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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

ORACLE USA, INC., *et al.*,

Plaintiffs,

v.

SAP AG, *et al.*,

Defendants.

No. 07-CV-01658 PJH (EDL)

[PROPOSED] ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Date: May 5, 2010
Time: 9:00 am
Place: 3rd Floor, Courtroom 3
Judge: Hon. Phyllis J. Hamilton

On May 5, 2010, the Court held a hearing on the Motion for Partial Summary Judgment brought by Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc. (collectively "Defendants"), pursuant to Federal Rule of Civil Procedure 56 and Civil Local Rules 7-2 - 7-5 and 56-1.

Having reviewed the parties' papers and carefully considered their arguments, evidence and relevant legal authority, and good cause appearing, the Court hereby **DENIES** Defendants' Motion for Partial Summary Judgment as follows:

Plaintiff Oracle EMEA Ltd.

Plaintiff Oracle OEMEA Ltd. ("OEMEA") brings four California claims against Defendants. Oracle's other plaintiffs bring California claims in addition to two federal claims for copyright infringement and for violation of the Computer Fraud and Abuse Act. There is no dispute that Defendants twice admitted in their Answers to Oracle's Third and Fourth Amended Complaints that this Court has supplemental jurisdiction over OEMEA and OEMEA's pendent state law claims under 28 U.S.C. § 1367. There is also no dispute that Defendants twice admitted that "a substantial part of the events giving rise to the dispute occurred" in California. Moreover, Oracle has established extensive California conduct that relates to OEMEA's claims. Because there is no genuine dispute that OEMEA has suffered from California-based wrongful conduct, OEMEA's claims are not wholly extraterritorial as Defendants allege, and OEMEA's claims are properly before this Court. *See, e.g.*, *Solid Host, NL v. Namecheap, Inc.*, 652 F. Supp. 2d 1092, 1122 n.67 (C.D. Cal. 2009). Defendants' due process argument fails for these same reasons.

Accordingly, Defendants' Motion for Partial Summary Judgment as to OEMEA is **DENIED**.

Oracle's Lost Profits Claims

Defendants next seek a ruling that, as matter of law, an Oracle entity is not permitted to recover the lost profits of an affiliated plaintiff or non-plaintiff entity. However, for a given cause of action, no Oracle plaintiff has asserted a claim to another entity's lost profits, and thus this Court declines to issue the advisory opinion sought by Defendants' Motion. *United*

States v. Alpine Land & Reservoir Co., 887 F.2d 207, 214 (9th Cir. 1989) ("[C]ourts should not render advisory opinions upon issues which are not pressed before the court, precisely framed and necessary for decision."); *Sun Microsystems Inc. v. Hynix Semiconductor Inc.*, 608 F. Supp. 2d 1166, 1206 (N.D. Cal. 2009) (declining, on summary judgment, to "conclusively decide [the] legal impropriety" of a theory of liability that "defendants presuppose[d]" was being asserted by plaintiffs).

For the same reason, Defendants' Motion for Partial Summary Judgment seeking an advisory opinion on lost profits of non-plaintiff entities is also **DENIED**.

Recovery of Saved Development Costs

Defendants' next Motion relates to Oracle's use of "saved development costs" in support of its damages claims.

Oracle has confirmed that, for its state law claims, Oracle seeks to recover saved development costs only under its unjust enrichment/restitution claim. Under California law, Oracle may recover saved development costs on a theory of unjust enrichment/restitution. *Ajaxo, Inc. v. E*Trade Group, Inc.*, 135 Cal. App. 4th 21 (2005). This Court declines to issue an advisory opinion regarding a party's ability to seek saved development costs pursuant to Oracle's other California law claims, as Oracle does not seek them. *Alpine Land & Reservoir Co.*, 887 F.2d at 214.

Defendants also reargue whether saved development costs are relevant to a "value of use" measurement of actual damages pursuant to Oracle's copyright claim. This issue was previously argued, considered, and decided by this Court's January 28, 2010 Order on Defendants' previous Motion for Partial Summary Judgment Regarding Plaintiffs' Hypothetical License Damages Claim. Defendants have not sought reconsideration of that Order pursuant to Civil Local Rule 7-9, nor could Defendants meet Local Rule 7-9's requirement for reconsideration. Using the same arguments and authorities, Defendants reargue their previous Motion without moving for reconsideration; this is improper and sanctionable. Civ. L.R. 7-9(c).

Defendants' Motion for Partial Summary Judgment regarding "saved development costs" is **DENIED**.

CDAFA and Trespass to Chattels Claims

Defendants next argue that Oracle is not entitled to recover damages under its California Computer Data Access and Fraud Act claim ("CDAFA"), pursuant to Cal. Penal Code § 502, and its trespass to chattels claims, because Defendants claim that Oracle has not disclosed calculations for these claims. While styled as a Rule 56 motion, this appears to be an improper and unsubstantiated motion for preclusion sanctions under Federal Rule of Civil Procedure 37. *Cf. Hsieh v. Peake*, No. 06-5281, 2008 U.S. Dist. LEXIS 23649, at *59-60 (N.D. Cal. Mar. 25, 2008) (finding "an opposition to a motion for summary judgment is not a proper place for a Rule 37 motion," that "[i]n any event, a Rule 37 motion must be filed as a separate motion, and in accordance with the local rules regarding the filing of motions," and that "any Rule 37 motion should have been directed to the magistrate judge to whom the court referred all discovery disputes). Moreover, the Court finds that Oracle has adequately quantified all of the damages it seeks under these claims, as set forth its numerous written discovery responses, initial disclosures, Fed. R. Civ. P. 30(b)(6) testimony, and its expert damages report. Thus, even had Defendants brought a properly noticed Rule 37 motion before the assigned discovery magistrate, Defendants could claim no prejudice.

Defendants' additional argument that any damages recoverable under the CDAFA are limited to "investigation costs" is also unfounded. The legislative history of the CDAFA reveals that the 2000 amendments cited by Defendants were intended to expand the civil remedies available under the statute, not to limit them. *See* Cal. Bill Analysis, A.B. 2727 Assem., 8/07/2000 (intent is to "expand civil remedies available for computer crimes"). Based on this and the other legislative history and legal authorities Oracle cites, the Court finds that the CDAFA envisions "compensatory damages" to include "the amount that will compensate for all the detriment proximately caused," including lost profits. Cal. Civ. Code § 3333; *see Fibreboard Paper Prods. Corp. v. East Bay Union of Machinists*, 227 Cal.App.2d 675, 702 (1964).

Defendants' Motion for Partial Summary Judgment related to Oracle's trespass to chattels and CDAFA claims thus is **DENIED**.

IT IS SO ORDERED.

Dated: _____, 2010

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Hon. Phyllis J. Hamilton
United States District Court Judge