

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

COLLECTIVE TECHNOLOGIES, LLC,

Plaintiff,

v.

ORACLE CORPORATION,

Defendant.

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Civil Action No.

COMPLAINT

Plaintiff, Collective Technologies, Inc. (“Collective”), alleges as follows, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to all other matters:

NATURE OF THE ACTION

1. This is a civil action for trademark infringement, trademark dilution and unfair competition under the Lanham Act, 15 U.S.C. § 1051, *et seq.* and Texas statutory and common law.

2. Collective seeks equitable and monetary relief resulting from Oracle Corporation’s (“Oracle’s”) willful violations of Collective’s trademark rights in its COLLECTIVE INTELLECT trademark, which Collective has extensively used and promoted in various ways across various media, campaigns, events and materials. Oracle, a direct and major competitor of many of Collective’s customers and partners, has appropriated Collective’s mark by using it in media, campaigns, events and materials.

PARTIES

3. Plaintiff Collective Technologies is a Delaware limited liability company with its principal place of business at 9433 Bee Caves Road, Austin, Texas 78743.

4. Defendant Oracle is a Delaware corporation with a principal place of business at 500 Oracle Parkway, Redwood Shores, CA 94065.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b). The Court has supplemental jurisdiction over Collective's state-law claims pursuant to 28 U.S.C. § 1367(a) because they are substantially related to its federal claims and arise out of the same case or controversy.

6. This Court has general personal jurisdiction over Oracle based on its continuous and systematic contacts with Texas, including its sale of products and services over the internet reaching into Texas, stores in Texas and shipment of products into Texas.

7. This Court has specific personal jurisdiction over Oracle because it has purposely availed itself of the privilege of conducting business in Texas. Oracle (directly or indirectly or through authorized agents) disseminates advertising and promotional material featuring the mark that is of issue in this lawsuit to consumers located in Texas (including Dallas). Collective Technologies claims arise, in part, out of Oracle's contacts with Texas.

8. Venue lies in this District pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events giving rise to Collective's claims have occurred and are continuing to occur in this District and Collective's trademarks at issue are located in this District, where Oracle maintains a place of business, specifically, at 6031 Connection Drive, Suite 900, Irving, Texas 75039.

COLLECTIVE AND ITS PRODUCTS AND SERVICES

9. Collective is an IT services provider that competes in the Cloud based services market, the managed service market and the monitoring and reporting market. In recent years, companies, including Collective, have sought to apply social media technologies and solutions in these sectors. Many of Collective’s clients operate in the social media space.

10. Collective has established COLLECTIVE INTELLECT by using it for nearly 20 years with customers, potential customers, potential employees and employees embodying a vital part of its corporate culture and what it sells to its customers -- specifically, that customers and employees have the ability to call upon the COLLECTIVE INTELLECT of the entire company, its knowledge base, its databases and its personnel whenever and wherever they need it to solve a pressing problem for a customer. COLLECTIVE INTELLECT is a differentiator for Collective amongst its customers, its employees and its competition as it competes in the marketplace for talent and customers. COLLECTIVE INTELLECT is Collective.

COLLECTIVE’S TRADEMARK FILINGS FOR ITS COLLECTIVE INTELLECT MARK

11. Collective first commercially used COLLECTIVE INTELLECT in 1995. In addition to its common-law rights, Collective applied for a trademark on COLLECTIVE INTELLECT in 1999, registered it in 2001 and now owns the following valid and subsisting U.S. trademark registration and applications for the COLLECTIVE INTELLECT mark:

Mark	Reg./App. No.	Reg./Filing Date	Products/Services
COLLECTIVE INTELLECT	2417406	2001/1999	Providing an on-line computer database in the field of computer system design, installation, implementation and administration.

See Ex. A., Print Out of the U.S. Patent & Trademark Office's Trademark Electronic Search System (TESS), dated July 16, 2013.

ORACLE AND ITS WRONGFUL ACTS

12. On June 5, 2012, Oracle announced that it had acquired a company called Collective Intellect as part of a buying spree to enter the social media/business applications space. Oracle's purchase of Collective Intellect was one in a series of acquisitions designed to allow Oracle to enter that space. Oracle invested heavily in these companies, highly valuing what each could bring to Oracle. While Oracle's purchase price for Collective Intellect has not been disclosed, it also purchased social media companies Right Now and Vitruve for \$1.4 billion and \$300 million respectively, with the purchase price for the acquisition of a fourth social media company by Oracle around that same time, Involver, also being undisclosed.

13. Since its purchase of Collective Intellect, Oracle has been infringing upon the COLLECTIVE INTELLECT trademark. Oracle's Social Relationship Management ("SRM") suite includes, or has included, a product named "ORACLE: COLLECTIVE INTELLECT." *See* Ex. B., Print Out from Oracle's website at <http://www.oracle.com/us/solutions/social/collectiveintellect/index.html>), dated July 16, 2013.

14. Oracle's use of Collective's trademark COLLECTIVE INTELLECT after its Collective Intellect acquisition has caused, and will continue to cause, confusion in the marketplace among Collective's customers, vendors, and potential employees. Oracle's use of the COLLECTIVE INTELLECT trademark greatly devalues a trademark in which and for which Collective has spent nearly 20 years investing in and creating goodwill. Oracle's infringement destroys Collective's value in its trademark and has caused it to lose profits. At the same time,

Oracle and its acquired entity, Collective Intellect, have been, and are, profiting from their infringement of Collective's trademark.

15. Additionally, Oracle has included the COLLECTIVE INTELLECT suite of products in its Social Engagement and Monitoring Cloud Service. Since the acquisition, Oracle has referred, and may be still referring, to that product as COLLECTIVE INTELLECT in direct violation of Collective's trademark. *See* Ex. C., Print Out from Oracle's website at (<http://www.oracle.com/us/oracle-collective-demo-request-wc-1887841.html?&SC=sckw=WWMK12115884MPP027>), dated September 20, 2013.

16. Oracle's use of the COLLECTIVE INTELLECT mark has caused, and will continue to cause, damage to Collective as four of Oracle largest competitors are Collective's largest partners and clients. *See* Ex. D, Print Out of Oracle's "Tier 1 and Tier 2" Competitive Sets from its website at (<http://www.oracle.com/us/corporate/supplier/competitors-list-1900088.pdf>), dated September 20, 2013 and Ex. E, List of Collective's Partners from Collective's website (<http://colltech.com/>), dated September 20, 2013.

17. Collective's partners and clients have contacted Collective after becoming concerned that Collective had been acquired by their competitor, Oracle, or that their partner was exclusively recommending Oracle products to its customers.

INJURY TO COLLECTIVE AND THE PUBLIC

18. Oracle's unauthorized use of Collective's COLLECTIVE INTELLECT trademark has and is likely to continue to cause confusion, mistake, and deception as to the source or origin of Oracle and/or its products, and is likely to falsely suggest a sponsorship, connection, or association with Collective's COLLECTIVE INTELLECT.

19. Oracle's unauthorized use of Collective's COLLECTIVE INTELLECT trademark has damaged and irreparably injured and, if permitted to continue, will further damage and irreparably injure Collective and Collective's COLLECTIVE INTELLECT trademark.

20. Oracle's unauthorized use of Collective's COLLECTIVE INTELLECT trademark has irreparably injured, and, if permitted to persist, will continue to irreparably injure the public, who have an interest in being free from confusion.

21. Oracle's unauthorized use of Collective's COLLECTIVE INTELLECT trademark is likely to dilute the distinctiveness and value of Collective's COLLECTIVE INTELLECT trademark.

FIRST CLAIM FOR RELIEF

Trademark Infringement Under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)

22. Collective repeats and realleges each and every allegation set forth in Paragraphs 1 through 21 of this Complaint.

23. Without Collective's consent, Oracle used and continues to use in commerce reproductions, copies, and colorable imitations of Collective's registered COLLECTIVE INTELLECT trademark in connection with the offering, distribution, and/or advertising of goods and services, which is likely to cause confusion, or to cause mistake, or to deceive, in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

SECOND CLAIM FOR RELIEF

Trademark Infringement, False Designation of Origin, Passing Off, and Unfair Competition Under Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)

24. Collective repeats and realleges each and every allegation set forth in Paragraphs 1 through 23 of this Complaint.

25. Oracle's actions, as described above, are likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of Oracle, its products, its services, and/or its commercial activities by or with Collective, and thus constitute trademark infringement, false designation of origin, passing off, and unfair competition in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

THIRD CLAIM FOR RELIEF

Trademark Dilution Under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)

26. Collective repeats and realleges each and every allegation set forth in Paragraphs 1 through 25 of this Complaint.

27. Collective's COLLECTIVE INTELLECT trademark is famous, as that term is used in 15 U.S.C. § 1125(c), and was famous before Oracle's first use of the COLLECTIVE INTELLECT trademark, based on, among other things, the inherent distinctiveness and federal registration of Collective's COLLECTIVE INTELLECT trademark and the extensive nationwide use, advertising, promotion, and recognition of that mark.

28. Oracle's actions, as described above, are likely to dilute the distinctive quality of Collective's famous COLLECTIVE INTELLECT trademark by blurring in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), as amended by the Trademark Dilution Revision Act of 2006.

FOURTH CLAIM FOR RELIEF

Trademark Infringement Under Tex. Bus. & Com. Code § 16.102, et seq.

29. Collective repeats and realleges each and every allegation set forth in Paragraphs 1 through 28 of this Complaint.

30. Oracle's use, without the consent of Collective, of a reproduction and/or colorable imitation of Collective's COLLECTIVE INTELLECT trademark in connection with the sale, offering for sale, and/or advertising of goods or services, is likely to cause confusion, or to deceive as to the origin of the goods or services, and thus constitutes trademark infringement in violation of Section 16.102 of the Texas Business & Commerce Code.

FIFTH CLAIM FOR RELIEF

**Trademark Dilution Under
Tex. Bus. & Com. Code § 16.103, et seq.**

31. Collective repeats and realleges each and every allegation set forth in Paragraphs 1 through 30 of this Complaint.

32. Collective's COLLECTIVE INTELLECT trademark is distinctive, and was such before Oracle's first use of the COLLECTIVE INTELLECT trademark, based on, among other things, the federal registration of Collective's COLLECTIVE INTELLECT trademark and the extensive nationwide use, advertising, promotion, and recognition of that mark.

33. Oracle's actions, as described above, are likely to dilute the distinctive quality of Collective's COLLECTIVE INTELLECT trademark by blurring in violation of Section 16.103 of the Texas Business & Commerce Code.

SIXTH CLAIM FOR RELIEF

**Trademark Infringement and Unfair
Competition Under Texas Common Law**

34. Collective repeats and realleges each and every allegation set forth in Paragraphs 1 through 33 of this Complaint.

35. Oracle's actions, as described above, are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Oracle with Collective, or as to the origin, sponsorship, or approval of Oracle, its products, its services, and its

commercial activities by or with Collective such that Oracle's acts constitute infringement of Collective's proprietary rights in its COLLECTIVE INTELLECT mark, misappropriation of Collective's goodwill in that marks, and unfair competition under Texas common law.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Collective respectfully demands a trial by jury on all issues properly triable by a jury in this action.

PRAYER FOR RELIEF

WHEREFORE, Collective respectfully requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief, including but not limited to the following:

A. An Order declaring that Oracle's use of COLLECTIVE INTELLECT infringes and dilutes Collective's COLLECTIVE INTELLECT mark, and constitutes unfair competition under federal and/or state law, as detailed above.

B. A permanent injunction enjoining Oracle and its employees, agents, partners, officers, directors, owners, shareholders, principals, subsidiaries, related companies, affiliates, distributors, dealers, and all persons in active concert or participation with any of them:

1. From using, registering, or seeking to register COLLECTIVE INTELLECT or any other marks, logos, designs, designations, or indicators that are confusingly similar to or dilutive of Collective's COLLECTIVE INTELLECT trademark in manners likely to cause confusion or dilution with Collective's COLLECTIVE INTELLECT trademark, including but not limited to in connection with any other wording or designs;

2. From representing by any means whatsoever, directly or indirectly, that Oracle, any products or services offered by Oracle, or any activities

undertaken by Oracle, are associated or connected in any way with Collective or sponsored by or affiliated with Collective in any way; and

3. From assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs B(1)-(2) above.

C. An Order directing Oracle to destroy all products, packaging, signage, advertisements, promotional materials, stationery, forms, and/or any other materials and things that contain or bear the trademark or slogan COLLECTIVE INTELLECT or any other marks, logos, designs, designations, or indicators that are confusingly similar to or dilutive of Collective's COLLECTIVE INTELLECT trademark in accordance with 15 U.S.C. § 1118 and other applicable laws.

D. An Order requiring Oracle to disseminate pre-approved corrective advertising and send pre-approved letters to all customers, agents, and representatives to address the likely confusion and dilution caused from its use of Collective's COLLECTIVE INTELLECT trademark.

E. An Order directing that, within thirty (30) days after the entry of the injunction, Oracle file with this Court and serve on Collective's attorneys a report in writing and under oath setting forth in detail the manner and form in which Oracle has complied with the injunction.

F. An Order requiring Oracle to account for and pay to Collective any and all profits arising from the foregoing acts, and increasing such profits, in accordance with 15 U.S.C. § 1117 and other applicable laws.

G. An Order requiring Oracle to pay Collective damages in an amount as yet undetermined caused by the foregoing acts, and trebling such damages in accordance with 15

U.S.C. § 1117 and other applicable laws, including but not limited to Tex. Bus. & Com. Code §16.102, *et seq.*

H. An Order requiring Oracle to pay Collective all of its litigation expenses, including reasonable attorneys' fees and the costs of this action pursuant to 15 U.S.C. § 1117 and other applicable laws.

I. An Order requiring Oracle to pay Collective punitive damages for trademark infringement and unfair competition under Texas common law, as the harm for which Collective seeks recovery is due to the malice, fraud and/or gross negligence of Oracle.

J. Other relief as the Court may deem appropriate.

Dated: September 20, 2013

Respectfully submitted,



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