

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
The SCO GROUP, INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 07-11337 (KG)
	)	(Jointly Administered)
	)	
Debtors.	)	

**Objection Deadline: TBD**  
**Hearing Date: TBD**

**DEBTOR SCO GROUP, INC.'S OBJECTION  
TO CLAIM OF RED HAT, INC.**

For the reasons that follow, Debtor SCO Group, Inc. objects to the allowance of the claim filed by Red Hat, Inc. (“Red Hat”), claim #150 (“Red Hat Claim”), against the estate of SCO Group, Inc.

**Introduction**

1. On September 14, 2007 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.
2. This Court has jurisdiction over this Objection under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding per 28 U.S.C. § 157(b)(2)(B).

**Background**

3. On April 18, 2008, Red Hat filed the Red Hat Claim.
4. On August 4, 2003, Red Hat, Inc. filed a complaint against SCO Group, Inc., instituting a case which is pending in the United States District Court for the District of Delaware

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<sup>1</sup> The Debtors and the last four digits of each of the Debtors’ federal tax identification numbers are as follows: (a) The SCO Group, Inc., a Delaware corporation, Fed. Tax ID. #2823; and (b) SCO Operations, Inc., a Delaware corporation, Fed. Tax ID. #7393.

under the case caption, Red Hat, Inc. v. The SCO Group, Inc., Civil No. 03-772. Red Hat asserts that the Linux operating system does not infringe on SCO Group, Inc.'s UNIX intellectual property rights and seeks a declaratory judgment for non-infringement of copyrights and no misappropriation of trade secrets. In addition, Red Hat claims that SCO Group, Inc. engaged in false advertising in violation of the Lanham Act, deceptive trade practices, unfair competition, tortious interference with prospective business opportunities, trade libel and disparagement. Before the case could progress very far, the litigation was stayed by the court, which requested status reports every 90 days on the status of a related case, entitled SCO Group, Inc. v. International Business Machines Corp., Civ. No. 2:03CV-0294-DAK, pending in the United States District Court for the District of Utah. If and when the stay is lifted, SCO Group, Inc. intends to vigorously defend the Red Hat lawsuit. In the alternative, and because the lawsuit is really at its inception, SCO Group, Inc. would be willing to have this Court try the claim in the format of a claim objection. In either case, however, SCO Group, Inc. will likely assert counterclaims against Red Hat, and therefore, if this Court agrees to hear this Objection on the merits, SCO Group, Inc. will file an adversary proceeding as a counterclaim to the Red Hat Claim.

5. SCO Group, Inc. rejects the notion that the Red Hat Claim holds any value. It is SCO Group, Inc.'s position that Red Hat's claims are not valid for several reasons: First, before SCO Group asserted its claims regarding Linux being an unauthorized derivative of UNIX against IBM, IBM had publicly announced, in an effort to promote and advance Linux into the enterprise market, that Linux was valuable because it is "derived from UNIX" and that "UNIX

was a pre-write of Linux”. This is the basic point SCO Group, Inc. was making that forms the basis of Red Hat’s claims. In other words, before SCO ever made any such statement, one of Red Hat’s primary Linux customers and partners (and possibly the largest technology company in the world) had publicly stated the same thing that Red Hat asserts as the basis for its claim against SCO Group, Inc. This evidence shows that SCO Group, Inc.’s statements were truthful and known publicly before SCO Group, Inc. made its claims. Second, Red Hat’s CEO publicly stated that SCO Group, Inc.’s allegations about Linux had caused “no slowdown whatsoever in the progress Linux was making.” Therefore, Red Hat will not be able to prove that it has been damaged by any alleged statements by SCO Group, Inc.

### **Relief Requested**

6. By this Objection, SCO Group, Inc. seeks entry of an order pursuant to section 502(b) of the Bankruptcy Code and Rule 3007 of the Federal Rules of Bankruptcy Procedure disallowing the Red Hat Claim.

7. Further, SCO Group, Inc. asserts that it did not engage in false advertising in violation of the Lanham Act, deceptive trade practices, unfair competition, tortious interference with prospective business opportunities, trade libel or disparagement. Indeed, SCO Group, Inc. asserts that Red Hat is a debtor of SCO Group, Inc. and not the other way around.<sup>2</sup>

### **Applicable Authority**

8. Code Section 502(b) provided in pertinent part that:

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<sup>2</sup> For the sake of brevity, SCO Group, Inc. has not attached the court papers in the Red Hat Litigation (the “Red Hat Court Papers”) which provide greater detail for this Objection. Prior to any evidentiary hearing on, or estimation arising from, this Objection, SCO Group, Inc. will provide, under a notice of filing, the Red Hat Court Papers that support this Objection.

The court, after notice and a hearing, shall determine the amount of [a] claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that ... such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.

11 U.S.C. § 502(b)(1).

9. For the reasons set forth above, and for those reasons detailed in the Red Hat Litigation, SCO Group, Inc. submits that, pursuant to Code Section 502(b)(1) and Bankruptcy Rule 3007, the Court should disallow the Red Hat Claim.

**Notice**

10. Notice of this Objection has been given to the following parties, or in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee; (ii) parties requesting notice under Bankruptcy Rule 2002; and (iii) Red Hat. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

11. No prior objection has been made to this or any other court, other than in the United States District Court for the District of Delaware, where the Red Hat Litigation is pending.

WHEREFORE, Debtor SCO Group, Inc. respectfully requests that the Court enter an order (i) disallowing the Red Hat Claim and (ii) granting it such other and further relief as is just and proper.

Dated: June 5, 2009

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