**Fact Pattern for NFA IP Inn of Court Program (Nov. 2017)**

*[Slide 1]*

*History*

[Slide 2] Five years ago, Cornelius Heston founded a software company called Monkey See Monkey Do, LLC. The company develops facial recognition software for unlocking smartphones. [Slide 3]. Cornelius was more of a business man than an engineer, so he hired Simon Zaius, Ph.D to develop the software. Simon already had experience writing facial recognition code before he was hired at Monkey See, but almost all of the code that went into the Monkey See’s final product was written by Simon while he was employed by Monkey See, and under a contractual obligation to assign any rights to IP he developed to the company, and to maintain confidentiality.

[Slide 4] Three years later, Monkey See Monkey Do had developed its facial recognition technology, and was furiously marketing itself to all the major smartphone manufacturers. including global giant, Peach, Inc. [Slide 5]. Peach seemed very interested in the technology, and the negotiationswith Peach went further than with any of the other smartphone manufacturers. In the end, however, Peach decided that it would just develop this feature in-house.

*The Case*

After its failed negotiations with the smartphone manufacturers, Monkey See turned instead to developing an app that could be installed by the end user. [Slide 6]. Simon, however, felt that the company had missed its big chance. Feeling disgruntled about the missed opportunity, and blaming Cornelius, he left the company and was soon hired by Peach.

Soon after, Peach launched a new, high-end product—the Peach Z—that used the facial recognition technology that looked strikingly similar to what Simon had developed for Monkey See. [Slide 7]. Monkey See sued both Peach for trade secret misappropriation, seeking damages and unjust enrichment for global sales of the Peach Z under both federal and state law. Monkey See seeks over $20 million in damages.

[Slide 8]. In its complaint, Monkey See alleged that Simon had copies of the source code on his company computer, and that he copied parts of the code to a flash drive at some point during his employment. These copies, according to Monkey See, should have been returnedwhen Simon left the company, but were not. According to Monkey See, Peach used this trade secret information to develop the Peach Z product.

Peach and Simon deny that any of the code Simon wrote or had access to at Monkey See was used in developing the facial recognition software for the Peach Z.

*The Discovery Dispute*

Monkey See served Peach with broad discovery requests asking for all documents relating to the development of facial recognition technology at Peach, including all versions of Peach’s source code. Monkey See also asked for Peach’s sales information for the Peach Z and every other smartphone it makes, in every country worldwide. Monkey See insists that it needs this discovery to prove that Peach knew that Monkey See’s software was critical to the high-end smartphone market, and that it broke off business negotiations so that it could steal the technology through Simon.

Peach served Monkey See with discovery requesting a forensic analysis of Simon’s old computer in order to prove that Simon never transferred source code files to a flash drive, as Monkey See alleges. Peach also seeks all versions of source code for Monkey See’s facial recognition software

The attorneys visit their respective clients to discuss these discovery requests…..

[Slide 9] Monkey See’s attorney, George Grandscale (Ali Dhanani) visits the company to discuss the lawsuit and Peach’s discovery requests. He meets with Cornelius Heston, the founder of the company, played by Peter Mims, and their in-house IT Director, Dweeb Jones, played by Priya Prasad.

[SCENE]

[Slide 10]. Meanwhile, on the other side of town, Peach’s attorney, \_[stage name]\_\_\_, played by \_\_\_\_\_\_\_\_\_\_\_ meets with Peach about the case. Peach’s \_\_\_[name of position]\_\_\_\_\_\_\_\_\_\_\_\_\_ is played by \_\_\_\_\_\_\_\_\_\_, and Peach’s \_\_\_\_\_\_\_[name of position]\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is played by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[SCENE]

Well, it looks like Monkey See and Peach are not willing to fork over all of the documents and source code that has been asked of them. After lots of nasty letter writing and contentious meet and confers, both parties decide that they will be forced to compel the discovery they seek.

[PERHAPS HAVE THE ATTORNEYS WHO JUST PLAYED THE PARTS ON BOTH SIDES PRETEND TO YELL AT EACH OTHER (SILENTLY) ON THEIR CELL PHONES WHILE THE ABOVE IS READ?]

A hearing is set for today in front of Honorable Peter C. Justice. Both parties have NOW involved their top litigators to argue the discovery motions.

Representing Monkey See in court are Goliath Graybeard (played by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) and John Goodall (played by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_).

And representing Peach in court are the much more expensive lawyers, Henry James (played by Matt Frotnz) and Princess Peach (played by Heather Khassian).

[SCENE] [Slides 11-15]

 [Slide 16] Poll the Audience

Monkey See’s Motion:

* Monkey See wants all versions of Peach’s source code]. Peach wants to produce only the version being sold in the Peach Z product?
* Monkey see wants global pricing information for the Peach Z as well as for Peach’s other smartphones. Peach wants to produce pricing information for the Peach Z only, and only for the United States.

Peach’s Motion:

* Peach wants to do a forensic examination of Simon’s old computer. Monkey see thinks the server logs that it has turned over are sufficient and that a forensic inspection of 20 of its computers is unduly burdensome and disruptive.
* Peach wants all versions of Monkey See’s source code. Monkey See only wants to produce version 6, the only version that existed while Simon was at Monkey See that includes the specific Breakthrough Feature that Monkey See believes was used in the Peach Z.