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INTERSERVE, INC. dba TECHCRUNCH
9 and CRUNCHPAD, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 INTERSERVE, INC. dba TECHCRUNCH, a)
Delaware corporation, and CRUNCHPAD,)
13 INC., a Delaware corporation,)
14 Plaintiffs,)
15 vs.)
16 FUSION GARAGE PTE. LTD., a Singapore)
company,)
17 Defendant.)
18

Case No. CV-09-5812 RS (PVT)

DECLARATION OF NICHOLAS SHORT
IN SUPPORT OF PLAINTIFF'S MOTION
TO COMPEL DE-DESIGNATION OF
DOCUMENTS

(Exhibits A and B Lodged Under Seal)

Date: June 22, 2010.
Time: 10:00 a.m.
Place: Courtroom 5, 4th Floor.

1 I, Nicholas Short, declare pursuant to 28 U.S.C. § 1746:

- 2 1. I am an attorney at law duly licensed to practice before all the Courts of the State of
3 California, and am a member in good standing of the Bar of the United States District Court
4 for the Northern District of California. I am an associate with the law firm of Winston &
5 Strawn LLP, counsel of record in this action for Plaintiffs.
- 6 2. On Friday, May 7, 2010, I conferred by phone with Patrick Doolittle and Joshua Sohn,
7 counsel for Defendant Fusion Garage Pte. Ltd. to discuss the confidentiality designations on
8 various documents that Defendant has produced in this lawsuit. The conversation was
9 productive as Defendant's counsel agreed to de-designate 12 documents, and reduced the
10 designation on four additional documents from "Highly Confidential – Attorneys' Eyes
11 Only" to "Confidential."
- 12 3. The documents which we could not agree on have BATES numbers: FG00000243-46;
13 FG00001160-61, FG00001308-09, and FG00001319-20; FG00007391-92; FG00008409-12;
14 FG00013268-69; FG00013302-07; FG00013395-99; FG00029680; FG00029728-32;
15 FG00029927-33; FG00029940-44; FG00029960-68; FG00030010-11; FG00030068-73;
16 FG00030270-74; FG00032834; and FG00032911. These documents are attached to this
17 declaration as **Exhibit A**.
- 18 4. During the meet and confer, Defendant's counsel maintained that these documents deserve
19 the designation "Confidential." Defendant's counsel stated that the documents deserved the
20 designation because the documents were communications between Defendant and its public
21 relations firm, private vendors, or investors reflecting business or media strategy, or
22 containing information about the JooJoo device and the parties that help manufacture it.
23 Defendant also stated that certain immigration documents were confidential under Title 8 of
24 the United States Code, Section 1202(f). I stated Plaintiffs' position that the documents,
25 even if they were communications with Defendant's public relations firm, vendors, or
26 investors, did not contain confidential information, and would not injure Defendant if
27 publicly disclosed.
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5. Plaintiffs have filed all but one of these documents, FG00001160-61, in connection with its motions in this lawsuit.
6. Attached to this declaration as **Exhibit B** is a document Defendant produced in this litigation with BATES number FG0030162-164.
7. Attached to this declaration as **Exhibit C** is a document Plaintiff produced in this litigation with BATES number TC00000619-621.
8. On May 12, 2010, I went to the following URL associated with the website for Federal Communications Commission (“FCC”), Office of Engineering and Technology (“OET”):
https://fjallfoss.fcc.gov/oetcf/eas/reports/ViewExhibitReport.cfm?mode=Exhibits&RequestTimeout=500&calledFromFrame=N&application_id=893101&fcc_id='TX2-RTL8191SE'.
The webpage is titled “OET Exhibits List” and states “11 Matches found for FCC ID 'TX2-RTL8191SE'.” I obtained the documents attached as **Exhibit D** to this declaration by clicking on the hyper-links on that webpage listed below the words “view attachments.”
These documents are publicly available, and anyone who navigates to this URL can view the documents and print them.

I declare under penalty of perjury that the foregoing is true and correct.

Executed May 13, 2010.

/s/ Nicholas Short

Nicholas Short

SF:281680.2

EXHIBIT C
TO THE DECLARATION OF NICHOLAS SHORT
IN SUPPORT OF PLAINTIFF'S MOTION
TO COMPEL DE-DESIGNATION OF
DOCUMENTS

From: 'Chandrasekar Rathakrishnan' <chandra@fusiongarage.com>
To: Michael Arrington <editor@techcrunch.com>
CC: Heather Harde <heather@techcrunch.com>
Sent: 11/17/2009 2:50:02 PM
Subject: no good news

Mike,

no good news to update. updated hardware is still on its way , so that's a timing issue. friday will be a challenge now.

got delayed at taiwan's end. but the bigger issue is the required investment.

I had a conf call with Bruce last night. (An existing shareholder who is looking to co-invest and is a friend of the 2 new investors who were to be part of the new round).

and it was not a good call. Pls see his email note to me (below) for the details. I am in predicament and it's unenviable.

We need the investment but they are not willing to proceed on the current structure as proposed by CrunchPad.

I have spent the night deliberating on this and I cannot substantiate my arguments against the issues raised.

I know the counter proposal from Bruce is going to upset you greatly but I have no choice but to put it forth.

They are pretty resolute and it's extremely hard for me to ignore my fiduciary responsibility.

Unless there is an alternative funding available at the right terms , it's hard for me to turn this down.

Given its importance, I am heading to Miami to meet with them to discuss the situation further but doubt their position will change significantly.

I am going to get on my connection flight to Miami in the next few minutes and

I will be in the air for the next couple of hours or so and out of circulation during that time.

Given the urgency of the matter, pls let me have your thoughts.

Thanks,
Chandra

----- Forwarded message -----
From: <drlee@pacific.net.sg>
Date: Tue, Nov 17, 2009 at 11:51 PM
Subject: Rejection of Arrington's "offer"
To: chandra@fusiongarage.com

Hello Chandra,

TC00000619

Thanks for taking the time to discuss things. I just wanted to drop a note to recap our conversation.

As I mentioned to you, the shareholders have expressed concern that there is no formal offer letter from TechCrunch. They are also not happy with the verbal offers that you have relayed. We had been prepared to consider an offer of 12% last December based on your comments about the value that Michael Arrington and his team would add – coupled with the fact that we were still early in the development of the device and your recommendations that a merger would be the best way to move forward.

However, since that time, we as your shareholders (and you/your development team) have assumed all related operational and developmental costs of the device. We have told you at several points that based on our significant investments, we would be willing to entertain an offer of 50%, if not significantly more. You have argued an offer of 25% on their behalf until you were blue in the face – suggesting that Michael Arrington/TechCrunch would bring connections, funding and marketing valuable in bringing the device to market faster.

We appreciate that Arrington and his team have generated marketing/awareness via their blog posts and relationships in the technology community over the last year. However, we feel strongly that this awareness is of minor value without a product to back it up – a product funded completely by your investors and shareholders and developed by your team at Fusion Garage with no formal contract in place with Arrington/TechCrunch.

The dialogue that we have been having feels like you are saying that Fusion Garage should do all the work, the shareholders should assume all risk, then you merge the company and Arrington/TechCrunch hold substantially more shares than the original investors? Given their lack of formal commitment to the development of this device, we feel that it is not for them to dictate terms. Why would we grant them a controlling stake in the company when they have invested nothing and have contributed nothing tangible?

I am not disputing that Arrington and TechCrunch do have some value. However, I am disputing the pricing of this value. I am prepared, along with my two friends, to invest at the 10 million pre-money. This is because we recognize the potential of what Fusion Garage is developing. However, at that valuation and by giving up control to Arrington and team, you are suggesting that they are bringing a value of 5 million to the table. Marketing valued at 5 million? You could get so much more value for the buck if you were to spend that kind of money for marketing in other ways.

I appreciate that you respect Arrington and value his friendship, but from my perspective the agreement that you have presented to me demonstrates that he is looking after his own interests. I, along with your other shareholders, look to you to protect our interests. Because of this, we are rejecting the deal that you have presented to us outright. If you decide to proceed with this deal as it was presented to us, I will not co-invest resulting in the two new investors pulling out as well.

We still acknowledge that Arrington and TechCrunch bring some value to your business endeavor. If you would like to continue the relationship with Arrington/TechCrunch, I am proposing that we structure the deal differently. We would grant share options in Fusion Garage to Arrington and team, not to exceed a total of 10 % of the enlarged capital of the company. The percentage would be non-negotiable.

If he agrees to our terms, we would have Arrington assume the role of visionary/evangelist/marketing head and Fusion Garage would acquire the rights to use the Crunchpad brand and name. Personally, I don't think the name is all that important but you seem to be somewhat attached to the name.

This option grant would be done before the new round is assumed. This ensures new investors do not get diluted. I understand you are of the opinion that the above proposal may not hold with Arrington, but we are willing to back and invest in Fusion Garage with or without Arrington and Crunchpad. The above proposal has the unequivocal support of the existing shareholders and the new investors.

Collectively, we all agree that time is running out. We strongly believe that we need to launch with or without Arrington/TechCrunch ASAP. The investment is ready and the documents can be signed off quickly allowing you to focus on execution. Hence, I have to emphasize that you need this resolved by the end of this weekend or risk potential investment dissipating.

You are the founder and CEO of Fusion Garage. I trust that you will carry out your fiduciary duty as expected. I am available to meet in Miami tomorrow afternoon. Eric is here as well. Call me when you get into Miami.

Let's discuss in greater detail then.

Bruce

EXHIBIT D

**TO THE DECLARATION OF NICHOLAS SHORT
IN SUPPORT OF PLAINTIFF'S MOTION
TO COMPEL DE-DESIGNATION OF
DOCUMENTS**

GIGA-BYTE TECHNOLOGY CO., LTD

5FL., No. 6, Bau Chiang Road, Hsin-Tien, Taipei-Hsien, Taiwan, R.O.C.

Tel: 886-89124000

FAX: 886-89126322

Declaration of Authorization

We

Name: GIGA-BYTE TECHNOLOGY CO., LTD
Address: 5FL., No. 6, Bau Chiang Road, Hsin-Tien, Taipei-Hsien, Taiwan, R.O.C.
City: Taipei
Country: Taiwan.....

Declare that:

Name Representative of agent: Gene Chang ⁽¹⁾
Agent Company name: QuieTek Corp.
Address: Fl.2, No.345, Xin-hu 2nd Rd., Nei-hu District
City: Taipei
Country: Taiwan

is authorized to apply for Certification of the following product(s):

Product description: 802.11b/g/n RTL8191SE miniCard
Type designation: RTL8191SE
Trademark: Realtek

on our behalf.

Date:2010/02/25.....

City: Taipei

Name: Alan Wu ⁽²⁾

Signature:

Alan Wu. 2/25
2010

Notes:

(1): Required for FCC application

(2): For FCC it must be the Grantee Code "owner" or the authorized agent.

GIGA-BYTE TECHNOLOGY CO., LTD

5FL., No. 6, Bau Chiang Road, Hsin-Tien, Taipei-Hsien, Taiwan, R.O.C.

Tel: 886-89124000

FAX: 886-89126322

Attestation for FCC Declaration of Conformity

FCC ID: TX2-RTL8191SE

Date: Jan.28, 2010

Please be notified that we, the undersigned, GIGA-BYTE TECHNOLOGY CO., LTD. declares that the product which bears the above FCC ID is also compliant with the FCC requirements for DoC. The test report number supporting the DoC is ISL-10LE015FB. Testing in regards to this report was done by Fusion Garage Pte Ltd, located at 120 Lower Delta Road #07-16 Cendex Building Singapore 169208. which has been accredited in accordance to all of the requirements of 47CFR 2.948 (d) and (e) of the FCC rules and KDB349827.

Sincerely,

Alan Wu 3/8

Alan Wu
GIGA-BYTE TECHNOLOGY CO., LTD.

2010.

GIGA-BYTE TECHNOLOGY CO., LTD

FCC ID Label



LabelSmp

joojoo

Designed by Fusion Garage in Singapore. Assembled in China. Model Name: JooJoo. Rated 19v 2.1A Max. This device complies with Part 15 of the FCC Rules. Operation is subject to the following two conditions: 1) this device may not cause harmful interference, and 2) this device must accept any interference received, including interference that may cause undesired operation. Contains FCC ID: QISEM770W, FCC ID: TX2-RTL8191SE, FCC ID: TLZ-8T253 in North and South America. © 2010 Fusion Garage Pte Ltd. All rights reserved.

