

Exhibit W

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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RALPH VARGAS and BLAND-RICKY ROBERTS,

Plaintiffs,
Civil Action
No.

-against- 04CV 9772 (JCF)

PFIZER, INC., PUBLICIS, INC.,
FLUID MUSIC, EAST WEST
COMMUNICATIONS, INC. and
BRIAN TRANSEAU p/k/a "BT",

Defendants

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August 10, 2006
9:10 a.m.

Videotaped Deposition of

MATTHEW RITTER, taken by Defendants, pursuant
to Notice, at the offices of Kirkland & Ellis,
153 East 53rd Street, New York, New York,
before TAMMEY M. PASTOR, a Registered
Professional Reporter, Certified LiveNote
Reporter and Notary Public within and for the
State of New York.

1 MATTHEW RITTER

2 A. Yes. It is my understanding
3 that that is an album of music that Bust Dat
4 Groove is a song of.

5 Q. Have you ever had a copy of
6 Funky Drummer Volume II?

7 A. No.

8 Q. After you first listened to
9 Bust Dat Groove and Aparthenonia, what did you
10 do next?

11 A. I contacted Paul Chin and told
12 him that I did believe that it was absolutely
13 the same piece of music.

14 Q. Take a step back for a minute.

15 A. Okay.

16 Q. When you got the CD with the
17 two tracks what did you do?

18 A. I listened to them on a small
19 CD Walkman with headphones. This original
20 disc that I was given for some reason was not
21 a great copy and did not actually play on my
22 normal CD player. So I used a little small
23 one and, you know, the second I heard them I
24 knew they were one and the same. I mean I
25 hear drum recordings all day long every week.

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2 I had to listen twice just to
3 see that they, you know, they sounded like the
4 same exact thing to me, just like two
5 recordings of the same piece of music.

6 Q. How many times did you listen
7 to the tracks?

8 A. I don't remember. Many times.

9 Q. What do you mean when you say
10 they were one and the same?

11 A. Oh, first of all, one thing
12 that a lot of people don't know about drums is
13 that there is no standardized drum tuning, as
14 there is with a guitar. You tune a certain
15 string to G and certain string to an F,
16 whatever. Drums are tuned, you know, entirely
17 by the creative subjective choice of the
18 drummer.

19 So, it's extremely unusual and
20 perhaps impossible to have two different drum
21 sets sound exactly the same unless they were
22 tuned by the same drummer, the drums were made
23 of the same material, recorded in the same
24 room and so forth. Because I can tune my
25 tom-tom one way, you can tune your tom-tom

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2 and circled, I first of all broke down
3 Aparthenonia and circled each and every
4 musical element making up the piece of music.
5 And was able to find an example of it
6 somewhere in Bust Dat Groove.

7 Q. In your opinion could any of
8 the individual drum strikes in Aparthenonia
9 come from anything other than Bust Dat Groove?

10 A. Individual drum strikes? I am
11 not sure. And the reason is because the sound
12 are exactly the same. For all I know, you
13 know, maybe there is a piece of equipment out
14 there that can take that exact same sound and
15 mimic it or something. But the sound that I
16 hear in Aparthenonia are exactly the same
17 sounds in Bust Dat Groove.

18 So it is my opinion that the
19 sound in Aparthenonia came from Bust Dat
20 Groove because I have never known two drum
21 sets to sound the same.

22 Q. Sorry, I just want to try to
23 understand your answer. You said for all you
24 know maybe there is a piece of equipment out
25 there that can take the exact same sound and

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2 the analysis you performed to reach your
3 conclusions in this case.

4 Other than listening to the
5 track Aparthenonia and Bust Dat Groove, you
6 didn't perform any other kind of sound
7 analysis of the track; did you?

8 A. No, I didn't. I basically
9 played it, listened to it, wrote down the
10 various components and looked at them on paper
11 side by side.

12 Q. You didn't, for example, use
13 any kind of computer analysis of either Bust
14 Dat Groove or Aparthenonia; did you?

15 A. No.

16 Q. So your analysis was done
17 entirely by your listening ear; right?

18 A. That's true, yes, it is.

19 Q. So there is no -- sorry, so
20 there is no basis for your analysis other than
21 listening to Bust Dat Groove and Aparthenonia;
22 correct?

23 MR. CHIN: Objection.

24 A. I did my analysis by listening
25 countless times to the two tracks on various

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2 playback devices and writing down the various
3 components and looking at them side by side.

4 Q. When you say you looked at them
5 side by side you're talking about your
6 transcription?

7 A. Yeah, my own transcriptions to
8 see like oh, yeah, there is that same figure,
9 there it is again on that other page.

10 Q. So other than that you had no
11 other basis for your analysis; correct?

12 A. That is --

13 MR. CHIN: Wait. Objection.
14 You can answer.

15 A. My analysis was done completely
16 by listening repeatedly on various playback
17 machines, transcribing out the various
18 elements and looking at the two transcriptions
19 side by side to see what matched what.

20 Q. Your transcriptions were based
21 entirely on your listening to the tracks?

22 A. Yes.

23 Q. I want to play for you some
24 tracks. I am going to play tracks from what
25 has been marked Defendants' Exhibit 27. It is

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2 called a frame. One frame.

3 Q. Okay. So your opinion
4 regarding what Aparthenonia is, whether it is
5 a copy or not is in part also based on your
6 experience with sound editing equipment?

7 A. Not exactly. I would not say
8 that. Listening to the two of them I just
9 concluded from what I heard they were the same
10 thing. When I then had to answer the question
11 for myself well how are these rhythmic
12 elements, how have they been juxtaposed, the
13 answer was clear to me they had been
14 juxtaposed in the very same way that I
15 juxtaposed rhythms when I was producing my
16 DVD. By editing down to a 30th of a second.

17 Q. What kind of sound editing
18 equipment have you used?

19 A. I personally didn't use the
20 equipment. So I don't know, I was in the room
21 working with the sound editor. I was saying
22 can you take that and put it there. Within
23 moments he was doing it, it was amazing.

24 Q. Have you ever heard of the
25 computer software Propellerhead Reason?

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, TAMMEY M. PASTOR, a Registered Professional Reporter, Certified LiveNote Reporter and Notary Public within and for the State of New York, do hereby certify:

That MATTHEW RITTER the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

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

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2006.

TAMMEY M. PASTOR, RPR, CLR