

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOURNE CO.,)
)
 Plaintiff,)
)
 -against-)
)
 TWENTIETH CENTURY FOX FILM CORPORATION,)
 FOX BROADCASTING COMPANY, TWENTIETH)
 CENTURY FOX TELEVISION, INC., TWENTIETH)
 CENTURY FOX HOME ENTERTAINMENT, INC.,)
 FUZZY DOOR PRODUCTIONS, INC., THE)
 CARTOON NETWORK, INC., SETH MACFARLANE,)
 and WALTER MURPHY,)
)
 Defendants.)
)
 Case No. 07 Civ. 8580 (DAB))

Deposition of JEREMIAH HORAN, pursuant
to Rule 30(b)(6) Notice, held at the offices
of Loeb & Loeb, 345 Park Avenue, New York, New
York, on Friday, February 29, 2008, commencing
at 9:57 a.m., before James W. Johnson,
Registered Professional Reporter and a Notary
Public of the State of New York.

1 Horan
 2 Q. Did you talk to anyone who personally
 3 had knowledge of a request having been made?
 4 A. I have to answer that by saying that I
 5 spoke to anyone who might possibly have any
 6 knowledge of it and found that no one did have any
 7 recollection.
 8 Q. Is it fair to say, then, that you don't
 9 know what the request was?
 10 MR. FAKLER: Objection to form.
 11 Q. If a request was made you don't know
 12 what the request was?
 13 A. At the time we were looking I did not
 14 know. Since then I have seen the interoffice memo
 15 that was presented from, that was circulated at
 16 Fox. It says it was denied.
 17 Q. Well, other than any knowledge you may
 18 have from that memo, of what that memo says, do you
 19 know specifically what the request was, what type
 20 of use was requested?
 21 A. Since we had no record of the request,
 22 no, I would not know. Only from that Fox --
 23 Q. And do you know the basis of the denial?
 24 A. I'm sorry, I don't even know that there
 25 was a denial, since I have not seen any record.

1 Horan
 2 Q. So I may be beating a dead horse here,
 3 but if there was a request and if there was a
 4 denial it's fair to say that Bourne doesn't know
 5 the basis for the denial?
 6 A. Well, I'm -- yeah, I guess that would be
 7 right.
 8 Q. When did you first become involved in
 9 this matter?
 10 A. In approximately March of 2007.
 11 Q. And what was your involvement?
 12 A. When we learned of the use, my first
 13 involvement was I viewed it on YouTube and was
 14 asked for my comments by the owner.
 15 Q. And how did you first learn of its use?
 16 A. One of the employees advised us that
 17 they had seen it on television, on YouTube, and
 18 that's when we began looking into it.
 19 Q. And you said that was in March 2007?
 20 A. That's correct.
 21 Q. How do you know the date?
 22 A. How do I know the date?
 23 Q. Mm hmm.
 24 MR. FAKLER: Objection to form,
 25 misstates his former testimony.

1 Horan
 2 A. That is my recollection of the time it
 3 happened. It was in March. I can't tell you
 4 exactly.
 5 Q. Let me clarify the question.
 6 Are there any documents that you know of
 7 that reflect the fact that Bourne made this use in
 8 March 2007?
 9 A. Not that I'm aware of.
 10 Q. Well, what was the name of the employee
 11 who brought this to your attention?
 12 A. Jonathan Stone.
 13 Q. Okay. What did you do following this
 14 being brought to your attention?
 15 A. We first checked our computer files, and
 16 then our hard copy files, to find if we had in fact
 17 issued a license, since we knew that it had been
 18 originally run prior to 2007, to see if we had in
 19 fact, someone had in fact issued a license.
 20 And then we did some checking to see, we
 21 went on the Internet to check to see, to verify the
 22 fact that it had been run and so on, and we had
 23 discussions in the office about what action we
 24 should take, and we consulted our attorney.
 25 Q. Without telling me what your discussions

1 Horan
 2 with your attorney were, could you just tell me
 3 which attorney you consulted.
 4 A. Thomas Levy.
 5 Q. Did there come a time when Mr. Levy made
 6 a claim on behalf of Bourne against Fox?
 7 A. Yes, he did. He sent a letter to Fox.
 8 Q. Do you know when that was sent?
 9 A. It was sent sometime in June of 2007.
 10 MR. ZAVIN: I'm afraid I don't have
 11 other copies of this. Could we mark this as
 12 Exhibit 2.
 13 (Horan Exhibit 2, Letter dated June 21,
 14 2007 from Thomas Levy to Twentieth Century Fox
 15 Film Corporation, marked for identification.)
 16 Q. Mr. Horan, I'm just showing you a letter
 17 from Mr. Levy dated June 21st, 2007 that's been
 18 marked as Exhibit 2.
 19 Is this the letter that you're referring
 20 to that was sent on your behalf?
 21 A. That's correct.
 22 Q. To the best of your knowledge, was there
 23 any claim made against Fox prior to this letter
 24 being sent on June 21st, 2007?
 25 A. No, there was no -- not to, not to my

1 Horan

2 knowledge.

3 MR. ZAVIN: And just again for
4 clarification of the record, that letter is
5 Bates stamped Bourne 0001 through 0002.

6 Q. Mr. Horan, can you explain to me why,
7 having discovered this in March of 2007, Bourne
8 made no claim or didn't bring this to the attention
9 of Fox until June 21st, 2007.

10 A. As I said, we were researching to make
11 sure that we in fact had not issued any licenses or
12 had not received any kind of requests for licenses,
13 and discussed possible actions to take directly,
14 and we decided at that point that we would consult
15 Mr. Levy.

16 Q. Prior to March 2007 had anyone
17 communicated any complaint to Bourne with respect
18 to this use of "When You Wish Upon A Star?"

19 A. No.

20 Q. Had any licensee or potential licensee
21 of "When You Wish Upon A Star" communicated any
22 complaint or brought this use to the attention of
23 Bourne?

24 A. No.

25 Q. Had any licensee prior to March 2007

1 Horan

2 Fox in "Family Guy?"

3 A. The decision was made because as a music
4 publisher we have a right and an obligation to
5 protect our copyrights, and we felt that this use
6 was an invalid use, was an unlicensed use, and
7 therefore we had a right and an obligation to make
8 a claim.

9 Q. Was that the sole reason?

10 A. Yes.

11 (Horan Exhibit 3, Complaint and Jury
12 Demand, marked for identification.)

13 Q. From 1999 to the present, when you were
14 doing your second stint at Bourne --

15 A. Yes?

16 Q. -- do you know how many copyright suits
17 Bourne commenced to protect its copyrights?

18 MR. FAKLER: Object on the ground it's
19 outside the scope of the 30(b)(6) notice.

20 MR. ZAVIN: Objection is noted.

21 A. I know specifically of two that did not
22 go to trial, that complaints were made for invalid
23 use of Bourne copyright songs.

24 Q. Do you know what songs were involved?

25 A. Yes.

1 Horan

2 said they weren't going to license "When You Wish
3 Upon A Star" because of the use in "Family Guy?"

4 A. No.

5 Q. Has Bourne ever granted a license to
6 parody "When You Wish Upon A Star?"

7 A. No.

8 Q. Is that -- has anyone ever asked for a
9 license to parody "When You Wish Upon A Star?"

10 A. Not to my knowledge.

11 Q. But it's fair to say you don't know
12 whether the request that Fox made was to parody
13 "When You Wish Upon A Star?"

14 A. I'm sorry, but I don't, I don't know
15 that, I never saw the original request from Fox, so
16 I don't know what it says.

17 Q. Right, and Bourne doesn't know what it
18 says?

19 A. Right, so we can't say that, I can't say
20 that, if, that Fox was the first one. I cannot say
21 that.

22 Q. But you just don't know either way?

23 A. Either way, correct.

24 Q. Why was the decision made to make a
25 claim against Fox with respect to this, the use by

1 Horan

2 Q. Which songs were they?

3 A. One was "Whistle While You Work," and
4 one was "Hi Ho." The other was "Hi Ho."

5 Q. Who were these claims made against?

6 A. "Whistle While You Work" was made
7 against the Ying Yang Twins and their record
8 company, the name of which I cannot remember, and
9 the other was, the other suit was against Alfred
10 Publishing.

11 Q. Were uses made of either of these songs
12 claimed to be parodies?

13 A. No.

14 Q. Do you know what market substitution is?

15 A. Yes.

16 Q. In your view, what is market
17 substitution?

18 A. In the case of in the music industry,
19 the use of one song for another song or a similar
20 song, substituting one song for another, for
21 whatever use is being made.

22 Q. So that is it fair to say a potential
23 licensee, you know, wants song A, but instead of
24 using song A it uses song B?

25 A. That's correct.

1 Horan

2 Q. Does Bourne have evidence of "I Needed
3 You" substituting in the market for "When You Wish
4 Upon A Star?"

5 A. Well, we have the immediate evidence
6 that we don't have a synchronization license or fee
7 for the use on "Family Guy." Nor do we have
8 performance income from that use, but then also, as
9 stated in Ms. Siroka's report, we don't always,
10 people don't tell us why they don't use a song, but
11 these things do affect a potential user's decision
12 to use the song.

13 Q. Let me clarify the question.

14 Does Bourne have any evidence that any
15 potential licensor, putting Fox aside for the
16 moment, that "Family Guy" any other potential user
17 or licensor or purchaser of songs has chosen to
18 purchase "I Needed You" instead of purchasing or
19 licensing "When You Wish Upon A Star?"

20 A. No, we do not.

21 (Horan Exhibit 4, Responses to
22 Defendant's First Request for Admissions,
23 marked for identification.)

24 Q. I'm showing you a document that's been
25 marked as Exhibit 4, which I will represent to you

1 Horan

2 A. In my opinion, no.

3 Q. So could you explain to me the basis for
4 the denial of request for admission number 11,
5 which states, "Admit that," quote, "I Needed
6 You," end quote, "cannot serve as a substitute in
7 the market for the song."

8 A. Again, I, I don't know that -- we don't,
9 Bourne Company doesn't know that somebody, what
10 somebody could do, so therefore we deny it. We
11 can't say specifically that it cannot serve as a
12 substitute in the marketplace for the song.

13 Q. But it's your opinion that it cannot? I
14 think you just testified to that.

15 MR. FAKLER: Objection, asking for a lay
16 opinion.

17 A. Again, my personal opinion is that it
18 cannot.

19 Q. And then let's go to request for
20 admission number 12, which says, "Admit that
21 plaintiff," or Bourne, "is not aware of any
22 instances where a consumer or other potential user
23 or licensee of this song has purchased, used or
24 licensed 'I Needed You' instead of the song."

25 What is the basis of the denial of that

1 Horan

2 is the responses to requests for admissions that we
3 received from Bourne, and the first question is, do
4 you recognize it?

5 A. Yes.

6 Q. You've seen it before?

7 A. Yes, I have.

8 Q. Did you participate in its preparation?

9 A. Yes, I did.

10 Q. Okay, could you tell me the basis of the
11 denial for request for admission number 10 on
12 page 5, and just so the record is clear, the
13 request for admission reads, "Admit that," quote,
14 "I Needed You," end quote, "has not served as a
15 substitute in the market for the song," the song
16 being "When You Wish Upon A Star," and what is the
17 basis for the denial of that request for admission?

18 A. Because we were not aware of any use
19 does not necessarily mean to us that it has not
20 been used.

21 Q. In your opinion, would any licensor who
22 wants to use "When You Wish Upon A Star" think that
23 "I Needed You" is an acceptable substitute?

24 MR. FAKLER: Objection to the request
25 for an opinion, a lay opinion.

1 Horan

2 request for admission?

3 A. Again, we are not aware of any, but we
4 don't know, so we can't admit that, we cannot say
5 that there is an instance or not.

6 Q. Mr. Horan, I suggest that you read that
7 request for admission carefully, because I believe
8 that it asks, admit that you are not aware of any
9 instances of substitution, and yet you denied that,
10 which is denying -- it implies to me that you are
11 aware of instances of market substitution.

12 Can you explain to me what the basis of
13 the denial for that request for admission was.

14 A. No, I cannot in that case.

15 Q. Do you agree with me that Bourne does,
16 is not aware of any instance where a consumer or
17 other potential user or licensee of the song has
18 purchased, used or licensed "I Needed You" instead
19 of the song?

20 MR. FAKLER: Objection, misstates his
21 prior testimony.

22 MR. ZAVIN: I, I was asking him whether
23 he agreed with that statement.

24 Q. You can answer the question.

25 A. Would you repeat the question.

1 Horan

2 Q. That Bourne is not aware of any
3 instances where a consumer or any other potential
4 user or licensee for the song has purchased, used
5 or licensed "I Needed You" instead of the song.
6 A. Correct, we are not aware.
7 Q. Now, other than Ms. Siroka's opinion --
8 put that aside for the moment -- does Bourne have
9 any evidence that the song "I Needed You" as it
10 appears in "Family Guy" has harmed the market for
11 "When You Wish Upon A Star?"

12 A. As I said, the, the fact that it was
13 used without a license in "Family Guy" is, is -- no
14 synch license, no performance license, has harmed
15 our market.

16 Q. Putting aside any royalty you were
17 deprived of by Fox, Fox's use, putting aside
18 Ms. Siroka's report, do you have any evidence
19 whatsoever that the song "I Needed You" as it
20 appears in "Family Guy" has harmed the market for
21 "When You Wish Upon A Star?"

22 A. No.

23 Q. When did you first contact -- and when I
24 say "you" I mean Bourne -- first contact
25 Ms. Siroka?

1 Horan

2 A. We contacted -- we didn't have direct
3 contact with her. She was contacted by our
4 attorneys.

5 Q. Do you know when?

6 A. I don't know the exact date. It was
7 within the last month.

8 Q. Okay, that is actually what I wanted to
9 know, so I'm going to show you a document that's
10 been marked as Exhibit 3 in this proceeding, which
11 I will represent to you is the complaint that was
12 served against the defendants.

13 Do you recognize that document?

14 A. Yes, I do.

15 Q. Did you see it at the time it was
16 drafted?

17 A. Yes.

18 Q. So is it fair to say that you saw it
19 before it was served?

20 A. Yes.

21 Q. And the complaint is dated October 3rd,
22 2007; is that correct?

23 A. October 3rd?

24 Q. If you'll look at the page 11 --

25 A. Yes.

1 Horan

2 Q. -- does that conform with your personal
3 knowledge that the complaint was prepared and/or
4 served approximately on October 3rd?

5 A. Yes.

6 Q. And is that, and is -- am I correct that
7 that is well before there was any contact made with
8 Ms. Siroka or any report received from Ms. Siroka?

9 A. Yes.

10 Q. In that case, sir, could you tell me the
11 basis in paragraph five for the statement that
12 defendants -- and I'm quoting now -- quote,
13 "Defendants' infringing activities have also caused
14 substantial and irreparable harm to Bourne."

15 A. Would you repeat the question, please.

16 Q. Could you tell me the basis of the
17 statement in the complaint in paragraph five where
18 it is asserted that, quote, "Defendants' infringing
19 activities have also caused substantial and
20 irreparable harm to Bourne."

21 A. We feel that this use without a license,
22 and with the nature of the lyrics that were used,
23 will be harmful to Bourne for two reasons; first,
24 that it would appear that Bourne did not protect
25 its copyrights, in that it was, a use such as this

1 Horan

2 was made without our consent; and secondly, that,
3 with the nature of the use of a classic like "When
4 You Wish Upon A Star," we felt that it could harm
5 the potential market for the use in commercials and
6 in other films.

7 Q. But isn't it fair to say, I think as you
8 previously testified, you didn't have any evidence
9 that any such harm had occurred?

10 MR. FAKLER: Objection, vague as to what
11 you mean by "evidence." You mean admissible
12 evidence?

13 MR. ZAVIN: No. In the common layman's
14 terms.

15 Q. Did you have any evidence in October
16 2007 that there has been any actual harm to the
17 composition?

18 A. The evidence we have is that we have,
19 I've got 25 years' experience in the business, the
20 owner of the company's been in business for a long
21 time, and if a song is used, although we cannot
22 give you dollars-and-cents figures, how a song is
23 used in one instance can and has affected how the
24 song is used in future instances, and we feel that
25 this is a case, exactly this kind of a case now.

FILED UNDER SEAL

FILED UNDER SEAL

1 Horan
 2 this on the grounds that it's outside the
 3 scope of the 30(b)(6) notice.
 4 MR. ZAVIN: Well, it isn't.
 5 MR. FAKLER: How is it within, how is
 6 the public association of Walt Disney on this
 7 notice? Can you show it to me.
 8 DI Q. Mr. Horan, did you ever watch in the
 9 1950s the television program "The Wonderful World
 10 Of Disney?"
 11 MR. FAKLER: I'm going to instruct the
 12 witness not to answer. This is way outside of
 13 anything on this list.
 14 Q. Mr. Horan, are you following the
 15 instruction of your counsel?
 16 A. Yes, I am.
 17 MR. ZAVIN: I have no further questions.
 18 MR. FAKLER: Can we take 10.
 19 MR. ZAVIN: Sure.
 20 MR. FAKLER: Thanks.
 21 (Recess taken.)
 22 MR. FAKLER: First I'd just on the
 23 record like to request that Mr. Horan have the
 24 opportunity to review and correct any final
 25 transcript of the deposition.

1 Horan
 2 in 1998, until 2005 in fact, the only person who
 3 would have denied or handled a telephone call
 4 requesting a use would have been Beebe Bourne, who
 5 has since passed away, B-E-E-B-E Bourne, who died
 6 in 2005.
 7 MR. FAKLER: That's all I have.
 8 MR. ZAVIN: Okay, just very simple.
 9 EXAMINATION BY MR. ZAVIN:
 10 Q. I just -- I understand that Beebe Bourne
 11 died, but your answer remains correct that Bourne
 12 as a company does not have any record of the
 13 request, a request coming in or what the nature of
 14 the request was or why it was denied if it was
 15 denied; is that correct?
 16 A. That is correct.
 17 Q. Okay. And just with respect to your
 18 first clarification, is it, does the rest of your
 19 answer remain the same, that you, other than the
 20 loss of whatever revenue that they might have
 21 expected to receive by Fox from the use, Bourne has
 22 no evidence of market harm or market substitution?
 23 A. That is correct.
 24 MR. ZAVIN: Okay, I have no further
 25 questions, except I reserve the right to

1 Horan
 2 MR. ZAVIN: Agreed.
 3 MR. FAKLER: And so -- thanks, and I
 4 have just a little bit of cross here, so to
 5 speak.
 6 EXAMINATION BY MR. FAKLER:
 7 Q. Mr. Horan, having answered a series of
 8 questions, is there anything in your testimony that
 9 you feel the need, looking back on it, to amplify
 10 or clarify?
 11 A. Yeah, there were a couple of questions
 12 regarding market substitution and harm to the
 13 market. In a couple of instances I gave an answer
 14 of, if asked if there was any harm I said -- and I
 15 guess just an answer -- no, but in those instances
 16 I should, should have said that, brought up the
 17 loss of revenue from the "Family Guy" use that does
 18 affect Bourne Company.
 19 And then there was also a question about
 20 the, whether or not I was aware of whether or not
 21 the, a request from Fox had come in for the use,
 22 and I said I was not aware whether or not it came
 23 in or what was, whether it was denied or how it was
 24 denied.
 25 That should be clarified to state that

1 Horan
 2 reopen this should the court move favorably,
 3 that the witness was improperly instructed not
 4 to answer certain questions or certain lines
 5 of questions.
 6 (Time noted: 11:45 a.m.)
 7
 8
 9

 10 JEREMIAH HORAN
 11 Sworn and subscribed to
 12 before me this ____ day
 13 of _____ 2008.
 14
 15
 16

 17 NOTARY PUBLIC
 18
 19
 20
 21
 22
 23
 24
 25