

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA

RELIABLE AIR, INC.,	.	Case No. 05-85627
	.	Adv. No. 07-06352
Plaintiff,	.	
	.	
v.	.	
	.	75 Spring Street S.W.
DANIEL L. JAPE, et al.,	.	Atlanta, Georgia 30303
	.	
Defendants.	.	
	.	August 9, 2007
.	1:07 p.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE JAMES MASSEY
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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B. Jape - Cross

3

1 THE COURT: All right, Ms. Jape, if you would come
2 back to the witness stand please? Mrs. Jape, you understand
3 that you're still under oath?

4 THE WITNESS: Yes, sir.

5 B A R B A R A J A P E, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN
6 CROSS EXAMINATION BY MR. McBRYAN:

7 Q Ms. Jape, My name is Lou McBryan. I represent Daniel Jape
8 and Ms. Ruse. A couple of questions. I think you've testified
9 this, but it wasn't made clear. Prior to 1999, could you give
10 me a time line what your role with was with the business known
11 as Reliable Heating and Air?

12 A I met Mr. Jape in 1982. It was he and a pickup truck and
13 some business cards. We began to co-habitate together, I ran
14 the office for him, did his books. In 1985 with the birth of
15 my son I quit my job and stayed home full time and ran the
16 office out of the home. I answered the phones, filed the tax
17 returns, had all the customer contact, set up appointments.
18 And as we continued to grow, my role continued to grow. I
19 scheduled all the service calls, set sales appointments,
20 continued to do the books until we got so big that we needed to
21 do that for us. Had an active role in every decision that was
22 made.

23 Q In 1982, weren't you a real estate agent?

24 A I worked in the Relocation Department for Harry Arman
25 (phonetic) Realtors, that's correct.

B. Jape - Cross

4

1 Q So are you saying that you were a full-time employee of
2 Reliable Heating and Air at the same time --

3 A No, sir, what I said was, we met in '82 and I did the
4 books and kept all the records after work.

5 Q Was this commencing immediately starting in 1982?

6 A I'm not quite sure that it started the very second I met
7 Mr. Jape, not, sir.

8 Q Okay. Do you currently as an individual have any interest
9 in the trademarks or service marks or any intellectual property
10 of -- that Reliable Air, Inc., is currently using?

11 (Speaker away from microphone)

12 UNIDENTIFIED SPEAKER: Excuse me. The question he's
13 asking is her to make a conclusion of law, or stated
14 conclusion, I would object to her competence. Otherwise, I
15 don't object. You can state her understanding.

16 THE WITNESS: I'm sorry, could you repeat the
17 question?

18 MR. McBRYAN: Sure.

19 THE COURT: He wants to know whether you contend that
20 you have a property interest in any of the intellectual
21 property of Reliable Air?

22 THE WITNESS: Fortunately -- I'm sorry, you're asking
23 me personally if I do?

24 MR. McBRYAN: Yes, ma'am.

25 THE WITNESS: No, the corporation does.

B. Jape - Cross

5

1 BY MR. MCBRYAN:

2 Q Tell me, prior to the incorporation in 1999, did you
3 believe you had an interest, a property interest in any of the
4 business known as Reliable Heating and Air?

5 A Prior to the incorporation when it was just, meaning we
6 worked as a self proprietorship, is that what you're asking?

7 Q Yes, when Dan Jape --

8 A I never really thought about it one way or the other. It
9 was the business that we owned and we ran.

10 Q But you say that you owned it, you had an interest in it,
11 it wasn't Dan Jape's business, you had an interest in that
12 business known as Reliable Heating and Air?

13 A Yes, sir.

14 Q When the company was incorporated, are you contending you
15 gave all of your interest in Reliable Heating and Air to this
16 company?

17 A I would assume so, yes, sir.

18 Q And did you get paid anything for that?

19 A No, sir. I'm sorry -- and I'm just a little confused.
20 You mean on the day of the incorporation when we turned it into
21 a corporation did they give me remuneration for something?
22 You're not very clear.

23 Q Let's start there. Let's stay on the day of
24 incorporation, yes.

25 A No, sir. On the day of the incorporation I was at work

B. Jape - Cross

6

1 doing what I've always done.

2 Q So you weren't there.

3 A What, in the attorney's office?

4 Q Yes, ma'am.

5 A No, sir.

6 Q So did you ever meet with Mr. Don Rolader?

7 A I had met with him on occasions before that. I didn't
8 meet him on the day when we made the appointment for Dan to go
9 down and fill out the incorporation papers.

10 Q Do you know when you transferred all of your interest in
11 the business known as Reliable Heating and Air to this company,
12 Reliable Air, Inc.?

13 A I would assume that when it became a corporate asset,
14 that's when your individual interests became corporate assets.
15 I don't really understand the question or the nature of it, but
16 I'll answer it as best I can.

17 Q Okay. Well the question -- you heard my opening statement
18 -- is I want to know when Reliable Air, Inc., became the owner
19 of the service marks of Reliable Heating and Air.

20 A When it became the entity that did all the advertising and
21 paid for everything, that was Reliable Heating and Air.

22 Q What kind of corporation is Reliable Air, Inc.?

23 A An S.

24 Q An S Corp. And does the company pay taxes separate and
25 apart from you as an individual?

B. Jape - Cross

7

1 A Yes.

2 Q Income taxes?

3 A Yes. They file separate income taxes. I receive a W-2.

4 Q You receive a W-2 as an employee.

5 A Correct.

6 Q Does the company file a separate tax return?

7 A Reliable Air, Inc. files a tax return.

8 Q When did it start that?

9 A In '99 when it became incorporated.

10 Q Are you an accountant, Ms. Jape?

11 A No, sir.

12 Q Do you have any formal training as an accountant?

13 A No, sir. Other than the classes I took in college.

14 Q Did you -- let me go back to again the assets, so you
15 didn't receive any payment from Reliable Air, Inc., for your
16 transfer of any of your interest in the business known as
17 Reliable Heating and Air?

18 A Neither Mr. Jape nor I did.

19 Q How do you know Mr. Jape didn't?

20 A Because I'm the only one who's ever been able to write a
21 check from that corporation and one was never issued to him.

22 Q Mr. Jape never got any money from Reliable Heating,
23 Reliable Air --

24 A Not for that, he took a paycheck.

25 Q How did the business operation change on July -- in July

B. Jape - Cross

8

1 of 1999 after the incorporation from the day before it was
2 incorporated?

3 A Day to day operations continued on as they always had.

4 Q Have you ever heard of a company called Reliable Services
5 Company?

6 A Yes.

7 Q What is it?

8 A It was a name that we used on a checking account years --
9 I'm not quite sure of the dates, but it was when we had some
10 problems with the IRS.

11 Q Does the business entity Reliable Air, Inc., currently
12 have any property that it uses titled in the name of Reliable
13 Services Company?

14 A I don't believe so, but I'm not absolutely sure. There
15 may have been a van or two.

16 Q Is it possible that you purchased a bunch of trucks and
17 still have them titled in that name?

18 A I don't believe so.

19 Q You're not sure, are you?

20 A No, sir, I'm not.

21 Q You testified that the business known as Reliable Air,
22 Inc., moved from an address on Highway 92 to Londonderry Court,
23 correct?

24 A Yes, sir.

25 Q Why did it move?

B. Jape - Cross

9

1 A We sold the property.

2 Q When did the debtor sell the property?

3 A I think we closed at the end of July of 2006.

4 Q And that was before Mr. Jape commenced doing business
5 again after he was terminated from --

6 A Yes, sir.

7 Q Reliable Air, correct?

8 A Yes, sir.

9 Q So you moved off of Highway 92. Where do you live?

10 A Four-hundred Huntington Estates Manor, Woodstock, Georgia.

11 Q And how close to that is to the highway -- the old address
12 on Highway 92?

13 A Less than a mile.

14 Q Okay, and how close is it to the Londonderry Court?

15 A Probably two to three miles?

16 Q And you know where Mr. Jape's current business is located,
17 correct?

18 A I do.

19 Q And where does Mr. Jape live? How close does he live to
20 where that business is located?

21 A Probably a mile.

22 Q You testified that Mr. -- there was a lot of advertising
23 spent by Reliable Air, Inc., on a show guess -- a radio
24 personality Mr. Neal Boortz, correct?

25 A Yes.

B. Jape - Cross

10

1 Q Isn't it true that when Mr. Boortz spoke on behalf of in
2 the ads, that in every ad he mentioned Dan Jape's name?

3 A Yes. What Mr. Boortz said, call my friends, Dan and
4 Barbara Jape at Reliable Heating and Air, he mentioned both
5 names.

6 Q Okay, so he never mentioned call Reliable Air, Inc., doing
7 business as Reliable Heating and Air, did he?

8 A No, sir.

9 Q Isn't it true that in the advertising of Reliable Air,
10 Inc., doing business as Reliable Heating and Air, that Mr.
11 Jape's photograph was in a lot of the ads?

12 A Yes, sir.

13 Q Including through 2005, correct? Take a look at
14 defendant's booklet, Exhibit Number 7, Ms. Jape.

15 A Yes, sir.

16 Q Do you see Exhibit Number 7?

17 A I do.

18 Q And do you see another picture of Mr. Jape?

19 A Yes, sir.

20 Q Okay. And that was -- take a look at it, wasn't that
21 published in 2005? Can you tell?

22 A Let me see, just a moment. Yes, sir, it was.

23 Q Okay. What's it say under Mr. Jape's name?

24 A Dan Jape, owner.

25 Q Doesn't say Reliable Air, Inc., owner, does it?

B. Jape - Cross

11

1 A No, sir.

2 Q Doesn't say Barbara Jape, owner.

3 A Only because I did not wish to have my picture. On
4 numerous occasions Mr. Jape asked me to please have a picture
5 taken together and I chose not to.

6 Q Okay. Were you aware of the registration by Mr. Jape of
7 the trade name Reliable Heating and Air?

8 MR. MALONE: Excuse me, Your Honor. Which
9 registration? I believe there's evidence on record of two
10 registrations by Mr. Jape using that name.

11 MR. McBRYAN: Mr. Malone's incorrect, Judge. His
12 Exhibit 9 says Reliable Heating and Air Conditioning.

13 BY MR. McBRYAN:

14 Q Take a look at defense Exhibit Number 3 -- I'm sorry,
15 Judge, he did object.

16 MR. MALONE: I was asking for clarification, Your
17 Honor.

18 THE COURT: What is the -- which one are you talking
19 about?

20 BY MR. McBRYAN:

21 Q I'm going to ask about defendant's Exhibit Number 3.

22 A Yes, sir?

23 Q Were you aware of that?

24 A I was.

25 Q Okay. Do you notice that Reliable Air, Inc's. name is not

B. Jape - Cross

12

1 on that?

2 A I do.

3 Q Okay. Did you ever ask Dan why not?

4 A You know, I do think we had a discussion about that at the
5 time, but I don't recall.

6 Q You don't recall what the discussion was about?

7 A I don't recall why the corporate name wasn't put there. I
8 do know that I asked about that because this registration was
9 actually filled out after we brought the piece of property in
10 Cherokee County that became the 15021 Highway 92 address.

11 MR. McBRYAN: Your Honor, this is a certified copy of
12 that registration. We've asked the Court to allow the
13 admission of that document. The defendant -- pardon me -- the
14 witness has the original exhibits, Judge.

15 THE COURT: Any objection?

16 MR. MALONE: No objection.

17 THE COURT: Defendant's Exhibit 3 is admitted without
18 objection.

19 BY MR. McBRYAN:

20 Q Let's take a look back at Exhibit 7, Ms. Jape.

21 THE COURT: Are you referring to defendant exhibit?

22 MR. McBRYAN: Defendant Exhibit Number 7, I'm sorry.

23 BY MR. McBRYAN:

24 A Yes, sir.

25 Q And can you identify that as one of the advertisements

B. Jape - Cross

13

1 placed by Reliable Air, Inc., d/b/a Reliable Heating and Air?

2 A Yes.

3 Q Okay.

4 MR. McBRYAN: Judge, I'd move to admit defense
5 Exhibit Number 7.

6 MR. MALONE: No objection.

7 THE COURT: Defendant's Exhibit Number 7 is admitted.

8 BY MR. McBRYAN:

9 Q Do you notice under the words Reliable Heating and Air do
10 you see a name you can rely on since 1978?

11 A I do.

12 Q And you agree that you were not involved in the business
13 in 1978, right?

14 A I absolutely do, and I will also tell you that is a catch
15 line that I came up with to help promote the business when we
16 wished to establish longevity of the company.

17 Q So are you personally claiming the copyright on that
18 phrase?

19 A I'm certainly not claiming copyright, I will certainly say
20 I used it in advertisements.

21 Q But the advertisement was paid for by Mr. Jape
22 individually, wasn't it?

23 A No, the advertisement was paid for by Reliable Air, Inc.

24 Q In 1978?

25 A This didn't run in 1978.

B. Jape - Cross

14

1 Q 1981?

2 A This didn't run in 1981.

3 Q In 1983?

4 A I don't understand where you're going with this, sir, I'm
5 sorry.

6 Q Well how long has that phrase been in the business?

7 A This phrase has only been in the business, the name you
8 can rely on since 1978, for about four or five years.

9 Q But the name itself has been around since long before
10 1978, right?

11 A Yes, sir.

12 THE COURT: 1978?

13 MR. McBRYAN: Since 1978.

14 BY MR. McBRYAN:

15 Q The business has been around since 1978, correct?

16 A Yes, sir.

17 Q Take a look at your Plaintiff's Exhibit Number 5, Ms.
18 Jape. It's a picture of a service van, correct?

19 A It is.

20 Q What was the date of this picture?

21 A I would assume that it was taken the first day that Mr.
22 Malone came to our office and took a photograph of the sign,
23 but I don't know.

24 Q Down on -- it's hard to see -- you can't tell at all --
25 isn't there usually some writing if you look at my -- Ms. Jape,

B. Jape - Cross

15

1 if you'll look on the screen --

2 A Sorry, I can't --

3 Q Oh, you can't -- oh, can you see it that way?

4 A Yeah, I mean, I have the picture here if there's
5 something.

6 Q Right around here, you can't see it, except some phrasing,
7 isn't there some language?

8 A Yes, sir. It says GA Reg. and then a number after that.
9 It's issued by the Secretary of State to Corporations.

10 Q And is that your reg. number?

11 A It's the corporations reg. number.

12 Q It's not your license number?

13 A No, sir.

14 Q Is there a difference between a license and a regulation
15 number?

16 A Yes, the reg. number is not used any longer. As I said,
17 it was issued by the Secretary of State to corporations.

18 Q Why don't you use it anymore.

19 A Because they don't use them anymore.

20 Q Isn't it true Mr. Jape asked you to remove that because
21 it's personal to him?

22 A Mr. Jape has asked me to do a lot of things because it is
23 personal to him. He did ask me to remove that. I removed it
24 because I called the Secretary of the State's office and spoke
25 with the people in the Corporations Division, and they said

B. Jape - Cross

16

1 that the number was no longer valid for anything, they did not
2 use them.

3 Q Do you remember who you spoke with at the Secretary of
4 State's office?

5 A No, sir.

6 Q Do you remember when you made that call?

7 A I would assume that I made that call somewhere the end of
8 last year, the beginning of this year when Mr. Jape started
9 e-mailing me on a regular basis and asking me to remove it from
10 the trucks.

11 Q And you did remove it from the trucks.

12 A After speaking with the Division of Corporations from the
13 Secretary of State's office and finding out that it was no
14 longer necessary on vehicles.

15 Q Take a look at your plaintiff Exhibit Number 6, it's also
16 on the screen, do you see that?

17 A I do.

18 Q Are you claiming that Reliable Htg. and that ampersand Air
19 are also part of your service marks?

20 A With the exception of the heating being abbreviated it is
21 the mark.

22 MR. MCBRYAN: I'd ask the Court to strike the answer
23 as non-responsive.

24 THE COURT: Aren't you asking her for a legal
25 conclusion?

B. Jape - Cross

17

1 MR. McBRYAN: No, I'm asking if she's claiming it.
2 I'm not asking if she has one, I'm saying are you claiming?

3 THE COURT: Okay. Just answer that question.

4 THE WITNESS: And I'm sorry, Your Honor. I'm not
5 trying to be difficult. That is a part of the service mark
6 with the exception of the heating having to be abbreviated for
7 space purposes.

8 BY MR. McBRYAN:

9 Q The service mark registration you registered with the
10 Secretary of State did not include the abbreviation Htg., did
11 it?

12 A Never.

13 Q Have you used this phrase Htg. on any other advertising?

14 A Yes, it is on the billboard.

15 Q What billboard?

16 A The one that is in front of our place of business. Again,
17 for space purposes.

18 Q Take a look at what's been marked as your plaintiff's
19 Exhibit Number 2.

20 A Yes, sir.

21 Q And this is the document that purports to register your
22 service marks, correct?

23 A It is.

24 Q All right. And the description on it on the second page
25 of the Exhibit 2 refers to the capital letter R surrounded by

B. Jape - Cross

18

1 the colors red and blue with the words Reliable Heating and an
2 ampersand, Air. With the word reliable in blue with the words
3 heating and the ampersand and the words air in red. Did you
4 describe this or is this how the Secretary of State just took
5 what you provided?

6 A I would assume that I provided a rough description, but
7 you also have to documentation in the form of two or three
8 pieces of identification. We would have sent letterhead,
9 things like that and then they came up with the actual
10 description.

11 Q So you're actually seeking a service mark in the phrase
12 Reliable Heating and Air, correct?

13 A I'm sorry?

14 THE COURT: You're seeking it?

15 Q I mean, you've got a service mark in the Reliable Heating
16 and and Air.

17 A No, sir. I believe the and there is a conjunction showing
18 that the ampersand comes after it.

19 Q Is that your opinion or did you seek somebody else's
20 opinion on that?

21 A That would be my opinion.

22 Q Okay. But you never asked anybody about that. Do you use
23 the description, that phrase in any of your advertising? Do
24 you have the words and, and followed by an ampersand in your
25 advertising?

B. Jape - Cross

19

1 A No, sir.

2 Q Tell me about -- what year did the entity, the business,
3 Reliable Heating and Air, commence using the telephone number
4 770-594-9066.

5 A Sometime when we first moved to Roswell I would imagine in
6 the late '80s, early '90s.

7 Q And that was a sole proprietorship owned by Mr. Jape,
8 correct?

9 A Yes. Well, during a portion of that time it was a
10 corporation, Jape Air, Inc., which was owned by the two of us.

11 Q Let me ask you about that. Do you have any documents to
12 support that statement?

13 A I can produce them. I don't have them with me, sir. But
14 they are registered with the Secretary of State, I'm sure, with
15 the Corporations.

16 Q Right, but the company was voluntarily dissolved, correct?

17 A Yes, sir, it was.

18 Q Do you have documents that say all of these assets of
19 Reliable Heating and Air were transferred to Jape Air, Inc.?

20 A No, but when Jape Air, Inc., was dissolved, we took on
21 personally all the debts of that company and filed personal
22 bankruptcy. So there was a transference there.

23 Q Any chance at that time you disclosed the service marks
24 and the value of your --

25 A I don't know, sir.

B. Jape - Cross

20

1 Q -- Reliable Heating and Air at that time?

2 A That was a personal bankruptcy.

3 Q I understand, but you said the company dissolved and you
4 took all the assets back on its debt.

5 A I don't know, I would have to pull those papers, sir.

6 Q Do you remember what year you personally filed bankruptcy,
7 Ms. Jape?

8 A Mr. Jape and I personally filed bankruptcy somewhere in
9 the early '90s.

10 Q When did you obtain a license as an HVAC person in the
11 state of Georgia?

12 A Approximately ten years ago. I would have to look at it
13 to be exact.

14 Q When did the debtors commence -- when did the debtor
15 commence advertising in the Yellow Pages?

16 A In I believe 2005.

17 Q In what month?

18 A It would have run through -- the ad would have run through
19 whatever the length of the book was.

20 Q All right, let me rephrase. When I speak about the
21 debtor, I'm talking about the bankrupt, not the pre-company.
22 Did post -- when did Reliable Inc., a debtor in possession
23 subsequent to the bankruptcy start filing -- running ads in the
24 Yellow Pages.

25 A I'm sorry, that was a little confusing for me. When did

B. Jape - Cross

21

1 we prior to the bankruptcy or after the bankruptcy?

2 Q After the bankruptcy. You testified initially with Mr.
3 Malone that the debtor is advertising in the Yellow Pages
4 currently.

5 A Okay.

6 Q I want to know when you started.

7 A Well there were ads that ran through 2005 and 2006, new
8 ads were placed in the middle of 2006.

9 Q Isn't it true though that the adds that were placed were
10 placed pre-bankruptcy and you still owe those funds?

11 A No, sir.

12 Q Did you pay those debts?

13 A No, sir, they are still in the bankruptcy, but we do have
14 other Yellow Page ads that are running.

15 Q There are multiple Yellow Pages.

16 A Correct.

17 Q What book are you in?

18 A We are the one that is put out by Lakeview Publishing and
19 distributed in the Roswell operator area.

20 Q Right. And is Mr. Jape published in that Yellow Pages?

21 A I don't believe so.

22 Q Okay. Mrs. Jape, is that the Yellow Pages ad, is this the
23 plaintiff's 4?

24 A Yes, sir.

25 Q Do you recall how Reliable Air, Inc., obtained the phone

B. Jape - Cross

22

1 number 770-594-9066?

2 A It was the number that we used. Now when we moved to the
3 new property out on Highway 92 and formed a corporation we had
4 to have that number remote call forwarded from the Roswell area
5 to be able to take that to a Woodstock location.

6 Q Just because you filed it -- formed a corporation you had
7 to have --

8 A No, sir, because we moved, and those just happened to
9 happen at the same time.

10 Q I thought you said you didn't move in until 2001?

11 A We took possession of the land and the building on it,
12 sir. And we had a huge sign out front, you know, coming soon.

13 Q But you didn't move your operations there until 2001,
14 correct?

15 A No, sir. We did not take possession of the building until
16 2001.

17 Q Okay, and the corporation was formed in 1999, correct?

18 A When we purchased the land, yes, sir.

19 Q I'm looking at Plaintiff's Exhibit Number 7, can you see
20 that, this is the letter?

21 A Yes, sir.

22 Q Okay. During the time that Mr. Jape was president of
23 Reliable Air, Inc., do you know how many times letters like
24 this were written on its behalf?

25 A To the best of my knowledge, this was the only case.

B. Jape - Cross

23

1 Q Since Mr. Jape has been terminated from the plaintiff, how
2 many letters like this have you or your lawyers written on the
3 company's behalf to competing companies?

4 A None that I know of.

5 Q Does the Reliable Heating and Air Conditioning, LLC in
6 Decatur, is that not a competitor of yours?

7 A They're in the same market that we are, but we very
8 seldom, if ever, come up against them.

9 Q How do you know?

10 A The only way you truthfully know is if you're bidding on a
11 replacement system and the customer tells you who you're up
12 against.

13 Q So you've never -- no one's ever said -- and you've never
14 gone to Decatur, is that right?

15 A I'm sorry?

16 Q And you don't go to Decatur --

17 A Personally?

18 Q Your company.

19 A We have a few customers in Decatur, yes, sir.

20 Q But you've not taken any steps to protect the market?

21 A No, sir, it has not been an issue.

22 Q On the advertising by Reliable Air, Inc., d/b/a Reliable
23 Heating and Air, prior to Mr. Jape's termination in November of
24 '05, how much input did you have in advertising?

25 A I did all of the newspaper advertising and I did all of

B. Jape - Cross

24

1 the coupon advertising. Mr. Jape would write commercials for
2 Mr. Boortz and submit those and then Mr. Boortz would reword
3 them and do them. But the other advertising, I have always
4 been in charge of.

5 Q Really?

6 A Yes.

7 Q Do you have the advertising book with you today that shows
8 all the ads from years going back?

9 A No, sir.

10 Q Do you still have it in your records?

11 A Yes, sir.

12 Q Okay. I understand you no longer have any of Mr. Jape's
13 personal items, is that correct?

14 A Not to the best of my knowledge we do not.

15 Q What happened to them?

16 A Mr. Jape came and packed his office up and then his
17 parents came after that and also took things. When Mr. Jape
18 left, his office was empty.

19 Q Was that before or after you had him arrested?

20 A It was before.

21 Q Ms. Jape, you terminated Mr. Jape's compensation in
22 October of 2005, correct?

23 A He would have received a paycheck that covered up until
24 the time of the early November meeting when he was dismissed
25 from the company, that's correct.

B. Jape - Cross

25

1 Q Okay. Have the advertising dollars paid by Reliable Air,
2 Inc., diminished from the year 2001 to the year 2005 or were
3 they about the same on average per year?

4 A I would assume that after we stopped using Mr. Boortz that
5 the advertising dollars would have gone down.

6 Q And post-bankruptcy, would the advertising dollars gone up
7 or gone down?

8 A If you take Mr. Boortz's advertising in its entirety out
9 of there, we spent and have since 1999 about 210 to \$250,000 a
10 year on advertising.

11 Q I noticed you testified earlier that you thought -- in
12 response to a question -- you actually testified that you spent
13 in 2007 almost \$200,000 in advertising so far, is that correct?

14 A I believe that to be correct, yes, sir.

15 Q Okay. In preparing for that testimony, did you review
16 your operating reports?

17 A In preparing for the testimony I went back through old
18 financial statements that had been prepared for me by
19 accountants and -- that's not an exact figure, I don't purport
20 it to be. It's a best guest estimation.

21 Q Well isn't it true that according to your last operating
22 report filed in the bankruptcy case that on advertising, that
23 the debtors, through June, end of June, just a total of
24 \$305,113.07?

25 A That's entirely possible, yes, sir.

B. Jape - Cross

26

1 Q Okay. So since you testified you put almost \$200,000 in
2 '07, do you know what your advertising budget was or what your
3 expenditures were in July of 2007?

4 A I would have to go back to get that exact figure for you,
5 sir.

6 Q Okay. So actually the \$200,000 number is just a wild
7 guess, isn't it?

8 A No, sir, I said it was an average. What I would have done
9 is taken all the years and averaged them. I never purported it
10 to be an exact figure.

11 Q So if you're November and you file -- when did the debtor
12 file bankruptcy, end of November, wasn't it, or was it earlier?

13 A It was November 22, I believe, of 2005.

14 Q Okay, and the operating reports show the \$782.46
15 expenditure in advertising for that month. And then through
16 June you only paid 305, that's almost 18 months.

17 A I'm sorry, what are you looking at, sir, I don't have --

18 Q I'm looking at summary that I have reviewing your
19 operating reports, because you testified as to what your
20 expenditures are --

21 MR. MALONE: Your Honor, I object. If counsel is
22 going to question the witness about a document, he needs to
23 show the document and address the specific areas of the
24 documents to which his questions are directed. Objection to
25 the form of the question. I further object to the

B. Jape - Cross

27

1 (indiscernible) of this line of questioning. We've established
2 that there's a lot of advertising.

3 THE COURT: Overruled.

4 MR. McBRYAN: Thank you, Your Honor. For the purpose
5 of Mr. Malone to help with -- I guess since this is impeachment
6 I want to know what testimony, I have the June operating report
7 filed July --

8 THE COURT: Show it to Mr. Malone before you show it
9 to the witness.

10 MR. McBRYAN: May I approach, Your Honor?

11 THE COURT: Mm-mm.

12 BY MR. McBRYAN:

13 Q Ms. Jape, I handed to you the June 2007 operating report
14 filed by the debtor in this case, correct?

15 A Yes, sir.

16 Q Okay. And that's a document that you executed on behalf
17 of the debtor, correct?

18 A Correct.

19 Q And on the second page it demonstrates information and
20 categories and expenditures, correct?

21 A Yes, sir.

22 Q I believe it's the first line on expenditures that shows
23 advertising expenditures, correct?

24 A It does.

25 Q And through this report dated through June 30, 2007, what

B. Jape - Cross

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1 the expenditures of advertising on behalf of the debtor?

2 A Cumulative petition to date, is that what you're asking?

3 Q Yes, ma'am.

4 A \$305,113.07.

5 Q Okay, thank you. Mrs. Jape, what was your salary paid by
6 the debtor at the commencement of this bankruptcy case,
7 monthly?

8 A I believe it was \$5,000 a payroll, which is 26 payrolls a
9 month -- a year -- I'm sorry.

10 Q What is your current monthly salary?

11 A It is \$7,000 a payroll.

12 Q Well we don't go by payroll, it goes by months on your
13 reports.

14 A We pay bi-weekly.

15 Q You paid bi-weekly?

16 A Yes, sir.

17 Q So what is your -- you salary's increased how much during
18 this pendency of this bankruptcy case?

19 A It has increased \$2,000 a payroll.

20 Q Overall, how much is that?

21 A I don't have that figure and I'm not going to speculate or
22 guess. I don't have a calculator to do the math. I've told
23 you it has gone up \$2,000 a payroll.

24 Q Times 26 weeks, right?

25 A Yes, sir.

B. Jape - Cross

29

1 Q Isn't that \$52,000 annually?

2 A If that's what it multiplies out to, sir.

3 Q Did the board authorize that salary increase?

4 A I don't believe we had a board meeting, sir.

5 Q When's the last time they had a board meeting?

6 A When we removed Mr. Jape from the company.

7 Q I'm sorry, say that again.

8 A When we removed Mr. Jape from the company.

9 Q Okay. Take a look, Ms. Jape, at defense Exhibit Number
10 11, please. Can you identify defense Exhibits Number 11?

11 A It appears to be schedules, part of the original
12 bankruptcy filing I would assume. Schedule A real property,
13 Schedule B personal property.

14 Q Are these the schedules filed -- executed by you and filed
15 by the debtor?

16 A Yes, sir.

17 Q Your Honor, these are not certified, but they're on the
18 docket of this Court and they have a top stamp of the docket
19 and filing. I'd move to admit defense Exhibit Number 11.

20 MR. MALONE: We will stipulate they are accurate
21 copies of pleadings filed in this case.

22 THE COURT: Defendant's Exhibit 11 is admitted.

23 BY MR. McBRYAN:

24 Q Mrs. Jape.

25 A Yes, sir.

B. Jape - Cross

30

1 Q At the top of Exhibit Number 11, there are actually -- it
2 says pages of, do you see those?

3 A No, I'm sorry, I don't see where you're looking.

4 THE COURT: The very top of the page.

5 A Oh yes, sir. I see pages of -- page --

6 Q Could you take a look at Page 53 of 55?

7 A Yes, sir.

8 Q Do you see at the bottom it says declaration, under
9 penalty of perjury on behalf of the corporation or partnership?

10 A I do.

11 Q Did you sign those documents?

12 A I did.

13 Q Okay, good. Take a look at -- and you swore they were
14 accurate at the time, correct?

15 A To the best of my knowledge, information and belief.

16 Q All right. Take a look at Schedule B. That would be
17 Page -- Schedule B personal property begins on Page 30 of 55.
18 Please go to Page 31 of 55 and look at Paragraph Number 22, do
19 you see that?

20 A Yes, sir.

21 Q All right. Do you see that says patents, copyrights and
22 other intellectual property, give particulars?

23 A I do see that.

24 Q And do you see the box marked X for none?

25 A Yes.

B. Jape - Cross

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1 Q Okay. So in December of --

2 THE COURT: I also see the box above that says --
3 it's got a claim for a misappropriation of trade secrets.

4 MR. MCBRYAN: That's right, Judge. We're not here on
5 trade secrets.

6 THE COURT: I know.

7 MR. MCBRYAN: We're on conversion of they're saying
8 trade dress, trade name.

9 THE COURT: I know.

10 MR. MCBRYAN: And I think we already dealt with the
11 conversion issues.

12 THE COURT: I understand that.

13 BY MR. MCBRYAN:

14 Q So you've never, on behalf of the company, amended your
15 schedules, did you?

16 A I don't believe we have.

17 Q Let's take a look at Exhibit Number 12, defendant's
18 Exhibit Number 12, take a look at that. Do you see that second
19 amended disclosure statement to company debtor's first amended
20 plan of reorganization debtor?

21 A I do.

22 Q Good. Can you identify that as a document of the debtor?

23 A Yes, sir.

24 Q Now you did not sign this document, correct?

25 A This one that's in this book?

B. Jape - Cross

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1 Q Yes. Oh, I'm sorry, you did. I take that back. Look on
2 Page 27 of 81.

3 A Yes, sir.

4 Q Now we understand from Mr. Malone that there's a reference
5 here to some litigation against Mr. Jape. But take a look at
6 Exhibit D, it's Page 33 of 81, do you see that?

7 A Just a moment. Yes.

8 Q There's no -- this is the liquidation analysis provided by
9 the debtor, the plaintiff, correct?

10 A Yes, sir.

11 Q There's no reference -- it doesn't appear to have any
12 reference to the service mark, trade name, intellectual
13 property, good will of the company, is that correct?

14 A That's correct.

15 Q Why is that?

16 A I don't know.

17 Q Is it your contention under this liquidation analysis that
18 if the company was liquidated that the name Reliable Heating
19 and Air would have no value?

20 A If the company was liquidated -- I don't know, that's a
21 very good question, sir, I don't know. I'm not sure after a
22 company has gone through a bankruptcy like that and after
23 several years is liquidated, what the value is.

24 MR. McBRYAN: Judge, I move to admit Exhibit Number
25 12.

B. Jape - Cross

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1 MR. MALONE: No objection.

2 THE COURT: Defendant's Exhibit 12 is admitted.

3 BY MR. MCBRYAN:

4 Q Take a look at defendant's Exhibit Number 5, Mrs. Jape.

5 Have you ever seen defense Exhibit Number 5?

6 A I have.

7 Q And how have you seen it?

8 A I received a copy of it.

9 Q Have you seen it before today?

10 A I have.

11 Q And under what circumstances did you see this?

12 A I'm sure I received a copy of it back in '04. I don't
13 know the exact circumstances.

14 MR. MCBRYAN: Judge, this is a certified copy. Mrs.
15 Jape has the original certified. I move to admit this as a
16 public record.

17 MR. MALONE: Objection to grounds of relevancy.
18 Bears no relevance to the issue before the Court today.

19 MR. MCBRYAN: Your Honor, I think it does have some
20 relevance which deals with the --

21 THE COURT: Well, I'm going to admit it for what it
22 may be worth. And then there's obviously a disagreement over
23 whether the trade name is property that continued -- came into
24 existence when Mr. Jape owned all or a portion of a sole
25 proprietorship, at one point when it may have been another

B. Jape - Cross

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1 corporation, and whether that property had to be transferred
2 into Reliable Air Inc., that I understand to be the defendant's
3 contention.

4 MR. McBRYAN: It absolutely is, Judge.

5 THE COURT: And the plaintiff's contention is because
6 the business wasn't conducted in Mr. Jape's name, it was
7 conducted in the name of a corporation, that fact that it was
8 an S corporation I don't think would necessarily make a
9 difference. But that may be the defendant's contention that
10 whatever property interest there was went away and the trade
11 name is property of the debtor.

12 MR. McBRYAN: No, it's the plaintiff's contention,
13 not the defendant's.

14 THE COURT: That's right. Sorry, the plaintiff's
15 contention, yes, that's the plaintiff's contention. And I'll
16 tell you right now that when we conclude today I'm going to ask
17 you to file a brief by close of business Monday on that issue.
18 Give Mr. Malone a couple of days after that to file a reply if
19 he thinks he needs to do one in case -- and I think I'm going
20 to do that probably without coming to a conclusion today. And
21 if I change my mind and come to other kind of conclusion that
22 makes that unnecessary then I'll tell you. But I'm troubled by
23 that issue.

24 MR. McBRYAN: That is the crux of this case, Your
25 Honor.

B. Jape - Cross

35

1 THE COURT: Yeah, I think so.

2 MR. McBRYAN: If Dan somehow runs the company --

3 THE COURT: It almost is such that if it turned out
4 that -- I'm just thinking off the top of my head now and I want
5 you to help me with this -- that if it were property of the
6 debtor, and that's an enforceable property interest, then his
7 using it might considerably, as I said earlier, be a violation
8 of the automatic stay.

9 It's not the only -- it is an element, but not the
10 only element by far of the plaintiff's contentions under the
11 statutes.

12 MR. McBRYAN: They have a couple of claims, we
13 understand that.

14 THE COURT: Yeah, right, right. So it's -- you said
15 that it's -- it probably is the central issue, but it's not
16 necessarily the only issue.

17 MR. McBRYAN: There are some -- yeah, dealing with
18 the -- they have claims for tortious interference and some
19 other stuff. I understand that.

20 THE COURT: Yeah.

21 MR. McBRYAN: But as a corollary to your initial
22 statement, it's not the ownership or even an irrevocable
23 license which is really what Mr. Malone asserts he has. The
24 next step is, is it an exclusive irrevocable license?

25 THE COURT: I know, those are the various -- the

1 questions whether there needs to be a license in the first
2 place, because if he were correct as I understood his argument
3 at the beginning, that, you know, you don't just have a trade
4 name and then keep it forever. You've got to operate a
5 business so that if another business starts operating it, it
6 then at some point acquires a property interest.

7 MR. McBRYAN: Right, but there is case and we'll be
8 happy at the end to talk about that dealing with Atlanta
9 (indiscernible). You can't just grab a blanket license.
10 You've got to hold on to have quality control and look at --

11 THE COURT: I appreciate, there's a lot of issues
12 floating around this question of who's entitled to use the name
13 Reliable Heating and Air from a legal standpoint.

14 MR. McBRYAN: That's right.

15 THE COURT: Okay, so on this basis I've admitted D-5
16 because, you know, if it turned out you were right, then I
17 would suppose it would be relevant. If you're wrong, it's not.
18 Admitting it's not going to hurt it either way.

19 MR. McBRYAN: We understand. Thank you. If you
20 could give me one moment, Judge.

21 BY MR. McBRYAN:

22 Q Ms. Jape, you testified earlier that you became aware of
23 Mr. Jape and Ms. Ruse competing using the name Reliable in
24 August of 2006, correct?

25 A I said I believed that to be the case, yeah.

B. Jape - Cross

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1 Q And this particular action was commenced in late July,
2 2007, correct?

3 A Yes, sir. Although are you talking about -- the
4 proceeding we're having now, we put an application in to employ
5 Mr. Malone much earlier than that in the first part of the year
6 and Mr. Jape filed objections to that. Otherwise we would have
7 already brought this.

8 Q But you made your counsel aware of Mr. Jape's competing
9 and using those names early on late in '06, right?

10 A Toward the end of '06, yes.

11 Q Wasn't it September '06 you didn't tell your counsel --
12 you knew about it in August, but you didn't tell her until
13 later?

14 A Until Mr. Jape became very bold and blatant it wasn't an
15 issue, but I'm sure I did notify my counsel that it was going
16 on.

17 Q And you sought to employ Mr. Malone on May 8th, 2007,
18 correct?

19 A If that's the date on the paper, yes, sir. I know it was
20 the first part of the year.

21 Q I'm just referring to the docket. I'm just trying to see
22 if that refreshes your memory.

23 A Right.

24 MR. McBRYAN: Nothing at this time, Your Honor, but
25 we would like to reserve the right to call her in our case if

1 necessary.

2 THE COURT: Anything else from plaintiff at this
3 time?

4 MR. MALONE: I have no further questions of the
5 witness at this time, Your Honor.

6 THE COURT: Ms. Jape, you may step down. Leave all
7 of the documents where you found them.

8 THE WITNESS: Thank you.

9 THE COURT: Do you have any further evidence you want
10 to present, Mr. Malone?

11 MR. MALONE: Your Honor, we apologize to the Court.
12 I have an affidavit from Amy Graham, the receptionist at
13 Reliable Air, Inc., testifying to her experience on a daily
14 basis with calls from customers confused as to which Reliable
15 Air they are calling. I only have the original data, I'd like
16 to make copies of it, provide Mr. McBryan a copy of it and
17 tender that. That will be the last evidence we will tender on
18 behalf of the plaintiff at this time.

19 MR. McBRYAN: Your Honor, we object. We can't cross
20 examine an affidavit.

21 MR. MALONE: Your Honor, at the stage of a
22 preliminary injunction, the Court is authorized to consider
23 evidence other than what would be considered at trial.
24 Specifically in the case of University Georgia Athletic
25 Association v. Laite, (L-a-I-t-e) decided at 756 F. 2nd, 1535,

1 a 1985 11th Circuit case, the evidence of actual confusion
2 consisted of -- and I'm reading from the opinion -- an
3 affidavit from a University of Georgia professor who stated
4 through the week of October 11, I received ten or 15 inquiries
5 in person or by telephone about the distribution of in that
6 case, the offending product. There is a likelihood -- excuse
7 me -- there's a lot of case law to the effect that evidence of
8 this nature is admissible.

9 In the case of Sierra Club v. Federal Deposit
10 Insurance Corporation, 992 F. 2nd 545, a Fifth Circuit decision
11 from 1993, the Court said, and I quote, "At the preliminary
12 injunction stage, procedures in the district court are less
13 formal and the district court may rely on otherwise
14 inadmissible evidence including hearsay evidence, thus the
15 district court can accept evidence in the form of deposition
16 transcripts and affidavits.

17 And in the case -- I apologize, I've lost my case. I
18 know the style of the case, it's a Fifth Circuit case where the
19 issue of confusion was at issue. Armco, A-r-m-c-o was the
20 plaintiff. The Court recognized there while one of the
21 dispatchers testified to his daily experience receiving phone
22 calls of confused customers, they said that was an exception
23 under Rule 803, sub 3 of mental state. The confusion of the
24 customers was the subject matter, not the truth of what they
25 said. I will get the Court the citation on that. But I'd

1 recognize that in cases of trademark, trade name and service
2 mark infringement, where the issue was actual confusion, that
3 type of testimony is not only admissible, but it's perhaps the
4 best evidence.

5 The 11th Circuit used to go into the polling, where
6 they'd go out and interview all the people in the universe and
7 they'd get polls, have you ever heard of XYZ Air Company, and
8 they would say yes, no. And it got to be such a debacle and
9 the expert swearing one against the other, the 11th Circuit has
10 virtually abandoned polling. But now I submit, I'll show you
11 the cases shows, they actually prefer that type of evidence.
12 I'll get the Court the citation on that if you wish to see it.

13 THE COURT: You can submit that and I'll have Ms.
14 Jackson make a copy.

15 MR. MALONE: Thank you, Your Honor. I'll have it
16 marked, it will be the next sequential number which I believe
17 is 24.

18 THE COURT: And I will -- actually a copy for you and
19 a copy for Mr. McBryan and I'll take under advisement what I
20 want to do with it.

21 MR. MALONE: I will give it to him before we leave
22 court today, I just need to make a copy.

23 THE COURT: That's what I said. We'll make two
24 copies and we'll keep the original.

25 MR. MALONE: Thank you, Your Honor. I will mark them

1 right now.

2 THE COURT: I'm not ruling at this point.

3 MR. McBRYAN: That's what I thought.

4 THE COURT: But I'm going to keep the original, let
5 him mark it as an exhibit, give you a copy. If after you look
6 at these cases, you want to put that in your brief on Monday if
7 that's where we end up, which is where I think we're going to
8 end up then that's fine. I'm marking this as Plaintiff's
9 Exhibit 24.

10 MR. McBRYAN: My only comment to that, and I don't
11 have these cases, Judge, is that it's a Georgia Rule that I
12 know about, there's 24 hours before hand you can file to
13 present it, but not --

14 THE COURT: Well, I was going to ask Mr. Malone
15 whether in any of these cases the affidavit was submitted at
16 trial as opposed to being attached to the motion.

17 MR. MALONE: Your Honor, I certainly would allow --

18 THE COURT: I shouldn't say trial, the hearing on the
19 preliminary injunction motion. But you all look at that and
20 decide what you want to argue about and I'll take a look at it.

21 MR. MALONE: That's all the plaintiff offers at this
22 stage, Your Honor.

23 THE COURT: Mr. McBryan, are you going to put on any
24 evidence?

25 MR. McBRYAN: Absolutely, Your Honor.

1 (Indiscernible), Judge I don't think they proved their case,
2 there's a couple parts. We're here on a preliminary injunction
3 to shut down my client's use of name and numbers for something
4 they've known about for almost a year. I think they have a
5 legal remedy and irreparable harm hasn't been shown, not in any
6 of the plaintiff's case in chief. Irreparable harm, didn't
7 show it. Testified in confusion, we understand, I may
8 disagree, but they testified in confusion. They testified as
9 to -- I think we're there. Similarity and confusion, but they
10 haven't gotten to the irreparable harm, and why they need him
11 to stop what he's been doing, from their own testimony since at
12 least March maybe, on the mark which they think is even more
13 similar, but certainly he's been using -- pardon me, they, Ms.
14 Ruse stepped out -- they have been using the name Reliable in
15 any combination thereof which is what they want this Court to
16 rule preliminarily, since August of 2006. I think on that part
17 we haven't shown irreparable harm, and I think we can stop
18 there.

19 But I'm prepared to go forward on the ownership issue
20 because I don't think -- they haven't proved that either. They
21 proved, to quote, "We've been doing business since '78," and on
22 '99, poof, we own everything. No documents, no supporting any
23 of it.

24 THE COURT: No, that's not their argument, that's
25 your argument.

1 MR. McBRYAN: Well, their argument is --

2 THE COURT: Their argument is that Mr. Jape stopped
3 using it and the company did and the company still uses it and
4 it belongs to the company as a result of that.

5 MR. McBRYAN: I understand that, Judge.

6 THE COURT: That's just a legal issue I think.

7 MR. McBRYAN: I think so too. But Mr. Jape was part
8 of the company. And the case law -- and we'll put it in -- is
9 Atlanta (indiscernible) shows that quality and control and
10 licenses, he has the right to take it back. Those weren't in
11 his brief.

12 THE COURT: No, I think, you know, I think it was the
13 corporation was doing business. If that's the rule, I don't
14 think you're going to succeed on that. But I'm not making up
15 my mind today on that issue. Mr. Malone, what about the
16 contention that you just haven't shown irreparable harm?

17 MR. MALONE: Very briefly, Your Honor, in our brief
18 filed on Tuesday supporting this motion, at Page 15 we cite a
19 half a dozen cases which hold, and I quote, "The injury to
20 plaintiff's business and reputation alone constitutes
21 irreparable injury authorizing injunctive relief." That is the
22 Seventh Circuit held the most corrosive and irreparable harm
23 attributable to trademark infringement is the inability of the
24 victim to control the nature and quality of defendant's goods.

25 In the 11th Circuit, McDonald's Corporation v.

1 Robertson, 147 F. 3rd at 1301 said, and I quote, "A
2 sufficiently strong showing of likelihood of confusion" --
3 which I understood Mr. McBryan to admit -- "Caused by an
4 infringement may itself constitute a showing of a substantial
5 threat of irreparable harm." If that's the argument, I
6 respectfully submit we have clearly established evidence to
7 justify finding irreparable harm.

8 THE COURT: All right. Got another argument?

9 MR. McBRYAN: Real brief. What he responded to was
10 the confusion. I didn't concede anything. The irreparable
11 harm, his inability to control the quality of the product.
12 They then testify that anything to do with my clients' quality,
13 period. They talked about confusion, there was no evidence,
14 Your Honor, about the harm that his business is doing to
15 there's. No evidence, Judge. The only person up there was
16 Mrs. Jape.

17 THE COURT: Well, I'm not going to commit on that
18 today. I want to read the cases in light of the evidence that
19 have been cited, give you a chance to write down exactly what
20 your argument is. There's nothing like putting something in
21 writing that focuses the mind when you're trying to figure out
22 whether you're saying what you mean and whether you really mean
23 what you say. And really to save some time, I think I'm going
24 to let you go ahead and put your evidence on -- I'm going to
25 take a quick break -- but let you put your evidence on and try

Rolader - Direct

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1 to get this phase over with today so that we don't have to come
2 back. Unlike appealing from an order of a district judge to
3 the court of the appeals, it's a little easier to get to the
4 district court from the bankruptcy court, so if I ruled in your
5 favor on that issue and he took it up right away, spending an
6 extra hour today wouldn't make much difference and if he were
7 successful it would maybe save some time to have a complete
8 record, so we'll take a 15-minute break and then you can put on
9 your case.

10 (Recess)

11 MS. BOGUE: Good afternoon, Your Honor, Ginny Bogue
12 on behalf of the defendants. We would like to call Don Rolader
13 as our first witness.

14 THE COURT: Okay.

15 THE CLERK: Please raise your right hand.

16 D O N A L D A. R O L A D E R, DEFENDANTS' WITNESS, SWORN

17 THE CLERK: Thank you, please be seated. State and
18 spell your name for the record, please.

19 THE WITNESS: My name is, first name Donald,
20 D-o-n-a-l-d, middle initial A, Rolader, R-o-l-a-d-e-r.

21 DIRECT EXAMINATION BY MS. BOGUE:

22 Q Mr. Rolader, would you tell us why you are here today?

23 A I got a subpoena delivered to my office.

24 Q Okay. And did that subpoena require you to bring anything
25 with you?

Rolader - Direct

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1 A Yes, I brought the incorporation file for Reliable Air,
2 Inc., which was stated on the face of the subpoena.

3 Q Okay, and have you reviewed that file?

4 A I have reviewed that file.

5 Q Okay, and tell us your occupation please.

6 A I'm attorney, I practice law in Roswell, Georgia.

7 Q Okay. And in your capacity as an attorney, are you
8 familiar with Dan Jape?

9 A I was in 1999 when I filed this incorporation, yes.

10 Q Okay, and when you did this work for Mr. Jape, was that
11 the only thing -- the legal services you provided was the
12 incorporation?

13 A I honestly don't recall. It was a long time ago.

14 Q Okay. Now when you were preparing the documents for the
15 incorporation, was there an issue of a transfer of assets from
16 Mr. Jape to the corporation?

17 A I have no independent recollection. Reviewing my file, I
18 don't find any indication of it on my information sheet.

19 Q So you have no notes to indicate that there was any issue
20 about a transfer of assets?

21 A No, we did a stock subscription agreement which indicated
22 cash consideration of \$500 per stockholder for a total of
23 \$1,000.

24 Q Okay. And if the issue had come up, would it be reflected
25 in your notes?

Rolader - Direct

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1 A It would be our standard practice to put that in the
2 subscription agreement if it were an issue that were brought to
3 our attention.

4 Q Okay, thank you. So I'm going to show you defendant's
5 Exhibit 2, which is the minutes of the organization meeting of
6 the stockholders of directors of Reliable Air, Inc., can you
7 identify that?

8 THE COURT: Mr. Rolader, there should be a notebook
9 there.

10 MS. BOGUE: I'm sorry.

11 THE WITNESS: I have it on the screen.

12 THE COURT: There's a blue notebook if you want to
13 look at the paper.

14 BY MS. BOGUE:

15 A That appears to be the organizational minutes that we
16 prepared.

17 Q That you prepared, okay. And if there had been a transfer
18 of assets, would it have been reflected in these minutes?

19 A If we had been made aware of one, it would have been
20 reflected either there or in the stock subscription agreement.

21 Q Okay. And if you can review these minutes please and tell
22 me if there is any mention of a transfer of assets.

23 A No, there is not.

24 Q So there's not mention of any sort of property,
25 intellectual property, good will, trade name, service mark or

1 anything?

2 A No, ma'am.

3 Q Okay. Thank you.

4 THE COURT: Any questions of this witness?

5 MS. BOGUE: Oh yes, I move to admit defendant's
6 Exhibit Number 2.

7 THE COURT: Any objection to admission of defendant's
8 Exhibit Number 2, Mr. Malone?

9 MR. MALONE: No, no objection.

10 THE COURT: That exhibit's admitted.

11 CROSS EXAMINATION BY MR. MALONE:

12 Q Mr. Rolader, in your dealing with Mr. Jape forming
13 Reliable Air, Inc., was there any discussion as you recall
14 about any trade names?

15 A I don't have any recollection there. I have no notations
16 about a trade name on my information sheet. No, sir.

17 Q Was there any discussion about licensing a trade name for
18 the corporation or permitting the corporation to use a trade
19 name?

20 A No.

21 Q Was it your understanding that Mr. Jape was already
22 engaged in heating and air conditioning business as to the time
23 he met you?

24 A I'm not sure I was aware of that.

25 Q So you were just asked to form a corporation?

1 A Absolutely.

2 Q Would this be a fairly standard form that you'd have used
3 for a corporation?

4 A It would be our standard form for what was then a C
5 corporation.

6 Q Do you know if this was in fact formed as a C or an S
7 corporation?

8 A When it was formed we formed it, and we formed it as a C,
9 that doesn't prohibit a party from later filing a sub S
10 application. So I don't know what happened after that.

11 Q Do you have any specific recollection of any discussions
12 with Mr. Jape about the formation of this corporation's
13 business or any of its assets?

14 A No, I do not.

15 Q Thank you, sir.

16 THE COURT: Anything else, Ms. Bogue?

17 MS. BOGUE: No, Your Honor.

18 THE COURT: All right, Mr. Rolader, thank you very
19 much --

20 THE WITNESS: Thank you, sir.

21 THE COURT: -- for taking the time to come down here
22 today.

23 MR. MALONE: Your Honor, may this witness be excused?

24 THE COURT: Absolutely.

25 MS. BOGUE: Your Honor, we're going to call Phil

Hogseb - Direct

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1 Hogseb as our next witness? Mr. Hogseb, come forward please.

2 THE CLERK: Please raise your right hand.

3 P H I L H O G S E B, DEFENDANTS' WITNESS, SWORN

4 THE CLERK: Thank you. Please be seated. Say and
5 spell your name for the record.

6 THE WITNESS: My name is Phil Hogseb, P-h-I-l,
7 H-o-g-s-e-b.

8 DIRECT EXAMINATION BY MS. BOGUE:

9 Q By whom are you employed?

10 A Reliable Heating and Air.

11 Q How long have you been employed by that company?

12 A Since the first part of April.

13 Q All right, and let's -- for the record, let's make sure
14 we're talking about the same entity. The entity that you're
15 talking about is run by Mr. Dan Jape, is that correct?

16 A Yes, ma'am.

17 Q All right, how long have you been there? I'm sorry.

18 A Since the first part of April.

19 Q All right. Where did you work prior to April 1 of this
20 year?

21 A With Reliable Heating and Air.

22 Q And that meant -- for the record, that would be the entity
23 that is currently run by Barbara Jape, is that correct?

24 A Yes, ma'am.

25 Q All right. And how long were you employed by that

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1 particularly entity?

2 A It's been roughly six years.

3 Q All right. Why did you leave?

4 A Why did I leave?

5 Q Yes.

6 A Basically, work got slower every year and I was going home
7 two days a week minimum every week.

8 Q How long has that been occurring?

9 A It slowed down for the past three years every year.

10 Q For the past three years?

11 A Yeah.

12 Q When you left Mrs. Jape's employment, did Mr. Jape solicit
13 you to come to work for him?

14 A No, ma'am.

15 Q How many other employees do you know have left Mrs. Jape's
16 employment over the last two years?

17 A Over the last two years a lot have left her employment.

18 Q Do you know if any of those employees were solicited by
19 Mr. Jape?

20 A No.

21 Q Why did those employees leave, to your knowledge?

22 MR. MALONE: Your Honor, I object. Unless he can
23 state the basis on which knows how or why these other employees
24 left it would be hearsay.

25 THE COURT: That's hearsay, isn't it?

1 MS. BOGUE: It would be hearsay, Your Honor.

2 THE COURT: Sustained.

3 MS. BOGUE: WE have no further questions of this
4 witness.

5 THE COURT: Okay. Thank you.

6 CROSS EXAMINATION BY MR. MALONE:

7 Q When asked where you worked you said you now work for
8 Reliable Heating and Air, correct?

9 A Yes, sir.

10 Q And asked where you worked before you said you worked for
11 Reliable Heating and Air, correct?

12 A Yes, sir.

13 Q Those are two different companies, correct?

14 A Yes, sir.

15 Q They're both located in Woodstock, Georgia, correct?

16 A That's right.

17 Q About two miles apart?

18 A Roughly about two miles.

19 Q They both do the same work?

20 A Yes, sir.

21 Q Same customers?

22 A I would say pretty much the same customer line.

23 Q Do you see that causing confusion among people in
24 Woodstock?

25 A Not anymore.

1 Q Not anymore?

2 A No.

3 Q It used to cause confusion?

4 A There was a couple of times the customer didn't know who
5 was out there, but they were informed.

6 Q Informed what?

7 A As to which company was there.

8 Q By whom?

9 A I told them.

10 Q Beg your pardon.

11 A I told them.

12 Q What did you tell them?

13 A I just told them who we were.

14 Q How did you characterize the company that Ms. Jape runs?

15 A That she ran it and that Dan ran the other one. This way
16 she'd know who it was.

17 MR. MALONE: Thank you very much. No further
18 questions.

19 THE COURT: Any other questions for this witness?

20 MS. BOGUE: No, Your Honor.

21 THE COURT: Thank you, sir. You may step down and
22 you may be excused.

23 MS. HOWICK: Your Honor, may this witness be excused?

24 THE COURT: Yes. That's what I said.

25 (Witness Excused)

B. Jape - Direct

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1 MR. MCBRYAN: Your Honor, at this time I call Ms.
2 Betty Jape to the stand.

3 B E T T Y J A P E, WITNESS, SWORN

4 THE CLERK: Please state and spell your name for the
5 record.

6 THE WITNESS: Betty, B-e-t-t-y, C. Jape, J-a-p-e.

7 DIRECT EXAMINATION

8 BY MR. MCBRYAN:

9 Q Good afternoon, Ms. Jape. My name is Lou McBryan. I
10 represent Daniel Jape and Kimberly Ruse. We've met before
11 correct? We have met before?

12 A Yes.

13 Q Are you familiar with the defendant Daniel Jape?

14 A Yes.

15 Q How are you familiar with defendant Daniel Jape?

16 A He is my son.

17 Q Are you familiar with the company or the trade name
18 Reliable Heating & Air?

19 A Yes.

20 Q How are you familiar with that trade name?

21 A I came up with the name.

22 Q And when did you come up with that name?

23 A Some time in the 80s.

24 Q And for what purpose?

25 A He was discussing expanding the business and wanted a name

B. Jape - Direct

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1 to put in the phone book and advertising.

2 Q And when you say he, who are you referring to?

3 A My son, Daniel. At that time I was teaching and I believe
4 in the power of words and I suggested Reliable because of the
5 connotations that went with it, reliable, trustworthy.

6 Q Are you familiar with the history of the business Reliable
7 Heating & Air as well?

8 A Yes.

9 Q What can you tell me about the development of the
10 business?

11 A Well we were able to help Dan financial in the beginning
12 to get started, and he did have the business before he met
13 Barbara.

14 Q Do you recall, you heard the testimony of Ms. Jape saying
15 that she was doing the books and records from just about the
16 moment they met in 1982. Does that sound familiar to you?

17 A It's the first time I've heard of it. It doesn't mean
18 that she didn't. She wasn't doing that but I wasn't familiar
19 with the facts. I know that she was pregnant during '94.

20 Q Was that '84 I think?

21 A '84, I'm sorry.

22 Q Thank you. At any time subsequent to the initial startup,
23 you said you had given Dan some money, did you have any other
24 reason to assist the business Reliable Heating & Air
25 financially?

B. Jape - Direct

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1 A Well we assisted in a number of ways. For one thing, when
2 he first started my husband loaned him a pager that he used
3 extensively to communicate with clients. We also assisted him
4 with our credit trying to establish accounts in our name
5 because we have excellent credit references. And at that time
6 he hadn't established.

7 Q When was that? Was that in the beginning or was that
8 later?

9 A Well it was throughout from the beginning almost to the
10 end.

11 Q When you say the end, were you referring to 1999 or 2005?

12 A Well it was in the 80s when he first started.

13 Q Do you -- other than the name Reliable Heating & Air did
14 you have any input or do you recall the development of the,
15 what we refer to as the, service marks, that is the stylized R
16 that the plaintiff Ms. -- that Reliable Air Inc. is claiming
17 belongs to it?

18 A Well at some time after having decided on the name
19 Reliable, Dan brought some logos to the house and we looked at
20 them and discussed them and he decided on one and that was the
21 one that used the Reliable symbol.

22 Q Do you remember, was that in the 70s, 80s, 90s?

23 A I'm sorry, I couldn't pin that down.

24 MR. MCBRYAN: Thank you very much. No further
25 questions at this time.

D. Jape - Direct

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1 MR. MALONE: I have no questions of this witness.

2 THE COURT: All right. Ms. Jape, thank you very
3 much. You may step down. You are welcome to stay or you may
4 be excused.

5 (Witness Excused)

6 MR. MCBRYAN: Thank you, Your Honor. We have another
7 witness and that is Mr. Daniel Jape.

8 D A N I E L J A P E, WITNESS, SWORN

9 THE CLERK: Please be seated. State and spell your
10 name for the record.

11 THE WITNESS: My name is Daniel Lee Jape, D-a-n-i-e-
12 l, L-e-e, J-a-p-e.

13 DIRECT EXAMINATION

14 BY MR. MCBRYAN:

15 Q Good afternoon, Mr. Jape.

16 A Afternoon.

17 Q Mr. Jape, are you currently employed?

18 A Yes.

19 Q In what industry?

20 A I work in the heating and air conditioning business.

21 Q And when did you start working in that industry?

22 A 1972.

23 Q Can you tell me what -- have you worked continuously in
24 that industry since 1972?

25 A Yes.

D. Jape - Direct

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1 Q Can you give me a brief description of your working in
2 that industry up to the present time?

3 A I started out as, in the subdivision that we lived in, I
4 walked down to a house they were building and was hired as a
5 helper. I started doing heating and air at that time. I did
6 it through school as a part time job and was eventually hired
7 with a big real estate company. I did heating and air for
8 them.

9 During that time I met a lot of customers that --
10 potential customers that wanted me to do work for them. I
11 started doing side work and eventually became kind of a big
12 deal and had more side work than I did my regular eight to five
13 job. So I quit my eight to five job, started up a business and
14 kind of worked from there to build it up.

15 Q When did you start this side business or this full time
16 business?

17 A Well it was, I was still working for another company
18 during this. It was '78, late '78 and it was, that went on
19 best that I can tell what I recall was maybe two years, a year
20 and a half like that before I quit my other job. So while I
21 use '78 as a start date I was still employed by Chatham Realty
22 during that time.

23 Q When you started the business and kind of left Chatham,
24 did you form a corporation or how did you do business?

25 A No, I just -- at first I just became a sole proprietor.

D. Jape - Direct

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1 The extent of it was business cards and a business license and
2 I did as my wife said, I worked out of a truck. I had an
3 answering service. I had a couple of employees early on and
4 started there.

5 Q You heard the description of your mother on picking the
6 name, is that accurate?

7 A Yeah. I was kicking around Jape Heating & Air
8 Conditioning and our name is so weird Jape, we get Yapa, Jzap,
9 all kinds of stuff so I just didn't want to go there. Most
10 people name the company after themselves so we came up with
11 some words like dependable, On Time Heating & Air, Budget
12 Heating & Air and she mentioned Reliable and Reliable was just
13 the word that, it just described everything that I wanted to
14 be.

15 Q Are you familiar with what the plaintiff alleges are its
16 service marks?

17 A Absolutely.

18 Q Can you -- how are you familiar with them?

19 A Well it was one of the -- we developed a number of
20 different logo ideas and it was the one that we collectively
21 chose I think.

22 Q When you say we, who do you mean we?

23 A My mom, my dad, whoever at the time, probably other
24 employees. I kind of, those kind of things I kind of want a
25 consensus on because you know you get close to it, you think

D. Jape - Direct

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1 you like it but you want some other people's opinion. So I
2 think I showed it to my parents. I probably showed it to a
3 number of people. I have little drawing boards of them,
4 different logos.

5 Q Okay. I put on the screen and direct your attention to
6 defendant's Exhibit Number 7. I believe Ms. Jape has already
7 testified that this is an ad of 2005 done by the plaintiff. It
8 has the stylized R with the name Reliable Heating & Air. Do
9 you see that?

10 A Yes.

11 Q Is this -- who developed this mark? I mean is this the
12 mark that we were just discussing?

13 A Yes.

14 Q Do you recall the time line of when this particular mark
15 was adopted?

16 A I went in the phonebook in 1982 and I believe that
17 somewhere around '84 or '85 we were developing working on a
18 logo. I know by '86 I bought my first fleet of trucks and the
19 idea of a logo was I wanted that on the trucks. So I know by
20 '86 we had it on our vans.

21 Q And at that time you were the sole owner of Reliable
22 Heating & Air, correct?

23 A Absolutely.

24 Q Can you give me a little time line of the business again
25 of Reliable Heating & Air starting, you say you developed the

D. Jape - Direct

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1 mark about '85 or '86 and you said you were a sole proprietor
2 and it grew from there. Can you tell me, describe the 1980s
3 with the business known as Reliable Heating & Air?

4 A Okay. Well as I said '82 I went in the yellow pages. And
5 before '82 I was working pretty much by word of mouth and
6 referrals. In '82 we became what I considered a true company
7 in that all of a sudden we had non-referral people calling us.
8 By '82 I guess I had hired, maybe I had three or four people.
9 I hired one of my best friends from high school and he worked
10 out very well.

11 We grew. We got -- I actually hired service people
12 and then word of mouth took off. We started -- we moved onto
13 Highway 92 for the first time. We put up a sign and that was
14 phenomenal.

15 Q Hold on. You've thrown me. Highway 92 the first time?
16 Was this before 2001?

17 A Actually I apologize, Highway 92 changes names 14 times.
18 It's called Crossville Road. Yes and it was in the 80s, '86 I
19 guess we moved in on Crossville Road, Highway 92.

20 Q Okay, was that in Roswell?

21 A That was in Roswell, yes. That was my second office. My
22 first office was on Buford Highway. I rented a building on
23 Buford Highway. My second office was in Roswell. But we
24 weren't on a main street. We put up a marquee sign and that
25 really was one of the best marketing moves that I ever did.

D. Jape - Direct

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1 And that was taking the heating & air company out of an
2 industrial warehouse location into a prominent street. I've
3 been on a prominent street ever since. It probably is
4 responsible for clearly half of what we do.

5 But I continued to market and grow and I developed
6 the departments. We departmentalized from service, install,
7 eventually bought duct cleaning equipment and started a duct
8 cleaning department. I had really two or three separate
9 companies running under one umbrella til eventually we got to
10 be extremely large. I hired managers. For many, many years
11 Barbara and I ran most everything ourselves and that was the
12 secret to our success. As we grew, we got managers in there
13 and got bigger.

14 Q What about, you heard Ms. Jape testify as to Jape Air
15 Inc., what can you tell me about Jape Air Inc.?

16 A The best of my recollection is we got -- there was some
17 set aside programs for female owned, or minority owned,
18 companies and we wanted to bid on those. As a male owned
19 company, we couldn't. So we incorporated a business, put
20 Barbara as 51 percent owner, me as 49 percent owner and we went
21 after some of those set contracts. That didn't work out. We
22 eventually gave up.

23 Q Did the company transfer -- did your sole proprietorship
24 transfer assets to Jape Air Inc.?

25 A Not that I recall.

D. Jape - Direct

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1 Q Did you -- did Jape Air Inc. utilize the service mark that
2 you had developed as a sole proprietor?

3 A Yes.

4 Q Under what terms did you agree to allow Jape Air Inc. to
5 utilize the marks you developed?

6 A Well as long as I was there and I can control the quality
7 of what the company was doing then the name has always been
8 synonymous with me and I allowed it. As long as I'm
9 controlling the quality that's the most important thing. And
10 that's what happened today.

11 Q Do you recall the corporation of the plaintiff Reliable
12 Air Inc.?

13 A Do I recall it?

14 Q Yes, the time.

15 A You want to know the year we incorporated?

16 Q Well I know the year, but I'm asking you do you recall it?

17 A Yes.

18 Q What I'm asking is do you recall the circumstances and why
19 you incorporated Reliable Air Inc.?

20 A I'm sorry. Yes, we were -- we decided to move. We had
21 moved the business a number of times and it's a nightmare to
22 move a business so I wanted to buy a piece of property, build a
23 building big enough that I thought we would be there for the
24 rest of our lives. And also I think for tax reasons we
25 incorporated. The bank at the time, the lender, wanted that

D. Jape - Direct

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1 structure. It was more formal than a sole proprietorship so we
2 incorporated for tax reasons and corporate protection I guess
3 as best I can remember.

4 Q When you incorporated, Jape Air Inc. had already went
5 away, is that correct?

6 A Yes. It was dissolved in '87 I think.

7 Q At the time you incorporated Reliable Air Inc. did you
8 make any transfers of the service marks or any registered trade
9 names etcetera to Reliable Inc. from your sole proprietorship?

10 A No.

11 Q Take a look at, on the defendant's exhibit book, if you
12 would take a look at Exhibit Number 3. Are you familiar?

13 A Yes.

14 Q And what is the Defense Exhibit 3?

15 A This is my registration to protect my name. That's to
16 keep me being the only one that can operate in Cherokee County
17 under this name.

18 Q And that name is Reliable Heating & Air, correct?

19 A Correct.

20 Q And you registered under the name Dan Jape.

21 A Correct.

22 Q And it says -- well it says what it says. I won't testify
23 that. This was registered after you were incorporated as
24 Reliable Air Inc., correct?

25 A Correct.

D. Jape - Direct

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1 Q Do you recall why you did it?

2 A Why I did it, to protect my name in the county that I
3 operated so I didn't have to worry about the situation I've got
4 going on now where someone is using my name to take my
5 business. I assume this would cause protection from the very
6 thing that's happened to me a number of times with other
7 entities and Mrs. Jape at this point.

8 Q Okay. Does the name Reliable Heating & Air have value to
9 you?

10 A Absolutely.

11 Q How did you determine that that name had value?

12 A I invested millions of dollars in that name. I clearly
13 understand the value of that name. I know that name is
14 sellable on the open market. I know there's companies that
15 specialize in taking that name and phone number and disposing
16 of them to earn money.

17 I know that with that name anyone that's competent in
18 this business can earn millions of dollars every year.

19 Q How did you know that that name has value? Has anybody
20 offered to buy it?

21 A Oh, absolutely.

22 Q Tell me.

23 A Well in our industry, we went through a phase called
24 consolidation where Wall Street was interested in I guess
25 capital firms were interested in buying heating and air

D. Jape - Direct

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1 companies and putting them together in big nationwide concerns
2 like Sears or Home Depot. So we were approached numerous times
3 by consolidators.

4 We were approached early on by service experts. We
5 were approached by Service Master.

6 Q Do you have a date or year do you recall, 80s, 90s?

7 A Let's see. We were in the highway building so Service
8 Master must have been early 90s maybe but I'm vague on that Mr.
9 McBryan. We had not moved to our new building so it was in '97
10 or '98 probably.

11 We also were approached by Service Master and so I
12 clearly knew and at the time we were rated by our industry as
13 the seventh largest HVAC dealer in retrofit and what we do in
14 the nation. So it's clear to me that it was a very valuable
15 entity.

16 Q Once the corporation Reliable Air Inc. was formed, how did
17 the business change?

18 A Not at all.

19 Q What do you mean not at all?

20 A The whole thing was just -- the whole thing was just, we
21 never acted as a corporation. We never had meetings, we never
22 had any minutes. It was all bull. We did to -- the company
23 was run just as it had always been run, a sole proprietorship,
24 and her own piggy bank. I didn't write checks, you're right.
25 But it was in and out of money. I mean there was no corporate

D. Jape - Direct

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1 formalities. This thing was never run as a corporation and
2 never intended to be. We just wanted the protective corporate
3 veil. That's all we wanted. We didn't change anything.

4 Q What were the duties of you versus Mrs. Jape subsequent to
5 July 1999 in the business known as Reliable Heating & Air?

6 A My duties were to make rain. I did the sales, I brought
7 business in, I promoted the company, I wrote the advertising, I
8 placed the ads, I am the one that brought business to that
9 company. Mrs. Jape did clerical and I made it happen. From
10 the point I sold, I would turn it over to the operations. But
11 my deal was to make sure that we had six, seven, eight, nine,
12 ten million dollars a year in work every year.

13 I set the policies, I set the way that the vehicles
14 looked, the way the people dressed, the way they spoke to
15 people. I set the whole attitude of the company. The whole
16 company was an extension of my personality and it's clearly
17 obvious when I left how it changed. I mean the proof there is
18 in the pudding. The company changed drastically from the time
19 I left.

20 MR. MALONE: Your Honor, I object. The answer
21 exceeds the question.

22 THE COURT: Mr. Jape you need to consider the
23 question carefully and just answer the questions asked.

24 MR. MCBRYAN: I apologize Judge. I can't remember if
25 I asked this question. It's on my list.

D. Jape - Direct

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1 Q Mr. Jape, upon your incorporation in '99 what assets did
2 you transfer to Reliable Air's name or ownership?

3 A The only thing I remember was the issuing of the stock.
4 And I don't recall any transfer of any money. That was just,
5 maybe we gave some money but there was no transferring of
6 anything.

7 Q Let me ask you this, under what terms did Reliable Air
8 Inc. use the service marks and trademarks of Reliable Heating &
9 Air?

10 A Just as we had before. As long as I'm there we continued
11 to use it just as we had before.

12 Q Is it, I mean, you said as long as you are there.

13 A Correct.

14 Q Well you were terminated in 2005.

15 A Correct.

16 Q We won't get into wrongfully or otherwise, but you no
17 longer received a paycheck or any funds from the debtor in
18 2005, correct?

19 A Correct.

20 Q What steps -- what happened to you and what steps did you
21 take after that to protect -- well you are asserting that you
22 own those marks, correct?

23 A Correct.

24 Q What steps did you take to protect your mark subsequent to
25 November 2005? Tell me what happened.

D. Jape - Direct

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1 A Well first I guess one of the first things I did was try
2 to get the -- my wife's company or my former company to stop
3 using my license number, my state reg number and my name. They
4 were going around doing horrible work under my name and that's
5 my first goal was to get here and stop the bleeding.

6 I had people calling me or calling my parents talking
7 about the crappy work that she was doing and my goal was to get
8 here and sure that up and that's what I did.

9 Q Take a look -- can you take a look at defendant's Exhibit
10 9? Okay. At the very bottom of that page there is a reference
11 to a Georgia State reg number. Do you see that?

12 A Right, correct.

13 Q You heard Mrs. Jape's testimony regarding that reg number.
14 Tell me do you agree with Mrs. Jape's testimony regarding the
15 reg number?

16 A No, actually it's half true.

17 Q Okay, tell me what is the difference. Explain to me.

18 A A reg number was brought about during the time when they
19 had contractors fronting for different companies. I have a
20 license and I would be the license holder for five or six
21 companies. The reg number was a policy they came up with in
22 the state so each individual licensed person could only
23 represent one company.

24 That reg number takes my name and my license
25 personally and says that I'm responsible for everything that

D. Jape - Direct

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1 Reliable Heating & Air was doing. That was the problem I had
2 with the reg number. The reg numbers are not given out anymore
3 but they are still used. Any prominent company Shumate, Estes,
4 any of us that have been around a long while have a reg number
5 and that reg number is so that a consumer can look at a truck
6 or look at an advertising and know who was behind the company.

7 It's a -- it's to prevent fraud is what it's about.
8 And it's not issued to corporations; it's issued to people. I
9 wrote her a letter. I sent emails. I called her. My whole
10 thing was I didn't want her out there doing work using my state
11 license number and my reg number and she used both of them long
12 after I was not associated with the company. She was doing
13 horrible work, ripping people off, stealing from people all
14 over town. That's what I wanted.

15 MR. MALONE: Objection, Your Honor. That's not a
16 responsive question.

17 THE COURT: Again, I know you are angry but when you
18 are asked a question answer that question and stop.

19 THE WITNESS: Okay.

20 Q Mr. Jape, subsequent to your termination from Reliable Air
21 Inc. I think you did testify when did you start notifying Mrs.
22 Jape to remove your reg number from her --

23 MR. MALONE: I object. The question is leading. I
24 don't think the question has been answered yes.

25 Q Did you ever ask -- I asked what steps you took to protect

D. Jape - Direct

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1 your marks and he did testify about the reg number. So to
2 follow up with that, Mr. Jape, when did you ask Mrs. Jape to
3 make Reliable Air remove your reg number if you recall?

4 A I can't recall an exact date. It was some time in late
5 '06.

6 Q The brief that the plaintiff filed raises in part that you
7 moved to Florida. Is that true?

8 A No.

9 Q Tell me after you left the employ of Reliable Air for
10 whatever reason in November of '05, where did you start to work
11 right after that?

12 A I couldn't start to work.

13 Q Why not?

14 A I had -- Mrs. Jape had me arrested and thrown in jail. I
15 had criminal charges on my record. Everywhere I went to try to
16 get a job they run a background check and as long as there is
17 pending criminal charges there's nobody that's going to hire
18 you.

19 Q Why would they run a background check? Tell me about your
20 industry. Does it have to do with your industry or just
21 because of you?

22 A No, no. You have to realize that people that work in this
23 industry are going into homes and businesses that are
24 unoccupied. There's a high level of trust. A company would be
25 negligent not to check the background of an employee and see

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1 what's going on. We learned that the hard way. So it's pretty
2 much standard fare, any company now that you apply to is going
3 to run a criminal background check first thing.

4 Q Your employer was, I'm sorry I can't remember his name,
5 but does he have a license in this industry or is it merely
6 owner or managers?

7 A Generally it's owners or managers. That individual is
8 licensed, correct. We have a number of people I guess that are
9 licensed.

10 Q That gentleman was licensed?

11 A That gentleman is licensed.

12 Q But if you were to do a background check on the license,
13 would it be an adverse mark -- well you said it was, but is
14 that something you would have checked?

15 A To see if he has a license?

16 Q Right.

17 A Well that would be something that he would definitely
18 divulge because that would be a plus in hiring someone. So
19 would I check to see if he had a license, no.

20 Q But you say it's a plus.

21 A Yes, right.

22 Q So if you had a reg number or a license and you put it on
23 advertising is that a good thing?

24 A Absolutely, absolutely.

25 Q Mr. Jape, there should be a stack of plaintiff exhibits as

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1 well. I'd like you to take a look at Plaintiff's Exhibit
2 Number 7.

3 A Okay.

4 Q Do you recognize this correspondence?

5 A Yes.

6 Q Can you tell me what it's about?

7 A Yes, somewhere in 2000, 2001, I became aware of a
8 competing company that was using our name and I believe their
9 logo was even similar to ours. They were in the newspaper in a
10 very similar business with almost an identical name so I had an
11 attorney write them a letter. I actually called them first and
12 got nowhere with it so then we hired an attorney to write this
13 letter.

14 Q I believe Mrs. Jape testified she didn't remember any
15 other times. Do you remember any other times you moved to
16 protect your mark?

17 A Well recently I moved against a company in Decatur. I
18 notified them to stop using my mark. Of course, I notified Ms.
19 Jape to stop using my mark. Other than that, I believe those
20 three times may be it.

21 Q Mr. Jape, at any time did you solicit employees of
22 Reliable Air Inc. to work for you?

23 A No.

24 Q Take a look at what has been marked as Plaintiff's
25 Exhibits 21 and 22. Are you familiar with those?

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1 A Yes, sir.

2 Q How are you familiar with those?

3 A These are emails that I sent to my wife and my daughter
4 involving our divorce.

5 Q Let's talk about 21 first. Tell me the context of Exhibit
6 21 and why it was sent.

7 A Let me brush up on it real quick here. All right, to the
8 best of my knowledge this was written, we were -- we had,
9 actually my wife and my daughter and I had started to rekindle
10 a relationship. She actually -- my wife had invited me to my
11 former house and had kind of given me a honey do list. I was
12 taking my daughter up to go to the park to walk the dog. I had
13 dinner with her a few times. We were starting to return to
14 normalcy and this was, if I remember this correct, this was
15 written after we filed an objection to her plan. And our
16 relationship had started to go south again.

17 I had made an offer of settlement. I remember that.
18 I had come up --

19 Q Stop right there.

20 A Sorry.

21 Q Well, settlement. The bankruptcy settlement or divorce
22 case?

23 A It's all one.

24 Q Thank you. What they show in 2 is for purposes they tell
25 us to show your bad intent. But you wrote a statement in this

D. Jape - Direct

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1 email Exhibit 21 that states, I believe, I am in negotiations
2 with every reliable employee I want to hire and have worked out
3 a schedule with each one to hire them and purchase trucks over
4 the next few months. Did you -- is that statement a true
5 statement that you wrote?

6 A No, no it's not.

7 Q Let's take a look at Exhibit Number 22. This is dated
8 April 12, 2007, was that the date it was sent?

9 A I don't know. I believe.

10 Q And who was this addressed to?

11 A This was to my daughter.

12 Q And they've testified and it's been admitted that this is
13 a document sent to your daughter at her company working, it's a
14 business record.

15 THE COURT: I don't think that's what the testimony
16 was. I think the testimony was that that's where she saw it.

17 MR. MCBRYAN: And printed off and maintained it as a
18 company record.

19 THE COURT: Yes, but you said it was -- your question
20 had that it was sent to the company. You could go on Yahoo for
21 example if you had an email and get that at the company. It
22 doesn't -- you understand what I'm saying?

23 MR. MCBRYAN: Yes, sir. Let me rephrase.

24 Q Mr. Jape, tell me who did you send this to and where did
25 you think you were sending it?

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1 A I sent it to my daughter and I sent it to her personal
2 email.

3 Q You say it's a personal email. Mrs. Jape said your
4 daughter was working at the company at the time. Are you aware
5 of that?

6 A No.

7 Q If she were an employee, based upon your previous
8 knowledge of the company, would she have had a work email?

9 A Yes.

10 Q But you don't know if she did or didn't?

11 A I do not know.

12 Q Go on with your context. Please.

13 A Sure.

14 Q Describe the context.

15 A This -- we had, my daughter and I had developed a
16 relationship where I could pick her up and take her to the park
17 as I said. We were talking and you have to realize I hadn't
18 seen my kids or talked to my kids in years before this. I was
19 at a point where I could go pick her up and take her places and
20 we filed the objection to her plan and she wrote an email and
21 called me a thief and a liar and a bum and trash, and just all
22 kids of crap.

23 This was written in anger out of a response to being
24 called a thief. I was only trying -- I'm only trying to take
25 back what's mine Mr. McBryan. I'm not stealing from anybody.

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1 Q The statement I'm referring to that they've highlighted
2 for us, thank you, there's a little arrow on it, it says
3 everybody there except for Larry David and a few others hate
4 your mother's guts. I have your people calling me everyday
5 begging to come over. As soon as I take delivery of my trucks,
6 I'm going to decimate your company. We have taken hundreds of
7 customers just by being nice.

8 This was the intent, for whatever purpose -- first
9 off let's talk about this. The statement I am going decimate
10 your company. What did you mean by that?

11 A By that I mean I'm building a company that is going to be
12 doing eight or ten million dollars in volume and I'm taking
13 business away from anybody that's around me. I'm competing
14 with them head to head. I don't do anything dishonest. I'm
15 just competing with them. I'll compete with anybody in town
16 and my four or five, eight, ten million dollars or whatever I'm
17 going to do is going to be eked out of whatever is out there.
18 I can't create new business. I can only go after what's out
19 there and I'll compete with anybody.

20 Q All right. When you -- are you targeting Reliable Air
21 Inc. differently than Estes?

22 A Absolutely not. As a matter of fact we haven't competed
23 against each other one single time.

24 Q Mr. Jape if the Court grants this preliminary injunction
25 and you are barred from using the advertising term Reliable

D. Jape - Direct

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1 Heating & Air or apparently in any combination thereof those
2 words, and I'm not sure how far it is, would that effect your
3 ability to do business?

4 A Absolutely.

5 Q How would that effect your business?

6 A I'm, as I said before, this company and my name is
7 synonymous. Even the time that I wasn't there, everybody that
8 did business with her company thought that they were doing
9 business with me. There is no one in town that doesn't believe
10 that I have been and am the owner.

11 MR. MALONE: Your Honor, excuse me, excuse me. I
12 object. He's telling what other people think. He can say what
13 he knows and what he said but this is hearsay.

14 THE COURT: Stick to the question Mr. Jape.

15 THE WITNESS: Yes, sir.

16 Q The question was is how will the inability to use those
17 names or words effect your business?

18 A How would it effect my business? It would certainly -- it
19 would reduce my standing in the community.

20 MR. MCBRYAN: Just one moment, Judge.

21 Q Mr. Jape, take a look at what's been marked as Plaintiff's
22 Exhibit 13. Do you see that?

23 A Yes, sir.

24 Q All right. They made -- plaintiff has raised the issue of
25 the telephone number 770-594-9096. Are you familiar with that

D. Jape - Direct

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1 number?

2 A Absolutely.

3 Q Are you -- how did your business obtain that number?

4 A Well as I grew, I needed more phone lines. We started out
5 with two or three numbers. I needed more phone lines so I
6 called Bell South and acquired a group of numbers and that
7 number was in there.

8 Q That number is similar to the 770-594-9066 that the debtor
9 currently uses, correct?

10 A Similar.

11 Q The debtor's number, the number that the debtor is using
12 that was a number that you obtained prior to the incorporation.

13 A Correct.

14 Q Do you have other phone numbers?

15 A Yes.

16 Q Do you advertise with other phone numbers?

17 A Yes.

18 Q What other phone numbers do you advertise with?

19 A I have --

20 Q Go ahead and tell me.

21 A I have 404-626-2344. I have 770-594-9969. I have some
22 678 numbers. I don't know them all but I have 30 or 20
23 numbers.

24 Q Twenty numbers?

25 A Yes.

D. Jape - Direct

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1 Q And you use them in different areas?

2 A Yes.

3 Q And you use them all, is that correct?

4 A I don't advertise all of the 678 numbers but about eight
5 numbers are advertised.

6 Q Do you ever use the advertising of 404 numbers?

7 A Yes. It's on all my business cards.

8 Q Take a look at what's been marked as Plaintiff's Exhibit
9 12. Do you see that?

10 A Yes, sir.

11 Q Mrs. Jape testified that I believe someone took this
12 photograph, correct?

13 A Yes. We were at our office and they conducted
14 surveillance on us and popped those pictures on us.

15 Q Well tell me who conducted surveillance and when.

16 A Dave Keener (phonetic).

17 Q Who is Dave Keener?

18 A Dave Keener was a manager that worked for her.

19 Q And who else?

20 A I don't know. There was two people in the truck but we
21 saw them, you know, sneaking around out there. They set up
22 across the street, snapped these pictures and then took off and
23 I was going to go out and talk to them but there was a drive-by
24 surveillance shot.

25 Q Does your company ever receive phone calls intended for

D. Jape - Direct

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1 Reliable air Inc.?

2 A Yes.

3 Q And what do you do when you receive them?

4 A If it's a customer that is an ongoing affair with them or
5 any kind of a situation like that, we refer them down there.

6 If it's a customer that wants service, we take a service call.

7 Q If someone calls and says I want Reliable Air Inc., do you
8 try to talk them into taking your job?

9 A Well that's not going to happen. Reliable Air Inc. is not
10 -- no one will ever call and ask for that. But if someone
11 calls and specifically says they want that company, we send I
12 don't know five, six, seven, eight, ten calls down there to
13 them that are their customers.

14 Q Are you spending a lot of money on advertising Mr. Jape?

15 A Yes.

16 Q How much money are you spending per month on advertising?

17 A Thirty or forty thousand.

18 Q What is your current salary from your company?

19 A My current, my salary?

20 Q Yes. What are you taking out of your company?

21 A I make \$1,000 a week. So I'm sorry \$500 a week.

22 Q What about Ms. Ruse?

23 A One thousand every two weeks. I don't know what she
24 makes. I'm sorry. I think it's \$1,000 a week.

25 Q I understand. Thank you.

D. Jape - Cross

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1 MR. MCBRYAN: I have no further questions Your Honor.

2 THE COURT: Thank you.

3 MR. MALONE: Your Honor, if I can (indiscernible)

4 THE COURT: Fine. Let's -- I'll take you up on that.

5 Why don't we take a five minute break.

6 MR. MALONE: Five minutes would be great. Thank you.

7 (Recess)

8 THE COURT: Okay. We're back on the record. Mr.

9 Jape you know you are still under oath.

10 THE WITNESS: Yes, Your Honor.

11 CROSS EXAMINATION

12 BY MR. MALONE:

13 Q Good afternoon, Mr. Jape. I just want to clarify a couple
14 of things that I understood you to say on direct examination
15 and if I misstate the testimony just please set me straight,
16 okay. You indicated that when Reliable Air Inc. was
17 incorporated, did I understand you to say there was no transfer
18 of any property from the proprietorship that you and your wife
19 were operating to the corporation?

20 A Correct.

21 Q Well as of that date, Reliable Heating & Air, your
22 proprietorship was a pretty good size company, wasn't it?

23 A Yes.

24 Q Pretty good sized business let's put it that way, correct?

25 A Pretty good, you know.

D. Jape - Cross

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1 Q How many employees did you have?

2 A No idea.

3 Q Twenty?

4 A I have no recollection.

5 Q You have no idea. Were there two or 20?

6 A Probably 30, 40.

7 Q Thirty or forty employees.

8 A Less than that, 25.

9 Q You are guessing.

10 A That's a guess.

11 Q I'm not trying to pin you down.

12 A No, I don't know.

13 Q Your best guess is maybe 25, maybe 20, maybe 30.

14 A You know it really is irrelevant, I don't have any idea.

15 Let's leave it at that.

16 Q I'll let the Judge decide what's relevant. How many
17 trucks did Reliable Heating & Air have?

18 A I can't answer that.

19 Q But you had some trucks?

20 A Had trucks.

21 Q Had employees?

22 A Had employees.

23 Q How much business had you done the year before? What was
24 your gross sales?

25 A What year are you talking about?

1 Q 1998.

2 A I don't know.

3 Q 1999.

4 A Sir, I don't know. A lot, five million, four million, six
5 million.

6 Q So four to six million would be your best estimate for the
7 year before?

8 A Something in that range.

9 Q Did you have a bank account?

10 A Yes.

11 Q Where you had to buy equipment and pay employees and
12 things like that, correct?

13 A No, sir.

14 Q What?

15 A No, sir.

16 Q You did not have to pay employees or buy equipment?

17 A No.

18 Q How -- your employees didn't work for free did they?

19 A Sir, I testified earlier what I did is sold.

20 Q The company.

21 A The company paid people yes.

22 Q What happened to all the trucks that the company was using
23 before you incorporated? They were transferred over to the
24 corporation, were they not?

25 A I don't know.

D. Jape - Cross

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1 Q Were the employees listed as employees of Reliable Air
2 Inc.?

3 A Were the employees listed as, in what?

4 Q The employees, before you incorporated Reliable Air Inc.
5 you said you were guessing 25 employees working for your
6 company Reliable Heating & Air, your proprietorship, correct?

7 A Correct.

8 Q And up to that point in time they had been listed as
9 employees and they were paid what, under your social security
10 number?

11 A I don't know.

12 Q Your wife handled that or your accountant handled that?

13 A Correct.

14 Q Did those employees become employees of Reliable Air Inc.
15 when you formed the corporation?

16 A Yes.

17 Q The trucks that you were driving when you formed Reliable
18 Air Inc. they were being driven by employees of Reliable
19 Heating & Air. Were any of those trucks transferred into the
20 name of Reliable Air Inc. after the corporation was formed?

21 A Not that I'm aware of.

22 Q So they just stayed in the name --

23 A They just left them there. They were RSC, they were in my
24 name. We had eight different tag times and we had to renew
25 tags so all the tags on that 20 or 25 trucks, they all had

1 different titles. None of them were corporate.

2 Q Did your proprietorship have any debt or owe anybody any
3 money?

4 A Did my proprietorship have any debt?

5 Q Yes.

6 A In what year? I'm assuming we always had debt.

7 Q When you formed Reliable Air Inc. in 1999 did Reliable
8 Heating & Air, the proprietorship have any debt, as of the date
9 you formed the corporation?

10 A Well absolutely.

11 Q Who paid that debt?

12 A I have no idea.

13 Q Did Reliable Air Inc. form a bank account or open a bank
14 account in the corporate name?

15 A I don't know.

16 Q Were you ever authorized to sign a check on a corporate
17 account for Reliable Air Inc.?

18 A Ever?

19 Q Yes.

20 A I don't know.

21 Q Who paid for the trucks you were driving?

22 A I don't know. I'm assuming the accountant, bookkeeper,
23 Barbara, a manager. I don't know.

24 Q Excuse me, I apologize if my question was imprecise. The
25 question was not who wrote the check, what entity actually

1 physically handled the disbursement or paying? Whose money,
2 what money went to pay those debts?

3 A I will assume an answer for you. I will give you a guess
4 that it was Reliable Air, the corporate entity. I don't know.
5 I'm not trying to be -- I guess you need to understand one
6 thing, financial stuff not me, somebody else. So I don't have
7 any answers for you on anything financial like that.

8 Q But you know about customers?

9 A Absolutely.

10 Q You are good on customers?

11 A Absolutely.

12 Q And customers are the lifeblood of this business?

13 A Absolutely.

14 Q And if you've got a customer on the books to whom you have
15 sold a heating and air conditioning system, that customer is
16 the best, most likely, next customer whom you can service,
17 correct?

18 A There's no loyalty in this business. We put in a system
19 and the next time that customer needs assistance, you don't
20 know where they'll go.

21 Q Discussing with Service Master I believe possibly buying
22 your company?

23 A Umhum.

24 Q What did they offer you?

25 A Well we got down, we were talking in broad numbers. We

D. Jape - Cross

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1 didn't get down to the actual deal but somewhere in the \$25,
2 \$28 million range. That's what she made it sold for and I was
3 there and insinuated that would be close to what we would get.

4 Q That was for your business. With whom did you discuss
5 that? who represents Service Master?

6 A I don't know the people's name. They flew in from -- it
7 was a broker first approached us. I don't know who they are.
8 I don't recall that kind of stuff.

9 Q What information concerning your business did Service
10 Master request to see in connection with making you an offer at
11 that time?

12 A Well first they wanted to see books, sales. They came to
13 the business and looked at our business. Yeah, I mean, part of
14 the issue was that we never got to the final brass tacks of --
15 we didn't want to sell.

16 Q Well they wanted to see your customer list, didn't they?

17 A I don't know if they asked that. We probably didn't get
18 that far. They knew what the volume was. I guess that was a
19 nine or ten, close to \$9 million year maybe.

20 Q Your recollection is that Service Master offered \$28
21 million but you don't know if they wanted to see your customer
22 list, I mean as far as you can recall?

23 A Well as far as I know, they wanted the -- what they wanted
24 was they wanted a north side location to up their American Home
25 Shield Warranty Program. We were strategically located in a

D. Jape - Cross

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1 place. We had all the criteria, all the -- we had all what
2 they wanted. We were the type. We met the profile. That's
3 why they identified us to talk to us.

4 Q But you don't recall any of the people with whom you
5 discussed that?

6 A Name wise?

7 Q Yes, sir.

8 A The first person I talked to I don't. He was a broker and
9 I didn't even know who the person behind the scenes was. The
10 second person that I spoke to I did find out who it was.

11 Q Who was that?

12 A Service Master.

13 Q But you don't have a name of a person?

14 A No. I don't know who -- Service Experts talked to us too
15 and I don't know who they were name wise.

16 Q How's business?

17 A How's business?

18 Q Yes, sir.

19 A Good as can be expected I guess.

20 Q You mentioned a couple of times figures six, eight and \$10
21 million, are those numbers that you realized when you were
22 engaged and working with Reliable Air Inc.?

23 A Can you clarify that question?

24 Q I'm just trying to know where you -- to what you were
25 referring when you mentioned six, eight and ten million. Was

D. Jape - Cross

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1 that sales at Reliable Air Inc. when you were there?

2 A Are you asking did we have years where we had six, eight
3 ten? Is that what you are asking?

4 Q I'm asking you to what were you referring when you were
5 talking about sales at six, eight and ten million?

6 A I thought I was talking about my current company what I
7 was going to do. I don't know what you are referring to.

8 Q I'm trying to clarify what you meant, sir?

9 A Okay. You are talking about my company now?

10 Q Yes, sir.

11 A My plan is to eke out a business for myself and what I'm
12 simply saying is that business will be taken away from existing
13 companies that compete with me. That's what I said.

14 Q What are your current sales?

15 MR. MCBRYAN: Objection, Judge. Relevance.

16 MR. MALONE: It's very relevant.

17 THE COURT: Why?

18 MR. MALONE: It's relevant in the Ladam act for
19 damages. It also shows the amount of the impact upon the
20 plaintiff, how much business he's taking away.

21 THE COURT: I don't know that gross sales tells you
22 that.

23 MR. MALONE: I think it's a component.

24 MR. MCBRYAN: (Indiscernible - Not near microphone)

25 MR. MALONE: No, Judge, I'm trying to determine his

D. Jape - Cross

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1 sales right now. He testified that he gets if I recall 10
2 calls a day from my client that he has to refer off. I'm
3 trying to determine the nature of the extent of interference
4 with my client's business. I think the Court is entitled to
5 that.

6 THE COURT: I think it's relevant, whether it's what
7 you can make out if it I'm not sure. But answer the question.
8 What are your current sales on an annual basis?

9 A I don't have an annual. I don't have an annual behind me
10 so I can't answer that.

11 Q What do you project?

12 A What do you project me to do? Are you asking me for
13 projections?

14 Q Yes.

15 A Two million.

16 Q What were your sales last month? You know that don't you?

17 A No. Yes, close.

18 Q What?

19 A Maybe, I don't know, I can tell you close, three, two
20 fifty.

21 Q Two hundred fifty, three hundred thousand last month?

22 A Yes.

23 Q How about the month before that, which would be June?

24 A About 240, 220, 240, something like that.

25 Q Do you have records of sales?

1 A Yes.

2 Q And who keeps the records?

3 A I have a CPA.

4 Q Who is that?

5 A The name is --

6 MR. MCBRYAN: Objection, Judge. I understand we do it
7 in discovery.

8 THE COURT: This isn't discovery.

9 MR. MALONE: Withdrawn.

10 THE COURT: Mr. Malone, you can take his deposition
11 but let's get back on the point.

12 MR. MALONE: Thank you, Your Honor.

13 Q On the subject of the phone number, is it your testimony
14 that the number which you are now using and showing on the road
15 sign is just coincidence?

16 A Absolutely, absolutely.

17 Q You did not ask for that number?

18 A Anyone that knows anything about Bell South knows that the
19 numbers are generated by a binary number generator. I asked
20 for a block of numbers. I got ten numbers and one of them was
21 -- I have other numbers that are very similar to that too.
22 They were all random. One cannot go to the phone company and
23 pick a phone number and get it.

24 Q Why do you use that number on your road sign?

25 A I used that number because that number is -- I wanted to

D. Jape - Cross

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1 get to Roswell. My 924 number got me all of Marietta and East
2 Cobb and I've always been, I started in Roswell. I've been in
3 Roswell for years and I wanted a Roswell presence. So I asked
4 for some Roswell phone numbers which I was given some 587 and
5 some 594 numbers. One of them was that one.

6 Q Of all those numbers, why did you chose that number?

7 A If there's not a sign to right and wrong then I don't know
8 what that is Mr. Malone. That was a sign of what's right.

9 Q You consider the fact that you were given that just by
10 chance by the phone company some type of sign that you should
11 have that number?

12 A What are the odds that you would call up at any time and
13 ask for a number with seven digits or ten digits and you would
14 get that combination of numbers? What are the chances of that
15 happening Mr. Malone?

16 MR. MCBRYAN: Your Honor, I object. My client has
17 answered, move to strike.

18 MR. MALONE: I object --

19 THE COURT: Mr. Malone, sir. Mr. Jape.

20 THE WITNESS: Yes, sir.

21 THE COURT: I give you the same instruction. You can
22 call it advice if you like. You need to listen very carefully
23 to the question and just answer the question.

24 THE WITNESS: Okay.

25 A Yes, it was a coincidence that I got it.

D. Jape - Redirect

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1 Q Did you determine that as some type of sign that you
2 should have that number?

3 THE COURT: It's what he said, move on.

4 Q You testified earlier that you received ten calls a day
5 for Reliable Air Inc.

6 A And their customers.

7 Q Calling you?

8 A Yup.

9 Q And the emails that have been marked in as Plaintiff's
10 Exhibit 21 and 22 are emails which you did in fact send?

11 A Correct.

12 MR. MALONE: No further questions.

13 THE COURT: Any redirect?

14 MR. MCBRYAN: Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. MCBRYAN:

17 Q Your testimony to Mr. Malone's question as to the eight to
18 ten calls about -- might belong to Reliable Air Inc.'s
19 customers, correct?

20 MR. MALONE: I object, it was ten calls.

21 MR. MCBRYAN: Ten calls.

22 Q You said they were angry calls? Okay, can you -- were
23 they confused when they called you or were they calling you
24 because they were angry with --

25 MR. MALONE: Objection, leading.

D. Jape - Redirect

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1 THE COURT: Sustained.

2 Q Why do they call you?

3 A They call for different reasons. One of them, a common
4 one, is their unhappy. They are calling -- I started
5 advertising -- all my advertising has my name and picture on
6 it. So people call me to get their problems resolved. That's
7 probably the single biggest call we get.

8 The other callers they can't get to people. They had
9 no employees so if we can get to them in a timely manner, we
10 started doing all their warranty work. If it's a warranty
11 call, I do it for free. I fix it. I've given air conditioners
12 away. I've given pieces away and parts. I've fixed stuff.
13 Anything that they do that they can't fix, I'll go fix it free.

14 Q So these calls that Mr. Malone -- ten calls a day that are
15 Reliable Air Inc. customers aren't necessarily calling you
16 because they are confused, are they?

17 MR. MALONE: Objection, leading.

18 Q Well why are they -- you said they are angry.

19 THE COURT: Hold on, hold on. Don't lead the
20 witness.

21 Q Are these people, you say they are angry, did they know
22 who they call when they call you?

23 A Absolutely.

24 MR. MALONE: Objection, asked and answered. It call
25 for conclusion.

D. Jape - Redirect

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1 THE COURT: Well.

2 MR. MCBRYAN: I think in this case, I think he opened
3 the door on this one. You know. The testimony was Mr. Jape on
4 direct, eight to ten. Mr. Malone narrowed it down to ten calls
5 of their customers. I'm trying to find out why they are
6 calling. Trying to clarify.

7 THE COURT: I'll let you ask it again.

8 Q Mr. Jape, do you know why these customers are calling?

9 A They don't answer their phone. They have a number in the
10 yellow pages that they don't answer. They don't run nighttime
11 calls. Their customers want service. They want their heating
12 and cooling fixed. They know that I will be responsive and
13 help them. They are rude to people. Everyone in their office
14 is rude, we get that all the time. So they call up, they can
15 speak to someone friendly and get their problem fixed. That's
16 why they call.

17 Q Mr. Jape when you were at, with the same business Reliable
18 Air Inc., Reliable Heating & Air whether it was as a sole
19 proprietor or otherwise, did your business now known as the
20 plaintiff, did it own other numbers like it currently uses and
21 advertises 770-594-9066?

22 A Yes.

23 Q I think that's the current one I think the plaintiff uses.
24 Did it own other numbers?

25 A Yes.

D. Jape - Redirect

97

1 Q Do you recall some of those other numbers?

2 A 594-9067, 594-9068. I believe we had nine.

3 Q Did it have an interest in or did the business have 594-
4 9096?

5 A No. Did I have it prior to this?

6 Q Right.

7 A No.

8 Q But do you know if the plaintiff still has those numbers
9 594-9066, 67 -- well it has 66, 67, 68, 69?

10 A No, they do not.

11 Q Why not?

12 A I know that one of them was offered to me, that's all. I
13 knew that it was available.

14 Q They just let the numbers go? Were you involved in that
15 decision?

16 A I'm guessing I was involved in that decision. When we
17 moved, as my wife said when we moved we had to direct our
18 remote call forward. So every call that comes from Roswell, at
19 that time, we had to pay a penny a second while they spoke. So
20 we didn't want to bring all those numbers to Woodstock. So I
21 guess at that time we decided to get rid of them.

22 Q This Court asked earlier about the divorce case and I made
23 representations but we didn't have any testimony. Can you tell
24 me what the current status of the divorce case is with the
25 principal Mrs. Jape?

D. Jape - Redirect

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1 A Sure. I -- we both have attorneys. My attorney has
2 contacted her attorney and asked for mediation on two separate
3 occasions. We gave her approximately 20 dates at one time and
4 20 dates trying to meet her schedule that we could sit down and
5 mediate. So far we've got no response.

6 Q And I understand that your children are here today,
7 correct?

8 A Correct.

9 Q Do you know the purpose -- did you know before today that
10 they were going to be in the courtroom?

11 A I found out, yes.

12 Q And do you know for what purpose they are here for?

13 A I do not know other than because this is our divorce and
14 they want to see what's going on.

15 Q Have you heard directly -- have you ever heard Mrs. Jape
16 say anything negative about your current business?

17 A Yes.

18 Q What has she said about your business?

19 MR. MALONE: Excuse me Your Honor. We seem to be
20 plowing new ground here.

21 THE COURT: What's the relevance of that?

22 MR. MCBRYAN: I think we're still going to harm,
23 Judge. We're still here. It's a weighing thing in preliminary
24 injunction.

25 THE COURT: Go ahead.

D. Jape - Redirect

99

1 Q Go ahead Mr. Jape.

2 A Can you repeat it?

3 Q Yes. Have you ever heard Mrs. Jape say anything
4 derogatory about your business?

5 A Yes. About my business, yes, that in the beginning we
6 were just I think she said we were just a one man show, with
7 one truck and we would never amount to anything. She's told me
8 of course that I'm stealing business from her and that we are
9 -- she downplays, you know she says that we are not responsive
10 to customers.

11 Q Has any customer of yours ever reported information
12 regarding any statements Mrs. Jape made?

13 MR. MALONE: Objection, relevance.

14 MR. MCBRYAN: I think it still goes to the balancing
15 thing.

16 THE COURT: We're getting ready to go into history.

17 MR. MCBRYAN: I understand that Judge. I'm just
18 asking if there's been an effect. Let me rephrase.

19 Q Has there been any affect on your business from
20 information that you believe is coming from the plaintiff?

21 A Absolutely.

22 MR. MALONE: Same objection, irrelevant.

23 MR. MCBRYAN: I think I'm entitled Judge.

24 THE COURT: He's answered it. I'll overrule the
25 objection for what it's worth. Anything else?

D. Jape - Recross

100

1 MR. MCBRYAN: No, Your Honor. I'm completed.

2 THE COURT: All right. Any further cross?

3 MR. MALONE: Just one.

4 RECCROSS EXAMINATION

5 BY MR. MALONE:

6 Q Mr. Jape, you said you had a lot of phone numbers that you
7 use in advertising?

8 A Umhum.

9 Q What advertising do you use other than the number that
10 appears on the road sign? Where would we see those other
11 numbers?

12 A Where would you see other numbers?

13 Q Yes, what ads? Yellow page?

14 A Yellow pages.

15 Q Which yellow pages?

16 A Bell South and I imagine, let me think about that one,
17 Bell South and I was going to say Kudzu --

18 MR. MALONE: No further questions.

19 A -- but Ms. Jape got us kicked out that so that's not
20 there. And then on my business cards, my proposals and on my
21 when I go do a bid, they are on my bid sheets.

22 MR. MALONE: Thank you very much. No further
23 questions.

24 THE COURT: Thank you, sir. You may step down and
25 leave all the exhibits where you found them.

1 (Witness Excused)

2 THE COURT: All right. As I indicated earlier today
3 I'm going to ask the defendant to prepare a brief responding to
4 the plaintiff's brief and anything else you want to say
5 regarding the legal issue that we've discussed all day long
6 today, which is the basis on which the defendant contends that
7 the defendant is the owner of the trade name Reliable Heating &
8 Air. Including in that the effect of the registration, of the
9 service mark that plaintiff has apparently obtained or has
10 obtained based on the evidence presented.

11 I'd like to have that brief by the close of business,
12 five o'clock, on Monday. I give Mr. Malone two days after that
13 to respond since I think you are already through a lot of cases
14 and probably won't need more time than that. If there's a
15 problem let me know, but I'd like to get on with this.

16 I'm going to -- well we'll see -- I'll try to reach a
17 decision by the end of next week. This case really needs to be
18 tried quickly it seems to me. I would think that the district
19 court, it would be better for the parties for the reference to
20 be withdrawn frankly because the cost is just so large. And I
21 think that probably ought to be mentioned to the district judge
22 when that decision is coming down.

23 Sometimes the district court wants the benefit of
24 seeing how it comes out below just kind of like an appellate
25 court wants to -- doesn't want to, or the supreme court for

1 example doesn't want to take a case until its seen a lot of
2 cases. Well it's helpful I think to have a kind of preliminary
3 look-see. But this is one in which I would hope that the costs
4 could be kept down.

5 I said this before and I'm going to say it again, if
6 there's a golden goose you are going to kill it. It's going to
7 be killed either way. I don't think there's -- I don't see a
8 way out of this. I really don't. Usually I can figure one out
9 if the problem is like this. It's too bad you all didn't just
10 go on and get over with the divorce situation. I just hate
11 seeing cases like this that tear up families, I really do.

12 But I get paid to make decisions and I'm going to
13 make a decision on this motion and hopefully it'll go upstairs
14 as quickly as it can if one side or the other wants to appeal.
15 Anything else today?

16 MR. MALONE: Nothing for plaintiff.

17 MR. MCBRYAN: Your Honor, one thing. I talked to Ms.
18 Ray about this already, the defendant Ms. Ruse has not been
19 Ruse since April and we'll just do a consent order to change
20 it. Her name is Praeter (phonetic), Kimberly Praeter, same
21 person. We'll do a --

22 THE COURT: That's fine.

23 MR. MCBRYAN: Other than that, Judge, nothing. Thank
24 you.

25 THE COURT: Okay, thank you.

C E R T I F I C A T I O N

We, Rita Bergen and Lynn Schmitz, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Rita Bergen

DATE: August 12, 2007

RITA BERGEN

/s/ Lynn Schmitz

LYNN SCHMITZ

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