

Hall Reply Declaration Exhibit A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROBERT JACOBSEN, AN
INDIVIDUAL,
PLAINTIFF

VS

MATTHEW KATZER, AN
INDIVIDUAL, AND KAMIND
ASSOCIATES, INC., AN OREGON
CORPORATION D/B/S KAM
INDUSTRIES,
DEFENDANTS

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: NO. C06-1905-JSW
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VIDEO
DEPOSITION OF: JERRY BRITTON

TAKEN BY: PLAINTIFF

BEFORE: HELENA L. BOWES, RPR
NOTARY PUBLIC

TORR PIZZILLO, LEGAL VIDEO
OPERATOR

DATE: AUGUST 24, 2009, 9:06 A.M.

PLACE: GEIGER & LORIA REPORTING
SERVICE
2408 PARK DRIVE
HARRISBURG, PENNSYLVANIA

1 Q Do you remember registering this --
2 there's a domain name that's noted in this e-mail.

3 A Yes.

4 Q And that domain name is?

5 A Computerdispatcher.com.

6 Q Who did you write this e-mail to?

7 A Bob Jacobsen.

8 Q And you said in this e-mail, the subject
9 line in the first sentence?

10 A "I got bored so I..."

11 Q And the first sentence?

12 A "...registered another domain name."

13 Q And that is -- what is the date of this
14 e-mail?

15 A 10/25/04.

16 Q Do you remember registering this domain
17 name?

18 A Yes.

19 Q So you sent this to Bob Jacobsen after you
20 registered a domain name?

21 A Yes.

22 Q Did you talk with Mr. Jacobsen before you
23 registered this domain name?

24 A No.

25 Q Did you tell Mr. Jacobsen that you had any

1 plans -- you make a note in your last sentence -- this
2 last sentence. Can you read the last sentence?

3 A "Tomorrow I'll announce its intended use."

4 Q Did you tell Bob Jacobsen what you planned
5 on doing with it?

6 A No.

7 MS. HALL: All right, I am finished with
8 that e-mail. I am going to hand to the court reporter
9 Exhibit Britton 8. This is RGJ.00003638.

10 Scott, that's in your first set of
11 e-mails -- the first set of PDF e-mails. And the court
12 reporter is handing it to Mr. Britton.

13 (October 29, 2004 e-mail marked as Britton
14 Exhibit Number 8.)

15 BY MS. HALL:

16 Q Mr. Britton, please read that.

17 A (Witness complies.) Okay.

18 Q Do you recognize this e-mail?

19 A Yes.

20 Q You wrote it?

21 A Yes, I did.

22 Q And what does it say?

23 A You want me to read the whole thing?

24 Q What is it about?

25 A It obviously was after I announced the

1 A I don't remember the particulars, but that
2 was when he made me aware that there was litigation
3 over it. We don't have copies of other e-mails
4 suggesting anything else, and I don't have a
5 recollection.

6 Q So it's fair to say that you learned of
7 Mr. Katzer's registration of decoderpro.com through
8 Mr. Jacobsen?

9 A Most likely, yes.

10 Q So going back to Exhibit 7, when you told
11 Mr. Jacobsen you registered Computer Dispatcher Pro,
12 you had no idea then -- this would have been two days
13 earlier -- that Mr. Katzer had registered
14 decoderpro.com?

15 A I don't believe so.

16 Q And so, in your mind, was Computer
17 Dispatcher Pro a JMRI -- not necessarily a trademark --
18 but a mark that they used for their product as well?

19 I mean, why did you -- I guess I'm asking,
20 why did you pick that name?

21 A I do recall searching for several domain
22 names and getting several sites that were already
23 registered for like first responders. I mean,
24 dispatching can relate to buses or fire, police,
25 whatever. I went through several, came up with this

1 one.

2 I don't believe KAM's product was out yet,
3 which he was marketing a CD Pro. I had tested -- we
4 found out through here, the recollection of having a
5 product called Conductor. And then when he made the
6 first insinuations on the 26th -- I have that screen
7 shot that shows that I was out looking for his
8 trademarks and was unable to find it for Computer
9 Dispatcher Pro.

10 Q So on the 25th, the date of Exhibit 7, do
11 you have any idea that there might be an issue with
12 Computer Dispatcher Pro, or had that not even
13 crossed --

14 A No, I hadn't --

15 Q -- your mind yet?

16 A No.

17 Q You did not have an idea?

18 A No.

19 Q And how did you come to learn about
20 Mr. Katzer's allegations that he had Computer
21 Dispatcher Pro as a registered trademark?

22 A I believe that came out on the 26th.

23 Q Who told you that?

24 A When he contacted me late morning.

25 Q Mr. Katzer?

1 A This would be the reference to checkmate,
2 it looks like.

3 Q Yes. Does that help refresh your
4 recollection on that?

5 A Well, based on the time stamps, this was
6 after the preceding page when Mr. Katzer suggested we
7 swap domains, which, of course, was after I found out
8 there was ongoing discussions about that matter that I
9 was not involved in. So I was telling Bob that that
10 had come up.

11 Q Do you have any idea what the "checkmate"
12 refers to?

13 A I'm assuming, because Bob was having
14 ongoing discussions, that it was a reference to a
15 resolution.

16 Q Is it fair to say then that the end goal
17 was to get back decoderpro.com, and this was a way that
18 you're going about to do that?

19 A No, that was never an end goal. It worked
20 itself out along the way.

21 Q So you never registered Computer
22 Dispatcher Pro with the intent of --

23 A Specifically to do this? No.

24 Q Did you think that was a good idea to
25 trade those domain names, or did you think that was a

1 fair trade?

2 A Well, there was no gain to me other than,
3 at the time, to avoid litigation. If he argued -- and
4 obviously had the means to sue me -- why would I not
5 give up my investment in the Computer Dispatcher Pro
6 domain when I could go get another domain to do the
7 same thing? It was unfortunate. It was a headache.
8 The fact that he offered up something that somebody
9 else was looking for, and I was using JMRI, it was
10 like, what the heck.

11 Q Okay.

12 A So the truth of the matter -- the truth of
13 the matter is, even without trading, under those
14 circumstances, with my financial means at the time, I
15 would have given the domain over.

16 Q Okay. Do you have any sense of how
17 important it was to Bob to have the DecoderPro domain
18 name?

19 A No idea.

20 Q Did he ever convey to you that he would
21 like to see that trade happen?

22 A He didn't know about a trade upfront. So
23 I made him aware when it was presented and basically
24 said, hey, guess what, this was offered up as a
25 possibility, and I would pursue it.

1 Q And what was his response to that?

2 A That's when he notified me about the -- I
3 call it pending litigation, but I don't know if that
4 is, in truth, if it was legal at that time or not, but
5 definitely under discussion.

6 Q Did you take away that Bob thought the
7 trade was a good idea, a bad idea, neutral?

8 A Well, my recollection is that he would
9 prefer it be transferred directly to JMRI and -- but
10 the first go-round with Mr. Katzer, it sounded like
11 that was a possibility. The only original stipulation
12 was that I couldn't sell it for a profit. But when it
13 came down to it, he stipulated that I couldn't even
14 give it to JMRI.

15 Q Right. Is it fair to say, though, that
16 back at the time -- I know it's been a while now --
17 your understanding from Mr. Jacobsen was that it was
18 important to recover the decoderpro.com domain name,
19 that that was something that was important to
20 Mr. Jacobsen?

21 A Important, but I don't know to what
22 extent. I mean, you know, obviously this has gone on
23 for so long, it's obviously very important to him. But
24 in terms of what my impression was at the time, a nice
25 touch, but not required. Now, you certainly wouldn't

1 Mr. Jacobsen?

2 A He's not addressed to it -- it's not
3 addressed to him, so I would not think so. No. In the
4 e-mails later with Mr. Jacobsen, I told him that we
5 didn't discuss the terms of any agreement or anything.
6 So I don't think I would have given him anything
7 earlier either.

8 If I outright sent him a copy, I would
9 have included him on the addressee, unless I was doing
10 a blind, and I don't think I would have, based on the
11 content in here.

12 Q What did you hope would happen to
13 DecoderPro once it got transferred? Did you care?

14 A Well, the original intent -- and I have to
15 look back at -- do we have a copy? I'd have to refer
16 back to the complaint, and I know it's buried here
17 somewhere.

18 Originally, when we had e-mail
19 discussions, Mr. Katzer only was going to prohibit me
20 from selling the domain at a profit or with the
21 proceeds going to the NMRA. Later, they said that I
22 couldn't transfer it. But in between there, my plan
23 was to just turn it over to Mr. Jacobsen.

24 MS. HALL: For the record, I just handed
25 Mr. Britton Exhibit Britton 11, which is the complaint.

1 BY MR. JERGER:

2 Q So your plan was to hand it over to
3 Mr. Jacobsen?

4 A Yes. And again, that was not the original
5 plan. That's what came out on that Monday or Tuesday,
6 when all this started and I found out from Mr. Jacobsen
7 about all the litigation.

8 Q What was the original plan then?

9 A Mr. Katzer was the first one to propose
10 giving it to me in exchange.

11 Q Before you -- okay, and at that point, you
12 had not spoken to Mr. Jacobsen; is that correct?

13 A No, there was no -- there was no plan in
14 advance, or conspiracy, if you will.

15 Q So what would you have done with
16 DecoderPro had Mr. Katzer given it to you at that time?

17 A Given it to JMRI.

18 Q And then Mr. Jacobsen got involved and
19 said what?

20 A I think you're taking things out of
21 sequence here. When Mr. Katzer first contacted me, he
22 suggested trading for decoderpro.com. I contacted
23 Mr. Jacobsen, what's the deal kind of thing. He tells
24 me about the litigation. Then there's that e-mail from
25 me saying I didn't realize there was something going

1 on, and then acknowledging this may be a way to get it
2 traded. Do you follow me there?

3 Q I'm following you.

4 A Okay.

5 MR. JERGER: All right, I have no further
6 questions.

7

8

REDIRECT EXAMINATION

9

10 BY MS. HALL:

11 Q I have just a few on redirect. This is
12 Victoria Hall, for Plaintiff Robert Jacobsen.

13 Mr. Britton, just three general subject
14 areas. You have to referred to the dealings with --
15 your correspondence with Bob Jacobsen, and you referred
16 to a dispute or litigation, or something of that sort,
17 with Mr. Katzer.

18 Now, are you sure that it's litigation?
19 Are you sure that it's a dispute? What was it? What
20 was going on in October of 2004 that you can say you're
21 positively aware of?

22 A A dispute.

23 Q So you're not sure if it was litigation
24 then?

25 A That's correct.