

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Skydive Arizona, Inc.,)
))
))
Plaintiff,)
))
vs.) NO. CIV 05-2656 PHX-MHM
))
Cary Quattrochi, et al.,) Phoenix, Arizona
) March 3, 2010
) 2:31 p.m.
Defendants.)
))

REPORTER'S EXCERPT OF PROCEEDINGS

(Motion Hearing - Testimony of Jan Meyer)

BEFORE THE HONORABLE MARY H. MURGUIA

APPEARANCES:

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Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

I N D E X

WITNESS: DIRECT CROSS REDIRECT RECROSS VD

JAN MEYER
 By Mr. Leach 3
 By Mr. Mathew 33
 By Mr. Leach 37

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
454	Settlement agreement	3	6
461	Georgia court order	6	6

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P R O C E E D I N G S

(The following is an excerpt from the proceedings in this matter:)

THE COURTROOM DEPUTY CLERK: Would you spell your name for the record.

THE WITNESS: Jan Meyer, J-a-n, M-e-y-e-r.

(The witness, Jan Meyer, was duly sworn.)

JAN MEYER,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEACH:

Q. Jan, I just want to hit a few high points with you and try to move quickly. If I start talking too fast, I don't want to take up too much time on this.

But are you familiar with the settlement agreement that was entered into between United States Parachute Association and the Skyride people dated November 29, 2007?

A. Yes, I am.

MR. LEACH: All right. And, Your Honor, that is marked as Exhibit 454.

Your Honor, if I may approach the witness, I have her

1 declaration and all of her exhibits collected here. I think it
2 will help speed things along. They are all in evidence.

3 THE COURT: All right. They were all introduced as
4 evidence in the trial?

5 MR. LEACH: No, these were admitted this morning.

6 THE COURT: Oh, okay.

7 MR. MATHEW: I'm sorry, what numbers are those?

8 THE COURT: What numbers are they?

9 MR. MATHEW: 554?

10 MR. LEACH: No. No. I just said what I gave her is
11 what was introduced this morning. I did not mean to imply that
12 Exhibit 454 was admitted during trial. I'm trying to lay the
13 foundation for that right now.

14 MR. MATHEW: Your Honor, this -- this settlement
15 agreement between the United States Parachute Association and
16 the defendants was a confidential settlement agreement. It
17 should not be the subject of a matter before this Court.
18 Previously the Court has upheld the -- this issue. And once
19 again, they are trying to introduce this to make -- somehow
20 make this document public and the settlement agreement public.
21 I think it's improper and shouldn't be allowed. It's not
22 relevant.

23 THE COURT: What's your response?

24 MR. LEACH: Well, I don't think it's appropriate to
25 suggest that we are somehow trying to circumvent or undermine

1 some previous ruling. This is a document that is relevant to
2 the issues before the Court. We did not introduce it before
3 the jury because it didn't pertain necessarily to the jury --
4 issues the jury decided. And it would have perhaps been
5 prejudicial. And, therefore, although we made it clear
6 repeatedly, and I think you will find on the record I
7 repeatedly said to the Court that we intend to offer evidence
8 that they did not -- they are not living up to this agreement,
9 the promises they made here, and they are not living up to the
10 orders that -- that the -- another injunctive order that has
11 been previously entered against them. We want to now make that
12 record.

13 But Ms. Limon-Wynn has pointed out to me that you will
14 find that statement in the amended final pretrial order at page
15 13 where we said that the defendants made promises -- and this
16 is at line 24, starting at line 24 on page 13: "The defendants
17 made promises in their settlement agreement with the USPA that
18 they have not complied with. The defendants have not complied
19 with the injunctive order entered in the case brought against
20 them by the State of Georgia. Contractual settlement
21 agreements and injunctions appear to have" been -- have "an
22 insufficient deterrent effect." And I am now trying to correct
23 that record.

24 MR. MATHEW: Your Honor, this has nothing to do with
25 the Attorney General of Georgia. This is an attempt to try to

1 get into the public record a confidential settlement agreement,
2 which they have previously tried to get this Court to unseal.
3 And I think it's improper and I think it's not relevant and I
4 think it should not be countenanced by this Court.

5 THE COURT: Overruled. You may proceed.

6 MR. LEACH: Thank you, Your Honor.

7 THE COURT: It's admitted.

8 MR. LEACH: Thank you. So that's Exhibit 454. And
9 then let's go ahead and address this other one while we've been
10 talking about this objection.

11 BY MR. LEACH:

12 Q. Are you familiar with the order that was entered in the
13 State of Georgia case against Mr. Quattrocchi and Mr. Butler,
14 et al, which is Exhibit 461?

15 A. Yes, I am.

16 MR. LEACH: Your Honor, we offer Exhibit 461 in
17 evidence.

18 MR. MATHEW: No objection.

19 THE COURT: It's admitted.

20 BY MR. LEACH:

21 Q. All right. Now, very briefly, for purposes of this Court
22 determining what remedy to grant in this case, have you -- are
23 you familiar with and have you studied the provisions above,
24 Exhibit 461 and Exhibit 464?

25 A. Yes.

1 Q. Are -- is -- are the defendants complying with the
2 provisions in these -- this agreement and this order concerning
3 the content of their websites?

4 MR. MATHEW: Objection, calls for speculation, lack of
5 foundation.

6 THE COURT: I ask you to lay foundation for that,
7 Mr. Leach.

8 MR. LEACH: Sure.

9 BY MR. LEACH:

10 Q. I already established that you are familiar with the
11 provisions then. Are there provisions in the USPA settlement
12 agreement that require the defendants to make certain changes
13 in the content of their websites?

14 A. Yes.

15 Q. For example, in -- on page 3 of Exhibit 454, if you -- if
16 that could be displayed on -- from counsel's desk, here where
17 it says paragraph 2, plaintiff's obligations, and then there's
18 subparagraph A, modifications to the websites. Are those some
19 of the provisions that plaintiffs -- excuse me, that the
20 Skyride people agreed to make to their websites?

21 MR. MATHEW: Your Honor, I'm going to object to this
22 line of questioning on relevance. It's not pertinent to a
23 trademark infringement in this particular case.

24 THE COURT: Overruled. I'll allow it.

25 THE WITNESS: Yes, that's a paragraph that Skyride

1 promised to make changes to their website.

2 BY MR. LEACH:

3 Q. And did the changes relate to the false advertising and
4 deceptive nature of the websites?

5 A. Yes, they do.

6 Q. And then did those changes that they were required to make
7 continue on to page 4, the top half of that page as well?

8 A. Yes. Those are more things that the Skyride people had to
9 do to their websites.

10 Q. Okay. And have you reviewed websites of -- Skyride website
11 or the defendants' website to determine whether they are
12 complying with the provisions of Exhibit 454, the USPA
13 agreement?

14 MR. MATHEW: Objection, Your Honor, this is calling
15 for a legal conclusion. This is an agreement between two
16 outside parties and there's all kinds of agreements between
17 them. This witness does not have that knowledge.

18 THE COURT: Mr. Leach?

19 MR. LEACH: Your Honor, we can go into specifics. I'm
20 trying to lay -- ask her a general question. He can
21 cross-examine her if he doesn't think she knows the answer.
22 But I intend to, if necessary, go through with specific
23 examples of what this required, what they failed to do.

24 THE COURT: And how does she know about this?

25 MR. LEACH: She's -- she reviewed the defendant's

1 websites.

2 BY MR. LEACH:

3 Q. And you were a member of the USPA board of directors when
4 the agreement of -- Exhibit 454 was entered into, correct?

5 A. That's correct.

6 THE COURT: All right. Overruled. You may proceed.

7 MR. LEACH: Thank you, Your Honor.

8 BY MR. LEACH:

9 Q. And I'm just trying to save time. But have you also
10 reviewed the terms of the consent order of Exhibit 461?

11 A. Yes, I have.

12 Q. And you've reviewed the provisions there where the
13 defendants were required to make changes to their websites,
14 correct?

15 A. Correct.

16 Q. And have you reviewed Skyride websites and found -- made --
17 made a determination of whether they have done what this order
18 required them to do?

19 MR. MATHEW: Objection, Your Honor, this order is
20 between the State of Georgia and the defendants. It has
21 nothing to do with the USPA. And to sit there and say that
22 she's a member of the USPA does not create the foundation for
23 her to talk about an agreement between the defendants and the
24 State of Georgia.

25 THE COURT: Well, I think I can recall the testimony

1 regarding all of this that occurred during trial, the
2 foundation that was laid at that point regarding the witness's
3 knowledge of this settlement agreement, also some of the issues
4 that were raised regarding this witness and her, I guess, lack
5 of affinity for the defendants and some of the issues that were
6 raised also during the questioning of this witness about some
7 issues regarding her performance on the board. But I'm going
8 to allow this testimony. And I'll give it whatever weight I
9 think it deserves.

10 MR. MATHEW: Your Honor, I don't know if I was clear,
11 but this agreement is not the USPA settlement agreement. It's
12 the Georgia settlement agreement. I just didn't know if I was
13 clear about that. But that was my objection.

14 THE COURT: And her knowledge on this is based on just
15 simply reviewing it on the website?

16 MR. LEACH: No, Your Honor. She's read the consent
17 order. And the main thing she's going to testify as to what
18 the websites say. I'm just trying to lay the foundation that
19 what she intends to indicate -- focus her testimony on, are
20 instances in which she will show factually to the Court where
21 they violated this. But the ultimate determination of whether
22 there's a violation or not will be yours.

23 I'm just trying to lay the foundation to set the stage
24 for the factual testimony that she's trying to get -- that I'm
25 trying to get in through this witness that -- and it's because

1 the defendants raised the objection to lack of foundation, I'm
2 trying to lay the foundation. And then I'll get to the
3 testimony.

4 MR. MATHEW: And that's what I'm trying to object to,
5 Your Honor. When he says there that ultimately it will be your
6 decision about whether they violated, it's the State of Georgia
7 and the Attorney General and the Georgia courts. And this is
8 not relevant for this because there's other things that are
9 happening with that case that she may not be privy to. And
10 it's unfair for us, because it's hard for us to unring the
11 bell.

12 THE COURT: Well, again, Mr. Leach, I'm not quite sure
13 how this witness is going to be able to give you what you want.
14 But I'm going to give you some latitude and let you proceed.
15 But if she's just based on reading the website and you're
16 submitting that to me, she shouldn't be interpreting that
17 document.

18 MR. LEACH: No. No. I'm going to have her point out
19 to you. Here's an example, and you can look at what the order
20 said, and she will factually that here's the website, there are
21 more of these, but to save time, here's an example. You look
22 at it and you can take that into consideration in whatever
23 remedy you grant in this case.

24 THE COURT: And that's tied to this claim and this
25 case?

1 MR. LEACH: Yes.

2 THE COURT: Based on what?

3 MR. LEACH: The false advertising claim, Your Honor.

4 THE COURT: Based on your theory that you set out this
5 morning?

6 MR. LEACH: Well, this applies to all of their
7 websites, so both ways. But even if you were to rule that I
8 only had standing for Arizona, this is relevant to Arizona
9 because it applies nationwide.

10 THE COURT: All right. Overruled.

11 MR. MATHEW: Thank you.

12 THE COURT: Overruled. Proceed.

13 MR. LEACH: Thank you, Your Honor.

14 BY MR. LEACH:

15 Q. Now, your declaration that has been admitted into evidence
16 in this case is contained in a number of exhibits which have
17 been -- now been marked as trial exhibits, correct?

18 A. Correct.

19 Q. Now, what did you intend to show by this collection of
20 exhibits to your declaration which are now in the record as
21 Exhibits 551 through 572.

22 A. These exhibits show samples of their websites that go
23 against the Georgia state order and the USPA agreement where
24 they were mandated or made an agreement, promised to change
25 things on their website to get rid of the misleading language,

1 the misrepresentation. These are samples, it is only a small
2 sample of the existing websites that are out there that violate
3 these agreements that they have.

4 Q. Have you reviewed other websites in terms of determining
5 whether they have the changes that the USPA agreement and the
6 Georgia order required to determine whether or not they have
7 the changes that were required to be made?

8 Have you looked at other websites beyond these?

9 A. Oh, beyond the ones in this?

10 Q. Yes.

11 A. Yes, more sites than those, too.

12 Q. And then just to save time, this is illustrative?

13 A. Correct.

14 Q. Let me then refer you then to the USPA agreement, paragraph
15 2(a)(1) on page 3.

16 MR. MATHEW: Which exhibit is that?

17 MR. LEACH: Exhibit 454.

18 MR. MATHEW: Your Honor, this agreement was not given
19 to me.

20 THE COURT: Which agreement, 454, which is -- you need
21 to tell me which one you are talking about.

22 MR. MATHEW: The one he's talking about, 454. I
23 didn't have a chance to prepare for it. He dumped this to me
24 over lunch time. And now I'm sitting here and I'm being
25 surprised by this. I'm being surprised by a prejudicial

1 document that should not be made public.

2 THE COURT: You need to stand at a microphone. Okay,
3 I heard your -- can you give him 454, please.

4 MR. LEACH: I think it's in the -- in the collection
5 that I gave him for -- that we have for Jan Meyer. Do we have
6 another 454?

7 MR. MATHEW: Well, I wasn't even given that one at
8 lunchtime.

9 MR. LEACH: No, Your Honor, these were included in
10 what we gave -- what we filed. 461 was included in what we
11 filed on the 17th in support of our motion. And reference was
12 made to 454 at the same time. But we will give it to him.

13 THE COURT: There are a lot of exhibits here,
14 Mr. Mathew, believe me, I know. And but I think some of them
15 were, you know, filed along with a lot of the papers that have
16 been submitted to the Court. So take the time you need right
17 now to review that.

18 MR. MATHEW: Thank you, Your Honor. I'm not trying to
19 make your life difficult.

20 I'm going to object to this document being introduced
21 into evidence. It was not provided to me as an exhibit. It's
22 a -- it says clearly confidential settlement and release
23 agreement, something that should not be made public.

24 THE COURT: Well, I think it was provided to you
25 before this hearing, Mr. Mathew. I think it was an exhibit

1 also during the course of the trial. So I understand there
2 were a lot of exhibits here. You've had a chance to look at it
3 now. Your objections are overruled.

4 MR. LEACH: Your Honor, if I may ask to have the
5 overhead projector displayed for the Court.

6 I think defense counsel is way over-representing his
7 surprise. This is what we filed as document 397 on February
8 17. And in our pleading, we said, for example, Skydive Arizona
9 intends to use Trial Exhibits 454, 461, and 670. So we told
10 Mr. Mathew on February 17, when we filed our motion prior to
11 this hearing, that we were going to use these exhibits.

12 MR. MATHEW: We were given some exhibits, Your Honor,
13 and those were the ones that I thought they were going to be
14 using.

15 THE COURT: Well, you had this, Mr. Mathew. The
16 record is clear, it's made. Let's go.

17 MR. LEACH: Thank you.

18 Now, again, I'm trying to use as little of the Court's
19 time as possible. If we can now have the overhead -- the
20 display from counsel's stand. Sorry, I'm probably not saying
21 that correctly.

22 And if we can show page 3 of this agreement and
23 show -- focus in on paragraph 2(a)(1) that says "about us."

24 BY MR. LEACH:

25 Q. Now, let me focus your attention in on the language here of

1 the USPA agreement where it says, "Plaintiffs will add to all
2 websites a link on their main pages to an 'about us' section
3 that explains the website is affiliated with plaintiffs'
4 network."

5 And then also refer you down to the sixth line from
6 the bottom, and ask you about the -- this last part that says,
7 "The 'about us' section shall be displayed in a manner
8 including size and placement consistent with other sections of
9 the website."

10 Do you see that?

11 A. Yes, I do.

12 Q. All right. And did you look at the Skyride websites to
13 determine whether they had added to all websites a link on
14 their main pages to an "about us" section that explained that
15 the website was one that was affiliated with the Skyride
16 network?

17 A. I've looked at several sites and found sites that did not
18 have this "about us" link that described their business. And I
19 didn't look at all 1,000 plus websites. But a small but
20 significant sampling of their websites.

21 Q. Okay. And in Exhibit 461, the Georgia order, did you look
22 at paragraph 35 provision on page 11 of 461? Right at the
23 bottom here that talked about within 120 days of the order,
24 which was August, 2008, the Skyride defendants are ordered to
25 post in a conspicuous location on the "about us" page of each

1 of their websites a statement that they serve only as a booking
2 agent for affiliates, partners or vendors available on a
3 requested service, and then the provision that goes on the next
4 page that says the "about us" page shall be accessible through
5 a link entitled "about us," which link shall appear on each
6 page of their websites.

7 Did you look at their website to see if they had done
8 that?

9 A. I looked at their websites and found that their websites
10 did not abide with this contract. They did not have "about us"
11 on every page of their websites.

12 Q. And is Exhibit 556 an example of one of the websites that
13 you looked at that illustrates this?

14 A. Yes. 556 are printouts of the Tempe Skydiving, Scottsdale
15 Skydiving, Iowa Skydiving, Nebraska Skydiving, Oklahoma
16 Skydiving. And none of those pages -- and remember, this is
17 just a sampling. This is the tip of the iceberg. They do not
18 have the "about us" link on those pages.

19 MR. MATHEW: Your Honor, I object to this. This is
20 way beyond the scope of the trademark and the infringing
21 activity and the false advertisement that would be attributable
22 to this case. This -- it's just not relevant.

23 THE COURT: Overruled.

24 BY MR. LEACH:

25 Q. And is Exhibit 557 another example -- excuse me. I'm

1 looking at the wrong exhibit here.

2 Yes, is Exhibit 557, the last two pages, another
3 example of a place where their websites do not have this?

4 A. Yeah, they are missing the "about us" on the Topeka
5 Skydiving, Kansas Skydiving websites.

6 Q. So if we look at -- go back two pages and look at the last
7 two pages, so it would be the third page and the fourth page,
8 that's it?

9 A. Those two, yeah.

10 Q. So this is one that doesn't have "about us." And then the
11 Kansas Skydiving, next page, doesn't that have it either?

12 A. That's correct.

13 Q. Okay. Is Exhibit 567 another example of a place where they
14 don't have the required "about us" on their websites?

15 A. Yes. This is a printout of Tempe Skydiving, and these are
16 from Thrill Planet domain. And the other ones were from
17 Skydive domain. This one is Mesa Skydiving, Skydiving serving
18 Fargo, these also do not have the "about us" links on the
19 pages.

20 Q. And in each instance, if we look at way down at the lower
21 right-hand corner, do these exhibits show the date that they
22 were printed out?

23 A. They were printed out on February 17th, 2010.

24 Q. Okay. And then is Exhibit 572 another example where they
25 don't have the "about us"?

1 A. Yes, this one is for Wyoming Skydiving. And this is off
2 the 1-800-Skyride domain. Wyoming Skydiving. And there's
3 several pages from the Wyoming Skydiving website. And again,
4 this is just a sample, you can go find other sample websites
5 for other states or cities that are set up the same way. This
6 is just a representative of the websites missing "about us."

7 Q. And where we saw the Georgia order said the "about us" has
8 to appear on each page, 572 shows several pages of the same
9 website. And do any of those have an "about us" link?

10 A. None of those pages have an "about us." And they are from
11 the same domain.

12 Q. Now, again, is this all of the instances where they failed
13 to do this?

14 A. No, there's plenty more. Just type in a city and state
15 name, and you'll find more.

16 Q. Okay. Now, in the Georgia order at paragraph 32, which is
17 on page 10 of Exhibit 461.

18 A. What paragraph number?

19 Q. Paragraph 32, please.

20 Does this provision require the Skyride defendant to
21 post conspicuously on their website a clearly written policy
22 concerning the availability of refunds, and that the policy
23 concerning refunds had to be immediately accessible by a link
24 to the terms and conditions page of each of their websites to
25 which consumers are directly referred by a conspicuously placed

1 hyperlink or other symbol or phrase located at the bottom of
2 the home page of the websites?

3 MR. MATHEW: Your Honor, relevance again. This has
4 nothing to do with false advertising.

5 THE COURT: Overruled. You may proceed.

6 BY MR. LEACH:

7 Q. And also that it has to be in the same size font, character
8 type as that used in the main body of the page's content. Did
9 you look at web sites to determine whether they had this "terms
10 and conditions" link?

11 A. Yes, I looked at many websites to see if they had the
12 "terms and conditions" and I found lots of websites that did
13 not.

14 Q. Now, the ones that we just looked at, did any of those have
15 the "terms and conditions" link on them?

16 A. No, they didn't.

17 Q. Let me also refer you to the Georgia order, paragraph 16,
18 which is Exhibit 461. And this provision also requires that
19 they post in a conspicuous location on a terms and conditions
20 page of each of their websites things like the hours and days
21 of operation. And in addition, if you look at the sixth line
22 down where it says, "The 'terms and conditions' page shall be
23 accessible through a link entitled 'terms and conditions' which
24 link shall appear on the home page of each of their websites."

25 Did you look at their websites to see if they had a

1 "terms and conditions" link on their home page of their
2 websites?

3 A. Yes, I looked for that.

4 Q. And did they?

5 A. They did not have "terms and conditions" links on their
6 websites.

7 Q. And the exhibits we just looked at, did they have a "terms
8 and conditions" page on the home page of those websites?

9 A. No.

10 Q. And are there others that did not have the terms and --

11 A. There's many other websites that do not have the "terms and
12 conditions" link on them.

13 Q. Now, we saw in Georgia order paragraph 32 that the "terms
14 and conditions" have to have a written policy concerning
15 refunds. Is Exhibit 557 an example of an instance where they
16 don't have the required "terms and conditions" displayed on the
17 home page?

18 A. Yes. This one is Kansasskydiving.com. It was printed
19 January 28th, 2010. And it does not have the terms or
20 conditions --

21 Q. And --

22 A. -- or the "about us."

23 Q. And in addition to the exhibits we've looked at plus this
24 one, are there others out there that fail to have the "terms
25 and conditions" link on the home page?

1 A. Yes. There's many, many other websites. There's -- you
2 know, they have over a thousand domain names. I looked at
3 probably 100 and gave you a sample of the -- of just to
4 illustrate the violation. But if you wanted me to print out
5 all of them, I could.

6 Q. Well, how big a stack would that have been?

7 A. It would be more than twice your height, I guess.

8 Q. All right. Now, let's look at the Georgia order, paragraph
9 27, on page 9 of Exhibit 461. And that provision says, "The
10 Skyride defendants are enjoined from representing that they own
11 or operate the facilities at which consumers will be
12 participating in adventure sport or experience, or that they
13 employ the individuals at those facilities unless that's true."

14 Did you look at their website to see if they were
15 complying with this?

16 A. Yes, I looked for compliance on that and found several
17 websites that do not comply with it. They represent themselves
18 as other businesses.

19 Q. And just so we don't have to go through this exhibit --
20 these exhibits multiple times, let's collect three particular
21 provisions. In addition to this one, paragraph 17 of the
22 Georgia order, which is Exhibit 461, and this is on page 6,
23 paragraph 17, had a provision that the Skyride defendants were
24 enjoined from representing that they have affiliations,
25 partnerships, or business relationships with companies or

1 vendors which they had no legal enforceable agreement to
2 provide services to consumers prior to the representation.

3 Did you look to see whether they were complying with
4 that?

5 MR. MATHEW: Your Honor, objection, this calls for a
6 legal conclusion.

7 THE COURT: Well, no, I think he's asking if she saw
8 anything in the other websites that track this language here.

9 MR. LEACH: Right. Where they had any representations
10 that they had affiliations or business relationships with
11 companies or vendors they didn't have.

12 THE COURT: Overruled. You may answer.

13 THE WITNESS: Yes, I looked at websites that they
14 claimed they had affiliations with. They still claim
15 affiliation with Skydive Arizona in fact.

16 BY MR. LEACH:

17 Q. So did you find websites where they were claiming
18 affiliations or business relationships with companies or
19 vendors that they had no such relationship with?

20 A. Yes, they did.

21 Q. And we will look at some examples in a second, but I think
22 we can do all of these together profitably and save time. Let
23 me have you look at the USPA agreement, Exhibit 454, paragraph
24 3 on page 4 of that exhibit. It's actually paragraph 2(a)(3).

25 And was there a provision in the USPA agreement where

1 they agreed to make certain changes in their websites
2 concerning facilities or amenities?

3 A. Yes, in this particular paragraph it says that they should
4 not use the description as "their" or "our" unless they have a
5 real drop zone there. But they have many, many websites that
6 claim, you know, their planes, their equipment, their
7 facilities when they should not be doing that because it
8 implies that they have a physical location where they do not.

9 MR. MATHEW: I move to strike that. It makes a legal
10 conclusion. She's making a determination of what these people
11 can and cannot do.

12 THE COURT: Overruled.

13 BY MR. LEACH:

14 Q. Okay, so you looked at websites to see whether they had
15 something that went against their promise that they were not
16 going to represent or that the entities identified in the name
17 of their website actually possessed or maintained specific
18 facilities, equipment, or staff at a physical location,
19 including by such descriptions as "their" or "our," to describe
20 staff facilities or equipment except for things like the web
21 sight for ASC or Alabama or wherever they actually own a
22 website, correct?

23 A. That's correct.

24 Q. Did you find situations where they still owned websites
25 even today, had representations about our staff, our

1 facilities, or our equipment at a -- on a website for an entity
2 named in the website that in fact did not have such things?

3 A. Yes, I found many web sites like that.

4 Q. Now, let's look at some exhibits, now that we have these
5 provisions in mind, and let me ask you to look at Exhibit 559.

6 And is this a website that was printed out on January 26, 2010,
7 correct?

8 A. That's correct.

9 Q. And this is one of the Skyride websites, correct?

10 A. Yes.

11 Q. And if we look right under "Welcome to Utah Skydiving,"
12 where they say "experience the adrenaline-pumping action of
13 skydiving from an airplane high in the Utah sky." And this
14 is -- the entity named on this website is Utah Skydiving. And
15 they say in the third sentence here, "Utah Skydiving
16 representatives can help you book your first skydive with one
17 of our safe, experienced vendors."

18 Do they have any vendors in Utah?

19 A. No, they don't.

20 Q. Now, on this -- is Exhibit 557 a similar example for the
21 State of Kansas?

22 A. Yes, it is.

23 Q. And here they have a similar thing where they tell
24 consumers they can have -- experience skydiving from an
25 airplane high in the Kansas sky and that they can book their

1 skydiving with one of our safe, experienced vendors, suggesting
2 that they have vendors in Kansas.

3 Do they have any vendors in Kansas?

4 A. They have no vendors in Kansas.

5 Q. And then is Exhibit 572 another example?

6 A. Yes, this is another example.

7 Q. And if we look beyond the first page and go to page 6,
8 which is the frequently asked questions, is this a page that
9 was printed out from one of the Skyride websites on February
10 16th, 2010?

11 A. Yes, it is.

12 Q. And the entity named in this website is Wyoming Skydiving,
13 correct?

14 A. That's correct.

15 Q. And under the question number two, or do they have the
16 sentence, "Most of our skydives are made from 15,000 feet"?

17 A. That's correct.

18 Q. And do they have -- is there any entity in Wyoming
19 Skydiving where skydives are made from 15,000 feet?

20 A. There's no skydiving operation in Wyoming at all.

21 Q. All right. And then under number three --

22 THE COURT: You are starting to get a little
23 cumulative.

24 MR. LEACH: All right.

25 THE COURT: I think I've got it. So, I mean, I'll

1 give you one more and those are all the examples.

2 MR. LEACH: All right.

3 BY MR. LEACH:

4 Q. In number three they have something about our ability to
5 teach you in free-fall using hand signals. And our, there is a
6 violation, correct?

7 THE COURT: What did you say?

8 MR. LEACH: They even have under question number
9 three, the last sentence, it says, "Another is our ability to
10 teach you in free-fall using hand signals to adjust your body
11 position, thereby giving you a better result."

12 A. That's correct.

13 Q. They use "our" to refer to their violation of the order; is
14 that right?

15 A. That's correct.

16 Q. And then on the next page, under question number six, the
17 second sentence there under question number six, it says that,
18 "If you lose altitude awareness, we would guide you through
19 hand signals telling you to open the parachute. And if you do
20 not respond, we will open it for you."

21 A. That's correct.

22 Q. And is that a violation of that provision?

23 A. Yes, it is a violation.

24 Q. And do they also have things in here about "our canopies,"
25 "we will give you a radio," "we will teach you to pack," and so

1 forth?

2 A. Yes, they do.

3 Q. All right. And then just to shorten things because I know
4 the Court doesn't want to spend all day on this, are there many
5 others that you could point to where they continue to use "our"
6 or "we" to refer to equipment, facilities, staff that are not
7 true?

8 A. Yes, there are many, many websites that have the "our" or
9 the possessive nouns to pretend that they have a real center
10 where they don't.

11 Q. Okay. And then let me then ask you about something
12 different, and that is the USPA agreement and a provision on
13 page 5, paragraph D, which refers to use of unauthorized
14 endorsements. And did this provision require that no
15 references will be made on the web sites to any unauthorized
16 endorsement, for example, endorsements from entities that do
17 not exist?

18 A. Yes, it does say that.

19 Q. Did you look at websites to see if they were violating that
20 promise?

21 A. Yes, they are violating that.

22 Q. Is Exhibit 553 one example of such a website?

23 A. Well, in fact --

24 Q. If you go past the first page, I think. I want you to look
25 at on page one, two, three, five of this exhibit.

1 A. Yes. That's a printout from SkydivingAL.com. And it's
2 making reference to Tim Easen's text is what's on this page.

3 Q. For example, this representation at the bottom where it
4 says, "Adventure Skydiving Alabama offers the most advanced
5 training methods available by NSA certified instructors."

6 Do you see that.

7 A. Yes, I do.

8 Q. Is there any such entity of the NSA or National Skydiving
9 Association that exist and which gives such certifications?

10 MR. MATHEW: Objection, foundation.

11 THE COURT: Sustained.

12 BY MR. LEACH:

13 Q. Are you familiar with whether or not there is any
14 organization called the NSA or the National Skydiving
15 Association?

16 MR. MATHEW: Objection, foundation.

17 THE COURT: Well, answer this first.

18 THE WITNESS: There is no such thing as a national
19 association -- skydiving association.

20 THE COURT: How does she know this?

21 BY MR. LEACH:

22 Q. How many years have you been involved in skydiving?

23 A. Since 1981.

24 Q. How many skydives have you made?

25 A. About 6500.

1 Q. How many different places in the United States have you
2 gone to skydive?

3 A. 20 or so.

4 Q. Were you a member of the board of directors of the
5 United States Parachute Association?

6 A. Yes, I was.

7 Q. And when you were -- and in the course of that -- oh,
8 withdrawn.

9 Have you also been one of the leading skydivers in the
10 country who gets invited to world record attempts?

11 A. Yes, I am.

12 Q. And are you one of the leading skydivers in the country
13 that gets invited to the Arizona Challenge, which involves
14 making very difficult skydives?

15 A. Yes, I am.

16 Q. And has the issue of the National Skydiving Association or
17 the NSA certified instructors ever come to the attention of the
18 USPA while you were there?

19 A. Yes, it has.

20 Q. And what was the net result of that event as far as your
21 ability to testify now as to whether there is such a thing as
22 NSA certified instructors?

23 A. I'm sorry, you're asking --

24 Q. That's a lousy question. So -- well, just tell us about
25 what you learned about the NSA when it came to the attention of

1 the USPA.

2 A. The NSA virtual company was displayed on several of the
3 Skyride websites, skydiving.com and skydiveinfo.com. And it
4 pretended to be an organization and lists -- listed
5 affiliations with real drop zones, gave links to their
6 websites, and then portrayed that they were an agency that
7 certified skydiving instructors.

8 The only organization in the United States that
9 certifies skydiving instructors is the United States Parachute
10 Association. USPA is recognized by the FAA. The NAA -- or the
11 NSA is just a figment of Cary's imagination. And he does it to
12 pretend that he rates his instructors or school through this
13 fictitious virtual company.

14 MR. LEACH: I hope that's sufficient.

15 BY MR. LEACH:

16 Q. Let me just ask you about one more provision, or --

17 THE COURT: No, we are done with the provisions,
18 Mr. Leach.

19 MR. LEACH: All right.

20 THE COURT: Do you have anything else for her?

21 MR. LEACH: Sure.

22 BY MR. LEACH:

23 Q. The provision in the USPA agreement that pertains to
24 photographers, paragraph 2(a)(4), is there a problem with
25 enforcement of the provision about the photographs where the

1 plaintiffs will not display photographs on the websites without
2 permission of the copyright holder? Is there a problem with
3 the enforceability of that provision by virtue of the fact that
4 this agreement is being kept secret?

5 A. Yes. That particular paragraph cannot be enforced because
6 the photographers do not know that provision exists. Now, the
7 photographers can see their -- their photographs being used on
8 the Skyride websites, but they have no recourse. Many of them
9 have already contacted Skyride directly, asked them, tried to
10 phone them if they were in the country. And they cannot get
11 the photographs removed.

12 The photographers do not know about this agreement,
13 and USPA doesn't know whose photographs those are. And so
14 there's no way to get Skyride to remove those photos, because
15 nobody can complain because they don't know about the
16 paragraph.

17 Q. Now, in the USPA --

18 MR. MATHEW: Your Honor, I move to strike that. I
19 mean, it assumes that these people -- if they don't know about
20 it, how can she say that they need this to do that? It assumes
21 facts that are beyond this witness' knowledge. And it requires
22 her to get into the mind of a photographer about something they
23 don't even know. I move that that be stricken.

24 THE COURT: There was testimony regarding a
25 photographer regarding this, Mr. Leach. I really think we are

1 done. Is there anything else with this witness?

2 MR. LEACH: No, Your Honor, except that we would argue
3 that this agreement, because it's being kept secret, is
4 essentially unenforceable, because no one knows about it except
5 someone who happens to be -- have been on the USPA board and so
6 there is no one out there who can enforce these provisions
7 because Jan Meyer is prohibited from telling the photographers
8 about the provision or saying anything about the violations of
9 the agreement.

10 THE COURT: All right.

11 MR. LEACH: So that was the point that I was trying to
12 make.

13 THE COURT: Okay.

14 MR. LEACH: Thank you, Jen.

15 THE COURT: Thank you.

16 Mr. Mathew.

17

18 CROSS-EXAMINATION

19 BY MR. MATHEW:

20 Q. Good afternoon, Ms. Meyer.

21 Did you talk to -- when was the last time you talked
22 with a representative of the Georgia Consumer Affairs
23 Department?

24 A. I haven't talked to them.

25 Q. Are you aware that they don't have any problems right now

1 with 1-800-Skyride?

2 A. I do not know what their thinking is. I haven't talked to
3 them.

4 Q. So they haven't come to you and asked you to enforce any
5 kind of agreement in Arizona, have they?

6 A. They wouldn't ask me to enforce a document.

7 Q. Is that a no?

8 A. Well, I don't have the enforcement authority, what your
9 question asked.

10 Q. They didn't ask you to look at websites?

11 A. They did not -- they did not ask me to look at websites.

12 Q. With regard to complaints last year against 1-800-Skyride
13 to the Better Business Bureau, how many complaints were there
14 in Georgia? How many complaints did you unearth?

15 A. Did I enter?

16 Q. Did you unearth?

17 A. Oh, unearth. I don't remember the exact number off, but it
18 was several hundred.

19 Q. Last year?

20 A. Yes.

21 Q. And last year you unearthed several hundred, is that
22 correct? Is that what you're saying?

23 A. I think so. I don't have that documentation with me, so I
24 couldn't give you a specific number.

25 Q. Were you aware that it was less than five last year?

1 MR. LEACH: Object to the form of the question, Your
2 Honor.

3 THE COURT: Sustained.

4 BY MR. MATHEW:

5 Q. How do you square that with your testimony of several
6 hundred versus less than five?

7 THE COURT: Whose testimony is that, Mr. Mathew?

8 MR. MATHEW: I'm sorry, I'll withdraw the question.

9 BY MR. MATHEW:

10 Q. Are you aware that there was less than five?

11 MR. LEACH: Still object to the form of the question.

12 THE COURT: Sustained. Based on what Mr. Mathew?

13 Based on who?

14 BY MR. MATHEW:

15 Q. You testified about Exhibit 559; am I correct? Do you have
16 that?

17 A. Yes.

18 Q. Did you prepare these websites for inclusion in your
19 affidavit?

20 A. Yes, I did.

21 Q. When you prepared these websites, did you print them out or
22 did the lawyers print them out?

23 A. The lawyers. I made the PDF file and sent that to the
24 lawyers. The lawyers printed out the pieces of paper.

25 Q. Did you cut out anything in the websites?

1 A. No, I didn't.

2 Q. So it's your testimony that in 551 -- I'm sorry, 559, the
3 document that says 1-26-2010, 5:51 a.m. My client didn't
4 comply with an agreement to find or to put in the "terms and
5 conditions." Is that what your testimony is?

6 A. On this page this one does have a "terms and conditions" in
7 itty-bitty print. But that itty-bitty font does not comply
8 with the paragraph.

9 Q. So on 559, when you earlier testified that it didn't comply
10 with the terms and conditions, it really did have the terms and
11 conditions, am I correct?

12 MR. LEACH: Objection, Your Honor, to assumption in
13 the question.

14 THE COURT: What's your question again? Repeat it.

15 BY MR. MATHEW:

16 Q. When you earlier testified about Exhibit 559 that Utah
17 Skydiving, the website, Utah Skydiving, did not comply with an
18 agreement?

19 A. That's correct.

20 Q. But it does have "terms and conditions," doesn't it?

21 A. It does have that link, but not in the proper font or style
22 that's germane to the rest of the page, which is part of the
23 agreement paragraph.

24 Q. And on page 2 it has that, doesn't it, "terms and
25 conditions"?

1 A. It has the link. But it does not comply with the font
2 specification from the Georgia court order.

3 Q. Also on 559, it has another link that says "about us,"
4 doesn't it?

5 A. Yes, it does. And this one also does not have the proper
6 font and type face as the rest of the page, which is part of
7 requirement.

8 MR. MATHEW: No further questions, Your Honor.

9 THE COURT: Thank you.

10 Any redirect?

11

12 REDIRECT EXAMINATION

13 BY MR. LEACH:

14 Q. Just look real quickly at Exhibit 559.

15 A. Okay.

16 Q. And the first paragraph under "Welcome to Utah Skydiving."
17 Is this one of the exhibits that you testified about where they
18 used the word "our" and this was not one of the ones that you
19 referred to about the "terms and conditions" and "about us"?

20 A. Yes. This one also violates the "our" -- the -- you know,
21 the possessive pronoun.

22 MR. LEACH: Okay, thank you, Your Honor.

23 THE COURT: Thank you. You may step down.

24 THE WITNESS: What do I do with these?

25 THE COURT: You just leave those right there. Thank

1 you.

2 * * *

3
4 C E R T I F I C A T E

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6
7
8
9 I, MERILYN A. SANCHEZ, do hereby certify that I am
10 duly appointed and qualified to act as Official Court Reporter
11 for the United States District Court for the District of
12 Arizona.

13 I FURTHER CERTIFY that the foregoing pages constitute
14 a full, true, and accurate transcript of all of that portion of
15 the proceedings contained herein, had in the above-entitled
16 cause on the date specified therein, and that said transcript
17 was prepared under my direction and control.

18
19
20 DATED at Phoenix, Arizona, this 8th day of March,
21 2010.

22
23
24 S/Merilyn A. Sanchez

25 MERILYN A. SANCHEZ, CRR

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