

EXHIBIT B

REDACTED PUBLIC VERSION

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION

4 VAPORSTREAM INC.,)
5)
6 Plaintiff,) No. 2:17-CV-00220-
7) MLH (KSx)
8 vs.)
9)
10 SNAP, INC., dba SNAPCHAT)
11 INC.,)
12)
13 Defendant.)
14 -----)

15
16
17
18 VIDEOTAPED DEPOSITION OF PHILIP JOHNSON

19 * * * CONFIDENTIAL * * *

20
21
22
23 Seattle, Washington

24 Friday, November 15, 2019

25 Reported by:

Connie Recob, CCR 2631, RMR, CRR

JOB NO. 171685

1 to be input to the process of designing and
2 creating these videos?

3 A. I don't think so.

4 Q. How would you describe the target
5 population for this survey?

6 A. They were current and potential
7 users of Snap.

8 Q. And "current users of Snap" are
9 users of Snap for the last six months?

10 A. Well, the current users were people
11 who have it installed currently on their phone
12 and -- and use it. In other words, some people
13 install it and never use it, which they would
14 not qualify for the survey but there's no time
15 frame in its current use.

16 Q. And is there a time frame that you
17 applied to your definition of potential users
18 of Snap?

19 A. Yes. Use in the coming year.

20 Q. Anticipated use in the coming year?

21 A. Chances you will install Snapchat on
22 your phone in the coming year.

23 Q. And what is -- what is that chance?

24 A. Definitely, probably or maybe
25 install it.

1 Q. Can you just point me to the portion
2 of your report where you identify this as the
3 target population for your survey?

4 A. Paragraph 7 in the methodology
5 outlines generally the target population, and
6 then it becomes more specific as the discussion
7 of methodology continues and we talk about the
8 screening.

9 Q. Okay. And given this target
10 population, how did you determine the
11 appropriate demographic information?

12 A. I was provided the age and gender
13 breakdown from Snap.

14 Q. And is that the -- one of the Excel
15 spreadsheets that you provided along with your
16 report?

17 A. I think it's in there.

18 Q. Do you know what -- the actual quota
19 percentages that you used in your quotas?

20 A. Well, the quotas were set based on
21 the -- on the demographics, and then they're
22 adjusted after the survey by using weighting to
23 bring them back to those levels.

24 Q. And is that -- is that answer --
25 does that answer apply to quotas that you used

1 technical experts?

2 MR. NGUYEN: Objection. Asked and
3 answered.

4 THE WITNESS: I don't think so.

5 BY MS. XI:

6 Q. Do you have any belief as to whether
7 the ephemerality or reduced traceability of
8 messages is an important feature of Snapchat?

9 MR. NGUYEN: Objection. Vague.

10 Lacks foundation. Calls for a legal
11 conclusion.

12 THE WITNESS: I don't know.

13 BY MS. XI:

14 Q. You don't have an opinion either
15 way?

16 A. I don't.

17 Q. There were two categories of videos
18 or vignettes that you used in connection with
19 your survey, correct?

20 A. Well, there were a number of
21 different categories. Which two are you
22 referring to?

23 Q. Okay. I'm referring to the ones
24 that you called or described as status quo
25 versus the ones that you described as an

1 alternate.

2 A. Okay. Those are two things, yeah.

3 Q. Okay. How would you describe -- how
4 would you describe the status quo vignettes?

5 MR. NGUYEN: Objection. Vague.

6 THE WITNESS: Well, my understanding
7 of the status quo alternative -- the --
8 we'll call it the user experience or
9 vignette is that it reflected the existing
10 experience at the time of the survey based
11 on either the new user interface or the old
12 user interface depending on which the
13 Snapchat user had on their phone.

14 BY MS. XI:

15 Q. And are you referring to what the
16 Snapchat user had on their personal phones?

17 A. On the phone they were using to take
18 the survey, yes.

19 Q. And what were the alternate
20 vignettes testing?

21 A. Those were vignettes that showed the
22 same general functionality or process, but
23 executed it differently in a way that was
24 believed to be noninfringing.

25 Q. You had four different status quo

1 where five is the best and one is the
2 worst, how would you rate this Snapchat
3 user experience in terms of, and then they
4 were asked about ease of use, speed and
5 efficiency, clarity and readability,
6 informational content and fun and
7 entertaining.

8 BY MS. XI:

9 Q. So were you testing those five
10 features and how -- what the user's perception
11 would be of those five features?

12 A. For this user experience that they
13 had just seen.

14 Q. Why did you choose to test these
15 five features? And by "five features," I mean
16 ease of use, speed and efficiency, clarity and
17 reliability, informational content and fun and
18 entertaining.

19 MR. NGUYEN: Objection. Vague.
20 Misstates the document and previous
21 testimony.

22 THE WITNESS: These are fairly
23 standard metrics for reading a mobile
24 application.

25 BY MS. XI:

1 Q. How did you come about selecting
2 these metrics to be rated in the survey study?

3 A. Well, these are metrics I've used
4 before in studying mobile applications.
5 They're also widely used in the industry.

6 Q. Do you agree that these metrics have
7 nothing to do with the ephemerality of messages
8 in a messaging or mobile application?

9 MR. NGUYEN: Objection. Vague.

10 Lacks foundation.

11 THE WITNESS: I don't think I would
12 agree, no.

13 BY MS. XI:

14 Q. In what way is ease of use related
15 to the ephemeral nature of the Snapchat
16 application?

17 MR. NGUYEN: Objection. Vague.

18 Assumes facts.

19 THE WITNESS: The ephemeral nature
20 is something that's subsumed in how easy it
21 is, how efficient it is, how clear it is,
22 how informational it is, how fun it is.
23 It's part of the experience.

24 BY MS. XI:

25 Q. Would you say that ephemerality is

1 subsumed in other features that you're not
2 testing here?

3 A. I would assume so.

4 Q. Do you have on -- do you have an
5 opinion as to whether any of these five
6 features that you're testing actually read on
7 the patents in suit?

8 A. I don't.

9 Q. Now, would it be fair to say that by
10 testing the five features that we've been
11 discussing, you're also testing the
12 ephemerality of the Snapchat app and users'
13 perceptions of the ephemerality?

14 MR. NGUYEN: Objection. Vague.
15 It's compound. Misstates previous
16 testimony.

17 THE WITNESS: It's part of the
18 overall experience they're rating, yes.

19 BY MS. XI:

20 Q. Is there any reason why you did not
21 test features that are specific to maintaining
22 the privacy or security of a Snap being
23 transmitted on the Snapchat app?

24 MR. NGUYEN: Objection. Vague.
25 Lacks foundation.

1 THE WITNESS: I'm not sure what the
2 question is when you said, did not test it.

3 BY MS. XI:

4 Q. Yeah. So privacy and security is
5 not one of the five features that you tested;
6 is that right?

7 A. Well, it's not one of the five
8 attributes that they're rated on. It's
9 included in their overall experience with the
10 app and it's included in the key question of,
11 If your Snapchat session were like the one you
12 just saw, would that make you use Snapchat more
13 often, less often or about the same as you do
14 now, to the extent it matters to people.
15 Excuse me.

16 Q. Is it your opinion that the five
17 metrics that you chose to test each read upon
18 privacy and securities of a Snap being
19 transmitted on the Snapchat app?

20 MR. NGUYEN: Objection. Vague.
21 Lacks foundation.

22 THE WITNESS: Well, to some extent,
23 they would be included certainly in things
24 like informational content, perhaps clarity
25 and readability, but they're not directly

1 tested. They're not one of the major
2 attributes that you would expect to rate on
3 an app.

4 BY MS. XI:

5 Q. So would it be fair to say that
6 privacy and security of the message is not one
7 of the metrics directly being tested in your
8 survey study?

9 MR. NGUYEN: Objection. Vague.

10 THE WITNESS: No.

11 MR. NGUYEN: Misstates his prior
12 testimony.

13 BY MS. XI:

14 Q. In what way would you reform my
15 question or statement?

16 A. Well, it's not that they're --
17 they're not one of the metrics that's included
18 in the ratings. As I said, they're certainly
19 included in informational content. They're not
20 an independent attribute that's added to the
21 list if that's what you're asking me.

22 Q. And that is. Thank you.

23 Let's turn to your question 4B. Did
24 you analyze any of the open responses that
25 respondents provided?

1 more after seeing the video?

2 A. I thought it was about a third of
3 the current users who were exposed to the
4 status quo video said they would use it more
5 after seeing the exhibit, while two thirds
6 said, No, it's no different than what I do now.
7 I wouldn't use it more.

8 Q. Got it. Thank you for that.

9 For those one third, you are
10 contending that they're using -- they said that
11 they would use it more probably because the
12 survey is fun in its design, and also because
13 the survey has reminded them of fun or familiar
14 features about Snapchat that would make them
15 want to use that application more?

16 MR. NGUYEN: Objection. Vague.

17 Misstates prior testimony. And, again,
18 it's compound.

19 THE WITNESS: It's reminder -- it's
20 classic reminder advertising of getting
21 someone a little enthusiastic about
22 something they were familiar with before,
23 but you're reminding them. It's what you
24 would expect.

25 BY MS. XI:

1 THE WITNESS: I'm saying that
2 virtually all of the people who have a
3 computer also have a smartphone who are in
4 a panel like this.

5 BY MS. XI:

6 Q. Okay.

7 A. We typically have the opposite
8 issue, is you try to get them from their
9 smartphone to their computer and you lose about
10 a third of the people.

11 Getting them to use the smartphone
12 has never been a problem in my -- in my
13 experience anyway.

14 Q. So -- well, going back to my
15 question: Do you know how many people declined
16 to take the survey after opening an invitation?

17 A. Because it was on the smartphone?

18 Q. Yeah.

19 A. I don't.

20 Q. Okay. But those people, would you
21 agree, had been excluded from the survey
22 effectively?

23 A. Well, as I say, whenever you do a
24 survey, you start with the screening for what
25 platform it's going to be on, and either send

1 your survey?

2 A. I didn't understand the question.

3 Q. Oh, sorry. Did minors complete your
4 survey and the survey was designed to have
5 folks aged 13 to 17 to complete it?

6 A. Yes, they're one of the key groups
7 of users.

8 Q. You had a quota for them, right?

9 A. I did.

10 Q. And remind me how you reach -- you
11 were able to reach them to take the survey?

12 A. Well, they're reached through their
13 parents. So what you have to do is greatly
14 over sample the parents, mostly with the
15 households or the -- excuse me, where the head
16 of household 35 plus, who is the panel member,
17 and then you have to see if you can recruit
18 their child to take them as an alternative for
19 those households.

20 Q. Okay. And then after you identified
21 a parent of a child 13 to 17 who said that they
22 would grant permission to have their child take
23 the survey, the child was able to take the
24 survey and that's how you got your quotas for
25 13 to 17?

1 gave them is the rating they deserve. I don't
2 understand.

3 Q. Not a reason to exclude, right?

4 A. Well, no.

5 Q. Okay. What about Response ID 1337,
6 Group No. 9: "I like it. It's cool stuff. I
7 like it, but it's okay. Cool stuff to, and it
8 has to be the a."

9 A. Okay. And these are done on a
10 screen, so what they mean -- there's some typos
11 involved. I did not change things or edit
12 typos.

13 Q. Yeah. No, I understand.

14 A. Just so you understand that.

15 Q. I do.

16 A. So some of these, I'm not sure what
17 they meant, but I would not exclude it.

18 Q. I just had a total crash. Okay.
19 Let's move on to one of the questions that I
20 wanted to come back to.

21 Earlier, we discussed the advertising
22 effect. Do you remember advertising effect?

23 A. Yes.

24 Q. And we discussed that the
25 advertising effect caused the respondents to

1 say that they would use Snap more because they
2 got familiarized with the same experience that
3 they currently have.

4 Do you remember that discussion?

5 A. I do.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14 A. I don't know.

15 Q. What about, do you know what
16 percentage of those respondents in the same
17 group in the category we're talking about said
18 that they would use Snapchat more in the
19 alternative feature that they reviewed?

20 A. I don't know.

21 Q. If respondents are basing their
22 answers on the supposed advertising effect,
23 would they still be evaluating the feature that
24 you're presenting to them?

25 A. Absolutely.

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C E R T I F I C A T E

STATE OF WASHINGTON)

) ss.:

COUNTY OF SNOHOMISH)

I, Connie Recob, CCR 2631, RMR, CRR,
a Notary Public within and for the State of
Washington, do hereby certify:

That PHILIP JOHNSON, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such
deposition is a true record of the
testimony given by such witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 26th day of November,
2019.

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Connie Recob, CCR 2631, RMR, CRR