

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

PROP SOLUTIONS, LTD.)	
)	
Plaintiff,)	
)	
v.)	
)	
GOPD, LLC, POE SYSTEMS, INC.,)	Case No.: _____
JACK D. DUNCAN, DONNA SNYDER,)	
and SOLUTIONS 4 BUSINESS, INC.)	
)	
Defendants.)	
_____)	

COMPLAINT

Prop Solutions, Ltd. files this Complaint for copyright infringement and related torts and states as follows:

I. Short Summary of Case

1.

From 2003 to 2010, Prop Solutions was in a business relationship with Defendants.

2.

Prop Solutions brought to that relationship certain software (described below) which Prop Solutions solely developed, wrote and owned.

3.

Prop Solutions' software is used by hundreds of companies, all of which are in the business of selling office supplies at the retail level.

4.

Adverse to Prop Solutions' ownership, Defendants have claimed and continue to claim that Defendant GOPD, LLC owns the software.

5.

Defendants have continued to license that software to Defendant GOPD, LLC's customers.

6.

Based on the belief that Defendant GOPD, LLC owns the software, Defendants have continued to license that software to Defendant GOPD, LLC's customers.

7.

Such licenses by Defendant GOPD, LLC have created millions of dollars in revenue for it.

8.

In addition to damages for copyright infringement, Prop Solutions seeks a declaratory judgment declaring it the sole owner of the software and the related copyrights and seeks injunctive relief to prevent further infringement.

II. Parties

9.

Prop Solutions, Ltd. is a Delaware corporation which is registered as a foreign corporation to do business in the State of Georgia. Prop Solutions is located at 32 Saint Aurics Drive, Suwanee, GA 30024 and is solely owned by its founder and chief employee, Rick Marlette.

10.

Based on information currently available to Prop Solutions, Defendant GOPD, LLC is a Delaware corporation located at 2620 Logan Way, Lawrenceville, GA 30043.

11.

Based on information currently available to Prop Solutions, Defendant POE Systems, Inc. is a Georgia corporation located at 2620 Logan Way, Lawrenceville, GA 30043.

12.

Based on information currently available to Prop Solutions, Defendant Solutions 4 Business, Inc. is a Delaware corporation located at located at 2620 Logan Way, Lawrenceville, GA 30043.

13.

Jack D. Duncan, Jr. is an individual and a resident of the State of Georgia.

14.

Prop Solutions believes Mr. Duncan is an owner and manager of both POE Systems, Inc. and GOPD, LLC.

15.

Defendant Donna Snyder is an individual and resident of the State of Georgia.

16.

Prop Solutions believes Ms. Snyder is an owner and manager of both Solutions 4 Business, Inc. and GOPD, LLC.

III. Subject Matter Jurisdiction

17.

This Court has subject matter jurisdiction over Prop Solutions' claims for copyright infringement and related claims pursuant to 17 U.S.C. § 501 and 28 U.S.C. §§ 1331 and 1338(a).

18.

This Court has supplemental jurisdiction over Prop Solutions' claims arising under the laws of Georgia pursuant to 28 U.S.C. § 1367(a) because these claims are so related to Prop Solutions' claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

IV. Personal Jurisdiction

19.

This Court has personal jurisdiction over Defendants because Defendants reside in and/or are doing business in the State of Georgia and in this District. In addition, many of the copyright infringement acts complained of herein occurred in the State of Georgia and in this District.

V. Venue

20.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and § 1400(a) because (a) Defendants reside in the Northern District of Georgia and/or (b) a substantial part of the events giving rise to Prop Solutions' claims occurred in the Northern District of Georgia.

VI. Factual Background

About the Software

21.

Prop Solutions created and owns robust, enterprise level software for the office supply industry. This is the software being infringed by Defendants and is referred to hereinafter as "Software."

22.

The industry-leading Software is among the most widely-used and commercially successful software of its kind in the industry.

23.

Hundreds of independent office supply retailers throughout the United States use the Software to run their business. Some of the key features of the Software are:

- gives office supply retailers a way to receive online orders from their customers;
- allows retailers to manage and process customer orders;
- manage inventory;
- order and dropship orders from third-party suppliers; and
- record financial transactions related to those orders.

24.

One of the most innovative features of the Software is the automatic collection and organizing of market pricing from national office supply chains allowing smaller office supply retailers to compete on price with the national chains.

25.

The Software is original to Prop Solutions.

26.

Mr. Marlette, as an employee of Prop Solutions, started writing the source code for the Software in 2001 and wrote every line of original code.

27.

As an employee of Prop Solutions, he regularly added features and upgraded the Software throughout the time Prop Solutions was in a business relationship with Defendants (*i.e.*, from 2002 to 2010).

28.

The Software consists of over one million lines of code, all written by Mr. Marlette.

29.

From 2001 to 2010 the Software was Mr. Marlette's sole focus and continues to be his proverbial baby.

Ownership of the Software

30.

The Software has been registered with the United States Copyright Office, as TX 8-156-123. A copy of the Certificate of Registration is attached as Exhibit A.

31.

Defendant GOPD, LLC has in the past claimed to be the sole owner of the Software.

32.

Defendant GOPD, LLC currently maintains its claim of sole ownership of the Software.

33.

In a May 26, 2010 letter from an attorney for GOPD, LLC, GOPD, LLC asserted that “all of the OPSoftware is property of GOPD, LLC.” (Exhibit B).

Relationship Between the Parties

34.

In 2002 or 2003, Prop Solutions entered a business relationship with Defendants.

35.

Defendants Duncan and Snyder held the joint undertaking out as a being an entity named “GOPD.” However, there was no such legal entity until April 2010, when those Defendants (or perhaps others) incorporated GOPD, LLC with the Georgia Secretary of State.

36.

The individual owners of Prop Solutions (Marlette), Defendant POE Systems (Defendant Duncan) and Solutions 4 Business, Inc. (Defendant Snyder) agreed they would equally share (i.e., one-third each) the revenue generated by this joint undertaking.

37.

As part of the joint undertaking, Prop Solutions allowed the Software to be licensed to customers and provided all IT and technical support.

38.

During the joint undertaking, Prop Solutions was paid one-third of the revenue generated by licensing the Software.

39.

Solutions 4 Business, Inc.'s contribution to the joint undertaking was sales and marketing.

40.

Solutions 4 Business, Inc. was also paid one-third of the licensing revenue.

41.

In 2003, 2004 and 2005, Prop Solutions' one-third of the revenue was paid to it from "POE Systems." During this period of time, Prop Solutions was paid an average of \$9,449.75 a month for its share of the undertaking's revenue.

42.

In 2006 through 2010, Prop Solutions' one-third of the revenue was paid to it from "GOPD, LLC." During this period of time, Prop Solutions was paid an average of \$13,175.86 a month for its share of the revenue.

Termination of the Joint Undertaking

43.

In 2010, the business arrangement between Prop Solutions and the Defendants ended due to personal and business differences between the principals.

44.

The understanding between the Parties at the time of the break-up was that the Defendants, since they did not own the Software, would develop their own software product to replace the Software. Defendants would then license the software it developed to its customers.

45.

Consistent with the understanding, Defendants developed one piece of software needed to replace the Software.

46.

The one piece Defendants developed is called the "front-end." The "front-end" of the Software is basically the "shopping cart" portion of an office supply

retailer's website where the retailer's customers order office supplies and pay the office supply retailer for the goods.

47.

By simply visiting the websites of certain of Defendants' customers, Mr. Marlette was able to confirm that Defendants stopped using Prop Solutions' "front-end" and had developed different "front-end" software.

48.

Defendants led Prop Solutions and its owner, Mr. Marlette, to believe that Defendants also developed new "back-end" software.

49.

Based on representations from Mr. Duncan and Ms. Snyder, and based on being able to confirm that Defendants developed their own "front-end" piece of software, Mr. Marlette believed that Defendants had complied with the understanding between them for Defendants to stop using Prop Solutions' Software altogether.

Revelations During the Summer of 2015

50.

Last summer, Mr. Marlette received a phone call about someone attempting to purchase "GOPD" software.

51.

Because of the call, Mr. Marlette began to consider whether Defendants were actually continuing to make use of the Software, despite Defendants' representations to the contrary to Mr. Marlette.

52.

This, in turn, motivated Prop Solutions to have its attorney, Jesse Kent, send a letter to Defendants, dated June 17, 2015. (Exhibit C).

53.

Soon after that letter was sent, Defendants' website which resided at the <gopd.com> domain name, was inexplicably taken off-line and made unavailable to the public.

54.

Since 2010, Defendants had owned and maintained its marketing content on a website at <gopd.com>. Currently at since around receipt of the June 17, 2015 letter (Exhibit C) by at least one Defendant, there is no longer a website or other content at that domain name.

55.

Prop Solutions believes Defendants took the website at <gopd.com> down after receiving the June 17, 2015 letter from Prop Solutions' attorney in an attempt

to hide the fact that Defendants were continuing to use and license the Software to customers.

Confirmation of Copyright Infringement in 2016

56.

GOPD, LLC is currently licensing the Software to its customers.

57.

In 2016, Mr. Marlette was able to verify that Defendants were continuing to use and license Prop Solutions' Software and did so using a different and difficult-to-locate domain name: <dealer.gopdllc.com>.

58.

Based on at least one Defendant's claim of ownership of the Software, GOPD, LLC is licensing at least a portion of the Software to GOPD, LLC's customers.

59.

While Defendants developed a new "front-end," at least one Defendant is licensing the "back-end" portion of the Software to customers of at least one Defendant.

60.

Prop Solutions believes that there are no less than 222 office supply retailers using the "back-end" of Prop Solutions' Software.

61.

Those at least 222 office supply retailers are using the “back-end” portion of the Software under the guise of a license from GOPD, LLC.

62.

Since 2010 and continuing today, with an estimated average revenue per user of \$450.00 a month, 222 customers are likely producing for at least one Defendant annual revenue of not less than \$1.2 million.

63.

At least one Defendant’s continued use, distribution, copying and licensing of the back-end portion of the Software violates Prop Solutions’ copyrights, forcing Prop Solutions to seek this relief.

VII. Counts

Count One – Declaratory Relief

64.

Prop Solutions repeats and incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth in this paragraph.

65.

Declaratory Relief is sought under 28 U.S.C. § 2201, *et seq.* (Declaratory Judgment Act) and 17 U.S.C. § 501, *et seq.* (Copyright Act).

66.

There is a real and actual controversy between Prop Solutions and at least one Defendants regarding ownership of the Software since both Prop Solutions and at least one Defendant claim sole ownership of it.

67.

Furthermore, Defendants are using the Software to compete with Prop Solutions, which is also in the business of licensing software to office supply retailers.

68.

Prop Solutions has lost customers (and failed to gain new customers) and will continue to do so until the Court declares Prop Solutions the sole owner of the Software.

69.

Thus, the controversy between Prop Solutions and Defendant is real and substantial and demands specific relief through a decree of a conclusive character.

70.

Prop Solutions is entitled to declaratory judgment that it is the sole owner of the Software.

Count Two – Copyright Infringement

71.

Prop Solutions repeats and incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth in this paragraph.

72.

Relief is sought for copyright infringement under 17 U.S.C. § 501, *et seq.*

73.

Prop Solutions is the sole owner of the Software, and of the corresponding copyrights and Certificates of Registration.

74.

Defendants, including the individual principals, have infringed the copyrights in Prop Solutions' Software by advertising, marketing, installing, offering, and/or distributing infringing materials in the United States of America without approval or authorization from Prop Solutions.

75.

The infringement by Defendants is ongoing.

76.

At a minimum, Defendants acted with willful blindness to and in reckless disregard of Prop Solutions' copyrights.

77.

As a result of their wrongful conduct, Defendants are liable to Prop Solutions for copyright infringement and Prop Solutions is entitled to recover damages, which include any and all profits Defendants have made as a result of their wrongful conduct. 17 U.S.C. § 504.

78.

Alternatively, Prop Solutions is entitled to statutory damages under 17 U.S.C. § 504(c).

79.

In addition, for the reasons set forth above, the award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

80.

Prop Solutions is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Prop Solutions has no adequate remedy at law for Defendants' wrongful conduct because, among other things, (a) Prop Solutions' copyrights are unique and valuable property which have no readily determinable market value, (b) Defendants' infringement harms Prop Solutions such that Prop Solutions could not be made whole by any monetary award, and (c) Defendants' wrongful conduct, and the resulting damage to Prop Solutions, is continuing.

81.

Prop Solutions is also entitled to recover its attorneys' fees and costs of suit.

17 U.S.C. § 505.

Count Three - Vicarious Copyright Infringement

82.

Prop Solutions repeats and incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth in this paragraph.

83.

At all times relevant herein, Defendants, including the individual principals, had the right and ability to control and/or stop their customers' use of the Software but Defendants failed to exercise such control. As a direct and proximate result of such failure, the Software customers have infringed Prop Solutions' copyrights in the Software.

84.

At all times relevant herein, Defendants derived substantial financial benefit from infringement of Prop Solutions' copyrights by the Software customers.

85.

At a minimum, Defendants acted with willful blindness to and in reckless disregard of Prop Solutions' registered copyrights.

86.

As a result of their wrongful conduct, Defendants are liable to Prop Solutions for vicarious copyright infringement. 7 U.S.C. § 501. Prop Solutions has suffered damages. Prop Solutions is entitled to recover damages, which include any and all profits Defendants have made as a result of their wrongful conduct. 17 U.S.C. § 504. Alternatively, Prop Solutions is entitled to statutory damages under 17 U.S.C. § 504(c).

87.

In addition, for the reasons set forth above, the award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

88.

Prop Solutions is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Prop Solutions has no adequate remedy at law for Defendants' wrongful conduct because, among other things, (a) Prop Solutions' copyrights are unique and valuable property which have no readily determinable market value, (b) Defendants' vicarious infringement harms Prop Solutions such that Prop Solutions could not be made whole by any monetary award, and (c) Defendants' wrongful conduct, and the resulting damage to Prop Solutions, is continuing.

89.

Prop Solutions is also entitled to recover its attorneys' fees and costs of suit.

17 U.S.C. § 505.

Count Four - Contributory Copyright Infringement

90.

Prop Solutions repeats and incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth in this paragraph.

91.

Copyright infringement takes place every time a Software customer, without Prop Solutions' authorization, uses the Software. Each infringement is facilitated and made possible by Defendants.

92.

Through their conduct averred herein, Defendants have engaged and continue to engage in the business of knowingly and systematically inducing, causing, and materially contributing to the unauthorized use of the copyrighted Software and thus to the infringement of Prop Solutions' copyrights in the Software.

93.

Each customer's use constitutes a separate and distinct act of infringement.

94.

At a minimum, Defendants acted with willful blindness to and in reckless disregard of Prop Solutions' registered copyrights.

95.

As a result of their wrongful conduct, Defendants are liable to Prop Solutions for contributory copyright infringement. 17 U.S.C. § 501. Prop Solutions has suffered damages. Prop Solutions is entitled to recover damages, which include any and all profits Defendants have made as a result of their wrongful conduct. 17 U.S.C. § 504. Alternatively, Prop Solutions is entitled to statutory damages under 17 U.S.C. § 504(c).

96.

In addition, for the reasons set forth above, the award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

97.

Prop Solutions is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Prop Solutions has no adequate remedy at law for Defendants' wrongful conduct because, among other things, (a) Prop Solutions' copyrights are unique and valuable property which have no readily determinable market value, (b) Defendants' contributory infringement harms Prop Solutions such that Prop

Solutions could not be made whole by any monetary award, and (c) Defendants' wrongful conduct, and the resulting damage to Prop Solutions, is continuing.

98.

Prop Solutions is also entitled to recover its attorneys' fees and costs of suit. 17 U.S.C. § 505.

VIII. Jury Demand

99.

Prop Solutions requests a trial by jury for all issues raised in this Complaint, as it may be amended, and in any answer or counterclaim that are so triable.

IX. Prayer for Relief

100.

WHEREFORE, Prop Solutions respectfully requests judgment as follows:

(1) That the Court enter a declaratory judgment that Prop Solutions is the sole owner of the Software and the related copyrights;

(2) That the Court enter a judgment against Defendants: (a) that Defendants have infringed the copyrights in Prop Solutions' Software, including the federally registered copyright TX 8-156-123, in violation of 17 U.S.C. § 501; and (b) that the infringement was committed, at a minimum, with willful blindness and/or reckless disregard.

(3) That the Court enter a judgment against Defendants: (a) that Defendants have vicariously infringed the copyrights in Prop Solutions' Software, including the federally registered copyright TX 8-156-123, in violation of 17 U.S.C. § 501; and (b) that the vicarious infringement was committed, at a minimum, with willful blindness and/or reckless disregard.

(4) That the Court enter a judgment against Defendants: (a) that Defendants have contributorily infringed the copyrights in Prop Solutions' Software, including the federally registered copyright TX 8-156-123, in violation of 17 U.S.C. § 501; and (b) that the contributory infringement was committed, at a minimum, with willful blindness and/or reckless disregard.

(5) That the Court issue injunctive relief against Defendants, and that Defendants, its officers, agents, servants, employees, and all others in active concert or participation with Defendants, be enjoined and restrained from imitating, copying, or making any other infringing use or infringing distribution of the Software program, components, end user license agreements ("EULA"), certificates of authenticity ("COAs") and/or things protected by Prop Solutions' copyrights, including Copyright Certificate Registration No.: TX 8-156-123;

(6) That the Court order Defendants to pay Prop Solutions' damages and Defendants' profits pursuant to 17 U.S.C. § 504(b), or alternatively, enhanced statutory damages pursuant to 17 U.S.C. § 504(c), and 17 U.S.C. § 504(c)(2);

(7) That the Court order Defendants to pay to Prop Solutions both the costs of this action and the reasonable attorneys' fees incurred by it in prosecuting this action; and

(8) That the Court grant to Prop Solutions such other and additional relief as is just and proper.

Dated: April 13, 2016

Respectfully submitted,

/s/David M. Lilenfeld

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