

1 A. Well, they would take a license, and they would pay a
2 royalty for each device that they manufactured and sold using
3 that technology.

4 Q. Mr. Racz, how were things going with Gemplus around this
5 time in mid-2001?

6 A. Well, we -- we actually ran into a -- a bit of an issue.
7 They were going very well, and then we stumbled across a bit
8 of a problem.

9 Q. Remind us what this presentation was. It's 141.002.

10 A. That's a presentation that was developed by Tality for
11 Internet Plc or in conjunction with Internet Plc for the
12 reader player devices that they designed.

13 Q. What was the problem you mentioned that you ran into
14 with Gemplus?

15 A. I was at a meeting in Steven Landau's office. I noticed
16 on his desk that he had some drawings that looked very
17 familiar and similar to our own. And when I looked closer, I
18 picked up the presentation. I was quite shocked.

19 Q. So what presentation are we looking at now, Mr. Racz, as
20 Plaintiffs' Exhibit 127?

21 A. This is a Gemplus presentation.

22 Q. Were they referring to a device as a Smartflash device?

23 A. No, they weren't, sir.

24 Q. What were they doing?

25 A. What they'd actually done is they'd taken the drawings

1 and they put them into their own presentation. They deleted
2 the Internet Plc and Tality trademarks and company names and
3 taken off any references to our own trademarks and replaced
4 them with this -- I suppose a similar -- similar product and
5 their own logos and company name.

6 Q. Did it seem to you that Gemplus was trying to claim your
7 idea as theirs?

8 A. That's exactly what it looked like, sir, yes.

9 Q. Mr. Racz, did you confront Gemplus?

10 A. I did, sir, yes.

11 Q. Tell us about that.

12 A. I -- I confronted Steven Landau about it. I asked him
13 about it. He insisted that it was -- it wasn't him. I
14 wanted to believe him. I didn't think Mr. Landau would take
15 my ideas as his own. He said that he was instructed to
16 prepare the presentation by Gilles Michel.

17 Q. Were you willing to forgive Gemplus at that time?

18 A. I did so, yes.

19 Q. Mr. Racz -- well, also from the Gemplus presentation at
20 Plaintiffs' Exhibit 127, what was Gemplus saying also in that
21 presentation, Mr. Racz?

22 A. They'd taken some words that I used for their
23 presentation verbatim and put it into there as their own
24 words. Instead of Smartflash, they put SUMO as the preferred
25 carrier for music and entertainment and thereafter as the

1 preferred carrier solution for all digital content.

2 Q. Did Gemplus ever come to you and reaffirm their
3 commitment to work with your company?

4 A. Yes, sir, they did.

5 Q. What are we seeing at Plaintiffs' Exhibit 162, Mr. Racz?

6 A. That's the reaffirmation -- the confirmation from
7 Gemplus, and there they've used the correct words. They've
8 taken the opportunity to affirm that commitment. And here
9 they use the words to help draft Smartflash as the preferred
10 carrier for digital media.

11 Q. Thank you, sir.

12 Alongside development, did Smartflash look for ways to
13 market its products?

14 A. Yes, we did, sir. Yes.

15 Q. Okay. Tell us who you partnered with to market.

16 A. Well, the first -- first branded partner we were
17 actually associated with was Britney Spears.

18 Q. Can you show us that, sir, the reader that you have?

19 A. Yes, sir. Yes. This is -- this is the reader player
20 device and product that we developed in association with
21 Britney Spears, yes.

22 Q. Thank you, Mr. Racz.

23 How are y'all able to get an audience with Britney
24 Spears in order to cut a deal?

25 A. One of my friends knew her manager quite well, and he

1 got me through the door and got the wheels in motion.

2 Q. What was Ms. Spears' status in the music industry at
3 that time?

4 A. She was huge. She was -- at that time, we're going back
5 to 2001. She had just released her second album. She was, I
6 believe, the highest selling or the biggest selling artist in
7 the world at that time, certainly one of them. She was
8 enormous, yeah.

9 Q. Besides putting her name on a product, did she do
10 anything else to help you market?

11 A. Yes, she did, sir. Yes.

12 Q. What was that?

13 A. Well, we were linked into her world tour. We were doing
14 the European promotional leg of her world tour. When she was
15 in London, I think it was around July of that year; and she
16 did a commercial for us in a London taxi promoting
17 Smartflash, and that was going to be shown at all the
18 concerts she did.

19 Q. Do you still have that commercial today?

20 A. Yes, we can play it now, sir.

21 MR. CALDWELL: Your Honor, may I play that
22 commercial? We'll have audio, just so you know.

23 THE COURT: Proceed.

24 (Videoclip played.)

25 Q. (By Mr. Caldwell) When you saw that, did you think

1 things were going pretty well?

2 A. Yes, sir.

3 Q. Were you getting recognition in the press?

4 A. We were, yes. We were getting a lot of attention from
5 the press online, even doing interviews with the Wall Street
6 Journal.

7 Q. Mr. Racz, what happened next?

8 A. Well, unfortunately, the tragic events of 9-11 took
9 place.

10 Q. Making no light whatsoever of those tragic events, it
11 doesn't equal that, but how did that connect to your
12 business?

13 A. Well, we were linked into Britney Spears' European tour
14 as part of her world tour. And quite understandably, she was
15 worried about flying at the time, and she took the decision
16 to not fly and to cancel the European tour.

17 Q. Did she keep other concert dates in another part of the
18 world?

19 A. Yes, she did. She still kept her North American tour;
20 and that was good for her other partners, so brands like
21 Pepsi and Kellogg sketches that we were working with, they
22 were still able to benefit and work with her. But we were
23 pretty much restricted in the European side. And it really
24 hurt our -- our small company at the time.

25 Q. After the European tour was canceled, did you still try

1 to do some work with Ms. Spears?

2 A. We did, sir, yes. We -- we -- we continued working with
3 her.

4 Q. Was that part successful?

5 A. Well, I'd say it was -- it was successful in terms of it
6 was a fantastic association to have, and it opened a lot of
7 other doors and validated a lot of what we were doing. So in
8 that sense, yes, it was; but we didn't have the content, so
9 we didn't have the content from the tours and we didn't have
10 the sale from the tours, so it wasn't the success that we
11 envisioned at the time.

12 Q. But did you still have your partnership with Gemplus to
13 continue developing the hardware you envisioned?

14 A. Well, un -- unfortunately, we -- we hit a roadblock at
15 that point, sir.

16 Q. Explain that to us, Mr. Racz.

17 A. Well, shortly after Britney had canceled her tour, I was
18 in Paris -- would have been October 23rd to the 25th. I was
19 visiting a trade event called CARTES 2001. Gemplus had a
20 very large presence there and very large booth in the center
21 of the hall. I walked out of the booth and was really
22 shocked to see that they were back to promoting my product as
23 this SUMO device again.

24 And I -- well, I went up and I confronted the man who
25 was doing the demonstrations and showing the press and the

1 people that were there. I introduced myself. He knew who I
2 was immediately. He apologized profusely, said it was all a
3 misunderstanding, and it would all get resolved.

4 Q. Did you break things off with Gemplus after the second
5 time?

6 THE COURT: Mr. Caldwell, you're going to need to
7 speak up so everybody can hear you.

8 MR. CALDWELL: Thank you. Thank you, Your Honor.

9 THE COURT: All right. Let's proceed.

10 Q. (By Mr. Caldwell) Did you break things off with Gemplus
11 at that point, Mr. Racz?

12 A. No, I -- I couldn't really.

13 Q. Why not?

14 A. Well, as much as I felt betrayed, I wasn't in a position
15 to. They -- you know, we'd spent a very large amount of our
16 shareholders' funds at that point. We were developing
17 additional products. They were our technology partner, and
18 we were -- thought we were close to the -- you know, the
19 senior people there. We -- couple of the directors were
20 working closely with us. I thought I'd be able to turn
21 things around.

22 Q. Did you still try to work on some additional products
23 with Gemplus?

24 A. Yes, we do. We continued developing them. We were very
25 close to launch, and these are two of the products here.

1 Q. Thank you.

2 A. The first one here, this is a product that we developed
3 with Disney -- the first product we developed with Disney,
4 which was Treasure Planet reader and card. And the other one
5 here, this was in association with Paramount Studios with the
6 launch of their movie Star Trek Nemesis.

7 Q. The products that you've shown us today, do those
8 products practice the specific patent claim that are at issue
9 in this case?

10 A. No, they don't, sir. No.

11 Q. Did you have a plan as to how you were going to build up
12 to other products?

13 A. Yes, sir, we did.

14 Q. Explain that to us.

15 A. Well, we had a phase launch plan in several stages. The
16 first one we termed Smartflash promo. That was the
17 production of promotional cards that were given away or what
18 would be given away in serial packets, multi-packs of Pepsi
19 in Target stores and the music CDs. The second one we termed
20 Smartflash Light, Smartflash Fan, and that product had a bit
21 more functionality to it.

22 Similar to the products I've shown you, you could also
23 have some digital rights management and payment functionality
24 involved buying content with the memberships and so on.

25 And the third one was Smartflash Media, and this was far

1 more complete offering. This was including digital rights
2 management, so you would have rules, storage of content, use
3 data, and all the functionality we spoke about earlier, on
4 one integrated device.

5 Q. Mr. Racz, did you describe those phases in a business
6 plan?

7 A. We did so, yes.

8 Q. What's on the screen is marked Plaintiffs' Exhibit 114.

9 A. This is -- this is from our 606 business plan, final
10 version, Smartflash Media, unique combination of
11 authentication, storage, digital rights management, customer
12 relationship management, and loyalty applications, payment
13 and Internet/channel access. Smartflash Media permits the
14 distribution of digital products over the Internet on a
15 worldwide scale.

16 Q. You said 606. Are you meaning 2006?

17 A. No, Version 606.

18 Q. Approximately when is this dated?

19 A. This would have been in 2002.

20 Q. Did you ever get a chance to complete all those phases
21 of production?

22 A. No, we -- no, we didn't, sir.

23 Q. What happened to your relationship with Gemplus?

24 A. Well, I would -- they pulled the -- pulled the plug on
25 us, sir.

1 Q. How did you find out that Gemplus was pulling the plug
2 on your project?

3 A. I found out from Mark Lassus, from the chairman.

4 Q. Explain that to us.

5 A. Mark Lassus called me one evening from Miami. He had
6 been at a board meeting, and there was a lot of problem he
7 was having internally. There were some new shareholders
8 who -- involved in the company wanted to move the firm and
9 some of the management and directors that Gemplus had sided
10 with them against him. He called me after the board meeting,
11 and he said that he'd been fired from the board. In addition
12 to that, that they'd called in a loan in connection with his
13 shares for over a hundred million Euros, similar to, I guess,
14 the dollar, sir. That he was effectively out.

15 Q. What did you say to him?

16 A. I -- I told him I was shocked. I was really sorry to
17 hear that. I asked if there was anything I could do to help,
18 and -- and then he said be careful, you watch your own back
19 because they're going to come for you. And I -- I asked him
20 what he meant, and I'll never forget what he said. He
21 switched it to his native French and he said (speaking
22 French) and then translated in English, they are very
23 jealous, they want your technology, but they want you out of
24 the way. And the implication was that they didn't want me
25 around because of my association with him.

1 Q. Did they cut you off?

2 MR. BATCHELDER: Your Honor, I object to the
3 hearsay.

4 THE COURT: Restate your question, counsel.

5 MR. CALDWELL: I'm happy to move on to --

6 THE COURT: Let's move on then.

7 Q. (By Mr. Caldwell) Mr. Racz, did Gemplus cut off the
8 relationship?

9 A. Yes. I got a call a couple hours afterwards from Gilles
10 Michel to say that they were unable to continue with the
11 strategic development agreement with the investment program
12 and they were no longer able to work with us, but he wouldn't
13 give a reason why.

14 Q. Did you have any issued patents at that time?

15 A. No, sir.

16 Q. Approximately when did you get that call from Gemplus?

17 A. This would have been around October of 2002.

18 Q. How did it affect your business to not yet have the
19 patents?

20 A. It was a disaster to us.

21 Q. Mr. Racz, how did you feel when all that happened?

22 A. I'm pretty -- pretty shocked, devastated.

23 Q. What happened with your company after Gemplus broke off
24 the deal?

25 A. Well, we -- we had to scale back and reduce our plans.