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2005 MAY 11 10:30

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THE SCO GROUP, INC. v. AUTOZONE, INC.

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May 10, 2005

Via Overnight UPS

The Honorable Robert C. Jones
U.S. District Judge
U.S. District Court, District of Nevada
333 S. Las Vegas Blvd.
Las Vegas, Nevada 89101

Re: *The SCO Group, Inc. v. AutoZone, Inc. CV-S-04-0237-RCJ-LRL*

Dear Judge Jones:

Pursuant to the Court's August 6, 2004 Order, AutoZone, Inc. submits this letter to update the Court on the ongoing litigation related to this matter. Although AutoZone is not a party to the other related cases, AutoZone has derived the following information from publicly available sources.

1. ***The SCO Group, Inc., v. International Business Machines Corporation, Case No. 2:03-CV-0294 DAK (D. Utah)***
 - a. **September 15, 2004 Hearing and Subsequent Rulings**

On September 15, 2004, the Utah District Court held a hearing regarding several dispositive motions filed by the parties. On February 8, 2005, the Court issued a memorandum decision and order on the motions.

The first motion involved IBM's tenth counterclaim, in which IBM requests a declaration from the Court that "IBM does not infringe, induce infringement of, or contribute to the infringement of any SCO copyright through its Linux activities...." SCO moved to dismiss this counterclaim on the grounds that it is permissive and that

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introduction of the counterclaim would unduly complicate the ongoing litigation.¹ The Court did not decide whether the counterclaim was permissive or compulsory; however, the Court found that “there is no question that [the counterclaim] overlaps to some extent with the claims brought by SCO.” Thus, the court allowed IBM’s Tenth Counterclaim to remain because SCO had clearly alleged a copyright infringement claim “[n]otwithstanding SCO’s puzzling denial in its briefing that it has not[.]”

The Court next considered IBM’s cross-motion for partial summary judgment on its tenth counterclaim. The Court found it “astonishing” that SCO had not offered “any competent evidence” to create a disputed fact regarding SCO’s allegations that IBM has infringed SCO’s alleged copyrights through IBM’s Linux activities. The Court also noted that SCO “chose to cavalierly ignore IBM’s claims that SCO could not create a disputed fact regarding whether it even owned the relevant copyrights.” Nevertheless, the Court resisted the “temptation to grant IBM’s motion” and held that summary judgment was premature because of ongoing discovery in the case.

Finally, the Court denied without prejudice two IBM motions for summary judgment that had not yet been fully briefed. The court ruled that judicial economy was not being served in the case by entertaining dispositive motions prior to the close of discovery. Thus, the Court denied all pending dispositive motions, and ordered that no dispositive motions may be filed until after the close of discovery.

b. Other Motions

On October 14, 2004, SCO filed a motion for leave to file an amended complaint. Both the memorandum in support of the motion and the new complaint were filed under seal. After filing a sealed response to the motion to amend, IBM filed a motion for entry of an order clarifying its ninth counterclaim, which seeks a declaration with respect to its UNIX activities. On April 21, 2005, the Court heard oral argument on SCO’s motion to amend its complaint, as well as several discovery issues. The Court has not yet issued a ruling on the motions.

On April 26, 2005, the Court heard oral argument on G2 Computer Intelligence Inc.’s *ex parte* motion to intervene and unseal the court’s file. On April 28, 2005, the court denied the motion, but cautioned both parties to be careful in designating documents as confidential.

¹ SCO initially claimed that IBM’s tenth counterclaim should be denied because the issues would be litigated against AutoZone. After those issues were stayed in this case, SCO argued instead that the counterclaim should be stayed because it was permissive.

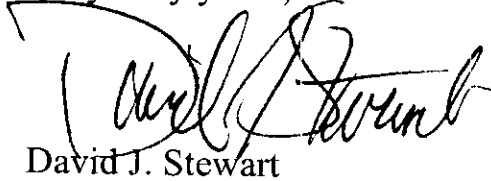
2. ***The SCO Group, Inc. v. Novell, Inc., Case No. 2:04-CV-00139 (D. Utah)***

On August 6, 2004, Novell filed a motion to dismiss SCO's amended complaint with prejudice. The motion has been fully briefed, and the oral argument is currently scheduled to be heard on May 25, 2005.

3. ***Red Hat, Inc. v. The SCO Group, Inc., Case No. 03-772-SLR (D. Del.)***

As reported previously, the District of Delaware ordered this case stayed *sua sponte* on April 6, 2004. On April 20, 2004, Red Hat filed a motion for reconsideration of that order. On March 31, 2005, the Court denied Red Hat's motion. Accordingly, this case remains stayed pending resolution of the *IBM* and *Novell* cases.

Very truly yours,



David J. Stewart

DJS:dlb

cc: Stanley W. Parry, Esq. (via facsimile)
David Stone, Esq. (via facsimile)

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