

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF STETLAND
PINELLAS DIVISION

Sammy Adams,
Plaintiff,

v.

No. A-11-CA-2356—CHR

Xtreme, S.A. and
Sports.com Inc.,
Defendants.

Deposition of Julian Lukas

1 Counsel for Plaintiff Sammy Adams: Just for the record, this deposition of Defendant's
2 Corporate Representative Julian Lukas is being taken for the limited purpose of obtaining
3 discovery relevant to the two pending motions in this matter. Sammy Adams takes this
4 deposition for this limited purpose and without waiver of his rights to fully depose Mr.
5 Lukas about all of the other matters raised by the pleadings in this case on a later date. Is
6 that right?

7
8 Xtreme counsel: That's correct. Same as for all the other depositions. Also, we do have
9 everyone's understanding that Mr. Lukas' appearance in Stetland for this deposition, and
10 the upcoming hearing, is without waiver or prejudice to the company's pending 12(b)(2)
11 motion, understood?

12
13 Adams Counsel: Correct.

14
15 (Witness was sworn)

16
17 Q: (Adams counsel) Alright, let's begin. Please state your name for the record.

18
19 A: (Witness) Julian Lukas.

20
21 Q: Where do you live?

22
23 A: Switzerland

24
25 Q: Is that where you're originally from?

26
27 A: No, I grew up in Norway but moved to Switzerland for college and remained there
28 ever since.

1 Q: What degree do you have?
2
3 A: Engineering with a minor in marketing.
4
5 Q: What is your job title?
6
7 A: I am Chief Operating Office of Xtreme, S.A.
8
9 Q: What are your duties?
10
11 A: I oversee all operations, ultimately. I'm also involved in working with our design
12 team and marketing people. I make the final decision on all important matters.
13
14 Q: Are you involved in customer relations?
15
16 A: Not really. We are not a retailer. I do work with our authorized retailers spread
17 around the globe. We meet from time to time and talk about trends in new products,
18 demand for certain equipment, etc. I see them at industry conferences from time to time.
19
20 Q: What is Xtreme, S.A?
21
22 A: It is a Swiss corporation based in Berne, Switzerland.
23
24 Q: How long as has it been in operation?
25
26 A: About twenty years. I've been with the company about six.
27
28 Q: Are you the best person within the organization to discuss the scope of its
29 operations?
30
31 A: Our directors would say the answer had better be "yes."
32
33 Q: Is that a yes?
34
35 A: Sorry, yes.
36
37 Q: Tell me about Xtreme's operations?
38
39 A: We design, manufacture and sell a limited variety of extreme outdoor sports
40 equipment. We have two basic lines of gear—surfing and climbing/hiking gear.
41
42 Q: I get the climbing idea for a Swiss corporation but how did you get involved in surf
43 products?
44
45 A: That is ironic, no? We of course began with hiking and climbing gear when the
46 company began. I was not present for that season of the company's history but it is well

1 known throughout the company. Anyway, that's where we became famous among
2 climbers. We have a reputation for making top of the line, innovative gear that the best
3 climbers and hikers can use for virtually any condition present on this planet. My
4 immediate predecessor travelled around the globe doing product development and
5 marketing and was introduced to surfing while in Australia. He began to toy around with
6 sketches for surfboards and realized that we already had much of the manufacturing
7 equipment in our primary facility in Berne to produce such a product. A few years later we
8 introduced our line of surfboards—with some pretty cool features and designs. Top
9 surfers around the world love our surfboards and amateurs like to mimic the pros and so
10 we have started to have some pretty healthy sales of our surfing line now.

11

12 Q: I take it Xtreme is a successful company?

13

14 A: I would certainly not contend otherwise.

15

16 Q: By the way, you speak English well.

17

18 A: Thank you. Europeans are very well educated and we tend to speak multiple
19 languages fluently. English is a rather clumsy, simple language.

20

21 Q: Sorry about the scattershot nature of these questions, but this is simply a
22 preliminary deposition in this matter to be focused on certain pending issues.

23

24 A: No apology is needed. I am at your beck and call.

25

26 Q: Now speaking of English, is it true that your company's website is in this clumsy,
27 simple language?

28

29 A: Actually it is. It has, for some reason, become the international language of the
30 world and of transnational business.

31

32 Q: Do you do a lot of business in the United States?

33

34 A: I'm not sure what you mean by "a lot" but actually a fair amount of our total sales
35 are to authorized retailers in English-speaking countries.

36

37 Q: Let's get some specific numbers here, alright? During the most recent complete
38 fiscal year, what were Xtreme's total sales?

39

40 A: In revenues, we realized approximately 104 million. That's in Euros not dollars.
41 Switzerland's official currency is the Franc but our company's books are done in Euros
42 instead.

43

44 Q: Pardon my ignorance, but what would the value in U.S. dollars be of 104 million
45 Euros?

46

1 A: Again, you need not apologize for your relative ignorance. I understand you are not
2 European. Anyway, it would be about \$150 million U.S. dollars at current exchange rates.
3

4 Q: Of that amount, what were the profits?
5

6 A: We had a 20% profit margin. An excellent year.
7

8 Q: In terms of your two divisions—Surf and Turf—how were the revenues and profits
9 distributed?
10

11 A: The Turf products—climbing and hiking gear—account for roughly 75% of our sales
12 and profits. The Surf line is the remainder. It is still newer but growing quite nicely.
13

14 Q: Do you find your markets for the two lines to be different, geographically?
15

16 A: To an extent, that would be quite right naturally.
17

18 Q: Elaborate some please.
19

20 A: Alright. Closer to our home, the Turf line is most popular. Europe is primarily a
21 hiking and climbing region in terms of our sales though we have sold some Surf products
22 along the coasts. In Australia we have gotten to the point that our sales of the two lines are
23 virtually equal. In the United States, we are selling about 60% climbing and now 40%
24 surfing with the latter number increasing.
25

26 Q: Now when you mention climbing gear that would include the SkyNet safety
27 harness?
28

29 A: Obviously.
30

31 Q: When was that product designed?
32

33 A: Well the current design, the one complained about by your client, was made in 2010.
34 We just began selling that particular model at the beginning of 2011.
35

36 Q: I recognize we're not getting directly into the merits of the case yet—and I reserve
37 my right to ask many more detailed questions later about this—but can you tell me what
38 the basic idea was behind the current design?
39

40 A: Certainly. We were concerned by some reports involving climbers at very high
41 altitudes having difficulties adequately securing their traditional harnesses in rappelling
42 activities. The low oxygen at high altitudes can cause mental and physical fatigue. In those
43 conditions, the margin for error is as thin as the atmosphere and one can't be too careful.
44

45 Q: So?
46

1 A: So we came up with the idea for a simpler harness that one could secure quickly and
2 easily—with primarily a Velcro clasp.
3

4 Q: Let me show you the exhibit we've seen before in this matter—the website page of
5 your company for the SkyNet. Do you recognize this Exhibit "1"?
6

7 A: Certainly, I helped to design our webpage.
8

9 Q: If I look closely at the photograph, I can still see what appears to be the traditional
10 loops and buckle clasps.
11

12 A: Yes, while there still some loops and buckles, the primary point that a climber would
13 actually need to manipulate while on a mountain is a simple Velcro clasp in the middle of
14 the belt. The other loops and buckles would have been fastened before the climb ever
15 began. The climber steps into the harness and simply closes the primary fastener with the
16 Velcro and he is ready to rappel.
17

18 Q: Again, avoiding the merits but just curious, why Velcro?
19

20 A: It is the simplest form of fastener ever developed and is tremendously strong.
21

22 Q: Do you understand the engineering of Velcro?
23

24 A: Can a duck quack? I'm an engineer good fellow. Velcro utilizes hooks on one side
25 and loops on the contrary side. Not coincidentally, Velcro was invented by a Swiss
26 electrical engineer named George de Mestral in 1948 and was first introduced
27 commercially in the late 1950s. Master Mestral got the idea while hunting the Alps with his
28 dog. He noticed the dog's fur catching burrs. Under a microscope, this process of the fur
29 and the burrs coming together appeared to be much like the hooks and loops of Velcro
30 manufactured today.
31

32 Q: Fascinating. Please continue.
33

34 A: Fascinating to Americans perhaps, but such observations are expected of the Swiss.
35 Hook and loop fasteners have two components—two lineal fabric strips that are attached
36 to the opposing surfaces to be fastened. When the two faces are pressed together—the
37 hooks and the loops—the hooks catch the loops and the two pieces fasten or bind
38 temporarily. They can be separated by purposefully pulling or ripping them apart.
39

40 Q: Is Velcro considered safe and strong?
41

42 A: If you ask NASA I'm sure they would answer in the affirmative. Velcro is strong
43 enough that a two inch square piece is enough to support a 79 kilogram adult—roughly
44 175 of your American pounds. Velcro is easy to use, safe, and maintenance free.
45

46 Q: Are you serious about NASA?

1
2 A: If you don't believe me, go to the web. It's documented. Your space shuttle used
3 tens of thousands of inches of Velcro, including on the astronauts' suits. Also, your quite
4 aggressive U.S. Army uses Velcro. If it's good enough for your astronauts and storm
5 troopers it ought to be quite safe for some climbers.
6
7 Q: Yet your SkyNet only has two square inches of Velcro?
8
9 A: I'm not sure of the exact dimensions but I'm certain it's adequately designed.
10
11 Q: Do you understand that my client weighs a bit more than 175 pounds?
12
13 A: As an American, I have no doubt that he must have some impressive girth. Yet our
14 Velcro would be sufficiently safe and strong for even him.
15
16 Q: That's what your website promised customers didn't it?
17
18 A: Our customers are our authorized retailers. They understand the design and safety
19 aspects of our products as well as we do. That's why we authorize them to sell.
20
21 Q: But you understand your ultimate customers are the product users—like my client,
22 right?
23
24 A: I cannot deny that. But we did not sell anything to your client.
25
26 Q: I know that's why we sued Sports.com and yet you accused us of fraudulently
27 joining them. You even signed an Affidavit in support of that motion, correct?
28
29 A: My lawyers asked me some questions, prepared an Affidavit, and asked me to sign. I
30 do not understand the intricacies of your American laws.
31
32 Q: Are you objecting to being sued here?
33
34 A: In Stetland, yes, that is my understanding.
35
36 Q: Why?
37
38 A: Ask my lawyer.
39
40 Q: What's your understanding?
41
42 A: We don't do business in Stetland. We didn't sell to your client. And the seller—
43 Sports.com—sold to your client in Texas where he was hurt. Your suit here is unfair and
44 burdensome on our little company.
45

1 Q: Are you serious? A \$150 million a year company says it's being burdened by one
2 suit by a crippled customer who ordered the product in Stetland?
3
4 A: Quite serious. And he's not our customer.
5
6 Q: What—is it a burden for you to come here for deposition?
7
8 A: Quite annoying actually. I have much more pressing business in much more
9 interesting places.
10
11 Q: What are your sales in Stetland?
12
13 A: We only sell to authorized retailers. We have none based in Stetland, so I would say
14 zero.
15
16 Q: Sports.com is a Stetland corporation, is it not?
17
18 A: Not its operations. They are in Texas. I've never had any idea where they were
19 incorporated, nor would I care.
20
21 Q: How many U.S.-based authorized retailers do you have?
22
23 A: Two currently. Sports.com from Texas and Hykes! from Seattle.
24
25 Q: Describe your relationship with them.
26
27 A: They are independent companies. They buy from us and sell to others.
28
29 Q: Surely there's more to it than that. Do you meet with them?
30
31 A: Yes we see their reps at industry gatherings and have other conversations at times.
32
33 Q: You steer customers to them via your "store locator" link on your webpage also,
34 right?
35
36 A: Yes. An interested person clicks on that link and, based upon their location, are
37 provided a link to the webpage of an appropriate retailer.
38
39 Q: These retailers are authorized by you to sell your gear?
40
41 A: Indeed.
42
43 Q: So when Sammy Adams went to your website and clicked the store locator what
44 would he find?
45

1 A: A place to input his country. And after that he would click where within the United
2 States he was located.
3
4 Q: You mean what state he was in?
5
6 A: Yes, that's how your country is divided.
7
8 Q: So the word "Stetland" is on your website under store locator as one of the options
9 for a customer to click?
10
11 A: Yes. It's a U.S. state. They're all listed. That's how we know which retailer to steer
12 them toward.
13
14 Q: And then?
15
16 A: Because Sports.com is our southern U.S. retailer, your client would then be
17 forwarded to Sports.com's own independent website where he could, and apparently did,
18 place an order with that company.
19
20 Q: Do you ship the goods directly to the users?
21
22 A: No, we ship only to the retailers and they do the shipping.
23
24 Q: Where are your goods sold to Sports.com shipped?
25
26 A: To Austin, Texas where its primary warehouse and retail store is located.
27
28 Q: Sports.com has a storefront as well as a website?
29
30 A: Yes, but I believe only in Austin.
31
32 Q: So the SkyNet purchased by my client would have been shipped from Austin to Pine
33 Springs, Texas?
34
35 A: You'll have to ask a Sports.com person but I assume that's correct.
36
37 Q: But your products are purchased by Stetland users?
38
39 A: Well one—your client.
40
41 Q: No others?
42
43 A: For climbing gear, I'd be surprised if we had hardly any of our products sold in
44 Stetland. This state of yours has no hills. None. Period. The thick air here is stifling.
45

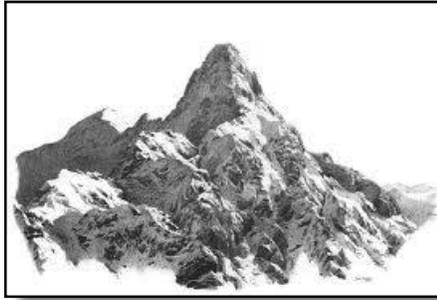
1 Q: Are you denying a single sale of a SkyNet to a Stetland resident—other than Mr.
2 Adams?
3
4 A: Even Adams was buying the product for delivery in Texas.
5
6 Q: But are you saying there have been no others in Stetland?
7
8 A: The SkyNet is new and designed for high altitude.
9
10 Q: But what about other products?
11
12 A: They have nothing to do with this preposterous lawsuit of yours.
13
14 Q: Answer my question.
15
16 A: Okay, we sell to only authorized retailers and they're not in Stetland.
17
18 Q: But your authorized retailers sell to customers in Stetland.
19
20 A: Not the SkyNet.
21
22 Q: But your other products?
23
24 A: Certainly our surfing products would be used in Stetland—it has many popular
25 beaches. The best in the world perhaps.
26
27 Q: Do you have some idea of the quantity of your surfing products sold by your
28 retailers to customers in Stetland?
29
30 A: An idea. It would only be Sports.com as Stetland is within its territory. I believe
31 Sports.com has reported to me sales of surfing units in Stetland last year that would
32 constitute roughly 5% of our total sales of surfboards. But remember, surfing is our
33 smaller division. And that 5% number is likely decreasing as we are rolling out the
34 surfboards one area of the globe at a time. We expect our new sales in Africa and the
35 Pacific will cause the 5% number to decrease to something closer to 3% of our total sales of
36 surfing products worldwide for the current fiscal year. I never see those numbers in any
37 final form until the end of the year. Too early to know yet.
38
39 Q: Since Sports.com reports to you on its sales by region, and even state, you must
40 know exactly what their volume of sales of your climbing products was last year in
41 Stetland?
42
43 A: Honestly I don't remember any sales by Sports.com of our climbing gear in Stetland
44 last year. That would surprise me—particularly for the SkyNet since it was just introduced
45 at the beginning of 2011.
46

1 Q: Zero?
2
3 A: That's my knowledge. If there was some incidental sale, it didn't reach my radar.
4 Surely you should understand that.
5
6 Q: Have you heard of any personal injury claims by Stetland citizens involving your
7 climbing gear?
8
9 A: No. I've not heard of any and wouldn't expect any. Ask Sports.com.
10
11 Q: Except this case.
12
13 A: And this one is—how would you say it? Bogus.
14
15 Q: Do you market your products in Stetland?
16
17 A: There's no reason to market our climbing gear in Stetland.
18
19 Q: Any of your products?
20
21 A: Not specifically that I can recall.
22
23 Q: Your website?
24
25 A: It can be accessed by anyone from anywhere. I suppose a NASA astronaut could
26 access our internet page from space but we don't market our products in space.
27
28 Q: Do you advertise your webpage anywhere?
29
30 A: In some climbing magazines we take out small advertisements in the back. And a
31 few surfing magazines more recently.
32
33 Q: Are these magazines sold in Stetland?
34
35 A: Are you serious? How would I know? They are American magazines written in
36 English. Go ask them.
37
38 Q: What about advertising your products on other websites?
39
40 A: We've never had the need to do that with our climbing gear.
41
42 Q: What about surfing products?
43
44 A: There are some small links we pay to place on certain surfing websites—to help get
45 a foothold in that market.
46

1 Q: Are these websites targeting Stetland customers?
2
3 A: Doubtful since we have no retailers in Stetland and they are our only customers.
4
5 Q: Have you heard of a website called surfguru.com?
6
7 A: Perhaps
8
9 Q: Isn't it a website where you provide an advertising link for your company's
10 products?
11
12 A: Yes, beginning in the spring of 2011, we began to pay for links to appear on that
13 website to promote our surfing line.
14
15 Q: Isn't that website dedicated to Stetland surfers?
16
17 A: I don't run that website. It does reference Stetland beaches, etc. I'll concede that
18 much.
19
20 Q: What actually appears on that site?
21
22 A: Just a picture of our company logo and the name "Xtreme." Users can click it and be
23 routed to our main webpage.
24
25 Q: Have you ever met with Sports.com representatives in Stetland?
26
27 A: I've seen them at numerous industry conferences all over the United States.
28
29 Q: Including Stetland?
30
31 A: One time, I believe, I met with Sports.com's CEO at a surfing convention in Tampa,
32 Stetland in early 2010.
33
34 Q: What did you discuss?
35
36 A: It was a long time ago. I think we just got further acquainted and talked about the
37 economy mainly.
38
39 Q: That was about the time you were redesigning the SkyNet, wasn't it?
40
41 A: Yes.
42
43 Q: So you probably discussed that potential new item with him?
44
45 A: It is likely yes.
46

1 Q: Would he have had input on your design ideas?
2
3 A: Certainly not. I recall he has no engineering background.
4
5 Q: You've seen Sports.com's website?
6
7 A: Of course.
8
9 (Adams Counsel) Thank you for your time. I'll reserve the remainder of my questions
10 for later in this case.
11

Xtreme



Shop for Xtreme's Unique and Unparalleled line of "Surf & Turf" products!!

Climbing Products

Shoes
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All-New SkyNet

The fully adjustable SkyNet climbing harness can be used for nearly any style of high-altitude climbing during any season.

- Padded, bullhorn-shaped waistbelt is ergonomically designed
- Adjustable leg loops are designed for quick entry/exit
- New Velcro fastener for safe 'n secure high-altitude use