

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
N.E. OF N.Y.
FILED

NOV 11 2008

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ALBANY

RICHARD MINSKY, an individual, d/b/a
SLART® ENTERPRISES,

Civil Case No.: 08-CV-819

Plaintiff

LEK/DRH

vs.

Linden Research, Inc., d/b/a Linden Lab®,
a Delaware corporation, John Doe (a/k/a
Victor Vezina), an individual, Philip
Rosedale, an individual, Mitchell Kapor,
an individual, other Does, presently
unknown to Plaintiff

**PLAINTIFF'S SURREPLY TO
MOTION TO DISMISS OF
DEFENDANTS PHILIP ROSEDALE
AND MITCHELL KAPOR**

Defendants

**MEMORANDUM IN FURTHER OPPOSITION OF MOTION TO DISMISS OF
DEFENDANTS PHILIP ROSEDALE AND MITCHELL KAPOR**

Plaintiff Richard Minsky submits this surreply in response to new material in Defendants' Reply Memorandum of November 10, 2008.

In that Memorandum Defendants raise new issues and bring in new cases in support of their position, while making factual errors. In footnote 4 on page 6 they assert that the Complaint contains no Prayer for Relief regarding Claims Four and Five, but ¶ 73 does in fact pray for damages for each claim.

On p. 6 they also cite *Hughes* to support the notion that Delaware law applies to Kapor and Rosedale in piercing the corporate veil. Even if it did apply here, the factors I used are California factors, based on Defendants' place of business and residence, and are more specific and stringent than the vague *Hughes* criteria quoted by the Defendants. On p. 3 they misquote Kapor by omission, leaving out the incriminating part. They also

provide a copy (in their Exhibit A) of *Muniz v. Goord*, which on p. 16, #4, *11 gives criteria for Personal Involvement, and Rosedale and Kapor meet these criteria.

On page 9, in footnote 5, Defendants suggest that an attorney is ghostwriting my pleadings and briefs. That is untrue. I write my own pleadings and briefs, though I do get pro bono legal advice from Tamiko Franklin, primarily about trademark law. Ms. Franklin is not a member of the NY Bar. She is a transactional Intellectual Property attorney, not a litigator. John Koegel has provided no substantive advice. For advice on procedural matters that I can't find in the FRCP, Local Rules or Pro Se Handbook, I call the Court Clerk, and if they do not have the answer, am directed to Chambers.

Defendants have a corporate legal department and two powerful law firms researching, preparing papers, and representing them in court. These firms have hundreds of attorneys specializing in every aspect of law and litigation that can be employed in this case. The inequity is staggering. I am an individual artist/bookbinder relying on the volunteer assistance of one attorney who is in Croatia and is helping me over the Internet, and her volunteer intern, who is a law student in California. By claiming that an attorney is ghostwriting my papers, the Defendants are attempting to deceive the Court into creating the burden of having my advisor fly here from Croatia and appear in Court.

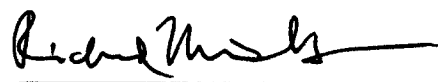
I do appreciate the kudos implied by the Defendants statements about the quality of my writing. I do my best to keep it coherent, relevant and nonfrivolous. The Defendants' Exhibits B and C of their Reply Memorandum do make clear statements of the extent of Ms. Franklin's involvement, and if it were not for her suggestions regarding the reorganization of some of the paragraphs in my briefs my arguments would likely be harder, though not impossible, to follow. Additionally, she has suggested some

additional words, such as when I cited a previous document “*see* Dkt. 20” she suggested “*see generally* Dkt. 20.” Also, in my Answer to the present Motion to Dismiss, I cited several quotations from cases that were provided by the Defendants in their Motion, and attached as Exhibits thereto. I thought the relevance of these quotes was obvious, but Ms. Franklin said I should add some text explaining their relevance, without being more specific than that. I wrote text that set a context for the citations and did not consult with Ms. Franklin about the content of the additions I made before submitting that document to the Court.

I believe it is my obligation to get as much advice as I can before submitting documents to the Court, and that doing so saves the Court’s time and that of the Defendants. I cannot compete with the Defendants’ wealth and resources in hiring “Super Lawyers” (Exhibit A). In college and graduate school I learned how to write a paper, I have studied logic, and I am a journalist. Without having been to law school, it would be foolish of me to refuse the opportunity to have someone help with legal research and review of my submissions, and am trying to present my case in the best way I can.

Defendants provide and quote two irrelevant cases: *Raghavendra V. Columbia*, where a *pro se* plaintiff actually retained an attorney who appeared in Court, and *Schroer v. Emil Norsic*, where someone didn’t want to pay the bill for having their septic tank cleaned. Defendants Rosedale and Kapor’s Motion to Dismiss should be denied, and I should be allowed to present the evidence to support my Claims 5 and 6.

November 21, 2008

A handwritten signature in black ink, appearing to read "Richard Minsky", written over a horizontal line.

Richard Minsky, Plaintiff

EXHIBIT A

Janet Cullum, Partner

► Professional Search

PRINT PREVIEW

Janet Cullum is a member of the Cooley Godward Kronish Litigation group and resident in the New York office. She serves on the Firm's management committee and its marketing committee.

Ms. Cullum practices in the area of intellectual property litigation focusing primarily on trademark and copyright, as well as advertising and licensing disputes. Ms. Cullum has litigated patent, copyright, trademark and trade dress cases. Ms. Cullum also counsels clients in the selection and adoption of trademarks, the legal aspects of advertising and enforcement and registration of copyrights. In her practice, Ms. Cullum assists her clients to identify and manage intellectual property with the goal of realizing and sustaining the significant competitive advantage that intellectual property provides.

Ms. Cullum has been named one of *The Best Lawyers in America* for 2007 in the specialty of Technology Law; in 2006 she was named to the *Super Lawyers* list by *Law & Politics* magazine.

Ms. Cullum previously served as head of the Trademark, Advertising & Copyright practice group and the Intellectual Property Litigation practice group.

In 1986, Ms. Cullum served as a deputy district attorney for the county of Santa Clara as part of a firm sponsored program with the District Attorney's office, handling six jury cases and a dozen bench trials.

She attended the University of California, Berkeley, Boalt Hall School of Law, where she received a J.D. in 1982 and was elected to the Order of the Coif. She also received the American Jurisprudence Award in contracts and in corporations. She received a B.A. in 1972 from California State University, Northridge, where she majored in English and minored in French.

Ms. Cullum is admitted to practice in California, New York and the District of Columbia. She is a member of the American Bar Association, and its section of patent trademark and copyright law, and the Santa Clara County Bar Association. She is also a member of the International Trademark Association and has served on the Education Subcommittee focusing on federal agency regulations. She was named by *San Jose Magazine* as one of the Silicon Valley's top 300 lawyers in 2000 and 2001. In 2004 and 2005, Ms. Cullum was recognized by *San Jose Magazine* as one of Silicon Valley's Top Legal Eagles for her work in Patent, Copyright and Intellectual Property Law.

► EDUCATION

- University of California, Berkeley School of Law, Boalt Hall
J.D., 1982
Order of the Coif
- California State University, Northridge
B.A. English, 1972

► BAR ADMISSIONS

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NOV 24 2008

State of New York
County of Columbia

LAWRENCE K. BAERMAN, CLERK
ALBANY

Re: Civil Case No.: 08-CV-819 LEK/DRH Richard Minsky v Linden Research, Inc. et al

I, Richard Minsky, hereby certify that I am the plaintiff herein and served a copy of the following documents:

PLAINTIFF'S LETTER REQUEST TO JUDGE KAHN FOR PERMISSION TO SUBMIT
SURREPLY (TO Docket. 44) and
PLAINTIFF'S SURREPLY TO MOTION TO DISMISS OF DEFENDANTS PHILIP
ROSEDALE AND MITCHELL KAPOR

on Defendants' counsel: Janet Cullum, Daniel Hurteau and Andrew Rose
At the following e-mail addresses:

jcullum@cooley.com
ACRose@nixonpeabody.com

on the following date: NOVEMBER 21, 2008

and by first class U.S. Mail to

Janet L. Cullum
Cooley, Godward Law Firm - NY Office
1114 Avenue of the Americas
New York, NY 10036-7798

by depositing a true and correct copy of said document(s) with the postal clerk on duty at the United States Post Office in Columbiaville, NY on the following date: NOVEMBER 21, 2008

and by hand delivery to:

Andrew C. Rose
Nixon, Peabody Law Firm - Albany Office
677 Broadway
10th Floor
Albany, NY 12207 *on November 21, 2008*

I certify that the foregoing is true and correct.

DATED: NOVEMBER 21, 2008



Signature of Plaintiff