

## 3Com Wins \$6M In Contract Dispute With Capital 4

By Allison Grande

Law360, New York (August 25, 2009) -- A federal judge has awarded 3Com Corp. \$6 million and has permanently enjoined telecommunications carrier Capital 4 Inc. from using 3Com's name or trademarks without prior consent in a suit in which 3Com accused Capital 4 of breaching its contractual obligations.

Judge Jed S. Rakoff entered final judgment Friday in the U.S. District Court for the Southern District of New York, ruling that Capital 4 had breached a 2006 licensing contract between the parties but dismissing with prejudice 3Com's claims of breach of duty, defamation and fraud.

Despite the dismissals, Capital 4 must still pay a \$6 million penalty for breach of contract and cannot use 3Com's name in advertising its telecommunications services without express written approval from 3Com.

The sides have agreed to bear their own costs and fees and waived all rights of appeal, according to the judgment.

3Com, a telecommunications equipment provider, began supplying Capital 4, a telecommunications carrier, with equipment for Capital 4's "Power of \$Zero" program in 2000.

In 2006 the companies entered into a licensing and operations agreement that gave 3Com the right to "use, exploit and commercialize" the Power of \$Zero program by selling the equipment and services to its own customers in return for paying Capital 4 a \$5 million prepayment of licensing fees, according to the complaint filed by 3Com in October 2007.

The sides also agreed that Capital 4 would still be able to obtain equipment from 3Com and use its name in advertising with the company's prior approval.

But 3Com alleges that Capital 4 and its two co-owners, who were also named in the original lawsuit, breached the contract and defamed the company's reputation by continuing to use 3Com's name and trademark without permission in its promotion of the program as Capital 4 fell deeper into financial trouble.

In August 2007 3Com made seven loans to its licensing partner totaling \$600,000 to help offset the debt that was threatening to terminate the phone and Internet services for Capital 4's customers, according to the complaint.

Capital 4 also owed 3Com an additional \$400,000 for equipment, the complaint said.

3Com continued to provide loans to Capital 4 because its co-owners misrepresented their financial situation, claiming that while the company had \$300,000 worth of debt in 2005, the liabilities were being reduced at a rate of about \$30,000 per month, and the debt would be resolved within 10 months, according to the complaint.

Capital 4 claimed in its answer to the complaint that 3Com had led the company to believe that it would receive \$12 million in licensing fees by 2007, and this lack of payment is what caused Capital 4's inability to provide its customers with service.

"At all relevant times, 3Com was aware that Capital 4 was continuing to experience cash flow problems and that its ability to turn cash flow positive was completely dependent on 3Com's executions of its obligations under the [two agreements]," the answer said.

3Com's allegations against Capital 4's co-owners, F. Davis Dawson and Ish Villa-Lobos, for piercing the corporate veil and for being personally liable for the fraud against 3Com, were dismissed by Judge Rakoff on July 30.

Representatives for both sides could not be immediately reached for comment on Tuesday.

3Com is represented in this matter by Prince Lobel Glosky & Tye LLP and Labaton Sucharow LLP.

Capital 4 is represented in this matter by Winget Spadafora & Schwartzberg LLP.

The case is 3Com Corp. v. Capital 4 Inc. et al., case number 07-cv-08707, in the U.S. District Court for the Southern District of New York.