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2 IN THE UNITED STATES DISTRICT COURT

3 FOR THE DISTRICT OF COLUMBIA

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6 UNITED STATES OF AMERICA, )
)
7 Plaintiff, )
)
8 vs. ) Case No. 981232(TPJ)
)
9 MICROSOFT CORPORTATION, )
)
10 )
Defendant. )
11 )

DEPARTMENT OF JUSTICE
SEP - 2 1998
ANTITRUST DIVISION
SAN FRANCISCO OFFICE

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DEPOSITION OF STEVE WADSWORTH, a
16 witness herein, taken on behalf of the plaintiff at
17 8:16 a.m., Tuesday, September 1, 1998, 500 South Buena
18 Vista Street, Burbank, California, before Serena Wong,
19 CSR, RPR, pursuant to Notice.
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REPORTED BY:
24 Serena Wong
CSR No. 10250, RPR
25 Our File No. 1-49088

Q Okay. Why did Disney want to have a channel on the Active Desktop?

A Because it -- the Active Desktop if shipped with -- as part of IE, which as my understanding was, would be shipped with Windows operating system, would provide for a high degree of visibility and accessibility to our websites from a user of most PCs.

Q What made you think that being on the

1 Active Desktop would provide Disney with a high degree
2 of accessibility to users of most PCs?
3 A Because it was our understanding that
4 Microsoft was planning to distribute the Active Desktop
5 functionality and the Internet Explorer browser with
6 the Windows operating system, which is highly
7 distributed and holds a majority market share among
8 operating systems for PCs.
9 Q Did anyone from Microsoft ever discuss
10 with Disney the advantages of having -- of Disney
11 having a channel on the Active Desktop?
12 A Yes.
13 Q What did Microsoft tell Disney would be
14 the advantages of having a channel on the Active
15 Desktop?
16 A Just that. That we would get a high
17 degree of visibility and accessibility to our websites
18 through that distribution because of the icon and
19 links, both from the browser and from the Active
20 Desktop.
21 Q Do you remember who from Microsoft told
22 you that?
23 A Well, at various times, Bill Spencer and
24 Brad Chase.
25 Q What do you recall Brad Chase telling

1 Disney about the distribution of the Active Desktop?
2 A I don't recall specific words, but it was
3 conveyed that it was highly valuable to be there, to be
4 an icon or have an icon on the Active Desktop because
5 the distribution would be significant. I'm not sure
6 that it was very specific other than, you know, it's
7 going to be distributed or will be distributed with the
8 Windows operating system and that there was a high
9 degree of value associated with it. And initially to
10 the point of, you know, content providers should be
11 willing to pay to be -- or have an icon on the Active
12 Desktop.
13 Q Did Mr. Chase tell you why there would be
14 a high degree of value associated with being on the
15 Desktop?
16 A As I recall, it was basically that we
17 would have an icon -- if we were to have an icon on the
18 Active Desktop, we would have an icon that would be
19 viewed by future users of the Windows operating system
20 at default. Although at various times in the
21 conversation, the specifics changed because the
22 development of that product was underway.
23 But basically, we would have an icon that
24 got high visibility because of the distribution with
25 Windows and because of distribution with IE, the

1 Internet Explorer, both the products that Microsoft was
2 -- or was planning to distribute very broadly and
3 aggressively.
4 Q What do you recall Bill Spencer telling
5 you about the distribution of the Active Desktop?
6 A You know, largely the same things; that
7 it had a very high degree of value; that it basically
8 was a position on the Windows Desktop; and that
9 therefore, you know, a huge amount of users would see
10 it, and it was very valuable. Very similar things.
11 Again, I'm paraphrasing my recollection of what was
12 said, but that sort of thing.
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17 Q In your discussions with Microsoft about
18 Disney getting a channel on the Active Desktop, did
19 anyone from Microsoft ever refer to the Windows Desktop
20 as Microsoft's crown jewel?
21 A I recall Bill Spencer at one point did.
22 Q Do you remember the context of that
23 statement?
24 A It was in the context of discussing what
25 we were -- would be getting versus what we would be

1 giving in order to get an Active channel icon on the
2 Active Desktop as -- you know, on the default. And it
3 was just, as I recall, the context was Bill describing,
4 you know, the significance of the value of what we were
5 getting.
6 (The document referred to was marked by
7 the court reporter as Government's Exhibit 613 for
8 identification and is attached hereto.)
9 Q BY MS. ROTH: I'd like you to take a look
10 at what's been marked Government's Exhibit 613.
11 Do you recognize this document?
12 A I recognize it as my notes.
13 Q Just for the record, this is a document
14 Bates stamped TWDC No. 0276. At the top of the
15 document is written "Brad C., and Bill S."
16 A Uh-huh.
17 Q What did that mean?
18 A Brad Chase and Bill Spencer.
19 Q Do you recall what these notes were
20 referring to? Strike that.
21 Do you recall when you took these notes?
22 A I don't specifically recall. I mean, I
23 see the date, so it's clear I took them on May 19,
24 1997. But I don't specifically recall doing it. But
25 I'm sure I did.

1 Q The second line on the notes reads "AOL
2 gets most of their subs from Windows."
3 What is your understanding of what "subs"
4 means?
5 A Subscribers.
6 Q Do you recall either Brad Chase or Bill
7 Spencer ever telling you that AOL gets most of their
8 subscribers from Windows?
9 A I don't specifically recall it, but I
10 would presume from my notes that that was said in the
11 context of the conversation that these notes are
12 tracking.
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Q Did Disney's agreement with Microsoft place restrictions on Disney's ability to promote the Netscape Navigator?

A Yes.

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14 Is it your understanding -- does Disney's
15 agreement with Microsoft limit its ability to promote
16 and market Netscape Navigator?
17 MR. FESSEL: Objection. Form.
18 THE WITNESS: Yes, as I recall.
19 Q BY MS. ROTH: Would Disney's agreement
20 with Microsoft have prohibited Disney from having its
21 logo and trademark characters on Net Center?
22 A Yes, as I recall it would, at the time.
23 Q Would Disney's agreement with Microsoft
24 have prohibited Disney from displaying a Netscape logo
25 or trademark characters on some of Disney's web pages?

1 MR. FESSEL: Objection. Form.
2 THE WITNESS: Yes, as I recall. And
3 again, at the time; at the time that we entered into
4 the agreement.
5 Q BY MS. ROTH: Would the agreement between
6 Disney and Microsoft have prohibited Disney from
7 providing links from Disney web pages to a web page
8 that would allow users to download a Netscape Navigator
9 browser?
10 A Yes, as I recall.
11 Q Would the agreement between Disney and
12 Microsoft have prohibited Disney from representing that
13 their websites were best viewed with Netscape
14 Navigator?
15 A Yes, as I recall.
16 Q Would the Disney agreement with Microsoft
17 have prohibited Netscape from promoting -- strike that.
18 Would the Microsoft agreement with Disney
19 have limited Netscape's ability to promote the Disney
20 channel that is on Net Caster?
21 A Yes, as I recall.
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Have there been changes in your contracts with Microsoft since you first entered into the contract?

A There have been changes to Microsoft's

1 position regarding the contract. I'm not sure how
2 official, but from my Microsoft's perspective, I think
3 they are official. I believe their approach has been
4 to send us an e-mail that, from their perspective,
5 serves as an official notification that certain
6 restrictions would not apply.
7 And as I recall -- I can't remember the
8 specific date -- we did get an e-mail from either Wil
9 Poole or Bill Spencer, I'm not sure which, saying that
10 the restrictions with respect to, you know, marketing
11 and promotion did not apply, from their perspective, no
12 longer applied. And as I recall, the mail said it --
13 you know, that served as an amendment to the agreement
14 or official notification.
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22 Q At some point in time, did a dispute
23 arise between Microsoft and Disney over the appearance
24 of Disney's Net Caster channel icon?
25 A Yes.

1 Q What was that dispute about?

2 A We had, as we had said we were going to

3 and as we had told Microsoft, we had also developed a

4 Net Caster channel. And that Net Caster channel

5 included in the icon for it the Disney scripted -- you

6 know, "Disney," which is the trademark, I think, or

7 copyright, whichever it is, Disney logo for generally

8 the Walt Disney Company.

9 And although it seemed clear to me and it

10 seems clear from reading the agreement that we had

11 specifically carved out from any restrictions with

12 respect to Netscape or other browsers the opportunity

13 to do a Net Caster channel and fully implement a Net

14 Caster channel, et cetera, none of the restrictions

15 applied specific to that. Their perspective was that

16 the use of an icon or the Disney scripted logo was an

17 icon or Disney -- Disney icon or logo graphic, Disney

18 graphic.

19 They felt that that was in violation of

20 the contract and violated the restrictions that the

21 contract placed on any, you know, use of our logos or

22 icons with respect to Netscape. I totally disagreed

23 and told them that, no, I thought our contract

24 specifically allowed to us create the Net Caster

25 channel, which included the icon for the channel

1 representation. And he wanted us to change it, change
2 it to text only, meaning, you know, like just some
3 standard font of text that might say Disney or
4 something like that, which we were -- I was totally
5 uncomfortable with largely because I thought he was
6 wrong, and was unhappy that he was making this
7 assertion that we were in violation of the contract.
8 Q When you said "he," who were you --
9 A Bill Spencer.
10 Q At some point in time, did anyone from
11 Microsoft threaten to remove the Disney Channel from
12 the Active Desktop?
13 A As I recall, and as I indicate in this
14 e-mail, Bill in one of our many conversations on this
15 topic said that they would go down the dispute
16 resolution path of our agreement. In our agreement, in
17 the event of a dispute, we have a dispute resolution
18 process that I believe involved a 30-day, sort of,
19 let's see if we can figure it out. And if we can't,
20 somebody would move to terminate. And he said that he
21 would do that. And in the meantime, if they needed to
22 pull our icon off the Active Desktop, they would
23 consider doing that, and they might do it.
24 Q Looking at ~~Exhibit 617~~ Gov. Ex. 2023, halfway down the
25 page it reads, "Bill also made it clear that Brad

1 believes we will back down because we would be screwed
2 to pick Net Caster over Microsoft. I pointed out to
3 Bill that I didn't like being strongarmed, and that
4 this approach to the relationship is only going to
5 screw it up."
6 What did you mean when you wrote "pick
7 Net Caster over Microsoft"?
8 A Um, basically, I think Microsoft viewed
9 our -- my interpretation is that Microsoft viewed our
10 use of a Disney icon as something that they didn't want
11 us to do, and they positioned it as or believed one or
12 the other that it was in violation of the contract so
13 that we would not have a compelling interesting channel
14 on Net Caster.
15 And that basically we either had to
16 change it or risk losing the Microsoft channel icon
17 position. And that faced with that choice, there, from
18 a business perspective at the time, was only one
19 obvious thing to do. And that would be, well, if you
20 have a business decision, it's purely a business
21 decision, and there's a value proposition that being on
22 the Microsoft Active Desktop was substantially more
23 valuable than being -- having a Net Caster channel or
24 compelling Net Caster channel. And then if we had to
25 make the choice between that, a compelling interesting

1 Net Caster channel using the logo or -- and not being
2 on the Microsoft Active Desktop or wanting to stay on,
3 that we'd obviously choose to stay on, because the
4 value associated with being on a Microsoft Active
5 Desktop channel was substantially higher than the Net
6 Caster channel, and we'd be making a big mistake, just
7 a bad business decision if we made that choice.
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20 Q Looking, again, at ~~Exhibit 617~~ Gov. Trial Ex. 213, where you
21 wrote, "We are being roughed up by the 1000 pound
22 gorilla of the industry."
23 A Uh-huh.
24 Q What did you mean when you wrote that?
25 A Well, all along -- the entire negotiation

1 for the Active Desktop deal was fairly drawn out, and a
2 significant portion of the negotiations centered around
3 the Netscape Net Caster channel versus Microsoft Active
4 Desktop channel, and what restrictions we might have,
5 and whether it would be exclusive or not.
6 And it went back and forth quite a bit,
7 and we didn't want it to be exclusive. They did. And
8 in the end, I viewed this as an effort by them to
9 reduce -- in my opinion reduce the value of the Net
10 Caster channel to us and to Netscape. And it -- I was
11 -- I felt like, yeah, these guys have all of the cards
12 because they have this broad distribution capability
13 through the Windows operating system and the Desktop.
14 And, you know, in the end, yeah, they have substantial
15 market share with PCs.
16 So in my mind, that made them the 1000
17 pound gorilla of the industry. I mean they have huge
18 market share in the industry. And I felt like they
19 knew, and they said they knew that, you know, we'd be
20 making a mistake to choose something else over them,
21 which I basically agreed with, but felt like it was a
22 difficult way to get there, and it was not -- I was
23 very uncomfortable with it; so I felt like we were
24 being, you know, leveraged.
25 Q You said that there were a lot of

1 discussions back and forth about exclusivity and the
2 restriction placed on Disney.
3 What were the reasons that Disney agreed
4 to the promotional restrictions that are contained in
5 Disney's agreements with Microsoft and Netscape?
6 A It was -- it came down to being necessary
7 to get the deal done. Initially, Microsoft didn't want
8 us to do any promotion at all, and at first didn't want
9 us to have a Net Caster channel at all. And we were
10 very uncomfortable with that concept, initially started
11 going down that path, and more and more became
12 uncomfortable; that just wasn't the right thing for us
13 to do as a business.
14 However, you know -- and we eventually
15 were be able to get off of not having a channel at all.
16 And then the issue came around, okay, well, how much
17 promotion are we going to do on behalf of that Netscape
18 Net Caster channel?
19 And obviously Microsoft wanted to limit
20 it significantly so that we would -- most of the
21 marketing promotion effort we would do, if not all of
22 it, on behalf of a browser would be for them. That was
23 the value they were looking at getting out of the deal,
24 that plus distribution of their browser and things like
25 that. And so it was just one of the negotiating points

1 of the deal, was we had agreed to limit our marketing
2 and promotion with other browsers.
3 Q Why did you agree to limit the marketing
4 and promotion of other browsers?
5 A Because in the value proposition of the
6 relationship, we made the determination, the business
7 judgement that having the channel and getting the deal
8 done and doing the Active Desktop channel was worth
9 giving up some abilities to do some other marketing and
10 promotion on behalf of someone else. So we determined
11 it was worth it, and we wanted to have the Active
12 Desktop channel.
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14 Q BY MR. FESSEL: You testified earlier
15 about Microsoft objecting to Disney's logo or use of
16 the logo on the Netscape Net Caster?
17 A Right.
18 Q Did Disney ultimately change the logo?
19 A Yes.
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