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Attorney for Plaintiff, eBOOK, Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

eBOOKS, Inc., a California  
corporation,

Plaintiff,

vs.

GIOTTO MULTIMEDIA, a  
California corporation, and  
MARIANNE LABELLE,  
an individual,

Defendants

Case No. 08-23456-JJ

Complaint for Breach of  
Contract, Copyright  
Infringement, Theft of  
Trade Secrets, Breach of  
Fiduciary Duty, and Unfair  
Competition

**General Allegations**

1. Plaintiff eBOOKS, Inc. (hereafter "eBOOKS") is a California corporation in good standing with principal offices in the City of Westlake Village, California. Since 1995, eBOOKS has been engaged in

the business of converting printed books, manuals, and brochures into electronic form and distributing them for sale. Since 2000, eBOOKS has maintained a website, ebooks.com, where it offers a variety of electronic books for sale, using a range of "eBOOK readers" including Adobe's ACROBAT software, MobiReader, PocketReader, and others.

2. In 1999, defendant Marianne Labelle ("Marianne") came to work for eBOOKS as a project leader in eBOOKs' production department. It was her responsibility to gather the printed materials from the customer, organize them, scan them, run them through optical character recognition software, edit the results, and format the electronic file for distribution and sale. She supervised teams of up to five workers at a time, depending on the size of any given project. By the time she had worked at eBOOKS for three years, Marianne had come to be on a first-name basis with all of eBOOKS' major customers and all the members of its production staff.

3. In April of 2005, Marianne approached Jean le Stud, Vice President of eBOOKS in charge of Research and Development, and told him that a new idea had occurred to her which, if implemented, could lead to an improved eBOOK format with functionality more attractive

than that of any existing eBOOK reader on the market. Over the course of several weeks, in a series of informal meetings, Marianne convinced Mr. le Stud to commit corporate resources to the development of what was provisionally named "e2books", and between May of 2005 and the date of this complaint, the corporation invested over \$5 million into software and design and other expenses specifically related to e2Books.

4. Based on his conversations with Marianne, Mr. le Stud became convinced that the new format of e2Books would spearhead a highly profitable line of business, and he began dropping hints to customers at sales meetings describing some of the functions of the e2Book, in order to elicit customer response. The response was so favorable that le Stud persuaded the President of eBOOKS and its Board of Directors to invest still more resources into the development project, and by the Fall of 2006, eBooks had a primitive but working prototype.

5. At Mr. le Stud's recommendation, in July of 2006, Marianne was promoted to Asst. Vice President of Research and Development. She was given a 5-year contract which provided for a beginning annual

salary of \$175,000 with 15% annual increases; and options of 2500 shares of eBOOKs stock at \$10/share for each year of the contract. The stock was trading at \$10 in July of 2006.

6. As part of her July, 2006 contract, Marianne was required to sign and did sign a Confidentiality and Intellectual Property Agreement with eBOOKS, a true and correct copy of which is attached as Exhibit A.

7. In October of 2006, eBOOKS engaged the patent department of its counsel, Dewey, Cheatem & Howe, to prepare a patent application for the e2Books software. eBOOKS was required to pay and did pay its attorneys the sum of \$50,000 to begin work on the patent and this sum is part of the \$5 million mentioned above. Marianne participated in all client meetings with counsel, and agreed to sign the patent as inventor, and to assign the patent to eBOOKS.

8. In October of 2007, Marianne left eBOOKS, and together with two of her college friends, formed Giotto Multimedia ("Giotto"). Giotto's business revolves around what it calls a new style of electronic book, which it names "gBOOKS". However gBOOKS are nothing other than a variation on e2Books.

9. By February of 2008, five of the seven members of eBOOKS' production staff had left eBOOKS and were working at Giotto, under Marianne's supervision.

10. Without the input of Marianne and her staff, eBOOKS has been unable to complete the development of the e2Books software, and has been unable to complete the application for a patent. Furthermore, eBOOKS' inability to deliver the e2Books software has caused it great embarrassment with its customers, 25% of whom have left. Of those, more than half are now publishing their materials as gBOOKS, with Giotto.

### **FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

11. Paragraphs 1 through 10 above are hereby incorporated by reference into and made a part of this First Cause of Action.

12. Marianne entered into a contract with eBOOKS pursuant to which she would work at the corporation for five years, spearheading its development of e2Books.

13. Except as prevented or excused by Marianne's own conduct, eBOOKS performed each and every term of its contract with Marianne, and did all things required of it pursuant to the contract.

14. During October, 2007, Marianne breached her contract with eBOOKS by terminating her performance prior to the expiration of the employment term.

15. By reason of Marianne's breach, eBOOKS has been damaged in an amount of not less than \$5 Million, said sum consisting of legal fees paid and incurred to Dewey, Cheatem & How, development costs expended in connection with the e2Books project, and loss of customer revenues flowing from eBOOKs' inability to deliver the e2Book functionality.

## **SECOND CAUSE OF ACTION: COPYRIGHT INFRINGEMENT**

16. Paragraphs 1 through 10 above are hereby incorporated by reference into and made a part of this Second Cause of Action.

17. Pursuant to Exhibit A, Marianne assigned to eBOOKS all copyright in the e2Books project, including copyright of the "look and feel" of e2Books.

18. Giotto is violating eBOOKs' copyright by developing and distributing gBOOKS, which are nothing but a knock-off of e2Books.

### **THIRD CAUSE OF ACTION: THEFT OF TRADE SECRETS**

19. Paragraphs 1 through 10 AND 18 above are hereby incorporated by reference into and made a part of this THIRD Cause of Action.

20. At all times pertinent hereto, eBOOKS treated the e2Books project as a valued trade secret. It kept the software source code listings under lock and key, granting access to them solely on a need-to-know basis. It required all personnel involved with the project to sign Confidentiality Agreements in the form of Exhibit A. The fundamental characteristics of e2books were secret and not commonly known in the industry, and only persons inside eBOOKS had any access to them at all.

21. Marianne and Giotto took source code listings, screen shot layouts, and project descriptions from eBOOKS and used them in the development of gBOOKS.

22. By reason of this theft, gBOOKS and Marianne hold all the benefits associated with gBOOKS in trust for eBOOKS.

#### **FOURTH CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY**

23. Paragraphs 1 through 10, 18, AND 21 above are hereby incorporated by reference into and made a part of this FOURTH Cause of Action.

24. At all times pertinent hereto, Marianne owed a fiduciary duty towards eBOOKS by reason of her employment and also by reason of the position of confidence and trust she occupied at the firm.

25. Marianne's fiduciary duty required her to be loyal to eBOOKS, to use reasonable efforts and in fact, her best efforts, to prosecute the development of e2books, to prosecute the patent, and to support the development of this new line of business.

26. In a period of time beginning prior to October 2007 and continuing to the present date, Marianne breached her fiduciary duty towards eBOOKS by quitting, by inducing key eBOOKS employees and customers to follow her to Giotto, and by completing the development of gBOOKS at Giotto instead of at eBOOKS.

27. Giotto was at all times aware of Marianne's role at eBOOKS, was aware of Exhibit A, and was aware of her fiduciary duties towards eBOOKS. But Giotto encouraged Marianne to leave eBOOKS in the



lurch, and to offer employment to its key personnel. Giotto gave Marianne this encouragement, and aided and abetted her, in order to benefit from her loathsome disloyalty and beat eBOOKS to market with this important new technology.

28. The conduct of both Marianne and Giotto in the premises was, and continues to be, malicious, done with a conscious disregard of eBOOKS's rights, and so utterly below the standard of moral conduct that it justifies an award of punitive damages.

**FIFTH CAUSE OF ACTION: UNFAIR COMPETITION UNDER  
BUS. & PROF. CODE SEC. 17200**

29. Paragraphs 1 through 10, 18, AND 21 above are hereby incorporated by reference into and made a part of this FIFTH Cause of Action.

30. The conduct of Giotto constitutes an unfair business practice under Bus. & Prof. Code Sec. 17200.

31. eBOOKS is suffering harm, and will continue to suffer harm and economic injury, so long as Giotto is allowed to compete in the marketplace with gBOOKS.

## **WHEREFORE EBOOKS PRAYS:**

1. On its first cause of action, for breach of contract, for \$5 million as contract damages.
2. On its second cause of action, for copyright infringement, for an injunction prohibiting giotto and all persons acting in concert with giotto, and all persons with notice of the court's order, from using, selling, or publishing gBOOKS except with the written permission of eBOOKS.
3. On its Third cause of action, for theft of trade secrets, for a declaration that gBOOKS holds all revenues and profits received from sale or distribution of gBOOKS or gBOOKS software, in trust for eBOOKS; for an accounting of all such revenues and profits, and for a judgment in favor of eBOOKS in the amounts found.
4. On its Fourth cause of action, for breach of fiduciary duty, for a judgment against Marianne and gBOOKS for \$5 million, and for an additional sum as punitive and exemplary damages, in an amount to be set by the court.
5. On its Fifth cause of action for unfair competition, for an injunction prohibiting Giotto and all persons acting in concert with

Giotto, and all persons with notice of the court's order, from using, selling, or publishing gBOOKS.

6. For its costs of suit and reasonable attorney's fees incurred.

7. For such other and further or different relief as the court may deem equitable and just.

Dated: June 1, 2008

Dewey, Cheatem & How  
Attorneys for plaintiffs,

By\_\_\_\_\_

P-Counsel