EXHIBIT I

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

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RALPH VARGAS and BLAND-RICKY   )

ROBERTS,   )

)

        Plaintiffs,   )

) No. 04CV 9772

vs.   ) (JCF)

)

)

PFIZER, INC.; PUBLICIS, INC.;   )

FLUID MUSIC; EAST WEST   )

COMMUNICATIONS, INC. and   )

BRIAN TRANSEAU, p/k/a "BT",

    Defendants.

CERTIFIED COPY

Deposition of

BRIAN TRANSEAU

NON-CONFIDENTAIL SECTIONS, PAGES 1-94; 112-182

CONFIDENTIAL SECTION, PAGES 95-111

Wednesday, August 16, 2006

Reported by:

GEORGE SCHUMER, CSR   (01-385207)

1   Q.   Can you do time correction live?

2   A.   No.   I wish I could.

3   Q.   So if David is playing a guitar, and Chris is

4 playing a piano, and I'm playing the drums, and you

5 are -- I don't know; recording it -- can you

6 time-correct it, if I'm playing randomly, and not in

7 tune or at the same pitch as David and Chris?

8   MR. KEEGAN: Objection. Vague; ambiguous.

9   THE WITNESS: You are also asking a question

10 revolving around pitch and frequency, which is

11 unrelated to time.

12   But to answer your question, there is a

13 plug-in for that called "Auto Tune," and that's why

14 Britney Spears has a career.

15   MR. CHIN: Q. So you couldn't do it live. It

16 had to be recorded first?

17   A.   That's not necessarily completely accurate.

18 There's a program called "Ableton Live" that you can

19 record, and I have done this before in live

20 performance -- you can record into.

21   And watch the wave form come up as the audio

22 recording is happening, and drop what are called "warp

23 marker points" in, that will align the sound to a

24 grid. So you actually can do it.

25   Q.   But it has to play back at some point; right?

1   Q.   Was your daughter born in LA?

2   A.   Yes. No, sorry, she wasn't. She was born in

3   Maryland.

4   Q.   Do you recall, at the birth of your daughter,

5   were you living in LA or Maryland?

6   A.   We were living in Maryland.

7   Q.   Then after the birth of your daughter, do you

8   recall when you moved to LA?

9   A.   Shortly thereafter. Two months after she was

10   born.

11   Q.   Now before the birth of your daughter, what,

12   if any, musical jobs did you have?

13   A.   Before the birth of my daughter?

14   Q.   Yes.

15   A.   I produced mixed and recorded songs for the

16   Millenium Dome; for Peter Gabriel. I produced songs

17   for Seal; In Sync; Britney Spears; Madonna. I wrote

18   the music for the film "Monsters", starring Charlize

19   Theron; the Fast and the Furious; Under Suspicion,

20   Doug Lyman's second film, "Go". I guess I did Stealth

21   after Kaia was born.

22   I have done remixes for slews of artists.

23   Q.   What was your first record deal?

24   A.   The first record deal I signed was to Perfecto

25   Records, which is a subsidiary of East West, which is

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1 a subsidiary of Warner Brothers in England, which is

2 Paul Okenfold's label. And I signed to that label in

3 1994.

4   Q.   In 1994, were you living in England at the

5 time?

6   A.   I lived in England for six-month periods three

7 times between 1994 and 1997.

8   Q.   So from 1994 to 1997 you lived in England how

9 many --

10   A.   Collectively roughly a year and a half.

11   Q.   And prior to 1994, where were you living?

12   A.   I was already back in Maryland at that point.

13 Full time.

14   Q.   Did you ever work in England as a DJ?

15   A.   No. I never DJ'd, as you would consider what

16 we would call DJ-ing, until 2001.

17   Q.   Do you know somebody by the name of "Sasha"

18 from England?

19   A.   Yes.

20   Q.   Who is Sasha?

21   A.   Sasha is a recording artist and electronic

22 music composer that now lives in New York.

23   Q.   Is Sasha a man or woman?

24   A.   A man.

25   Q.   It is a guy?

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1   were talking about?

2   A.   We have discussed all of them, this being one

3   of them; my family lawsuit; and the thing in England.

4   Q.   So there's no fourth one?

5   A.   That's correct.

6   Q.   Next: When you -- in that same paragraph, I

7   believe it is the third sentence, it begins with:

8   "There is a guy in New York" and it says "that claims

9   one loop on my sample CD is his." Do you see that?

10   A.   Yes.

11   Q.   Who are you referring to?

12   A.   I don't know.

13   Q.   And that one lawsuit in New York: Are you

14   referring to this case?

15   A.   Yes, I am.

16   Q.   In parenthesis in the fourth sentence it says,

17   "I made the loop in Reasons in about five minutes."

18   Do you see that?

19   A.   Yes.

20   Q.   Is that true?

21   A.   Can I demonstrate it to you right now?

22   Q.   What? The loop?

23   A.   No, I would like to make you the loop in five

24   minutes. I will go get my laptop, and make it for you

25   right now.

1   Q.   Can you make it?

2   A.   I can make it in less than five minutes, and

3 we can do spectral analysis of the loop that I make

4 right now, and the loop that's on my sample CD.   They

5 will be perfect matches.

6   Q.   Did you ask Dr. Boulanger to do that?

7   A.   Why would I do that?

8   Q.   He's the guy that did the FFT analysis.   Did

9 you do anything like that with him?

10   A.   No, I didn't.

11   So that -- to answer you, is accurate?   That

12 is accurate?   Yes.

13   Q.   Then when you created this loop, and the loop

14 we're talking about is Aparthenonia; right?

15   A.   That's correct.

16   Q.   When you first made the loop, you did it in

17 five minutes?

18   A.   When I first played the loop, I probably did

19 it in less than five minutes.

20   Q.   And it was done and complete in five minutes?

21   A.   That's incorrect.

22   Q.   How long did it take you to do it completely?

23   A.   I couldn't answer that.

24   MR. KEEGAN: Objection.   Vague.

25   MR. CHIN: Q.   So this is accurate; right?   "I

1   Q.   MCDSP is a compressor?

2   A.   Yes.

3   Q.   Digi-Design?

4   A.   Digi-Design 1-band EQ is a high-pass filter.

5   Q.   Speed-time correction -- that's a plug-in as

6 well?

7   A.   That's right.

8   Q.   And you mentioned, I think, two others?

9   A.   I don't remember what I said.   Renaissance

10 6-band EQ.   He'll (indicating) know.

11   Q.   And the plug-ins: Could you describe that?

12 What is a plug-in again?   I know it is not a plug-in,

13 but you described it earlier.

14   MR. KEEGAN: Asked and answered.

15   THE WITNESS: It is a piece of software that

16 functions in a host platform.

17   MR. CHIN: Q.   And do you know what version of

18 Reason you used?

19   A.   I used Version 1.0 of Reason.   There was some

20 confusion to which version I used, because of the time

21 period that I made these loops.   And also, because I

22 have beta-tested stuff for Propellerhead in the past,

23 as well as a slew of other software companies, so I

24 thought I might have had Reason 1.5, but it was Reason

25 1.0.

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1   Q.   What drum machines did you use?

2   A.   Roland TR-808; TR-909. A Roland CR-78.

3   TR-606.   That's it.

4   Q.   And you said "a computer." What computer did

5   you use?

6   MR. KEEGAN: Just to clarify, Paragraph 5 is

7   about Aparthenonia. Are you talking about Breakz, the

8   whole album, or Aparthenonia?

9   MR. CHIN: Aparthenonia.

10   THE WITNESS: That's not what Paragraph 5 is

11   talking about. I have been answering for the whole

12   record.

13   MR. CHIN: Q. Since you have started talking

14   about the whole record, then I'll ask you about

15   Aparthenonia.

16   A.   Okay.

17   Q.   What computer did you use?

18   A.   A blue and white G-3. And -- sorry. And a

19   Dell PC, too. There is an application called Stomper

20   on the Dell PC, that's used for synthesis of snare

21   drums and kick drums, that I used to use a lot during

22   that time period.

23   Q.   Anything else?

24   A.   In the way of computers?

25   Q.   Yes.

1   A.   No.

2   Q.   Now, for Aparthenonia, what software

3   application did you use?

4   A.   Reason and Logic.   Reason 1.0, and Logic,

5   roughly version 4.7.

6   Q.   What drum machines did you use?

7   A.   None.   I used the soft drum machine, Red Drum.

8   It is not a plug-in.   It is a function of Reason.   It

9   is how you make beats in Reason.   The Rex player in

10   Red Drum.   So if you want to classify that as a drum

11   machine, I did use that.

12   Q.   But it wasn't a separate plug-in?

13   A.   No, it wasn't.

14   Q.   Which computer did you use?

15   A.   The G-3.   So I used Reason 1.0 with the Reason

16   factory sound library.   And Logic.   And then in

17   mixing, I used the plug-ins I stated.

18   Q.   You indicate in Paragraph 5 that Aparthenonia

19   is "programmed."   What do you mean by that?

20   A.   I mean, when I say "programmed," that it is a

21   beat created in a computer.

22   Q.   Then you say, "The percussion elements

23   originated in an off-the-shelf music generator

24   computer program, Propellerhead Reason."

25   A.   That's correct.

1   Q.   What percussion elements are you referring to?

2   A.   Kick drum, snare drum, high hat, and

3 low-velocity snare notes, which I have heard referred

4 to as ghost notes.

5   Q.   Any tom-toms?

6   A.   No.

7   Q.   The other snare drum -- you said a low

8 velocity?

9   A.   That's right.

10   Q.   Is there any particular reason why you chose

11 to use a low-velocity snare drum?

12   A.   If you will see any of my interviews, I will

13 talk about programming beats. And one of the

14 characteristics of a live drummer, that makes a live

15 drummer sound like a live drummer, is the syncopation

16 between the back beat hits of a snare drum. And it is

17 sort of one of my specialties in back beats, to make

18 beats that sound live.

19   Q.   The low-velocity snare drum, you indicated

20 that it had been referred to by the plaintiff as

21 "ghost notes"?

22   A.   Yes.

23   Q.   Do you know what a ghost note is?

24   A.   I understood the term. Yes, I know what it

25 is.

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1   Q.   What is your personal knowledge of what a

2   ghost note is?

3   A.   Since I play drums, it is what I said to you.

4   That's what makes a drum -- a real drum performance

5   compelling -- is the ghost note figures. When you

6   hear beats that are programmed, typically you don't

7   hear people doing intermittent syncopations during the

8   back beats. But that's what a real drummer does, and

9   I do it in all of my programming for beats -- which I

10   would love to demonstrate.

11   Q.   I'm not sure we're going to be able to do that

12   today.

13   A.   That's too bad.

14   Q.   But we'll probably get an opportunity at some

15   point in time.

16   A.   Good.

17   Q.   Are you saying that then you have ghost notes

18   in all of your drum beats?

19   A.   Unless I'm trying to create a drum beat that

20   sounds like a drum machine, absolutely, yes.

21   Q.   If you didn't have the ghost notes in those

22   drum beats, are you saying that the absence of them

23   would indicate that it would sound like a drum

24   machine?

25   A.   Depends on the end user. It depends on the

1   listener, really.

2   Q.   But in your personal opinion, it would?

3   A.   I think it is one of the things that

4   distinguish a real drum performance from a drum

5   machine. But I think it is one of five or six things.

6   And I would be happy to share the others, if you are

7   interested.

8   Q.   Sure, of course.

9   A.   The velocities that a drummer plays with

10   affect the tamboural and the spectral qualities of the

11   sounds, and being a drummer and someone fascinated

12   with digital audio, it is something I have studied

13   quite a bit. In my ghost note programming, as you

14   would call it, I have figured out -- and it is

15   something I have talked about in interviews in

16   Keyboard, EQ, and many magazines -- that in order to

17   make a convincing snare drum performance, you can take

18   a drum sound that's struck at high velocity; add an

19   attack to it --

20   Q.   What is an attack?

21   A.   You are blurring the characteristics at the

22   beginning. So it is a sound like "dish," and you are

23   going "shish" -- and then low-pass filtering it.

24   Because that's what happens when a snare drum is

25   struck in a weak manner. But velocity changes the

1   spectral characteristics dramatically of a sound,

2   especially on high hats and cymbals, and there's so

3   many things that make a drum performance sound like a

4   live drum performance. And I have spent 15 years

5   trying to create beats that sound like a live drummer.

6   Q. Can we agree that the low-velocity snare and

7   ghost notes are the same thing, in Aparthenonia?

8   A. We're talking about the same thing.

9   Q. So how did you create the ghost notes in

10 Aparthenonia?

11   A. Very simply. You take a snare drum strike,

12 and you add a long attack to it, and you make it at a

13 lower amplitude. And high-pass filtering sounds

14 pretty convincing, too, because the harder you hit a

15 drum, the more high-frequency content it is going to

16 have in a signal.

17   Q. And would you need to utilize time correction

18 in order to make it -- make the sound sound

19 rhythmically the same?

20   A. All this is like trying to describe a giraffe

21 to someone who has never seen it. I can demonstrate

22 it to you in three minutes.

23   Q. The problem is the demonstration is not going

24 to help me --

25   A. I think it will help you a lot, honestly.

1   Q.   It won't help me, unless we have it written

2   down.

3   A.   I can walk you through it, and we can

4   videotape it. I would be happy to demonstrate it to

5   you.

6   Q.   If we get through the rest of what I have

7   here, maybe that will work.

8   A.   Great.

9   Q.   So was there any time correction used in it?

10   A.   Not in creating the beat, no.

11   Q.   And in finalizing it, was there any time

12   correction?

13   A.   I wouldn't remember.

14   Q.   Now you said you did all of this on your

15   computer; correct?

16   A.   That's right.

17   Q.   And you did it in Logic?

18   A.   No.

19   Q.   I'm sorry. What program did you do it in?

20   A.   In Reason.

21   Q.   And Logic was used for what purpose?

22   A.   Logic was used for after-effects; for effects

23   after the fact. And then the beat was rendered out,

24   and put into a folder.

25   I think it is very important to explain my

1   work flow.   There have been some questions asked about

2   me producing sequence files, and it is part of what I

3   would like to demonstrate, creating this beat to you.

4   I can sit down and have a coffee and make a

5   hundred break beats. I do it regularly. And there's

6   no reason to save a sequence template in Reason, when

7   I could do that all day long.

8   So the things that come out of Reason I render

9   as audio files -- as stereo interleafed audio files;

10   pull them into Logic, and apply effects to them, and

11   render them out.

12   So that's how I create beats, typically.

13   Q.   That's good to know typically, but with

14   respect to Aparthenonia --

15   A.   This follows that form.

16   Q.   You did it the exact same way?

17   A.   This follows what I just stated.

18   Q.   Did you have to mix Aparthenonia at all?

19   A.   I applied effects to the beat, yes.

20   Q.   Is that a part of mixing?

21   A.   Applying effects?

22   Q.   Yes.

23   A.   That would be categorized as mixing.

24   Q.   When you mixed Aparthenonia, did you do it

25   live, or with automation?

1   A.   I don't use automation. To answer your

2   question.

3   Q.   Never?

4   A.   I have automated vocals before. I would never

5   automate a beat, to answer your question.

6   Q.   And the effects, you said, was used -- you

7   used Logic for the effects?

8   A.   That's right.

9   Q.   And once you were done with the final product,

10   you didn't store it at all, in your hard drive?

11   A.   I rendered it down as two channels of audio,

12   which is what I always do when I'm making beats.

13   Again, to discuss my work flow -- and it is so

14   much easier to show it than to talk about it, but I'll

15   sometimes create really sophisticated synthesis

16   patches in Reason. Reason looks like a hardware --

17   piece of rack-mounted hardware. And you can flip the

18   rack around and cross-patch, like you can cross-patch

19   equipment in a studio.

20   And if I have 15 devices working in tandem,

21   all cross-patched in a crazy way, then I think it

22   might be something that took a tremendous amount of

23   activity to create. And then it has a very sort of

24   exotic and unusual sound; I'll save a patch like that.

25   But of the patches that I have saved out of

1   working in Reason for years, I probably have saved 200

2   patches total, and I have done tens of thousands of

3   sounds in reason.

4   Q.   So when you say you "rendered it down," what

5   does that mean?

6   A.   Again, it is easier to show than to speak

7   about.

8   There is a function called "render song" or

9   "render loop" as an audio file. So it is bouncing out

10 the beat you are working on, or the pad you are

11 working on, or the bass line you are talking about or

12 whatever.

13   Q.   Did you bounce it internally to a disk, or did

14 you bounce it mixed to a DAT?

15   A.   At that time I would have bounced it out to an

16 external hard drive. DAT players are a thing of the

17 90's.

18   Q.   So you bounced it out to an external hard

19 drive?

20   A.   To an external skuzzy drive. FireWire didn't

21 exist at that time.

22   Q.   Did you use Midi?

23   A.   No.

24   Q.   And where were you, when you created

25 Aparthenonia?

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1   A.   On the back of my tour bus.

2   Q.   How long did it take for you to create

3   Aparthenonia on the back of your tour bus?

4   A.   I would be speculating, because there's 403

5   beats on the record.

6   Q.   403 versions of Aparthenonia?

7   A.   No, there's 403 beats on my record.

8   Q.   I'm talking about Aparthenonia.   Just that

9   one.

10   A.   I would be speculating.   Five minutes or less.

11   Q.   That would kind of coincide with the time that

12 you mentioned in Plaintiff Exhibit 6.

13   A.   That's right, yes.   Again, which I'm happy to

14 demonstrate at any time.

15   Q.   And in Paragraph 6, you say that Aparthenonia

16 is not a recording of any work, and it contains no

17 sampling of any other sound recording.   Is that

18 correct?

19   A.   That's correct.

20   Q.   And that's true?

21   A.   Yes, it is true.

22   MR. CHIN: Let's get this marked as 10.

23   (Document referred to herein marked

24   for identification Exhibit 10)

25   MR. CHIN: We're just going to go off the

1   have the spectral characteristics of the rest of the

2   drum kit embedded into a sound from room tone. That's

3   something really important to note. And tom-tom's

4   ring -- it is a characteristic of tom-toms. So you

5   can use the sound of a live kick drum, or live snare

6   drum, or live high hat, for that matter, and have room

7   tone and tones from tom-toms. And that's very

8   frequently a part of the spectral signature of live

9   drum sounds.

10   Q. Let's not talk about the spectral signature.

11   Let's talk about somebody listening.

12   MR. KEEGAN: Is there a question?

13   MR. CHIN: Yes.

14   THE WITNESS: What is the question?

15   MR. CHIN: Q. A person who has played the

16   drums for -- let's say he's a professional drum

17   player -- would you expect him to be able to tell the

18   difference between a low velocity snare and a tom-tom?

19   MR. KEEGAN: Objection. Calls for

20   speculation.

21   MR. CHIN: Q. How long have you been playing

22   the drums?

23   A. 20 years; 15 years.

24   Q. Can you tell the difference between a

25   low-velocity and a tom-tom?

1   A.   They are actually the same instrument.   One

2 has a snare on it and one doesn't.

3   Q.   That's not the question.

4   A.   My answer would be no, I can't tell.

5   MR. CHIN: Those are all the questions that I

6 have for you.   I'm concluding the deposition.   Your

7 attorney, of course, is going to have some questions

8 to ask.

9   MR. KEEGAN: Let's take a real quick break.

10   MR. CHIN: Very, very quick.

11   MR. KEEGAN: Sure thing.

12   THE VIDEOGRAPHER: The time now is 3:49, and

13 we are going off videotape record.

14   (Discussion off the record)

15   THE VIDEOGRAPHER: The time now is 3:57, and

16 we're back on the videotape record.

17   MR. KEEGAN: Paul, I just want to go on the

18 record at the end of the day here.   BT has indicated a

19 couple of times that he's willing to show you sort of

20 Reason, right now, live, if that's something you are

21 interested in seeing.

22   We can do that.

23   MR. CHIN: No, I can't, unfortunately, but I

24 understand that he's ready, willing and able to do so.

25   MR. KEEGAN: The second thing is that we have
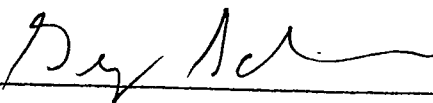
CERTIFICATE OF REPORTER

I, George Schumer, a Certified Shorthand Reporter, hereby certify that the witness in the forgoing matter was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled cause;

That said proceeding was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript ____ was ✓ was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way vested in the outcome of this cause, and that I am not related to any of the parties thereto.

DATED: _____8-23-06_____

_____

George Schumer, CSR 3326