

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

THENDIC ELECTRONICS COMPONENTS, a
foreign corporation, and GENESI SARL, a
foreign corporation,

Plaintiffs,

v.

AMIGA, INC., a corporation in the state of
Washington,

Defendant.

NO. 03-0003

**AMIGA, INC.’S REPLY IN SUPPORT OF
MOTION FOR RELIEF FROM
JUDGMENT**

I. INTRODUCTION

Amiga, Inc. (“Amiga”) does not dispute that a high standard applies to requests for relief from judgment. Amiga urges that the evidence of Plaintiffs’ conduct presented to the Court in Amiga’s Motion for Relief from Judgment (the “Motion”) and Amiga’s Response to Plaintiffs’ Motion to Modify the Order Granting Specific Performance (the “Response to Motion to Modify”) warrants relief from judgment here.

Plaintiffs submitted no evidence disputing the facts submitted with Amiga’s Motion – not a single declaration. Plaintiffs did not offer any evidence to dispute that they presented misleading information to the Court, misrepresented facts regarding this lawsuit in public forums, brought this lawsuit for an improper purpose and misused Amiga’s trademarks. This

1 Court should grant Amiga relief from the Summary Judgment Order entered on February 19,
2 2004 and amended on March 12, 2004.

3 II. REPLY

4 A. **Plaintiffs failed to provide any evidence justifying their misleading conduct in 5 regards to the e-mail allegedly written by Amiga's Chief Technology Officer.**

6 The only factual information Plaintiffs have ever presented regarding their reliance on an
7 e-mail they alleged was written by Amiga's Chief Technology Officer¹ was a one sentence
8 statement in Bill Buck's March 17, 2004 declaration submitted with Plaintiffs' Reply in Support
9 of Motion to Modify that: "I believe the email attributed to 'Fleecy Moss' was and still is from
10 Fleecy Moss." March 17, 2004 Declaration of Bill Buck, ¶ 11. In response to this Motion,
11 Plaintiffs provide no additional factual explanation on this topic.

12 Plaintiffs have never disputed that:

- 13 • In the time between the original posting of the forged e-mail on February 25, and the
14 date on which Mr. Buck signed his declaration in support of the Motion to Modify, on
15 March 1, more than 100 messages were posted on public bulletin boards regarding the
16 e-mail, many of the messages questioning the authenticity of the e-mail. See Amiga's
17 Response to Motion to Modify, pp. 8-11; Declaration of Ray A. Akey in Support of
18 Amiga, Inc.'s Response to Motion to Modify Order Granting Specific Performance
19 ("Akey Modification Decl.").
- 20 • Mr. Buck posted to these same public bulletin boards at least nine times between
21 February 25 and March 1. Id.
- 22 • Plaintiffs were aware that the true author of the e-mail admitted it was a forgery on
23 March 4, 2004 – three days after Mr. Buck signed his declaration in support of the
24 Motion to Modify. Id.

25
26 ¹ Exhibit 2 to Declaration of Bill Buck in Support of Plaintiffs' Motion to Modify the Order Granting Specific
Performance.

- 1 • Mr. Buck publicly posted a minimum of seven times on the public bulletin boards
2 from March 4 until March 9. Id.
3 • Plaintiffs never updated the Court as to the doubt surrounding the authenticity of the
4 e-mail on which Plaintiffs heavily relied. Id.

5 Even in response to this Motion, Plaintiffs offer no explanation for their failure to provide the
6 Court with any information regarding the source of the e-mail and the doubts regarding its
7 authenticity. Allowing litigants to engage in such conduct and still obtain the relief they request
8 puts the integrity of the courts in jeopardy. Plaintiffs' conduct warrants vacation of the Summary
9 Judgment Order.

10 **B. Plaintiffs failed to provide any evidence disputing the fact that they brought this**
11 **lawsuit for an improper purpose.**

12 Plaintiffs offer no evidence disputing that the following information presented in
13 Amiga's Motion (p. 3) is true and correct –

14 On April 27, 2003, Mr. Buck posted the following on a public bulletin
15 board:

16 The whole AmigaDE lawsuit was just a means to shut Bill
17 McEwen up and force Amiga Inc into a settlement that might
18 include us obtaining rights to the Amiga trademarks and the classic
19 OS.

20 Akey Modification Decl., Exh. B.

21 Mr. Buck's statement long before the Summary Judgment Order was entered indicates Plaintiffs'
22 true purposes for bringing this suit. Plaintiffs' factually unsupported argument that this
23 statement was simply an expression of Mr. Buck's intent to resolve litigation via settlement is
24 ludicrous. The fact that Mr. Buck did not submit a declaration disputing that Plaintiffs brought
25 this lawsuit for an improper purpose speaks volumes. Amiga is not aware of any authority that
26 indicates bringing a lawsuit to "shut someone up" or to extract items to which a party has no

1 legal right are proper purposes. Plaintiffs' abuse of the legal system warrants vacation of the
2 Summary Judgment Order.

3 **C. Plaintiffs failed to provide a single shred of evidence in response to Amiga's Motion**
4 **to Modify.**

5 Plaintiffs do not provide any evidence to dispute the evidence presented in support of
6 Amiga's Motion to Modify. In addition to their failure to dispute the facts mentioned above,
7 Plaintiffs did not dispute that they have misrepresented the Court's actions and rulings,
8 misrepresented their rights to and misused Amiga's trademarks and threatened to interfere with
9 Amiga's business relationships. While some of these actions by Plaintiffs may give rise to
10 separate causes of action by Amiga and others against Plaintiffs, all of these actions, coupled
11 with the actions by Plaintiffs discussed above, demonstrate Plaintiffs' willingness to misuse the
12 judicial system and to flaunt legal limitations on their rights and actions. Parties, such as
13 Plaintiffs, that have a pattern of engaging in such conduct should not be allowed to benefit from
14 relief granted by the Court.

15 **III. CONCLUSION**

16 This Court has the inherent equitable power to take actions necessary, including vacating
17 or amending its orders, to avoid an inequitable result. See, e.g., Levander v. Prober, 180 F.3d,
18 1114 (9th Cir. 1999); Chambers v. NASCO, Inc., 501 U.S. 32, 33-34 (1991) ("Federal courts
19 have the inherent power to manage their own proceedings and to control the conduct of those
20 who appear before them.") Plaintiffs have cited to no authority that limits this Court's equitable
21 powers to take the actions necessary to avoid an inequitable result. This Court should invoke its
22 equitable powers to prevent Plaintiffs from benefiting from their misconduct. The Summary
23 Judgment Order should be vacated.

24 DATED this 8th day of April, 2004.

25 CAIRNCROSS & HEMPELMANN, P.S.

/s/ Diana S. Shukis

26 Diana S. Shukis, WSBA No. 29716

Attorneys for Defendant