

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ALOFT MEDIA, LLC,

Plaintiff,

v.

YAHOO!, INC., et al.,

Defendants.

§
§
§
§
§
§
§
§
§

Civil Action No. 6:08-cv-509

JURY TRIAL DEMANDED

EXHIBIT "4"

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ALOFT MEDIA, LLC,)
))
PLAINTIFF,)
))
VS.) CIVIL ACTION
))
NOKIA, INC., NOKIA CORP.,) NO.: 2:08-CV-99
MOTOROLA, INC., PALM,)
INC., RESEARCH IN MOTION,)
LTD., RESEARCH IN MOTION)
CORPORATION, SONY ERICSSON)
MOBILE COMMUNICATIONS AB,)
AND SONY ERICSSON MOBILE)
COMMUNICATIONS (USA) INC.,)
))
DEFENDANTS.)

ORAL AND VIDEOTAPED 30(b)(6) DEPOSITION OF
KEVIN ZILKA
DECEMBER 17, 2008
*** HIGHLY CONFIDENTIAL ***

ORAL AND VIDEOTAPED DEPOSITION OF KEVIN ZILKA,
produced as a witness at the instance of the DEFENDANTS,
and duly sworn, was taken in the above-styled and
numbered cause on the 17th of December, 2008, from 9:23
a.m. to 6:23 p.m., before Tami Lewis, CSR in and for the
State of Texas, reported by machine shorthand, at the
law offices of the Albritton Law Firm, located at 111
West Tyler Street, Longview, Texas, pursuant to the

1 practice -- practice of obtaining some sort of corporate
2 or government shield between personal and business
3 assets.

4 Q. Who created it?

5 A. I had the help of an attorney, Scott Stevens.

6 Q. And where are -- where are Aloft Media, LLC's
7 offices?

8 A. Here in Longview.

9 Q. You say you had the help of Attorney Stevens.
10 Were -- who else was involved in the formation of Aloft
11 Media, LLC? For example, were you involved in the
12 formation?

13 A. Yeah, I -- I believe I may have executed some
14 documents or at least reviewed them. So in that
15 capacity, I would say I was involved.

16 Q. Anyone else?

17 A. Not to my recollection.

18 Q. How about the attorneys of the Albritton Law
19 Firm?

20 A. In terms of formation, I don't recall them
21 actually taking part in actually helping form -- form
22 the corporate entity.

23 Q. How about in another capacity?

24 A. I can't think of any other capacity that there
25 might be. If you could elaborate on -- on what you had

1 in mind in terms of involvement.

2 Q. Did they suggest that you form a company?

3 MR. RODGERS: Object to that question to
4 the extent it calls for you to reveal attorney/client
5 communications. If it doesn't, you can answer;
6 otherwise, please don't.

7 A. I did have communications with the Albritton
8 Law Firm, but in order to -- if I were to divulge the
9 content of those communications, I would be divulging
10 privileged information.

11 Q. (BY MR. MAHONEY) Did you have communications
12 with the William -- with any of the attorneys of the
13 William Morgan Amerson firm prior to the formation of
14 Aloft Media, LLC?

15 MR. RODGERS: Same instruction.

16 A. Excuse me while I recollect.

17 Those communications do exist; however, to
18 divulge them would be to divulge privileged
19 communications.

20 Q. (BY MR. MAHONEY) Does Aloft Media, LLC -- and
21 is it okay, by the way, if I just refer to it as Aloft?

22 A. Absolutely.

23 Q. Does Aloft sell any products?

24 A. Aloft Texas, LLC does not sell any products.

25 Q. Is there another Aloft entity that does sell

1 products?

2 A. No other Aloft -- there's an Aloft California,
3 LLC. It does not currently sell products.

4 Q. So no Aloft entity sells any products?

5 A. At this time, no.

6 Q. Does Aloft -- and unless I indicate otherwise,
7 when I refer to Aloft, I mean Aloft Media, LLC,
8 incorporated in Texas.

9 Does Aloft market any products?

10 A. No.

11 Q. Does Aloft offer any services?

12 A. No.

13 Q. Am I right in understanding that Aloft's only
14 business goal is to license patents?

15 A. That is correct.

16 Q. Who are Aloft's competitors?

17 A. I haven't given that much thought. I haven't
18 reviewed the competitive landscape to -- to ascertain
19 that.

20 Q. Does Aloft compete in the marketplace with any
21 of the defendants in this lawsuit?

22 A. Aloft does not compete in the terms of selling
23 products and/or services with any of the defendants in
24 this lawsuit.

25 Q. What are the -- is there a parent company of

1 Aloft?

2 A. No.

3 Q. Does Aloft have any subsidiaries?

4 A. No.

5 Q. What are the affiliates of Aloft?

6 MR. RODGERS: Object to form.

7 Q. (BY MR. MAHONEY) Are there any affiliates of
8 Aloft?

9 MR. RODGERS: Same objection.

10 A. Could I have clarification of the definition of
11 "affiliates" as it sometimes varies from case to case?

12 Q. (BY MR. MAHONEY) For example, Stragent, LLC,
13 would you consider Stragent, LLC an affiliate?

14 A. The only relationship between Stragent, LLC and
15 Aloft, LLC is the fact that I am the sole member of --
16 of both. Depending on your definition of "affiliate,"
17 I'm not sure whether that would constitute an
18 affiliation or not.

19 Q. What about Azure Networks, LLC?

20 A. Same answer.

21 Q. That the only relationship between Azure
22 Networks, LLC and Aloft is that you are the only owner
23 of both?

24 A. From a corporate structure standpoint, that's
25 correct.

1 Q. Who are the -- and you're the only owner of
2 Aloft, correct?

3 A. That is correct.

4 Q. Does Aloft have any employees other than you?

5 A. Yes.

6 Q. Who are they?

7 A. One employee, David Depoma.

8 Q. How do you spell the last name?

9 A. D-e-p-o-m-a.

10 Q. What are his job responsibilities?

11 A. Basically managing the office and
12 administrative duties.

13 Q. How long has he worked for Aloft?

14 A. If you -- if you define the -- the start date
15 as the acceptance of an offer, less than a month.

16 Q. Is he a full-time employee?

17 A. Can you define "full time"?

18 Q. 20 to 40 hours a week?

19 A. Yes.

20 Q. What's his salary?

21 A. It's in and around \$40,000 a year. Whether
22 it's paid by hourly or -- I'd have to review the offer
23 again to give you the exact arrangement.

24 Q. And is that salary paid by Aloft only?

25 A. No.

1 Q. What other entities pay for his salary?

2 A. There is a work hire -- there is a employee --
3 an agreement among some of the entities you ind -- you
4 indicated to -- to share the time or the resources that
5 David Depoma brings to the table or offers.

6 Q. Let me just clarify that. So Stragent, Azure,
7 and Aloft have an agreement to employ David Depoma for
8 services for all three entities?

9 A. Correct.

10 MR. RODGERS: Object to form.

11 Q. (BY MR. MAHONEY) Did you say correct?

12 A. Repeat the question. I'm sorry.

13 (Record read.)

14 A. Correct.

15 Q. (BY MR. MAHONEY) And all three of Stragent,
16 Azure, and Aloft contribute to Mr. Depoma's salary; is
17 that right?

18 A. That is the agreement.

19 Q. When you say managing the office, what office
20 are you referring to?

21 A. The office down the street at 211 West Tyler
22 Street.

23 Q. Unit C?

24 A. Correct.

25 Q. How large is that office?

1 A. I would have to check the lease, but I think
2 it's around -- I'm speculating between 1 and
3 2,000 square feet.

4 Q. Have you ever been in the office?

5 A. Yes.

6 Q. Is it air conditioned?

7 A. When I've been in there, it's been pretty cold,
8 so I don't know. I don't think there was a need.

9 Q. How long have you had this office that we're --
10 we're talking about? Let me ask you a different
11 question.

12 Did you -- did you rent a different office
13 at 211 Longview (sic) before this one?

14 A. Yes. We've -- there was a first office that
15 has been subject of a lease since, I believe, last year.
16 And I should probably correct the record. I am -- I
17 haven't technically executed. I am due to execute
18 the -- the lease on the new one this week. It was
19 supposed to happen Monday, but now that I recollect,
20 technically, I haven't executed it yet. So I should
21 clarify the record.

22 MR. MAHONEY: Would you mark these for me.

23 (Exhibit Numbers 4-7 marked.)

24 MR. MAHONEY: That was 4 through 7?

25 THE REPORTER: Yes.

1 Q. (BY MR. MAHONEY) Okay. Mr. Zilka, these are
2 exhibits marked 4 through 7. Just let me know when
3 you've had a chance to take a look at them.

4 A. Okay. I'm ready.

5 Q. For Exhibit 4, do you recognize this document?

6 A. This appears to be the LLC documentation with
7 respect to Aloft Media California.

8 Q. And this is a document bearing production
9 number Aloft CP 000001 through 5; is that right?

10 A. That is correct. I will make note, though,
11 that there appears to be some sort of tax form attached
12 to what appears to be some limited liability corporation
13 documentation or company doc -- documentation.

14 Q. On page 4 of Exhibit 4, does this indicate that
15 the Aloft Media, LLC California entity was created on
16 September 27th, 2006?

17 A. I'm not too familiar with corporate law, but I
18 do see the date there, September 27, 2006 and a stamp
19 above it that says "endorsed."

20 Q. Is that consistent with your recollection about
21 when the California entity was created?

22 A. Sounds about right.

23 Q. Let's take a look, actually, at Exhibit 6,
24 which is a document bearing production number Aloft CP
25 32 through 36. Mr. Zilka, do you recognize this

1 document?

2 A. This appears to be the LLC documentation
3 associated with Aloft Media Texas along with a possible
4 cover sheet here.

5 Q. And so am I right that after forming Aloft
6 Media, LLC in California, you formed Aloft -- you formed
7 an entity called Aloft Media, LLC in Texas?

8 A. That is correct.

9 Q. And what was the timing of the formation of the
10 Texas entity?

11 A. I'm not familiar with corporate law to -- but I
12 do see an effective date of July 12th, 2007 listed here
13 on certificate of filing.

14 Q. And then on page 34, production number 34 of
15 Exhibit 6, do you see about middle of the page the
16 business address of the registered agent, and the
17 registered office address is 11 -- or excuse me,
18 111 West Tyler Street?

19 A. I do see that.

20 Q. Is that accurate?

21 A. I don't -- I recall there being an issue in
22 terms of filing -- yeah, I don't know.

23 Q. Okay. But your -- your agent when you formed
24 the Texas entity was Attorney Stevens, right?

25 A. Agent and/or attorney, yes.

1 Q. Okay. And then after forming the Texas entity,
2 is it correct that you changed the name of the Aloft
3 Media, LLC California entity to Aloft Media Holdings,
4 LLC?

5 A. I remember changing the name, but I don't
6 remember what the name change -- whether it was Aloft
7 Media Holdings, Aloft Media Technologies. I don't
8 recall, but I did change the name.

9 Q. Take a look at Exhibit 8 -- or excuse me, 7,
10 which is before you, Exhibit 7 bearing production number
11 Aloft CP 74. Do you recognize that document?

12 A. I do.

13 Q. Does that indicate to you that the -- the name
14 change for the Aloft Media, LLC California entity was to
15 Aloft Media Holdings, LLC?

16 A. Yes.

17 Q. Does that refresh your recollection that that
18 was, in fact, the name change?

19 A. It does.

20 Q. Turning back to Exhibit 5 bearing production
21 number Aloft CP 17 through 29.

22 A. I see it.

23 Q. What is this document, sir?

24 A. This is a commercial lease naming the tenant as
25 Aloft Media, LLC, the Texas corporation.

1 Q. So am I right that Aloft, the Texas entity --
2 Aloft leased commercial property at 211 West Tyler,
3 Suite C-1 through this lease?

4 A. Correct.

5 Q. And that -- that was the -- that was the first
6 office in Texas that Aloft had?

7 A. That's correct.

8 Q. What was the size of that property? Do you
9 recall?

10 A. I don't, but I do see an indication here of
11 100 square feet, so I'm assuming that's correct,
12 100 square feet.

13 Q. Would you agree that that's a pretty small
14 office?

15 MR. RODGERS: Object to form.

16 Q. (BY MR. MAHONEY) How would you characterize
17 that?

18 A. It's about the size of my office that I work
19 in.

20 Q. At -- at your California law firm?

21 A. Yes.

22 Q. Have you -- have you ever been to this office,
23 the C-1 suite indicated on Exhibit 5?

24 A. Yes.

25 Q. When was that?

1 A. On Monday.

2 Q. This is the same -- this is the same office
3 that you currently lease for Aloft?

4 A. Just -- there should be some clarification,
5 okay. This is the first lease.

6 Q. Okay.

7 A. There's an agreement to execute a second lease.

8 Q. Right.

9 A. This is the lease that was executed
10 October 2007.

11 Q. Uh-huh.

12 A. The first time I visited the office physically
13 that -- that was referred to in Exhibit 5 was last
14 Monday.

15 Q. Okay. What is in the office?

16 A. There is a -- a chair and there's a desk and
17 there's a room for -- for -- for -- for storage if -- if
18 need be.

19 Q. Are there any documents?

20 A. At this time, no.

21 Q. Is there a computer?

22 MR. RODGERS: Counsel, this is getting
23 pretty far afield of any of the topics that I can see on
24 the notice. I mean, you can use your time however you
25 want, but you got his individual notice -- deposition