

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHOPIFY, INC.,
Petitioner,

v.

DDR HOLDINGS, LLC,
Patent Owner.

Case No.: Unassigned
INTER PARTES REVIEW OF U.S. PATENT NOS. 8,515,825, 9,043,228, &
9,639,876

**DECLARATION OF NATHANIEL BORENSTEIN IN SUPPORT OF
PETITIONS FOR *INTER PARTES* REVIEW OF U.S. PATENT NOS.
8,515,825, 9,043,228, & 9,639,876**

1. My name is NATHANIEL BORENSTEIN. I am over the age of twenty-one (21) years, of sound mind and capable of making the statements set forth in this declaration. I am competent to testify to matters set forth herein. All the facts and statements contained herein are within my personal knowledge and they are, to the best of my knowledge, true and correct.

2. I am being compensated by the Petitioner for my assistance with its Inter Partes Review (IPR) and, specifically, for my time spent reviewing documents in association with the IPR and in preparing my testimony. Additionally, I am not, and have never been, an employee of Petitioner, and my compensation is not dependent upon the outcome of this proceeding. I am being compensated at a rate of \$470 per hour for my work.

First Virtual/InfoHaus Prior Art Publications

3. I have reviewed the First Virtual/InfoHaus publications provided as Exhibits 1013-1016 in the petition for *Inter Partes* Review. I was Chief Scientist of First Virtual from March 1994 until June 1998. I have personal knowledge relating to the creation and distribution of these publications as of the times and dates detailed below.

4. *Loshin* (Ex. 1013) is a paperback book authored by Pete Loshin, entitled “The Internet Merchant Master Series: Selling Online With... First Virtual”, and was published in 1996. I was involved with answering questions regarding the

subject matter of *Loshin*, reviewing aspects of *Loshin*, and writing the forward to *Loshin*. Ex. 1013 is a true and correct copy of the *Loshin* book. When books such as this were published, it was the goal to distribute as far and as wide as possible to people in our field (e.g. to merchants having or wanting to establish ecommerce websites and/or web designers tasked with designing and maintaining such websites). Individuals receiving this book would include potential clients in the ecommerce field, including individuals with three (3) plus years of technical expertise in this field such as web-designers and technical developers who design and manage ecommerce websites.

5. The following links from the Internet Archive: Wayback Machine (“Wayback Machine”) represent various content from First Virtual’s website. These webpages and documents are included as Exhibits 1014-1016 in the Petition. I was personally involved in creating and reviewing content for each of these websites and/or documents:

- <https://web.archive.org/web/19970615125011/http://www.fv.com:80/infohaus/guide/index.html> (archived on 6/15/1997 – InfoHaus Guide) (Ex. 1015);
 - <https://web.archive.org/web/19970625184134/http://www.fv.com:80/pubdocs/infohaus-guide-1.txt> (6/25/1997 – Chapter One - Introduction) (Ex. 1015, at 3-6);

- <https://web.archive.org/web/19970625184145/http://www.fv.com:80/pubdocs/infohaus-guide-2.txt> (6/25/1997 – Chapter Two – Communicating with the InfoHaus) (Ex. 1015, at 7-9);
- <https://web.archive.org/web/19970625184155/http://www.fv.com:80/pubdocs/infohaus-guide-3.txt> (6/25/1997 – Chapter Three – Opening Your Shop on the InfoHaus) (Ex. 1015, at 10-17);
- <https://web.archive.org/web/19970625184207/http://www.fv.com:80/pubdocs/infohaus-guide-4.txt> (6/25/1997 – Chapter Four – Adding and Removing Information Products) (Ex. 1015, at 18-26);
- <https://web.archive.org/web/19970625184222/http://www.fv.com:80/pubdocs/infohaus-guide-5.txt> (6/25/1997 – Chapter Five – Adding HTML To Your Shop – Advanced Info) (Ex. 1015, at 27-31);
- <https://web.archive.org/web/19970615125950/http://www.fv.com:80/infohaus/helpmeister/> (archived on 6/15/1997 – InfoHaus HelpMeister) (Ex. 1016); and
- <https://web.archive.org/web/19970615124058/http://www.fv.com:80/selling/> (archived on 6/15/1997 – FV Seller Programs June 15 1997 Website) (Ex. 1014).

I certify that each of these pages and/or documents are true and correct copies of the documents or webpages found at the specified locations, and that they were published on the World Wide Web at the location noted in the archive at least as of the archival date provided by the Wayback Machine.

6. A person in the field of ecommerce systems in general, ecommerce affiliate sales systems, web storefront design, and the like, exercising reasonable diligence, would have found the above websites and documents using customary internet searching tools available at the time. Additionally, in my position and capacity at First Virtual, I often spoke to potential clients and at conferences in the ecommerce field, including individuals with three (3) plus years of technical expertise in this field such as web-designers and technical developers who design and manage ecommerce websites, and directed them to the above websites. In fact, the above websites were made explicitly to receive traffic from such individuals.

7. Exhibit 1015 is a webpage including a search option from the First Virtual website from June 15, 1997. I was personally involved in reviewing content for this webpage, and I certify that Exhibit 1015 is a true and correct copy of that webpage including its linked text documents. This First Virtual InfoHaus Guide webpage was freely and actively available to customers and potential customers at least by June 15, 1997. I navigated to this First Virtual InfoHaus Guide webpage by

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