

Sonny Perdue
GOVERNOR



Timothy A. Connell
PRESIDENT

October 12, 2006

Re: XAP Corporation

Dear Colleague:

As you know, XAP Corporation, our contractor for the GAcollge411 website and the transcript exchange project, has been involved in litigation with CollegeNet over patent infringement and unfair competition claims. Last week, the jury rendered a verdict in the trial. I have attached a letter from XAP's President, Liz Dietz, explaining the verdict and its ramifications. She has and continues to keep me updated on the matter and on XAP's position. I continue to remain confident in XAP's ability to carry out the terms of its agreement with GSFC.

You may wish to note that on page 2 of the letter, XAP has explicitly assured us that "at no time ha[s] any data from users who established accounts on GAcollge411 been shared with any entity other than GSFC, the colleges themselves, the Department of Education's FAFSA contractor, and counselors or other coaches specifically authorized by the users."

Please rest assured that we will continue to monitor the lawsuit and advise you should there be any changes.

Sincerely,



Timothy A. Connell
TAC:mlc
Attachment



October 11, 2006

Tim Connell
Georgia Student Finance Commission

Dear Tim:

We believe that it is appropriate to clarify for our clients the recent jury verdict in the Xap/CollegeNet trial rendered last week. That verdict represented a split decision, with Xap and CollegeNet each winning and losing some important claims. Further, the judge must address many additional issues before any final judgment can be entered.

The case involved three sets of claims that CollegeNet asserted against Xap:

- that Xap infringed eleven patent claims in the CollegeNet '042 patent which covers credit card payment of college admission application fees over the internet;
- that Xap infringed two patent claims in the CollegeNet '278 patent which covers a forms engine employed to generate electronic forms and auto-population of and data sharing among the electronic forms so generated; and
- that Xap committed unfair competition by engaging in false advertising under the Lanham Act.

The jury found that all of the asserted claims in CollegeNet's '042 patent were invalid by reason of obviousness. Because the '042 patent is also being asserted by CollegeNet in other cases against ApplyYourself, Princeton Review and the Common Application, this is an important victory for the industry as a whole, as well as for Xap.

With respect to the '278 or "forms engine" patent while the jury determined that Xap did not "literally" infringe either of the asserted claims, it found that Xap did infringe one of the asserted claims under the "doctrine of equivalents", which means in substance that the jury believed Xap accomplished substantially the same result as the patented process through means similar but not identical to the process set forth in the patent. The claim at issue here was narrowed by CollegeNet during the course of the patent prosecution, and there is a legal principle that a patent claim narrowed during prosecution cannot be infringed under the doctrine of equivalents if the narrowing is at all relevant to the asserted infringement. The judge deferred consideration of this issue until after the jury trial and will consider this and some additional issues at a continuation of the

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proceedings that will likely be held in January. If Xap prevails in its legal position that CollegeNet is precluded from asserting the doctrine of equivalents, and we are quite confident the position is correct, the jury's award of \$4 million for patent infringement would be nullified.

The jury also found the second claim of the '278 patent asserted by CollegeNet to be invalid by reason of anticipation.

The jury did rule against Xap with respect to the claim of unfair competition under the Lanham Act, which is very disappointing on many levels, and with which we disagree. I want to provide you with my explicit assurance that at no time have any data from users who established accounts on GACollege411 been shared with any entity other than GSFC, the colleges themselves, the Department of Education's FAFSA contractor, and counselors and other coaches specifically authorized by the users.

The central issue in the Lanham Act claim was whether colleges were misled with respect to Xap's privacy practices. CollegeNet's theme was that the "opt-in" question on the account creation pages of some Mentor sites and the associated privacy policies posted on those sites did not provide sufficient notice to the students that an affirmative answer to the "opt-in" question about interest in receiving additional information regarding student aid and student loans would result in sharing some personal information with site sponsors. In the vast majority of the cases, the site sponsors have been state agencies such as the student loan guaranty authorities but in some cases the sponsors were highly responsible commercial lenders like Citibank, although Xap has had no sponsorship arrangements with commercial lenders for some time.

The jury's financial award of \$4.5 million with regard to the Lanham Act claim was advisory only. Under the Act, the judge has the sole responsibility for assessing damages, and she will address this issue when the proceedings resume, which we expect will be in January. While she will take the jury's advice into account, it is not in any way binding. The judge is not expected to make a final determination on the amount of the award until next year, at which point we will again review our legal options.

Xap's privacy policy and the information provided with the opt-in question have evolved over time, as has been the case with most internet sites, and we believe that Xap's practices have always been well within the then current industry standards. Our current 2006 privacy policy and opt-in question are very clear and explicit with regard to what data is shared and under what circumstances. The current GACollege411 privacy policy is an example of a typical privacy policy used today. Only that information utilized to act on the student's express request for information is provided to the sponsors of these sites, and this contact information is used solely for the purpose of providing information about financial aid and student loans. These sponsors are all state agencies, and Xap for



some time has had no commercial sponsors. In some situations Xap and a sponsoring agency co-host a Mentor site utilizing a single sign-on for both the Xap-hosted and the agency-hosted portions of the system. In such cases, both Xap and the sponsor require and have access to user data needed for site administration. That data might include social security numbers if they are used to validate or identify accounts on the portion of the system hosted by the site sponsor.

Another issue with which the judge must deal when the proceeding resumes is Xap's claim that the CollegeNet patents are invalid because CollegeNet provided false information to the Patent Office. A finding of inequitable conduct on the part of CollegeNet would invalidate the patents and eliminate the infringement award.

The judge also put off consideration of motions for judgment as a matter of law until after the upcoming bench trial. In these motions, Xap has raised legal issues in regard to all of CollegeNet's claims. If not accepted by the trial court, the legal principles underlying these motions, as well as other issues including patent claim construction and jury instructions, could be the basis for an appeal of any adverse judgment

We are very disappointed, although unfortunately not surprised, with the inaccuracies pervading the recent CollegeNet press release regarding the jury trial. CollegeNet continue to focus on the courts and inaccurate and misleading press releases as its principal means of competition, not just with Xap but with ApplyYourself, Princeton Review and the Common Application as well. The false statements include:

- That the jury found that Xap "sold" data. The jury never addressed that question. The question presented to the jury was whether colleges were misled about Xap's privacy practices.
- That Xap "sold" data regarding 600,000 students. The 600,000 students cited in the press release is an approximation of the aggregate number of account holders who, since 1999, answered an opt-in question on a Xap site in the affirmative, not those who have had account information shared with sponsors. When information was shared with sponsoring organizations, it was usually shared with state agencies. In all cases, use was strictly limited by contract to the purpose or purposes identified to the student. It is telling that in almost seven years Xap has received a grand total of one complaint from users whose information was shared with sponsors.
- That the Lanham Act award is final. The determination of Lanham Act damages is reserved for the judge, who will hear evidence and then make a decision. The jury's action is strictly advisory.
- That the '278 patent award is final. To retain the \$4 million patent infringement award, CollegeNet would have to prevail both on the legal issue about whether



- the doctrine of equivalents can apply to the '278 patent claim and on the inequitable conduct issue.
- That patent claims were not invalidated. The jury found that 1 of 2 claims in the '278 patent at issue in the case was invalid, and that all asserted claims in the '042 patent were invalid.

While Xap is taking the next legal steps including the bench trial and if necessary an appeal, it is important for you to know that Xap does not intend to try in the media the issues remaining in the case in the media or to respond in kind to CollegeNet's inflammatory press releases. Our primary focus will be to continue to provide our customers with outstanding service and solutions. We are here for the colleges Xap serves as well as the millions of students and their families that rely on Xap technology to fulfill their academic and career dreams.

Please feel free to call me at (310) 842-9800 if you would like to discuss any of these topics in greater detail.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth A. Dietz".

Elizabeth A. Dietz
Chief Executive Officer