

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

PROVISUR TECHNOLOGIES,)
INC.,)
Plaintiff,) Civil Action No.
5:19-CV-06021
v.)
and
WEBER, INC., TEXTOR,)
INC., WEBER) Civil Action No.
MASCHINENBAU GMBH) 5:20-CV-06069
BREIDENBACH, WEBER)
MASCHINENBAU GMBH) Hon. Stephen R. Bough
NEUBRANDENBURG, and)
TEXTOR)
MASCHINENBAU GMBH,)
Defendants.)

DESIGNATED CONFIDENTIAL

ZOOM REALTIME VIDEOTAPED DEPOSITION OF
KEVIN DUESTERHAUS, a witness testifying
individually and as a 30(b)(1) witness on behalf
of defendants, taken remotely on behalf of the
Plaintiff before Peggy E. Corbett, CSR, CCR, RDR,
pursuant to Notice on the 4th day of January,
2022, at the Law Offices of Levy Craig, 4520 Main
Street, Suite 1600, Kansas City, Missouri 64111.

1 A P P E A R A N C E S

2 APPEARING FOR THE PLAINTIFF:

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11 APPEARING FOR THE DEFENDANTS:

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20 VIDEOGRAPHER: Mr. Dave Leyland

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1 (Deposition commenced at 11:33 a.m.)

2 THE VIDEOGRAPHER: We are on the
3 record. Today's date is January the 4th, 2022.
4 We are going on the record at 11:33 a.m. This is
5 the video deposition of Kevin Duesterhaus in the
6 matter of Provisur Technologies vs. Weber,
7 Incorporated, et al. The Case Number is
8 5:20-CV-06069. This deposition is taking place
9 remotely via Zoom. Will counsel please state
10 your appearance and affiliation for the record.

11 MR. BABBITT: Hello, my name is
12 Mike Babbitt for plaintiff Provisur.

13 MR. THOMAS: Henry Thomas for
14 plaintiff Provisur.

15 MS. HAUSMANN: Taylor Concannon
16 Hausmann for plaintiff Provisur.

17 THE REPORTER: I couldn't hear that
18 person. Who was that?

19 MR. BABBITT: I'm Mike Babbitt for
20 plaintiff Provisur. With me is Henry Thomas and
21 Taylor Concannon Hausmann.

22 THE VIDEOGRAPHER: Will the court
23 reporter please swear in the witness.

24 MR. BANOWIT: Actually do you want
25 me to state I'm here, as well?

1 THE VIDEOGRAPHER: I didn't hear.

2 MR. BANOWIT: Don Banowit for
3 defendants. Here with me is Jason Leiker, and
4 just for the record the attorneys and the witness
5 are all here live in the room. The court
6 reporter and videographer are remote.

7 KEVIN DUESTERHAUS,
8 a Witness, being first duly remotely sworn,
9 testified under oath as follows:

10 EXAMINATION

11 BY MR. BABBITT:

12 Q. Good morning.

13 A. Good morning.

14 Q. Please state your name and address for
15 the record.

16 A. My name is Kevin Duesterhaus. My
17 address is 9601 North Green Hills Road, Kansas
18 City, Missouri, 64154.

19 Q. How long have you lived in Kansas City?

20 A. I lived in Kansas City since 1985, but a
21 three-year stint outside of the city. I lived
22 down in the New Orleans area for three years.

23 Q. What's your current job title?

24 A. My current job title is technical
25 solutions manager.

1 Q. And what company do you work for?

2 A. I work for Weber, Inc.

3 Q. Do you have a role at Textor, Inc.?

4 A. I don't believe Textor, Inc. is still
5 valid so -- but I didn't really have a role at
6 Textor, Inc.

7 Q. What do you mean when you say, "Textor,
8 Inc. is not still valid"?

9 A. Well, as far as I understand, Textor,
10 Inc. and Weber, Inc. several years ago combined
11 together.

12 Q. I see.

13 A. So I really don't know if there is a
14 valid Textor, Inc. any more.

15 Q. Can you just explain a little bit more
16 what you mean by Textor, Inc. and Weber, Inc.
17 several years ago combined together?

18 A. Well, when Textor, when Textor was
19 created and came to the U.S., it was, as far as I
20 believe just management. It would have been a --
21 it was a separate entity, although it was they
22 shared resources with Weber, Inc., so service and
23 parts and project management support was through
24 Weber, Inc.

25 Q. Is it your understanding that Weber,

1 Inc. and Textor, Inc. are not part of the same
2 company?

3 A. That is, I believe that would be the
4 case, that the two companies are one company.

5 Q. How long have you worked at Weber?

6 A. I started at Weber in 2002.

7 Q. What are your job responsibilities at
8 Weber?

9 A. Currently?

10 Q. Yes.

11 A. Currently my job responsibility is
12 sales.

13 Q. Would you say that you're knowledgeable
14 about Weber's products and sales?

15 A. I would say I am knowledgeable of
16 Weber's products.

17 Q. Are you knowledgeable about Textor's
18 products and sales?

19 A. I am knowledgeable of Textor's products.

20 Q. Are you knowledgeable about Weber's
21 sales?

22 A. I am knowledgeable of Weber's sales.

23 Q. Are you knowledgeable about Textor's
24 sales?

25 A. I am knowledgeable of Textor's sales.

1 Q. Have you ever been deposed before today?

2 A. I have. I was deposed once before.

3 Q. And what were the circumstances of your
4 prior deposition?

5 A. That was a deposition regarding a past
6 employee who was let go.

7 Q. Did you testify at a trial in connection
8 with that matter?

9 A. I didn't.

10 Q. So again I'll be asking you the
11 questions today, and you'll be answering the
12 questions, but if there's anything you don't
13 understand, you can go ahead and ask me to
14 clarify. I'm try to do my best.

15 You know, if you need a break at any
16 time today, let me know. I'll try to do it every
17 hour or so. And also for the record we want to
18 make sure it's clear that I want to complete my
19 question, and then I'll let you complete your
20 answer, so that we aren't talking over each
21 other. Do you understand that?

22 A. I do.

23 Q. You understand that you're under oath,
24 correct?

25 A. Yes, I do.

1 with respect to bacon solutions?

2 A. There's actually two companies of, maybe
3 three that we would compete with. It would be
4 Provisur, Thurne and Titan.

5 Q. With respect to bacon solutions, does
6 Weber compete more often with Provisur than
7 Thurne and Titan?

8 A. I really don't know the answer to that
9 one. I only have really one bacon customer, and
10 they are a Weber customer. I don't really
11 compete against anybody with them.

12 Q. How do you determine what Provisur
13 products compete with which Weber products?

14 A. The breakdown that I gave you had to do
15 with slicing capacity, so slicing products.

16 Q. Are there other factors that determine
17 whether products may be competitive between
18 Provisur and Weber?

19 MR. BANOWIT: Objection, form.

20 A. Typically the determination, it would be
21 based on the required throughput that the
22 customer needs. That fits you into a specific
23 model, which would tell you then which you would
24 figure -- you make an assumption that that's what
25 you would be competing against, whether it

1 Provisur or Gea or Shiwa.

2 Q. (BY MR. BABBITT) Slicing capacity is
3 not always the determinative factor on which
4 products are competitive, though, right?

5 MR. BANOWIT: Objection, form,
6 foundation.

7 A. I can only speak how I configure a line,
8 or which model to sell, so I don't know what --
9 there's certain options available on the
10 machines, but I couldn't say what other things
11 would do that.

12 Q. (BY MR. BABBITT) Do you believe there
13 are other factors besides slicing capacity that
14 customers consider when choosing to purchase
15 products from Weber versus Provisur?

16 MR. BANOWIT: Objection, form,
17 foundation.

18 A. I believe relationship has to do, a lot,
19 with it.

20 Q. (BY MR. BABBITT) Besides relationship
21 and slicing capacity do you believe there are
22 other factors that customers consider when
23 choosing to purchase products from Weber versus
24 Provisur?

25 MR. BANOWIT: Objection, form,

1 foundation.

2 A. I think there probably are.

3 Q. (BY MR. BABBITT) Can you think of any
4 examples of --

5 A. I'm sorry, go ahead.

6 Q. Can you think of any examples of factors
7 that a customer may consider when deciding
8 whether to buy a product from Provisur versus
9 Weber?

10 A. All I can judge by is my experience and
11 I would say maybe solution is what I've run into
12 before.

13 Q. What do you mean by solution is a factor
14 that customers consider when deciding who to buy
15 products from?

16 A. As the example I gave you of [REDACTED]
[REDACTED], I actually lost a sale to Provisur
18 because of the customer thought they had the
19 better solution for that.

20 Q. And in that instance for [REDACTED],
21 what was the problem that the customer was
22 looking to find a solution for?

23 A. This had to do with a snack tray system.

24 Q. And what was the solution for the snack
25 tray solution? Strike that. What was the

1 solution for the snack tray system?

2 MR. BANOWIT: Objection, form.

3 A. The solution was two slicers converging
4 portions together into a belt loader system, and
5 then into a pocket.

6 Q. (BY MR. BABBITT) Is it correct that the
7 technical solution proposed by a company is an
8 important factor for customers in deciding
9 whether to buy products from Provisur or Weber?

10 MR. BANOWIT: Objection, form,
11 foundation.

12 A. I think the overall solution is very
13 important to the customer.

14 Q. (BY MR. BABBITT) Why do you say the
15 overall solution is very important to the
16 customer in deciding whether to buy products from
17 Weber or Provisur?

18 MR. BANOWIT: Objection to form,
19 foundation, mischaracterizes the testimony.

20 A. You have to -- I have to present a
21 solution to a customer that they think will work.
22 If they don't believe it will work, they won't
23 buy it.

24 Q. (BY MR. BABBITT) so Maybe to back up a
25 little bit, you could describe to me how sales

1 work with customers, and I guess the question I
2 would ask is does a customer come to you with a
3 problem and then you provide a solution?

4 MR. BANOWIT: Objection, form.

5 A. Sometimes that's the case. Sometimes
6 it's a repeat line. Sometimes it's a -- they are
7 asking for a solution.

8 Q. (BY MR. BABBITT) Have you ever seen a
9 Provisur product manual?

10 A. You'd have to be a little bit more
11 specific on that, I believe. Like a physical
12 manual, is that what you're asking about?

13 Q. Correct.

14 A. I don't believe I -- I don't recall ever
15 seeing a Provisur manual.

16 Q. I guess I'd ask have you ever seen a
17 Provisur electronic copy of a manual also?

18 A. So I've seen Provisur manuals. I
19 haven't looked in them, but they are on -- they
20 are sitting in about every maintenance shop that
21 would have a Provisur machine, but I, myself, I
22 haven't looked through one.

23 Q. When you refer to a maintenance shop
24 that might have a Provisur machine, are you
25 referring to a customer's maintenance shops?

CERTIFICATE OF DEPONENT

I have read the foregoing transcript of my deposition and except for any corrections or changes noted on the errata sheet, I hereby subscribe to the transcript as an accurate record of the statements made by me.

KEVIN DUESTERHAUS

SUBSCRIBED AND SWORN before and to me
this ____ day of _____, 20__.

NOTARY PUBLIC

My Commission expires:

C E R T I F I C A T E

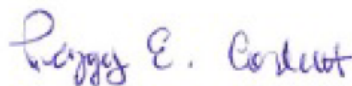
I, Peggy E. Corbett, a Certified Court
Reporter of the State of Missouri, do hereby
certify:

That prior to being examined the witness
was by me duly sworn;

That said deposition was taken down by
me in shorthand at the time and place
hereinbefore stated and was thereafter reduced to
writing under my direction;

That I am not a relative or employee or
attorney or counsel of any of the parties, or a
relative or employee of such attorney or counsel,
or financially interested in the action.

WITNESS my hand and seal this 10th day
of January, 2022.



PEGGY E. CORBETT,
CCR No. 143, RDR, CRR

VERITEXT LEGAL SOLUTIONS
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