

SNELL & WILMER L.L.P.
Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
Amy F. Sorenson (8947)
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE LLP
Evan R. Chesler (admitted pro hac vice)
David R. Marriott (7572)
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

*Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.,
Plaintiff/Counterclaim-Defendant,
v.
INTERNATIONAL BUSINESS MACHINES
CORPORATION,
Defendant/Counterclaim-Plaintiff.

**IBM'S MOTION FOR SUMMARY
JUDGMENT ON SCO'S UNFAIR
COMPETITION CLAIM (SCO'S SIXTH
CAUSE OF ACTION)**

(ORAL ARGUMENT REQUESTED)

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

Pursuant to DUCivR 56-1(a) and Federal Rules of Civil Procedure 1, 26, 30, 33, 37 and 56, Defendant/Counterclaim-Plaintiff International Business Machines Corporation (“IBM”) respectfully submits this motion for summary judgment on Plaintiff/Counterclaim-Defendant The SCO Group, Inc.’s (“SCO”) unfair competition claim (SCO’s Sixth Cause of Action).

As is more fully set forth in the accompanying memorandum, SCO’s unfair competition claim is a mix of SCO’s other causes of action and separate allegations of misconduct regarding Project Monterey (“Monterey”), which was a joint development project between IBM and The Santa Cruz Operation, Inc. (“Santa Cruz”) beginning in 1998. To the extent SCO’s unfair competition claim concerns Monterey — which appears to be its focus — the claim is untenable for at least three independent reasons: (1) it is untimely; (2) SCO cannot show that IBM engaged in unfair competition regarding Monterey; and (3) the claim is preempted by federal copyright law. To the extent the claim is based on the alleged misconduct underlying SCO’s other claims, it is untenable for the reasons set out in IBM’s motions for summary judgment with respect to those claims, which are incorporated in the accompanying memorandum by reference.

For the all foregoing reasons, and for the reason that SCO cannot adduce admissible evidence sufficient to establish the essential elements of its claim, this Court should enter summary judgment in favor of IBM on SCO’s claim for unfair competition (SCO’s Sixth Cause of Action).

DATED this 25th day of September, 2006.

SNELL & WILMER L.L.P.

/s/ Amy F. Sorenson
Alan L. Sullivan
Todd M. Shaughnessy
Amy F. Sorenson

CRAVATH, SWAINE & MOORE LLP
Evan R. Chesler
David R. Marriott

*Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation*

Of Counsel:

INTERNATIONAL BUSINESS MACHINES CORPORATION

Alec S. Berman

1133 Westchester Avenue

White Plains, New York 10604

(914) 642-3000

*Attorneys for Defendant/Counterclaim-Plaintiff International
Business Machines Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September, 2006, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court and delivered by CM/ECF system to the following:

Brent O. Hatch
Mark F. James
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101

Stephen N. Zack
Mark J. Heise
BOIES, SCHILLER & FLEXNER LLP
100 Southeast Second Street, Suite 2800
Miami, Florida 33131

and by U.S. Mail, postage pre-paid to:

Robert Silver
Edward Normand
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504

/s/ Amy F. Sorenson