

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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I-Systems, Inc. and Jeremy Kahn,

Civil No. 02-CV-1951 (JRF/FLN)

Plaintiffs,

vs.

**AMENDED COMPLAINT**

SoftWares, Inc., Quantum Management  
Systems, LLC, and Christ's Household of  
Faith, Inc.,

Defendants.

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For their Complaint, Plaintiffs i-Systems, Inc. and Jeremy Kahn (collectively referred to herein as "i-Systems") state and allege as follows:

**I. THE PARTIES**

1. Plaintiff i-Systems, Inc. is a corporation organized under the laws of the province of Quebec, Canada, with its principal place of business in Montreal, Quebec, Canada. Among other things, i-Systems is a software development company.

2. Plaintiff Jeremy Kahn is a resident of Montreal, Quebec, Canada, and is the sole shareholder of i-Systems, Inc.

3. Defendant SoftWares, Inc. ("SoftWares") is a corporation organized under the laws of the state of Minnesota. Its principal place of business is at 27 Empire Drive, St. Paul, Minnesota 55103.

4. Defendant Quantum Management Systems, Inc. ("Quantum") is a corporation organized under the laws of the state of Minnesota. Its principal place of business is at 23

Empire Drive, St. Paul, Minnesota 55103.

5. Defendant Christ's Household of Faith, Inc. ("CHOF") is a church and non-profit corporation organized under the laws of the state of Minnesota. Its principal place of business is at 355 Marshall Avenue, St. Paul, Minnesota 55102.

## **II. JURISDICTION AND VENUE**

6. Jurisdiction of this Court is appropriate pursuant to the provisions of 28 U.S.C. § 1338(a) because it arises under federal copyright law, and under the principles of supplemental jurisdiction pursuant to the provisions of 28 U.S.C. § 1367.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial part of events or omissions giving rise to the claim occurred in this judicial district and a substantial part of the property that is the subject of the action is situated in this judicial district.

## **III. GENERAL ALLEGATIONS**

8. On or about September 17, 1993, i-Systems' predecessor-in-interest, Intuitive Systems, Inc. ("ISI"), entered into a Development Agreement ("1993 Development Agreement") with SoftWares' predecessor-in-interest, CHOF. Plaintiff Jeremy Kahn was the sole shareholder of ISI.

9. Pursuant to the 1993 Development Agreement, ISI wrote and developed a software product that is now known as TQ Tracker. TQ Tracker is a business management software application used by commercial photolabs and companies in the printing industry.

10. The 1993 Development Agreement designated CHOF d/b/a "SoftWares" as the

exclusive distributor of ISI's TQ Tracker software for a defined period of time. CHOF d/b/a "SoftWares" recognized ISI as the sole owner of all proprietary rights in TQ Tracker.

11. From 1995 to present, the parties have agreed that ISI and i-Systems would assist CHOF and SoftWares by providing support to sublicensees of TQ Tracker. ISI and i-Systems were compensated for their support work through the sharing of upgrade and annual maintenance fees paid by sublicensees to CHOF and, later, SoftWares. ISI and i-Systems would invoice CHOF and SoftWares for such fees. In providing support to end-users, ISI and i-Systems used CHOF and SoftWares' intranet support system.

#### **1995 License**

12. Since as early as 1995, the parties bundled a license agreement with each copy of TQ Tracker. The TQ Tracker software, its documentation, and ACI US 4 D, a third-party software, were downloaded from ISI and i-Systems' server over the Internet. A true and correct copy of the license agreement as it existed from 1995 to 1998 ("1995 License") is attached hereto as Exhibit A.

13. Consistent with industry practice and custom, CHOF, SoftWares and ISI understood that the 1995 License was part and parcel of TQ Tracker. CHOF and SoftWares never objected to the 1995 License or its integration with TQ Tracker.

14. On or about April 22, 1996, CHOF and ISI entered into a second Development Agreement ("1996 Development Agreement"). A true and correct copy of the 1996 Development Agreement is attached hereto as Exhibit B.

15. On or about September 26, 1997, CHOF and ISI assigned all their respective rights

and obligations under the 1996 Development Agreement to SoftWares and i-Systems, respectively.

16. As in the 1993 Development Agreement, SoftWares was the licensee and exclusive distributor of TQ Tracker. SoftWares sublicensed TQ Tracker to the end-users. For each sublicense, upgrade and maintenance fee that SoftWares received from end-users, i-Systems was paid a license fee and a portion of the upgrade or maintenance fee.

17. Just as under the 1993 Development Agreement, the parties continued to bundle the 1995 License with TQ Tracker.

#### **1998 License**

18. In 1998, the License Agreement was revised. A true and correct copy of the new “TQTracker Product ‘License’” (“1998 License”) is attached hereto as Exhibit C.

19. The License Agreement bundled with TQ Tracker was explicitly referenced on both the quotes and invoices delivered to SoftWares and stated: LICENSE: PLEASE READ THE SOFTWARE LICENSE AGREEMENT (“LICENSE”) CAREFULLY BEFORE USING ANY I SYSTEMS PRODUCT. YOU ARE BOUND BY THE TERMS OF THIS LICENSE.

20. Consistent with industry practice and custom, SoftWares and i-Systems understood that the 1998 License was part and parcel of the TQ Tracker software. SoftWares never objected to the 1998 License, its terms, its integration with TQ Tracker, or the reference to the license on the quotes and invoices it received from i-Systems.

#### **2001 License**

21. In 2001, i-Systems modified the License Agreement bundled with TQ Tracker. Now,

when TQ Tracker is installed, the revised License Agreement (the “2001 License”) pops up on the computer screen and requires licensees or sublicensees to check one of two boxes, indicating their acceptance or rejection of the terms of the 2001 License Agreement. If an installer does not check the box that indicates acceptance of the License Agreement, the installation process terminates and TQ Tracker does not install. A true and correct copy of the 2001 License is attached hereto as Exhibit D.

22. In 2001, for the first time, SoftWares objected to the license agreement bundled with the TQ Tracker software.

23. Despite SoftWares’ objection, each time that it has installed TQ Tracker, SoftWares has nonetheless checked the box indicating its acceptance of the terms of the 2001 License Agreement.

24. To i-Systems’ knowledge, no sublicensee or end-user has ever rejected the click-through license bundled with the TQ Tracker software.

**SoftWares, Quantum and CHOF Copy the TQ Tracker Software and Begin to Compete Against I-Systems**

25. I-Systems is the holder of United States Copyright No. TX-5-524-657 for its TQ Tracker software.

26. The 1995 License, the 1998 License, and the 2001 License prohibit any licensee or sublicensee, including SoftWares, from reverse engineering the TQ Tracker software, or from planning for, organizing, or engaging in any business that competed directly or indirectly with the business of i-Systems.

27. Despite the anti-competition clause, SoftWares has developed a software product

directly competitive to i-Systems' TQ Tracker. SoftWares' competitive product is now called "Quantum MIS."

28. Despite the prohibition against reverse engineering, and i-Systems' copyright, Defendants developed its product from the TQ Tracker software code and feature set.

29. While serving as i-Systems' exclusive distributor for TQ Tracker, SoftWares improperly used i-Systems' trade secrets and confidential information to develop its own software that competes against TQ Tracker.

30. On or about May 22, 2002, i-Systems' attorney delivered a cease and desist letter to SoftWares. The letter specifically alleged and requested confirmation that SoftWares: (i) was developing a competitive product to TQ Tracker; (ii) was developing software derived from TQ Tracker; (iii) was engaged in conduct directly competitive with i-Systems; and (iv) was using i-Systems' trade secrets and confidential information to develop new products for SoftWares' commercial benefit.

31. SoftWares refused to deny these factual allegations in the May 22, 2002 letter.

32. On or about June 20, 2002, i-Systems' counsel again asked SoftWares whether it: (i) was developing a software product competitive to i-Systems TQ Tracker; (ii) had derived a product from TQ Tracker; (iii) had used i-Systems' trade secrets or confidential information; or (iv) had engaged in conduct directly competitive with i-Systems.

33. SoftWares again refused to deny these factual allegations in the June 20, 2002 letter.

34. In June 2002, SoftWares blocked i-Systems' access to the support system for sublicensees of TQ Tracker.

35. SoftWares is a wholly-owned subsidiary of CHOF.

36. On information and belief, Quantum is a subsidiary of CHOF and an affiliate of SoftWares.

37. On information and belief, CHOF operates SoftWares and Quantum as church businesses. CHOF provides employees of SoftWares and Quantum with housing, transportation, food and stipends. Because employees of SoftWares and Quantum receive little or no compensation from SoftWares or Quantum, they are in fact employees of CHOF.

38. Employees of SoftWares also work for Quantum, and employees of Quantum work for SoftWares.

39. SoftWares and CHOF have transferred to Quantum the technology, know-how and product now called Quantum MIS.

**COUNT ONE  
(Breach of Contract)**

40. I-Systems realleges paragraphs 1 through 39 herein.

41. Despite due demand, SoftWares has failed to halt its breaches of the license agreements and 1996 Development Agreement.

42. In breach of the 1996 Development Agreement, SoftWares has failed to pay all license fees owed to i-Systems for each sublicense of TQ Tracker.

43. As a direct and proximate result of SoftWares' breaches of the license agreements and 1996 Development Agreement, SoftWares is in breach of its contracts with i-Systems, and i-Systems has been damaged in an amount to be determined at trial.

**COUNT TWO**

**(Copyright Infringement)**

44. I-Systems realleges paragraphs 1 through 43 herein above.

45. I-Systems is the registered owner of TQ Tracker and has the exclusive right to copy, distribute and transmit it in the United States. I-Systems' TQ Tracker is an original work and copyrighted under the Copyright Act.

46. At all times relevant herein, i-Systems has complied with the Copyright Act, 17 U.S.C. §§ 101, *et seq.*, and has secured the exclusive rights and privileges in and to the copyright for TQ Tracker.

47. Defendants have, without authorization from i-Systems, copied and/or otherwise exploited i-Systems' TQ Tracker, including but not limited to deriving works from TQ Tracker and TQ Tracker's feature set.

48. Defendants' acts constitute direct and/or contributory infringement of i-Systems' copyright and TQ Tracker software in violation of 17 U.S.C. §§ 101, *et seq.*

49. Upon information and belief, Defendants' infringement has been committed willfully, and have been and are being engaged in with total disregard for i-Systems' intellectual property rights.

50. Defendants' infringement has caused, and will continue to cause, i-Systems to suffer substantial injuries, loss and damage to its exclusive right in its TQ Tracker product.

51. Defendants' infringement entitles i-Systems to actual damages and the profits of the infringer, statutory damages of at least \$150,000 per infringement, seizure, and the destruction of copies of TQ Tracker or software derived from TQ Tracker.



**COUNT THREE**  
**(Breach of Implied Covenant)**

52. I-Systems realleges paragraphs 1 through 51 herein above.

53. I-Systems and SoftWares entered into the 1996 Development Agreement in which SoftWares became the exclusive distributor of i-Systems' TQ Tracker.

54. Without good cause, Defendants have copied TQ Tracker, copied TQ Tracker's feature set, and/or developed a product directly or indirectly competitive with TQ Tracker despite Defendants' position as exclusive distributor for i-Systems.

55. Defendants' actions as described above constitute a violation of their duty of good faith in performing the Development Agreement.

56. As a direct and proximate result of SoftWares' breaches of the implied covenant, i-Systems has been damaged in an amount to be determined at trial.

**COUNT FOUR**  
**(Breach of Fiduciary Duty)**

57. I-Systems realleges paragraphs 1 through 56 herein above.

58. I-Systems and SoftWares entered into the 1996 Development Agreement in which SoftWares became the exclusive distributor of i-Systems' TQ Tracker.

59. As a result of the exclusive distributor relationship, and Defendants' access to i-Systems' trade secrets and confidential information, a fiduciary relationship arose along with the attendant duty that Defendants exercise the utmost care, candor, loyalty and good faith in dealing with i-Systems.

60. Defendants' actions as described above constitute a violation of their fiduciary duty

to i-Systems.

61. As a direct and proximate result of Defendants' breaches of their fiduciary duty, i-Systems has been damaged in an amount to be determined at trial.

**COUNT FIVE  
(Misappropriation of Trade Secrets)**

62. I-Systems realleges paragraphs 1 through 61 herein above.

63. I-Systems has expended a large amount of time and money in research and development expense in the development of the TQ Tracker software.

64. The TQ Tracker software, including the source code and feature set, is protected by i-Systems as trade secrets, and constitutes confidential information belonging to i-Systems.

65. Defendants have misappropriated and infringed i-Systems' trade secrets and confidential information as described above.

66. As a result of such misappropriation of i-Systems' confidential information, i-Systems has suffered damages. The precise amount of those damages is unknown, but upon information and belief, i-Systems believes that such damages are in excess of \$50,000, exclusive of interest and costs.

**COUNT SIX  
(Fraudulent Transfer)**

67. I-Systems realleges paragraphs 1 through 66 herein above.

68. Defendants' transfer of SoftWares' technology, know-how and software to Quantum with the intent to hinder, delay or defraud i-Systems constitutes a fraudulent transfer. Defendants' acts violate Minn. Stat. § 513.41-51 (2002).

69. By reason of the foregoing, i-Systems has been damaged in an amount to be established at trial.

**COUNT SEVEN  
(Consumer Fraud Act)**

70. I-Systems realleges paragraphs 1 through 69 herein above.

71. Defendants' representations and conduct with respect to Quantum MIS and TQ Tracker constitute fraud, false pretenses, false promises, misrepresentations, misleading statements and/or deceptive practices in connection with the sale of the merchandise with the intent that others rely thereon. Defendants' acts violate Minn. Stat. § 325F.68-70 (2002).

72. By reason of the foregoing, i-Systems has been damaged in an amount to be established at trial, plus costs and attorneys' fees, as allowed by Minn. Stat. § 8.31, subd. 3(a) (2002).

**COUNT EIGHT  
(Disregard of Corporate Entity)**

73. I-Systems realleges paragraphs 1 through 72 herein above.

74. Defendants have failed to observe corporate formalities. CHOF and Quantum have acted as the alter ego of SoftWares.

75. Defendants have failed to observed corporate forms so as to perpetrate a fraud on i-Systems.

76. By reason of the foregoing, i-Systems has been damaged in an amount to be established at trial.

**COUNT NINE  
(Conspiracy)**

77. I-Systems realleges paragraphs 1 through 76 herein above.

78. Defendants agreed and conspired to steal and otherwise wrongfully infringe i-Systems' copyright and trade secrets, and to deprive i-Systems of its technology, know-how and software.

79. Each of the Defendants took actions in furtherance of said conspiracy.

80. As a result of Defendants' actions, i-Systems has and will continue to suffer damages in an amount to be established at trial.

**COUNT TEN  
(Injunctive Relief)**

81. I-Systems realleges paragraphs 1 through 80 herein above.

82. Based upon the foregoing, i-Systems has suffered and will continue to suffer irreparable damages unless i-Systems is granted injunctive relief by the Court.

83. Defendants' copyright infringement, and the threat of continuing infringement, has caused, and will continue to cause, i-Systems severe and irreparable injury.

84. If i-Systems is unable to stop the proliferation of its confidential information and further copyright infringement, it will suffer irreparable damages. I-Systems' remedy at law is inadequate to compensate it for the injuries already inflicted and further threatened by Defendants. Therefore, Defendants should be enjoined pursuant to 17 U.S.C. §§101, *et seq.*

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs i-Systems, Inc. and Jeremy Kahn pray for judgment as follows:

B. Temporarily and permanently enjoining Defendants, and each of their officers,

agents, servants, employees, subsidiaries, affiliates and attorneys, and all persons in active concert or participation with them who receive actual notice of the Court's order by personal service or otherwise, from using in any way i-System's software, derivative works, confidential information, trade secrets, and copyrighted materials, and cease from competing, directly or indirectly, with i-Systems.

C. Requiring Defendants to file and serve on i-Systems, within 30 days after service of an injunction, a written report under oath setting forth in detail Defendants' compliance with the injunction.

D. Requiring Defendants to account for the sales and profits related to the sale of TQ Tracker, Quantum MIS, or any product that directly or indirectly competes with TQ Tracker or any other i-Systems' product.

E. Awarding damages against Defendants in an amount to be determined at trial.

F. Awarding statutory and treble damages against Defendants under the Copyright Act.

G. Awarding i-Systems its costs and disbursements, including attorneys' fees, in bringing suit under the Copyright Act and state statute.

H. For such other, further or different relief as the Court deems just and equitable.

Dated: October \_\_, 2002

**MASLON EDELMAN BORMAN & BRAND, LLP**

By \_\_\_\_\_  
Richard A. Kempf #19167X  
3300 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-4140

Telephone: 612-672-8342

Facsimile: 612-674-8342

***ATTORNEYS FOR PLAINTIFF  
I-SYSTEMS, INC.***

#232200