

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SAP AMERICA, INC. AND SAP AG,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 08-877 (GMS)
	)	
SECURITY WEAVER LLC,	)	
	)	
Defendant.	)	

**JOINT STATUS REPORT**

1. **Jurisdiction and Service.** The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) for the asserted claims under federal law and pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction) for the asserted claims under state law. All parties are before the Court and no service or jurisdictional objections have been raised.

2. **Substance of the Action.** Plaintiffs SAP America, Inc. and SAP AG (collectively “SAP”) develop and sell business software products. Defendant Security Weaver LLC (“Security Weaver”) develops and sells Governance, Risk, and Compliance (“GRC”) applications that provide “add-on” functionality to SAP Enterprise Resource Planning (“ERP”) software.

Through marketing and licensing initiatives, SAP encourages third parties to develop add-on software products for SAP ERP, and SAP develops add-on software, itself. Pursuant to a series of contracts, SAP licensed Security Weaver to develop and sell “add on” applications for use with SAP’s software. SAP also licensed Security Weaver to use certain SAP trademarks so long as Security Weaver’s applications passed the requirements of SAP’s certification program. SAP’s certification program is designed to assure SAP users that third-party applications meet SAP’s specifications, contain a correct implementation of SAP-endorsed technologies, and

maintain stability within the SAP environment. SAP certified Security Weaver's product called "Security Weaver 2.0."

SAP sued Security Weaver, contending that Security Weaver has made unauthorized use of SAP's trademarks and falsely advertised that Security Weaver's new products were certified, when, in fact, they were not. Allegedly, Security Weaver continued to unlawfully use SAP's certification trademarks even after receiving notice from SAP to cease such activity. In addition, SAP contends that Security Weaver has materially breached its contracts with SAP. Finally, SAP contends that Security Weaver has engaged in a series of unfair trade practices.

Security Weaver denies these claims, and contends that SAP has unlawfully discouraged Security Weaver's customers and prospects from doing business with Security Weaver, by falsely stating that Security Weaver copied SAP's software code, and by falsely stating that SAP sued Security Weaver over stolen SAP Code. Security Weaver also contends that SAP has engaged in unfair competition and anti-competitive acts, in an attempt to monopolize the market for GRC add-ons running on SAP's platform, by engaging in a series of predatory acts. Security Weaver alleges that these acts include: 1) SAP falsely stating to Security Weaver's customers and prospects that Security Weaver stole SAP Code, and that SAP sued Security Weaver as a result; 2) wrongfully dissuading a third party host of SAP marketing conferences from permitting Security Weaver to attend and market its products; and 3) wrongfully excluding Security Weaver and other competitors from SAP's marketing conferences, despite advertising a policy and practice of encouraging competition to permit further development of the "SAP ecosystem"; 4) SAP withholding certification from new entrants into the market; and 5) SAP forcing customers to license SAP's own GRC product. Based on these acts, Security Weaver counterclaims for

tortious interference with contract, tortious interference with prospective economic advantage, trade libel, unfair competition, and attempted monopolization.

3. **Identification of Issues.** The key issues in dispute with respect to SAP's claims are: (1) whether Security Weaver made unauthorized use of the following SAP trademarks: the "SAP® Certified Powered by SAP NetWeaver®" logo, the "SAP® Certified Integration" logo, and the "Powered by SAP NetWeaver®" logo; (2) whether Security Weaver engaged in acts of false and misleading advertising by claiming that certain uncertified applications had been certified by SAP; (3) whether Security Weaver materially breached its contracts with SAP by (a) failing to return or destroy SAP's software, (b) failing to re-certify new versions of Security Weaver's applications, and (c) failing to offer SAP a right of first refusal for products developed using SAP's software; (4) whether Security Weaver's pattern of conduct in the marketplace constitutes unfair trade practices under Pennsylvania law, and (5) the amount of damages suffered by SAP as a result of Security Weaver's unlawful acts.

The key issues in dispute with respect to Security Weaver's counterclaims are: (1) whether SAP sales representatives falsely told Security Weaver customers or potential customers that Security Weaver copied SAP software, and that SAP sued Security Weaver because its GRC software infringes on SAP's intellectual property rights; (2) whether SAP improperly encouraged Wellesley Information Services, a company that promotes SAP marketing initiatives, to terminate its contract with Security Weaver; (3) whether SAP improperly interfered with Security Weaver's business negotiations with Deloitte & Touche LLP, Titan America LLC, and other potential and existing customers; (4) whether the "add-on" GRC software market for SAP ERP is a relevant antitrust market, and whether there is a dangerous probability that SAP's actions will result in an SAP monopoly in such market; (5) whether SAP's actions, taken

together, constitute anticompetitive conduct causing harm to competition, not just harm to a competitor; and (5) the amount of damages suffered by Security Weaver as a result of SAP's alleged unlawful acts.

4. **Narrowing of Issues.** There are two pending motions before the Court that may narrow the issues in dispute.

Security Weaver has filed a motion to strike certain paragraphs from SAP's complaint on the grounds that the allegations are not relevant to SAP's causes of action, further SAP's unlawful conduct by suggesting that SAP is suing Security Weaver for software infringement, and are prejudicial to Security Weaver's lawful business interests.

SAP has filed a motion to dismiss Security Weaver's amended counterclaim for attempted monopolization on the grounds that even if Security Weaver's allegations are assumed to be true, Security Weaver has only alleged injury to Security Weaver, not the injury to competition necessary to establish an antitrust violation. Moreover, SAP argues that Security Weaver has failed to adequately plead a relevant antitrust market that is in dangerous probability of being monopolized by SAP. If Security Weaver's attempted monopolization claim is dismissed, Security Weaver believes that leave to amend should be granted. If Security Weaver's attempted monopolization claim is not dismissed for failure to state a claim, SAP believes such claim is also amenable to summary judgment.

The parties expect that discovery likely will further narrow the issues now pending because certain material facts may not be in genuine dispute.

5. **Relief.** SAP seeks permanent injunctive relief barring Security Weaver from unauthorized use of SAP's trademarks, specific performance of Security Weaver's contractual

obligations to SAP, treble damages based on either Security Weaver's profits or damages to SAP resulting from unauthorized use of SAP's trademarks, and attorneys fees and costs.

Security Weaver seeks injunctive relief prohibiting SAP from stating or implying that Security Weaver misappropriated SAP/Virsa source code or that SAP sued Security Weaver because Security Weaver misappropriated source code from SAP or Virsa. Security Weaver also seeks compensatory damages, statutory damages, punitive damages, and costs and attorney's fees.

6. **Amendment of Pleadings.** If the dispute is not settled within the next 30 days, SAP expects to amend its complaint in light of its notice of termination of certain license agreements with Security Weaver unless Security Weaver agrees to comply with the termination provisions of the agreements. Security Weaver expects to move to amend its counterclaim if it uncovers further evidence of wrongdoing by SAP, and if SAP wrongfully terminates the license agreements in 30 days.

7. **Joinder of Parties.** Neither party anticipates the joinder of other parties at this point in time.

8. **Discovery.** The parties jointly request a schedule in which fact discovery would be completed within 6 months and expert discovery within 9 months. SAP proposes that each side be allowed no more than 10 depositions, while Security Weaver proposes that each side be allowed no more than 20 depositions. The parties will confer to limit the scope and cost of electronic discovery by agreeing to limits on the number of document custodians as well as agreed search terms.

9. **Estimated Trial Length.** Assuming Security Weaver's antitrust counterclaim remains in the case, the parties expect the trial to last 10-12 days. If the antitrust counterclaim is not in the case, the parties expect the trial to last 5-6 days.

10. **Jury Trial.** Both parties have demanded a trial by jury.

11. **Settlement.** The parties are currently engaged in settlement negotiations. In the event that such negotiations are not successful, the parties jointly request a referral to mediation by a Magistrate Judge or a private mediator to be agreed to between the parties.

12. **Other Matters.** None.

Counsel for both parties have conferred with respect to all of the above matters, as required by Court Order, and jointly submit the foregoing status report.

DATED: June 8, 2009

**DUANE MORRIS LLP**

**POTTER ANDERSON &  
CORROON LLP**

/s/ Daniel Folt  
Daniel V. Folt (DE# 3143)  
Matt Neiderman (DE# 4018)  
1100 North Market Street, 12th Floor  
Wilmington, DE 19801  
Tel: (302) 657-4900

/s/ Richard L. Horowitz  
Richard L. Horowitz (DE# 2246)  
Hercules Plaza, 6<sup>th</sup> Floor  
1313 N. Market Street  
Wilmington, DE 19801  
Tel: (302) 984-6000

*Attorneys for Plaintiffs SAP America, Inc. and  
SAP AG*

*Attorneys for Defendant Security Weaver LLC*

*Of Counsel:*  
Robert M. Galvin  
Katie J.L. Scott  
DAY CASEBEER MADRID &  
BATCHELDER LLP  
20300 Stevens Creek Blvd., Suite 400  
Cupertino, CA 95014  
Tel: (408) 873-0110

*Of Counsel:*  
Kenneth M. Fitzgerald  
Buck B. Endemann  
LATHAM & WATKINS  
600 West Broadway, Suite 1800  
San Diego, CA 92101-3375  
Tel: (619) 236-1234