EXHIBIT B

October 8, 2010

A Double Standard at H.P.

By JOE NOCERA

Editors' Note Appended

And so it came to pass that on the 55th day — 55 days, that is, after firing its chief executive, Mark V. Hurd, for playing footsie with a consultant and fudging his expense accounts — the board of directors at Hewlett-Packard proudly announced it had found a new man to lead the company out of the wilderness.

His name is Léo Apotheker, a suave European — how many American C.E.O.'s have an accent aigu in their name? — who had spent most of his career at SAP, the giant German maker of business software. SAP has one primary competitor: Oracle, the very same company that hired Mr. Hurd barely a month after H.P. let him go, in a move clearly intended not only to bolster Oracle but to humiliate H.P.

Oracle and H.P. had once been the closest of partners, with the latter selling the industrial-strength hardware that ran Oracle's industrial-strength software. But that partnership appears to be dissolving. Earlier this year, Oracle completed its purchase of Sun Microsystems, a move that meant that it would now be trying to sell its own hardware, instead of encouraging customers to buy H.P. computers. What's more, Larry Ellison, Oracle's flamboyant founder, had taken to sending e-mail to reporters mocking the ineptitude of the H.P. board.

Is it possible that the hiring of Mr. Apotheker was motivated by the board's desire to strike back at Oracle? And that, with Mr. Apotheker on board, H.P. would try to encroach on Oracle's software stronghold just as Oracle was moving into H.P.'s hardware arena? There are analysts who are convinced that was the case.

H.P., of course, was adamant that nothing could be further from the truth. “Hiring him had nothing to do with fighting Oracle,” said Ray Lane, the former Oracle (!) president who is set to become H.P.’s chairman next month. “The board chose Léo because he was the best available athlete.”

There were other things about the appointment that seemed a bit odd. For instance, at the point at which the H.P. board hired him, Mr. Apotheker was unemployed.

You see, his tenure at SAP had ended abruptly in February, when the company’s executive board (as boards are called in Germany) declined to renew his contract. After being named co-C.E.O. in April 2008, he had just become sole C.E.O. in 2009 — meaning that he had been flying solo for just seven months when he was shown the door.

Maybe, as his defenders insisted, he was simply an unfortunate victim of the global recession. “He got a raw deal,” said Mr. Lane. But maybe, as I heard from others, his own missteps had contributed to his downfall. He had tried to raise prices aggressively for servicing SAP’s complex software, which had resulted in a customer revolt. A critical new initiative, called Business ByDesign, had flopped. And he had managed to alienate the SAP work force.

“My communication towards you was not always optimal,” he was quoted as saying in a memo SAP issued to its employees when he left. While I found some people who defended Mr. Apotheker’s management style —“He’s a tireless worker who gives everyone a second chance,” said Andre Boisvert, a former top software executive — I found just as many people who thought that Mr. Apotheker was likely to further traumatize the already demoralized H.P. staff. “If you wanted to find someone who represented the diametrical opposite of the H.P. way, it is Léo,” said Jason Maynard, a veteran technology analyst with Wells Fargo Securities. “He is tough as nails and chews glass for breakfast.”

Still, having written two unflattering columns recently about the H.P. board, I was inclined to take a pass on Mr. Apotheker’s hiring. But then I learned something about him that caused me to shake my head in disbelief.

Next month, Oracle and SAP are scheduled to go to trial in a case involving the wholesale theft of Oracle’s intellectual property by an SAP division. SAP has acknowledged its guilt; the only issue being litigated is the size of the damages. (Oracle is asking for $2 billion; SAP says it should have to pay only “tens of millions” of dollars.) As a member of SAP’s executive board, Mr. Apotheker clearly knew about the theft.

It takes your breath away, really: the same board that viewed Mr. Hurd’s minor expense account shenanigans as intolerable has chosen as its new C.E.O. someone involved — however tangentially — with the most serious business crime you can commit.

If it were anybody besides the H.P. directors, the situation would be unbelievable. With these guys, though, it’s all too believable.

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No company, not even H.P., is as obsessed with Oracle as SAP. And with good reason. Over the last half-dozen years, Oracle has made serious inroads into the German company’s core business of enterprise software, primarily by acquiring other software companies. In the mid-2000s, for instance, Oracle bought PeopleSoft, J. D. Edwards and Retek, all companies that compete with SAP in one niche or another. In fact, SAP had tried to buy Retek itself but had been outbid by Oracle. It wanted revenge.

In the middle of the bidding war for Retek, SAP bought a company called TomorrowNow, based in Bryan, Tex., that had been founded by a handful of former PeopleSoft executives. It held itself out as being able to service PeopleSoft software — and, eventually, other Oracle software — for far less money than the typical Oracle maintenance contract. With TomorrowNow, SAP hoped to be able to lure away some Oracle customers.

“Retek deal is in danger,” an angry Mr. Apotheker wrote in an e-mail to a top SAP executive shortly after the TomorrowNow acquisition. “We need to inflict pain on Oracle. Is there a chance to close a few TN deals in the next coming days?”

In the short term, SAP wanted to “inflict pain” just by grabbing maintenance contracts away from Oracle. Over the long term, though, it hoped that TomorrowNow would act as a kind of stalking horse, allowing SAP to persuade its new customers to abandon Oracle entirely and switch to SAP’s expensive suite of software applications. It called this its “Safe Passage” program. Because Mr. Apotheker was then the head of SAP’s sales and marketing, he would have led the charge to get customers to switch to SAP from Oracle.

There was just one little problem. TomorrowNow's business model was based on theft, pure and simple. When it landed a customer, it gained access to Oracle's servers, so that it could service the Oracle software that had been written for that client. But instead of limiting itself to servicing the software it was licensed to work on, TomorrowNow instead "scraped" Oracle's servers, vacuuming up proprietary software code. According to the Oracle complaint, between September 2006 and February 2007, Oracle discovered "at least 10,000 illegal downloads by SAP."

Did SAP's executive board know that its new division's business model depended on stealing Oracle's code? Stunningly, it did. A crucial piece of evidence in the lawsuit is a presentation made in January 2005 to the SAP board by executives arguing in favor of the purchase. One of the slides acknowledges that TomorrowNow used "nonproduction copy" — i.e. unauthorized copy — of Oracle's software.

Another slide read: "The access rights to the PeopleSoft software is very likely to be challenged by Oracle and past operating issues may be a serious liability." A third slide said that SAP needed to conduct "a full and complete assessment of the legality of the service model." That appears not to have ever taken place; the deal was completed not long after this presentation.

Oracle sued SAP in March 2007. In July, Henning Kagermann, then SAP's chief executive, admitted to "inappropriate" downloads. Yet the illegal scraping continued. The following April, Mr. Apotheker became co-chief executive — but it wasn't until October 2008, several months after he became the sole C.E.O., that he finally shut TomorrowNow down.

Mr. Apotheker's defenders stress this last point — that he was the one who finally closed the company. They also stress that TomorrowNow was never under his direct supervision. What they gloss over, however, is that at the point he shut down the company, the evidence against it was simply overwhelming. And as the head of sales and marketing, Mr. Apotheker would have been keenly aware of TomorrowNow's strikes at Oracle's customers, because it was his job to turn those small customers into big ones for SAP.

If the case goes to trial, Mr. Apotheker could well be called as a witness. Though he is not central to the lawsuit, the chance to embarrass H.P. and its new C.E.O. is likely to be irresistible to Oracle and Mr. Ellison. Which will mean yet more egg on the faces of the H.P. directors.

More important, for a company that professes to be concerned with ethics — so concerned that it had to get rid of Mr. Hurd, with his piddling expense account problems — it is astonishing that it would find Mr. Apotheker's lapses acceptable. He may not have been directly involved in this brazen theft of intellectual property, but it defies belief to say he didn't know about it. And he did nothing to stop it until it was far too late. Apparently, the H.P. directors adhere to the highest ethical standards — but only when it's convenient.

When I spoke to Mr. Lane, he told he me believed that Mr. Apotheker, a longtime friend, was the right choice for H.P. When I asked him about the TomorrowNow fiasco, he professed to know nothing about it. I take him at his word. Mr. Lane is a highly respected Silicon Valley veteran, who, after a long run as Mr. Ellison's No. 2, joined Kleiner Perkins, the prominent venture capital firm. When he joins the board next month, he will give it something it doesn't now have: a little credibility.

Let's hope it's not too late.

Editors' Note: October 12, 2010

In the Talking Business column in Business Day on Saturday, Joe Nocera wrote about a lawsuit by Oracle against a division of SAP, claiming theft of intellectual property. Mr. Nocera learned after the column was published that Oracle was represented by the law firm of Boies, Schiller & Flexner, where his fiancée works as director of communications. To avoid the appearance of a conflict of interest, Mr. Nocera would not have written about the case if he had known of the law firm's involvement.