

COPY OF TRANSCRIPT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

* * * * *

ROBERT H. BRAVER, an individual,)	
)	
Plaintiff,)	
)	
vs.)	No. CIV-04-1013-W
)	
AMERIQUEST MORTGAGE COMPANY, et)	
al.,)	
)	
Defendants.)	
)	
AMERIQUEST MORTGAGE COMPANY, a)	
Delaware corporation,)	
)	
Cross-Complainant,)	
)	
vs.)	
)	
INNOVATIVE MARKETING, INC.,)	
et al.,)	
)	
Cross-Defendant.)	

* * * * *

DEPOSITION OF TIMOTHY W. FOUST
TAKEN ON BEHALF OF THE PLAINTIFF
ON MAY 8, 2006
IN SEATTLE, WASHINGTON

* * * * *

APPEARANCES:

MR. LUKE WALLACE, (via telephone), Humphreys
Wallace Humphreys, 1724 East 15th Street, Tulsa, OK 74120,
appearing on behalf of the **PLAINTIFF**.

APPEARANCES CONTINUED ON NEXT PAGE

REPORTED BY: KARMEN M. FOX



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**PLAINTIFF'S
EXHIBIT
2**

1 areas about which you would like Mr. Foust to
2 testify, so that we have a clean record.

3 **MR. WALLACE:** I'll be happy to do that
4 in a minute.

5 **Q (BY MR. WALLACE)** But, Mr. Foust,
6 based upon your review of that document, as you
7 told me you did a few minutes ago, at the time --

8 **MR. NEWMAN:** If you don't remember the
9 documents, say you don't remember the
10 documents.

11 **Q (BY MR. WALLACE)** -- we needed the
12 person most knowledgeable to appear at this
13 deposition to testify about these areas.

14 **A** I don't remember the document verbatim,
15 but speaking to Tandax and myself, I would be the
16 best person to speak to.

17 **Q** So Tandax, you're appearing on behalf of
18 Tandax?

19 **A** I am.

20 **Q** As the corporate representative?

21 **A** Yes.

22 **Q** And would you state the full name of
23 Tandax?

24 **A** It's T-A-N-D-A-X, Inc.

25 **Q** And where is that incorporated?



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1 A Well, it's no longer incorporated, but it
2 was incorporated in the state of Washington.

3 Q And where did it conduct its business,
4 the address?

5 A 28610 Northeast 20th Avenue in
6 Ridgefield, Washington.

7 Q What county is that in?

8 A Clark.

9 Q And what is the last time that you can
10 remember Tandax having conducted business?

11 A September 2004. Perhaps August.

12 Q And as you sit here today, are you aware
13 of any occurrences where Tandax conducted any
14 business since then?

15 A No.

16 Q What was the business of Tandax?

17 **MR. NEWMAN:** Objection. Vague.

18 Q **(BY MR. WALLACE)** You can answer,
19 please.

20 A It served the sole purpose to provide
21 consumer-related data to other business entities.

22 Q Tell me what types of consumer-related
23 data was provided to other entities.

24 A Mortgage data, people with interest in
25 refinancing their homes.



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1 Q Any other types of data other than
2 mortgage data?

3 A Not to the best of my recollection. I have
4 no reason to believe any other type of data, but
5 there might have been an instance where I sold
6 debt consolidation, which also could be directly
7 tied into refinancing, mortgage.

8 Q It was all mortgage? It wasn't anything
9 dealing with prescriptions or anything like that?

10 A No. No.

11 Q Have you sold the company, Tandax, Inc.?

12 A No.

13 Q When's the last time it filed a tax return?

14 A 2004. The year of 2004.

15 Q Was Tandax an S corp.? C corp.?

16 A C.

17 Q How did Tandax acquire the
18 consumer-related data that it, in turn, sold to
19 others?

20 A Yes.

21 Q I apologize. I asked "How did Tandax
22 acquire."

23 A Oh.

24 Q Let me restate it so we're clear on the
25 record here. I apologize.



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1 A Okay.

2 Q Would you please tell me how Tandax
3 acquired the consumer-related data that it sold to
4 third parties.

5 A There was a website by the name of
6 2savemoney.com that was a porthole for
7 applicants to fill out for an expressed interest in
8 mortgage loans. And through that venue, I would
9 also have other third-party intermediaries that
10 would contact me through that account, through
11 that Web porthole, with an offer of additional
12 product.

13 Q Why don't you expand upon that, please.

14 A What would you like to know?

15 Q Well, what do you mean, "other
16 third-party intermediaries that would contact" --

17 A Let's just say --

18 Q Hang on just a second. Let me make sure
19 I get my question across here. Okay?

20 A Okay.

21 Q So the record is clear.

22 I'm asking you to clarify what you mean
23 when you say other third-party intermediaries
24 would contact you through that porthole,
25 2savemoney.com?



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1 **A** I would have individuals that would
 2 e-mail me with an inventory or an expressed
 3 interest in doing business with
 4 2savemoney/Tandax, Inc. They would contact me,
 5 ask me if I had a need for 50 mortgage leads. And
 6 that was in the entire way of transacting the
 7 business.

8 **Q** How did these -- do you know how these
 9 individuals you say that e-mailed you with this
 10 information found out about you --

11 **A** No.

12 **Q** -- and Tandax?

13 **A** I have no knowledge of how, other than
 14 going to the Web or doing a mortgage search, how
 15 they would have contacted me. I never inquired
 16 into how they found me.

17 **Q** What did you -- did you have agreements
 18 with these third parties?

19 **A** Verbal agreements.

20 **Q** Tell me everything you can remember
 21 about the verbal agreements that you entered into
 22 with these third parties who sold data to this --
 23 mortgage-related data to you.

24 **MR. NEWMAN:** Objection. The question
 25 calls for a narrative and is overbroad and is



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vague.

Q (BY MR. WALLACE) Go ahead and answer the question, please.

A The agreement essentially would be, I would discuss with them what they had, what their operating procedures are. I would do an investigation into their business, into the persons. And I would ask them to be in compliance with all state, federal, local laws.

Q Did you, at any point, sign any agreements with these third parties that were selling you this mortgage-related data?

MR. NEWMAN: Objection. Vague. Asked and answered.

Q (BY MR. WALLACE) Go ahead.

A I have no information that would lead me to believe that I do have such a document. And if such a document existed, it no longer exists.

Q Do you have a memory of such a document existing?

A I don't have any reason to believe that there was a document or was not a document.

Q Okay. Based upon your discovery responses, which were provided a few days ago, it's my understanding that Tandax operated



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1 sometime in the year 2003 through the year
2 September -- August or September of 2004.

3 Is that your memory?

4 **A** That is my memory.

5 **Q** And its only business purpose, that
6 you've told me about, is the acquisition and sale
7 of mortgage-related data; is that correct?

8 **A** Correct.

9 **Q** And how many different third parties did
10 you buy your mortgage-related data from?

11 **A** I have no information to lead me to any
12 particular number.

13 **Q** Can you estimate whether or not it was
14 more than ten?

15 **MR. NEWMAN:** Objection. The question
16 calls for speculation.

17 **Q (BY MR. WALLACE)** Go ahead and
18 answer, sir.

19 Please understand that when your lawyer
20 makes an obligation, you still have an obligation
21 to answer the question, unless your lawyer
22 instructs you not to answer the question.

23 **A** I understand. I'm trying to answer your
24 question by thinking about the response --

25 **Q** Thank you, sir.



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A -- to the best of my ability.

Maybe I should throw this statement in there. This was a very long time ago. This was a home-based business. I wouldn't know -- I couldn't answer that question to my full ability. I have no reason to believe that it was one or ten.

Q Do you remember the name of a single person you dealt with that sold these mortgage leads to you?

A I remember a few first-name basis. These weren't what you would call long-term business relationships. They fulfilled the demand, had the supply, and typically it was one-hit wonder, one-time dealing.

Q And why was it a one-hit wonder, one-time dealing?

A Because in this business, people put out campaigns to facilitate the aggregation of mortgage leads, and they may run a campaign on, say, MSN.com. They generate a specific amount of this data. And at that point, their campaign ends; they are doing something else.

Q Do you have any knowledge as to why their campaign would end?

MR. NEWMAN: Objection. The question



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1 calls for speculation.

2 A I would say that I would be speculating,
3 but they moved to a different market sector,
4 another particular type of business, another type
5 of data that they may have tried to procure.

6 Q (BY MR. WALLACE) Leads for another
7 product?

8 A Perhaps leads. Perhaps -- I have
9 absolutely no idea. I didn't consult with them in
10 their business matters.

11 Q Did you ever have any -- do you remember
12 having any communications with any of the
13 individuals you bought leads from, concerning the
14 CAN-SPAM Act?

15 MR. NEWMAN: Objection. The question
16 calls for a legal conclusion.

17 A I would -- I would always require and do
18 my due diligence, to the best of my ability.

19 I would first ask them if they were always
20 in compliance, and then I would also do a Better
21 Business Bureau search. I would Google their
22 information to see if I got any negative inference
23 from that.

24 Q (BY MR. WALLACE) After you bought
25 information from these individuals, did you ever



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1 have occasion to go back and have conversations
2 with them regarding CAN-SPAM Act?

3 **MR. NEWMAN:** Objection. The question
4 calls for a legal conclusion.

5 **MR. CERSETO:** And assumes facts not
6 in evidence.

7 **THE REPORTER:** Who is this?

8 **MR. CERSETO:** Mike Cereseto. It may
9 assume facts not in evidence.

10 **MR. NEWMAN:** Mr. Wallace, just so we
11 could make sure that we're on the same page, are
12 you doing jurisdictional discovery or are you doing
13 general discovery?

14 **MR. WALLACE:** Doing jurisdictional
15 discovery.

16 **MR. NEWMAN:** I just want to make sure,
17 because these questions don't sound like they go
18 to jurisdiction. I know that that's a determination
19 you should make, but if the line of questioning
20 continues and doesn't seem to relate to
21 jurisdiction, then at some juncture, we'll object.

22 **MR. WALLACE:** Sure. You know, we've
23 alleged conspiracy jurisdiction. So...

24 **MR. NEWMAN:** Well, then I suppose you
25 should be taking the deposition of the



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1 co-conspirators, if you want to --

2 MR. WALLACE: (Inaudible.)

3 A We're crossing up on this call. I didn't
4 even hear your last question.

5 Q (BY MR. WALLACE) Tell me about the
6 investigation or research that you did on these
7 individuals who you were buying this mortgage
8 data from.

9 A Well, if the person's name was Bob Jones,
10 which is a very generalized name, I would do a
11 search on Bob Jones Enterprises, the name of the
12 company, with the Better Business Bureau to find
13 out if they had any grievances, any legal issues
14 outstanding that I could detect.

15 Google, Yahoo, et cetera, is a great
16 repository for negative information about people
17 and their practices. And I would suspect any
18 well-known criminal, con artists, et cetera, would
19 have a blurb somewhere about them somewhere in
20 those repositories.

21 Q Did you ask them to produce any
22 information to you, besides the mortgage data?

23 A No. I wouldn't have any reason to ask
24 them to produce me any data.

25 Q Did you get their social security



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1 Q Did Tandax have a place where it went
2 and made deposits?

3 A Usually I was paid via wire transfer, as
4 well.

5 Q Directly into Tandax's banking account?

6 A Yes.

7 Q Any occasions where you went and -- let
8 me strike that.

9 Is there a branch office there in Clark
10 County, that you're aware of?

11 A There's probably -- US Bank -- I know
12 you're from Oklahoma. It's a well -- very large
13 lending institution here.

14 Q How about just answering my question.
15 Does US Bank have a branch office there in the
16 county of Clark?

17 A I suspect they have multiple.

18 Q Thank you.

19 So did you ever have discussions with
20 these third parties you were buying this mortgage
21 data from concerning the CAN-SPAM Act?

22 MR. NEWMAN: Objection. The question
23 calls for a legal conclusion and is overbroad.

24 A I would always question their compliancy.
25 I would ask them if they were in compliance.



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1 Q (BY MR. WALLACE) And at what term --
2 when would these conversations occur? Before,
3 during, after? Or when, when you bought this
4 data?

5 A Before.

6 Q Did you ever have occasion to have
7 discussions with these third parties that you were
8 buying this mortgage data from, after you bought
9 the data, concerning the CAN-SPAM Act?

10 A No.

11 Q Did you ever have occasion to talk to any
12 of these third parties regarding -- let me strike
13 that.

14 This mortgage data we're talking about is
15 essentially mortgage leads; is that correct?

16 MR. NEWMAN: Objection. The question
17 is vague.

18 Q (BY MR. WALLACE) Let me see if I can
19 zero in here.

20 Are you buying the names -- were you
21 buying the names and addresses and contact
22 information for people that were interested in a
23 mortgage product?

24 A I would fulfill an obligation to a buyer,
25 and that set of criteria could be a host of different



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1 types of information.

2 Q Were you buying the names and addresses
3 and contact information for people who were
4 interested in a mortgage-related product while
5 Tandax was operating in 2003 and 2004?

6 MR. NEWMAN: Objection. The question
7 is compound and overbroad.

8 A In generalized terms, yes.

9 Q (BY MR. WALLACE) What information
10 was in this mortgage data that you were buying
11 from these third parties?

12 MR. NEWMAN: Objection. The question
13 is compound and overbroad.

14 A I have -- I mean, I don't know. I don't
15 look at the data. It's a -- there's no reason for me
16 to know exactly what was contained within the
17 data. I was simply fulfilling an order.

18 Q (BY MR. WALLACE) I'm not looking for
19 the specific information. I'm talking about the
20 categories.

21 Were you buying the names and addresses
22 of people who wanted mortgage --

23 A I guess I would say I was buying
24 information that was presented to me as a person
25 that was interested in refinancing their home.



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1 Q So somebody else was selling you contact
2 information, which you, in turn, sold to another
3 party?

4 A I would suspect there was some type of
5 contact information, absolutely.

6 Q They were selling you this information
7 and you were, in turn, turning it and selling that
8 to somebody else?

9 A Yes.

10 Q Were you ever in the business of
11 providing mortgages to people who wanted to
12 refinance during this time period at Tandax?

13 A Did I --

14 MR. NEWMAN: Objection. The question
15 calls for speculation and lacks foundation.

16 MR. CERSETO: Can I have that read
17 back, please?

18 A No.

19 Q (BY MR. WALLACE) You were always
20 acquiring this information and turning and selling
21 it to other people?

22 A Yes.

23 Q And one of those was Go Apply; correct?

24 A Go Apply? I would say no. I sold to
25 ELeadz, which I know has a connection to Go



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Apply.

Q Who else did you sell this information to?

A Loan Page and Eleadz.

Q That was your -- did you sell these leads to any other parties other than Go Apply, Eleadz, or Loan Page?

A Not to the best of my knowledge. And I have no information to lead me to believe otherwise.

Q Did you have an agreement with -- a written agreement with Go Apply, Eleadz -- well, let's break it down.

Did you have a written agreement at any time between yourself and Go Apply?

A If such a document ever exists, I have no recollection of such document.

Q You don't have a memory of ever entering into a written agreement with Go Apply?

MR. NEWMAN: Objection. Asked and answered about four times now.

A I don't have any recollection of signing any document. Again, I'll state, this has been years ago. What transpired two, three years ago, I don't have any recollection of that.

Q (BY MR. WALLACE) Let's try Eleadz. Did



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1 A I remember it being brief.

2 Q Do you have any memory beyond that, the
3 fact that it was brief --

4 A No.

5 Q -- your relationship with Loan Page?

6 A I have no memory beyond that.

7 Q How long did your relationship with Go
8 Apply and Eleadz continue?

9 A Again, I would be speculating. I would --
10 to speculate, I would say it would be several
11 months.

12 Q Why did you stop doing business with Go
13 Apply?

14 A Because I stopped operating my company.

15 Q Why did you stop operating your
16 company?

17 A Because I moved -- I just decided to get
18 out of that business and move on with my life.

19 Q Why did you decide to get out of that
20 business?

21 A There was no money in it.

22 Q How much were you getting paid for these
23 leads from Go Apply?

24 A I have no idea. I have no recollection of
25 what the payment structure was.



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MR. NEWMAN: And I'm going to have a continuing objection on the term "leads." I don't think it's been defined, and I don't know that we all know necessarily what the question refers to when you use that term.

Q (BY MR. WALLACE) Sir, did you ever sign an agreement that defines lead, with anyone?

MR. NEWMAN: In the world?

MR. WALLACE: Yes.

A To tell you the truth, not to my -- yeah, I think I -- to --

MR. NEWMAN: Let me object to the question as compound and overbroad.

Go ahead and answer.

A I hired a marketing firm one time to send traffic to 2savemoney. And I'm sure at some point, a lead was defined in there.

Q (BY MR. WALLACE) When did you hire this marketing firm to send traffic to this website?

A I think I provided that document; but I don't have the exact date.

Q What's the relationship between Tandax and this website, 2savemoney.com?

MR. NEWMAN: Objection. Vague. I didn't know websites had relationships.



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1 there was a video, an MPEG-4 file. And Mr. Foust
2 would like that to remain confidential pursuant to
3 the protective order.

4 Do we agree on that?

5 **MR. WALLACE:** That's fine.

6 **MR. NEWMAN:** Thank you.

7 **Q (BY MR. WALLACE)** So my question is,
8 you said you approached this -- let me back up.

9 You say Tandax ceased operations in
10 August or September of 2004; is that correct?

11 **A** To the best of my memory, yes.

12 **Q** And Tandax owns this website,
13 2savemoney?

14 **A** Yes.

15 **Q** Did you try to drive traffic to that
16 website after Tandax ceased operations?

17 **A** No.

18 **Q** What was the purpose of trying to drive
19 traffic to your website, 2savemoney?

20 **A** To generate mortgage-related information.
21 Data mining.

22 **Q** Did you track how traffic was driven to
23 your 2savemoney.com website?

24 **A** By using a third-party company.

25 **Q** And how were you able to track that?



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1 **A** Every time someone filled out the form
2 based off of a company I hired -- which, you have
3 that info -- they would deduct a certain amount of
4 money from the account.

5 **Q** How would that, if you know, that
6 company know whether or not they drove that
7 traffic to your website?

8 **A** That would be --

9 **MR. NEWMAN:** Objection. The question
10 calls for speculation and lacks foundation.

11 **Q (BY MR. WALLACE)** Did you have an
12 understanding as to how somebody would know
13 how certain traffic arrived at your website?

14 **A** No.

15 **Q** What's the name of that third party?

16 **A** I don't remember the name, but I think
17 we provided that document to you.

18 **Q** Okay. Would it be Info Search Media?

19 **A** Sounds correct.

20 **Q** And did you do business with Info Search
21 Media back in 2003 and 2004?

22 **A** I have no information other than -- other
23 than the e-mail or the document that you're
24 looking at.

25 **MR. LAPIDUS:** Good morning. This is



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1 Daniel Lapidus. I was under the understanding we
2 were starting at 10:00 a.m. this morning.

3 MR. WALLACE: Okay. We've been going
4 for a while here. You can join in.

5 Q (BY MR. WALLACE) I apologize. I didn't
6 catch your answer there.

7 MR. NEWMAN: Would you repeat it back?

8 A Or that we provided.

9 Q (BY MR. WALLACE) How did you obtain
10 this e-mail information that you provided?

11 A Could you please clarify?

12 Q The Tandax documents that are the
13 e-mails between yourself and Info Search Media.

14 A Info Search Media approached me to do a
15 marketing campaign. We discussed that
16 telephonically, made an agreement. Subsequently,
17 e-mails were exchanged.

18 Q Was the agreement that you just
19 mentioned relatively close in time to the e-mail
20 exchange?

21 A I have no information.

22 Q How many agreements -- let me back up.
23 Did you hire Info Search to help you?

24 A Yes.

25 Q And how many times did you hire Info



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1 Search to do this for you?

2 A Once.

3 Q And so the e-mails would relate to the
4 one time you hired Info Search; correct?

5 A Yes.

6 Q And how much traffic was driven to your
7 site?

8 UNIDENTIFIED SPEAKER: I'm going to
9 object. We keep using the word "traffic," and I
10 think we're being vague about that, because we
11 haven't defined exactly what traffic is.

12 Q (BY MR. WALLACE) Tell me what Info
13 Search was doing for you, sir.

14 A They were -- I'm trying to choose --
15 carefully think about the potential conversation.

16 They were attempting to direct
17 individuals that had an interest in refinancing
18 their home.

19 MR. CERSETO: Excuse me, counsel?

20 MR. WALLACE: Yes.

21 MR. CERSETO: Well, we were dropped
22 off the line. I'm not certain how that happened,
23 but we have been off the line now for maybe two or
24 three minutes.

25 Hello?



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1 UNIDENTIFIED SPEAKER: Objection, as
2 well. I think spam is -- we're using a lot of
3 undefined terms here. When you say "spam," I
4 think it's vague and ambiguous.

5 MR. NEWMAN: May call for a legal
6 conclusion.

7 UNIDENTIFIED SPEAKER: May call for a
8 legal conclusion, as well.

9 MR. NEWMAN: Would you like the
10 witness to answer the question, notwithstanding
11 the objection and the fact that you're using terms
12 that the lawyers here have trouble understanding,
13 so the witness probably does, as well?

14 MR. WALLACE: Yes, I'd like for him to
15 answer the question.

16 MR. NEWMAN: You should answer the
17 question, then.

18 THE WITNESS: I'm sorry if I -- I'm going
19 to need it repeated back to me again.

20 A I have no memory of such conversation.

21 Q (BY MR. WALLACE) Do you have a
22 memory of anyone ever telling you that the
23 mortgage data you were selling was in violation of
24 state or federal law?

25 UNIDENTIFIED SPEAKER: Objection.



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UNIDENTIFIED SPEAKER: The question is vague and ambiguous.

Q (BY MR. WALLACE) Go ahead, Mr. Foust.

A No.

Q If somebody had accused you of selling mortgage data that was in violation of federal and state law, is that something that would have stood out in your mind?

MR. NEWMAN: Objection. The question calls for speculation.

UNIDENTIFIED SPEAKER: Objection.

Q (BY MR. WALLACE) Go ahead and answer the question.

MR. NEWMAN: And is vague and ambiguous.

A Yes, I believe it would have stuck out in my mind.

Q (BY MR. WALLACE) Do you have a memory of anybody in your business at Tandax ever saying that your business practices were in violation of the law?

UNIDENTIFIED SPEAKER: Can I have that read back, please?

UNIDENTIFIED SPEAKER: That assumes facts not in evidence.



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MR. NEWMAN: Objection. Asked and answered.

A No.

Q (BY MR. WALLACE) Who did you deal with -- let me strike that.

Do you remember who your contact was at Eleadz while you were doing business with them?

A I'm trying to think carefully. It was a female. I don't -- I don't recall her name.

Q Do you remember having contact with anybody other than a female at Eleadz?

A I'm sure I -- I'm jumping ahead here, maybe. I can't speak to how many individuals that I ever had dialogue with at Eleadz.

Q The documents that you produced, Tandax -- Tandax 72 there, the e-mails that you were talking about a few minutes ago that you produced, they all relate to March of 2005.

MR. NEWMAN: Is that a question?

Q (BY MR. WALLACE) And you said that Tandax ceased operations in August or September of 2004.

A Mm-hm.

Q What were you doing --

UNIDENTIFIED SPEAKER: Excuse me.



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representation.

Why don't we go off the record. We'll retrieve the documents. I'll get that URL, in case anyone else needs them, and then we can go back on the record, and the witness is happy to answer questions about them.

Is that fair?

MR. WALLACE: Fair.

MR. NEWMAN: So may I confirm that we're off the record?

MR. WALLACE: Yes.

MR. NEWMAN: Thank you.

(Recess 10:13-10:28 p.m.)

Q Have you had a chance to look over the Tandax document that you produced? Not the Complaint, but the document you actually produced, that was your document.

A Yeah. Yes.

Q And the dates that I'm seeing is in March of 2005. Do those dates appear on your documents there?

A They do.

Q Yes?

A Yes, they do.

Q And do you have any reason --



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UNIDENTIFIED SPEAKER: Is there a

Bates stamp number for these?

MR. WALLACE: Yes. Tandax Exhibits 71 through 77.

UNIDENTIFIED SPEAKER: Thank you.

Q (BY MR. WALLACE) And the dates from March 2005, do you have any reason to question the validity of those dates?

A It would have -- in my mind, it was much earlier than this. I can't know for sure if there's not some type of clerical error here. But to the best of my recollection, my business practice with these folks was a lot earlier in time.

Q And this is the only firm that you've ever hired to try to direct traffic to your website 2savemoney; correct?

A Yes.

Q If you will look at Tandax 75, did you put your name and your -- and the date and time in there?

A Did I put my name and date and time?

Q Yes, sir.

A No. I see no -- I see my name typed and a date and time, but this was not crafted by me.

Q Okay. Where did you publish this



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1 information, but all information is purged at a
2 point.

3 Q (BY MR. WALLACE) So the data that you
4 purchased from these third parties, what did you
5 do with that?

6 MR. NEWMAN: Objection. Vague,
7 ambiguous as to "data" and "third parties." The
8 question lacks foundation.

9 A Sometimes I did nothing with the data.
10 Sometimes I sold it to a person that was looking
11 for that particular set of data. And not all cases
12 was all data usable.

13 Q Do you still have any of that data?

14 A None.

15 Q And where did it go?

16 A Which data are you referring to?

17 Q I'm not sure I understand your answer.

18 A I'm not sure -- I'm not sure I understand
19 your question. What data went where? I'm not
20 sure what data you're specifically speaking to.

21 Q Besides selling it to third parties, what
22 did Tandax do with that data? Does it still
23 maintain it?

24 A No.

25 Q Why not?



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1 **A** Two reasons. One is that after a certain
2 period of time, it no longer has any value. It
3 would be a waste to keep. And under my
4 document destruction policy internally, we would
5 remove all data.

6 And third, as we provided to you in our
7 deposition about my divorce, all documents were
8 destroyed at that point. But I'm sure even at that
9 point, there was no data.

10 **Q** What's this period of time? How much
11 time are we talking about?

12 **MR. NEWMAN:** Objection. Vague.

13 **Q** **(BY MR. WALLACE)** You said that this
14 data is good for a certain period of time. What
15 was the period of time you were operating under?

16 **MR. LEVENTHAL:** Objection. This is Joe
17 Leventhal.

18 **A** I would say it would be no good after
19 seven days.

20 **Q** **(BY MR. WALLACE)** What was your
21 document destruction policy at Tandax with regard
22 to this data?

23 **A** Six months.

24 **Q** You would destroy the data every six
25 months?



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1 A Or sooner.

2 Q You no longer have any knowledge or
3 information as to where you obtained this data?

4 A Again, I would have to ask you to clarify
5 what data.

6 Q The data you bought from third parties.

7 A So any and all data?

8 Q Any and all -- the data that related to
9 mortgage products.

10 **UNIDENTIFIED SPEAKER:** The question
11 is compound and vague and ambiguous.

12 A I don't -- I don't have any reason to keep
13 any of the data. I don't have any of the data. I
14 have no reason to have any record whatsoever.

15 Q **(BY MR. WALLACE)** My question is, you
16 have no information as to who you bought the data
17 from in 2003?

18 **MR. BALASUBRAMANI:** Object. This is
19 Venkat. What data are we referring to here? The
20 question is vague and ambiguous on that point.

21 Q **(BY MR. WALLACE)** Did you buy or sell
22 or acquire any data other than mortgage-related
23 data?

24 A No.

25 Q Okay. So that's the data we're talking



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1 about. Is that clear to you, sir?

2 MR. NEWMAN: That's not really clear to
3 me, because the witness testified that there was
4 different parties and different data sets. And if
5 you're speaking of data collectively in the
6 aggregate, I don't know how this witness is
7 supposed to answer the question, unless he dealt
8 with all the data together at a single time.

9 Q (BY MR. WALLACE) Do you have a
10 memory of -- strike that.

11 Do you have the contact information for
12 any of these third parties you acquired this data
13 from, at any point in time while Tandax was
14 operating?

15 A So I'm clear, did I ever have their contact
16 information?

17 Q No. Do you have it today?

18 A No, I do not.

19 Q Is it something you can find?

20 A No, it is not.

21 Q That's information you destroyed
22 according to your document destruction policy; is
23 that fair?

24 A Yes.

25 Q While you were obtaining data and selling



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1 that's true or not?

2 MR. NEWMAN: Objection. The question
3 calls for speculation and lacks foundation.

4 Q (BY MR. WALLACE) Would it be the data
5 itself?

6 MR. NEWMAN: Objection. The question
7 calls for speculation and lacks foundation.

8 A I can't answer your question for you.

9 Q (BY MR. WALLACE) It's a question to
10 you, sir.

11 A I mean, what would be the best way to
12 determine -- I have absolutely no idea, and I have
13 -- I wouldn't have a foggy notion.

14 Q Who would know whether or not -- there's
15 not any record, that you're aware of, that would
16 be able to tell us whether or not you were
17 trafficking, buying and selling mortgage data, that
18 related to the state of Oklahoma?

19 A No. I have no reason to believe that I
20 ever did business there. Therefore, I don't -- I
21 don't know where I could possibly ever come up
22 with such data or such information from any
23 source.

24 Q My question was whether or not there
25 were records, what records would show if you



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1 bought and sold mortgage data that related to the
2 state of Oklahoma.

3 **MR. NEWMAN:** Objection. The question
4 calls for speculation and lacks foundation.

5 **A** I don't -- to the best of my knowledge, no
6 record ever existed.

7 **Q (BY MR. WALLACE)** Is there any other
8 websites that Tandax used during its existence?

9 **A** No.

10 **Q** How about you personally? Any websites
11 you've been affiliated with or created?

12 **MR. NEWMAN:** Objection. Vague,
13 compound.

14 Do you want to limit it to created?

15 **MR. WALLACE:** Yeah, that's fine.

16 **A** I'm not a Web developer/designer, no.

17 **Q (BY MR. WALLACE)** You told me a little
18 bit ago, you developed and designed this 2save --

19 **A** I said I had a part -- let me clarify that
20 response then. I may have directed its
21 construction and I might have done some search
22 engine optimization, but I certainly didn't craft
23 the images, et cetera. I don't have that kind of
24 capability or skill set.

25 **Q** Have you ever directed anybody else to



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1 set up a webpage for you?

2 A No, I have not.

3 Q Are you familiar with divorcestopper.com?

4 A Yeah.

5 Q What's your -- tell me what you know
6 about that.

7 A What I know about it?

8 Q Yeah.

9 A It sells divorce books.

10 Q Do they have a webpage?

11 A It does.

12 Q Okay. And how did that come about, if
13 you know?

14 A How did it come about?

15 Q Yeah. How did divorcestopper.com come
16 into existence?

17 MR. NEWMAN: Objection. Vague.

18 A I registered the domain.

19 Q (BY MR. WALLACE) So did you direct
20 somebody to create this website?

21 A Yeah. Yes.

22 Q So you directed somebody to create
23 another website besides 2savemoney?

24 A That was so long ago, that -- yeah, I
25 guess, yeah, now that you mentioned the name.



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1 Q Are you aware of any records anywhere
2 that would identify the providers or suppliers of
3 this mortgage data that you acquired?

4 A No, I'm not aware of any.

5 Q The Info Search Media information you
6 produced all relates to a time period well after
7 your agreements with Go Apply and Eleadz and
8 The Loan Page; correct?

9 A Well after my agreements?

10 Q Yes, sir.

11 A What I -- what I stated is that I ceased
12 business in September -- August/September of
13 2004.

14 Q The business you did with Info Media
15 Search -- or Info Search Media occurred well after
16 the time period you stopped doing business with
17 Go Apply, Eleadz, and The Loan Page?

18 A Well, looking at the document, the date
19 would indicate so.

20 Q Who were the -- were there any other
21 employees -- let me strike that.

22 Who were the employees of Tandax?

23 A Myself.

24 Q Any others?

25 A No.



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1 Q Who were the officers of Tandax?

2 A Myself.

3 Q Any others?

4 A No.

5 Q And Tandax's sole business purpose was
6 to buy and sell this data?

7 A Yes.

8 Q I didn't hear your answer, sir.

9 A Yes.

10 Q How was Tandax capitalized?

11 A How was it capitalized?

12 Q Yes, sir.

13 A As I stated earlier, there was really no
14 marketing efforts ever put forward. These are very
15 limited, small, home-based businesses -- or
16 home-based business, that it didn't require any
17 sort of capital.

18 Q Did you run any of your personal
19 expenses through Tandax?

20 A No.

21 Q What have you done since 2001 to earn
22 income?

23 MR. NEWMAN: Objection. The question
24 lacks foundation.

25 THE WITNESS: Does that mean I answer?



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1 received about your business, Tandax?

2 A I might have had a customer complain
3 about not getting a timely refund on a book
4 purchase, or something as trivial like that.

5 Q But that would be the full extent of it?

6 A Absolutely.

7 Q You've never been aware -- nobody's
8 suggested that you were selling mortgage data that
9 was acquired through e-mail?

10 A No, no one's suggested any -- that I've
11 done any improprieties. And frankly, I was really
12 shocked to see this lawsuit.

13 Q Really?

14 A Really.

15 Q And you don't have a single document
16 that relates to this mortgage data business; is
17 that correct?

18 A For the, yeah, fifteenth time, I have not
19 one single document.

20 You have to understand -- and I'm going
21 to kind of go out -- I conducted my business in
22 what I felt to be an upstanding, professional
23 manner. And at no point did I ever suspect that I
24 would be involved in any type of litigation. So all
25 this is quite shocking to me.



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1 rules.

2 Q (BY MR. WALLACE) Please answer the
3 question, Mr. Foust.

4 THE WITNESS: Again, can you read it
5 back to me?

6 Q (BY MR. WALLACE) The question was,
7 are you aware of whether or not anybody has ever
8 accused you or Tandax of selling mortgage-related
9 data that was acquired through spam?

10 A Not to the best of my knowledge.

11 Q Is that something that would have stood
12 out to you, if somebody had accused you of that?

13 A If somebody would have accused me of
14 spamming?

15 Q Yeah.

16 A Absolutely.

17 Q How about selling mortgage data that was
18 acquired through spam? Is that something that
19 would have stood out to you?

20 A I don't recall ever alleged selling of spam
21 to mortgage leads, or whatever you're referring to.

22 Q Is that something that would have stood
23 out to you, though, if somebody would have said
24 that or implied that?

25 A I suspect it would have stood out to me.



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