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CYBERSitter, LLC d/b/a Solid Oak Software

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U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

FILED

8 UNITED STATES DISTRICT COURT  
9  
10 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

11 CYBERSitter, LLC, a California limited  
12 liability company, d/b/a Solid Oak Software,  
13 Plaintiff,

14 v.

15 The People's Republic of China, a foreign  
16 state; Zhengzhou Jinhui Computer System  
Engineering Ltd., a Chinese corporation;  
17 Beijing Dazheng Human Language  
Technology Academy Ltd., a Chinese  
18 corporation; Sony Corporation, a Japanese  
corporation; Lenovo Group Limited, a  
19 Chinese corporation; Toshiba Corporation, a  
Japanese corporation; ACER Incorporated, a  
20 Taiwanese corporation; ASUSTeK  
Computer Inc., a Taiwanese corporation;  
21 BenQ Corporation, a Taiwanese  
corporation; Haier Group Corporation, a  
22 Chinese corporation; DOES 1-10, inclusive,  
23 Defendants.

CASE NO.

**CV10-0038** GAF (SHx)

**COMPLAINT FOR  
MISAPPROPRIATION OF TRADE  
SECRETS; UNFAIR  
COMPETITION; COPYRIGHT  
INFRINGEMENT; AND CIVIL  
CONSPIRACY**

**DEMAND FOR JURY TRIAL**

1 Plaintiff CYBERSitter, LLC d/b/a Solid Oak Software ("Solid Oak" or  
2 "Plaintiff") alleges, on information and belief, as follows:

3 **NATURE OF THE ACTION**

4 1. This action arises from one of the largest cases of software piracy in  
5 history, wherein two Chinese companies, backed by the Chinese government, stole  
6 approximately 3,000 lines of code from a small American company's software  
7 program, and disseminated it to tens of millions of end users in China with the willing  
8 participation of computer manufacturers who chose to turn a blind eye to the illegal  
9 and otherwise surreptitious nature of the pirated program in order to gain increased  
10 access to the vast Chinese market by participating in the Chinese government-led  
11 initiative to proliferate the illegal program throughout China (the "Green Dam  
12 Initiative").

13 2. Solid Oak is a small family-owned software company based in Santa  
14 Barbara, California. Solid Oak developed and marketed an award-winning Internet  
15 content filtering program called CYBERSitter, which was designed to help parents  
16 protect their children from viewing inappropriate pornographic and violent content on  
17 the Web. CYBERSitter was the first commercially available Internet content filter,  
18 and it has been continuously published by Solid Oak for over 14 years. Solid Oak  
19 now boasts over 2.4 million active CYBERSitter users worldwide, including  
20 thousands of businesses, individuals, and schools in China, and thousands more in  
21 other Chinese-speaking countries.

22 3. The Defendants in this action include the People's Republic of China  
23 ("PRC"), two Chinese software development companies, and several of the largest  
24 computer manufacturers in the world. As relevant here, the Chinese software  
25 developers, in collaboration with the Chinese government, purported to design an  
26 Internet content filtering program known as Green Dam Youth Escort ("Green Dam").  
27 Like CYBERSitter, the Green Dam program was allegedly designed to block  
28 pornographic and violent Internet content from children. Unlike CYBERSitter,

1 however, the Green Dam program was found to contain filters to block political and  
2 religious content expressing views that differed from those of the Chinese  
3 government. The program was also found to have serious security vulnerabilities that  
4 would allow third parties to monitor or take control of the computers on which it was  
5 installed. As a result, the Green Dam program and the Chinese government's efforts  
6 to proliferate the program throughout China were met with stiff opposition from  
7 human rights groups in China and around the world. The central component of the  
8 Green Dam Initiative was for the PRC to convince and incentivize computer  
9 manufacturers to participate in the Initiative by including the Green Dam software  
10 with their computers sold in China. The Defendant computer manufacturers named  
11 herein willingly participated in this plan.

12 4. In June 2009, a group of independent researchers at the University of  
13 Michigan confirmed that the Green Dam developers had copied verbatim nearly 3,000  
14 lines of code from the CYBERSitter program and incorporated it into the Green Dam  
15 program. The stolen materials include the heart of the CYBERSitter software: its  
16 proprietary content filters. The Chinese government has issued Green Dam usage  
17 figures reporting – as of early June 2009 – that over 53 million computers marketed  
18 for home use had been sold with the Green Dam program, that the Green Dam  
19 program had been installed on more than half a million computers in Chinese schools,  
20 and that Green Dam had been downloaded by users from the Internet an additional  
21 3.27 million times.

22 5. The Defendants in this action have conspired together to steal Solid Oak's  
23 proprietary software, and to disseminate the illegal product to tens of millions of end  
24 users in China and elsewhere. The Defendants met together at a PRC-sponsored  
25 Green Dam Symposium at the Beijing offices of the PRC's Ministry of Industry and  
26 Information Technology ("MIIT") in March 2009 to develop their common plan. The  
27 Defendants' common scheme – the Green Dam Initiative – involved two overlapping  
28 components which eventually became indistinguishable from each other: participation

1 in the Chinese government's seemingly legal (albeit surreptitious) plan to proliferate  
2 the Green Dam program throughout China, and the illegal theft, infringement,  
3 exploitation and distribution of Plaintiff's intellectual property. Each of the  
4 Defendants herein willingly participated in this common scheme both before and after  
5 the illegal aspects of the scheme became apparent.

6 6. Defendant computer manufacturers derive significant financial benefits  
7 from their unauthorized distribution of Plaintiff's intellectual property to the vast  
8 Chinese market, and have willingly participated in the scheme of the Defendant  
9 developers and the Chinese government to proliferate the illegal Green Dam product  
10 throughout China and elsewhere. The Defendant computer manufacturers had the right,  
11 ability, legal obligation and knowledge to prevent unauthorized copies of Plaintiff's  
12 works from being distributed on their computers. But although the Defendant computer  
13 manufacturers vigorously defend their own intellectual property in the courts and in the  
14 press, they chose to turn a blind eye to the theft and infringement at issue here in order to  
15 continue to reap the financial rewards of exploiting the vast Chinese computer market.

16 7. By their actions alleged herein, Defendants have conspired together to  
17 misappropriate Plaintiff's trade secrets under California law, have violated federal  
18 prohibitions on theft of trade secrets and economic espionage (constituting unlawful  
19 practices under California's Unfair Competition Law), and have violated Plaintiff's  
20 copyrights in the CYBERSitter program, both directly and indirectly, under applicable  
21 copyright laws of the United States, China, Japan and Taiwan. Because each Defendant  
22 named herein willingly participated in the illegal elements of their common scheme, each  
23 Defendant is liable for the illegal acts of the others.

24 8. As a result of Defendants' acts alleged herein, Plaintiff has been damaged in  
25 an amount to be determined at trial. Plaintiff estimates its damages to be  
26 \$2,257,175,000, representing the Chinese government's stated figures of more than  
27 56.5 million unauthorized copies distributed in China alone as of early June 2009,  
28

1 multiplied by \$39.95 per copy (the price of purchasing a legal copy of the  
2 CYBERSitter program from Solid Oak).

3 **JURISDICTION AND VENUE**

4 9. This Court has subject matter jurisdiction over this action pursuant to 28  
5 U.S.C. §§ 1330, 1331, 1332(a), 1338 and 1367. This action seeks relief, *inter alia*,  
6 for violations of the United States Copyright Act, 17 U.S.C. §§ 101, *et seq.*, and for  
7 unfair competition predicated on violations of the Economic Espionage Act, 18 U.S.C.  
8 §§ 1831-32 (theft of trade secrets and economic espionage). As stated in paragraphs  
9 12 through 26 below, for purposes of diversity jurisdiction, Solid Oak is a citizen of  
10 the State of California, and Defendants are citizens of the People's Republic of China,  
11 Japan, and the Republic of China (Taiwan). The amount in controversy exceeds the  
12 sum of \$75,000 exclusive of interest and costs.

13 10. This Court has personal jurisdiction over Defendant PRC, Defendant  
14 Jinhui, and Defendant Dazheng because they have purposefully availed themselves of  
15 the benefits of this forum by doing business in this District, by committing wrongful  
16 acts in whole or in part within this District, and/or by committing wrongful acts which  
17 have had direct effects in this District. Because Defendant PRC's wrongful acts  
18 alleged herein arise in connection with a commercial activity that causes a direct  
19 effect in the United States, Defendant PRC comes within an express exception to the  
20 Foreign Sovereign Immunities Act, *viz.*, 28 U.S.C. § 1605(a)(2). This Court has  
21 personal jurisdiction over the remaining Defendants because they conduct significant  
22 business in this District, and sell their computers throughout the United States in their  
23 own capacity and through their wholly-owned subsidiaries.

24 11. Venue is proper in the Central District of California pursuant to 28  
25 U.S.C. § 1391(b)(2).

26 **THE PARTIES**

27 12. Plaintiff Solid Oak is a limited liability company organized and existing  
28 under the laws of the State of California, with its principal place of business in Santa

1 Barbara, California. Solid Oak is engaged in the business of software development  
2 and sales. As relevant here, Solid Oak developed and sells an Internet content  
3 filtering program known as "CYBERsitter."

4 13. Defendant People's Republic of China ("PRC") is a foreign state. As  
5 relevant here, PRC has engaged in the purely economic conduct of licensing,  
6 sublicensing, distributing and promoting the software program known as Green Dam  
7 at issue in this litigation. PRC may not claim jurisdictional immunity from this suit as  
8 its conduct arises from commercial activity that "causes a direct effect in the United  
9 States" as described in 28 U.S.C. § 1605(a)(2) in the form of damaging Solid Oak, a  
10 California company, by PRC's unauthorized taking and use of Solid Oak's intellectual  
11 property. The PRC's actions alleged herein are purely economic because PRC  
12 purchased a one-year license to exploit the software program at issue for  
13 approximately 6.9 million U.S. dollars, and then promoted the program and  
14 sublicensed the program to computer manufacturers, for which it received substantial  
15 sums.

16 14. Defendant Zhengzhou Jinhui Computer System Engineering Ltd.  
17 ("Jinhui") is a corporation organized and existing under the laws of the People's  
18 Republic of China, with its principal place of business in Zhengzhou, China. As  
19 relevant here, Jinhui is in the business of developing and distributing software  
20 products – in particular, the Green Dam program at issue in this litigation.

21 15. Defendant Beijing Dazheng Human Language Technology Academy Ltd.  
22 ("Dazheng") is a corporation organized and existing under the laws of the People's  
23 Republic of China, with its principal place of business in Beijing, China. As relevant  
24 here, Dazheng is in the business of developing and distributing software products – in  
25 particular, the Green Dam program at issue in this litigation.

26 16. Defendant Sony Corporation ("Sony") is a corporation organized and  
27 existing under the laws of Japan, with its principal place of business in Tokyo, Japan.  
28 As relevant here, Sony is engaged in the business of manufacturing and distributing

1 personal computers and related products, in the United States, China, and elsewhere  
2 around the world. Sony operates and does business throughout the United States  
3 through its wholly-owned subsidiary, Sony Corporation of America. Sony has taken a  
4 strong public stance on the importance of the protection and vigorous enforcement of  
5 its own intellectual property rights.

6 17. Defendant Lenovo Group Limited ("Lenovo") is a corporation organized  
7 and existing under the laws of the People's Republic of China, with its principal place  
8 of business in Beijing, China. As relevant here, Lenovo is engaged in the business of  
9 manufacturing and distributing personal computers and related products, in the United  
10 States, China, and elsewhere around the world. Lenovo operates and does business  
11 throughout the United States. In May 2005, Lenovo purchased IBM's Personal  
12 Computing Division. As part of this purchase, Lenovo agreed to relocate its PC  
13 business headquarters from Beijing to the United States. Lenovo's principal office is  
14 currently located in Morrisville, North Carolina.

15 18. Defendant Toshiba Corporation ("Toshiba") is a corporation organized  
16 and existing under the laws of Japan, with its principal place of business in Tokyo,  
17 Japan. As relevant here, Toshiba is engaged in the business of manufacturing and  
18 distributing personal computers and related products, in the United States, China, and  
19 elsewhere around the world. Toshiba operates and does business throughout the  
20 United States through its wholly-owned subsidiary, Toshiba America, Inc.

21 19. Defendant ACER Incorporated ("Acer") is a corporation organized and  
22 existing under the laws of the Republic of China, commonly known as Taiwan  
23 ("Taiwan"), with its principal place of business in Taipei, Taiwan. As relevant here,  
24 Acer is engaged in the business of manufacturing and distributing personal computers  
25 and related products, in the United States, China, and elsewhere around the world.  
26 Acer operates and does business throughout the United States through its wholly-  
27 owned subsidiaries, Acer America Corporation and Gateway, Inc.

28