

ORIGINAL

AO 440 (Rev. 1/90) Summons in a Civil Action

UNITED STATES DISTRICT COURT

DISTRICT OF

NEVADA

2004 MAR 12 P 2:54

THE SCO GROUP, INC.,
a Delaware corporation

Plaintiff,

v.

AUTOZONE, INC.,
a Nevada corporation

Defendant

SUMMONS IN A CIVIL ACTION

CV-S-04-0237-RCJ-LRL

TO: (Name and Address of Defendant)

AUTOZONE, INC.
by and through their Registered Agent,
Corporation Trust Company of Nevada
6100 Neil Road, Ste. 500
Reno, Nevada 89511

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon Plaintiff's attorney (name and address)

Stanley W. Parry
CURRAN & PARRY
300 South Fourth Street, Ste. 1201
Las Vegas, Nevada 89101
(702) 471-7000

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

MAR - 3 2004

LANCE S WILSON

CLERK

DATE

BY DEPUTY CLERK

7

RETURN OF SERVICE		
Service of the Summons and Complaint was made by me ¹	DATE	
NAME OF SERVER (PRINT)	TITLE	
<p><i>Check one box below to indicate appropriate method of service</i></p> <p><input type="checkbox"/> Served personally upon the defendant. Place where served:</p> <p><input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.</p> <p style="margin-left: 40px;">Name of person with whom the summons and complaint were left:</p> <p><input type="checkbox"/> Returned unexecuted:</p> <p><input type="checkbox"/> Other (specify):</p>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____</p> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="text-align: center;"> <p><i>Date</i></p> </div> <div style="text-align: center;"> <p>_____ <i>Signature of Server</i></p> <p>_____ <i>Address of Server</i></p> </div> </div>		

¹ As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Stanley W. Parry, Esq., #1417

Curran & Parry
300 South Fourth Street, Suite 1201
Las Vegas, Nevada 89101

(702) 471-7000
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THE SCO GROUP, INC.
Plaintiff
vs.
AUTOZONE, INC.,
Defendant

Case No. CV-S-04-0237-DWH-LRL

AFFIDAVIT OF SERVICE

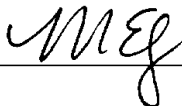
State of Nevada
ss.
County of Clark

R. WHITE, being duly sworn says: That at all times herein affiant was over 18 years of Age, not a party to or interested in the proceeding in which this affidavit is made. That Affiant received one copy of the SUMMONS and COMPLAINT and served the same by delivering a copy to the Defendant, AUTOZONE, INC., CORPORATION TRUST COMPANY OF NEVADA, Resident Agent, in the following manner: Pursuant to NRS 14.020 as a person of suitable age and discretion at the address below, which address is the address of the resident agent as shown on the current certificate of designation with the Secretary of State.

Date/Time Served March 4, 2003, 8:39 a.m.
Served To Faye Martin
Served At 6100 Neil Road, Suite 500
Reno, Nevada 89511

Subscribed and Sworn to
before me this date

3/5/2004



Signature of Affiant
SOUTHERN NEVADA PROCESS SERVICE
726 S. Casino Center Blvd., Suite 212
Las Vegas, Nevada 89101
Telephone (702) 319-5300
Facsimile (702) 319-3994

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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.

COMPLAINT
JURY DEMAND

CV-S-04-0237-DWH-LRL

COMES NOW, the Plaintiff, The SCO Group, Inc. ("SCO") sues Defendant, AutoZone, Inc., ("AutoZone") and alleges as follows:

INTRODUCTION

1. Defendant uses one or more versions of the Linux operating system that infringe on SCO's exclusive rights in its propriety UNIX System V operating system technology. This case seeks relief under the Copyright Act to compensate SCO for damages it has sustained as result of Defendant's infringing uses of SCO's proprietary UNIX System V technology, and to enjoin any further use by Defendant of the protected UNIX System V technology contained in Linux.

///

FILED RECEIVED
ENTERED SERVED ON
COURT CLERK OF RECORD

2004 MAR -3 A 9:02

U.S. DISTRICT COURT
DISTRICT OF NEVADA

BY _____ DEPUTY

1
2 2. Plaintiff SCO is a Delaware corporation with its principal place of business in Utah
3 County, State of Utah.

4 3. Defendant is a Nevada corporation with its principal place of business in the State
5 of Tennessee.

6 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

7 5. Venue is properly situated in this District pursuant to 28 U.S.C. §§ 1391 and 1400.

8 **BACKGROUND FACTS**

9 6. UNIX is a computer software operating system. Operating systems serve as the link
10 between computer hardware and the various software programs (known as applications) that run
11 on the computer. Operating systems allow multiple software programs to run at the same time and
12 generally function as a "traffic control" system for the different software programs that run on a
13 computer.

14 7. In the business-computing environment for the Fortune 1000 and other large
15 corporations (often called the "enterprise computing market"), UNIX is widely used.

16 8. The UNIX operating system was originally developed by AT&T Bell Laboratories
17 ("AT&T"). After successful in-house use of the UNIX software, AT&T began to license UNIX as a
18 commercial product for use in enterprise applications by other large companies.

19 9. Over the years, AT&T Technologies, Inc., a wholly owned subsidiary of AT&T, and
20 its related companies licensed UNIX for widespread enterprise use. Pursuant to a license with
21 AT&T, various companies, including International Business Machines, Hewlett-Packard, Inc., Sun
22 Microsystems, Inc., Silicon Graphics, Inc., and Sequent Computer Systems, became some of the
23 principal United States-based UNIX vendors, among many others.

24 10. These license agreements place restrictions on the valuable intellectual property
25 developed by AT&T, which allow UNIX to be available for use by others while, at the same time,
26 protecting AT&T's (and its successors') rights.
27
28

11. Through a series of corporate acquisitions, SCO presently owns all right, title and interest in and to UNIX and UnixWare operating system source code, software and sublicensing agreements, together with copyrights, additional licensing rights in and to UNIX and UnixWare, and claims against all parties breaching such agreements.

12. During the past few years a competing, and free, operating system know as Linux has been transformed from a non-commercial operating system into a powerful general enterprise operating system.

13. Linux is in material respects an operating system variant or clone of UNIX System V technology. According to leaders within the Linux community, Linux is not just a "clone," but is intended to displace UNIX System V.

**CAUSE OF ACTION
(Copyright Infringement)**

14. Plaintiff repeats and re-alleges all allegations set forth in paragraphs 1 through 13 of this Complaint as though fully set forth herein.

15. SCO is the owner of copyright rights to UNIX software, source code, object code, programming tools, documentation related to UNIX operating system technology, and derivative works thereof. These materials are covered by numerous copyright registrations issued by the United States Copyright Office (the "Copyrighted Materials"). Registrations in the Copyrighted Materials have been obtained by SCO and its predecessors in interest and are owned by SCO. Included among such registrations are the following reference materials:

TITLE	REGISTRATION NO.
UNIX SYSTEM V RELEASE 4 Integrated Software Development Guide	TX 2 931-646
UNIX SYSTEM V RELEASE 4 Reference Manual For Intel Processor Commands m-z	TX 3 221-656
UNIX SYSTEM V RELEASE 4 Reference Manual for Intel Processors Commands a-1	TX 3 227-639

1		
2	UNIX SYSTEM V RELEASE 4 Device Driver Interface/Driver Kernel Interface Reference Manual for Intel Processors	TX 3 232-578
3		
4	UNIX SYSTEM V RELEASE 4 Programmer's Guide: Streams for Intel Processors	TX 3 218-286
5		
6	UNIX SYSTEM V RELEASE 4 Device Driver Interface/Driver Kernel Interface Reference Manual for Motorola Processors	TX 220-500
7		
8	UNIX SYSTEM V RELEASE 4 Reference Manual for Motorola Processors Commands a-1	TX 3 220-331
9	UNIX SYSTEM V RELEASE 4 PROGRAMMER'S GUIDE	TX 2 120-502
10	UNIX SYSTEM V/386 RELEASE 4 Transport Application Interface Guide	TX 2 881-542
11		
12	UNIX SYSTEM V/386 RELEASE 4 Device Interface/Driver Kernel Interface (DDI/DKI) Reference Manual	TX 2 883-235
13		
14	UNIX SYSTEM V/386 RELEASE 4 Programmer's Guide: SCSI Driver Interface	TX 2 902-863
15	UNIX SYSTEM V/386 RELEASE 4 System Administrator's Reference Manual	TX 2 881-543
16	UNIX SYSTEM V/386 RELEASE 4 Programmer's Reference Manual	TX 2 853-760
17		
18	UNIX SYSTEM V/386 RELEASE 4 User's Reference Manual	TX 2 890-471
19	UNIX SYSTEM V/386 RELEASE 4 User's Reference Manual	TX 2 820-791
20		
21	UNIX SYSTEM V RELEASE 4 Device Driver Interface/Driver Kernel Interface (DDI/DKI) Reference Manual	TX 3 820-792
22		
23	UNIX SYSTEM V RELEASE 4 Programmer's Guide: Streams	TX 2 833-114
24	UNIX SYSTEM V RELEASE 4 Programmer's Reference Manual	TX 2 832-009
25		
26	UNIX SYSTEM V RELEASE 4 System Administrator's Reference Manual	TX 2 830-989
27	UNIX SYSTEM V/386 Programmer's Guide Vol. II	TX 2 454-884
28		

UNIX SYSTEM V/386 RELEASE 3.2 Programmer's Reference Manual	TX 2 494-658
UNIX SYSTEM V/386 Programmer's Reference Manual	TX 2 373-759
UNIX SYSTEM V/386 System Administrator's Reference Manual	TX 2 371-952
UNIX SYSTEM V/386 Streams Programmer's Guide	TX 2 367-657
UNIX SYSTEM V/386 Streams Primer	TX 2 366-532
UNIX SYSTEM V RELEASE 3.2 System Administrator's Reference Manual	TX 2 611-860
UNIX SYSTEM V. RELEASE 3.2 Programmer's Reference Manual	TX 2 605-292
UNIX SYSTEM V Documentor's Workbench Reference Manual	TX 2 986-119
UNIX SYSTEM V RELEASE 4 User's Reference Manual/System Administrator's Reference Manual for Motorola Processors Commands m-z	TX 3 218-267
UNIX SYSTEM V RELEASE 4 System Files and Devices Reference Manual for Motorola Processors	TX 3 221-654

16. Pursuant to 17 U.S.C. § 410 (c) the Certificates of Copyright Registrations identified above constitutes *prima facie* evidence of the validity of the copyrights and of the facts stated in the Certificates. SCO's registered copyrights in the Copyrighted Materials as embodied in the above Copyright Registrations are entitled to such statutory presumptions.

17. Registrations in the Copyrighted Materials have also been obtained by SCO and its registrations in the following additional registrations of software code:

UNIXWARE 7.1.3	TX 5-787-679
UNIX SYSTEM V RELEASE 3.0	TX 5-750-270
UNIX SYSTEM V RELEASE 3.1	TX 5-750-269
UNIX SYSTEM V RELEASE 3.2	TX 5-750-271

UNIX SYSTEM V RELEASE 4.0	TX 5-776-217
UNIX SYSTEM V RELEASE 4.1ES	TX 5-705-356
UNIX SYSTEM V RELEASE 4.2	TX 5-762-235
UNIX SYSTEM V RELEASE 4.1	TX 5-762-234
UNIX SYSTEM V RELEASE 3.2	TX 5-750-268

18. SCO and its predecessors in interest created the Copyrighted Materials as original works of authorship, and, as such, the Copyrighted Materials constitute copyrightable subject matter under the copyright laws of the United States. The Copyrighted Materials were automatically subject to copyright protection under 17 U.S.C. § 102(a) when such programs were fixed in a tangible medium of expression. Copyright protection under 17 U.S.C. §§ 102 and 103 extends to derivative works. Derivative works are defined in 17 U.S.C. § 101 to include works based on the original work or any other form in which the original work may be recast, transformed, modified or adapted.

19. The Copyrighted Materials include protected expression of code, structure, sequence and/or organization in many categories of UNIX System V functionality, including but not limited to the following: System V static shared libraries; System V dynamic shared libraries; System V inter-process communication mechanisms including semaphores, message queues, and shared memory; enhanced reliable signal processing; System V file system switch interface; virtual file system capabilities; process scheduling classes, including real time support; asynchronous input/output; file system quotas; support for Lightweight Processes (kernel threads); user level threads; and loadable kernel modules.

20. On information an belief, parts or all of the Copyrighted Material has been copied or otherwise improperly used as the basis for creation of derivative work software code, included one or more Linux implementations, including Linux versions 2.4 and 2.6, without the permission of SCO.

1
2 21. Defendant has infringed and will continue to infringe SCO's copyrights in and
3 relating to Copyrighted Materials by using, copying, modifying, and/or distributing parts of the
4 Copyrighted Materials, or derivative works based on the Copyrighted Materials in connection with
5 its implementations of one or more versions of the Linux operating system, inconsistent with SCO's
6 exclusive rights under the Copyright Act.

7 22. Defendant does not own the copyright to the Copyrighted Materials nor does it have
8 permission or proper license from SCO to use any part of the Copyrighted Materials as part of a
9 Linux implementation.

10 23. Upon information and belief, Defendant's conduct was and is willfully done with
11 knowledge of SCO's copyrights.

12 24. Plaintiff has no adequate remedy at law. Defendant's conduct has caused, and if
13 not enjoined, will continue to cause, irreparable harm to SCO.

14 25. As a result of Defendant's wrongful conduct, SCO is entitled to the following relief:

- 15 a. Injunctive relief pursuant to 17 U.S.C. § 502 against Defendant's further use
16 or copying of any part of the Copyrighted Materials;
17 b. SCO's actual damages as a result of Defendant's infringement and, to the
18 extent applicable and elected by SCO prior to trial pursuant to 17 U.S.C. §
19 504, SCO's statutory damages and enhanced damages; and
20 c. Attorney's fees and costs pursuant to 17 U.S.C. § 505.
21

22 **PRAYER FOR RELIEF**

23 WHEREFORE, having fully set forth its complaint, plaintiff prays for relief from this Court as
24 follows:

- 25 1. Injunctive relief pursuant to 17 U.S.C. § 502 against Defendant's further use or
26 copying of any part of the Copyrighted Materials;
27
28

- 1
2. SCO's actual damages as a result of Defendant's infringement and, to the
- 2
- 3 extent applicable and elected by SCO prior to trial pursuant to 17 U.S.C. §
- 3
- 4 504, SCO's statutory damages and enhanced damages;
- 4
3. Attorney's fees and costs pursuant to 17 U.S.C. § 505; and
- 5
- 6
4. Pre- and post-judgment interest, and all other legal and equitable relief deemed just
- 6
- 7 and proper by this Court.
- 7

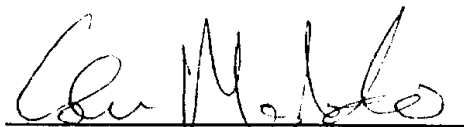
8 **JURY DEMAND**

9 Plaintiff demands that all issues in this case be tried by a jury in accordance with the Seventh

10 Amendment to the U.S. Constitution and Rule 38(b) of the Federal Rules of Civil Procedure.

11 DATED this 2nd day of March, 2004.

12

13 

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