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SALT LAKE COUNTY

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**IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH**

THE SCO GROUP, INC.,
a Delaware corporation,

Plaintiff,

vs.

NOVELL, INC.,
a Delaware corporation,

Defendant.

COMPLAINT

(Jury Trial Demanded)

Civil No.: 040900936

Judge: Anthony B. Quinn

Plaintiff, The SCO Group, Inc. (“SCO”) sues Defendant Novell, Inc. (“Novell”) and alleges as follows:

I. NATURE OF THIS ACTION

1. Through an Asset Purchase Agreement dated September 19, 1995, as amended (“Asset Purchase Agreement,” attached hereto with amendments as Exhibit “A”) wherein Novell received 6.1 million shares of SCO common stock, valued at the time at over \$100 million in consideration, SCO, through its predecessor in interest, acquired from Novell all right, title, and interest in and to the UNIX and UnixWare business, operating system, source code, and all copyrights related thereto, as well as all claims arising after the closing date against any parties relating to any right, property, or asset included in the business.
2. In Attachment E of Novell’s Disclosure Schedule to the Asset Purchase Agreement (Exh. A at Attachment E), Novell provided a list of approximately 106 copyright registrations (encompassing 8 pages) covering products relating to the business transferred to SCO.
3. In the course of exercising its rights with respect to UNIX and UnixWare, SCO has filed for copyright protection with the United States Copyright Office.
4. In a bad faith effort to interfere with SCO’s exercise of its rights with respect to UNIX and UnixWare technologies, Novell has, in disregard of its obligations under the Asset Purchase Agreement, and subsequent to the Asset Purchase Agreement, filed for copyright protection in the same UNIX technology covered by SCO’s copyrights.
5. Recently, Novell repeatedly claimed publicly in press releases and otherwise that it, and not SCO, owns the UNIX and UnixWare copyrights.

6. Novell has made such statements with the intent to cause customers and potential customers of SCO to not do business with SCO and to slander and impugn the ownership rights of SCO in UNIX and UnixWare, and to attempt, in bad faith, to block SCO's ability to enforce its copyrights therein.
7. Novell's false and misleading representations that it owns the UNIX and UnixWare copyrights has caused and is continuing to cause SCO to incur significant irreparable harm to its valuable UNIX and UnixWare copyrights, to its business, and its reputation.
8. Through this action for slander of title against Defendant Novell, SCO seeks the following:
 - a) a preliminary and permanent injunction: (i) requiring Novell to assign to SCO all subsequently registered copyrights Novell has registered in UNIX and UnixWare; (ii) preventing Novell from representing in any forum that it has any ownership interest whatsoever in the UNIX and UnixWare copyrights; and (iii) requiring Novell to retract or withdraw all representations it has made regarding its purported ownership of the UNIX and UnixWare copyrights; and
 - b) actual, special, and punitive damages in an amount to be proven at trial based on Novell's slander of SCO's title and interest in the UNIX and UnixWare copyrights.

II. PARTIES, JURISDICTION AND VENUE

9. Plaintiff SCO is a Delaware corporation with its principal place of business in Utah County, State of Utah.

10. Defendant Novell is a Delaware corporation with its executive offices and headquarters in Waltham, Massachusetts that does business in the State of Utah, has a registered agent in Salt Lake County, Utah, and lists a sales office located at 15 West South Temple, Suite 500, Salt Lake City, Utah.
11. This Court has subject matter jurisdiction over this matter pursuant to section 78-3-4 of the Utah Code.
12. This Court has personal jurisdiction over Novell because Novell transacts substantial business in the State of Utah.
13. Venue is proper in this Court pursuant to section 78-13-7 of the Utah Code.

III. FACTUAL BACKGROUND

14. Schedule 1.1(a) to the Asset Purchase Agreement provides that SCO, through its predecessor in interest, acquired from Novell:

I. All rights and ownership of UNIX and UnixWare, including but not limited to all versions of UNIX and UnixWare and copies of UNIX and UnixWare (including revisions and updates in process), and all technical, design, development, installation, operation and maintenance information concerning UNIX and UnixWare, including source code, source documentation, source listings and annotations, appropriate engineering notebooks, test data and test results, as well as all reference manuals and support materials normally distributed by [Novell] to end-users and potential end-users in connection with the distribution of UNIX and UnixWare...

II. All of [Novell's] claims arising after the Closing Date against any parties relating to any right, property or asset included in the Business.

(Exh. A, at Schedule 1.1(a) I and II)

15. In Amendment No. 2 to the Asset Purchase Agreement, Novell and SCO made clear that SCO owned all “copyrights and trademarks owned by Novell as of the date of the [Asset Purchase Agreement] required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies,” and that Novell would no longer be liable should any third party bring a claim against SCO “pertaining to said copyrights and trademarks.” (Exh. A, Amendment No. 2 to the Asset Purchase Agreement dated October 16, 1996 at 1)
16. Software technology is valuable only insofar as the intellectual property contained therein is protected from unlawful misappropriation. Copyrights provide critical protection against misappropriation established by the United States Congress under the Copyright Act. SCO requires the full copyright protection it purchased from Novell to enforce its rights in UNIX and UnixWare technology, including proprietary source code, against infringing parties.
17. Based on the clear and unambiguous terms of the Asset Purchase Agreement and Amendment No. 2 thereto, SCO is the sole and exclusive owner of all copyrights related to UNIX and UnixWare source code and all documentation and peripheral code and systems related thereto.
18. Novell, with full knowledge of SCO’s exclusive ownership of the copyrights related to UNIX and UnixWare, has embarked on a malicious campaign to damage SCO’s ability to protect its valuable copyrights in UNIX and UnixWare. In particular, Novell has wrongfully asserted ownership over UNIX and UnixWare technologies by filing for copyright protection in its own name, and has made numerous false and misleading public

representations disparaging SCO's ownership of the UNIX and UnixWare copyrights and claiming that it, and not SCO, owns the Unix and UnixWare copyrights.

19. Novell's false oaths and misleading public representations and wrongful assertion of ownership rights in UNIX and/or UnixWare include, but are not limited to, the following:
 - a) Despite the clear language of the Asset Purchase Agreement and Amendment No. 2 thereto, on May 28, 2003, Novell's Chairman, President, and CEO Jack Messman ("Messman") based at Novell's headquarters in Waltham, Massachusetts, publicly claimed that Novell did not transfer the UNIX and UnixWare copyrights to SCO and that "SCO is not the owner of the UNIX copyrights." Messman's statement was published in several newspapers, including the Salt Lake Tribune and Deseret News, and was timed by Messman to be released on the eve of the release of SCO's quarterly statements.
 - b) In a letter dated June 6, 2003, directed from SCO to Novell, SCO brought to Novell's attention Amendment 2 to the Asset Purchase Agreement that clearly evidences that the UNIX copyrights were in fact transferred from Novell to SCO.
 - c) Following Novell's receipt of SCO's June 6, 2003, letter, Novell issued a press release dated that same date which recanted Messman's prior statement claiming Novell owned UNIX copyrights stating "[t]he amendment [to the Asset Purchase Agreement] appears to support SCO's claim that ownership of certain copyrights for UNIX did transfer to SCO in 1996."

- d) In a letter of the same day, June 6, 2003, directed to SCO, Joseph Lasala, Novell's General Counsel based at Novell's headquarters in Waltham, Massachusetts, continued to call SCO's claims "absurd" and "unsubstantiated."
- e) In a letter to SCO on June 26, 2003, from Joseph Lasala, Novell's General Counsel based at Novell's headquarters in Waltham, Massachusetts, Novell acknowledged that Amendment No. 2 "appears to support a claim" by SCO to "some copyrights", but at the same time, Novell called SCO's claims of ownership of UNIX and UnixWare "simply wrong" and declared "that we do not agree with SCO's public statements on this matter."
- f) In a letter from Joseph Lasala, Novell's General Counsel based at Novell's headquarters in Waltham, Massachusetts, dated August 4, 2003, Novell responded to SCO's registration of UNIX System V copyrights with the United States Copyright Office, and explicitly "dispute[d] SCO's claim to ownership of the copyrights."
- g) Despite Amendment 2 of the Asset Purchase Agreement that clearly established SCO's ownership of the copyrights, Novell continued with its unfounded and malicious campaign to slander SCO's ownership of the copyrights. In fact, Novell, again falsely asserted ownership of UNIX copyrights by submitting twelve certifications beginning on September 22, 2003 through October 14, 2003, to the United States Copyright Office. In these certifications, Novell publicly claimed to be the copyright owner of several versions of UNIX, including the following: (1)

UNIX System V/386 Release 4 Version 3; (2) UNIX System V/386 Release 4 2; (3) UNIX System V/386 Release 4 Version 4; (4) UNIX System V/386 Release 3 2; (5) UNIX System V/386 Release 3 0; (6) UNIX System V/386 Release 4 0; (7) UNIX System V/386 Release 4 1ES; (8) UNIX System V Release 3 2/386; (9) UNIX System V Release 3/386; (10) UNIX System V Release 4 2MP; (11) UNIX System V Release 2; and (12) UNIX System V Release 4 1ES/386. Novell published its false certifications to the world by placing them online at its website.

- h) Also on October 10, 2003, Novell publicly filed under oath with the United States Copyright Office four different iterations of a “Declaration Regarding Ownership” of UNIX copyrights TXU-510-028, TXU-511-236, TXU-516-704, and TXU-516-705. In each of these sworn documents, Novell declared “that it retains all or substantially all of the ownership of the copyrights in UNIX, including the U.S. Copyright Registration referenced above.”
- i) In a press release dated December 22, 2003, Novell, despite its June 2003 statement that SCO owns the copyrights, Novell stated that “it owns the copyrights in UNIX, and has applied for and received copyright registrations pertaining to UNIX consistent with that position.”
- j) In a press release dated January 13, 2004, Novell again knowingly and wrongfully made the false claim that “it retained ownership of [UNIX] copyrights.”

20. Novell’s false oaths and wrongful claims of copyrights and ownership in UNIX and UnixWare are in bad faith and constitute a knowing and intentional disregard for the truth.

21. Novell's wrongful claims of copyrights and ownership in UNIX and UnixWare have caused, and continue to cause, irreparable harm to SCO, in the following particulars:
- a) Customers and potential customers of SCO are unable to ascertain the truth of ownership in UNIX and UnixWare, and make decisions based thereon; and
 - b) SCO's efforts to protect its ownership of UNIX and UnixWare, and copyrights therein, are subject to a false cloud of ownership created by Novell.

**IV. CLAIM FOR RELIEF
(Slander of Title)**

22. SCO realleges and incorporates all prior paragraphs by this reference as if fully set forth herein.
23. SCO is the sole and exclusive owner of all copyrights related to UNIX and UnixWare source code and all documentation and peripheral code and systems related thereto.
24. Novell has slandered SCO's title and rights to its UNIX and UnixWare copyrights and damaged SCO's business reputation and relationships with potential customers by making false oaths of ownership to public officials, and by repeatedly representing both to the public in general and directly to several of SCO's customers and potential customers that Novell, and not SCO, owns the UNIX and UnixWare copyrights.
25. Novell's representations regarding its purported ownership of UNIX and UnixWare are patently false, and Novell made such representations intentionally, maliciously, and with the utter disregard for the truthfulness thereof.

26. As a consequence of Novell's conduct as alleged herein, SCO has incurred actual and special damages in an amount to be proven with at trial.
27. Novell's conduct as alleged herein was intentionally and maliciously designed to destroy SCO's valuable rights to the UNIX and UnixWare copyrights and further destroy SCO's business livelihood. As such, this Court should impose an award of punitive damages against Novell in an amount to be proven at trial.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff SCO prays this Court grant relief against Defendant Novell in favor of SCO as follows:

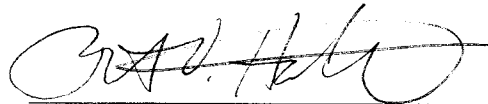
1. For actual and special damages in an amount to be proven at trial for Novell's slander of SCO's title to the UNIX and UnixWare copyrights;
2. For punitive damages in an amount to be proven at trial for Novell's malicious and willful conduct as alleged herein.
3. For a preliminary and permanent injunction (a) requiring Novell to assign to SCO any and all copyrights Novell has registered in UNIX and UnixWare; (b) preventing Novell from representing in any forum that it has any ownership interest whatsoever in the UNIX and UnixWare copyrights; and (c) requiring Novell to retract or withdraw all representations it has made regarding its purported ownership of the UNIX and UnixWare copyrights.
4. For attorneys' fees, costs, pre- and post-judgment interest, and all other legal and equitable relief deemed just and proper by this Court.

VI. JURY TRIAL DEMAND

SCO demands trial by jury on all issues so triable.

DATED this 20th day of January, 2004.

By:



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