21

preexisting Facebook?

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A. No idea.

23

Q. Have you ever heard of CU Community?

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A. No.

Q. Do you know anybody at Columbia?
Did you know anybody at Columbia?

MS. BEA: Objection, vague.

A. Today?

Q. No, in 2003.

A. Yes.

Q. All right. But you don't recall anything called CU Community, correct?

A. No.

Q. When you say that there's no doubt that the idea of introducing a web-based social network exclusively for the Harvard community was copied directly from Divya's original idea, do you have any proof of that?

MS. BEA: Objection, vague.

A. Proof in what sense?

Q. Is that just your opinion?

A. My understanding was that was a novel idea.

Q. But that's just your understanding, correct?

A. I have not done the extensive research, no.

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Q. You say, "Some of the fields in theFacebook.com profile, especially those relating to dating, seem to be inspired from his involvement with Harvard Connection," correct?

6

A. Yes.

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Q. All right. What fields are you referring to?

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A. Like which house he lived in, for instance.

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Q. Isn't it true that some of those fields are natural for a university setting?

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MS. BEA: Objection, vague.

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A. Can you qualify natural.

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Q. Isn't it true that many of the fields that Mark used were available, for instance, to -- in the electronic versions of the online face books that were available at the houses?

19

A. That information was available, yes.

20

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22

Q. So isn't it true that some of the fields, for instance, included, say, what year the student was, correct?

23

A. Yes.

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Q. That isn't necessarily inspired by Harvard Connection, correct?

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MS. BEA: Objection. Calls for speculation.

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A. I don't know.

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Q. In fact, isn't it true that the fields that were used by Mark Zuckerberg were different from the fields that were used in Harvard Connection?

7

8

9

A. I didn't do a side-by-side comparison.

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11

Q. So this was just a general overall sense you had, as of 2003, correct -- 2004, correct?

12

13

14

A. From what I could see and look at the time, yes.

15

16

Q. All right. And the user interfaces were different, correct?

17

18

A. Yes.

19

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Q. All right. The registration fields were different, correct?

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A. There's some difference.

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Q. There were differences, correct?

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A. There were differences.

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Q. And that would have to be hard-coded into the Facebook site, correct?

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MS. BEA: Objection, vague.

A. They don't have to be. There are many ways to do it.

Q. But to your knowledge, they may have been, correct?

A. They may have been.

Q. And if the Harvard Connection -- and if the Facebook site was launched as HTML, it was launched on a different type of scripting program altogether than Harvard Connection, correct?

A. Can you say that again.

Q. If -- if the Facebook was launched as a scripted HTML program, it was based on an entirely different scripting program than Harvard Connection, correct?

A. Do I know that?

Q. It would be, correct?

A. It would be, if what?

Q. Harvard Connection was a PHP-based back end, correct?

A. Yes.

Q. So if the back end of Facebook was HTML, it had to necessarily have a different

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code base, correct?

A. Doesn't necessarily. PHP is a superset of HTML. There's no way the back end can be done using HTML.

Q. Well, do you have any reason, as you sit here today, independent of your own just judgment, to believe that in any way that the Facebook copied Harvard Connection's back end?

A. I have no way of knowing that.

Q. In fact, you know for a fact it had to populate different types of database fields, don't you?

MS. BEA: Objection, misleading.

A. Can you -- can you repeat that question.

Q. Well, for instance, the Facebook didn't have a dating feature, correct?

A. I think it had something relating to dating.

Q. It had something, but it wasn't a dating site, correct?

MS. BEA: Objection, vague.

A. The functionality was not nearly as developed as Harvard Connection's.

1

2 Q. And in fact, it didn't even refer to
3 dating, correct?

4 A. I believe there was a field that it
5 did.

6 Q. How do you know there was a field?

7 A. I should say the profile logic would
8 say what you are interested in.

9 Q. But that -- that isn't the same as
10 saying who you were interested in, correct?

11 A. Yes.

12 Q. So it wasn't directed to dating per
13 se, it was directed towards interest level,
14 correct?

15 MS. BEA: Objection, vague.

16 A. Okay.

17 Q. And that's a function that actually
18 existed in Friendster, correct?

19 MS. BEA: Objection, foundation.

20 A. Yes.

21 Q. Can you conceive of any way Harvard
22 Connection code could have been used for
23 Facebook?

24 MS. BEA: Objection, vague and
25 ambiguous.

1

2 A. Repeat the question.

3 Q. Can you conceive of any way that the
4 Harvard Connection code, as it existed when you
5 last used it in the fall of 2003, could have
6 been used to develop Facebook?

7 A. I don't have an opinion.

8 Q. Okay. So the answer is no?

9 MS. BEA: Objection, misstates the
10 witness's testimony.

11 A. I don't have an opinion.

12 Q. All right.

13 (Gao Exhibit 21, March 11, 2004
14 e-mail from Paul Arthur Fili to Victor
15 Gao, marked for identification, as of
16 this date.)17 Q. Mr. Gao, I put in front of you a
18 March 11, 2004 e-mail from Paul Arthur Fili to
19 you, do you see that?

20 A. Yes.

21 Q. And below it is an earlier March 11,
22 2000 e-mail from you to Paul Arthur Fili, right?

23 A. Yes.

24 Q. And in that e-mail you say, "Yo,
25 Paul, you want to shoot an e-mail to Zuckerberg

1

2 and tell him to clear the reject request?"

3

A. Yes.

4

5 Q. You were registered for Facebook at
this point, correct?

6

A. Yes.

7

8 Q. What's the reject request you were
referring to?

9

A. I don't recall, specifically.

10

11 Q. You then say, "Better if you do it,
because I'm the one requesting," correct?

12

A. Yes.

13

14 Q. Why did you want Paul Arthur Fili to
make that request, instead of you?

15

A. I don't recall the circumstances.

16

17 Q. Were you concerned that Paul -- that
Mark Zuckerberg would be hostile to you?

18

A. I may have been.

19

20 Q. Okay. And is that because of your
cooperating with the Winklevosses in the Harvard
21 admin board proceedings?

22

MS. BEA: Objection, argumentative.

23

A. May have been.

24

25 Q. As you sit here today, you agree the
Harvard Connection code, as it was left to you,

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C E R T I F I C A T I O N

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, ERICA L. RUGGIERI, RPR and a
Notary Public within and for the State of
New York, do hereby certify:

That I reported the proceedings in
the within-entitled matter, and that the
within transcript is a true record of
such proceedings.

I further certify that I am not
related by blood or marriage, to any of
the parties in this matter and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 7th day of December,
2007.

Erica L. Ruggieri

ERICA L. RUGGIERI, RPR