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NEO4J, INC. and NEO4J SWEDEN AB

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation, NEO4J SWEDEN, AB, Plaintiffs, v. PURETHINK LLC, a Delaware limited liability company, IGOV INC., a Virginia corporation, and JOHN MARK SUHY, an individual, Defendants.	CASE NO. 5:18-cv-07182-EJD **STIPULATION AND ~~[PROPOSED]~~ ORDER FOR MODIFICATION OF CASE MANAGEMENT SCHEDULE**
AND RELATED COUNTERCLAIMS.	
NEO4J, INC., a Delaware corporation, Plaintiff, v. GRAPH FOUNDATION, INC., an Ohio corporation, Defendant.	CASE NO. 5:19-cv-06226-EJD

STIPULATION

Plaintiff and Counter-Defendants Neo4j, Inc. and Neo4j Sweden AB (collectively "Plaintiffs") and Defendants and Counterclaimants PureThink LLC and iGov, Inc. and Defendant John Mark Suhy (collectively the "PureThink Defendants") in the action entitled *Neo4j, Inc. et al v. PureThink LLC et al*. Case No. 5:18-cv-07182-EJD ("PureThink Action") and Neo4j, Inc. and Defendant Graph Foundation, Inc. ("GFI") in the related action entitled *Neo4j, Inc. v. Graph Foundation, Inc.*, Case No. 3:19-cv-06226-EJD ("GFI Action"), by and through the parties' respective attorneys, hereby submit this stipulation regarding the case schedule as follows:

1. Neo4j Inc. ("Neo4j USA") has filed claims pursuant to the Lanham Act and California's unfair competition law, Cal. Bus. & Prof. Code § 17200 et seq. ("UCL") against Defendants in both actions. Neo4j USA alleges that Defendants in both actions engaged in overlapping conduct that amounts to trademark infringement in violation of 15 U.S.C. § 1117(a), as well as false advertising, passing-off and false designation of origin in violation of 15 U.S.C. § 1125(a). Neo4j USA further alleges that this same conduct constitutes unlawful and unfair competition in violation of the UCL. In turn, Defendants have asserted certain affirmative defenses and counterclaims that share common facts and law. The parties agree that prioritizing the trademark-related claims and defenses will simplify coordination with the GFI Action and will minimize duplication of document productions, depositions and some expert discovery.

2. At the March 5, 2020 Case Management Conference, the Parties discussed with the Court a proposal to allow the parties to focus on completing discovery and filing dispositive motions on their respective trademark-related claims, counterclaims and defenses in both actions. In doing so, the parties would be allowed to depart from the Court's one-summary judgment motion rule in both actions.

3. The parties have met and conferred and agree that the following claims, counterclaims and affirmative defenses ("Phase 1 Issues") be subject to the first motions for summary judgment/adjudication filed by each party (to the extent that such counterclaims and defenses are not resolved by Neo4j USA's pending motions for judgment on the pleadings and motion to strike):

(a) Neo4j USA's First Cause of Action for Trademark Infringement (15 U.S.C. § 1114); Second Cause of Action for False Designation of Origin and False Advertising (15 U.S.C. § 1125(a)); Third Cause of Action for Unfair Competition (15 U.S.C. § 1125(a)); and Fourth Cause of Action for Unfair Competition (Cal. Bus. Prof. Code §§ 17200 et seq.) asserted against the PureThink Defendants in the PureThink Action (Dkt. No. 50);

(b) The Second Cause of Action for Declaratory Relief for Abandonment of Trademark asserted in Defendant John Mark Suhy's Counterclaim (PureThink Action, Dkt. No. 48);

(c) The Third Affirmative Defense for "Right to Fork, the Eighth Affirmative Defense for Fair Use of Trademark and Ninth Affirmative Defense for Naked License asserted in the PureThink Defendants' Answer to the Second Amended Complaint (PureThink Action, Dkt. No. 54);

(d) The Ninth Cause of Action Declaratory Relief for "Right to Fork" and the Tenth Cause of Action for Declaratory Relief for Abandonment of Trademark asserted in PureThink LLC and iGov, Inc.'s First Amended Counterclaim (PureThink Action, Dkt. No. 55);

(e) Neo4j USA's First Cause of Action for Trademark Infringement (15 U.S.C. § 1114); Second Cause of Action for False Designation of Origin and False Advertising (15 U.S.C. § 1125(a)); Third Cause of Action for Unfair Competition (15 U.S.C. § 1125(a)); and Fourth Cause of Action for Unfair Competition (Cal. Bus. Prof. Code §§ 17200 et seq.) asserted against GFI in the GFI Action (Dkt. No. 1); and

(f) The Third Affirmative Defense for Fair Use of Trademark and Fourth Affirmative Defense for Naked License and the Fifth Affirmative Defense for "Right to Fork," asserted in GFI's Amended Answer to the Complaint (GFI Action, Dkt. No. 31).

4. The parties further agree to coordinate and prioritize discovery for the foregoing trademark-related claims, counterclaims and defenses to minimize duplication of document productions and depositions.

5. The parties have met and conferred regarding potential reductions in the page limits prescribed by the Court's Standing Order governing motions for summary judgment. The

parties agree that filing consolidated briefs would reduce the potential for duplication rather than simply reducing the number of pages in separately-filed motions in each action. Thus, in the interest of judicial economy, to reduce the potential for duplication and to lower the total amount of pages that would result in the parties submitting separate briefs, the parties agree to the following consolidated briefing structure and page limits:

(a) Neo4j USA shall file a consolidated opening brief for its motions for summary judgment against the Defendants in the PureThink and GFI Actions not to exceed 35 pages;

(b) Defendants in the PureThink and GFI Actions shall file a consolidated, combined opposition/cross-motion not to exceed 35 pages;

(c) Neo4j USA shall file a consolidated, combined opposition/reply not to exceed 25 pages; and

(d) Defendants shall file a consolidated, combined reply not to exceed 25 pages.

6. Despite their meet and confer efforts, however, the parties are in disagreement as to where the unclean hands affirmative defenses asserted by the PureThink Defendants in their Fourth Affirmative Defense and GFI in its Second Affirmative Defense directly pertain to Lanham Act and UCL claims asserted by Neo4j USA against them. The Parties intend to submit a joint statement outlining their respective positions for the Court's consideration.

7. Plaintiffs and the PureThink Defendants agree that their remaining claims, counterclaims and affirmative defenses asserted in the PureThink Action will be subject to a second round of motions for summary judgment/adjudication filed by each party.

8. In light of the foregoing, the Parties respectfully request that the Court enter the following case schedule in both the PureThink Action and GFI Action:

Event	**Current Deadline**
Fact Discovery Cutoff for Phase 1 Issues	August 14, 2020
Last Day to File Fact Discovery Motions for Phase 1 Issues	August 21, 2020
Last Day for Neo4j USA to file its combined motion for summary judgment, partial summary judgment and/or summary adjudication for Phase 1 Issues in the PureThink and GFI Actions	September 25, 2020

Event	Current Deadline
Last Day for Defendants to file their combined opening motion for summary judgment, partial summary judgment and/or summary adjudication and opposition for Phase 1 Issues in the PureThink and GFI Actions	October 23, 2010
Last Day for Neo4j USA to file its combined opposition/reply in the PureThink and GFI Actions	November 16, 2020
Last Day for Defendants to file their combined reply brief in the PureThink and GFI Actions	December 2, 2020
Hearing on motions for summary judgment, partial summary judgment and/or summary adjudication and a further Case Management Conference to set the schedule for Phase 2 in the PureThink and the GFI Actions	December 17, 2020, or the earliest available date thereafter

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: April 10, 2020

HOPKINS & CARLEY
A Law Corporation

By: */s/ Jeffrey M. Ratinoff*
Jeffrey M. Ratinoff
Attorneys for Plaintiffs and Counter-Defendants
NEO4J, INC. and NEO4J SWEDEN AB

Dated: April 10, 2020

/s/ Adron W. Beene
Adron W. Beene
Attorneys for Defendants PURETHINK LLC, IGOV INC., and JOHN MARK SUHY

Dated: April 10, 2020

BERGESON, LLP

By: */s/ John D. Pernick*
John D. Pernick
Attorneys for Defendant
GRAPH FOUNDATION, INC.

IT IS SO ORDERED.

Dated: April 13, 2020

EDWARD J. DAVILA
United States District Court Judge

ATTESTATION OF E-FILED SIGNATURE

Pursuant to Local Rule 5-1(i)(3), I hereby certify that I have obtained the concurrence in the filing of this document from all signatories for whom a signature is indicated by a "conformed" signature (/s/) within this electronically filed document and I have on file records to support this concurrence for subsequent production to the Court if so ordered or for inspection upon request.

Dated: April 10, 2020

HOPKINS & CARLEY
A Law Corporation

By: */s/ Jeffrey M. Ratinoff*
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