

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

TRAVEL SYNDICATION	)	
TECHNOLOGY, LLC	)	
	)	
Plaintiff/Counterclaim Defendants,	)	
	)	
v.	)	C.A.No.11-553-GMS
	)	
FUZEBOX, LLC, and	)	
DIGITAL COMMERCE, LLC	)	
	)	
Defendants/Counterclaim Plaintiffs.	)	

FUZEBOX, LLC'S AND DIGITAL COMMERCE, LLC'S ANSWER AND DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT FOR INJUNCTIVE AND MONETARY RELIEF

Defendants Fuzebox, LLC and Digital Commerce, LLC (collectively, "Fuzebox"), state for their answer (the "Answer") and defenses (the "Defenses") to the Amended Complaint for Injunctive and Monetary Relief (the "Amended Complaint") filed by Petitioner Travel Syndication Technology, LLC ("TST") as follows:

1. Paragraph 1 of the Amended Complaint contains a legal conclusion for which no response is required. To the extent a response is required, Fuzebox admits that this dispute involves several agreements, including but not limited to those referenced in paragraph 1 of the Amended Complaint. Except as thus stated, denied.
2. Fuzebox admits that it agreed to develop certain programs and related intellectual property related to travel technology. In further response, Fuzebox states that TST breached the agreements as set forth in its Counterclaim filed on June 28, 2011 ("Counterclaim"). Except as thus stated, denied.
3. Fuzebox respectfully refers the Court to the Professional Services Agreement (the "PSA") for a full and complete statement of its contents, which speaks for itself, and Fuzebox

denies any allegations in paragraph 3 of the Amended Complaint contrary to the terms of the PSA. Fuzebox admits that TST sent to it a letter on May 16, 2011 that TST purports is a Notice of Termination. Fuzebox admits that TST paid to Fuzebox certain sums for work being performed by Fuzebox, but still owes Fuzebox in excess of \$4.5 million, as articulated in Fuzebox's Counterclaim. Except as thus stated, denied.

4. Fuzebox denies the allegations as set forth in paragraph 4 of the Amended Complaint.

5. Fuzebox denies the allegations as set forth in paragraph 5 of the Amended Complaint.

6. Fuzebox denies the allegations as set forth in paragraph 6 of the Amended Complaint, except admits that the Product is a unique development in travel software that is of substantial value. Except as thus stated, denied.

7. Fuzebox denies the allegations as set forth in paragraph 7 of the Amended Complaint.

#### **I. Parties, Jurisdiction and Venue**

8. Fuzebox lacks information and knowledge sufficient to admit or deny the allegations set forth in paragraph 8 of the Amended Complaint.

9. Fuzebox admits the allegations set forth in paragraph 9 of the Amended Complaint.

10. Fuzebox admits the allegations set forth in paragraph 10 of the Amended Complaint.

11. Fuzebox admits the allegations set forth in the first sentence in paragraph 11 of the Amended Complaint. Fuzebox denies the allegations set forth in the second sentence of

paragraph 11 of the Amended Complaint, except admits that TST purports to seek “injunctive and other equitable relief” by its Amended Complaint.

## **II. Factual Background**

### **A. The Agreement**

12. Fuzebox admits the allegations set forth in paragraph 12 of the Amended Complaint.

13. Fuzebox respectfully refers the Court to the PSA referenced in paragraph 13 of the Amended Complaint for a full and complete statement of its contents, and Fuzebox denies any allegations in paragraph 13 of the Amended Complaint contrary to the terms of the PSA. Except as thus stated, denied.

14. Fuzebox respectfully refers the Court to the PSA referenced in paragraph 14 of the Amended Complaint for a full and complete statement of its contents, and Fuzebox denies any allegations in paragraph 14 of the Amended Complaint contrary to the terms of the PSA. Except as thus stated, denied.

15. Fuzebox respectfully refers the Court to the PSA referenced in paragraph 15 of the Amended Complaint for a full and complete statement of its contents, and Fuzebox denies any allegations in paragraph 15 of the Amended Complaint contrary to the terms of the PSA. Except as thus stated, denied.

16. Fuzebox respectfully refers the Court to the PSA referenced in paragraph 16 of the Amended Complaint for a full and complete statement of its contents, and Fuzebox denies any allegations in paragraph 16 of the Amended Complaint contrary to the terms of the PSA. Except as thus stated, denied.

17. Fuzebox respectfully refers the Court to the PSA referenced in paragraph 17 of the Amended Complaint for a full and complete statement of its contents, and Fuzebox denies any allegations in paragraph 17 of the Amended Complaint contrary to the terms of the PSA. Except as thus stated, denied.

18. Fuzebox respectfully refers the Court to the PSA referenced in paragraph 18 of the Amended Complaint for a full and complete statement of its contents, and Fuzebox denies any allegations in paragraph 18 of the Amended Complaint contrary to the terms of the PSA. Except as thus stated, denied.

19. Fuzebox respectfully refers the Court to the PSA referenced in paragraph 19 of the Amended Complaint for a full and complete statement of its contents, and Fuzebox denies any allegations in paragraph 19 of the Amended Complaint contrary to the terms of the PSA. Except as thus stated, denied.

20. Fuzebox respectfully refers the Court to the PSA referenced in paragraph 20 of the Amended Complaint for a full and complete statement of its contents, and Fuzebox denies any allegations in paragraph 20 of the Amended Complaint contrary to the terms of the PSA. Except as thus stated, denied.

21. Fuzebox respectfully refers the Court to the Assignment of PSA (the "Assignment") referenced in paragraph 21 of the Amended Complaint for a full and complete statement of its contents, and Fuzebox denies any allegations in paragraph 21 of the Amended Complaint contrary to the terms of the Assignment. Except as thus stated, denied.

22. Fuzebox respectfully refers the Court to the Novation referenced in paragraph 22 of the Amended Complaint for a full and complete statement of its contents, and Fuzebox denies

any allegations in paragraph 22 of the Amended Complaint contrary to the terms of the Novation. Except as thus stated, denied.

23. Fuzebox admits that paragraph 23 of the Amended Complaint references several Work Authorization Agreements (“WAAs”) that addressed specific aspects of the product. Fuzebox incorporates its Counterclaim and its factual statements herein, and specifically incorporates the July 2010 Reset (as defined in Fuzebox’s Counterclaim) and its contents. Except as thus stated, denied.

24. Fuzebox respectfully refers the Court to the PSA referenced in paragraph 24 of the Amended Complaint for a full and complete statement of its contents, and Fuzebox denies any allegations in paragraph 24 of the Amended Complaint contrary to the terms of the PSA. Fuzebox further states that the PSA precludes TST from terminating the work prematurely, which TST purported to do. Except as thus stated, denied.

**B. Respondent Incurs Substantial Delays And Cost Overruns**

25. Fuzebox admits the allegations set forth in the first sentence of paragraph 25 of the Amended Complaint based on the initial scope of work as set forth in WAA 4. Fuzebox denies the remaining allegations set forth in paragraph 25 of the Amended Complaint.

26. Fuzebox denies the allegations as set forth in paragraph 26 of the Amended Complaint. In further response, Fuzebox incorporates the factual statements set forth in its Counterclaim. Except as thus stated, denied.

27. Fuzebox denies the allegations set forth in paragraph 27 of the Amended Complaint.

28. Fuzebox denies the allegations set forth in Paragraph 28 of the Amended Complaint. In further response, Fuzebox states that the parties entered into the July 2010 Reset

at the request of TST, which by TST's own admission scheduled the completion deadline past November 30, 2010. Fuzebox denies the remaining allegations set forth in paragraph 28 of the Amended Complaint.

29. Fuzebox denies the allegations set forth in paragraph 29 of the Amended Complaint.

**C. Petitioner Sends Its Notice of Termination Of The Agreement**

30. Fuzebox denies the allegations contained in paragraph 30 of the Amended Complaint, but admits the Project has not been completed. Fuzebox admits that TST sent to Fuzebox a letter on May 16, 2011 that TST purports is a Notice of Termination.

31. Fuzebox respectfully refers the Court to the PSA and associated WAAs, including the July 1020 Reset, for a full and complete statement of their contents, and Fuzebox denies any allegations in paragraph 31 of the Amended Complaint contrary to the terms of these documents.

32. Fuzebox admits that TST paid to Fuzebox certain sums for work performed by Fuzebox, but denies that TST has paid all amounts owing. Except as thus stated, denied.

**D. Respondents' Conduct Subsequent To The Notice of Termination**

33. Fuzebox denies the allegations set forth in paragraph 33 of the Amended Complaint.

34. Fuzebox denies the allegations set forth in paragraph 34 of the Amended Complaint.

35. Fuzebox denies the allegations set forth in paragraph 35 of the Amended Complaint.

36. Fuzebox admits that it retained a copy of the code in the ordinary course of business and under its usual retention policies. Fuzebox denies the remaining allegations set forth in paragraph 36 of the Amended Complaint. Except as thus stated, denied.

37. Fuzebox denies the allegations set forth in paragraph 37 of the Amended Complaint.

38. Fuzebox denies the allegations set forth in paragraph 38 of the Amended Complaint.

39. Fuzebox denies the allegations set forth in paragraph 39 of the Amended Complaint.

**E. Respondents Refuse To Address Petitioner's Concerns And Continue To Impede Development Of The Product**

40. Fuzebox admits that TST sent to Fuzebox a letter on May 16, 2011, that TST purports is a Notice of Termination, admits that TST and Fuzebox had discussions regarding a resolution to the dispute between the parties, and admits that such discussions did not result in a resolution of such dispute. Fuzebox denies the remaining allegations set forth in paragraph 40 of the Amended Complaint.

41. Fuzebox admits that Richard Keck is counsel to Fuzebox, and that on May 19, 2011, Mr. Keck sent to TST a letter, which letter speaks for itself. Fuzebox denies the remaining allegations set forth in paragraph 41 of the Amended Complaint.

42. Fuzebox admits that F. Traynor Beck, Esq., counsel to TST, sent a letter to Fuzebox on May 20, 2011, which letter speaks for itself. Fuzebox denies the remaining allegations set forth in paragraph 42 of the Amended Complaint.

43. Fuzebox admits that it provided a written response to TST on May 21, 2011, which response speaks for itself. Fuzebox denies the remaining allegations set forth in paragraph 43 of the Amended Complaint.

44. Fuzebox admits that it provided a written response to TST on May 21, 2011, which response speaks for itself. Fuzebox denies the remaining allegations set forth in paragraph 44 of the Amended Complaint.

45. Fuzebox admits that the parties attempted to reach an amicable wind up and that these efforts were unsuccessful. Fuzebox denies the remaining allegations set forth in paragraph 45 of the Amended Complaint.

46. Fuzebox denies the allegations set forth in paragraph 46 of the Amended Complaint.

**Count I - - Preliminary and Permanent Injunctive Relief**

47. Fuzebox incorporates by reference, as if fully set forth herein, its responses to paragraphs 1 to 46 of the Amended Complaint.

48. Fuzebox denies the allegations set forth in paragraph 48 of the Amended Complaint.

49. Fuzebox denies the allegations set forth in paragraph 49 of the Amended Complaint.

50. Fuzebox denies the allegations set forth in paragraph 50 of the Amended Complaint.

51. Fuzebox denies the allegations set forth in paragraph 51 of the Amended Complaint.



52. Fuzebox denies the allegations set forth in paragraph 52 of the Amended Complaint.

53. Fuzebox states that the allegations in paragraph 53 of the Amended Complaint set forth legal conclusions to which no responsive pleading is required, and, therefore, those allegations are denied.

Answering the Prayer for Relief following paragraph 51 of the Amended Complaint, Fuzebox denies that TST is entitled to any relief, and specifically denies that TST is entitled to the relief requested in paragraphs A through C.

**Count II - - Breach of Contract**

54. Fuzebox incorporates by reference, as if fully set forth herein, its responses to paragraphs 1 to 54 of the Amended Complaint.

55. Fuzebox states that the allegations in paragraph 55 of the Amended Complaint set forth legal conclusions to which no responsive pleading is required, and, therefore, those allegations are denied. To the extent a response is required, Fuzebox states that it had valid and enforceable agreements with TST, which TST breached. Except as thus stated, denied.

56. Fuzebox denies the allegations set forth in paragraph 56 of the Amended Complaint.

57. Fuzebox denies the allegations set forth in paragraph 57 of the Amended Complaint.

58. Fuzebox denies the allegations set forth in paragraph 58 of the Amended Complaint.

59. Fuzebox denies the allegations set forth in paragraph 59 of the Amended Complaint.

60. Fuzebox denies the allegations set forth in paragraph 60 of the Amended Complaint.

61. Fuzebox denies the allegations set forth in paragraph 61 of the Amended Complaint.

62. Fuzebox denies the allegations set forth in paragraph 62 of the Amended Complaint.

63. Fuzebox respectfully refers the Court to the PSA referenced in paragraph 63 of the Amended Complaint for a full and complete statement of its contents, and Fuzebox denies any allegations in paragraph 63 of the Amended Complaint contrary to the terms of the PSA. Except as thus stated, denied.

Answering the Prayer for Relief following paragraph 63 of the Amended Complaint, Fuzebox denies that TST is entitled to any relief, and specifically denies that TST is entitled to the relief requested in paragraphs A through C.

### **Count III - - Constructive Trust**

64. Fuzebox incorporates by reference, as if fully set forth herein, its responses to paragraphs 1 to 63 of the Amended Complaint.

65. Fuzebox respectfully refers the Court to the PSA referenced in paragraph 65 of the Amended Complaint for a full and complete statement of its contents, and Fuzebox denies any allegations set forth in paragraph 65 of the Amended Complaint contrary to the terms of the PSA. Fuzebox denies the remaining allegations set forth in paragraph 65 of the Amended Complaint.

66. Fuzebox denies the allegations set forth in paragraph 66 of the Amended Complaint and specifically denies that it misappropriated any of TST's Intellectual Property.

67. Fuzebox denies the allegations set forth in paragraph 67 of the Amended Complaint.

68. Fuzebox denies the allegations set forth in paragraph 68 of the Amended Complaint.

Answering the Prayer for Relief following paragraph 68 of the Amended Complaint, Fuzebox denies that TST is entitled to any relief, and specifically denies that TST is entitled to the relief requested in paragraphs A and B.

**Count IV - - Conversion**

69. Fuzebox incorporates by reference, as if fully set forth herein, its responses to paragraphs 1 to 68 of the Amended Complaint.

70. Fuzebox admits that certain property belongs to TST, and denies the remaining allegations set forth in paragraph 70 of the Amended Complaint.

71. Fuzebox denies the allegations set forth in paragraph 71 of the Amended Complaint.

72. Fuzebox denies the allegations set forth in paragraph 72 of the Amended Complaint.

73. Fuzebox denies the allegations set forth in paragraph 73 of the Amended Complaint.

74. Fuzebox denies the allegations set forth in paragraph 74 of the Amended Complaint.

Answering the Prayer for Relief following paragraph 74 of the Amended Complaint, Fuzebox denies that TST is entitled to any relief, and specifically denies that TST is entitled to the relief requested in paragraphs A through C.

**Count V - - Declaratory Judgment**

75. Fuzebox incorporates by reference, as if fully set forth herein, its responses to paragraphs 1 to 74 of the Amended Complaint.

76. Fuzebox denies the allegations set forth in paragraph 76 of the Amended Complaint.

77. Fuzebox denies the allegations set forth in paragraph 77 of the Amended Complaint.

78. Fuzebox denies the allegations set forth in paragraph 78 of the Amended Complaint.

79. Fuzebox denies the allegations set forth in paragraph 79 of the Amended Complaint.

80. Fuzebox denies the allegations set forth in paragraph 80 of the Amended Complaint.

81. Fuzebox denies the allegations set forth in paragraph 81 of the Amended Complaint.

Answering the Prayer for Relief following paragraph 81 of the Amended Complaint, Fuzebox denies that TST is entitled to any relief, and specifically denies that TST is entitled to the relief requested in paragraphs A, A [sic], B, C, and C [sic].

**Count VI - - Breach of the Covenant of Good Faith and Fair Dealing**

82. Fuzebox incorporates by reference, as if fully set forth herein, its responses to paragraphs 1 to 81 of the Amended Complaint.

83. Fuzebox states that the allegations in paragraph 83 of the Amended Complaint set forth legal conclusions to which no responsive pleading is required. To the extent a response is

required, Fuzebox admits that there is an implied covenant of good faith and fair dealing between the parties, which TST breached. Except as thus stated, denied.

84. Fuzebox denies the allegations set forth in paragraph 84 of the Amended Complaint.

85. Fuzebox denies the allegations set forth in paragraph 85 of the Amended Complaint. In further response, Fuzebox incorporates its Counterclaim.

86. Fuzebox denies the allegations set forth in paragraph 86 of the Amended Complaint.

Answering the Prayer for Relief following paragraph 84 of the Amended Complaint, Fuzebox denies that TST is entitled to any relief, and specifically denies that TST is entitled to the relief requested in paragraphs A through C.

87. Fuzebox denies each and every allegation of the Amended Complaint to which Fuzebox has not otherwise made a specific response in this Answer.

FIRST AFFIRMATIVE DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

TST's claims are barred by the doctrines of acquiescence, ratification, release and/or waiver.

THIRD AFFIRMATIVE DEFENSE

TST's claims are barred by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

TST's claims are barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

TST's claims are barred by its failure to mitigate its damages.

SIXTH AFFIRMATIVE DEFENSE

TST's claims are barred by the doctrine of estoppel.

SEVENTH AFFIRMATIVE DEFENSE

TST's claim are barred by the doctrine of mootness.

Fuzebox hereby reasserts and realleges its Counterclaim, which was filed with the Court on June 28, 2011, as if set forth fully herein.

GREENBERG TRAURIG, LLP



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