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SNR, INC.

*ORMW*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

**RMW**

SNR INC., a Colorado corporation, dba  
SOFTWARE WHOLESAL  
INTERNATIONAL,

**C09 02840**  
CASE NO.

**RS**

**PLAINTIFF SNR INC.'S COMPLAINT  
FOR:**

Plaintiff,

- 1) VIOLATIONS OF 18 U.S.C. §§1961-1968, R.I.C.O.;
- 2) LANHAM ACT (UNFAIR COMPETITION);
- 3) LANHAM ACT (FALSE ADVERTISING);
- 4) UNFAIR COMPETITION (VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §1700 et seq.);
- 5) SALES UNDER COST (VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §17043 et seq.)

v.

TECHNOLOGY ONE ONLINE, a  
California corporation, dba  
TECHNOLOGY ONE, dba  
TECHNOLOGY 1, ISAAC COHEN, and  
DOES 1-50, inclusive,

Defendants.

Plaintiff SNR, INC., doing business as SOFTWARE WHOLESAL INTERNATIONAL,  
alleges as follows:

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I.  
PARTIES

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3 1. Plaintiff SNR, INC. (hereinafter "SNR"), is a Colorado Corporation, doing  
4 business in the State of California as SOFTWARE WHOLESALE INTERNATIONAL  
5 (hereinafter "SWI"), with its principal place of business in Longmont, Colorado, mailing address  
6 of Post Office Box 2297, Longmont, CO 80502.

7 2. Defendant TECHNOLOGY ONE ONLINE (hereinafter "CORP 1"), is a  
8 California corporation duly licensed to do business, and is doing business, in the State of  
9 California, with their principal place of business located at 1736 Westwood Blvd., Suite 102, Los  
10 Angeles, California 90024.

11 3. Defendant ISAAC COHEN (hereinafter "COHEN"), is an individual. Upon  
12 information and belief, COHEN is a resident of the City of Los Angeles, County of Los Angeles.

13 4. On or about March 15, 2001, COHEN filed a fictitious business statement with the  
14 Los Angeles County Recorders Office. The fictitious business statement reflects that ISAAC  
15 COHEN (AKA) ISAAC KOHANIAN is doing business as both TECHNOLOGY ONE and  
16 TECHNOLOGY 1 (hereinafter collectively "CORP 2" unless otherwise noted) with his principal  
17 place of business being 1736 Westwood Blvd. Suite 102, Los Angeles, California 90024

18 5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein  
19 as DOES 1-50, inclusive, and therefore sues those defendants by fictitious names. Plaintiff will  
20 amend this complaint to allege the true names and capacities of those defendants as soon as they  
21 are ascertained. Plaintiff is informed and believes that each fictitiously named defendant is  
22 responsible in some way for the events and damages described herein.

23 6. DOES 25-50 acted as the agent, partner, co-conspirator, employee and/or alter-ego  
24 of one or more of the remaining defendants and in doing the things herein alleged was acting  
25 within the course and scope of said agency, partnership, conspiracy and/or employment.

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**II.**

**SUBJECT MATTER JURISDICTION**

7. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §1331 (federal question) in that SNR alleges violations of 18 U.S.C. §§1961-1968, the Racketeer Influenced and Corrupt Organizations Act (hereinafter "RICO") and §43(a) of the Lanham Act, 15 U.S.C. §1125.

8. This Court has supplemental jurisdiction over the state claims pursuant to 28 U.S.C. §1367 in that the state claims form part of the same case or controversy as the RICO and Lanham Act claims.

9. This Court has personal jurisdiction over CORP 1, CORP 2 and COHEN (hereinafter collectively "Defendants" unless otherwise noted) as Plaintiff is informed and believes Defendants do business in the Northern District of California.

**III.**

**INTRADISTRICT ASSIGNMENT**

10. Pursuant to Local Rules 3-2(c) and 3-5(b), this action is brought in the San Jose Division because a substantial part of the events which give rise to the claim occurred in Santa Clara County, and a number of non-academic consumers who were confused by the false advertising of Defendants reside in Santa Clara County.

**IV.**

**VENUE**

11. Venue is proper in the United States District Court for the Northern District of California pursuant to 28 U.S.C. §1391 in that a substantial number of non-academic consumers in this district were confused due to the false advertising of Defendants.

**V.**

**GENERAL ALLEGATIONS**

12. Plaintiff SWI is an internet and phone based software dealer specializing in delivery of software licensing having customers in every state. SWI does business utilizing the Uniform Resource Locator ("URL") www.software-intl.com.

1           13. SWI has been a distributor of Microsoft products for several years. SWI is also a  
2 Value Added Reseller (hereinafter "VAR") for Microsoft software. VAR's provide a single point  
3 of contact for Microsoft consumers, have full pricing flexibility over Microsoft products and have  
4 greater visibility and influence with Microsoft than a typical distributor. Further, SWI is an  
5 Authorized Education Reseller (hereinafter "AER") of Microsoft products, entitling SWI to sell  
6 Microsoft products to academic consumers at substantially discounted prices. Finally, SWI is  
7 authorized by Microsoft to issue Microsoft Developer Network Subscriptions (hereinafter  
8 "MSDN") to consumers. MSDN is a subscription that gives consumers access to a suite of  
9 Microsoft products, including Vista and Microsoft Office, and entitles the consumer to technical  
10 support for a number of years. MSDN provides priority access to Microsoft Developer Tools,  
11 Operating Systems, Servers and Productivity Applications, and includes the latest evaluation and  
12 Beta software. SWI sells more MSDN than most of its competitors. SWI is the top US VAR for  
13 MSDN Sales and comes recommended by Microsoft as the number one reseller of MSDN  
14 Subscriptions.

15           14. SWI's business model relies on the fact that internet businesses are very  
16 competitive, as the world-wide web offers consumers a large number of choices when searching  
17 for products and services. As such, SWI spends a significant amount of money on internet  
18 advertising every year. SWI knows that sophisticated consumers can use several search engines,  
19 including [www.google.com](http://www.google.com), to perform searches for the products and services they are looking  
20 for. When a consumer who is looking for MSDN Subscriptions enters the terms "MSDN  
21 Subscription" into a Google search engine, the results list that appears reflects SWI in the number  
22 one position on the list. SWI is informed and believes it is able to sell as much MSDN as it does  
23 due to the high quality of its products and the amount of money SWI spends on internet  
24 advertising every year. A consumer who is looking for MSDN Subscriptions on the internet  
25 would most likely be directed to SWI's website, [www.software-intl.com](http://www.software-intl.com).

26           15. Defendants also advertise their products on Google's website. For almost two  
27 years Defendants occupied the number two spot on the results list, right below Plaintiff, when a  
28 consumer entered the term "MSDN Subscription" into a Google search engine. At all other

1 relevant times, Defendants have shown up on the first page of the results list when a consumer  
2 enters the term "MSDN Subscription" into a Google search engine. Upon information and belief,  
3 Defendants are not licensed by Microsoft to sell academic MSDN Subscriptions to any individual  
4 or organization in the USA or internationally.

5 **Defendants' Affiliated Websites**

6 16. Upon information and belief, Defendants are doing business utilizing two URLs:  
7 www.save365day.com and www.SaveIntheUSA.com. The URL www.save365day.com was  
8 created on July 17, 2002, and www.SaveIntheUSA.com was created on September 22, 2003.

9 17. Both www.save365day.com and www.SaveIntheUSA.com were registered by  
10 Domains By Proxy, Inc., a company located at 15111 N. Haden Rd., Suite 160, PMB 353,  
11 Scottsdale, Arizona 85260. The Administrative and Technical Contacts for both URL's is  
12 Domains By Proxy, Inc.

13 18. Domains By Proxy was conceived to allow registrants to keep their personal  
14 information private by listing Domains By Proxy as the contact information for the URL.  
15 Plaintiff is informed and believes the reason Defendants used Domains By Proxy to register their  
16 domain names was to hide their true identities.

17 19. Defendants use the URL's to advertise and sell their hardware and software,  
18 including Microsoft software. SWI is informed and believes that Defendants have been doing  
19 business as a hardware and software reseller since 2001. Defendants compete with SWI in the  
20 resale of Microsoft products.

21 **Microsoft Certifications**

22 20. Microsoft offers several levels of certifications to its business partners, including  
23 Certified Partner and Gold Certified Partner certifications.

24 21. A Certified Partner of Microsoft represents a high degree of competence and  
25 expertise with Microsoft technologies. A Certified Partner can access a set of benefits that can  
26 help the partner gain an advantage in the marketplace and build revenue, sales momentum, and  
27 prominence while increasing their market impact.

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1           36.     CORP 1 is an enterprise engaged in and the activities of which affect interstate  
2 commerce, to wit: a corporation incorporated under the laws of the State of California.

3           37.     Defendant COHEN, as a person within the meaning of 18 U.S.C. §1961(3),  
4 received income derived, directly or indirectly, from a pattern of racketeering activity which was  
5 used to operate CORP 1 and CORP 2, an enterprise which is engaged in, or the activities of which  
6 affect, interstate commerce in violation of 18 U.S.C §1962(a).

7           38.     Defendant COHEN, as a person within the meaning of 18 U.S.C. §1961(3), and as  
8 a person associated with said enterprise, conducted and participated, directly and indirectly, in the  
9 conduct of the affairs of said enterprise through a pattern of racketeering activity in violation of  
10 18 U.S.C. §1962(c).

11           39.     The several predicate acts which constitute this pattern of racketeering activity are:  
12 CORP 1 and CORP 2, having devised a scheme or artifice to defraud Microsoft and non-  
13 academic consumers, and by obtaining money and property by means of numerous false or  
14 fraudulent pretenses, representations, or promises that CORP 1 and CORP 2 were, including but  
15 not limited to, reselling Microsoft software to Academic Consumers, transmitted or caused to be  
16 transmitted by means of wire, radio, or television communication in interstate or foreign  
17 commerce, writings and sounds for the purpose of executing the scheme or artifice in violation of  
18 18 U.S.C. §1343.

19           40.     These several acts of racketeering, occurring within ten years of one another,  
20 constitute a pattern of racketeering activity within the meaning of 18 U.S.C. §1961(5).

21           41.     Plaintiff was injured in his business by reason of this violation of 18 U.S.C. §1962,  
22 in that, as a direct and proximate result of Defendants' complained of acts, Plaintiff suffered  
23 damages, including lost profits.

24           42.     By reason of Defendants' violation of 18 U.S.C. §1962, Plaintiff is entitled,  
25 pursuant to 18 U.S.C. §1964(c), to threefold the damages sustained with interest thereof at the  
26 maximum legal rate per annum, and a reasonable attorneys' fees in connection herewith.

27           WHEREFORE, Plaintiff prays for relief against Defendants as hereinafter set forth.  
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**SECOND CAUSE OF ACTION**

**Unfair Competition  
15 U.S.C. §1125(a)**

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43. Plaintiff incorporates by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 42.

44. Since 2001, Defendants have caused Microsoft software to be purchased from Microsoft AER's and distributed to consumers under the fraudulent representations that Defendants were purchasing the software from Microsoft AER's for resale to Academic Consumers.

45. Defendants were not purchasing the software for resale to Academic Consumers, but rather for resale to non-academic consumers.

46. Defendants obtained the software from Microsoft AER's at Academic Consumer prices, which are substantially lower than the prices Microsoft charges its distributors for the same software.

47. Based on their misrepresentations to Microsoft AER's and non-academic consumers, Defendants were able to resell the Microsoft software for a price lower than that of Plaintiff, causing Plaintiff to lose profits.

48. Plaintiff was unable to compete with the prices offered by Defendants, as offering that price would cause Plaintiff to lose money on every sale of Microsoft software.

49. Defendants fraud on Microsoft and the non-academic consumers and subsequent resale of Microsoft products constitutes unfair competition, in violation of 15 U.S.C. §1125 (a).

50. Plaintiff was injured in their business by reason of this violation of 15 U.S.C. §1125(a), in that, as a direct and proximate result of Defendants' complained of acts, Plaintiff suffered damages, including lost profits.

WHEREFORE, Plaintiff prays for relief against Defendants as hereinafter set forth.

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**THIRD CAUSE OF ACTION**

**False Advertising  
15 U.S.C. §1125(a)**

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4 51. Plaintiff incorporates by reference as though fully set forth herein each and every  
5 allegation contained in paragraphs 1 through 50.

6 52. Sometime in the last ten years, Defendants commenced advertising on their  
7 websites, www.save365day.com and www.SaveIntheUSA.com, representing that they sold  
8 Microsoft products with non-academic consumer licenses.

9 53. In doing so, Defendants made misrepresentations concerning the nature,  
10 characteristics and qualities of their products.

11 54. Defendants' statement described in paragraph 51 was false because Defendants  
12 were actually selling Microsoft products with academic licenses.

13 55. Defendants' misrepresentations were made in connection with sales of products in  
14 commerce.

15 56. Defendants' misrepresentation in commercial advertising or promotion was  
16 disseminated to non-academic consumers who were actually deceived or tended to be deceived by  
17 it.

18 57. Defendants' misrepresentations were likely to influence the purchasing decisions  
19 of the non-academic consumers to whom it was disseminated.

20 58. Defendants' misrepresentations injured Plaintiff by causing Plaintiff to lose  
21 customers and sales, resulting in business losses in an amount to be determined.

22 WHEREFORE, Plaintiff prays for relief against Defendants as hereinafter set forth.

**FOURTH CAUSE OF ACTION**

**Unfair Competition  
California Business & Professions §17200 et. seq.**

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26 59. Plaintiff incorporates by reference as though fully set forth herein each and every  
27 allegation contained in paragraphs 1 through 58.

1           60.     In doing the acts set forth above, Defendants engaged in unfair competition, in  
2 violation of California Business and Professions Code §17000 et seq. Defendants' acts as set  
3 forth above constitute one or more unlawful, unfair or fraudulent business acts or practices.

4           61.     The acts of the Defendants as alleged herein above are in violation of California  
5 Business & Professions Code §17200, as Defendants were able to resell Microsoft software at a  
6 price substantially below that of Plaintiff, due to the fraud Defendants perpetrated on Microsoft  
7 AER's and non-academic consumers. As such, the acts of the Defendants alleged herein  
8 constitute an "unlawful business act or practice," as that phrase is used in Business and  
9 Professions Code §17200.

10           62.     The acts of the Defendants as alleged herein above are in violation of California  
11 Business & Professions Code §17500, as Defendants knew or reasonably should have known that  
12 representing to non-academic consumers that Defendant sold Microsoft software with non-  
13 academic licenses constituted misleading representations or descriptions of fact regarding the  
14 nature, characteristics, or qualities of the Defendants' goods and services, in that they deceive or  
15 confuse non-academic consumers into believing that the Defendants' products and services sold  
16 were accompanied by non-academic consumer licenses. As such, acts of the Defendants alleged  
17 herein constitute an "unlawful business act or practice," as that phrase is used in Business and  
18 Professions Code §17200.

19           63.     As a proximate result of the unfair competition described above, the Defendants  
20 have benefited and will benefit, and the business of the Plaintiff has suffered and will suffer  
21 damages in an amount not yet fully ascertained.

22           64.     In doing the acts herein alleged, the Defendants acted, upon information and  
23 belief, maliciously and intentionally, in conscious or reckless disregard of the rights and interests  
24 of the Plaintiff, and with the intent to injure the Plaintiff or deprive Plaintiff of its rights. As a  
25 result, the Plaintiff has been damaged in an amount to be proven at trial and is entitled to the  
26 remedies available under Business and Professions Code §17200, including but not limited to,  
27 injunctive relief, and equitable restitution of any and all profits, revenues, compensation or other  
28 payments obtained by the Defendants as a result of their acts of unfair competition.

1 WHEREFORE, Plaintiff prays for relief against Defendants as hereinafter set forth.

2 **FIFTH CAUSE OF ACTION**

3 **Selling Below Cost**  
4 **California Business & Professions §17043 et. seq.**

5 65. Plaintiff incorporates by reference as though fully set forth herein each and every  
6 allegation contained in paragraphs 1 through 64.

7 66. Both Plaintiff and Defendants sell Microsoft products to the same non-academic  
8 consumers.

9 67. Sometime in the last ten years, Defendants offered for sale and sold to non-  
10 academic consumers (for whom Plaintiff and Defendant compete) large quantities of Microsoft  
11 software at varying prices. These offers of sale and sales were made below cost, in that the prices  
12 charged by Defendants were lower than that which Microsoft AER's would have charged  
13 Defendants for the same software had Defendants not defrauded the Microsoft AER's.  
14 Defendants consistently sold the Microsoft software in question at a price below the price at  
15 which Microsoft and Microsoft AER's charge for non-academic licenses.

16 68. Plaintiff is informed and believes and thereon alleges that Defendants performed  
17 the above-mentioned acts for the purpose of injuring Plaintiff and destroying competition.

18 69. Defendants threaten to and, unless restrained, will continue to offer to sell and sell  
19 to non-academic consumers the above mentioned commodities below cost.

20 70. As a proximate result of the above-mentioned acts of Defendants, Plaintiff has  
21 been deprived of the patronage of a large number of its actual and potential customers, all to its  
22 damage in an amount to be determined, which shall be trebled in an amount to be determined.

23 WHEREFORE, plaintiff prays for relief against Defendants as hereinafter set forth.

24 **VI.**

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 27 1. For threefold the damages actually sustained pursuant to 18 U.S.C. §1964(c);  
28 2. Preliminary and permanent injunctive relief requiring Defendants to cease

1 misrepresenting to Microsoft AER's and Microsoft that they are reselling Microsoft software to  
2 Academic Consumers;

3 3. Preliminary and permanent injunctive relief requiring Defendants to cease the  
4 resale of all Microsoft products;

5 4. Preliminary and permanent injunctive relief requiring Defendants to cease using  
6 the advertising or promotional materials described herein, recall all offending materials, and  
7 disseminate corrections and retractions;

8 5. Compensation in an amount to be determined representing Plaintiff's lost profits;

9 6. Compensation in the amount to be determined, representing profits earned by  
10 Defendants through their misrepresentations;

11 7. For trebled damages in an amount to be determined pursuant to California  
12 Business and Professions §17082;

13 8. For interest on the applicable sums at the prevailing rate;

14 9. For attorneys' fees and costs of suit incurred herein; pursuant to 18 U.S.C.  
15 §1964(c), 15 U.S.C. §1117(a), and Business and Professions §17082;

16 10. For such other and further relief as the Court deems just and proper.  
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18 Dated: June 24, 2009

HOPKINS & CARLEY  
A Law Corporation

19  
20  
21 By: 

Allonn E. Levy  
Attorneys for Plaintiff  
SNR, INC.