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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91210234
Party	Plaintiff Carole A. Faulkner dba C I Host
Correspondence Address	BRET MADOLE DAVID GOODMAN & MADOLE PC 5420 LBJ FREEWAY, SUITE 1200 DALLAS, TX 75240 UNITED STATES faulkner4010@yahoo.com, mgoodman@dgmlegal.com, ngray@dgmlegal.com, anikolopoulos@dgmlegal.com
Submission	Other Motions/Papers
Filer's Name	Andy Nikolopoulos
Filer's e-mail	anikolopoulos@david-goodman.com, jsagui@david-goodman.com
Signature	/Andy Nikolopoulos/
Date	07/03/2014
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CAROLE FAULKNER, INDIVIDUALLY	§	
AND D/B/A C I HOST, AND	§	In the Matter of Application
CHRISTOPHER FAULKNER,	§	Serial No. 85703135
INDIVIDUALLY AND D/B/A C I HOST;	§	
	§	Mark: C I Host
Opposers,	§	
v.	§	Opposition No. 91210234
	§	
GARY DOMEL,	§	
	§	Published: February 12, 2013
Applicant.	§	

OPPOSERS' NOTICE OF RELIANCE PURSUANT TO RULE 2.120(j)

Opposers, Carole Faulkner, Individually and d/b/a C I Host, and Christopher Faulkner, Individually and d/b/a C I Host, hereby submit this Notice of Reliance pursuant to Rule 2.120(j). Specifically, Opposers rely on the discovery deposition of Applicant Gary Domel which was taken on March 20, 2014. The portions of the deposition transcript relied upon are as follows:

Page 18, Line 13 through Page 20, Line 13

This testimony is relevant because it addresses the underlying lawsuit between the parties that the Applicant believes gives him the right to the trademark in question.

Page 22, Line 2 through Page 23, Line 15

This testimony is relevant to show that the Applicant has no prior experience with any forms of intellectual property.

Page 23, Line 16 through Page 26, Line 22

This testimony is relevant because it addresses the Applicant's trademark application and the misstatements contained therein.

Page 26, Line 23 through Page 28, Line 18

This testimony is relevant because it addresses the Applicant's alleged first use of the mark in question.

Page 29, Line 12 through Page 32, Line 19

This testimony is relevant because it addresses the purported foreclosure process that the Applicant wrongfully believes gives him ownership of the mark in question.

Page 32, Line 20 through Page 33, Line 23

This testimony is relevant because it discusses the Bill of Sale attached to the Applicant's Answer and the Applicant's belief that this Bill of Sale effectuated a valid transfer of ownership rights to the mark in question.

Page 34, Line 18 through Page 36, Line 7

This testimony is relevant because it addresses the Applicant's mistaken belief that there was a valid license of the mark in question to Cassiopeia.

Page 36, Line 12 through Page 37, Line 5

This testimony is relevant because it shows how the Applicant could not articulate how certain documents identified in his Initial Disclosures support any of his claims.

Page 37, Line 6 through Page 40, Line 14

This testimony is relevant because it shows how the Applicant could not articulate how certain documents identified in his Initial Disclosures support any of his claims.

Page 40, Line 15 through Page 41, Line 23

This testimony is relevant because it addresses a prior global settlement negotiation that Applicant admits could have included the ownership of the mark in question, but was excluded due to the Opposer's claim of right to the mark.

Page 41, Line 23 through Page 44, Line 11

This testimony is relevant because it addresses the promissory note and security agreement that Applicant wrongfully believes gives him the right to the mark in question.

Page 44, Line 12 through Page 45, Line 2

This testimony is relevant because it shows that Applicant was under the mistaken belief that there was a trademark registration existing at the time the Security Agreement was executed.

Page 45, Line 3 through Page 47, Line 19

This testimony is relevant because it addresses the issue of goodwill relating to the mark in question and how this goodwill was never included in the Security Agreement nor intended to be transferred.

Page 48, Line 10 through Page 53, Line 11; Page 55, Lines 6-20

This testimony is relevant because it demonstrates the Applicant's lack of use of the mark in question contrary to his representation in the trademark application.

Page 55, Line 21 through Page 60, Line 25

This testimony is relevant because it demonstrates that the Applicant has no intent to use the mark in question. This testimony is also relevant because it demonstrates the Opposer's long-standing use of the mark in question.

Page 62, Lines 4-17

This testimony is relevant because it demonstrates that the Applicant does not have experience in the industry which he claims he will be utilizing the mark under in his trademark application. This testimony is also relevant because it confirms a likelihood of confusion in the marketplace should the Applicant's application be approved.

Page 62, Line 18 through Page 62, Line 17

This testimony is relevant because it proves that there was no assignment or any other legal transfer of rights to the mark in question from the Opposers to the Applicant.

Page 63, Line 18 through Page 64, Line 18

This testimony is relevant because it further proves that the Applicant is not making use of the mark contrary to his representation in the trademark application.

Page 64, Line 19 through Page 65, Line 24

This testimony is relevant because it shows that the Applicant has not conducted himself in a manner consistent with that of a purported trademark holder.

Respectfully submitted,

/s/ Andy Nikolopoulos

Mark A. Goodman

State Bar No. 08156920

mgoodman@david-goodman.com

Daniel J. Madden

State Bar No. 12789180

dmadden@david-goodman.com

Andy Nikolopoulos

State Bar No. 24044852

anikolopoulos@david-goodman.com

David & Goodman, P.C.

A Professional Corporation

Two Lincoln Centre

5420 LBJ Freeway, Suite 1200

Dallas, Texas 75240

972-991-0889

972-404-0516 FAX

Attorneys for Carole Faulkner and
Christopher Faulkner

PROOF OF SERVICE

This is to certify that on the 3rd day of July, 2014, a true and correct copy of the above and foregoing document was served upon the attorney of record for Gary Domel via email and certified mail, return receipt requested to James G. Ruiz, Winstead PC, 401 Congress Avenue, Suite 2100, Austin, Texas 787011.

/s/ Andy Nikolopoulos

Andy Nikolopoulos

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CAROLE FAULKNER,)	
INDIVIDUALLY AND D/B/A)	In the Matter of
C I HOST, AND CHRISTOPHER)	Application Serial
FAULKNER, INDIVIDUALLY)	No. 85703135
AND D/B/A C I HOST,)	
)	Mark: C I Host
Opposers,)	
)	Opposition No. 91210234
v.)	
)	
GARY DOMEL,)	Published: February 12,
)	2013
Applicant.)	

ORAL DEPOSITION OF

GARY DOMEL

MARCH 20, 2014

ORAL DEPOSITION OF GARY DOMEL, produced as a witness at the instance of the Opposers and duly sworn, was taken in the above-named matter on the 20th day of March, 2014, from 1:25 p.m. to 3:05 p.m. before TEENA L. HARMON-DAVIS, a Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand at the offices of Winstead PC, 401 Congress Avenue, Suite 2100, Austin, Texas, pursuant to the Federal Rules of Civil Procedure and/or the provisions stated on the record or attached hereto.

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A P P E A R A N C E S

FOR THE OPPOSERS:

Mr. Andy Nikolopoulos
DAVID, GOODMAN & MADOLE, P.C.
5420 LBJ Freeway, Suite 1200
Dallas, Texas 75240
anikolopoulos@dgmlaw.com

FOR THE APPLICANT:

Mr. James G. Ruiz
WINSTEAD, PC
401 Congress Avenue, Suite 2100
Austin, Texas 78701
jruiz@winstead.com

ALSO PRESENT:

Ms. Teena L. Harmon-Davis, Court Reporter

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1 GARY DOMEL,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. NIKOLOPOULOS:

5 Q. Good afternoon, Mr. Domel.

6 A. Good afternoon.

7 Q. My name is Andy Nikolopoulos, and I represent
8 Christopher and Carole Faulkner both individually and
9 doing business as C I Host, and they're -- is it your
10 understanding that they are the opposers in this
11 trademark action?

12 A. It is.

13 Q. I understand there's quite a history between
14 all the parties, but you and I have never met before
15 today, correct?

16 A. That is correct.

17 Q. Okay. What is your full name?

18 A. Gary Alan, A-L-A-N, Domel.

19 Q. A-L-A-N?

20 A. That's correct.

21 Q. Okay. And you understand that you're here
22 today to give a deposition in a matter that's pending in
23 the Trademark Trial and Appeal Board of which you are an
24 applicant for a trademark and my clients are the
25 opposers, correct?

1 A. That is correct.

2 Q. Have you ever had your deposition taken before?

3 A. Yes, sir.

4 Q. Okay. Your lawyer may have already gone
5 through this with you, and you probably already do know,
6 but I still would like to offer what I would like to be
7 the rules of the road going forward this afternoon so you
8 and I can communicate effectively and smoothly. First
9 and foremost, you do understand you're under oath today,
10 correct?

11 A. I do.

12 Q. And this is the same oath that you would give
13 in front of a judge and a jury?

14 A. I do.

15 Q. Well, in this matter I don't think we're going
16 to have a judge and a jury. It's done a little
17 differently. But you know what I'm getting at?

18 A. Same intent, yes, sir.

19 Q. Same intent and the answers have the same force
20 and effect, correct?

21 A. Correct.

22 Q. And even though we're in an informal setting
23 here in your lawyer's office, the answers will be treated
24 as if they were being presented in front of the panel in
25 this case, correct?

1 A. They will.

2 Q. Okay. And you assure me that your answers
3 today will be truthful and complete?

4 A. Yes.

5 Q. If I ask you a question that's unclear in any
6 way, please let me know and I will do my best to clarify
7 it. As you probably already know, it's important that we
8 don't talk over each other. I will do my best to let you
9 finish an answer before I go on to my next question, and
10 I hope you can give me the same courtesy when I'm trying
11 to get my question out.

12 A. Yes.

13 Q. And for the convenience of the court reporter
14 let's try to avoid any nonverbal gestures, head nods.

15 A. Yeah.

16 Q. You already know this. And, of course, if you
17 need to take a break, please let me know and we'll take
18 a break. I don't anticipate that we're going to be here
19 too long this afternoon, but that doesn't mean you may
20 not need a break sooner rather than later.

21 A. Okay.

22 Q. Occasionally your lawyer may object to
23 questions. Unless he instructs you not to answer I would
24 ask that you continue and provide an answer to me. And
25 is that your understanding of how the objection process

1 works in these depositions?

2 A. It is.

3 Q. And you're fully prepared to answer all
4 questions regarding this matter today?

5 A. To the extent possible, yes.

6 Q. There's nothing that will prevent you from
7 giving me your full attention?

8 A. No.

9 Q. No medications that you may be under?

10 A. I do take a medication for my heart. It's
11 metoprolol, and sometimes it causes my thought process
12 not to be as linear as I would like it to be.

13 Q. I understand. I don't know much about that
14 drug, but if you do get the sense that that's the
15 direction you're heading, please let me know and we can
16 address it accordingly.

17 A. Okay.

18 Q. What did you do to prepare for your deposition
19 today?

20 A. Basically just thought about the series of
21 events that have happened and what my positions were.

22 Q. Now, I don't want to know what you said with
23 your lawyer, but did you speak to your lawyer at some
24 time?

25 A. Yes, I did.

1 Q. Today?

2 A. Uh-huh.

3 Q. Approximately how long?

4 A. Thirty minutes.

5 Q. Okay. Did you review any documents in
6 preparation for --

7 A. No.

8 Q. Okay. Mr. Domel, what is your current home
9 address?

10 A. 25709 Cliff Circle, Spicewood, Texas 78669.

11 Q. Did you say Spicewood, Texas?

12 A. Spicewood, one word.

13 Q. What county is that?

14 A. It's in Travis.

15 Q. Travis? How long have you lived at that
16 address?

17 A. Since 2010, so three years. Four. Sorry.

18 Q. How long have you lived in Travis County?

19 A. Let me ask for some clarification.

20 Q. Sure.

21 A. I've lived in Travis County, but not on -- not
22 continually, okay? So I moved from Williamson County to
23 Travis County to Burnet County, then back to Travis.

24 Q. Well, let's do it this way. And I don't want
25 to go too far back, but --

1 A. Yeah.

2 Q. Since 2010 you've lived in Spicewood, Texas,
3 correct?

4 A. That is correct.

5 Q. Okay. Where did you live before Spicewood?

6 A. Burnet County, in Marble Falls.

7 Q. And how long did you live there?

8 A. You didn't tell me there was going to be math.
9 Just a minute.

10 Q. Do your best.

11 A. Six years.

12 Q. Are you married?

13 A. I am.

14 Q. How long have you been married?

15 A. Twenty years this year.

16 Q. Very good. What is your spouse's name?

17 A. Kim.

18 Q. What is Kim's occupation?

19 A. She's a homemaker, mother. I don't know what
20 the politically correct term is now.

21 Q. Did you have any other marriages before that
22 one?

23 A. I did.

24 Q. How many?

25 A. Two.

1 Q. Were both of those divorces in Travis County?

2 A. They were both divorces in Williamson County.

3 Q. Williamson County. Okay. And do you have any
4 children?

5 A. I do.

6 Q. How many children do you have?

7 A. I have three.

8 Q. And what are their ages, please.

9 A. Chris is 35, Mason is 18, and Marshall is 10.

10 Q. What is Chris' occupation?

11 A. He's the general manager of a car wash that I
12 own.

13 Q. Is Mason helping you out in that respect or is
14 he too young for that?

15 A. He's 18. He's not doing anything.

16 Q. What is -- what is your current occupation?

17 A. I'm self-employed. I'm -- I'm the president of
18 the car wash.

19 Q. What's the name of this car wash?

20 A. Coachworks, one word.

21 Q. How long has Coachworks been in business?

22 A. Fifteen years.

23 Q. And this is a local Austin business?

24 A. It's in Bee Cave, Texas, yes.

25 Q. What is the business address for Coachworks?

1 A. 3919 Juniper Trace, T-R-A-C-E, and that's
2 Austin 78738.

3 Q. How long has that been the business address for
4 Coachworks?

5 A. All 15 years.

6 Q. Are you the sole owner of Coachworks?

7 A. I am.

8 Q. Is Coachworks an incorporated business?

9 A. It is.

10 Q. What's the corporate name?

11 A. Collective Interests, Incorporated. It's an
12 S corp.

13 Q. Do you know when this was formed? Was it
14 15 years ago?

15 A. I want to say '97.

16 Q. How many car washes does Collective Interests
17 operate?

18 A. Just the one.

19 Q. So there's only one location for this car wash?

20 A. Yes, sir.

21 Q. Do you have any other type of interest in
22 another car wash?

23 A. No.

24 Q. How many employees does Coachworks -- does
25 Coachworks have?

1 A. It varies, obviously, because it's largely
2 labor, but it's approximately 25 to 30.

3 Q. Did you have any prior experience in this type
4 of business?

5 A. No, I did not.

6 Q. Is it a business that you purchased or you
7 started from the ground up?

8 A. Started from the ground up.

9 Q. Would you say this car wash business is your
10 only occupation for the last 15 years?

11 A. Yes.

12 Q. And that goes back a long ways, so I don't want
13 to go too further back, but what was your occupation
14 before Coachworks?

15 A. I worked for Dell Computer Corporation.

16 Q. And how long did you work for Dell?

17 A. Fourteen years.

18 Q. What was your position -- your latest position
19 there?

20 A. Director of customer service engineering.

21 Q. How long did you have that position there?

22 A. I want to say four years. I'm not -- I'm not
23 positive.

24 Q. Okay. What was your first position at Dell?

25 A. I was -- I was senior manufacturing manager.

1 Q. Do you have any connection to Dell today?

2 A. Some.

3 Q. How so?

4 A. Can I ask for some clarification?

5 Q. Sure. I mean, you said some, so I would kindly
6 ask you to explain what you meant by some, then if I need
7 to clarify further I'll do that.

8 A. I -- I have some friends there. I -- I no
9 longer have any work relationship with Dell.

10 Q. Okay. That's actually what I meant.

11 A. Okay. That's what I surmised after I answered.

12 Q. So you just -- you still have some connections
13 with the people who work there?

14 A. I do have connections with the people.

15 Q. Do you currently own any interest in any other
16 businesses?

17 A. No.

18 Q. Have you owned an interest in any other
19 businesses since -- in the last five years?

20 A. No.

21 Q. Since 2008?

22 A. No.

23 Q. Are you an officer of any other type of
24 business or entity?

25 A. Can you clarify? Would -- would that include

1 family trusts?

2 Q. Yes.

3 A. I have a corporate entity that is called
4 Deguello L.L.C., and that includes -- the only property
5 in there is the boat.

6 Q. How do you spell Deguello?

7 A. D-E-G-U-E-L-L-O. Not a ZZ Top fan?

8 Q. No, no.

9 A. Okay.

10 Q. Did that give me away?

11 A. Yeah.

12 Q. Is this what you're referring to as the family
13 trust?

14 A. I -- I have a family trust that -- a generation
15 skipping insurance trust, and I think -- I can't remember
16 for sure, but I think my wife and I are both listed as --

17 Q. I understand.

18 A. -- partners in that.

19 Q. But you're not like a president, secretary,
20 treasurer, vice president of any other type of business?

21 A. No.

22 Q. What is the highest educational degree that you
23 received?

24 A. Bachelor of Science -- I'm sorry. Bachelor of
25 Arts in education and industrial engineering.

1 Q. I'm sorry. You said Bachelor of Arts in
2 education and then --

3 A. Bachelor of Arts in industrial engineering with
4 a minor in education.

5 Q. Got it.

6 A. It's been a while since I got out.

7 Q. Where did you get this degree?

8 A. Tarleton State University, now known as Texas
9 A&M at Tarleton -- at Tarleton Station.

10 Q. Did you have any graduate schooling?

11 A. No.

12 Q. Have you received any other type of formal
13 training in a non-school setting possibly?

14 A. Yeah, many management classes, accounting
15 classes, those types of things.

16 Q. Okay. You stated earlier that you have been
17 involved in depositions before. Were you both a party in
18 those cases or were you also a witness in some of those
19 cases?

20 A. Always a party.

21 Q. I'd like to briefly go over those. Are there
22 many that you've been deposed in?

23 A. There have been three.

24 Q. Three. Okay. Let's talk about them.

25 A. Including -- including this one. I'm sorry.

1 Q. Okay. Can you please tell me about the other
2 two cases that -- well, you said both of those prior
3 cases, they were also -- you were also a party in them,
4 correct?

5 A. Correct.

6 Q. Okay. If you could, just tell me about those
7 two cases and what -- you know, briefly what the subject
8 matter was and, unless there's some type of a
9 confidentiality order, you know, what the disposition of
10 the case was.

11 A. Can I get some clarification from my --

12 Q. Sure.

13 A. -- lawyer for that?

14 Q. Sure.

15 (Witness whispering to counsel)

16 A. Thank you. The first one that I'll speak to
17 was against a guy in Meridian, Texas. Actually, he -- he
18 was the plaintiff. My brother and I had jointly bought a
19 ranch to improve, and this gentleman had cattle. He was
20 leasing the ranch currently to -- for his cattle. We
21 came in with bulldozers to clean -- start cleaning the
22 place up. This guy didn't want us to do that and
23 basically filed suit against us.

24 Q. Did he get some type of a restraining order?

25 A. I don't remember.

1 Q. Okay. Do you know what happened with the case?

2 A. Yes. We -- we lost, long story short. We
3 appealed. The appeal was for much less than what the
4 jury granted him, and so all in all --

5 Q. Was it a money judgment that you had to pay?

6 A. It was a money judgment.

7 Q. Do you remember the amount?

8 A. I don't.

9 Q. Approximately?

10 A. It wasn't much. It wasn't -- it was less than
11 ten -- ten grand.

12 Q. Oh, okay. Okay. What about the other case?

13 A. The other case -- the other case involved a
14 house in Marble Falls -- or a ranch, again, in
15 Marble Falls that was sold. I had filled out a full
16 disclosure in April of the year that we listed it. The
17 gentleman bought it from me in about December of that
18 year. In between there was a storm, a hailstorm, did
19 some minor damage to all of the tin roofs out there. We
20 got an insurance judgment on it, a pretty good size one,
21 somewhere in about August. Never asked for any
22 disclosure. I didn't think about filling one out. He
23 heard about the insurance settlement and wanted money,
24 so --

25 Q. Approximately how much was the settlement?

1 A. There was no settlement. Oh, the insurance
2 settlement?

3 Q. Yeah, the insurance settlement.

4 A. About a hundred grand.

5 Q. Okay.

6 A. It was a jury trial. They found in favor of
7 the plaintiff. We're appealing it.

8 Q. Were these both Travis -- no, this -- was this
9 a Travis County case?

10 A. That was a Burnet County case.

11 Q. Okay. Are there any other cases?

12 A. No.

13 MR. NIKOLOPOULOS: I believe, James, in
14 your disclosures you listed the one in Travis County that
15 dealt with Mr. Domel and the Faulkners. Are we treating
16 that as --

17 MR. RUIZ: No, I think that may be -- I
18 recall that being another one. You were deposed in that
19 Chris Faulkner case.

20 BY MR. NIKOLOPOULOS:

21 Q. Yeah, this is the Gary -- and I'm reading off
22 your lawyer's disclosures.

23 A. Okay.

24 Q. Gary Domel and Kimberly Domel versus C I Host
25 and Chris Faulkner.

1 A. Okay. In -- in my mind these all kind of run
2 together.

3 Q. I understand. And keep in mind that I was not
4 involved in that prior litigation, so I'm asking you
5 because I'd really like to know some information about
6 it.

7 A. Okay. May I see the paper to refresh my
8 memory?

9 Q. Sure, of course. It just lists the style of
10 the case in there.

11 A. Yeah, the --

12 (Witness and counsel whispering)

13 THE WITNESS: Sorry. I had to refresh my
14 memory. I don't go back that far sometimes.

15 BY MR. NIKOLOPOULOS:

16 Q. That's okay.

17 A. Yeah, that was the result of a loan that I had
18 made Chris Faulkner and C I Host in about 1999 for about
19 \$350,000, took his -- took all the -- the company's
20 assets as collateral, and he defaulted on the loan almost
21 immediately to the point that we had to file suit to try
22 and recoup our losses.

23 Q. What was the -- what was the \$350,000 for; do
24 you know?

25 A. At that point I was told that as the company

1 was growing real rapidly they needed a little bit of
2 operational money, but they also were going to attend
3 Convex, if you remember what Convex was -- or is. It's
4 a large computer show. They spent the majority of the
5 funds on Convex, is my understanding.

6 Q. How did that particular case end; do you know?

7 A. This is -- this is where I get lost because it
8 was a lot of different things going on. As -- as far as
9 I remember, we received a judgment against Mr. Faulkner
10 and C I Host. Sorry.

11 Q. What's the status of that judgment; has it been
12 paid?

13 A. A portion of it has.

14 Q. Have you ever testified before at a trial or a
15 hearing? Well, no, you --

16 MR. NIKOLOPOULOS: Strike that.

17 Q. One of the cases you mentioned did go to jury
18 trial, correct?

19 A. It did.

20 Q. Okay. The first case in Meridian, Texas, did
21 that -- did that go to jury trial as well?

22 A. It did.

23 Q. Other than those two cases you mentioned to me,
24 have you ever been subpoenaed or called upon to testify
25 at another trial or hearing?

1 A. No.

2 Q. Have you ever personally filed for bankruptcy?

3 A. No.

4 Q. What about any business bankruptcies?

5 A. No.

6 Q. Do you have any tax liens currently levied
7 against you?

8 A. No.

9 Q. Have you in the past ten years?

10 A. No.

11 Q. Have you ever been arrested or convicted of
12 a crime?

13 A. Yes.

14 Q. Okay. Please tell me about that.

15 A. I've had two DWIs, 20, 30 years ago.

16 Q. The last one was 20 years ago?

17 A. I think so.

18 Q. How were those disposed of? What became of
19 them?

20 A. Deferred adjudication, weekend in jail,
21 something like that.

22 Q. Weekend, but you weren't incarcerated for
23 anything more than --

24 A. No, as far -- as far as I remember.

25 Q. Okay. Any other arrests or convictions?

1 A. Not to my knowledge.

2 Q. Have you ever -- you or any one of your
3 businesses ever filed an application for a U.S. patent?

4 A. No.

5 Q. Have you ever been assigned or licensed any
6 rights to a patent?

7 A. No.

8 Q. Same question. Have you or any one of your
9 businesses ever been -- ever filed an application for
10 a U.S. copyright?

11 A. No.

12 Q. To the best of your recollection have you ever
13 been assigned or licensed any rights to someone else's
14 copyright? As opposed to you filing for one, have you
15 ever been assigned or licensed the rights of someone
16 else's copyright?

17 A. Can I ask for clarification?

18 Q. Sure, of course.

19 A. By copyright, are you including trademark
20 underneath that?

21 Q. I'm not.

22 A. Okay.

23 Q. I'm not.

24 A. Then if you can re-ask the question one more
25 time. I apologize.

1 Q. Yes. My first question was, have you or one of
2 your businesses ever filed for an original copyright in
3 anything?

4 A. No.

5 Q. My second question was, have you ever been
6 assigned or licensed to use someone else's copyright?

7 A. No.

8 Q. Okay. Other than the trademark that's in
9 dispute in this case, have you or one of your businesses
10 ever filed for another U.S. trademark? Not the one we're
11 talking about here.

12 A. No.

13 Q. And have you ever been assigned or licensed the
14 use of someone else's trademark?

15 A. No.

16 Q. On August 14, 2012, I believe it was you
17 personally who filed an application for the service mark
18 C I Host, correct?

19 A. Through my lawyers, yes.

20 Q. That was my next question. So a lawyer
21 prepared this application for you?

22 A. They did.

23 Q. Do you recall if this application was just for
24 like the textural component of C I Host or was there a
25 design element or both? Do you recall what the

1 application was based on?

2 A. I do not recall what it was based on, but I
3 know it was the textural for sure. I don't know about
4 the design part, but I'm assuming it is because they
5 typically go together.

6 Q. Okay. So it's your understanding that there is
7 a design element to the C I Host mark, a design, logo
8 element?

9 A. As I said, I -- I don't specifically recall
10 reading that, but they typically go together.

11 Q. I understand. Do you recall stating in this
12 application that your street address was 1851 Central
13 Drive, Bedford, Texas?

14 A. That -- that address is inaccurate, probably
15 the fault of the lawyers copying and pasting an original
16 application into this and just not changing the address
17 to my home address.

18 Q. When you say copied and pasting, you're saying
19 it was -- the application was copied and pasted from a
20 prior one, from the prior C I Host application?

21 A. It's important that you -- I'm sorry. I didn't
22 mean to cut you off.

23 Q. No, please.

24 A. It's important that you understand I have no
25 knowledge of how it actually happened. I'm just --

1 I'm -- I was just wondering maybe they -- they got -- had
2 the original and just copied over the information that
3 they needed.

4 Q. Okay. Thank you. What are the goods and
5 services -- goods and/or services that are identified
6 with the C I Host mark that you applied for?

7 A. They are typically web hosting services.

8 Q. Just web hosting or --

9 A. It could be creative activity, could be web
10 page development, it could be host sharing, any of those
11 services that are typically done by a host.

12 Q. And it's your understanding that this
13 application you filed was set to cover this broad variety
14 of web-based services?

15 A. Absolutely.

16 Q. Now, are you aware if anyone else had filed
17 a trademark application for C I Host in the past, before
18 you?

19 A. I -- I would assume that Chris Faulkner and
20 Erin Bullock would have.

21 Q. Okay. And you kind of touched on this. But
22 you don't know whether your current application was
23 copied from a prior one that Chris Faulkner may have
24 done?

25 A. Okay. Again, I don't know exactly how it was

1 done. They -- they could have gotten the address of the
2 original business. I don't know. That's -- that's
3 something that I can't tell you. So if you'll restate
4 your question again, maybe I can answer.

5 Q. My prior question was more about the address.
6 This one is the content of the application as a whole.
7 Let me ask it this way. And you'll probably disagree
8 with this statement. But if I told you that your
9 application looked nearly identical to a prior one, would
10 you call that a coincidence or you just don't have any
11 comment on that?

12 A. I wouldn't know.

13 Q. Do you know off the top of your head what is
14 the date of the first use of the mark C I Host that you
15 yourself claim is the first use, not the one that you're
16 backdating to whenever Chris Faulkner first used it? So
17 do you know what date you're claiming as your date of
18 first use of the mark?

19 A. I -- I can't recall, but it's 2012 sometime.

20 Q. 2012?

21 A. I believe. You'd have to look at the
22 documents.

23 Q. And what particular event took place in 2012
24 that you identify as the date of first use by you of the
25 mark?

1 A. Can you clarify it for me? Define use for me.

2 Q. I'm not sure I can define it other than the
3 plain and ordinary meaning of the word use.

4 A. Okay. Let -- let me try and help here a little
5 bit. I acquired the -- the trademark. The -- the sale
6 of C I Host's assets, which were my assets which I owned,
7 to Cassiopeia, I believe, was -- I retained ownership of
8 that trademark, but in fact my purchase of the assets for
9 C I Host, which would include the trademark, was way back
10 when. I can't even tell you the date.

11 Q. Right. And I do understand the distinction
12 between, you know, your -- you know, the acquisition of
13 the mark.

14 A. Uh-huh.

15 Q. And correct me if I'm wrong, but are you
16 identifying this transaction with Cassiopeia as your
17 first use of the mark?

18 A. Be real clear. I -- I have never publicly used
19 the trademark.

20 Q. I understand.

21 A. So my -- in my definition, whether I use it or
22 not doesn't define the ownership of it, doesn't --

23 Q. I won't get into that, but I'm just more
24 interested in what you consider use, you know, in the
25 plain and ordinary sense of the word. Yeah, it's not

1 a question designed to, you know, assign any type of
2 ownership or legal implication. I just mean -- can we
3 agree that, you know, you can have a trademark and then
4 just have no involvement with it or you can have a
5 trademark and do something with it? And from what I
6 understand is you did something with it with respect to
7 licensing it to Cassiopeia. Is that a fair statement?

8 A. We did reapply for the license because it was
9 about to expire, and that's the date that you'll see on
10 that application.

11 Q. I'm sorry. Let me clarify. What do you mean,
12 reapplied for the license? You mean reapplied for the
13 trademark app?

14 A. Trademark application.

15 Q. Okay. And you may have answered this at the
16 very beginning. But you are aware that my clients have
17 filed an opposition to this very trademark application
18 you filed, correct?

19 A. I am.

20 Q. Do you have any opinion as to why they are
21 opposing your application?

22 A. It must serve some type of value for them, is
23 the only thing I can think of, because to my knowledge
24 they're not in that business anymore.

25 Q. When you say that business, you mean any type

1 of --

2 A. Web hosting, web-based, anything.

3 Q. What is your understanding of the type of
4 business that they are in today?

5 A. I -- I really don't know. I -- I -- he does
6 some things with oil and gas or something like that,
7 Chris does. Beyond that I don't have any idea.

8 Q. But how do you have knowledge that they're not
9 in the web -- web hosting realm?

10 A. Yeah, to me no knowledge is no knowledge.

11 Q. I understand.

12 (Exhibit No. 1 marked)

13 Q. Let me hand you what's been marked as
14 Exhibit 1. That's just -- that's the answer that was
15 filed to the opposition by your lawyer. Do you recognize
16 that?

17 A. Yes, I do.

18 Q. Okay. Paragraph 3 of the answer just on the
19 first page states that Gary Domel -- well, it says:
20 Applicant admits he is the owner of the C I Host
21 trademark, having acquired all right, title, and interest
22 in the trademark through a foreclosure sale on August 20,
23 2008. Do you see that?

24 A. Yes.

25 Q. What -- and I know you're not a lawyer, but

1 what do you know about this foreclosure sale? Do you
2 have any knowledge about how it was conducted?

3 A. The practical elements of the foreclosure sale?

4 Q. Yes.

5 A. We had foreclosed on C I Host for lack of
6 payment. We had agreed to pay at the foreclosure sale
7 a certain amount in a sell-buy transaction immediate so
8 that we could lease the -- the -- the interest back to
9 them for a set amount such that they'd continue to do
10 business until they would sell the business to someone if
11 they could find a person to buy it, so that way we
12 could -- we could both kind of recoup our losses and
13 their risk.

14 Q. Do you have any knowledge as to how the actual
15 foreclosure was done? Was it -- did you go to court to
16 do that? Was it just a letter claiming that they're
17 foreclosing? Do you have any knowledge about that
18 detail?

19 A. We went through a foreclosure process with my
20 lawyers and they handled all the -- the appropriate
21 steps, including court.

22 Q. Do you recall going to court for the
23 foreclosure?

24 A. Me personally?

25 Q. Right.

1 A. No, I did not.

2 Q. I probably should have asked it differently.

3 Do you recall whether anything was filed on your behalf
4 in order to foreclose on the security interest?

5 A. Yes.

6 Q. Do you recall whether --

7 MR. NIKOLOPOULOS: Strike that.

8 Q. Do you have any knowledge as to whether a court
9 signed any type of order foreclosing the security
10 interest?

11 A. Yes, there was.

12 Q. Do you remember when that order was, like the
13 year?

14 A. No, sir.

15 Q. And I'm asking this question not in a legal
16 sense, but in a layman sense. Is it this judicial order
17 that led you to believe that you now owned this trademark
18 or did you feel you owned it from anything prior to the
19 judicial order?

20 MR. NIKOLOPOULOS: Let me strike that.
21 That's not a good question.

22 Q. You stated that your lawyers handled some type
23 of foreclosure transaction, correct?

24 A. Yes.

25 Q. But you also stated that there was something

1 done in the court to foreclose on this as well. What I'm
2 asking you is, was it the court involvement that led you
3 to believe that you now owned the trademark or was there
4 just some type of transactional foreclosure that led you
5 to believe that it was all complete and now you owned it?

6 A. It's my understanding that it was the court
7 order.

8 Q. Okay. And I'm asking these questions because
9 I don't have a copy of this order, so I'm not just -- I'm
10 not asking you to hear myself talk. I'm actually
11 interested. Is it your understanding that this court
12 order foreclosed on a wide variety of assets or was it
13 just for the intellectual property?

14 A. I -- I don't recall.

15 Q. You don't recall. Okay. Okay. Back on the
16 first page, Mr. Domel, on the answer. Right after that
17 sentence that we just read that concludes with August 20,
18 2008, it says: See bill of sale attached as Exhibit A
19 hereto.

20 If you could, please turn to the back.
21 The Exhibit A should be attached.

22 A. Yes.

23 Q. Actually, I think a little bit further up.
24 That's -- I'm sorry. I'm looking at the document that's
25 titled Bill of Sale.

1 THE WITNESS: Oh, thank you, James.

2 Q. And on the second page of that bill of sale
3 I see the sellers being Gary Domel and Kimberly Domel and
4 the purchasers being Gary Domel and Kimberly Domel.

5 A. Yes.

6 Q. Is this what you were referring to a few
7 minutes ago?

8 A. Yes.

9 Q. Is this the document that you contend gave you
10 the rights to the C I Host name?

11 MR. NIKOLOPOULOS: Strike that. Another
12 bad question.

13 Q. You did state earlier there was the judicial
14 process that led you to believe you now owned it, it's
15 just that when I'm going by the answer filed on your
16 behalf it doesn't mention anything about this court
17 process, and the way I read it is that this bill of sale
18 is what gave the ownership to you, and so that's all I'm
19 trying to clarify.

20 A. And -- and I don't remember because my
21 attorneys handled all this. I don't remember the
22 sequence of events or the extent of those events in the
23 sequence.

24 Q. I understand that. Okay. If you could, please
25 turn to page 2 of the answer. On the -- at the top it

1 says -- second sentence says: Applicant entered into an
2 agreement with Cassiopeia Internet on March 25, 2009, to
3 allow it to use the trademark in connection with its
4 business. Do you see where it says that?

5 A. Yes.

6 Q. I believe you already touched on this
7 transaction before, didn't you? Is this the transaction
8 you were referring to with Cassiopeia?

9 A. Yes.

10 THE WITNESS: Do you mind if I take a
11 quick break or are you about done?

12 MR. NIKOLOPOULOS: Of course. No, of
13 course I don't mind.

14 THE WITNESS: Okay.

15 (Recess from 2:06 p.m. to 2:11 p.m.)

16 (Exhibit No. 2 marked)

17 BY MR. NIKOLOPOULOS:

18 Q. Mr. Domel, let me hand you what's been marked
19 as Exhibit 2.

20 A. Yes, I remember this.

21 Q. Okay. Right before the break we both read on
22 page 2 of your answer where it references a March 25,
23 2009, agreement with Cassiopeia Internet to allow it to
24 use the trademark. Is that -- is that what that letter's
25 referring to? I mean, it's the same date, so I'm

1 assuming it is, but I don't know for sure.

2 A. Let's make sure. I believe so, yes.

3 Q. And are you contending that this is a license
4 agreement to Cassiopeia to use the trademark, to use the
5 C I Host mark?

6 A. I believe it is, yes.

7 Q. Does it -- and that's my only copy, so I don't
8 have it in front of me, but does it -- no, go ahead.
9 Does it state anywhere -- I don't believe it does. Does
10 it state anywhere that the use of a trademark is being
11 licensed or does it just refer to just assets in the
12 broad sense?

13 A. Yeah, it's referring to assets in the broad
14 sense.

15 Q. Did this lease or license actually happen?
16 Whatever's in that letter, did it actually go forward, to
17 the best of your knowledge?

18 A. I'm trying to remember dates and so forth.

19 Q. I care less about the dates and more about
20 whether the sums were paid and --

21 A. Yeah, this, to some extent, reflects what began
22 to happen.

23 Q. But do you know one way or another whether all
24 the payments referenced in that letter were made?

25 A. They were not.

1 Q. Do you have an idea as to how much was not
2 paid?

3 A. We received the first installment of \$40,000,
4 as I remember. The second payment was only, if I
5 remember correctly, \$15,000, and I believe at that point
6 they started paying \$10,000 for about four months, and
7 then right before Christmas they stopped.

8 Q. Thank you. We already looked at these. These
9 are the initial disclosures that your lawyer made that
10 reference that one case in Travis County.

11 A. Uh-huh.

12 Q. One of these required disclosures was to
13 identify all documents that support your claims to the
14 trademark in this matter. One such category of documents
15 that's been identified by your lawyer says: Are
16 communications with Core Space concerning sale of assets
17 acquired from C I Host. Let me just hand it to you.
18 Towards the bottom of the page, number 5.

19 A. Yes, sir.

20 Q. What about those communications do you believe
21 helps support your claims in this case?

22 A. I'm going to leave that up to my attorney
23 because those were selected by him. In other words,
24 I can't answer your question. I don't know, have no
25 knowledge.

1 Q. When you say you're leaving it up to your
2 attorney you mean because you don't know or because
3 you're not sure if it's something you're supposed to
4 discuss? I just need to clarify.

5 A. No, I -- I truly don't know.

6 Q. Okay. Another category of documents are
7 communications with Cassiopeia and Core Space pertaining
8 to settlement of suit between Faulkner and Cassiopeia and
9 Faulkner and Core Space. Again I would ask you what
10 about those communications helps support your claim that
11 you have the rights to this mark.

12 A. Yeah, I have no personal knowledge of those.

13 Q. Were you -- were you a part of that lawsuit
14 that's referenced there with Cassiopeia and Core Space
15 and Faulkner?

16 A. If I remember correctly, I don't know that that
17 was a lawsuit. I think that was communications back and
18 forth regarding the purchase of Cassiopeia by Core Space.

19 Q. No, I'm referring to --

20 A. Oh, I --

21 Q. -- the category of documents that says:
22 Communications with Cassiopeia and Core Space pertaining
23 to settlement of suit between Faulkner and Cassiopeia and
24 Faulkner and Core Space.

25 A. Okay. I misread it. Yeah, I -- I have no

1 idea.

2 Q. You have no idea if you were a party to that
3 lawsuit?

4 A. I don't remember such a lawsuit.

5 Q. Do you recall that at one point some type of
6 a global settlement was trying to -- was being negotiated
7 among all these parties?

8 A. I do remember that.

9 Q. And maybe that's what's confusing about that.
10 This global settlement, was it settling multiple claims
11 and multiple lawsuits, to your knowledge?

12 A. That was its intent.

13 Q. Okay. And you don't know one way or another
14 whether you were a party to any one of those?

15 A. We refused to be a party to that.

16 Q. Refused to be a party to the settlement
17 negotiations or a party to the lawsuit?

18 A. The -- the global settlement.

19 Q. Oh, you refused to be a part of the global
20 settlement?

21 A. Settlement, correct.

22 Q. Why is that?

23 A. We weren't involved.

24 Q. Were you being asked to be a part of it?

25 A. I think there was an expectation on

1 Cassiopeia's part that we would be, but seems like it was
2 only in their best interest, as I recall, and didn't
3 serve -- didn't serve me at all.

4 Q. What do you mean that it would have -- how
5 would it have served Cassiopeia for you to be involved in
6 the settlement?

7 A. You know, I don't even know the answer to that
8 question. I -- I know they wanted to settle and -- and
9 get this deal done, right, but there was -- there was no
10 way for myself to contribute.

11 Q. Do you know one way or another whether
12 a settlement was actually reached?

13 A. A global settlement or a general -- or a
14 regular settlement?

15 Q. Well, a global settlement, first off.

16 A. I -- I don't have firsthand knowledge of it.
17 I know they settled something.

18 Q. Something. Okay. Now, these disclosures, they
19 state -- again, these were disclosures that are supposed
20 to point me to the direction of what documents prove your
21 claim. It doesn't state anything about a settlement; it
22 says communications about a settlement. So I would ask
23 you, what about the communications of the settlement
24 itself make them relevant to your claim today?

25 A. And again, I was letting my lawyers handle all

1 that. I -- I'm -- I'm sure that at some point in time he
2 covered it with me, but I can't remember it here.

3 Q. Okay. The settlement that did occur,
4 whether -- whether it was a global settlement or --

5 A. Right.

6 Q. -- a partial or limited settlement, could it
7 have addressed the ownership of the C I Host mark? Was
8 that an issue that was on the table?

9 A. It was discussed. I know that Core Space did
10 not want it. I know that there were some discussions
11 with me of -- with -- with my attorney about us selling
12 it or giving it away or something like that, which I
13 didn't want, and they weren't paying -- you know, I
14 wouldn't receive full funds, so --

15 Q. To your knowledge, did this settlement or
16 whatever we want to call it, did it address the ownership
17 of the C I Host mark?

18 A. No.

19 Q. But you're saying it could have, but it just
20 never came to fruition?

21 A. In my opinion it could have addressed it.

22 Q. But it ended up not being addressed?

23 A. But it ended up not being addressed.

24 Q. I understand. And the fact that it wasn't
25 addressed, in your opinion does this point to the fact

1 that it wasn't a -- it was a contested issue, that's why
2 it wasn't addressed?

3 A. You lost me there for just a second. Can
4 you -- can you say that again?

5 Q. The fact that it was not part of the settlement
6 leads me to believe that it was a contested issue.

7 A. No.

8 Q. Is that an unfair characterization of it?

9 A. Since I took ownership of it way back here in
10 2008, I don't see how a settlement that I'm not involved
11 in can transfer an asset that I own, so it's -- as far as
12 I'm concerned it's uncontested. It's mine.

13 Q. I guess what I'm getting at is, someone
14 disagreed with that or else it would have been in the
15 settlement agreement or some type of stipulation in that
16 agreement. Is that an unfair way of putting it on my
17 part?

18 A. I don't know that it's unfair. I don't know
19 that it's absolutely accurate. I think there was
20 probably a buy-sell transaction offered, but it wasn't
21 accepted because either the offer wasn't good enough or
22 not at all.

23 Q. Okay. So this foreclosure that we're talking
24 about, that all stems from this initial loan to Faulkner,
25 correct? He defaulted on the --

1 A. Uh-huh.

2 MR. NIKOLOPOULOS: Strike that.

3 Q. As part of that loan, I'm assuming -- I mean,
4 there was a promissory note signed, correct?

5 A. Yes, there was.

6 Q. And there was also a security agreement that
7 went along with that, correct?

8 A. Yes, there was.

9 Q. Okay. What was your --

10 MR. NIKOLOPOULOS: Strike that.

11 Q. What date were these documents signed? What
12 year were they signed; do you remember?

13 A. Which?

14 Q. The promissory note and the security agreement.

15 A. 1999 or early 2000.

16 Q. At that time what kind of property did you
17 think you were being granted a security interest in by
18 virtue of these agreements?

19 A. Their servers, their generators, their
20 intellectual property, their --

21 Q. Slow down, please. Servers, generators,
22 intellectual property. What else?

23 A. Trademark, patents, if any, workstations.
24 Anything that was not -- was not leased.

25 Q. Do you recall if the security agreement

1 specifically stated intellectual property?

2 A. I can't recall.

3 Q. As far as you were concerned, what was the most
4 important property that was being secured by these
5 agreements? What mattered to you the most?

6 A. Honestly, I didn't look at it that way.
7 Honestly, I look at it more as the ability to do
8 business, right? And that would include all those
9 things, right down to desks and --

10 Q. Now, remind me. At that time, 1999, was -- was
11 the car wash in operation?

12 A. 1999?

13 Q. Was that when you were with Dell?

14 A. The car wash was already in operation. It was.
15 So this was either late '99 or early 2000.

16 Q. So you're saying that at the time of this
17 security agreement being signed you were working the car
18 wash?

19 A. It was in operation, yes.

20 Q. Okay. Now, you mentioned a statement earlier
21 that you didn't see it that way when I -- when I made the
22 statement of which property was the most important to
23 you. Okay. What did you state in response? You said
24 that you saw it more as a business opportunity? Were
25 those your words?

1 A. No.

2 Q. Okay.

3 A. Those are not my words.

4 Q. Okay. I'm not trying to be tricky. What words
5 did you use?

6 A. I looked at it more as a -- if I had to sell
7 something, a business, to get my money back, I needed all
8 of those things, okay? I wasn't going to make my money
9 back by selling individual servers and those kind of
10 things, so I had to be able to recoup everything that --
11 that they had in order for me to pay back.

12 Q. Do you know if there was a registered trademark
13 for C I Host at the time that the security agreement was
14 signed?

15 A. I assume there was. They were using it
16 abundantly.

17 Q. How did you know they were using it? What
18 evidence did you have of that?

19 A. They had the signage all over the web, they had
20 signage on the front of their buildings, they had -- were
21 using it in publications locally, they had a billboard on
22 the highway that runs in front of their business there.

23 Q. Did they have a domain name?

24 A. They did. They had bank accounts, you know.

25 Q. So you didn't verify whether or not there

1 actually was a registered trademark at the time?

2 A. No.

3 Q. Do you know if the goodwill of C I Host was
4 contemplated as part of this security agreement?

5 A. I don't recall. I'm not sure that I even
6 understand.

7 Q. So I guess my -- my first question should be,
8 do you understand what business goodwill is? Do you have
9 any knowledge about what that term means?

10 A. Not in a legal aspect, no.

11 Q. What -- what -- what about in the general
12 aspect; what's your understanding of that word?

13 A. Well, goodwill would be allowing a business its
14 best opportunity to perform on its own.

15 Q. Do you know if a UCC statement was -- was ever
16 filed in connection with the security interest?

17 A. There was.

18 Q. I'm sorry?

19 A. There was.

20 Q. There was. Okay. Do you know if any type of
21 lien was ever recorded in the trademark office?

22 A. I do not know.

23 Q. Now, when the foreclosure happened, that was
24 many years, obviously, after the security agreement. Do
25 you know if the same trademark registration was in effect

1 at the time of foreclosure as it was in effect at the
2 time the security agreement was signed? Do you have any
3 knowledge of that?

4 A. I have no knowledge of that.

5 Q. Let me ask you this. Do you know if it's even
6 the same entity that owned the trademark registration on
7 foreclosure as it was owned at the time of the security
8 agreement?

9 A. I wouldn't -- I have no way to know that, no.

10 Q. A few questions ago I asked you about business
11 goodwill. Would you disagree with the statement that
12 goodwill also includes intangibles, such as reputation
13 and name recognition? Is that consistent with your
14 understanding of what business goodwill could be?

15 A. Well, no, on an intangible good reputation.
16 That's -- that's dependent on -- I don't see how that
17 could be either, quite frankly.

18 Q. Let's go back, then, to your understanding.
19 Remind me again. What was your understanding of goodwill
20 in just the general sense?

21 A. Allowing the business to be able to operate on
22 its own without, you know, restrictive barriers.

23 Q. Do you know if -- using the definition of
24 goodwill that you just provided to me, do you know if the
25 goodwill of C I Host was included as part of the security

1 interest?

2 A. I do not know.

3 Q. Let me ask it this way. Just focusing on the
4 intellectual property -- and I think we can all agree
5 that by that we're talking about just the trademark.
6 There was no patents or copyrights that you were aware of
7 pertaining to C I Host, correct?

8 A. Not to my knowledge.

9 Q. Okay. So was it your understanding that you
10 were being granted an interest in just the words C I Host
11 or everything that comes with that name?

12 A. Everything that comes with that.

13 Q. That's your understanding of what you were
14 getting?

15 A. Yes.

16 Q. But you don't have any -- you don't recall
17 whether the security agreement actually stated as such or
18 incorporated --

19 A. I -- I don't recall.

20 Q. Let me ask you this. In 1999 when the security
21 agreement was signed do you think that C I Host had any
22 type of positive reputation or name recognition in this
23 specific industry or would you not know one way or
24 another?

25 A. In -- in 1999 they began to struggle with

1 reputation out in the -- amongst their web peers and --
2 and customers.

3 Q. You stated that in 1999 they began to struggle?

4 A. They began to struggle.

5 Q. So when the security agreement was being signed
6 this intellectual property wasn't necessarily seen as
7 something valuable or --

8 A. I wouldn't say that. I mean, it was still
9 connected with, you know, tens of thousands of customers.

10 Q. Since the 2008 foreclosure have you yourself
11 utilized any domain name that incorporates the words
12 C I Host?

13 A. No, sir.

14 Q. Do you know if such a domain name is in
15 existence today?

16 A. No, I don't.

17 Q. You did state earlier that at some point you
18 were aware that the Faulkners were -- had a domain name
19 cihost.com.

20 A. As I recall.

21 Q. Okay. Do you have any reason to believe that
22 they no longer have control of such a domain name?

23 A. I -- I wouldn't know one way or the other.

24 MR. NIKOLOPOULOS: Would you mind if we
25 take a quick break?

1 MR. RUIZ: Sure.

2 (Recess from 2:34 p.m. to 2:40 p.m.)

3 BY MR. NIKOLOPOULOS:

4 Q. Okay. Mr. Domel, you stated before the break
5 that you did not have knowledge one way or another if
6 someone was using a domain name with the words C I Host
7 in it, correct?

8 A. That is correct.

9 Q. If you did have knowledge that someone was
10 using that domain name do you believe that it's
11 infringing on the rights of the mark that you believe you
12 own?

13 A. I assume it would.

14 Q. But during this whole process you haven't done
15 anything to try to put a stop to anyone using the
16 C I Host name, have you?

17 A. No.

18 Q. If you succeed in getting the rights to this
19 trademark do you intend on putting a stop to anything and
20 anyone that uses the name C I Host in any way?

21 A. I honestly haven't thought about that.

22 Q. Is that the end of your answer?

23 A. Yeah, I was going to end it there.

24 Q. And you yourself have never attempted to
25 register a domain name with the words C I Host, correct?

1 A. Correct. I answered that earlier.

2 Q. Have you ever filed any assumed name
3 certificates for C I Host?

4 A. No.

5 Q. You mentioned earlier that there is some type
6 of a logo or design element of C I Host. Are you
7 claiming that you own any type of a copyright in such a
8 design? And if that's a legal issue that you don't --
9 you're not comfortable speaking on, then let me know.

10 A. Yeah, that -- that tends to be a legal issue
11 that I'd rather not speak to.

12 Q. Legal issue aside, in the general sense you
13 claim that you own the rights to any logo associated with
14 C I Host as well?

15 A. Certainly.

16 Q. Correct me if this is misstating your prior
17 testimony. But since the 2008 foreclosure is the only
18 use that you've made of the C I Host mark the licensing
19 to Cassiopeia? And I'm using "use" in a very broad
20 sense; I'm not assigning any legal implications to it.
21 So since the foreclosure in 2008 have you done anything
22 with this mark other than license it to Cassiopeia?

23 A. I don't think I've licensed it to Cassiopeia.

24 Q. That Exhibit 2, I believe, that's in front of
25 you --

1 A. This one?

2 Q. Yes. I thought you and I discussed that that
3 was the license to Cassiopeia.

4 A. Let me stop. Sorry.

5 Q. No, go ahead.

6 A. You said Cassiopeia. I'm thinking Core Space.
7 Yeah, that's -- that's the only time that was done.

8 Q. Okay.

9 A. Sorry about that.

10 Q. No problem. Did you make any other uses of the
11 C Host mark -- C I Host mark after the foreclosure other
12 than what we already discussed?

13 A. No.

14 Q. Have you ever advertised services using the
15 C I Host mark?

16 A. No, sir.

17 Q. Have you ever been a shareholder of C I Host,
18 Inc.?

19 A. No.

20 Q. Have you ever been an officer or director of
21 C I Host, Inc.?

22 A. No.

23 Q. Do you understand if there's any type of a
24 distinction between C I Host, Inc., and a C I Host Corp
25 or are you not aware of multiple entities?

1 A. I'm not aware of it, yeah.

2 Q. Does the car wash -- is it Coachworks?

3 A. Yes.

4 Q. Does it have a website?

5 A. It does.

6 Q. Okay.

7 A. A really good one.

8 Q. I'll check it out. Have you ever used the
9 words C I Host in any website, including the Coachworks
10 website?

11 A. No.

12 Q. Since the 2008 foreclosure what is the total
13 amount of revenue that you've received as a result of
14 C I Host, the name? And by that question I'm assuming
15 that all we're talking about is that --

16 A. Is this document right here?

17 Q. Yes.

18 A. Well, like I said, I think they -- I want to
19 say they -- they gave me -- they paid me \$40,000
20 initially, shortly after we signed this, then there was
21 a \$15,000 payment about a month after -- 30 days after
22 closing, and then they started with the \$10,000 payments,
23 so -- and they went about three times, so that would be
24 30, 70, 85,000. That's generally speaking.

25 Q. When did that license terminate?

1 A. Explain what you mean by license.

2 Q. Well, let me -- let me strike that. I won't
3 use the word license. I'm not sure that that letter
4 you're holding says the word license.

5 When did this -- can we agree that that
6 letter allowed Cassiopeia some right to use certain
7 assets that you claim you acquired by a foreclosure sale?

8 A. I -- I would think -- I would think that this
9 agreement was superseded by -- no, it wasn't. You know,
10 that -- this is one of those legal things that I just
11 don't feel comfortable answering.

12 Q. Okay. Let me see if you are comfortable
13 answering this. To your knowledge did Cassiopeia make
14 any use of any assets that you claim you acquired by
15 foreclosure? Did you allow them to use --

16 A. Yes, they did.

17 Q. Okay. Up until what date did they continue
18 using these assets? Did it stop at some point?

19 A. I would -- I would assume it stopped at the
20 point that they sold Cassiopeia's business to Core Space.
21 What was that, 2009? 2010?

22 Q. I don't know. Can you tell me anything about
23 that sale and the circumstances of it? I don't believe
24 we touched on that today, but --

25 A. Probably not. I -- I know that that was -- I

1 was a third party to it almost in that in order for --
2 and this is at a very high level. In order for
3 Core Space to buy the assets that -- that were mine they
4 had to negotiate payment to me when they closed, and they
5 did that partially, couldn't get together on what -- what
6 we thought it was worth.

7 Q. Okay. So what you're saying is that at some
8 point this use by Cassiopeia of the assets most likely
9 stopped and the most likely stopping point would be this
10 transaction you're referring to with Core Space?

11 A. For every asset except for the trademark. They
12 did not take the trademark.

13 Q. So you're saying that -- oh, you're saying
14 Core Space did not take the trademark?

15 A. That's correct.

16 Q. I'm assuming there was some type of an
17 exclusion, a written exclusion in the --

18 A. Yeah, I'm -- I'm -- I'm assuming that. I --

19 Q. Was that the only thing excluded, the
20 trademark, or were there other things as well?

21 A. I think originally -- no, let's strike that
22 because that -- we've got the answer down. I -- to my
23 knowledge that's the only thing excluded.

24 Q. Why was that excluded?

25 A. I don't know.

1 Q. If it was excluded, then that wouldn't
2 necessarily stop the continued use, correct? No, no.

3 MR. NIKOLOPOULOS: Strike that.

4 Q. Never mind.

5 A. I know. It's a tangled web.

6 Q. I'll figure it out. Have you incurred any
7 expenses in promoting the C I Host name at any point?

8 A. No.

9 Q. Are you contending --

10 MR. NIKOLOPOULOS: Strike that.

11 Q. Would you agree with me that since the
12 foreclosure you have not been in continuous use of the
13 C I Host mark?

14 A. I have not been in any use with the mark, yes.

15 Q. Other than what we've already discussed?

16 A. Correct.

17 Q. Subject to --

18 A. Leases --

19 Q. -- the vagueness of the word use?

20 A. Yeah.

21 Q. Should you prevail in this trademark action do
22 you have any intent to expand the use of this mark or is
23 it just going to sit there until a next licensing
24 opportunity arises, if that?

25 A. I -- I don't have any intended use for it and,

1 quite frankly, don't -- don't know what to do with it.

2 Q. Are there any prospective licensees out there
3 in the works?

4 A. I'm sure there are, but I don't know of any
5 right off the top of my head.

6 Q. When you say off the top of your head, you mean
7 that you haven't been in contact with potential
8 licensees, you're just assuming that there -- there may
9 be someone out there or has someone showed you interest?

10 A. No, I -- I know that there are people out there
11 in the web hosting business that -- you know, domain
12 names are very popular.

13 Q. Do you know if that name is worth anything
14 today? I think I asked you during the security agreement
15 that the decline -- you said there was some type of a
16 decline in reputation. Where do you -- how do you
17 compare that with today?

18 A. I -- you know, I wouldn't know because I
19 haven't been looking at it and I've kind of separated
20 myself from that business, but I know in -- in my
21 business that if you've got a name or if you can prove
22 a name it's always worth something to promote. So I
23 don't -- I don't know where that interest lies.

24 Q. I'm sorry. When you say if you can prove a
25 name it has worth, are you just saying that if you have

1 a registered name it has worth? What do you mean by if
2 you can prove a name?

3 A. Well, it's a fair question. Can I use an
4 example?

5 Q. Please.

6 A. For instance, once Chrysler's name was garbage,
7 right? Brought in Iacocca and things changed
8 dramatically. All I'm saying is the -- they -- they only
9 make so many names in the world, right? And some of them
10 work really, really well. Some of them are really,
11 really good trademarks. Some have history to them. So
12 is there a potential for C I Host to be used again as a
13 trademark and used well? I'm assuming so. It would take
14 smarter guys than I, but that potential's there.

15 Q. But right now today there's no use --

16 A. No.

17 Q. -- for this mark?

18 A. I -- I use my energy elsewhere.

19 Q. When it was licensed to Cassiopeia -- or if you
20 don't like the word licensed -- however Cassiopeia was
21 using it --

22 A. Using it, okay.

23 Q. Do you know what specific services were being
24 offered under that name?

25 A. No, I do not.

1 Q. Do you have any -- excuse me. Do you have any
2 knowledge of how Cassiopeia was even -- was utilizing the
3 words C I Host?

4 A. Only very vaguely. I know that they -- it --
5 it was one small part of their business, but it wasn't on
6 the public side of things. They were try -- let's call
7 it rebranding --

8 Q. Okay.

9 A. -- the -- the assets, you know, into something
10 else, and honestly, at that point I thought C I Host --
11 the trademark became useless.

12 Q. At which point?

13 A. When they were rebranding from C I Host to
14 Cassiopeia.

15 Q. I mean, I have to ask. I mean, I'm hearing
16 that there's hardly any worth to it. It's -- I'm hearing
17 words like worthless, so why -- why a part of this fight
18 over the name? Is it just strictly based on the
19 foreclosure in 2008 and an alleged legal right or is
20 there anything more to it than this? I think that's a
21 fair question. You may disagree.

22 A. No, I -- I -- no, I think it's a fair question,
23 and I -- and I tend to think that this is a fair answer.
24 I think there's always potential in something. They had
25 their name out there in the business. They had a lot of

1 customers, and if you buy the trademark, to some extent
2 you -- you get some of the more reliable customers, and
3 that's the worth in it. Now, you can gauge that any way
4 you want to, but if they're not in the business I'd have
5 to ask the same question of them.

6 Q. Fair enough. Do you yourself have the ability
7 and knowledge to exploit this mark right now or are
8 you -- or would you have to either, A, hire other people,
9 or B, be relegated to licensing it out?

10 A. Me, no. I don't have the energy either. But,
11 you know, I've got three options: I can find somebody
12 that wants to invest in it; I can find somebody that
13 wants to buy it; I can find somebody that wants to buy it
14 back.

15 Q. I asked you earlier if you had any knowledge of
16 whether anyone was using a C I Host domain name.

17 A. Yes.

18 Q. Now I'm asking you if you have any knowledge
19 whether anyone out there is operating a business under
20 the name C I Host.

21 A. I don't have any knowledge of that.

22 Q. If you came to learn that the Faulkners did,
23 would that be surprising to you in any way?

24 A. Nothing they do surprises me.

25 MR. NIKOLOPOULOS: I'm trying to determine

1 whether I should object to that as nonresponsive, but
2 I'll just leave it.

3 Q. And just so I can have my record clear, the
4 entire basis of your claim to this trademark is what
5 happened in 2008 by virtue of the foreclosure, correct?

6 A. Yes.

7 Q. Okay. Although you may not have knowledge
8 about whether the Faulkners are using that name now, do
9 you have any knowledge whether they did since the 2008
10 foreclosure?

11 A. I -- I don't have any knowledge of that.

12 Q. At some point, though, you do have knowledge
13 that they were operating under C I Host?

14 A. Very early on, yeah.

15 Q. But you don't -- you don't know when --

16 A. When they --

17 Q. -- that would have stopped?

18 A. No.

19 Q. When they did operate under C I Host was it
20 your understanding that it was a continuous and exclusive
21 type of operation under that name as opposed to a
22 one-shot licensing or exploiting it to third parties?
23 I'm asking if they continuously operated under that name,
24 is what I'm asking.

25 A. To my knowledge, yes.

1 Q. At some point in time. You don't know when
2 it -- when it necessarily ended, but the point that they
3 did it was their regular course of business?

4 A. To my extent of -- of exposure to their
5 business, that's my knowledge. I -- I do know that,
6 I mean, they -- they propagated host names and -- and
7 trademarks pretty -- pretty aggressively in the early
8 2000s.

9 Q. What do you mean by that?

10 A. I mean they've always had, I mean, two, three,
11 four, five, six, seven different domain names, different
12 areas that they were trying to marketing in -- market
13 into. To sum it up, I -- I couldn't wrap my head around
14 what -- what all was going on.

15 Q. Okay. So you just meant they were aggressive
16 in just business names in general?

17 A. Right.

18 Q. You weren't necessarily saying that they
19 were -- they had multiple actual trademark applications
20 they were filing from or --

21 A. Yeah, I -- I -- I wouldn't know that.

22 Q. So you would disagree with the statement that
23 the Faulkners have continuously and exclusively utilized
24 the C I Host name since 1995? Would you disagree with
25 that statement? Because now I'm going back further,

1 before the foreclosure.

2 A. Yeah, I -- I don't -- I don't know that I can
3 answer it. I just don't have that much knowledge of it.

4 Q. And you yourself have never offered any type of
5 web hosting services to the public, whether through the
6 C I Host name or not through that name?

7 A. No.

8 Q. When the foreclosure took place in 2008, did
9 you have an intent then to engage in web-based services?

10 A. No. No.

11 Q. Assuming that my clients are still engaged in
12 web-based services with this name, if you prevail and get
13 the rights to this name do you agree that there's going
14 to be a likelihood of confusion out there in the
15 marketplace?

16 A. I agree there could be confusion out there if,
17 you know, somebody wanted to use it.

18 Q. Is there any proof or evidence that the
19 C I Host name was ever assigned to you in any way, any
20 kind of written document from -- from the Faulkners?

21 A. I'm -- I'm assuming that this agreement from
22 2009 is.

23 Q. Well, are you looking at Exhibit 2?

24 A. Yeah.

25 Q. That -- isn't that the -- that's --

1 A. That wasn't it. That's the lease, yeah. Okay.

2 Q. The only other exhibit that we discussed today
3 was Exhibit 1, and I think attached to the back was that
4 bill of sale.

5 A. Right.

6 Q. That bill of sale is just signed between you
7 and your wife as both buyers and purchasers. I mean, has
8 there -- to be clear, is there a document out there where
9 the Faulkners sign over and assign any rights to you?
10 I'm assuming there isn't because we talked about the
11 foreclosure as being the basis of the claim, but --

12 A. Yeah, I -- I have -- if there is I don't have
13 knowledge of it.

14 Q. Okay. And again, any proof of any type of
15 a leaseback arrangement, you know, with respect to the
16 C I Host --

17 A. Not to my knowledge.

18 Q. In your opinion, since 2008, the foreclosure,
19 do you believe that you have acted in a manner consistent
20 with that of the owner of a trademark with respect to
21 C I Host?

22 A. Can you define -- can -- can you define that?
23 Can you wrap a description around that?

24 Q. Define owner?

25 A. Yeah.

1 Q. Let me ask it this way. Do you believe that
2 you have acted in a manner consistently with someone who
3 believes they own the mark C I Host?

4 A. Yes. And can I answer that with -- with an
5 analogy?

6 Q. Of course.

7 A. In my house I have a PlayStation. I bought it.
8 It sits there. People use it, but I don't use it, but I
9 still own it.

10 Q. I understand your analogy.

11 A. Okay.

12 Q. And I take it that's the same -- that is how
13 you have acted with respect to the C I Host mark. You're
14 claiming that you own it, but you don't necessarily use
15 it. Others may have used it, like Cassiopeia, but you
16 yourself haven't used it.

17 A. I own it. I reapplied for it. I made sure
18 that it was in good standing.

19 Q. Have you ever or anyone on your behalf ever
20 sent any cease and desist letters to the Faulkners with
21 respect to any type of use that you believe would violate
22 your rights to the mark?

23 A. Not to my knowledge.

24 Q. Do you believe that you have done everything in
25 your power to establish rights to this name and to

1 prevent others from stepping on your toes with respect to
2 this name?

3 A. Yes.

4 Q. Is there anything else significant about this
5 matter that we haven't addressed that you'd like to add?
6 Anything you'd like to clarify as far as your answers?

7 A. Yeah, just this, if we're speaking to --

8 Q. Yes.

9 A. -- to the court. This has been a long,
10 drawn-out, multifaceted, very difficult process to go
11 through. I'm ready for it to be done.

12 Q. When you say -- I'm sorry. I don't normally
13 like to interrupt, but I just want to make sure that I'm
14 following you. When you say this process, do you mean
15 this very specific trademark process or the whole thing?

16 A. The whole thing.

17 Q. Okay.

18 A. As I said earlier on, it kind of blends into --
19 to my mind.

20 Q. Okay.

21 A. It's really difficult for me to go back and
22 think about some of these things and -- and remember them
23 in the amount of detail that -- that I should, but I'm 58
24 and things are happening, and I'd like it to be over.

25 MR. NIKOLOPOULOS: I'll pass the witness.

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MR. RUIZ: No questions today.

THE REPORTER: Is there anything else for
the record?

MR. RUIZ: No.

MR. NIKOLOPOULOS: No, I'm good.

(Deposition concluded at 3:05 p.m.)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CAROLE FAULKNER, INDIVIDUALLY)	
AND D/B/A C I HOST, AND)	In the Matter of
CHRISTOPHER FAULKNER,)	Application Serial
INDIVIDUALLY AND D/B/A C I)	No. 85703135
HOST,)	
	Mark: C I Host
Opposers,)	
	Opposition No. 91210234
v.)	
GARY DOMEL,)	Published: February 12,
	2013
Applicant.)	

REPORTERS CERTIFICATION
DEPOSITION OF GARY DOMEL
MARCH 20, 2013

THE STATE OF TEXAS:
COUNTY OF TRAVIS:

I, TEENA L. HARMON-DAVIS, a Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, GARY DOMEL, was duly sworn by me and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That examination and signature of the witness to the deposition transcript was waived pursuant to Federal Rule 30(e)(1);

That the original deposition was delivered to Mr. Andy Nikolopoulos

That the amount of time used by each party at the deposition is as follows:

1 Mr. Nikolopoulos - 1 hour:33 minutes

2 Mr. Ruiz - 0 hours:00 minutes

3 I further Certify that I am neither counsel for,
4 related to, nor employed by any of the parties or
5 attorneys in the action in which this proceeding was
6 taken, and further that I am not financially or otherwise
7 interested in the outcome of the action.

8 Certified to by me on this, the 31st day of March,
9 2014.



10 
11 _____
12 TEENA L. HARMON-DAVIS
13 Texas CSR No. 4900
14 Expires: December 31, 2014

15 U.S. LEGAL SUPPORT, INC.
16 Texas CRCB No. 341
17 Austin Centre
18 701 Brazos, Suite 380
19 Austin, Texas 78701
20 (512) 292-4249 or (800) 734-4995
21
22
23
24
25

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