

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., COMEDY)
 PARTNERS, COUNTRY MUSIC)
 TELEVISION, INC., PARAMOUNT)
 PICTURES CORPORATION, and BLACK)
 ENTERTAINMENT TELEVISION LLC,)
)
 Plaintiffs,)
 vs.) Case No. 07CV2203
 YOUTUBE, INC., YOUTUBE, LLC,)
 and GOOGLE, INC.,)
)
 Defendants.)
)

THE FOOTBALL ASSOCIATION PREMIER)
 LEAGUE LIMITED, BOURNE CO., et al.,)
 on behalf of themselves and all)
 others similarly situated,)
)
 Plaintiffs,)
 vs.) Case No. 07CV3582
 YOUTUBE, INC., YOUTUBE, LLC, and)
 GOOGLE, INC.,)
)
 Defendants.)
)

VIDEOTAPED DEPOSITION OF TINA EXARHOS

NEW YORK, NEW YORK

MONDAY, FEBRUARY 23, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 16507

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February 23, 2009

9:36 a.m.

VIDEOTAPED DEPOSITION OF TINA
EXARHOS, held at the offices of Wilson
Sonsini Goodrich & Rosati, 1301 Avenue of,
New York, New York, pursuant to notice,
before before Erica L. Ruggieri,
Registered Professional Reporter and
Notary Public of the State of New York.

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

JENNER & BLOCK, LLP

BY: SCOTT B. WILKENS, ESQ

1099 New York Avenue, NW

Washington, D.C. 20001

(202) 639-6000

Swilkens@jenner.com

FOR THE DEFENDANTS

WILSON SONSINI GOODRICH & ROSATI, PC

BY: BART E. VOLKMER, ESQ.

650 Page Mill Road

Palo Alto, CA 94304

(650) 493-9300

Bvolkmer@wsgr.com

- and -

MAYER BROWN, LLP

BY: JASON KIRSCHNER, ESQ.

1675 Broadway

New York, New York 10019

(212) 506-2500

Jkirschner@mayerbrown.com

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A P P E A R A N C E S: (Cont'd)

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4

ALSO PRESENT:

5

MICHELENA HALLIE, MTV Networks

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CARLOS KING, Videographer

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DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

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IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

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THE VIDEOGRAPHER: This is tape number one of the videotape deposition of Tina Exarhos, in the matter Viacom International, Inc., et al. versus, Inc., et al. and the Football League, et al., vs, YouTube LLC, and Google, Inc., et al.

09:35:33

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09:36:08

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This deposition is being held at 1301 Avenue of the Americas, New York, New York, on February 23, 2009, at approximately 9:45 a.m.

13

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09:36:21

15

My name is Carlos King, from the firm of David Feldman Worldwide, and I am the legal video specialist.

16

17

18

The court reporter is Erica Ruggieri, in association with David Feldman Worldwide.

19

09:36:33

20

Will counsel please introduce themselves.

21

22

23

24

MR. VOLKMER: Bart Volkmer from Wilson, Sonsini Goodrich & Rosati representing the defendants Google and YouTube.

09:44:42

25

MR. KIRSCHNER: Jason Kirschner,

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1 T. EXARHOS

2 from Mayer Brown LLP, representing
3 defendants Google and YouTube.

09:32:32

4 MR. WILKENS: Scott Wilkens,
5 Jenner & Block, representing the
6 plaintiffs.

7 MS. HALLIE: Michelena Hallie,
8 MTV Networks.

09:32:37

9 THE VIDEOGRAPHER: Will the
10 court reporter please swear in the
11 witness.

12 T I N A E X A R H O S , called as a
13 witness, having been duly sworn by a
14 Notary Public, was examined and
15 testified as follows:

16 EXAMINATION BY

17 MR. VOLKMER:

18 Q. Good morning.

19 A. Good morning.

09:45:08

20 Q. Could you please state your name
21 and title for the record?

22 A. Tina Exarhos, executive vice
23 president of marketing for MTV.

09:45:18

24 Q. And have you ever been deposed
25 before?

1 T. EXARHOS

2 were providing, and they were providing
3 good promotional placement for us.

10:39:14

4 Q. And the promotional clips that
5 MTV provided to YouTube, they were
6 authorized to be on YouTube, correct?

7 A. The ones that I'm referring to?

8 Q. Right. They were authorized to
9 be on YouTube, correct?

10:39:24

10 A. Correct.

11 Q. Do you know what the term
12 content council refers to?

13 A. It was a meeting.

14 Q. A single meeting?

10:39:38

15 A. I don't recall exactly how many
16 meetings, but I think that it might have
17 been a -- it might have been a one-time
18 meeting that we did. I don't remember if
19 it was more than one meeting.

10:39:54

20 Q. And what was the topic of the
21 meeting?

22 A. If it's the meeting that I think
23 we are talking about, we discussed just
24 kind of in the changing environment -- you
25 know what, I can tell you what I know I

10:40:14

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1 T. EXARHOS

2 talked about in that meeting.

3 Q. Right.

10:40:18

4 A. Because I don't remember the
5 broad themes of the entire meeting.

6 We talked about kind of content,
7 how things were shifting in the digital
8 space and how content was marketing and
9 marketing was content, and just kind of a
10 shifting nature of marketing in the
11 digital universe. That was what my piece
12 of the meeting was.

10:40:38

13 Q. So you did a presentation at
14 this meeting, the content council meeting?

10:40:50

15 A. I did.

16 Q. And who was at the meeting, who
17 attended?

10:41:00

18 A. It was a fairly large group of
19 people from, representatives from all
20 digital departments, from programming,
21 marketing, our digital group. I'm sure
22 there were some other groups there, but it
23 was a very large group of people -- a
24 fairly large group.

10:41:14

25 Q. So it was a fairly important

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1 T. EXARHOS

10:43:43

2 it, specifically. I was definitely aware
3 that we were working with YouTube and a
4 number of other sites at that time to
5 upload promotional materials, so I was
6 aware. I don't think it required my
7 approval, but I was aware of it.

10:43:56

8 Q. Do you think that YouTube was
9 infringing any MTV copyrights by hosting
10 those clips?

11 MR. WILKENS: Objection.

10:44:07

12 A. We authorized those clips. So
13 you know, we knew exactly what we were
14 providing, from a promotional perspective,
15 and they were aware of what we were
16 providing.

17 Q. Right.

18 A. So no.

10:44:15

19 Q. No, you do not think that
20 YouTube was infringing any MTV copyrights
21 by posting those clips?

22 MR. WILKENS: Objection. Calls
23 for a legal conclusion.

10:44:29

24 A. Right. I mean they were
25 authorized. Beyond that, I'm not sure,

1 T. EXARHOS

2 sense of fairness, if MTV sued YouTube for
3 those clips that MTV provided?

4 MR. WILKENS: Objection.

10:45:46

5 A. Yeah. I mean it's hard for me
6 to characterize what would be fair or not,
7 from a legal perspective.

10:45:58

8 Q. Not from a legal perspective,
9 just from your own sense of right and
10 wrong and what is fair and unfair.

11 A. For those specific clips?

12 Q. Correct.

10:46:13

13 A. No. We were providing those
14 clips for a marketing purpose, and we had
15 an understanding that we were providing
16 them to YouTube, and YouTube understood
17 that we were providing them.

10:46:25

18 Q. And from a marketing
19 perspective, were you happy with the
20 results of those clips appearing on
21 YouTube?

22 A. For that specific campaign, my
23 recollection is that it was -- it was a
24 good marketing campaign.

10:46:35

25 Q. It helped raise awareness of the

1 T. EXARHOS

2 to promote new season plus DVD."

3 Why did you send this e-mail to
4 Mr. Graden?

11:07:14

5 A. I was kind of unofficially just
6 reporting back to him on our marketing for
7 that show.

11:07:29

8 Q. And what is the reference here
9 to "Milonakis from content we provided to
10 promote new season plus DVD"?

11:07:47

11 A. It was the promotional material
12 that we created and provided to YouTube
13 and other sites for the purpose of
14 promoting the new season on MTV2 and the
15 DVD that was in store.

16 Q. And if you could turn to the
17 last in time e-mail on the first page.

18 A. Uh-hum.

11:08:00

19 Q. You write, "YouTube touting
20 official partnership in a way that seems,
21 well, official. It is not. But we did
22 give them the content, and they did give
23 us, as I think you saw, a home page,
24 premium position, and results have been
25 overwhelming in just 24 hours. Couldn't

11:08:14

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1 T. EXARHOS

2 times where they are advising us, but it's
3 under our supervision.

12:13:19

4 Q. So can you give me the general
5 timeline of a viral marketing campaign for
6 a particular television program, when does
7 the viral marketing campaign start, when
8 does it end, that sort of general timeline
9 for the marketing?

12:13:32

10 A. Yeah. It varies from priority
11 to priority, just based on what our goals
12 are again. If we have a show that's very
13 well-known, it might be that we just
14 release, you know, short, controlled clips
15 a week out to just generate interest for a
16 new season.

12:13:45

17 But if it's a show that nobody
18 has heard of before, we might start
19 providing content a little bit earlier on
20 to try to build some buzz, and that would
21 lead into the final week of really driving
22 people to tune in to a show. So anywhere
23 from one week to three. That's generally
24 speaking.

12:13:57

12:14:10

25 Q. Does MTV engage in viral

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1 T. EXARHOS

2 itself.

02:25:04

3 Q. But a piece of marketing
4 material need not contain a tune-in
5 message to be promotional, right?

6 MR. WILKENS: Objection.

02:25:18

7 A. I would be making that judgment.
8 So I wouldn't say, just generally
9 speaking, that any piece of content that
10 doesn't have a tune-in message would be
11 promotional in value or -- in value. We
12 would choose very carefully what type of
13 material would be uploaded, if it didn't
14 have a -- either way, we would choose
15 carefully.

02:25:34

16 I wouldn't say that any piece of
17 content without a call to action would be
18 of value to us.

02:25:42

19 Q. Right. And the question was a
20 piece of marketing material need not
21 contain a tune-in message to be
22 promotional, right?

23 MR. WILKENS: Objection.

02:25:50

24 A. I thought you had a follow-up
25 after that. You didn't?