UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re: Chapter 11

Psystar Corporation, Case No: **09-19921-BKC-RAM**

Debtor.

_________________________________/

DEBTOR'S RESPONSE TO APPLE INC.'S MOTION TO TERMINATE THE AUTOMATIC STAY

Psystar Corporation, Debtor, by and through undersigned counsel, file this response pursuant to Federal Rule of Bankruptcy Procedure 4001 and Loc al Rule 4001-1(D) to Apple Inc.'s Motion for Relief for Relief from Stay Pursuant to U.S.C. § 362(d) [DE 25]. The Debtor responds as follows:

BACKGROUND

1. On May 21, 2009, the Debtor commenced this case by voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is operating its business and managing its affairs as a Debtor-in Possession pursuant to § 1107(a) and §1108 of the Bankruptcy Code.

2. No trustee or examiner has been appointed in this case.

3. Prior to the Petition Date, the Debtor was involved in litigation with Apple Inc., in the United States District Court for the Northern District of California.

4. The case pending in the Northern District of California is still in the discovery stage. Trial is set to commence on November 9, 2009.

5. On February 12, 2009, Debtor filed its Amended Counter Claim for Declaratory Relief as to Unenforceability of Copyright, alleging misuse of copyright. In it Debtor requested the Court to:

a. Declare Apple's actions with respect to its EULA to be a misuse of copyright thereby making said copyrights unenforceable so long as the misuse of the copyright, with respect to EULA continues, and

b. Declare Apple's actions with respect to its claims under the DMCA to be a misuse of copyright, thereby making any copyright purportedly protected through enforcement of the DMCA unenforceable so long as the misuse of those copyrights continues.

A copy of the First Amended Counterclaim is attached hereto and made a part hereof as Exhibit "A".

6. Since Apple filed the case in the Northern District of California, on July 3, 2008, Apple has not filed a motion for temporary injunction to stop Psystar from using or selling the technology which is the subject of the litigation. A coy of the court docket is attached hereto and made a part hereof as Exhibit "B".

ARGUMENT

7. Apple, in its motion, wants this Honorable Court to believe that it has been damaged by the Debtor, that it is being prejudice by the automatic stay, and that the Debtor is not reorganizing its business, while it continues to sell computers using the technology which is the subject of the action in the Northern District of California.

8. Apple could have stopped the alleged damages by seeking a Restraining Order, to protect its interest. It has not done so.

9. The Debtor is in the process of reorganizing its business and moving from selling computers to selling its technology in a manner that is more cost effective and yields a higher profit.

10. The Debtor has been spending a large part of its time gathering the information and preparing the documents to comply with the requirements of this case and has not been able to move as fast as it would have liked in the transition of its business operations to the more efficient and profitable model.

11. Apple cites In re: Murray Indus, Inc., 121 B.R. 635 637 (Bankr. M.D. Fla. 1990) in support of its motion. In this case the Court granted Relief from Stay to allow the creditor to sue on unpaid invoices. The case pending in the Northern District of California does not deal with debt collection, it deals with a dispute related to intellectual property, which Apple has not tried to protect by requesting a temporary injunction .

12. Citing several cases Apple contends that "relief from stay may be granted for cause when it is necessary to permit litigation in another forum to be concluded" and "It will often be more appropriate to permit proceeding to continue in their place of origin, when no great prejudice to the bankruptcy estate would result........" Continuing at this time the case pending in the Northern District of California will be prejudicial to the bankruptcy estate. Having to incur the cost of litigation without having had a chance to reorganize and operate more profitably will force the Debtor to liquidate its business and lose the opportunity to benefit from its intellectual property.

13. Apple further relies on In re: SCO Group, Inc., 395 B.R. 852 (Bankr. D. Del 2007) stating that it is a similar case. Although some of the facts are similar, the main difference is that in SCO a Summary Judgment was entered and the only thing left to decide was the amount of damages. In this case there is no Summary Judgment entered and all the issues have to be decided. Debtor's Counsel is not "substantially" ready to proceed and it will be a burden to continue trial preparation at this time.

14. Debtor is in a difficult position at this time, although it is advantageous for the future of its operation to proceed with the litigation, it will not be able to continue to the end due

to the present financial situation brought about by a combination of the slow economy and the costly litigation. Debtor needs to be able to restructure its business while taking a break from the litigation in order to be able to see it to the end. Debtor's President has prepared a statement in support of the hardship and prejudice to the Debtor if the stay is lifted at this time, which is attached here to and made a part hereof as Exhibit "C".

15. There are no issues of fact to be litigating in the Northern District of California Case. The Debtor has admitted manufacturing and selling computers that utilize Apple's operating system, and that it has purchase the operating system directly from Apple or authorized vendors.

WHEREFORE the Debtor Respectfully requests that the Court deny Apple's Motion for Relief from Stay at this time to allow the Debtor the opportunity to reorganize or in the alternative that the stay be lifted for the limited purpose of the parties filing Motions for Summary Judgment on their issues.

CERTIFICATE OF ADMISSION

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(A).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all ECF registered users herein via CM/ECF, and by regular first class United States mail on all other interested parties on June 15th, 2009.

Respectfully,

/s/ Lazaro Lopez

LAZARO J. LOPEZ
Attorney for Debtors
Fla. Bar No. 879861
2333 Brickell Avenue, Ste. A-1
Miami, Florida 33129
Telephone: (305) 477-5933