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UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

PUBLIC ENGINES, INC., a Delaware
Corporation,

Plaintiff,

vs.

REPORTSEE, INC., a Delaware Corporation,
Defendant.

**MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT**

Case No. 2:10-cv-317

Honorable Tena Campbell

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Plaintiff Public Engines, Inc. (“Public Engines”), through counsel, hereby respectfully submits this memorandum in support of its Motion for Leave to File Amended Complaint. A copy of Public Engines’ proposed First Amended Complaint is appended hereto as Exhibit 1.

INTRODUCTION

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, the Motion to Amend asks the Court to grant Public Engines leave to amend its Complaint against Defendant ReportSee, Inc. (“ReportSee”). The primary change to the Complaint is the addition of Colin, Inc. as a defendant party.

ARGUMENT

I. Rule 15(a) of the Federal Rules of Civil Procedure Requires that Public Engines Be “Freely Given” Leave to Amend its Complaint.

Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that leave of court must be obtained to file amended pleadings when, as here, a responsive pleading has been filed. Rule 15(a) states that “[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a). The United States Supreme Court made clear that leave to amend should be freely given “[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc.” Foman v. Davis, 371 U.S. 178, 182 (1962); see also Childers v. Independent School District No. 1, 676 F.2d 1338, 1343 (10th Cir. 1982) (“Generally, refusing to amend is only justified upon a showing of undue delay, bad faith, or undue prejudice to the opposing party.”)

Public Engine’s Motion to Amend should be granted under these liberal standards. Justice will be furthered, not hindered, by amending the Complaint and adding Colin, Inc. as a party, because discovery has revealed that Colin, Inc., the sole shareholder of ReportSee, is extensively intertwined with the business and operations of ReportSee. Colin, Inc. is jointly and severally liable along with the ReportSee for the damages suffered by Public Engines. Because Colin, Inc. is the primary if not only source of funding for ReportSee, its addition to the Complaint is necessary to ensure that ReportSee cannot escape any judgment obtained by Public Engines by claiming insolvency or minimal assets.

ReportSee will not be placed in a position of disadvantage or prejudice if leave to amend is granted. In seeking to amend its Complaint, Public Engines has not acted in bad faith, or with undue delay or dilatory motive. Public Engines seeks to amend based on information recently obtained in discovery and does so prior to the deadline established by the Court’s scheduling

order. (See Order Granting Stipulated M. for Scheduling Order, Dkt. No. 52, July 30, 2010.) ReportSee will not suffer any prejudice because the key issues and causes of action in this matter remain the same. Public Engines' Motion to Amend also serves judicial economy, as this Court can determine liability for both Colin, Inc. and ReportSee in the same action, whereas without an amendment any potential judgment obtained by Public Engines would like have to be enforced through a post-judgment proceeding.

CONCLUSION

For the foregoing reasons, this court should grant Public Engines' Motion for Leave to File First Amended Complaint.

DATED this 29th day of October 2010.

SNELL & WILMER L.L.P.

By /s/ J. Elizabeth Haws
Alan L. Sullivan
Todd M. Shaughnessy
J. Elizabeth Haws
Attorney for Public Engines, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of October, 2010, I served the foregoing
**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT** by the CM/ECF system on the following:

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