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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE SCO GROUP, INC.
a Delaware Corporation

Plaintiff,

v.

AUTOZONE, INC.
a Nevada Corporation

Defendant.

Civil Action File No.
CV-S-04-0237-RCJ-LRL

DEFENDANT AUTOZONE, INC.'S EMERGENCY MOTION TO STAY

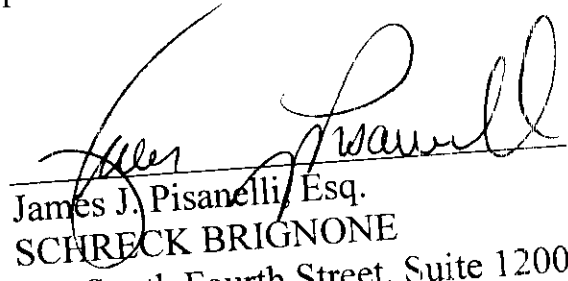
Defendant AutoZone, Inc. ("AutoZone") moves the Court for an order
staying all remaining proceedings related to the issue of preliminary injunctive relief.

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1 The grounds in support of AutoZone's Motion are set forth in detail in
2 AutoZone's Memorandum of Law filed concurrently herewith.

3 Respectfully submitted, this 1st day of September, 2004.

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DEFENDANT AUTOZONE, INC.'S MEMORANDUM OF LAW
IN SUPPORT OF ITS EMERGENCY MOTION TO STAY

Defendant AutoZone, Inc. ("AutoZone") moves the Court for an order staying all remaining proceedings related to the issue of preliminary injunctive relief.

INTRODUCTION

The Court has stayed all action in this case with the exception that the Court has authorized Plaintiff The SCO Group, Inc. ("SCO") to conduct limited expedited discovery in advance of the filing of a motion for preliminary injunction on SCO's claims that AutoZone infringed SCO's copyrights when AutoZone migrated from UNIX to Linux. Nevertheless, the Court has made clear to SCO that it can *only* pursue such discovery if it has a right to preliminary injunctive relief *and* if it intends to file a motion to pursue such relief.

SCO has recently stated in writing that it does not know whether it is entitled to a preliminary injunction but that it intends to pursue expedited discovery nonetheless in order to determine whether it has grounds to file such a motion. SCO's intent to pursue discovery at this time is therefore nothing more than a fishing expedition that is directly contrary to the Court's ruling, and AutoZone requests that all further action in this case be stayed pending resolution of the previously filed *IBM, Novell* and *Red Hat* cases.

STATEMENT OF FACTS

On March 3, 2004, SCO filed its Complaint alleging one cause of action for copyright infringement and broadly asserting that AutoZone's internal use, distribution, and copying of the Linux operating system infringes copyrights that SCO purports to own in the UNIX operating system. *See generally* Complaint. SCO

1 did not state in its Complaint that it is entitled to, or that it intends to move for,
2 preliminary injunctive relief on any of its claims.

3 On April 23, 2004, AutoZone filed two motions: (a) a Motion to Stay or, in
4 the Alternative, for More Definite Statement, and (b) a Motion to Transfer Venue.
5 The Court heard oral argument on AutoZone's motions on July 12, 2004.

6 At the July 12 hearing, the Court granted AutoZone's Motion to Stay as it
7 relates to the code within Linux itself, but the Court noted SCO's allegations that
8 AutoZone had independently infringed code in UNIX when AutoZone migrated
9 from UNIX to Linux.¹ Accordingly, the Court ruled that SCO could conduct limited
10 discovery on "facts predicate to [a motion for] preliminary injunction" on the alleged
11 migration infringements. See July 12, 2004 Hearing Transcript ("Hearing
12 Transcript"), attached hereto as Exhibit A, 25:10. Importantly, however, the Court
13 admonished SCO: "[i]f you don't have the right to a preliminary injunction, you
14 shouldn't proceed with discovery at all." Hearing Transcript, 24:22-23 (emphasis
15 added). The Court further instructed SCO: "you shouldn't go on a free-ranging
16 discovery course preparatory to a trial." Hearing Transcript, 25:10-12. Therefore,
17 the Court authorized SCO to conduct limited discovery *only* if SCO had a right to
18 preliminary injunctive relief *and* it intended to pursue such relief.

19 The Court instructed AutoZone to confer with SCO and submit a proposed
20 order on the motions. The parties conferred in good faith but were unable to reach
21 agreement on several important issues. As a result, the parties agreed to submit
22 separate orders to the Court. AutoZone submitted its proposed order on July 30,
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27 ¹ The Court stated at the July 12 hearing: "The only reason for doing that is because [SCO]
28 raised that issue in their responses that they would be harmed if the Court simply held off and did not
let them proceed here one way or the other." Hearing Transcript, 24:11-14.

1 2004. See Letter from David J. Stewart to Hon. Robert C. Jones, dated July 30,
2 2004. SCO did not submit an order. On August 6, 2004, the Court entered an Order
3 on AutoZone's motions in substantially the same form as AutoZone had proposed.
4 See Order, attached hereto as Exhibit B.

5 The Order required SCO to "serve on AutoZone a statement of the basis for
6 its claim for preliminary injunctive relief and the nature of the relief it seeks on those
7 claims" within fifteen (15) days from the date of the Order, or Monday, August 23,
8 2004. See Order, ¶ 2. On August 23rd, counsel for SCO contacted counsel for
9 AutoZone and requested an extension until Friday, August 27th to serve the required
10 statement. AutoZone agreed to the requested extension. On Friday, August 27th,
11 counsel for SCO again contacted counsel for AutoZone and requested a second
12 extension until Monday, August 30th to file the required statement. Again,
13 AutoZone agreed to the requested extension.

14 On August 30th, SCO served AutoZone with SCO's Statement of Basis for
15 Claim for Preliminary Injunctive Relief and Nature of Relief ("Injunctive Relief
16 Statement"), a copy of which is attached hereto as Exhibit C. In its Injunctive Relief
17 Statement, SCO states that "[t]he Court has permitted SCO to conduct limited
18 expedited discovery on [AutoZone's migration from a Unix Operating System to a
19 Linux Operating System] in order to determine whether or not to file a motion for
20 preliminary injunctive relief." See SCO's Injunctive Relief Statement, pp. 1-2
21 (emphasis added). SCO's Injunctive Relief Statement further states that SCO
22 "intends to conduct limited discovery into the above issues in order to determine
23 whether or not, under the circumstances, an application for a Preliminary Injunction
24 is warranted." See SCO's Injunctive Relief Statement, p. 4 (emphasis added). SCO
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1 therefore seeks to conduct discovery to determine whether or not it has a right to a
2 preliminary injunction, notwithstanding the Court's ruling that the right to a
3 preliminary injunction is prerequisite to conducting discovery. *See* Hearing
4 Transcript, 24:22-23.²

5 **ARGUMENT AND CITATION OF AUTHORITIES**

6 This Court possesses the inherent discretion to stay these proceedings.
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8 *Clinton v. Jones*, 520 U.S. 681, 706 (1997) ("The District Court has broad discretion
9 to stay proceedings as an incident to its power to control its own docket."). As this
10 Court has previously explained, "[e]very court has the inherent power to stay causes
11 on its docket with a view to avoiding [the] ... waste of time and effort by itself, the
12 litigants and counsel." *Stern v. United States*, 563 F. Supp. 484, 489 (D. Nev. 1983).

13 Here, the Court should stay the remaining proceedings related to the issue of
14 preliminary injunctive relief because, contrary to the Court's directive, SCO has no
15 idea at this time whether it is entitled to a preliminary injunction or whether it even
16 intends to move for such relief. Instead, SCO has announced through its Injunctive
17 Relief Statement that it intends to use the expedited discovery period for what
18 amounts to a fishing expedition to determine whether or not it has any legitimate
19 basis to file a motion for preliminary injunction on any issue. Such a fishing
20 expedition violates the Court's ruling, and will be a waste of time, effort and money
21 by the Court, the litigants, and third party witnesses.
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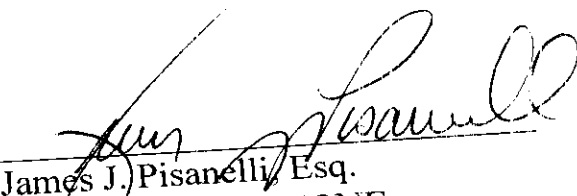
26 ² SCO states in its Injunctive Relief Statement that it "believes that it is reasonably likely that
27 AutoZone copied SCO's copyrighted material during the migration process ...;" however, this
28 statement does not amount to a statement by SCO that it has a right to a preliminary injunction and
can satisfy the onerous elements necessary to be entitled to such relief. *See* SCO's Injunctive Relief
Statement, p. 2.

1 SCO's Injunctive Relief Statement and its plan to conduct discovery is based
2 entirely on SCO's erroneous statement that:

3 The Court has permitted SCO to conduct limited discovery on
4 [AutoZone's migration from a Unix Operating System to a Linux
5 Operating System] in order to determine whether or not to file a
6 motion for preliminary injunctive relief.

7 SCO's Injunctive Relief Statement, pp. 1-2 (emphasis added). The Hearing
8 Transcript clearly demonstrates that the Court never authorized SCO to conduct
9 discovery "to determine whether or not" to file a motion for preliminary injunction.
10 To the contrary, the Court clearly stated: "[i]f you [SCO] don't have the right to a
11 preliminary injunction, you shouldn't proceed with discovery at all." Hearing
12 Transcript, 24:22-23 (emphasis added).³ SCO's intent to pursue expedited discovery
13 is therefore not authorized by this Court, and AutoZone respectfully requests that all
14 further proceedings in this case be stayed pending resolution of the previously filed
15 *IBM, Red Hat and Novell* cases.

16 This 1st day of September, 2004.

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24 ³ SCO's deliberate waffling "whether or not to" language in its Injunctive
25 Relief Statement is not surprising. Given that SCO did not seek a preliminary
26 injunction when it originally filed its Complaint, SCO now wants to cover itself in
27 the event that SCO elects not to file a motion for preliminary injunction. SCO can
28 then point to the language in its Injunctive Relief Statement after it subjects
AutoZone to expedited discovery and does not file a motion, and explain to the Court
that it subsequently learned that it did not have grounds for preliminary injunctive
relief, notwithstanding that such grounds were a prerequisite to conducting discovery
in the first place.

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CERTIFICATE OF SERVICE

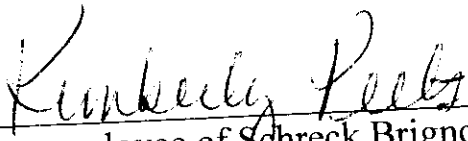
I hereby certify that I have this day served a copy of the within and foregoing
DEFENDANT AUTOZONE, INC.'S MEMORANDUM OF LAW IN SUPPORT
OF ITS EMERGENCY MOTION TO STAY upon all counsel of record addressed as
follows:

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This 1st day of September, 2004.


An employee of Schreck Brignone