

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

i.think inc.,

Plaintiff,

v.

MINEKEY, INC.;
DELIP ANDRA; and
INTERNET UNLIMITED, LLC

Defendants.

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CIVIL ACTION NO. 3-08CV0163-P

APPENDIX TO DEFENDANTS MINEKEY, INC.'S
AND DELIP ANDRA'S RESPONSE TO PLAINTIFF'S MOTION TO REMAND
AND SUPPORTING BRIEF

Tab 1: Declaration of Craig W. Weinlein

Respectfully Submitted,

/s/ Craig W. Weinlein

Craig W. Weinlein

State Bar No. 21095500

Barry R. Bell

State Bar No. 02068550

Prescott Smith

State Bar No. 24013534

CARRINGTON, COLEMAN, SLOMAN &

BLUMENTHAL, L.L.P.

901 Main Street, Suite 5500

Dallas, Texas 75202

Telephone: (214) 855-3000

Facsimile: (214) 855-1333

*Attorneys for Defendants Minekey, Inc.
and Delip Andra*

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record in the above cause in accordance with Rule 5, Federal Rules of Civil Procedure and Local Rule 5.1(d) on this 4th day of March, 2008.

/s/ Craig W. Weinlein _____

**UNITED STATES DISTRICT COURT
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CIVIL ACTION NO. 3-08CV0163-P

DECLARATION OF CRAIG W. WEINLEIN

I, Craig W. Weinlein, declare as follows:

1. My name is Craig W. Weinlein. I am over 18 years of age and I am fully competent to make this declaration.
2. I am counsel of record for defendants Minekey, Inc. and Delip Andra in the above styled action.
3. On February 26, 2008 the California counsel for defendants Minekey, Inc. and Delip Andra sent a letter to plaintiff's counsel offering to settle the above styled action. The letter was sent electronically with a copy to me. A true and correct copy of the letter is attached hereto as Ex. A, Appendix p. 6-7. Counsel for plaintiff i.think inc. acknowledged receipt of the letter by the email attached hereto as Ex. B, Appendix p. 8. The letter directs plaintiff i.think inc. to respond to the settlement offer by contacting me. I was never contacted by plaintiff i.think inc. or its counsel in response to the letter.
4. I was licensed by the Supreme Court of Texas in November 1980. I was admitted to practice before the United States District Court for the Northern District of Texas in February

1981. I received my J.D. degree from the Southern Methodist University School of Law in 1980, where I was notes and comments editor of the Journal of Air Law and Commerce. I received an LL.M. degree from Columbia University School of Law in 1981.

5. Since June of 1981 I have practiced law in Dallas Texas with the law firm of Carrington, Coleman, Sloman & Blumenthal, L.L.P. I am a partner in the firm and a leader of the firm's intellectual property practice group. I have a complex litigation practice which is concentrated in intellectual property litigation, including trademark infringement and dilution litigation.

6. In just the last ten years, I have been counsel of record in at least forty trademark infringement actions. More than thirty of these trademark infringement actions were pending in the United States District Court for the Northern District of Texas.

7. Based upon my experience in handling trademark infringement and dilution cases in Dallas and in the Northern District of Texas, I am familiar with the legal services to be performed in such actions, including the above styled action. In this action, the legal services for the parties will include interviewing witnesses, fact investigation, engaging in formal discovery including document requests, depositions, interrogatories and requests for admissions, legal research, preparation for the hearing on a preliminary injunction, working with survey experts to establish a likelihood of confusion, working with damages experts to establish damages, preparation for trial and trial. I am also familiar with the time required to perform these services for the parties.

8. My standard hourly rate is \$525.00. Barry R. Bell, one of my partners who is also counsel of record for defendants Minekey and Andra in this action, has a standard hourly rate of \$485.00 per hour. Omar Kilany, one of our senior associates who is also counsel of record for

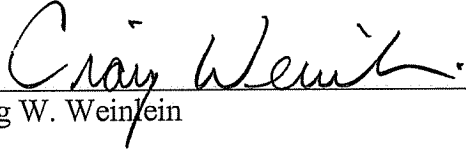
defendants Minekey and Andra, has a standard rate of \$340.00 per hour. All of these hourly rates are reasonable for the experience and expertise of the attorneys involved.

9. I believe our hourly rates are comparable to the hourly rates charged by plaintiff's counsel at Patton Boggs, LLP.

10. Using a blended hourly rate of \$450.00 per hour, 167 hours of attorney time results in attorneys' fees in excess of \$75,000.00. In my opinion, the legal services necessary to prosecute or defend this action through trial will greatly exceed 167 hours per side and the attorneys' fees will greatly exceed \$75,000.00 per side.

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

Executed on March 4, 2008



Craig W. Weinlein

FENWICK & WEST LLP

555 CALIFORNIA STREET, 12TH FLOOR SAN FRANCISCO, CA 94104
TEL 415.875.2300 FAX 415.281.1350 WWW.FENWICK.COM

February 26, 2008

R.J. HEHER

EMAIL RJHEHER@FENWICK.COM
DIRECT DIAL (415) 875-2329

VIA FEDERAL EXPRESS AND EMAIL

Lawrence R. Youst
Patton Boggs LLP
2001 Ross Avenue, Suite 3000
Dallas, TX 75201-8001
Email: lyoust@pattonboggs.com

Re: *i.think inc. v. Minekey, Inc., Delip Andra and Internet Unlimited*
Your Ref. No.: 026122.0103
Our Ref. No.: 24951-00070

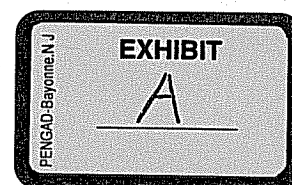
Dear Mr. Youst:

This letter is an offer to settle the lawsuit styled *i.think inc. v. Minekey, Inc., Delip Andra and Internet Unlimited*, originally filed in the 160th District Court of Dallas County, Texas in Cause No. 08-01055, and then removed with the same style to the United States District Court for the Northern District of Texas, Dallas Division, as Civil Action No. 3-08-CV-0163-P.

As you know from our recent correspondence and discussions, we strongly disagree with any suggestion that Minekey Inc. ("Minekey") has injured i.think inc.'s trade name or diluted its service mark, or that it has infringed i.think inc.'s service mark or breached any contracts. In fact, we believe your lawsuit is based on a fundamental misapprehension of Minekey's business model and how it uses its domain names. As you also know from our recent communications, however, Minekey wants to avoid the business disruption and the substantial litigation costs being imposed on it with this lawsuit.

We noted with interest the affidavit of Ms. Beth Mack which was filed in connection with the motion to remand. In that affidavit, Ms. Mack notes that i.think inc. is seeking injunctive relief, attorneys' fees and damages. Ms. Mack goes on to say: "i.think inc. does not seek, and expressly waives, damages in an amount greater than \$75,000, exclusive of interest and costs."

While we believe that \$75,000 greatly overstates the value of this lawsuit to i.think inc., we also believe that Minekey's legal expenses in defending this lawsuit will exceed that amount. Minekey, therefore, is prepared to pay i.think, inc. the sum of \$75,001.00, exclusive of interest and costs, in order to settle this lawsuit. We believe that the only arguable "interest and costs" (as that phrase is used in 28 U.S.C. § 1332) of i.think inc. would be state court civil filing fees of \$217, process fees of \$8 and service fees of \$120, for a total of \$345. (If we have overlooked any applicable "interest and costs," let us know and Minekey will add them to the settlement



Lawrence R. Youst
February 26, 2008
Page 2

offer.) In sum, Minekey is offering i.think inc. a total of \$75,346.00. In exchange for this payment, i.think inc. must dismiss the pending lawsuit in its entirety with prejudice—including all of its claims for injunctive relief, damages and attorneys' fees.

This offer will only remain open until the close of business on Friday, February 29, 2008. Please respond to this offer to Craig Weinlein (CWeinlein@CCSB.com) no later than February 29, 2008. If no reply is received by that date, Minekey will assume that i.think inc. rejects the settlement offer set forth in this letter.

Very truly yours,

FENWICK & WEST LLP



R.J. Heher

RJH:smd

24951/00070/SF/5223389.1

From: Youst, Lawrence [mailto:LYoust@PattonBoggs.com]
Sent: Wednesday, February 27, 2008 8:10 AM
To: RJ Heher
Subject: RE: i.think inc. v. Minekey, Inc., Delip Andra and Internet Unlimited

Thanks RJ. I will discuss this with my client.

Lawrence R. Youst
Patton Boggs, LLP
2001 Ross Avenue, Suite 3000
Dallas, Texas 75201
214.758.3414

From: RJ Heher [mailto:RJHeher@Fenwick.com]
Sent: Tuesday, February 26, 2008 5:52 PM
To: Youst, Lawrence
Subject: i.think inc. v. Minekey, Inc., Delip Andra and Internet Unlimited

Mr. Youst,

Please see the attached letter.

R.J. Heher
Fenwick & West LLP
555 California Street, Suite 1200
San Francisco, CA 94104
(415) 875-2329
rjheher@fenwick.com

3/4/2008

