

Hall Declaration Exhibit A

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

ROBERT JACOBSEN, AN
INDIVIDUAL,
PLAINTIFF

VS

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

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

TAKEN BY: PLAINTIFF

BEFORE: HELENA L. BOWES, RPR
NOTARY PUBLIC

TORR PIZZILLO, LEGAL VIDEO
OPERATOR

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

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

1 A Of what product?

2 Q Of the Kamind -- Mr. Katzer's product.

3 A Oh, KAM Industries. Not offhand, no.

4 Q Can you compare what it would be like to
5 work to program routes and signals using a handheld
6 device as opposed to computer control?

7 A If someone were to program routes and
8 signals via a handheld control, they would have to
9 memorize or have access to a list of all the turnout
10 and signal numbers in order to do that, I believe.

11 With computer control, a person who is
12 managing the dispatching can use a graphic user
13 interface to do it on screen, does not require
14 knowledge of all the numbers behind the system.

15 Q Which is easier to use then, computer
16 control or handheld?

17 A For dispatching, computer control.

18 Q Have you worked with Kamind software?

19 A Kevin?

20 Q Kamind. Mr. Katzer's --

21 A Only the demo that he sent me many, many
22 years ago.

23 Q What was it like to work with Mr. Katzer's
24 software?

25 A I found it very complicated. I never

1 didn't understand it.

2 To Mr. Katzer's credit, I believe it's a
3 very high end system. I didn't have time to invest in
4 the learning curve, and it just didn't meet my needs.

5 Q And compare it with JMRI.

6 A JMRI, in conjunction with the CATS module,
7 was very flexible, much more intuitive. It allowed me
8 to create the diagram on an external program like
9 Photoshop. So, instead of being electronically coded
10 through the actual dispatching program, I could use a
11 paint program to draw the lines and stuff and then use
12 the CATS software to add the technology behind it, the
13 logic.

14 Q Let me switch gears just a little bit
15 here. I'm going to ask you a few questions about what
16 you know about JMRI.

17 Are you a member of LISTSERVs that mention
18 or discuss JMRI?

19 A I'm on the JMR -- JMRI user list.

20 Q Are you on other LISTSERVs that mention or
21 discuss JMRI or DecoderPro or PanelPro?

22 A Not specifically. If they come up in
23 passing on another list that I'm on, sure. I mean, I'm
24 on several model railroad lists. Although, on this
25 point, I'm getting them in what's digest mode, which

1 Q Okay. Let me direct your attention to the
2 third paragraph. Can you read that paragraph --
3 actually the -- yes.

4 A "Shortly."

5 Q The first two sentences of that paragraph.

6 A "Shortly after its announcement, I was
7 approached by Mr. Katzer of KAM Industries. He offered
8 to swap the domain for the decoderpro.com domain.

9 Q Is that statement true?

10 A Yes.

11 Q Did you suggest swapping before Mr. Katzer
12 did?

13 A No, I did not.

14 Q Did you offer any money to Mr. Katzer, or
15 did you tell Mr. Katzer he could pay you for
16 computerdispatcherpro.com?

17 A I'd have to review my original e-mails,
18 which I know you have a copy of. I questioned --
19 because I had just registered it and spent \$200, or
20 something like that, I may have asked about that, but
21 that first e-mail that I returned on the CD-ROM had the
22 detail of that conversation.

23 Q But it wasn't \$20,000?

24 A Absolutely not.

25 Q When Mr. Katzer offered to swap the domain

1 name, did he have any conditions, do you remember?

2 A The specifics were in the -- again, in
3 that e-mail. He wanted, first and foremost, the domain
4 that I held transferred to him with no agreement that
5 protected my interests. I believe he immediately said
6 that I could not give it to the JMRI group. I know
7 that came out at one point, but I don't remember how
8 early.

9 He also demanded it be done the same day,
10 which you can't do. Network Solutions, any
11 transactions to change a domain name, even if you
12 wanted to expedite it, you're typically 24 to 48 hours.
13 So it literally was impossible to do. He also asked
14 that I take the site down immediately, and I was at a
15 remote location, I couldn't do that. I had to be on
16 site where the server was to do that.

17 So there were some things that I could not
18 do out of literal technical restrictions, and then
19 other things, such as transferring the one domain
20 first, which was just illogical from a business
21 standpoint.

22 Q Just stepping back a second. You had said
23 that he did not want to transfer decoderpro.com to
24 JMRI.

25 Did he explicitly say that?

1 A At some point, he did. Where that came
2 in, I don't recall. I'd have to look back at the
3 e-mails.

4 Q Did you pick up the phone and have any
5 conversations with him about this?

6 A With Mr. Katzer? I don't believe so. I
7 think it was all e-mail.

8 Q Did Mr. Katzer say why he didn't want to
9 permit JMRI to get the decoderpro.com domain name?

10 A No, not that I recall.

11 Q Did Mr. Katzer know at the time -- are you
12 aware if he knew at the time that DecoderPro was a JMRI
13 trademark?

14 A I don't recall at the time. Obviously,
15 since that, it became an issue, so that kind of clouds
16 my recollection of time frame.

17 MS. HALL: All right, I think I'm done
18 with this particular exhibit. I'm going to move to
19 Exhibit Britton 9, and I'm handing that to the court
20 reporter. This is Bates stamp RGJ.00003622.

21 Scott, this is in your e-mail. It is
22 e-mail FP 15.021.

23 MR. JERGER: 3622?

24 MS. HALL: Yes. And it is e-mail
25 .rfp.021.

1 this other screen shot it was called The Conductor. I
2 think that answers that. I did not have a recollection
3 of that. That would also explain the name of the
4 mailing list.

5 It doesn't show anything else really
6 telling there. His copyright statement is at the
7 bottom of the next screen shot on page 2, and it
8 mentions Computer Dispatcher, no mention of Computer
9 Dispatcher Pro. And, again, this was stuff I was
10 looking at while I was working through the responses
11 with him.

12 He starts early on in the e-mail about
13 starting the process to have this domain name
14 transferred to KAM unless we work a deal. And then
15 he's telling me to take the site down, you need to
16 change the site and remove the Computer Dispatcher and
17 Computer Dispatcher Pro term from the site, you do not
18 have the rights to use it, if it is not done by
19 Wednesday, I need to escalate this to protect my
20 trademark.

21 And then his -- the quote, saying: "As
22 for the domain, if you want to make a swap for Computer
23 Dispatcher Pro for decoderpro.com, I am for that."
24 That was his first suggestion of a domain swap -- that
25 was the first suggestion by either party, I should say.

1 A No.

2 Q So if there was a flaw in Mr. Katzer's
3 complaint so that you would not be liable, you would
4 not have had an attorney to advise you about that?

5 A That's correct.

6 Q Let's move to page 3 of the settlement
7 agreement, that's RGJ.00002809. This is paragraph 13.
8 Can you read that to me?

9 A Thirteen is on page 2.

10 Q I'm sorry, paragraph 15 on page 3.

11 A Fifteen. "In the event that either of the
12 parties breaches any of the terms in this agreement,
13 the breaching party shall, within 15 days of a demand
14 by the other party, pay the sum of \$20,000 to the
15 non-breaching party."

16 Q And paragraph 16, can you read that for
17 me?

18 A "In the event that either party is found
19 to have breached this agreement, reasonable attorney
20 fees shall awarded to the prevailing party in any
21 lawsuit on proceeding brought to enforce any term or
22 portion of this agreement, including fees incurred in
23 connection with any appeals."

24 Q Whose idea was it to include those terms?

25 A That was Mr. Katzer's side.

1 BY MR. JERGER:

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

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

8 Q What was the original plan then?

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

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

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

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

17 A Given it to JMRI.

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

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