UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

PLAINTIFF,

: C.A. NO. 98-1232 v.

MICROSOFT CORPORATION,

DEFENDANT.

STATE OF NEW YORK, ET AL.,

PLAINTIFFS,

: C.A. NO. 98-1223 ٧.

MICROSOFT CORPORATION,

DEFENDANT.

_ _ _ _ _ _ _ _ X MICROSOFT CORPORATION,

_ _ _ _ _ _ _ _ X

COUNTERCLAIM-PLAINTIFF, :

V.

DENNIS C. VACCO, ET AL.,

COUNTERCLAIM-DEFENDANTS. : JANUARY 13, 1999 - - - - - - - - - - - - X WASHINGTON, D.C.

VOLUME 37-B

TRANSCRIBED DEPOSITION EXCERPTS

COURT REPORTER:

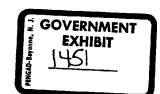
DAVID A. KASDAN, RMR

MILLER REPORTING CO., INC.

507 C STREET, N.E.

WASHINGTON, D.C. 20003

(202) 546-6666



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(DEPOSITION EXCERPTS OF ROBERT E. BERAN.)

THAT'S BEEN MARKED FOR IDENTIFICATION AS

- 3 4 5
- GOVERNMENT EXHIBIT 279. I ASK YOU TO TAKE A SECOND TO LOOK AT IT.

Q.

6

Α. OKAY.

7

DO YOU RECOGNIZE THIS DOCUMENT? 0.

I WOULD LIKE TO SHOW YOU A DOCUMENT

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YES. Α.

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Ο. WHAT DOES IT APPEAR TO BE?

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- THIS WAS A PROPOSAL FROM MICROSOFT ON THEIR ASK FOR BROWSER DISTRIBUTION DEAL WITH MY COMPANY.
- AND I WOULD LIKE TO DIRECT YOUR Q. ATTENTION TO THE SECOND PAGE OF THE DOCUMENT THAT HAS A BATES STAMPED NUMBER HEL 0325.
 - RIGHT. Α.
 - DO YOU SEE THAT? 0.
 - Α. YES.
- I WOULD LIKE TO DIRECT YOUR ATTENTION TO THE TOP, ITEM NUMBER SIX, WHICH STATES, "BAIS WILL DISTRIBUTE THE INTERNET EXPLORER AS ITS," UNDERLINED, "EXCLUSIVE," STOP UNDERLINE, "BROWSER TO ITS ACCESS CUSTOMERS AND WILL PROMOTE, " AGAIN UNDERLINED, "INTERNET EXPLORER AS THE," UNDERLINE, "EXCLUSIVE BROWSER RECOMMENDED FOR USE

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BY BAIS CUSTOMERS FOR ALL PLATFORMS SUPPORTED BY MICROSOFT."

DO YOU SEE THAT?

- A. YES.
- Q. DO YOU SEE ALSO THE ANNOTATION IN THE MARGIN THAT SAYS IN HANDWRITING, "NO," DASH, "WORK ON COMPROMISE"?
 - A. YES.
 - Q. DO YOU KNOW WHOSE HANDWRITING THAT IS?
- A. I BELIEVE IT IS BILL HEILIG'S, ONE OF

 MY STAFF MEMBERS WHO WORKED--WHO WAS WORKING WITH

 MICROSOFT IN THESE NEGOTIATIONS.
- Q. WHAT IS YOUR UNDERSTANDING, IF ANY,

 ABOUT WHAT IT MEANT BY "NO--WORK ON COMPROMISE"?

 MR. FESSEL: OBJECTION TO THE FORM.

 BY MR. POPOFSKY:
 - Q. YOU CAN NONETHELESS ANSWER.
- A. THAT IS OUR NOTE THAT, NO, WE WILL NOT GO EXCLUSIVE, AND WE NEED TO WORK ON A COMPROMISE.
 - Q. WHY DID BAIS NOT WANT TO GO EXCLUSIVE?
- A. EVERY FAIRLY SIMPLE. AS I STATED

 EARLIER, OUR VIEW WAS THAT OUR ROLE IN THE

 MARKETPLACE WAS TO LET THE CUSTOMER CHOOSE WHICH

 BROWSER THEY WANTED TO USE, AND IT WAS OUR JOB TO

1	PROVIDE THEM WITH ACCESS TO THE LEADING BROWSERS.
2	Q. WHY DO YOU VIEW THAT AS YOUR ROLE IN A
3	MARKETPLACE, TO OFFER CUSTOMERS A CHOICE?
4	A. WE BELIEVE THAT CUSTOMERS KNOW BEST,
5	AND IT'S NOT OUR JOB TO CHOOSE FOR THEM.
6	Q. WOULD AGREEING TO THIS PROPOSED
7	PROVISION, WHICH IS NUMBERED SIX, HAVE THWARTED
8	YOUR OBJECTIVE OF PROVIDING BROWSER CHOICE?
9	A. YES.
10	Q. AND WHY?
11	A. IT WOULD NOT HAVE ALLOWED ME TO OFFER
12	NETSCAPE TO CUSTOMERS WHO WANTED IT.
13	(EXCERPT.)
14	Q. I WOULD LIKE YOU TO DIRECT YOUR
15	ATTENTION TO BERAN EXHIBIT 1, WHICH IS THE
16	CONTRACT WE WERE JUST DISCUSSING.
17	A. RIGHT.
18	Q. THE PAGE THAT'S BEEN BATES STAMPED RAA
19	0106.
20	A. 106?
21	Q. YES.
22	A. UMM-HMM.
23	Q. ARE YOU THERE, MR. BERAN?
24	A. YES.
25	Q. TOP OF THE PAGE, YOU SEE WHAT'S BEEN

THIS SAYS.

1	MARKED SUBSECTION 3.1, NONEXCLUSIVITY?
2	A. UMM-HMM.
3	Q. DOES THAT REFRESH YOUR RECOLLECTION AS
4	TO WHETHER THIS AGREEMENT CALLED FOR ANY
5	PREFERENCES FOR NETSCAPE VIS-A-VIS OTHER
6	BROWSERS?
7	A. IT WAS NONEXCLUSIVE, IS WHAT THIS SAYS
8	WE WERE FREE TO OFFER OTHER BROWSERS IF WE
9	INTENDED TO.
10	Q. AND WAS THAT IMPORTANT TO YOU AT THE
11	TIME?
12	A. YES.
13	Q. WHY IS THAT?
14	A. BECAUSE WE KNEW THERE WERE OTHER
15	BROWSERS COMING.
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