

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CONNECTU LLC,

Plaintiff,

v.

C.A. No. 04-1923(DPW)

MARK ZUCKERBERG, EDUARDO SAVERIN,
DUSTIN MOSKOVITZ, ANDREW McCOLLUM,
CHRISTOPHER HUGHES and THE FACEBOOK,
INC.,

Defendants.

CERTIFIED
COPY

VOLUME 1

VIDEOTAPED DEPOSITION OF CONNECTU LLC

BY CAMERON H. WINKLEVOSS

Boston, Massachusetts

Tuesday, August 9, 2005

9:44 a.m. to 5:27 p.m.

Reported by:

Jessica L. Williamson, RMR, RPR, CRR
Notary Public, CSR No. 138795

JOB NO. 36599

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1 VIDEOTAPED DEPOSITION OF CONNECTU LLC
2 by CAMERON H. WINKLEVOSS, a witness called
3 on behalf of the Defendant Mark Zuckerberg,
4 Dustin Moskovitz, Andrew McCollum,
5 Christopher Hughes and The Facebook, Inc.,
6 pursuant to Rule 30(b)(6) of the Federal
7 Rules of Civil Procedure, before Jessica L.
8 Williamson, Registered Merit Reporter,
9 Certified Realtime Reporter and Notary
10 Public in and for the Commonwealth of
11 Massachusetts, at the Offices of Proskauer
12 Rose, LLP, One International Place, Boston,
13 Massachusetts, on Tuesday, August 9, 2005,
14 commencing at 9:44 a.m.

15
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A P P E A R A N C E S, Continued

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George Dobrentey, Videographer

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been much of an issue.

MR. CHATTERJEE: Let me mark this as Defendants' Exhibit 2.

(Exhibit No. 2, First Amended Complaint, marked for identification.)

Q. I'm going to ask you one question about this --

A. Sure.

Q. -- and then we'll take a break. If you'd go to Paragraph 14.

MR. HORNICK: I'll object that this is outside the scope. You can answer. It's not 30(b)(6) testimony.

Q. If you can read that paragraph and let me know when you're done.

A. Uh-huh.

(Witness reviews document.)

A. Uh-huh.

Q. Okay. If you look in the second sentence, it says, "After the first programmer hired by Plaintiff graduated," that first programmer was Sanjay Mavinkurve?

A. Sanjay Mavinkurve was the first programmer of HarvardConnection or -- yes, yes.

MR. CHATTERJEE: Okay. Why don't

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we take a break for a few minutes, like 10 minutes.

MR. HORNICK: All right.

THE VIDEOGRAPHER: The time is 10:46. This is the end of Tape 1, and we are off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 10:57. This is the beginning of Tape 2, and we are back on the record.

BY MR. CHATTERJEE:

Q. Mr. Winklevoss, we're back from a break. I want to ask a couple follow-up questions from the previous hour. You had mentioned that Mr. Zuckerberg agreed to be part of a partnership. Do you remember that testimony?

A. I believe I said that -- yes, I do remember the testimony where you asked me that, and I said that Mr. Zuckerberg had acknowledged an agreement between the parties where he would -- yes, he acknowledged the agreement.

Q. Was there any discussion about what share of the partnership he would have?

A. With respect to dot-com companies, they're

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generally started as projects and sort of a small group of people with an idea, and it's sometimes unclear exactly where, you know, two months from that -- the start point or six months from that start point where exactly the equity will lay. Mr. Zuckerberg himself has reapportioned equity multiple times.

So to the extent of talking about equity shares at that point, it was premature. However, everything was an equal partner. Everybody did contribute.

Q. So I want to make sure this is clear. So was there any discussion about what share of the partnership Mr. Zuckerberg would have?

A. The specific share, it was premature to speak about that at that time.

Q. So is the answer to my question no?

A. The answer is that it was premature to speak about specific shares. Was it understood by Mr. Zuckerberg that he would get a share?

Yes.

Q. Okay. Did you tell Mr. Zuckerberg how much of a share of the partnership he would have?

A. Well, there is more --

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Q. Please just answer the question. It's a yes or no.

MR. HORNICK: The witness can answer the question however he wants.

A. Yeah, I mean, you're -- I'm assuming you're talking about equity share, the multiple benefits to a project, which could include prestige, equity. There's multiple levels. And at that point we had no revenue source, and the product was far from completion. We stressed to him multiple times that one of his major benefits would be a sort of a reinventing of himself in terms of his reputation post the Facemash debacle. In fact, he would be the center point of the launch, not us, even though it was our idea.

So we did not have specific talks about equity share, but as I said, he was an equal partner. Whatever you might want to infer from the equal partner, be it a quarter, a quarter, a quarter, that's fine.

Q. Did you tell Mr. Zuckerberg that he would be an equal partner?

A. I told Mr. Zuckerberg that he was -- we conveyed to Mr. Zuckerberg that he would be

11:00:44 1 a part of the HarvardConnection team --

11:00:46 2 Q. And --

11:00:48 3 A. -- okay, not a contract programmer.

11:00:50 4 Q. And did you convey to him what his share of
11:00:53 5 the partnership would be?

11:00:54 6 MR. HORNICK: Objection, asked and
11:00:55 7 answered.

11:00:55 8 A. As I said before, we did not speak about
11:00:59 9 specific equity stakes at that point. It
11:01:01 10 was premature. If, you know -- I might
11:01:05 11 point out at that time that Mr. Zuckerberg
11:01:10 12 had yet to make a contribution. So,
11:01:11 13 generally speaking, you know, in any law
11:01:14 14 firm, particularly -- you know, I'm sure
11:01:16 15 your firm works this way -- you work for
11:01:18 16 seven, eight, ten years and then become a
11:01:20 17 partner. People don't hand out partnership.
11:01:22 18 You know, you don't give out equity.

11:01:25 19 So everybody was aware that they were
11:01:26 20 on a team, they'd make contributions, and
11:01:28 21 that depending on the size of the
11:01:30 22 contribution after a certain time period,
11:01:33 23 they would be given equity.

11:01:34 24 Q. Was there ever any discussion at any point
11:01:38 25 with Mr. Zuckerberg about what his share of

11:01:42 1 the partnership would be?

11:01:43 2 A. Other than the fact that he was an equal

11:01:46 3 partner on ConnectU and given full creative

11:01:49 4 control and full input into what the product

11:01:52 5 could and should be, there was not a

11:01:55 6 specific discussion about specific amounts

11:01:57 7 of equity at that time.

11:01:59 8 Q. Was there ever discussions stating that he

11:02:01 9 was an equal partner?

11:02:02 10 A. As I said, we invited him to be part of the

11:02:07 11 team. We invited him to contribute. He

11:02:09 12 agreed to contribute, end of story.

11:02:12 13 Q. And where I'm focusing now is the word

11:02:15 14 "equal."

11:02:16 15 A. Uh-huh.

11:02:17 16 Q. So did you ever tell Mr. Zuckerberg he would

11:02:19 17 be an equal partner?

11:02:20 18 A. Well, I think the fact that we gave him our

11:02:24 19 whole source code, gave him creative

11:02:27 20 control, gave him full, you know -- asked

11:02:30 21 him for multiple input would certainly lend

11:02:33 22 to the word "equal." There was no one-way

11:02:35 23 dialogue. In fact, if anything, it was

11:02:37 24 skewed in his favor. And so he had more

11:02:40 25 than enough reason to believe that it was

11:02:42 1 going to be on equal terms, his terms, and
11:02:46 2 that's as far as really I can comment on
11:02:49 3 that.
11:02:49 4 Q. Did he ever tell you that he wanted to be an
11:02:51 5 equal partner?
11:02:52 6 A. He never asked for monetary compensation,
11:02:56 7 and all -- I can't -- what he essentially
11:03:00 8 agreed to was to contribute to the coding
11:03:04 9 that he said he would contribute to.
11:03:06 10 Q. Did he ever agree to take some equity?
11:03:10 11 A. Again, he agreed to complete a portion of
11:03:14 12 the website and become part of the team.
11:03:16 13 Q. And -- but my question is, did he ever agree
11:03:19 14 to any specific allocation of equity in the
11:03:21 15 partnership?
11:03:21 16 A. He did not say, "I need X amount of equity
11:03:28 17 or amount," no, he didn't say that.
11:03:30 18 Q. And were there any discussions about
11:03:31 19 allocation of equity during your
11:03:33 20 relationship with Mr. Zuckerberg?
11:03:34 21 A. As I said before, it was premature to talk
11:03:37 22 about allocation. This was a contribution
11:03:38 23 basis where, you know, you join a team, you
11:03:40 24 contribute, and you can reallocate
11:03:43 25 partnerships. With myself and Tyler and

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Divya Narendra we didn't allocate partnership until later on because it was unclear what our respective contributions would be.

Q. So that actually raises another issue. Prior to joining with Mr. Zuckerberg, were there any discussions between Mr. Tyler Winklevoss, you, Divya Narendra about how the equity would be divided?

A. We, again, as I said before, were -- we operated on an equality basis, and so we had four individuals with Mark Zuckerberg. When Mark Zuckerberg decided to -- or effectively launched Thefacebook, there was three individuals. At that point there's three equal partners in the company. Over time that has clearly changed in terms of the contributions that individuals have put into the company.

Q. And with respect to the other programmers that you had, did you ever discuss giving them any equity?

A. So Victor Gao was a contract-based programmer, so he was not interested in equity. We had offered it. We had

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offered -- you know, we said, "What do you need to get this done?" And he took money. That was his deal.

Sanjay was part of the team, as I said. He contributed, but it became very evident after a while that he could no longer contribute. He did not ask to become a partner. And I think that it was very clear from both sides and both people's standpoint that -- we were thankful for the work that he did, but he wasn't a partner at that point.

Q. And both of them had access, both Victor Gao and Sanjay Mavinkurve had access to the source code, right?

A. Yes, they did, but, you know, the term -- as I mentioned before, Victor had access on a contract basis, and Sanjay was on a contributing basis and gracefully bowed out and decided that, you know, he couldn't complete it and that he did not want to be a partner of the situation.

MR. CHATTERJEE: So let's mark this as Exhibit No. 3.

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And as I said for the other defendants, based on their involvement in the creation and the fact that I believe that the creation is derivative work, that I believe he's used copyrighted code.

Q. I think I'll go with your counsel's stipulation that you can't answer the question so we'll move on.

MR. HORNICK: The witness gave you the best answer to the best of his ability.

Q. Now, Mr. Saverin was never a partner of the HarvardConnection, correct?

A. No, he would not have been involved. No.

Q. Right. And neither you nor anyone else at HarvardConnection ever made the HarvardConnection source code available to Mr. Saverin, correct?

A. We directly did not make it available --

Q. Right.

A. -- to him, yeah.

Q. And no one, to your knowledge, at ConnectU ever disclosed any HarvardConnection trade secrets to Mr. Saverin, correct?

A. No, not directly to Mr. Saverin.

Q. All right. And just to clean up a few

05:24:49 1 things from this morning, talk about this
05:24:51 2 partnership, this HarvardConnection
05:24:53 3 partnership.
05:24:54 4 A. Uh-huh.
05:24:55 5 Q. There was never any written agreement
05:24:57 6 between Mark Zuckerberg and
05:24:59 7 HarvardConnection that Mr. Zuckerberg would
05:25:01 8 be a partner of HarvardConnection, correct?
05:25:03 9 A. There was no written agreement.
05:25:08 10 Q. All right. And there was never any explicit
05:25:09 11 agreement, oral or written, by Mr.
05:25:11 12 Zuckerberg that he was going to be a partner
05:25:15 13 of HarvardConnection, correct?
05:25:17 14 A. Not correct to the extent that there was --
05:25:21 15 as I mentioned before, there was explicit
05:25:24 16 talk of contributions to the
05:25:26 17 HarvardConnection team.
05:25:28 18 Q. Well, let's talk about the word "partner."
05:25:30 19 A. Okay.
05:25:30 20 Q. Did Mr. Zuckerberg ever say to you, "I
05:25:33 21 understand I'm a partner in this
05:25:35 22 HarvardConnection venture"? Did he ever say
05:25:38 23 the word "partner"?
05:25:39 24 A. No, he did not use the word "partner." No.
05:25:42 25 Q. And did you, you personally, ever use the

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word "partner" to Mr. Zuckerberg?

A. No, and I don't believe I had to. I --

Q. But I didn't ask you about what you had to do.

MR. HORNICK: He can give a

complete answer.

A. I used the word "part," which is part -- which assumes a partner is a part of a slice of the pie, you know, if you want to go down to the semantics level. But, no, we did not use the word "partner." We're college students. You know, we are on a project, and it's a team. That's what we called it.

Q. Okay. So just to be clear, you never told Mr. Zuckerberg that he was going to be a partner --

A. I never --

Q. -- quote, "partner" in the venture, correct?

A. Quote, "partner" -- quote, "partner," no, I did not use the word, quote, "partner."

Q. Okay. Fine. And just to be clear again, there was never any written -- oral or written agreement with Mr. Zuckerberg that he would have some specific percentage ownership in HarvardConnection, correct?

05:26:39 1 A. Specific ownership, yes. Specific as in
05:26:44 2 specific equity stakes, yes, there was --
05:26:48 3 that conversation never happened.
05:26:48 4 Q. Listen to my question again.
05:26:50 5 MR. HORNICK: Listen to his answer.
05:26:52 6 Did you hear it?
05:26:53 7 MR. CHATTERJEE: Robert, let's have
05:26:55 8 the court reporter read that answer back.
05:26:56 9 MR. HAWK: Okay. Let's have the
05:26:58 10 answer back, question and answer, if you
05:27:00 11 wouldn't mind.
05:27:01 12 (Record read.)
05:27:27 13 A. So, well, I was --
05:27:28 14 MR. HORNICK: Wait, wait. There's
05:27:29 15 no question pending.
05:27:30 16 Q. Right. So let me -- I'm a little unclear, I
05:27:31 17 will say, after the last question and
05:27:33 18 answer, so let me try if I can reask it --
05:27:33 19 A. It was supposed to be --
05:27:36 20 Q. -- and clear it up.
05:27:37 21 A. Yeah, I mean, if you want to reask that same
05:27:41 22 question --
05:27:41 23 Q. Yeah --
05:27:41 24 A. -- sure.
05:27:41 25 Q. -- let me reask the question, okay?

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Isn't it correct that there was never any written or oral agreement with Mr. Zuckerberg that he would have a specific percentage ownership in HarvardConnection?

A. Specific percentage ownership, as I said before, we did not talk about because it was premature --

Q. Okay. Fine.

A. -- okay?

Q. All right. All right. You never talked about it with Mr. Zuckerberg, correct?

A. Specific percentage ownership. Outside of what I said earlier, which was that it was an equal -- an equal partnership based on contribution, no.

Q. See, that's the problem I'm having here.

A. Why is that so hard?

MR. HORNICK: Robert, listen. You don't like his answers, and you keep getting him to try to change them. He has given you his answer. He gave it this morning. He's been consistent all day. I think you should stop badgering the witness.

MR. CHATTERJEE: Mr. Hornick, what federal rule of evidence are you citing to

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at this point? Because badgering with
counsel has nothing to do with the
deposition.

MR. HORNICK: He is badgering the
witness. He keeps asking the same question
that's been asked all day. He keeps
answering it.

MR. HAWK: We'll put this record
before the Judge, okay?

MR. HORNICK: You're getting your
answers.

MR. HAWK: We'll put the record --
we'll put the record before the Judge, and
we'll --

MR. HORNICK: Go ahead. You're
getting your answers.

MR. HAWK: All right. Let's turn
it down a notch. We're almost done today.
Let me try and put another question. I was
just trying to explain to the witness why I
keep going back to the same thing.

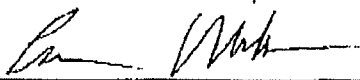
BY MR. HAWK:

Q. And the reason that I keep going back is
because you're giving an argumentative
answer.

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I, CAMERON H. WINKLEVOSS, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this 12 day of September,
20 05, at Queque (City), NY (State).




CAMERON H. WINKLEVOSS

1 In the United States District Court
2 For the District of Massachusetts
3 I, Jessica L. Williamson, Registered,
4 Merit Reporter, Certified Realtime Reporter
5 and Notary Public in and for the
6 Commonwealth of Massachusetts, do hereby
7 certify that CAMERON H. WINKLEVOSS, the
8 witness whose deposition is hereinbefore set
9 forth, was duly sworn by me and that such
10 deposition is a true record of the testimony
11 given by the witness.

12 I further certify that I am neither
13 related to or employed by any of the parties
14 in or counsel to this action, nor am I
15 financially interested in the outcome of
16 this action.

17 In witness whereof, I have hereunto set
18 my hand and seal this 11th day of August,
19 2005.

20
21 

22
23 _____
24 Jessica L. Williamson, RMR, RPR, CRR
25 Notary Public, CSR No. 138795
My commission expires: 12/18/2009