

confidential Corporate Participants pages, creating the false appearance that Disney made no claim of confidentiality as to any portion of the document.

SSI suggests Disney may have generated two versions of the document, one confidential and one non-confidential. No evidence supports this hypothesis and, to the contrary, Disney's in-house attorney personally responsible for creating the List, Ms. Vipperman, declared she never generated a non-confidential version and never omitted the confidential Corporate Participants section materials.⁸

Expert testimony by forensics document examiner Erich Speckin establishes that the Restricted Items List from Ms. Slesinger's file, with the confidential legend missing on its face page, is the source document from which SSI and its agents made copies bearing the confidential legend. The legend was removed from Ms. Slesinger's document after copies were made. Unique, identical damage markings common to all copies prove the point beyond all reasonable doubt.

Pati Slesinger's List and SSI's counsel copies are not independently created versions. The cover page on her List is an altered replacement of a page originally bearing a confidential legend. The cover pages on SSI's counsels' Lists are copies of the cover originally on Slesinger's List before alteration. Ms. Slesinger, or someone acting for SSI, altered her cover page, eradicating the word "CONFIDENTIAL" to create the false

⁸ While others apparently participated, at times, in preparing the Restricted Items List (e.g., Shoosh Karpman, Julie White and Lea Adamitz), no evidence demonstrates that any of them varied from Ms. Vipperman's stated practices and procedures.

appearance that Disney made no claim of confidentiality as to the entire document possessed by SSI in Ms. Slesinger's files and to create the false impression that Disney created both non-confidential and confidential versions of the Restricted Items List.⁹

The Court finds that the Restricted Items List which Mr. Sands delivered to SSI contained all 24 pages of the confidential Corporate Participants section, and all those pages were marked "**CONFIDENTIAL - For Internal Use Only.**" An orange divider page immediately following the Corporate Participants title page in the Slesinger List has a tiny piece of white fibrous material on it. While not conclusive, the fibrous material is consistent with a finding that white paper once occupied the space been dividers in Ms. Slesinger's List. The initial pages of the 24-page group from SSI's counsels' copies have damage patterns matching the damage pattern on the Corporate Participants title page in the Slesinger List.

The Court finds that SSI's counsels' copies were made from the Slesinger List at a time when the Slesinger List contained the 24 pages of confidential Corporate Participants material. SSI, or someone acting in its behalf, subsequently removed the 24 pages marked confidential from the Slesinger List to create the false impression that the contents of the Restricted Items List were not confidential and to create the false impression that Disney created both non-confidential and confidential versions of the Restricted Items List.

⁹ Producing in civil discovery documents which the producing party has altered, and which the producing party pretends not to have altered, can constitute a crime. *See People v. Pereira* (1989) 207 Cal. App. 3d 1057. Removing pages, as well as secretly redacting written portions of pages, is equally offensive.

SSI eventually produced to Disney certain pages removed from the Restricted Items List, claiming SSI had only recently found the pages in its files, and claiming not to know how the pages got into SSI's files. At about the same time, SSI made statements to the Court calculated to lead it to believe those pages were not confidential. When Disney moved for a protective order, SSI again disclaimed knowledge of confidentiality. Disney ultimately took its motion off calendar when SSI agreed to return to Disney "all copies ... of the contract summaries." That representation proved false. SSI retained copies of the material, including the source document in Pati Slesinger's file.

Contrary to its representations to Disney and the Court, SSI knew how it had obtained the Restricted Items List and knew it bore conspicuous confidential markings when originally procured by Sands. SSI either knew, or certainly should have known, that it had not returned all copies of the List to Disney. Whether intentionally deceptive, or something less culpable, the Court finds that SSI cannot be trusted to comply fully with any future order requiring it to purge its files of improperly obtained Disney documents. The Court finds SSI knowingly did not return all copies of the Restricted Items List, and the deception was intentional.

Interrogatory Tables

In preparing to respond to a series of interrogatories propounded by SSI in this case, Disney compiled an extensive set of Interrogatory Tables protected by the attorneys' work product privilege. Sands surreptitiously obtained a number of Interrogatory Table pages.¹⁰

¹⁰ Sands may have obtained the entire table. Neither Sands nor SSI have fully accounted for what was taken.

(Exs. 535A, 567/567A, 1029A.) A copy of a Table page produced by SSI's counsel (SSI-X 11760) bears the legend "Attorney work product. Privileged and confidential. Created at the request of counsel." This page bears two fax headers showing it was faxed from Pati Slesinger's Goldbook office and from Sirley Lasswell's Slesinger & Ryder office.¹¹ SSI reviewed the document.

Like the privileged Slesinger v. Disney memo, the Table page has been redacted to remove notations added by SSI which SSI now claims are privileged. The page is part of a larger set of 24 pages of Interrogatory Tables produced from the files of SSI's attorneys during Disney's inquiry into Sands' activities (SSI-X 12943-66). SSI's attorneys disclosed that this 24-page set came originally from Pati Slesinger. While the single page and 24-page group bear the same date, format, and general content, the privilege legend is missing from every page of the 24-page set.

The Court believes all the Interrogatory Table pages presently in question were originally created by Disney with privilege legends. The Court finds the Table page produced by SSI's counsel and the Table pages from Pati Slesinger's file all came from the same legend-bearing source. Transient photocopying damage marks prove they came from a common source document.

The Court finds that SSI, or someone acting on its behalf, removed Disney's privilege legends without disclosing the alterations when the material was ultimately produced. The

¹¹ Ms. Lasswell is SSI's only corporate officer and board member.

deception was calculated to create a false impression that Disney had originally generated the material without protective legends.

Ms. Slesinger claimed, in live testimony before the Court, that she did not remove the confidential and privilege legends from the Restricted Items List and the Interrogatory Table documents. Her demeanor on the witness stand when making those denials, coupled with evidence linking her directly to the documents,¹² convinces the Court that Ms. Slesinger's denials were false.

The Remaining Body of Disney Documents

Many of the remaining documents contain material which, on its face, appears to constitute confidential business and/or legal information. A few examples include: privileged and confidential memoranda concerning Disney negotiations with the Milne Trust for addition of a Winnie the Pooh attraction at Tokyo Disneyland (Exs. 572-80) and concerning the scope of Disney's legal rights relating to Winnie the Pooh (SSI-X 13325-26), rights at issue here; draft Disney discovery responses in this case (SSI-X 11583-11594); draft agreements with handwritten change suggestions (SSI-X 11709-40); draft answers and counterclaims to be filed by Disney in an unrelated lawsuit (SSI-X 11052-72); and documents discussing matters addressed to Disney's Legal Department (SSI-X 11630).

Redactions of marginal notes on over 300 pages of these documents – cataloged in SSI's redaction logs – suggest extensive document-by-document review of the material by

¹² Altered Disney documents were produced from her files.

