

September 18, 2008

VIA HAND-DELIVERY

The Honorable Robert C. Jones
United States District Judge
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:

In anticipation of the status conference that the Court has scheduled for this Monday, September 22, 2008, and in light of the recent trial decision in the *SCO v. Novell* litigation, The SCO Group, Inc. ("SCO") respectfully submits this status report to apprise the Court of developments in that case since our last update on July 14, 2008.

On July 16, 2008, the Court entered its Findings of Fact, Conclusions of Law, and Order (the "Trial Order"), ruling that:

1. The SCOSource agreements with Linux end-users were not SVRX Licenses and therefore Novell is not entitled to revenue from those agreements;
2. The 2003 SCOSource agreement with Microsoft contained an SVRX License that was incidental to the UnixWare license in the agreement, and therefore SCO was authorized to enter into the SVRX License and Novell is not entitled to revenue from the agreement;
3. The 2003 SCOSource agreement with Sun also contained an authorized incidental SVRX License and Novell is not entitled to revenue attributable to that license; and
4. The same Sun agreement contained an unauthorized amendment of a prior UNIX agreement, and Novell is entitled to \$2,547,817 of the revenue from the Sun agreement as attributable to that amendment. (Novell originally claimed that it was entitled to all the revenue from the Sun, Microsoft, and SCOSource agreements, totaling approximately \$30,000,000 plus interest, but shortly before trial, Novell conceded it would not pursue a significant part of the Microsoft agreement and dropped its claim below \$20,000,000).

The Trial Order also directed Novell to file a brief identifying the amount of prejudgment interest it seeks. On August 29, 2008, Novell filed an Unopposed Submission Regarding Prejudgment Interest, informing the Court that the parties agree that Novell is entitled to \$918,122 in prejudgment interest through that date, plus \$489 per day thereafter until the entry of final judgment, based on the Court's \$2,547,817 award.

The Trial Order also directed Novell to file within ten days of the Order a proposed Final Judgment consistent with the Court's orders and the parties' stipulations dismissing claims. In response, Novell informed SCO and the Court that "entry of Final Judgment is inappropriate given the pendency of claims subject to an arbitration-related stay and given the Bankruptcy Court's reservation of issues pertaining to the entry of a constructive trust." SCO proposed, as Novell put it, "a resolution to Novell's objections to the entry of Final Judgment." First, based on SCO's tracing of revenue from the 2003 Sun agreement, Novell agreed that at most \$625,487 of SCO's current assets were traceable as trust funds. Second, SCO proposed dismissing its stayed claims with prejudice on the basis of the Court's summary judgment order of August 10, 2007. On August 29, 2008, in its Submission Regarding the Entry of Final Judgment, Novell informed the Court of the parties' agreement as to the trust amount, but Novell stood by its position that final judgment could not be entered because of the stayed claims.

In order to have a final judgment entered as the Court had ordered, on September 15, 2008, SCO filed a Motion for Entry of Final Judgment, in which SCO requested permission to dismiss its stayed claims with prejudice on the basis of the Court's summary judgment rulings, moved the Court to enter Final Judgment in the case, and moved the Court to certify the Court-resolved claims under Rule 54(b) in the event the Tenth Circuit views the Final Judgment as lacking finality. SCO intends to appeal the Court's adverse summary judgment rulings at the earliest opportunity.

In the Trial Order, the Court also made and confirmed key findings regarding SCO's ownership rights in UNIX. First, the Court confirmed that SCO owns the UNIX business, that SCO owns all UNIX and UnixWare technology except pre-1996 copyrights, and that SCO has the authority to license UNIX under its SCOSource program. Importantly, the Court also found that Novell has no claim to any UnixWare royalties because any obligation SCO may have had to pay Novell a portion of those royalties expired at the end of 2002. Second, with respect to OpenServer, one of the UNIX operating systems that SCO alleges AutoZone misused, and which AutoZone has admitted using to help it migrate its applications to Linux, the Court found that "Novell never owned, or had a license to, OpenServer," that "OpenServer was Santa Cruz's flagship product through the 1990s," and that "OpenServer produces two-thirds of SCO's UNIX revenue and has thousands of customers, including small to mid-sized businesses and large corporations, such as McDonald's."

SCO looks forward to discussing the status of the case with the Court as scheduled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Pocker', with a long horizontal flourish extending to the right.

Richard J. Pocker

cc: James Pisanelli, Esq. (via facsimile)
David S. Stone, Esq. (via facsimile)

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LAS VEGAS, NV

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