

Bow provides this redacted transcript without prejudice to its ability to dispute plaintiffs' counsel's confidentiality claims.

3. Attached as **EXHIBIT B** is a true and correct copy of the transcript of the deposition of Robert Maginn taken on June 23, 2009. Redacted from the transcript are lines of testimony that plaintiffs' counsel claims are subject to confidentiality restrictions. Long Bow provides this redacted transcript without prejudice to its ability to dispute plaintiffs' counsel's confidentiality claims.

4. On April 7, 2009, I first noticed the depositions of the three named plaintiffs, served requests for production of documents on plaintiffs, and served interrogatories on plaintiff Jenzabar.

5. Long Bow initially deferred the depositions at plaintiffs' request. On May 19, however, I re-noticed the three depositions, after plaintiffs refused to supply dates for rescheduling the depositions. On May 20, plaintiffs' counsel stated that Jenzabar had designated Eric Russo ("Russo") as its Rule 30(b)(6) witness.

6. On Friday, May 29, the last business day before the Rule 30(b)(6) deposition of Jenzabar, plaintiffs filed an emergency motion to prevent all discovery, including the three noticed depositions. Neither Mr. Russo, nor anyone else from Jenzabar, nor any of plaintiffs' attorneys appeared for the noticed deposition on June 1.

7. On June 1, Long Bow opposed plaintiffs' motion to prevent discovery and simultaneously filed an emergency motion for Rule 37(d) sanctions, including dismissal, due to plaintiffs' failure to answer interrogatories and failure to appear for a Rule 30(b)(6) deposition.

8. On June 2, this Court heard argument on both motions. During the hearing, the Court specifically asked me if Long Bow wished to receive documents and interrogatory responses before conducting plaintiffs' depositions. I confirmed that Long Bow preferred, and had originally intended, this sequence of discovery.

9. On June 2, the Court issued rulings on both motions. The Court's handwritten order on Jenzabar's emergency motion for protective order stated the following:

With the exception of private client lists and financial info, which will be held confidential for use solely in these proceedings and not disclosed elsewhere, this motion is denied. However, it is denied without prejudice. If based on future events, including discovery, internet postings, etc., plaintiffs are able to make the requisite showing, this Court will consider the issue and make the necessary order, including, if appropriate, a 'claw-back' provision regarding depositions. At this time, however, Court will not construe fear of bad publicity as constituting an adequate showing; nor the concern re: trademarks, etc.

The Court's handwritten order on Long Bow's emergency motion for relief pursuant to Rule 37(d) stated the following:

Motion allowed as follows: Answer to Ints and other pending written discovery, if any, to plaintiffs shall be filed on or before June 12, 2009. Depositions of plaintiffs shall occur after that but no later than June 23, 2009. This includes 30(b)(6) deposition. Depositions of defendants may follow this discovery. Further relief sought in this motion is denied, without prejudice. This Court will entertain all options and sanctions in the event plaintiffs fail to comply with this Order. However, at this time, the Court considers the non-responses to be the result of a good faith dispute.

10. On June 5, I re-noticed the three depositions once again: (1) Jenzabar's Rule 30(b)(6) deposition for June 16; (2) Chai's deposition for June 18; and (3) Maginn's

deposition for June 19. Attached as **EXHIBIT C** are true and correct copies of the three amended notices of deposition.

11. Attached as **EXHIBIT D** is a true and correct copy of a column authored by Yvonne Abraham and published in *The Boston Globe* on June 7, 2009. The column quotes Jenzabar's spokesman, Robert Gray, as follows:

"Long Bow has gratuitously maligned Ling Chai for decades," said Rob Gray, spokesman for Jenzabar. "And now that she has the resources to fight back, they don't like it."

12. Attached as **EXHIBIT E** is a true and correct copy of an online reader comment from "bmaginn," which Maginn testified he authored and posted in response to the June 7 column by Ms. Abraham. Maginn's comment states:

As a party to this lawsuit involving my wife, it is clear to me that your reporting is so bias that no one should take you seriously. You fail to understand that the Internet is not like a newspaper and an Internet website "publishes" itself everyday. If you know you are publishing a pack of lies about someone and you are honest in your publishing you should publish the truth and not knowingly defame another person. Your readers need to read what the other Student leaders who were actually in Tiananmen say about this but in your bias report you knew about this website and hid it from the public. Shame on You. Here it is and so much for your insincere claims of free speech when you deny these many student leaders who risked their lives a chance to be heard (<http://www.64memo.com/d/Default.aspx?tabid=97>) <http://www.64memo.com/d/Default.aspx?tabid=97> .

You make such unverify statements as to be held in contempt in any court in the land: 1. How have your verify who is behind this group. It is hugely helpful to those who defend the Tiananmen massacre to have the focus be on such small issues and not the fact that soliders and tanks were sent to kill innocent unarmed citizens. What is your proof that they do not have huge resources behind them from a government or other front organizations? Your statement about bankruptcy is rubbish and you know it. 2. In an Internet age how can you say comparing the Internet

to a newspaper is "wise"? You seek to puff up the Judge on behalf of those you advocate for but most Judges are above that tactic. 3. You say this is about Free Speech but you fail to understand the concept of Internet Identity theft. You should not and hopefully cannot use your metatags to redirect Internet traffic meant for one site to your site. And then on that redirected website knowingly publishing every day the same set of lies that have been proven untrue in a court of law and have been retracted in writing by the very person who said the lies. Another fact you conveniently omit in your search for Free Speech!

In my opinion, you write with an agenda to harm and mislead. You write with a clear bias and the truth will be heard in a court of law. Tiananmen was also about the Rule of Law and thankfully we live in a country of laws. And Thank God for the Internet it gives all of us a chance to comment back on misleading stories like yours. You have written before against Chai Ling in other publications and conveniently neglect to tell your readers you have a long standing bias against her for starting a business and employing hundreds of people as though there is something wrong with that (you called it "Cashing In" did you not?). In the end we only feel sorry for you the reporter/columnist of this article. Something is missing in your life that leads to your jealousy over success in business and in life. On this Sunday morning I will say a prayer to God that you find some happiness and use your important positi

13. On the evening of Friday, June 12, after the close of business, Jenzabar served a 122-page document purporting to be its response to Long Bow's interrogatories. Attached as **EXHIBIT F** is a true and correct copy of Jenzabar's interrogatory responses. Nearly 100 pages (pages 9 through 103) of this "response" consisted of nothing but the double-spaced source code from part of Long Bow's website, which plaintiffs "cut and pasted" into the text of their responses.

14. Plaintiffs produced no documents between June 2 and June 12. After the close of business on Friday, June 12, however, plaintiffs produced (by leaving them with a building security officer) two disks containing approximately 3,000 pages of

documents. Most of this production – roughly 2800 pages of it – appears to have been recycled from another lawsuit and, as a result, bore at least two sets of Bates numbers and, in many cases, “confidential” designations that do not apply in this case.

15. Plaintiffs have represented that they have no responsive documents in the following categories:

- Plaintiffs have no documents concerning Long Bow’s alleged use of Jenzabar’s trademarks;
- Plaintiffs have no documents concerning the allegation that “numerous inquires from and misunderstandings with Jenzabar’s clients” resulted from Long Bow’s website;
- Plaintiffs have no documents concerning any instances of confusion allegedly caused by Long Bow’s use of Jenzabar’s trademarks;
- Plaintiffs have no documents concerning any business opportunities allegedly lost as a result of Long Bow’s use of Jenzabar’s trademarks;
- Plaintiffs have no documents concerning any harm allegedly suffered by them as a result of Long Bow’s use of Jenzabar’s trademarks;
- Plaintiffs have no documents concerning any efforts by them to stop or prevent persons other than Long Bow from use of Jenzabar’s trademarks;
- Plaintiffs have no documents concerning their allegation that Long Bow is motivated by sympathy for officials in the Communist government of China;
- Plaintiffs have no documents concerning their allegation that Long Bow is motivated by malice toward Chai Ling and a desire to discredit Chai Ling and advance Long Bow’s divergent political agenda.

16. Attached as **EXHIBIT G** is a true and correct copy of my letter dated May 27, 2009, which memorializes the Rule 9C conference in which plaintiffs’ counsel represented that plaintiffs have no documents in the categories listed in Paragraph 15 of this Affidavit. Plaintiffs produced no emails or other documents concerning any communications with actual or prospective customers about Long Bow, the Long Bow

website, or the Film. Plaintiffs produced no documents concerning any lost business opportunities or economic harm.

17. In its April 7 document requests, Long Bow requested Jenzabar's financial statements. Initially, Jenzabar refused to do so. Jenzabar later agreed to produce financial statements, on the condition that they remain confidential. Long Bow readily agreed. Jenzabar then changed its mind and, on May 29, asked the Court to prevent all further discovery, including the production of financial statements. The Court rejected this request. Yet despite the Court's order requiring responses to written discovery to be complete by June 12, the Court's June 12 deadline passed without any production of Jenzabar's financial statements, or any financial information whatsoever.

18. On June 15, I objected to the failure to produce financial statements, among other documents. On June 17, plaintiff's counsel reported that "certain financial information was available for review." After my further objection, given that the Rule 30(b)(6) deposition was scheduled to take place the next day, plaintiffs' counsel emailed a one-page PDF document containing six lines of selected, "gross" financial numbers for the period 2002 to 2007. Jenzabar produced no actual financial statements. To this day, plaintiffs refuse to produce Jenzabar's actual financial statements. Plaintiffs also refuse to produce documents relevant to their reputations, despite making many allegations about their reputations in connection with the surviving trademark claims.

19. On Monday, June 15, the day before the Rule 30(b)(6) deposition of Jenzabar, plaintiffs' counsel wrote: "I believe we shall be producing Ling Chai tomorrow and Bob Maginn on Friday. Both will also be our Rule 30b6 designees. I would also

suggest that we start the depositions @ 9:30.” Later that day, plaintiffs’ counsel wrote another email asking to change the schedule:

[S]ince there will be no other 30b6 witness separate from Ling and Bob, I suggest that we proceed on Thursday and Friday, the dates you noticed their depositions. I am meeting with them later today and will confirm that schedule (I apologize for any confusion), as well as the subjects each will be prepared to cover.

Plaintiffs’ counsel and I also spoke in the afternoon on June 15 to confirm plaintiffs’ commitment to appear for their depositions. During the call, plaintiffs’ counsel reiterated his representation that Chai and Maginn would be Jenzabar’s Rule 30(b)(6) witnesses and would testify as such on June 18 and June 19, respectively. Plaintiffs’ counsel also represented that both Chai and Maginn would be designated as Jenzabar’s Rule 30(b)(6) witnesses as to all thirteen topics identified in the deposition notice. In addition, plaintiffs’ counsel agreed that both depositions would begin at 9:00 a.m., pursuant to the deposition notices. In direct reliance on these representations by plaintiffs’ counsel, I agreed to defer the Rule 30(b)(6) deposition to June 18 (Chai) and June 19 (Maginn). Attached as **EXHIBIT H** are true and correct copies of the email and letter correspondence reflecting plaintiffs’ counsel’s representations.

20. On June 17, I noticed the deposition of Eric Russo for June 22, given that plaintiffs had identified him as a knowledgeable person and a likely trial witness.

Attached as **EXHIBIT I** is a true and correct copy of the notice of deposition of Eric Russo.

21. On June 17, five days after the Court’s deadline, and the day before the first deposition, Jenzabar produced an additional 150 pages of documents.

22. On June 18, Chai arrived for her deposition 50 minutes late at 9:50 a.m. When Chai arrived, she had with her Maginn (whose deposition was scheduled for the next day) and Jamison Barr, Jenzabar's general counsel. Early in the deposition, Maginn – Jenzabar's CEO and Chairman, and Chai's husband – stepped out of the conference room and tried to photograph the Long Bow representatives present at the deposition. Maginn did not request permission to do so, and Long Bow's representatives did not give Maginn permission to take their photographs.

23. At the end of the day, minutes after the Chai deposition suspended, plaintiffs' counsel informed Long Bow's counsel for the first time that Maginn refused to appear the next morning for his scheduled deposition, purportedly because he had a client meeting that was more important than the noticed deposition. Plaintiffs' counsel also informed Long Bow's counsel for the first time that Jenzabar's only other disclosed witness – Russo – also refused to appear for his deposition on June 22, because he was getting married on June 20. Plaintiffs' counsel refused to say whether or not Jenzabar would produce a Rule 30(b)(6) witness prior to the Court-imposed deadline of June 23. Maginn did not appear for his deposition on June 19, and Russo did not appear for his deposition on June 22.

24. On June 22, having heard nothing, I emailed plaintiffs' counsel to determine if plaintiffs would make any effort at all to comply with the Court's order. Later in the afternoon on June 22, plaintiffs' counsel sent a reply email that stated: "Bob Maginn will appear to testify tomorrow @ 10 am at your office as Jenzabar's Rule 30b6 representative." Attached as **EXHIBIT J** are true and correct copies of my communications with plaintiffs' counsel.

25. On June 23, I conducted Maginn's deposition. Although the notice for Maginn's deposition stated a 9:00 a.m. start time, Maginn did not arrive until 10:00 a.m.

26. On June 25, almost two weeks after the Court's deadline, and the day after Maginn's deposition, Jenzabar produced an additional 580 pages of documents consisting entirely of content from Long Bow's own website.

27. On June 29, two and a half weeks after the Court's deadline, Jenzabar produced an additional 660 pages of content from Long Bow's website. Plaintiffs' document production consists almost entirely of: (a) publicly available information, (b) content from Long Bow's own website, and (c) recycled filler material from a previous lawsuit.

28. Attached as **EXHIBIT K** is a true and correct copy of the source code from Jenzabar's website as of January 2002, as reflected on www.archive.org.

29. Attached as **EXHIBIT L** is a true and correct copy of the article titled "Great Story. Bad Business," which is available online from *Forbes* magazine at the web address: <http://www.forbes.com/forbes/2003/0217/114.html>. Attached as **EXHIBIT M** is the source code for that article, which includes the word "Jenzabar" as a metatag.

30. Plaintiffs' counsel took the deposition of Carma Hinton on July 2, 2009. I defended the deposition, which started on time. During the deposition, plaintiffs' counsel asked numerous questions about irrelevant topics, including the following:

- Ms. Hinton's classmates from China in the mid-1960s;
- Ms. Hinton's high school art teacher in China;
- Whether any of Ms. Hinton's high school classmates from China are now members of the Communist party;
- Whether Ms. Hinton or any of her family were members of the Red Guard;

- Her family members who reside in China;
- Her travel to China;
- Her personal charitable contributions;
- Her appearance in a nearly forty year-old photograph of a large group of people that included Ms. Hinton's father and Zhou Enlai (China's former Premier).
- The amount of money raised to fund the creation of the Film well over 15 years ago;
- Her willingness to post Chai's deposition testimony about Tiananmen Square on the Long Bow website;
- Her willingness to post a letter criticizing the Film on the Long Bow website;
- Her willingness to meet with Chai during the pendency of this lawsuit in an effort to settle the case;

31. Plaintiffs' counsel took the deposition of Richard Gordon, Long Bow's President, on July 7, 2009. I defended the deposition, which started on time. During the deposition, plaintiffs' counsel asked numerous questions about irrelevant topics, including the following:

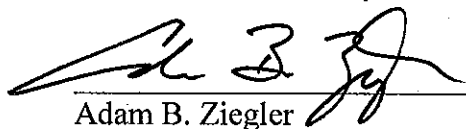
- Production of the Film;
- The methods of acquiring source material for the Film;
- Funding for the Film;
- Long Bow's financial status, including the amounts it has paid to its attorneys;
- Whether Long Bow met with members of the Chinese government in making the Film;
- Whether anyone at Long Bow has ever talked to Li Peng;
- Whether Li Peng is the adopted son of Zhou Enlai;

- Whether Long Bow has ever received any money from the Chinese government;
- Mr. Gordon's and Ms. Hinton's personal charitable contributions.

32. Plaintiffs have an in-house legal department led by Jamison Barr, Jenzabar's General Counsel, and are represented by at least the law firms of Eckert Seamans Cherin & Mellott, LLC and Brown Rudnick LLP. Both Mr. Barr and Mr. Kulig, from Eckert Seamans, have been present for all of the depositions in this case

33. Attached as **EXHIBIT N** is a true and correct copy of Justice Botsford's Trial Order in Cahaly v. Benistar Property Exchange Trust Co., Inc., 2003 WL 25316218 (Mass. Super. 2003).

Signed under penalties of perjury this 9th day of July, 2009.


Adam B. Ziegler

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon the attorney of record for each party by mail ~~by hand~~

Date: July 9, 2009 