

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff, CASE NO.

vs. 12-CV-2826 (DLC)

APPLE INC., et. al,

Defendants.

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HIGHLY CONFIDENTIAL

VIDEOTAPED DEPOSITION

DAVID NAGGAR

JANUARY 30, 2013

1918 Eighth Avenue

Seattle, Washington

REPORTED BY:
PAUL J. FREDERICKSON, CCR, CSR
JOB NO. 28641

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more information about the date of this meeting.

A. Yeah, the meeting that I was referring to in previous testimony was a meeting that we called immediately after John Sargent had left us in Seattle, when he came to Seattle to announce that Macmillan was giving us a choice between two terms options.

11:01:48

BY MR. PARKER:

Q. Okay. Okay.

11:02:04

Can you tell me approximately what the date on that was?

A. It was 28th of January.

Q. All right.

A. So it was that afternoon.

Q. All right.

MR. PARKER: So which one are we going to mark?

All right. So I'm going to mark a new document here, email from Mr. Murray to you and Mr. Grandinetti.

11:02:44

[Deposition Exhibit 6 marked.]

MR. FRIEDMAN: This is Naggar 6?

THE WITNESS: Yes.

THE COURT REPORTER: 6.

MR. FRIEDMAN: Thank you.

11:04:21

[Pause.]

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2 So she has now left the company, Ms. Wilson?

3 A. I don't know her status with the company.

4 She is snow longer general counsel.

5 11:13:47 Q. All right.

6 Mr. Bezos was there?

7 A. Yes.

8 Q. Mr. Kessel was there?

9 A. Yes.

10 11:13:54 Q. Laura Porco was there?

11 A. Yes.

12 Q. And you were there?

13 A. Yes.

14 Q. And Mr. Grandinetti was there?

15 A. Yes.

16 Q. All right.

17 So at that meeting did anybody outline the pros

18 and cons to Amazon of going to the agency model?

19 MR. Kipling: I'm going to object and

20 11:14:12 instruct the witness not to answer about what was

21 discussed in the meeting.

22 I've conferred with him and it was in his view and

23 in my view a meeting at which legal advice was being

24 sought and delivered by the lawyers for the company.

25 11:14:25 THE WITNESS: That's correct.

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BY MR. PARKER:

Q. Were you personally seeking legal advice?

11:14:31 MR. KIPLING: He -- I'm not suggesting that he was. I'm suggesting that Amazon was seeking legal advice. That's my client. And on that basis I'm instructing this employee of Amazon not to answer the question.

BY MR. PARKER:

11:14:42 Q. Was there any --

MR. PARKER: I mean, Mike are you going to block me on any question here? I mean, I can't ask any question whatsoever?

11:14:53 MR. KIPLING: You've spent 20 minutes asking him questions about this meeting which has probed who was there, when it happened.

MR. PARKER: Right.

11:15:02 MR. KIPLING: How long it was, whether documents were prepared, which I believe pretty much exhausts what you're permitted to inquire about in a meeting that's privileged.

MR. PARKER: All right.

Well, I'm --

11:15:10 MR. KIPLING: So beyond that I guess I -- yeah, I am. Beyond what you've done, unless you come up

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2 with something else that's permitted that doesn't invade

3 the privilege.

4 BY MR. PARKER:

5 11:15:17 Q. All right. What -- were there business

6 decisions that came out of this meeting?

7 A. Not as distinct from asking for lawyers'

8 counsel as to what we could do.

9 Q. Did you come up with a business strategy

10 11:15:32 for dealing with proposals by Mr. -- such as that

11 presented by Mr. Murray and others?

12 MR. KIPLING: You can answer yes or no to

13 this.

14 A. No.

15 11:15:46 MR. SUTTON: Objection.

16 BY MR. PARKER:

17 Q. So what did you come up with?

18 MR. FRIEDMAN: Objection.

19 MR. KIPLING: That -- instruct him not to

20 11:15:51 answer.

21 You can ask him about what he did after the

22 meeting and what Amazon did after the meeting.

23 MR. PARKER: Oh, I'm about to.

24 MR. KIPLING: Okay.

25 11:15:56 MR. PARKER: But I'm just asking.

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2 A. The next day.

3 Q. And you were personally involved in
4 executing that strategy?

5 A. Yes.

6 Q. What did Mr. Grandinetti tell you about why
7 you were doing that?

8 MR. SUTTON: Objection, form.

9 A. We were taking them down because they had
10 11:32:10 presented us with an ultimatum and terms we couldn't
11 live with and told us we had no option but to go with
12 those terms.

13 Q. And if you didn't go with those terms, what
14 did Mr. Sargent say would be the consequences?

15 11:32:31 A. Well, he said, "You have a choice. You
16 can either go to the agency model or you cannot see
17 new releases for seven months."

18 Q. It was, I'm sorry, seven months?

19 A. I believe it was seven months, yes.

20 11:32:43 Q. So it was sign up with the agency model or
21 windowing; am I right?

22 A. Yes.

23 Q. All right.

24 How long were the buy buttons pulled on
25 11:32:54 Macmillan titles?

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people, all our lawyers, and we discussed the
implications of --

MR. KIPLING: Don't talk about what you
discussed in that meeting.

THE WITNESS: Okay.

MR. PARKER: Okay.

BY MR. PARKER:

Q. What were the implications of pulling
the -- from your perspective, what were the
implications of pulling the buy button on the Macmillan
product?

A. It meant our customers were not going to
have access to the books. That was the immediate
impact.

Q. What positive comes out of it? I mean,
that's negative for the customer.

A. It's negative for the customer.

Q. All right.

So what's -- what's good about that strategy
from Amazon's point of view?

A. We had -- as far as business strategy for
the agency, if we were going to be forced to agency,
we did not want to be in a position where there was
selection available at other retailers that was not

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2 available to Amazon customers or where there was lower
3 prices on selection than was available to Amazon
4 customers. That was as far as we went. And so we
5 11:35:16 were going to make sure that we got those protections
6 for our customers.
7 Q. Price and selection; correct?
8 A. Correct.
9 Q. Did anybody -- withdrawn.
10 11:35:32 Did -- I'm referring now to your conversation
11 with Mr. Sargent, the one you just described.
12 A. Uh-huh.
13 Q. Did he suggest that there were any
14 retailers who would not be windowed on the Macmillan
15 11:35:47 product?
16 A. No, he suggested that everybody would be
17 on one model or the other.
18 Q. So he suggested that Apple, Barnes & Noble
19 and others would not be windowed if they signed onto
20 11:36:00 the agency proposal?
21 A. That was the assumption, yes.
22 Q. All right.
23 And so you were facing a situation in which
24 Amazon would be windowed but Apple and others might
25 11:36:11 not?

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with one retailer but not with Amazon.

Q. MFN on price parity means what?

A. That the price is set for these books
11:48:02 since the publishers under an agency model would be
seller of record, would be the same at Amazon as
anywhere else.

Q. And these are terms that Amazon proposed
and negotiated for with all of the publishers; am I
11:48:15 right?

A. I don't believe we proposed and I don't
believe it was with all the publishers. There were
only five publishers who were negotiating agency.

Q. I'm very sorry.
11:48:27 Amazon insisted on an MFN with the five
publishers who were negotiating agency?

A. It was -- yeah, these were some of the
elements of a 32 page contract, yes.

Q. And it was something that Amazon found to
11:48:42 be in its interest; am I right?

A. In our customers' interest for sure.

Q. And in your interest as well as a
competitor?

A. No, we were -- we were at that point
11:48:54 trying very hard to protect the customer experience.

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2 And so telling us there are books available elsewhere

3 but not on Amazon is bad for our customers.

4 Q. I see. All right.

5 11:49:04 And having books available elsewhere at a lower

6 price than Amazon is bad for your customers too?

7 A. Yes.

8 Q. All right. Okay.

9 I take it that Amazon was able to achieve MFNs

10 11:49:38 in some or all of its contracts with the five

11 publishers that went to agency?

12 MR. SUTTON: Objection, form.

13 A. The -- yes, we got protections on most the

14 issues.

15 11:49:52 BY MR. PARKER:

16 Q. Okay.

17 Did you -- do you recall taking steps to enforce

18 the MFN in any circumstance?

19 MR. KIPLING: Object.

20 11:49:59 MR. SUTTON: Object to form.

21 A. When?

22 Q. Following -- following at the time that you

23 entered into these agency agreements with these various

24 publishers.

25 11:50:08 A. Yes.