IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

QUINSTREET, INC.,

         Plaintiff,

v.

PARALLEL NETWORKS, LLC,

         Defendant.

C.A. 06-495 (SLR)

QUINSTREET, INC.,

         Third-Party Plaintiff,

v.

MICROSOFT CORPORATION,

         Third-Party Defendant.

QUINSTREET'S THIRD-PARTY COMPLAINT AGAINST MICROSOFT CORPORATION

Plaintiff and now third-party Plaintiff QUINSTREET, INC. ("QuinStreet"), by their attorneys, for its third-party complaint against third-party defendant MICROSOFT CORPORATION ("Microsoft"), hereby states as follows:

Parties, Jurisdiction and Venue

1. QuinStreet is a California corporation, with a principal place of business at Foster City, California 94404.

2. Microsoft is a Washington corporation with its principal offices at One Microsoft Way, Redmond, Washington 98502, and is doing business in the District of Delaware.

3.   This Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1332 and 1338.

4.   Microsoft as America's largest software corporation has done and continues to do substantial business throughout the United States including in the District of Delaware. Microsoft meets the "minimum contacts" required with the District of Delaware so as to render this venue a fair and reasonable one. The District of Delaware is a proper venue under 28 U.S.C. §§ 1391 and 1400.

Background Information

5   On August 5, 2005, epicRealm Licensing, LLC ("epicRealm") filed a Complaint against six defendants, including Herbalife International of America, Inc. ("Herbalife"), in the Eastern District of Texas alleging infringement of United States Patent Nos. 5,894,554 and 6,415,335. EpicRealm specifically claimed that all of the defendants used and were using software and hardware systems and methods for managing dynamic web page generation requests that fell within the scope of one or more of the claims of the foregoing patents. As a result, epicRealm alleged that Herbalife and the others had and were infringing one or more of the claims of the foregoing patents as defined by 35 U.S.C. § 271(a), (b) and/or (c). A copy of epicRealm's original Complaint is attached hereto as Exhibit A. A first Amended Complaint was filed on November 2, 2005. A copy of this Amended Complaint is attached hereto as Exhibit B.

6.   Herbalife has denied the allegations of the Amended Complaint and has filed its Answer and Counterclaims against epicRealm on November 17, 2005. A copy of Herbalife's Answer and Counterclaims is attached hereto as Exhibit C.

7   The Herbalife web site specifically accused by epicRealm in the aforementioned suit was hosted by QuinStreet. Pursuant to an indemnification provision in the hosting

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agreement between Herbalife and QuinStreet and at the request of Herbalife, in February 2006 QuinStreet undertook the defense and indemnification of Herbalife. QuinStreet also denies the allegations made against Herbalife.

8. On August 8, 2006, QuinStreet filed a declaratory judgment action in the District Court for the District of Delaware against epicRealm claiming that, as a service provider that employs a plurality of systems for dynamic web page generation including the Microsoft IIS server and in light of the claims asserted in the Texas lawsuit, it has a reasonable apprehension that epicRealm will accuse QuinStreet of infringement for using those technologies. QuinStreet's Complaint for Declaratory Judgment is attached hereto as Exhibit D.

9. On April 13, 2007, epicRealm Licensing, LP., filed an answer and counterclaim alleging that QuinStreet's use of systems and methods for managing dynamic web page generation requests infringed one or more claims of the epicRealm's patents-in-suit. epicRealm's Answer is attached hereto as Exhibit E.

10 epicRealm has consistently contended in the Texas lawsuit that Microsoft's IIS software can be configured in ways that infringe its patents. epicRealm has taken that same position in this case and has refused to state that its counterclaim of infringement asserted herein does not apply to the IIS platforms used by QuinStreet. As a result, QuinStreet is defending against epicRealm's claim that QuinStreet's use of Microsoft IIS web server technology in managing dynamic web page generation requests may infringe the epicRealm patents.

Claim for Defense and Indemnity

11. Microsoft is the owner and designer of the Microsoft Internet Information Services (IIS) suite of web servers.

12 QuinStreet licensed Microsoft IIS software for use in its computer systems for the purpose, among others, of managing and responding to dynamic web page generation requests.

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The Windows Server 2003 (IIS version 5 0) is part of the Enterprise 6 Standard Microsoft package as part of the Microsoft Volume Licensing Service (MVLS).

13.   QuinStreet and Microsoft entered into Microsoft Business Agreement No. U3475507 effective June 12, 2003 in which Microsoft represents and warrants with respect to any Microsoft software licensed for the licensee's use that it will defend the licensee against any of the following claims made by an unaffiliated third party, and will pay the amount of any resulting adverse final judgment (or settlement to which it consents):

    a. claims that any commercial product or fix infringes the third party's patent, copyright or trademark or misappropriates its trade secret, or

    b. claims that any service deliverable infringes the third party's copyright or trademark, or misappropriates its trade secret

Relevant portions of the Microsoft Business Agreement are attached as Exhibit F.

14.   QuinStreet has installed and used and/or uses its IIS software platforms according to the instructions provided and as intended by Microsoft. If QuinStreet's computer systems running Microsoft IIS infringe any claim of the aforesaid patents, such infringement would arise by reason of the use and functionality of the software licensed from Microsoft by QuinStreet.

15.   QuinStreet has notified Microsoft of the epicRealm claim and has requested that Microsoft undertake its defense and provide indemnification, but thus far Microsoft has failed to do so.

16.   The matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs.

Demand for Jury

17   QuinStreet requests trial by jury pursuant to Federal Rule of Civil Procedure 38 for all issues triable of right by a jury.

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18.   QuinStreet's Prayer for Relief

Wherefore, QuinStreet respectfully requests that this Court:

(a)   Award QuinStreet such amount as QuinStreet may be required to pay Parallel

Networks, LLC with respect to any infringement damages attributed to the use of

any Microsoft IIS server software;

(b)   Award QuinStreet costs, together with reasonable attorneys' fees and all other

expenses for this suit; and

(c)   Award QuinStreet such other relief as this Court may deem just and proper.
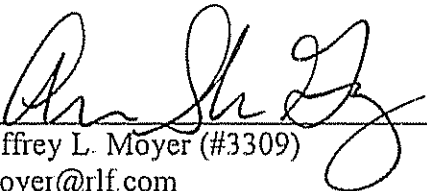

Jeffrey L. Moyer (#3309)

OF COUNSEL:

Robert S. Beiser
Ludwig E. Kolman
David L. Doyle
Vedder, Price, Kaufman & Kammholz, P.C.
222 North LaSalle Street
Chicago, Illinois 60601
(312) 609-7500

and

Gordon C. Atkinson
Cooley Godward LLP
101 California Street, 5th Flr.
San Francisco, California 94111
(415) 693-2000

Dated: January 4, 2008

moyer@rlf.com
Anne Shea Gaza (#4093)
gaza@rlf.com
Richards, Layton & Finger
One Rodney Square
920 N. King Street
Wilmington, Delaware 19899-0551
302-651-7700

Attorneys for Plaintiff QUINSTREET, INC.

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