

EXHIBIT 9

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-----

FARMER ARSENAULT BROCK LLC, for:

LiveNote World Service, 221 Main Street, Suite 1250

San Francisco, California 94105

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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 I represent defendant Eduardo Saverin in a case
2 sharing many of the same parties now pending in the
3 District of Massachusetts.

4 MS. SCHOENFELD: This is Meredith
5 Schoenfeld, from Finnegan Henderson Farabow Garrett
6 & Dunner. I represent the plaintiffs in the same
7 Massachusetts litigation, ConnectU.

8 MR. SCHULTZ: Chris Schultz, for the
9 defendants.

10 MR. CHOW: Stephen Chow, for iMarc,
11 Inc., and the witness today.

12 MR. CHATTERJEE: And just for sake of
13 clarity, Ms. Sutton and I also represent all of the
14 defendants except for Eduardo Saverin in the
15 Massachusetts case that Ms. Schoenfeld and Mr.
16 Hampton referred to.

17 DAVID TUFTS, duly sworn

18 EXAMINATION

19 BY MR. CHATTERJEE:

20 Q. Please state your name for the record.

21 A. David Tufts.

22 Q. Mr. Tufts, my name is Neel Chatterjee, and
23 I'm an attorney for the plaintiffs in a lawsuit
24 pending in California. I represent Facebook, Inc.
25 and Mark Zuckerberg in that case.

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 personal, and they liked some of the stuff that that
2 was doing. I think they liked the search results,
3 how they were displayed on the Facebook.

4 Q. Did they tell you anything else about the
5 relationship with Mark Zuckerberg or the Facebook?

6 MR. SCHULTZ: Just an objection as to
7 vague, as vague.

8 A. Cameron and Tyler Winklevoss?

9 Q. Yes.

10 A. They -- after we had started developing the
11 site, I think, you know, they brought that
12 facebook.com up as a benchmarking site, among those
13 other ones. And I think well into the development
14 the whole story came out about that, but it wasn't
15 upfront that there was any relationship with the
16 Facebook or its creators.

17 Q. Let me probe into that just a little bit,
18 because I'm not sure I understand your response.

19 So when you first started working with
20 the Winklevoss brothers and Divya Narendra they
21 never mentioned any dispute with the Facebook?

22 MS. SCHOENFELD: Objection, relevance.

23 A. No, they didn't. They mentioned that they
24 had -- and they actually came to us with, you know,
25 some mockups of a website and said that they had

1 started working on it, it was unfinished, and they
2 wanted to get something up really quickly.

3 Q. But they didn't say anything about Mark
4 Zuckerberg or thefacebook.com website at the time,
5 that they came to you with this mockup?

6 MS. SCHOENFELD: Same objection.

7 A. Again, I think by the time -- when they
8 came to iMarc as a company, it was probably a month
9 before the project came to me. So when the project
10 came to me initially, within the, you know, first
11 week, maybe, no.

12 Q. When was the first time after you started
13 working with the Winklevoss brothers and Divya
14 Narendra that you heard about a dispute that they
15 had with Mark Zuckerberg relating to thefacebook.com
16 website?

17 MR. SCHULTZ: Objection, foundation,
18 assumes facts not in evidence.

19 A. By "dispute" you mean a personal grudge
20 dispute or a legal dispute?

21 Q. Well, let's start with the first one. I'll
22 ask you about both. A personal grudge.

23 A. Maybe within the first month of developing
24 the site. They'd complain about it and then, you
25 know -- I mean, we --

1 Yeah, probably within the first month we
2 heard, you know, more of the whole story.

3 Q. And what was the whole story?

4 A. The whole story at that time, as it was
5 conveyed to us, was they hired Mark Zuckerberg to
6 build a site and he never finished it, so then they
7 hired us -- then they hired iMarc to build a site,
8 and while ours was still in development,
9 thefacebook.com was getting a fair amount of press,
10 among Harvard, B.U., and they were complaining about
11 that his site was up and had, it seemed like, a
12 significant amount of users.

13 Q. Did they say anything to you about whether
14 they felt thefacebook.com website and what they were
15 asking you to build were similar or dissimilar?

16 MS. SCHOENFELD: Objection.

17 MR. SCHULTZ: Objection, form and vague.

18 MS. SCHOENFELD: Relevance.

19 A. I actually find that a little vague.

20 Q. Well, did the Winklevoss brothers, either
21 of them, or Divya Narendra in that first month say
22 anything to you about whether they found
23 thefacebook.com website similar or dissimilar to the
24 project they had you working on?

25 MR. SCHULTZ: Object to the form, vague

1 and overbroad.

2 A. Again, I think all these social networking
3 benchmark sites were similar, as was theirs. There
4 was mass amounts of similarities between all of
5 them.

6 Q. Were there differences?

7 A. Yes.

8 Q. Describe what the differences were between
9 thefacebook.com website and the mockup that you were
10 given to work on.

11 MR. SCHULTZ: Objection, foundation.

12 A. Thefacebook.com website had a single user
13 profile. If I signed up for a Facebook account,
14 there would be one profile, whether I was -- I think
15 when you sign up, you say, "I'm here for dating,
16 just to meet friends, for professional networking"
17 on thefacebook.com, and on Friendster you had one
18 profile. On the mockup that was given to us, the
19 original idea for the site that we saw, you had a
20 professional profile and a completely segregated
21 personal profile. That was the main difference.

22 Q. Were there any other differences that you
23 recall?

24 A. Well, thefacebook.com was a website, and
25 what we were presented was a mockup, a screen shot,

1 light HTML. It was not a working website.

2 Q. What do you mean by "light HTML"?

3 A. There was HTML -- it wasn't a picture of a
4 Web page that you would make in a graphics program,
5 like Photoshop or something like that. It actually
6 was a Web page -- although the buttons that you
7 clicked weren't connected to any database, or it
8 didn't actually do anything. But it was a Web page,
9 in the fact that it was made of HTML, not just a
10 graphic.

11 Q. You described the dating portion of the
12 website as personal. Was that --

13 Let me step back. You described the
14 dating portion as personal, which would be both for
15 dating people and potentially for interacting with
16 social colleagues. Was that the original concept
17 that you were given, or was this interaction with
18 just nondating people originally on this
19 professional side?

20 MR. SCHULTZ: Objection, foundation,
21 mischaracterizes testimony.

22 A. The original concept had both of those
23 profiles that the user actually would fill out
24 separately, and one would show up sort of on one
25 screen, so you could send a link to someone -- if

1 it's a colleague, someone I'd go to college with,
2 they might be interested in that. But if I'm
3 applying for a job, maybe I'd post my resume on the
4 other side. And they were fairly segregated -- in
5 the, you know -- it wasn't an actual -- it wasn't
6 working. There was nothing working. That was what
7 was talked about.

8 MR. CHATTERJEE: Let's mark this as
9 Exhibit 64.

10 (Exhibit 64 marked for identification.)

11 Q. Mr. Tufts, what I've handed you is Exhibit
12 64. Take a quick look at this document, and then
13 let me know when you're done.

14 A. I'm done.

15 Q. Mr. Tufts, do you recognize this document?

16 A. I recognize -- yes, I recognize some of the
17 concepts, yes.

18 Q. What do you understand this document to be?

19 A. I'm not sure if this is something that Marc
20 Pierrat made with them or if this was a document
21 that came directly from HarvardConnection. But I
22 think this is what was originally presented to the
23 iMarc production team -- or I don't know if this was
24 exactly it -- originally. It might have went
25 through some revisions before it came down to us.

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 launched a website, it was much more user-friendly,
2 like friendster.com or thefacebook.com or match.com
3 or any of the sites that were represented in that
4 benchmarking.

5 Q. And in the next sentence you state, "In
6 April Facebook was already hugely popular. 90
7 percent of the direction we received from ConnectU
8 was 'Copy Facebook' and ignore the HarvardConnection
9 spec and design." What did you mean when you wrote
10 that?

11 MS. SCHOENFELD: Objection, relevance.

12 A. I meant that they kept pointing us --
13 again, benchmarking -- Facebook, Friendster, sites
14 like that. I think I only mentioned Facebook here
15 because I knew that they were asking for stuff
16 relating to some lawsuit that they were filing
17 against Facebook.

18 Q. When you use the phrase "Copy Facebook,"
19 explain what you meant when you said that.

20 A. I meant that -- again, I'm not sure if they
21 actually used the word "copy." But we were directed
22 at features on Facebook and other social networking
23 sites, mostly for look and feel, usability, ideas,
24 things like that, that they would see on another
25 website and say, "Hey, that's a good feature. We

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 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 document. I'm just going to ask you one kind of
2 windup question with respect to this document. As
3 to the functionality that's described in this
4 document in its entirety, all of it together --

5 A. Yes.

6 Q. -- is that something that the ConnectU
7 founders asked you to implement at the beginning of
8 the project for them?

9 MS. SCHOENFELD: Objection, relevance,
10 outside the scope of the deposition.

11 A. I don't think that we saw this document in
12 its entirety at the beginning of the project.

13 Q. I'm not asking whether you saw the
14 document. The functionality that we've just walked
15 through, did they ask you to implement all of this
16 at the beginning of -- all of this functionality?

17 A. As soon as you preclude one line item, then
18 all of the functionality would be false. So no,
19 they did not ask us to implement all of this
20 functionality.

21 MR. CHATTERJEE: It's 12:15. We've been
22 going for quite a while. And I know I put you
23 through a very detailed analysis. So why don't we
24 take a break for lunch and come back in about an
25 hour.

1 THE VIDEOGRAPHER: The time is 12:14,
2 and we are off the record.

3 (Recess for lunch.)

4 THE VIDEOGRAPHER: The time is 1:21. We
5 are back on the record.

6 Q. Mr. Tufts, we're back on the record. Do
7 you understand you're still under oath?

8 A. Yes.

9 Q. And you understand you're still testifying
10 as a witness on behalf of iMarc pursuant to the
11 subpoena notice?

12 A. Yes.

13 Q. I'm going to go through -- well, I'm going
14 to ask you one question: Before we broke for lunch,
15 you talked about, several times about a screen, an
16 HTML screen that showed what the HarvardConnection
17 graphical user interface looked like. Do you recall
18 that?

19 A. Yes.

20 Q. Did I characterize that right?

21 A. Yes.

22 Q. Do you recall if that graphical user
23 interface looked like the graphical user interface
24 of Facebook?

25 MS. SCHOENFELD: Objection, calls for

1 speculation; objection, outside the deposition
2 notice.

3 A. I do recall it; and no, it did not look at
4 all like Facebook.

5 Q. And why do you say that?

6 MS. SCHOENFELD: Same objection.

7 A. Because it looked different.

8 Q. And you don't remember any specific points
9 of differentiation?

10 MS. SCHOENFELD: Same objection.

11 A. Yes. The Facebook, to my recollection, was
12 blue with a white background, really square,
13 squared-up edges, squared design elements. And that
14 HarvardConnection one was brown, a lot more
15 graphical. Facebook seemed very sparse, cold. And
16 the HarvardConnection one was earth tones. Just
17 completely different color scheme, different design
18 elements.

19 Q. Were the pages themselves designed
20 differently?

21 A. Yes. They looked different.

22 Q. Outside of the presence of your counsel,
23 have you ever had discussions about the lawsuit --
24 I'll say the lawsuits that ConnectU is involved in
25 with Cameron or Tyler Winklevoss or Divya Narendra?

1 MS. SCHOENFELD: Objection, vague;
2 objection, outside the scope of the deposition.

3 A. Yes, there's some emails from them to us
4 regarding that.

5 Q. Other than those emails, did you have any
6 discussions with them?

7 A. No.

8 Q. Could you describe the emails that you're
9 talking about?

10 A. I think somewhere around 2005, June, July
11 2005, they wanted to see the -- they wanted us --
12 the whole source code, the original source code that
13 they supplied us, the code that we created, they
14 wanted everything, because they said they were
15 having -- they were in a lawsuit against Facebook.

16 Q. And other than that, you were unaware of
17 any lawsuits between ConnectU, Mark Zuckerberg, and
18 the Facebook?

19 A. That was the first time I was made aware of
20 that, yeah.

21 Q. In response to those requests for that
22 source code, did you provide copies of that source
23 code to ConnectU?

24 A. Yes. That's why there are a couple of
25 emails of us going back and forth, saying that we

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