

1 STATE OF WISCONSIN CIRCUIT COURT MONROE COUNTY

2

STATE OF WISCONSIN  
3 123 West Washington Avenue  
Post Office Box 7856  
4 Madison, Wisconsin 53707-7856

5 Plaintiff,

6 v. Case No. 95CV200  
Unclassified: 30703

7 TOP COMMUNICATIONS, INC.  
3500 West Olive Avenue, Suite 1060  
8 Burbank, California 91505,  
a California Corporation,

9

and

10

GARY DIMATTIA  
11 14925 Magnolia Avenue  
Sherman Oaks, California 91403,

12

Defendants.

13

14

15 DEPOSITION OF : DAVID NADELL  
TAKEN BY : PLAINTIFF  
16 COMMENCING : 9:15 A.M.  
DAY, DATE : THURSDAY, DECEMBER 5, 1996  
17 LOCATION : 4400 COLDWATER CANYON  
STUDIO CITY, CALIFORNIA  
18 PURSUANT TO : SUBPOENA  
BEFORE : CARYL WOLFF, CSR 5764

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CARYL R. WOLFF  
CERTIFIED SHORTHAND REPORTER  
24 12021 WILSHIRE BOULEVARD, NO. 298  
LOS ANGELES, CALIFORNIA 90025  
25 (310) 820-7167

1 APPEARANCES OF COUNSEL:

2 FOR PLAINTIFF:

3 WISCONSIN Department of Justice  
By DAVID J. GILLES, ESQ.  
4 123 West Washington Avenue  
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5 Madison, Wisconsin 53707-7856  
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6 FOR DEFENDANTS:

7 RICHARDS & CHEMERINSKI  
8 By RONALD RICHARDS, ESQ.  
1901 Avenue of the Stars  
9 Suite 1800  
Los Angeles, California 90067  
10 (310) 282-8777

11 ALSO PRESENT:

12 RICHARD ROSENBLATT

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I N D E X

WITNESS            EXAMINATION            PAGE

DAVID NADELL

BY MR. GILLES            5, 44, 49

BY MR. RICHARDS            33, 46

I N F O R M A T I O N   R E Q U E S T E D

P A G E            L I N E

(NONE)

U N A N S W E R E D   Q U E S T I O N S

P A G E            L I N E

(NONE)

E X H I B I T S

N U M B E R    P A G E    D E S C R I P T I O N

19    5    Civil Subpena (Court Reporter's  
Bates Stamp Nos. 00001 through  
00004)

20    5    Amended Notice of Deposition of  
David Nadell, R & R  
Advertising, Inc. (Court  
Reporter's Bates Stamp Nos.  
00005 through 00007)

1 21 5 June 15 Fax Transmission Cover  
2 Sheet, David to Department of  
3 Justice, Consumer Protection  
(Court Reporter's Bates Stamp  
No. 00008)

4 22 5 June 15, 1995 letter, R & R  
5 Advertising, Inc. to Wilcynski  
(Court Reporter's Bates Stamp  
No. 00009)

6

7

8 PREVIOUSLY MARKED EXHIBITS WHICH WERE

9 REFERRED TO DURING THIS DEPOSITION

10 NUMBER PAGE LINE

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1           STUDIO CITY, CALIFORNIA  
2           THURSDAY, DECEMBER 5, 1996  
3           9:15 A.M.

4  
5           (Exhibits 19 through 22 were  
6           marked for identification.)

7  
8           DAVID NADELL,  
9           having been sworn, was examined  
10          and testified as follows:

11  
12          EXAMINATION

13 BY MR. GILLES:

14        Q. This is a deposition taken pursuant to  
15 notice and subpoena. The notice has been marked as  
16 Exhibit 20. The subpoena has been marked as  
17 Exhibit 19.

18        Before we proceed, we can state the  
19 appearances. I'm David Gilles appearing for the  
20 plaintiff State of Wisconsin.

21        MR. RICHARDS: Ronald Richards for the  
22 defendant Top Communications.

23        MR. GILLES: Are you also appearing for  
24 Mr. DiMattia?

25        MR. RICHARDS: Yes.

1 MR. GILLES: And this is a deposition of  
2 R & R Advertising, and appearing on behalf of R & R  
3 Advertising is Mr. David Nadell.

4 Q. Is that correct?

5 A. Yes.

6 Q. Sir, before we begin, have you ever had  
7 your deposition taken before?

8 A. No.

9 Q. In the next few minutes, I'll be asking  
10 you questions related to a lawsuit that's pending  
11 in the State of Wisconsin. If you don't understand  
12 the questions that I'm asking, please let me know  
13 and I'll restate them so that we can communicate.

14 If for some reason you need to take a  
15 break, simply tell me and we can do that.

16 Okay?

17 A. Okay.

18 Q. One of the procedures for a deposition is  
19 that you have to answer "yes" or "no" because the  
20 court reporter is taking everything down.

21 Okay?

22 A. Yes.

23 Q. So first of all, Mr. Nadell, I'd like to  
24 show you what's been marked as Exhibit 19 and ask  
25 if that's a copy of the subpoena that you received

1 related to this deposition.

2 A. Yes. It looks like it is.

3 Q. Sir, could you tell me when you began  
4 working for R & R Advertising?

5 A. In February -- this coming February it  
6 would be four years. So that would be '93, I  
7 suppose. That would be '93.

8 Q. And you have worked for that company or  
9 that company's successors since February of '93?

10 A. If you mean its successor iMALL, yes.

11 Q. Would you describe for me what the  
12 business of R & R Advertising was when you began  
13 working?

14 A. It was the placement of advertising.  
15 Simply just we placed ads in newspapers and  
16 magazines.

17 Q. Where were the newspapers located?

18 A. Nationally mostly. There were some  
19 international ads as well.

20 Q. What was your position when you began  
21 working with R & R Advertising?

22 A. I didn't have a title, but I suppose I  
23 would tell someone that I was an account rep.

24 Q. When you began working at R & R, could  
25 you describe how big an organization it was?

1 A. When I began, I think there were four or  
2 five employees including myself.

3 Q. Who was in charge of R & R Advertising?

4 A. At that time Richard Rosenblatt.

5 Q. Where was the company located?

6 A. On Reseda Boulevard.

7 Q. Did there come a time following your  
8 beginning employment that the company moved  
9 offices?

10 A. I don't recall the date, but we moved to  
11 Chatsworth.

12 Q. What's the address at that --

13 A. I don't recall.

14 Q. At some point in time, did the company  
15 locate at 4400 Coldwater Canyon Boulevard?

16 A. Yes.

17 Q. When was that approximately?

18 A. I don't remember the exact date. I think  
19 it was in December two years back or something.

20 Q. That would have been in Suite 200 at that  
21 address?

22 A. Yes.

23 Q. Mr. Nadell, would you please describe to  
24 me briefly your educational background?

25 A. I attended USC, marketing degree, their



1 business administration program, and then attended

2 University of La Verne law school.

3 Q. Following your studies at law school,

4 would you describe your employment history briefly?

5 A. I began working for R & R Advertising

6 while I was still in law school.

7 Q. How old are you, sir?

8 A. 27.

9 Q. Now, Mr. Nadell, did there come a time in

10 connection with your employment at R & R

11 Advertising when you came into contact with a

12 company known as Top Communications, Inc.?

13 A. Yes.

14 Q. Would you describe to me how you first

15 came into contact with that company?

16 A. I don't recall exactly. I imagine they

17 came to the office and I was introduced.

18 Q. Do you have a recollection of being

19 introduced to representatives of Top

20 Communications?

21 A. I'm just imagining that actually most

22 R & R clients we didn't have the opportunity to

23 meet because we advertise nationally and our

24 clientele was a national base. However, Top

25 Communications was local so I did have the

1 opportunity to meet them.

2       But I don't recall -- we may have  
3 actually begun advertising for them before I  
4 personally met them.

5     Q. Without describing the specifics of your  
6 initial encounter with Top Communications, which I  
7 understand --

8     A. I couldn't describe the specifics.

9     Q. In the course of your work at R & R  
10 Advertising, you came to be familiar with a company  
11 known as Top Communications, Inc.; is that correct?

12    A. Yes.

13    Q. And in what capacity or -- let me restate  
14 the question.

15       What responsibilities if any did you have  
16 with respect to Top Communications, Inc.?

17    A. As all other clients, they provided us  
18 with an ad and we were told to place the ad.  
19 Simply we were given the copy and we looked up the  
20 papers to place it in.

21    Q. Were you or anyone else at R & R  
22 Advertising involved in preparing the actual script  
23 or format of the ads?

24    A. The text of the ad, no.

25    Q. Who did that?

1 A. Top.

2 Q. What services did R & R Advertising  
3 perform for Top?

4 A. We identified papers that would take the  
5 advertising and placed the advertising and then  
6 reported to them where the ad was being placed.

7 Q. How would you receive payment from Top  
8 for these services?

9 A. I suppose we just received a check,  
10 prepayment of advertising.

11 Q. So the ads were placed on a prepaid  
12 basis?

13 A. Yes. They paid us before we placed  
14 advertising.

15 Q. So Top Communications would pay R & R  
16 before R & R arranged with a publication to place  
17 an ad for Top?

18 A. Yes.

19 Q. What confirmation would be provided to  
20 Top Communications that ads had, in fact, been  
21 placed?

22 A. A record. It may have been termed an  
23 invoice. But because it was prepaid, technically  
24 was not an invoice but more a reporting of, "Here  
25 is where your advertising has been placed."

1 I think it was the standard R & R  
2 Advertising staple at the place, and it named the  
3 papers and the dates.

4 Q. Would the text of the particular ad that  
5 was placed in a particular paper be noted in that  
6 record?

7 A. It may. I recall times -- I mean if a  
8 company only had one type of ad, we wouldn't report  
9 it. I know that at the very beginning, I may not  
10 have had the ad at the top of what I reported to  
11 them because they only had one type of ad. With  
12 the introduction of new programs, I told them which  
13 ad was in what paper.

14 Q. Now, when you began working with the Top  
15 Communications account, what type of ad were you  
16 placing for them?

17 A. Clip ads out of your newspaper. I can't  
18 remember the others. There were all broadly termed  
19 "work at home."

20 Q. At what point in time did you begin  
21 working with the Top account?

22 A. Late 1994, probably November.

23 Q. Who would you deal with at Top  
24 Communications regarding the specifics of the  
25 business dealings?

1 A. Sometimes Anita.

2 Q. What did you understand her position to  
3 be?

4 A. I understood that she was -- she and  
5 another performed some sort of analysis so that  
6 they could say "renew" or "renew all but this  
7 particular paper."

8 Q. I would like to show you an exhibit that  
9 was marked at an earlier deposition in this matter  
10 as Exhibit 14 and it has an ad that's circled in  
11 yellow highlight.

12 Do you see that?

13 A. Yes.

14 MR. RICHARDS: Are we going to mark that  
15 exhibit at this deposition now?

16 MR. GILLES: No.

17 MR. RICHARDS: Anything you show the  
18 witness, I'd like to have it marked and entered.

19 MR. GILLES: It is marked as Exhibit 14  
20 in the deposition, in the Lauria deposition. So  
21 it's a matter of record in the case.

22 MR. RICHARDS: Right. But in California  
23 when you show a witness an exhibit and the witness  
24 is going to testify from it, it should be part of  
25 the record of this deposition.

1 I don't have -- I don't have the Lauria  
2 deposition and since there is more than one  
3 attorney on this case, it would be better for that  
4 complete record to have everything marked.

5 If you want to, make a photocopy of this  
6 stuff and then show it to him. I don't want him  
7 testifying from something that is not going to be  
8 put in the record.

9 MR. GILLES: We can do that.

10 MR. ROSENBLATT: I can make a copy of it.

11 MR. GILLES: I've got an extra copy.

12 MR. RICHARDS: This would be 21.

13 MR. GILLES: My preference so we don't  
14 have two exhibits identical with two exhibit  
15 numbers, I'd like to refer to it as Exhibit 14  
16 while having the copy remain with this record.

17 MR. RICHARDS: That's fine with me.

18 Q. (BY MR. GILLES): So then showing you a  
19 copy of Exhibit 14 and directing your attention to  
20 that ad, is that the type of ad that you were  
21 involved in placing for Top?

22 A. No.

23 Q. Why do you say that?

24 A. Because it doesn't have an (809) number  
25 in it. It looks like that is Top hiring people to

1 work in their physical location --

2 Q. Let me --

3 A. -- rather than work from home.

4 MR. RICHARDS: I'm going to object and  
5 move to strike his answer because he's speculating.

6 I'm going to instruct the witness that  
7 try not to guess why Top placed an ad or why an ad  
8 was placed unless you have personal knowledge. If  
9 you're just trying to be helpful and give a guess,  
10 then don't unless you know or have a basis because  
11 I don't want to take up a lot of your time and come  
12 to your conclusion.

13 THE WITNESS: Okay.

14 That ad I don't recognize.

15 Q. (BY MR. GILLES): Did there come a time  
16 in June of 1995 when you were contacted by a  
17 representative of the Wisconsin Department of  
18 Justice regarding Top Communications?

19 A. There during that month I spoke with a  
20 representative. I don't know that I was contacted  
21 initially by that representative or was contacted  
22 by Top.

23 Q. At some point in time -- let me show you  
24 what we've marked as Exhibit 21 and I would ask you  
25 to identify that, please.

1           What is it?

2       A.   This is a fax I prepared. I don't recall  
3 if the fax was prepared because the representative  
4 Lou Wilcynski or Top asked me to prepare it.  
5 That's what I meant before is I'm not sure who  
6 initiated asking me to prepare this.

7       Q.   That is your handwriting that appears  
8 upon the fax form?

9       A.   Yes.

10      Q.   What was your position with R & R  
11 Advertising at the time you prepared that  
12 particular fax?

13      A.   I don't know. I don't remember. I mean  
14 I was given raises throughout R & R Advertising and  
15 my title did change, but I don't know the dates of  
16 my title. I'd have to refer to my resume.

17      Q.   Were you familiar with the business that  
18 was being done for Top Communications at that time?

19      A.   Yes.

20      Q.   Can you indicate what the date of the fax  
21 is at the Top?

22      A.   Yes. June 15, 1995.

23      Q.   Then showing you what's marked as Exhibit  
24 22, would you identify that, please?

25      A.   That is a list of papers in Wisconsin and



1 the dates that they ran as well as the ads that  
2 were placed.

3 Q. (BY MR. GILLES): And did you cause the  
4 preparation of Exhibit 22?

5 A. I don't recall if I directed it to be  
6 created or if I personally created it.

7 Q. But it was the result of and included  
8 with Exhibit 21 that we just were discussing;  
9 correct?

10 A. Yes. It's dated the same.

11 Q. And Exhibit 21 is dated page 1 and  
12 Exhibit 22 has the note page 2; right?

13 A. Right.

14 Q. And at the time the document was  
15 prepared, what records were used to obtain the  
16 information that's depicted on Exhibit 22?

17 A. I don't want to guess, but it must have  
18 been created by looking at past -- I'm going to say  
19 invoices. But again they weren't invoices truly  
20 but from the past records that were sent to Top.

21 Q. And those would have been maintained as  
22 in the regular course of business at R & R  
23 Advertising?

24 A. Yes. While we dealt with Top, we had a  
25 file and the only way that a short list like this

1 could have been created was to view all the papers  
2 that were in that file.

3 Q. I take it when you received the response  
4 from -- the request from the Wisconsin Department  
5 of Justice, did you take time to prepare a response  
6 to that request?

7 A. All that I know, all that I can state  
8 affirmatively that I prepared is the fax cover  
9 sheet because I don't even know if I personally  
10 prepared the page 2 of the fax.

11 Q. In preparing the fax cover sheet, it  
12 attached page 2; correct?

13 A. Correct.

14 Q. Would you have attached a document that  
15 had not been prepared accurately to send to the  
16 Wisconsin Department of Justice?

17 MR. RICHARDS: Objection as to the form  
18 of your question. It's also mildly argumentative  
19 and it also is not a foundational question.

20 THE WITNESS: I would say that I would  
21 believe if I created it, I couldn't state that  
22 absolutely there is no human error in there. And  
23 I'd have to say the same thing if I directed the  
24 preparation of it. If one of the employees that I  
25 asked to do it -- again I'm not going to state that

1 these dates are 100 percent correct, that there is  
2 not one particular paper that may be missing. I  
3 just couldn't possibly go on the record to say that  
4 it's 100 percent accurate.

5 Q. (BY MR. GILLES): Absolute perfection is  
6 something we all aspire to, or maybe we don't.

7 But my point is that reasonable efforts  
8 were made to gather the information that's depicted  
9 in Exhibit 22; right?

10 A. Yes.

11 MR. RICHARDS: I'm going to object to the  
12 form because it's -- the question is assuming facts  
13 not in evidence.

14 The witness already testified that he  
15 doesn't have personal knowledge of how this was  
16 prepared and I want the record to reflect that I  
17 believe counsel is trying to lay a foundation for a  
18 business record so he can admit this later at some  
19 date. However, I'm going to make my objection now  
20 that I don't believe the proper foundation has been  
21 laid yet and the witness does not have a personal  
22 knowledge of how this document was prepared, nor is  
23 it a record made in the ordinary course of business  
24 of R & R Advertising but in a response to request  
25 by the Wisconsin Department of Justice.

1 Q. (BY MR. GILLES): Mr. Nadell, the  
2 subpoena that you were served with directed you and  
3 R & R Advertising to produce information related to  
4 Exhibit number 1 which is a copy of Exhibit 22.

5 So in response to that subpoena, sir, are  
6 you able to indicate to me who at R & R Advertising  
7 would be able to provide testimony about the  
8 preparation of Exhibit 22?

9 A. That was a long question. I don't  
10 understand it exactly.

11 Q. Let me restate it.

12 Who would be able to say whether or not  
13 this particular exhibit was prepared in an accurate  
14 manner, Exhibit 22?

15 A. Anybody that worked for R & R Advertising  
16 would be guessing. When you prepare something like  
17 this and you're sending it to an attorney general,  
18 having not been contacted by an attorney general  
19 before, no one's going to send anything that they  
20 don't believe is accurate.

21 Q. So at the time you sent the information  
22 out, your testimony is that you believed it was an  
23 accurate representation of the business records of  
24 R & R Advertising?

25 MR. RICHARDS: Objection as to the form

1 of the question because the witness has already  
2 testified that he doesn't have personal knowledge  
3 as to how this document is prepared. He just is  
4 giving supposition as to how he believes its  
5 reliability should be. He doesn't have personal  
6 knowledge.

7 MR. GILLES: What the witness testified  
8 to is that he prepared the fax that Exhibit 21 --  
9 attached to Exhibit 21 was Exhibit 22, and my  
10 question is whether or not he has any basis to  
11 testify as to the accuracy of Exhibit 22. And he  
12 just said that he would not have transmitted  
13 something if he didn't have a belief in the  
14 accuracy of the document.

15 Q. Is that correct?

16 A. Yes.

17 Q. Now, if you had asked someone in June of  
18 1995 to prepare a summary of the ads that were  
19 placed for Top Communications while you were at  
20 R & R Advertising, who would you have asked to do  
21 that?

22 A. Any number of people.

23 Q. What would the names of these people be?

24 A. At that time we hired temps. We hired  
25 kids out of -- on college break.

1 MR. RICHARDS: I'm going to move as  
2 nonresponsive.

3 I'm going to instruct the witness if you  
4 don't have the answer, the answer is "I don't know"  
5 or "yes" or "no." But I'm going to instruct you  
6 not to go beyond and try to guess as to -- or try  
7 to assist the person asking the interrogatory to  
8 you as to why you can't answer the question. If  
9 you don't know the answer, "I don't know" is an  
10 acceptable answer.

11 MR. GILLES: That's fine.

12 THE WITNESS: Okay. I don't know who I  
13 would have had prepare it.

14 Q. (BY MR. GILLES): And you testified  
15 before that the records that would have been used  
16 were the records that had been sent to Top  
17 Communications about the placement of ads?

18 A. Yes, to develop that, yes.

19 Q. And you also testified it's possible that  
20 this might not be a complete list of every ad that  
21 was placed in Wisconsin?

22 A. I'm just reminding everyone about human  
23 error.

24 Q. Do you have a recollection today as to  
25 whether or not the content of the ads depicted at

1 the top of the exhibit is an accurate reflection of  
2 the ads that were placed by R & R Advertising for  
3 Top Communications?

4 And please look at the three classified  
5 ads that are depicted there.

6 MR. RICHARDS: I'm going to have to  
7 object as to the form of the question as to time.

8 Are you saying ads placed in Wisconsin on  
9 the dates specified below or are you saying ads in  
10 general?

11 MR. GILLES: We can limit the question to  
12 ads in Wisconsin on or about the dates designated  
13 in the exhibit.

14 THE WITNESS: We placed ads nationally.  
15 So I couldn't state that I know that that  
16 particular ad was placed in Wisconsin and  
17 especially in a particular paper in Wisconsin.

18 But I recognize these three texts of ads  
19 as ads that we placed for Top.

20 Q. (BY MR. GILLES): Now, I note that the  
21 dates do not have the year date indicated and the  
22 letter is dated June of 1995.

23 Do they --

24 A. I'd have to suspect that they're '95  
25 dates given that we didn't run advertising -- if

1 you look at Action Advertiser, we weren't doing  
2 business with them February '94. So they got to be  
3 '95.

4 Q. At some point in time following the  
5 communication of this information to the Wisconsin  
6 Department of Justice, did you indicate to Top  
7 Communications that that had been done, that you  
8 had provided the Department of Justice with the  
9 information depicted on Exhibit 22?

10 A. Remember, I stated earlier I wasn't  
11 sure. I'm not sure today if I was contacted by the  
12 Wisconsin attorney general or if Top had me prepare  
13 this for them, so they certainly knew whichever way  
14 the communication initiated, they certainly knew  
15 that I was preparing this for Wisconsin.

16 Q. Okay. Now you mentioned earlier that  
17 from time to time -- or that you understood that  
18 Top monitored responses to the ads such as are  
19 depicted on Exhibit 22?

20 A. I understood that they did that. What  
21 led me to that understanding is that they would  
22 tell me, "No longer advertise me ever again in such  
23 and such paper."

24 Q. So, for example -- and this is just a  
25 hypothetical because I presume you don't remember



1 any specific discussion involving a particular  
2 paper in Wisconsin such as you just described?

3 A. No. I wouldn't remember a particular  
4 paper.

5 Q. But you do remember conversations with  
6 someone at Top Communications regarding stopping  
7 ads in particular locations?

8 A. Yes.

9 Q. Who did you have those discussions with  
10 at Top?

11 A. Typically a lady named Ronnie.

12 Q. Were those frequent? How often did you  
13 have conversations such as that with Ronnie at Top  
14 Communications?

15 A. It depended on the length of the ad run.  
16 If it ran for a week, then we spoke weekly. There  
17 were times when we ran longer than a week. So I  
18 didn't need to speak to Ronnie as frequently.

19 Q. Was that part of the arrangement, that  
20 you would confer with Ronnie as to how the  
21 particular ads were faring or performing?

22 A. I don't think it was part of it. They  
23 provided a budget.

24 MR. RICHARDS: I'm going to move to  
25 strike as nonresponsive.

1 Just answer the question he asks you.

2 THE WITNESS: Okay.

3 Q. (BY MR. GILLES): Let me restate the  
4 question.

5 With respect to conversations about  
6 discontinuing advertisements in particular papers  
7 with Ronnie at Top Communications, what would she  
8 tell you about stopping ads?

9 MR. RICHARDS: I'm going to have to  
10 object to the form of the question as to the scope.

11 Are we talking about ads in Wisconsin or  
12 ads in the other parts of the country?

13 MR. GILLES: We're talking about  
14 Mr. Nadell's recollection of specific conversations  
15 with Ronnie about stopping ads.

16 MR. RICHARDS: In general?

17 THE WITNESS: In general?

18 MR. GILLES: Yes.

19 MR. RICHARDS: Then I still want to make  
20 an objection that the question calls for an answer  
21 that's beyond the scope of this litigation. This  
22 litigation is dealing with ads placed in Wisconsin  
23 and I think the scope of the question should be  
24 limited to his recollection of his conversations  
25 dealing with Wisconsin because I wouldn't want the

1 record or the testimony by the witness to be given  
2 for ads that are not placed in Wisconsin because it  
3 would distort the answer.

4 MR. GILLES: I think the answer is  
5 relevant to the subject matter of the litigation.

6 Q. Could you please respond?

7 A. Again real quickly, the question.

8 Q. Let me restate it.

9 What were you told by Ronnie with respect  
10 to stopping ads that had been placed in various  
11 publications?

12 MR. RICHARDS: Same objection as before  
13 to the question.

14 THE WITNESS: She would -- on this  
15 Exhibit 22, it has four X's next to the 1-809-474,  
16 that is, whatever you call that phone number. She  
17 would say, "1, 2, 3, 4 no longer advertise in such  
18 and such paper."

19 Q. (BY MR. GILLES): She explained to you --

20 A. She would either do it on the phone, but  
21 more often than not, she'd just send a fax.

22 Q. And would the fax direct you to stop  
23 advertising with that particular paper?

24 A. Yes.

25 Q. What reason was provided for that?

1 A. None.

2 Q. At a point in time following that  
3 communication, would you ever place ads in that  
4 particular paper for Top?

5 A. No.

6 Q. Did you at some point in time discuss  
7 with Ronnie the basis for her telling you to stop  
8 placing ads?

9 A. No.

10 Q. Did you have an understanding or come to  
11 an understanding as a result of your communications  
12 with Ronnie and others at Top Communications that  
13 Top was involved in monitoring the responses to  
14 particular ads?

15 MR. RICHARDS: Objection; calls for  
16 speculation.

17 THE WITNESS: Being in advertising, you  
18 expect that your client is monitoring the  
19 response. They're not spending money on ads that  
20 they know don't do well.

21 If a client tells us to renew 15 out of  
22 20 ads, you think that the five ads that they asked  
23 you not to renew performed poorly.

24 Q. (BY MR. GILLES): In the course of your  
25 work with Top Communications, were you ever

1 directed not to place ads in the state of

2 Wisconsin?

3 A. At some point in time. I couldn't say  
4 after how long after this was prepared -- these  
5 exhibits were prepared, we were told to not place  
6 ads in Wisconsin.

7 Q. So sometime after June of 1995?

8 A. Yes.

9 Q. Before that, you had received no  
10 instruction from Top to refrain from placing ads of  
11 the sort depicted on Exhibit 22 in the state of  
12 Wisconsin?

13 A. Not before June 15.

14 Q. In fact, R & R Advertising placed ads for  
15 Top Communications throughout the country?

16 A. Yes.

17 Q. Were there any other states or locations  
18 other than the particular individual city that you  
19 described before or publications, any other general  
20 restrictions on where you could place ads for Top  
21 Communications?

22 A. No.

23 Q. Did Top limit the frequency in which --  
24 frequency for the placement of ads in particular  
25 publications?

1 A. Yes.

2 Q. How was that limited?

3 A. They would tell us to either advertise  
4 for a week or for two weeks and then they might  
5 indicate if it was a daily paper rather than  
6 weekly. If it was daily, they might indicate,  
7 "Only run our advertising Sunday through  
8 Wednesday."

9 Q. Now, did Top ever make explicit  
10 discussion or give you explicit directions about  
11 certain information that had to appear in these  
12 ads?

13 A. The phone number, how much they paid --  
14 well, international long distance tolls apply.

15 Q. I notice that the script does not include  
16 a statement of the anticipated cost of the call  
17 that the person responding to the ad will incur by  
18 calling that number.

19 A. Some ads did.

20 Q. Some ads?

21 A. Some papers required it.

22 Q. Now, if these were (900) numbers that  
23 were listed in the ads, then it would be required  
24 to put the cost of the call in; right?

25 MR. RICHARDS: Objection. There is no

1 foundation that he has any personal knowledge of  
2 what the legal requirements are for a (900) number.

3 Q. (BY MR. GILLES): At this time did you on  
4 occasion place ads for (900) numbers?

5 A. Yes.

6 Q. Was it your experience that ads involving  
7 (900) numbers contained information about the cost  
8 of the call?

9 A. Yes.

10 Q. What's the status of R & R Advertising to  
11 date?

12 A. I don't know if we have any active  
13 clients. We may have a few.

14 Q. At what point in time did R & R  
15 Advertising if any stop doing business with Top  
16 Communications?

17 A. Probably, let's see, over a year ago.

18 Q. In the course of working with Top  
19 Communications, did you understand that Top  
20 Communications would have a distributor or an  
21 arrangement with particular individuals with  
22 respect to the placement of these types of ads?

23 A. Are you asking did they have clients?

24 Q. Yes.

25 A. Yes.

1 Q. Clients that would lease the right to  
2 receive proceeds that resulted from the placement  
3 of ads; right?

4 A. Yes.

5 Q. And are you aware that Top Communications  
6 would from time to time direct these clients to  
7 place advertising through R & R Advertising?

8 A. Yes.

9 Q. And how would that work? Would the  
10 clients contact R & R Advertising directly or how  
11 would that arrangement work?

12 A. They were given a choice: Let Top handle  
13 it or that they contact us.

14 Q. And in the case the clients contacted  
15 R & R Advertising directly, who would pay for the  
16 ads?

17 A. The client.

18 Q. What information would you provide Top  
19 with respect to the placement of ads that had been  
20 made for clients?

21 A. A copy of the report that was sent to the  
22 client.

23 Q. Now, do you have an understanding whether  
24 R & R Advertising was served with a subpoena by the  
25 Federal Trade Commission?



1 A. No.

2 Q. Were you at all involved in preparing  
3 documents to respond to a request for information  
4 from the Federal Trade Commission?

5 A. No.

6 MR. GILLES: I don't have any other  
7 questions of Mr. Nadell at this time.

8 I would indicate for the record that the  
9 State of Wisconsin is procuring access to the  
10 documents that have been furnished to the Federal  
11 Trade Commission and I will -- the State may apply  
12 again to the court here to direct R & R to produce  
13 all documents responsive to the subpoena, depending  
14 on what information is obtained from the Federal  
15 Trade Commission.

16

17 EXAMINATION

18 BY MR. RICHARDS:

19 MR. RICHARDS: Good morning, Mr. Nadell.

20 My name is Ronald Richards.

21 How are you?

22 A. Good.

23 Q. I represent the defendant in this action,  
24 Top Communications.

25 I have a couple questions I want to ask

1 you. I'm going to show you Exhibit number 22.

2 Can you take a look at that now?

3 You have no personal knowledge as to how  
4 these names were placed on this document, exhibit  
5 number 22; is that correct?

6 A. No personal knowledge, correct.

7 Q. And exhibit number 22 is not a record  
8 that you would normally make in the ordinary course  
9 and scope of your business; is that true?

10 A. Being asked to prepare something for the  
11 attorney general is not normal business practice  
12 for R & R.

13 Q. And you have no recollection of who  
14 prepared this document labeled Exhibit number 22;  
15 is that correct?

16 A. Are you asking do I remember who prepared  
17 it?

18 Q. You already testified that you have no  
19 personal knowledge of who prepared it and I'll just  
20 leave it at that because I don't want to confuse  
21 you. Let me move on to my next question.

22 You testified that you had temps working  
23 for R & R Advertising at the time?

24 A. Part-time students or students off for  
25 vacation.

1 Q. Now, the run dates that are listed on  
2 Exhibit 22, you don't have any of the records which  
3 would have been used to compile this document  
4 anymore, do you?

5 A. No.

6 Q. So if I wanted to go and check the  
7 accuracy or reliability of these run dates with the  
8 original records, I would be unable to do so at  
9 this time; is that correct?

10 A. Correct. I mean our normal --

11 Q. That's a "yes" or "no" question.

12 A. Yes.

13 Q. I'm going to now move to when you had  
14 these conversations with someone named Ronnie at  
15 Top Communications.

16 Your conversations with her, did they  
17 deal with papers other than -- did they deal with  
18 states other than Wisconsin as well?

19 A. Of course.

20 Q. Okay. When Top Communications told you  
21 to discontinue ads, you have no personal knowledge  
22 of why they would discontinue an ad, do you?

23 A. No.

24 Q. Top Communications didn't call you and  
25 discuss with you any -- let me strike that.

1           When you testified that you were assuming  
2 that the client would stop placing an ad because  
3 they felt that the ad wasn't being responsive, is  
4 that your supposition or did someone tell you the  
5 ad wasn't being responsive?

6     A. No one told me at Top that it was  
7 unresponsive.

8     Q. So that testimony is just based in your  
9 experience in this case, that is, you assume that  
10 this is why they placed the ad -- they stopped the  
11 ad?

12    A. Yes.

13    Q. Now, do you ever remember Top  
14 Communications ever telling you to remove -- and  
15 I'm pointing to Exhibit 22 -- the disclaimer that  
16 says International Long Distance Toll? Do you ever  
17 remember telling them to place an ad without that?

18    A. Without it, no.

19    Q. Why is that?

20    A. Because it's required.

21    Q. And do you understand what International  
22 Long Distance Toll means?

23    A. It means that they're calling out of the  
24 country.

25    Q. And do you remember any discussions with

1 Top about the necessity of having that disclaimer  
2 in each of these advertisements?

3 A. I don't ask a lot of questions. If a  
4 client tells me to do something, I'm not asking  
5 them why.

6 Q. But do you remember any basis as to why  
7 they had this disclaimer in these ads?

8 A. The basis was -- I don't know what the  
9 legal basis.

10 Q. I'm not asking you to speculate what the  
11 legal basis is.

12 I'm just asking you from your own  
13 knowledge, do you know why they placed  
14 International LD Toll in each ad?

15 A. Just I -- full disclosure.

16 Q. Did anyone --

17 A. So people know that they're calling  
18 international before they call, before they make  
19 the call.

20 Q. Did anyone from Top Communications ever  
21 try and tell you to hide the disclosures or mislead  
22 the person making the call to not let them know  
23 they were making an international long distance  
24 call?

25 A. Clients never told me to mislead. Top

1 didn't tell me to hide it. They told me it was to  
2 always appear after the phone number.

3 Q. Every time you sent an ad in to a paper  
4 in Wisconsin, was it your practice and policy to  
5 make sure that that disclosure was in the ad?

6 A. Yes.

7 Q. If somehow that disclosure was left out  
8 of the ad, would you be able to tell me based on  
9 your experience who would have the blame for that?

10 MR. GILLES: I'll object. You're asking  
11 him to widely speculate.

12 But answer the question.

13 MR. RICHARDS: I'll strike it because I  
14 can get to specifics.

15 Q. In your experience with placing ad for  
16 (809) companies, has the disclaimer ever  
17 inadvertently been left out by a newspaper?

18 A. Yes.

19 Q. Was that the fault of R & R Advertising  
20 or the newspaper?

21 A. The newspaper.

22 Our opinions don't rate highly of the  
23 education level of a lot of newspaper employees.

24 Q. Have you found in your experience dealing  
25 with newspapers that newspapers commonly make

1 mistakes in the way they follow the print

2 advertising?

3 A. Yeah.

4 I wasn't trying to make them look bad and

5 I'm sure a lot of them have high education levels.

6 Q. I don't think so.

7 A. But there are just too many mistakes that

8 we saw.

9 Q. But at no time did Top Communications

10 ever advise you to leave out that disclosure, did

11 they?

12 A. They never advised us, no.

13 Q. And at no time did you ever send in --

14 from your personal knowledge do you ever remember

15 sending an ad display such as the ones in Exhibit

16 22 or other ones to a newspaper without this

17 disclaimer that it was an international LD toll?

18 A. To the best of my memory, it always had

19 in it in there.

20 Q. Okay. You testified that you knew

21 something about (900) numbers having to have the

22 anticipated price of the call disclosed?

23 A. Yes, I did.

24 Q. Now is that just based on the fact that

25 the clients told you to disclose the price or do

1 you have any personal knowledge of the requirements  
2 of a (900) number?

3 A. I don't have personal knowledge of (900)  
4 requirements.

5 Q. You do know from your experience in  
6 advertising and someone that has a juris doctor  
7 that (900) numbers have to have the price per call  
8 in the ad? Have you had that person -- do you know  
9 that?

10 A. I don't think I gained that by my  
11 attendance in law school but just the placement of  
12 (900) ads --

13 Q. Yes?

14 A. -- and the length of time that I was  
15 involved doing it, it was more I came to an  
16 understanding that a (900) ad has to have a (900)  
17 number in it and a price per call. And it was  
18 standard because it's not a different area code,  
19 it's always going to be that price.

20 Q. Based on your understanding of (900)  
21 numbers, did you know whether (809) numbers were  
22 required to have that disclosure in their ads?

23 A. What disclosure?

24 Q. The disclosure of the price per call.

25 A. I understood that they couldn't because



1 it was like me in the (818) area code calling  
2 (310). It's going to differ depending where you  
3 are. You're calling a different area code versus  
4 calling (900) where the charges are standard.

5 Q. That's a good understanding. I don't  
6 want to ask anything more about that.

7 Now the individuals that placed ads  
8 directly through you, these are the individuals  
9 that lease lines from Top Communications.

10 Do you remember these individuals?

11 A. Can you restate that?

12 Q. I'm going to ask you some questions now  
13 about the individuals that Top referred to you  
14 their clients to place advertising through R & R  
15 Advertising.

16 A. Okay.

17 Q. Did you ever deal with those individuals?

18 A. Not directly, no.

19 Q. Are you aware that individuals leased  
20 (809) lines from Top and Top referred them to R & R  
21 Advertising to have their advertising placed?

22 A. Yes.

23 Q. And those individuals paid you directly  
24 for their advertising?

25 A. Yes.

1 Q. Would you send those individuals copies  
2 of their ad?

3 A. Yes.

4 Q. And would you also send a second copy to  
5 Top?

6 A. Yes.

7 Q. And would you happen to remember if some  
8 of those individuals placed ads in Wisconsin?

9 A. No.

10 Q. So --

11 A. Maybe some -- one of them was bound to.

12 Q. So when I'm showing you Exhibit 22 again,  
13 you have no idea whether these ads were placed by  
14 Top or by individuals or a combination of both.

15 Is that fair to say?

16 A. I don't know, yeah. I don't know if --  
17 if these papers were all for Top, all for their  
18 clients who called in here, or a mix of both.

19 Q. Now, you have an understanding of how Top  
20 resold or leased lines to third parties.

21 Do you have an understanding of how that  
22 program worked?

23 A. No. I just understand that they did. I  
24 don't know how it worked.

25 Q. Did you have an understanding that when

1 an individual came to you to place ads as a --  
2 let's call him or her a lessee of a line from Top,  
3 did you have an understanding when this individual  
4 paid you, that they were responsible for the  
5 advertising?

6 A. Yes.

7 Q. Was this a common business practice for  
8 Top to refer these lessees to R & R Advertising so  
9 R & R Advertising can assist these individuals with  
10 the placement of their advertising?

11 A. Yes. I said earlier they were given a  
12 choice.

13 Q. I'm glad you reminded me of that.

14 When you say "given a choice," Top  
15 Communications is not an advertising agency; is  
16 that correct?

17 A. That's correct.

18 Q. And the people that did not choose to use  
19 R & R Advertising, you have no idea what those  
20 people did as far as their advertising choices, do  
21 you?

22 A. No.

23 Q. They could have gone to another  
24 advertising agency, couldn't they have?

25 A. Or called the paper themselves, yes.

1 Q. When you said -- when you testified  
2 earlier that they had a choice between you and Top,  
3 you didn't mean that Top was going to place the ads  
4 for them, did you?

5 A. No.

6 Q. So you have no idea if they didn't use  
7 R & R Advertising what these people ended up doing,  
8 do you?

9 A. Correct.

10 MR. RICHARDS: I have nothing further.

11 MR. GILLES: Just a couple more on  
12 redirect.

13

14 FURTHER EXAMINATION

15 BY MR. GILLES:

16 Q. When you say the lessees of Top  
17 Communications were responsible for the ads, you  
18 still provided Top Communications with copies of  
19 the ads that were run for their clients; right?

20 A. Yeah, if we placed the ads.

21 Q. Yes. I'm a --

22 A. Of course.

23 Q. If R & R Advertising placed advertising  
24 for either Top Communications or Top  
25 Communications' lessees, you provided Top with

1 confirmation that these ads had been placed?

2 A. Yes.

3 Q. And the format of the ads as depicted on

4 Exhibit 22, that was prepared by Top

5 Communications?

6 A. Yes.

7 Q. Did you have any specific discussions

8 with any particular individual at Top regarding the

9 content of the ads?

10 A. There were one or two occasions where we

11 changed the word "needed" from "wanted" or vice

12 versa. Where it says "part-time people needed,"

13 it might have said "part-time people wanted." They

14 tested that.

15 Q. Which worked better?

16 A. I don't recall.

17 Q. But that was an effort to test which ad

18 would elicit more responses; is that right?

19 A. Yes.

20 Q. I don't have anything further.

21 MR. RICHARDS: I have one or two more on

22 redirect.

23 ///

24 ///

25 ///

1            FURTHER EXAMINATION

2 BY MR. RICHARDS:

3     Q.  When you sent these confirmations to Top  
4 Communications, did you do this just as a courtesy  
5 so they knew that the lessee was actually  
6 advertising their line?

7     A.  I was instructed to.

8     Q.  When you say "confirmation," do you just  
9 mean the tear sheets or just a total amount of  
10 advertising that the lessee spent?

11    A.  We -- to the client?

12    Q.  No. To Top.

13    A.  To Top we sent the copy of the form we  
14 sent to the client. We sent clients tear sheets.

15    Q.  So the client -- a normal client of Top's  
16 that would advertise with you, they would get a  
17 tear sheet and a listing of the run dates? Or  
18 would they get -- why don't you tell me what they  
19 would get?

20    A.  If a client contacted us, they would  
21 receive the form, the -- whatever we want to call  
22 it rather than invoice, confirmation of where their  
23 ads had been placed. And when we got tear sheets  
24 in -- another example of papers not doing what  
25 they're supposed to do exactly because we seldom

1 got all tear sheets from an ad campaign. But they  
2 would forward those to the client. If it was Top  
3 advertising with us on behalf of the -- you know,  
4 for the client, then the tear sheets went to Top.

5 Q. When the client advertised directly with  
6 you, did you send a separate confirmation to Top?

7 A. In the way of a tear sheet?

8 Q. The record was unclear and I -- let me  
9 ask you hypothetically if a client wanted to place  
10 an ad in the Badger Herald directly and they pay  
11 you \$5,000 to run \$5,000 worth of ads, are you  
12 going to send Top anything?

13 A. Yes. Whatever I sent the client, Top got  
14 copied on.

15 Q. And the reason why you did that is  
16 because you were told to?

17 A. They wanted to make sure that if a client  
18 was going through us directly, that we were still  
19 doing what they told us to do with the ad copy.

20 MR. GILLES: Excuse me, who is "they"?

21 THE WITNESS: Top.

22 MR. RICHARDS: I see.

23 THE WITNESS: The client --

24 MR. RICHARDS: There is no question

25 pending, but I'm going to ask a question anyway for

1 the answer to that.

2 Q. Now you're saying that -- do you  
3 understand what the word "compliance" means?

4 A. Yeah.

5 Q. Are you saying that Top wanted to verify  
6 the text of the ad to make sure that the clients  
7 weren't deviating from the requirements outlined by  
8 Top as far as placing an ad?

9 A. Yes. That was my understanding.

10 Q. So would it be fair to say that Top was  
11 always very concerned about what even the lessees  
12 were placing in the newspapers?

13 A. Yes.

14 Q. And this method you had with Top of  
15 having them double check the print advertising was  
16 a way of assuring that the same ads authorized by  
17 Top directly or the same specifications would be  
18 followed by their lessees if they went directly  
19 with you?

20 A. Yes.

21 Q. Did you ever have a circumstance where  
22 a -- it doesn't matter.

23 I have no further questions.

24 MR. GILLES: Okay. Under Wisconsin  
25 procedure you have the opportunity to request to



1 review the transcript and prepare a sheet in the  
2 event that you believe that the court reporter has  
3 taken something down incorrectly or perhaps  
4 misspelled a name or something like that. You can  
5 also waive that.

6 THE WITNESS: I should --

7 MR. GILLES: We can go off the record  
8 now.

9 (Discussion held off the record.)

10 MR. GILLES: We have had an extensive  
11 discussion of both procedure and practice in  
12 Wisconsin and California, I think we've agreed to a  
13 stipulation with respect to handling of the  
14 transcript.

15

16 FURTHER EXAMINATION

17 BY MR. GILLES:

18 Q. But before that, I'd like to inquire as  
19 to the corporate relationship between R & R  
20 Advertising and a company that's currently doing  
21 business at 4400 Coldwater Canyon which is  
22 currently known as iMALL; is that correct?

23 A. That's correct.

24 Q. You don't have any direct personal  
25 knowledge of the relationship if any between those

1 two corporations, do you?

2 A. No.

3 Q. And you don't have -- your role with  
4 R & R Advertising was that as employee; correct?

5 A. Correct.

6 Q. You were not a stockholder of the  
7 corporation?

8 A. No.

9 Q. And you don't know exactly what the  
10 corporate status of that particular corporation is  
11 at the present time?

12 A. No.

13 Q. Okay.

14 MR. RICHARDS: I'm also going to augment  
15 the record.

16 There was some off-the-record discussion  
17 about what Code of Civil Procedure is controlling.

18 It's my opinion that Mr. Nadell -- and  
19 his attorney at the outset said he was not  
20 subjecting Mr. Nadell to personal jurisdiction in  
21 Wisconsin by appearing at this deposition and that  
22 the only subpoena I see in front of me and I  
23 believe -- what exhibit in this? It's not marked.

24 Exhibit 19 the only controlling subpoena in this  
25 number BS042032 is Exhibit 19 which is a standard

1 judicial counsel form civil subpoena and that is  
2 the subpoena that's ordered Mr. Nadell to produce  
3 records on behalf of R & R Advertising and ordered  
4 him to appear in person for his deposition taken.  
5 I don't see any other exhibit that has jurisdiction  
6 over Mr. Nadell at this point.

7 MR. GILLES: I don't think that goes to  
8 the question of what procedure is involved.

9 In any event, counsel, what have we  
10 agreed with respect to the stipulation?

11 MR. RICHARDS: We have agreed to the  
12 following stipulations: That the witness be sent  
13 an original of the transcript in order to make any  
14 corrections, changes, or deletions; that a copy  
15 will be sent to the Mr. Gilles in the Wisconsin  
16 Department of Justice; that the court reporter be  
17 relieved of her duties under the Code of Civil  
18 Procedure to have the witness -- to have the  
19 original transmitted to the witness; that the  
20 witness after reviewing the transcript within 30  
21 days shall execute the transcript under the penalty  
22 of perjury under the laws of the State of  
23 California; and that in the event the original ever  
24 becomes lost, a fully executed copy by the witness  
25 shall be as good as the original.

1 MR. GILLES: That's agreeable to me.

2 MR. RICHARDS: And that after the  
3 original is executed, the court reporter will  
4 retain custody of the original and a corrected copy  
5 will be sent to Mr. Gilles in Wisconsin.

6 MR. GILLES: With respect to the exhibits  
7 that were marked, shall we have those remain with  
8 the deposition?

9 MR. RICHARDS: Yeah. The exhibits are  
10 incorporated as part of the deposition transcript  
11 and the original exhibits will remain with the  
12 original transcript and the copies of the exhibits  
13 as part of the transcript and incorporated therein  
14 will be as good as the originals as well.

15 So stipulated.

16 MR. GILLES: Okay. So stipulated.

17 THE REPORTER: Did you want copy of the  
18 transcript?

19 MR. RICHARDS: No, I don't need one.

20 (Whereupon at 10:28 a.m., the deposition  
21 of DAVID NADELL was adjourned.)

22 \* \* \*

23

24

25

1 STATE OF CALIFORNIA )

2 ) ss.  
3 COUNTY OF )

4

5 I, DAVID NADELL, do hereby certify:

6 That I have read the foregoing deposition;

7 That I have made such changes in form and/or

8 substance to the within deposition as might be

9 necessary to render the same true and correct but

10 have limited such changes to actual reporting

11 errors or errors of fact as opposed to editing the

12 text generally;

13 That having made such changes thereon as were

14 required, I hereby subscribe my name to the

15 completed deposition.

16 I declare under the penalties of perjury that

17 the foregoing testimony is true and correct.

18

19 Executed this day of , 19 ,

20 at , California.

21

22

23

SIGNATURE OF THE WITNESS

24

25

