

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

ANASCAPE, LTD

*Plaintiff,*

v.

MICROSOFT CORP. AND  
NINTENDO OF AMERICA, INC.

*Defendant.*

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Civil Action No. 9:06-CV-158

JUDGE RON CLARK

**ORDER RE: PRESENTING WITNESSES**

\_\_\_\_\_ In keeping with the preference for live testimony expressed in Fed. R. Civ. P. 43, and in order to minimize trial time, eliminate repetitive introductions of a witness, avoid confusing the jury, and reduce the expense of preparing and objecting to deposition excerpts, the court enters the following **ORDER** pursuant to the provisions of Fed. R. Civ. P. 43(a) and Fed. R. Evid. 611. Absent a showing of good cause or agreement of the parties, no witness shall be called twice before all parties have rested, whether in person, by deposition, or by a combination of the two. (This does not prevent reading or playing a deposition for the purpose of impeaching a witness on the stand).

No later than **April 22, 2008**, counsel are directed to confer in good faith about the witnesses who may be unavailable under Fed. R. Civ. P. 32(a)(4) whom they intend to call at trial. Counsel shall agree on a list of the witnesses each will subpoena, or if beyond the 100-mile limit, will arrange to have present at trial. Deposition extracts and objections to extracts need not be submitted for such witnesses.

Absent a showing of good cause, Defendants shall make available during the Plaintiff's

case in chief employees and those under its control (other than designated experts) whom Defendants plan to call live, and whose testimony can fairly be said to be necessary to Plaintiff's case in chief. Of course, the testimony of such a witness called by Plaintiff shall not be limited to subjects covered by Plaintiff when the Defendants cross-examine. Absent a showing of good cause (or agreement of the parties approved of the court) such a witness who is not available live during Plaintiff's case in chief shall not be allowed to testify live during Defendants' case, and both sides shall be limited to presenting that person's testimony by deposition.

So **ORDERED** and **SIGNED** this **18** day of **April, 2008**.



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Ron Clark, United States District Judge