

1 GERARD R. KILROY SBN 094023
NEAL C. PESKIN SBN 185973
2 UNICOM SYSTEMS, INC.
15535 San Fernando Mission Blvd.
3 Suite 310
Mission Hills, CA 91345

4 Attorneys for Plaintiff
5

6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
8

9 UNICOM SYSTEMS, INC., a) Case No.: No. CV 01-9386-GHK
) (SHx)
10 California corporation,)
) DECLARATION OF CORRY S. HONG IN
11 Plaintiff,) SUPPORT OF OPPOSITION TO MOTION
) TO DISMISS
12 vs.)
) Date: January 28, 2002
13 LEONARD ADAM ROSENTHAL, ETC.,) Time: 9:30 a.m.
) Place: Courtroom 660,
14 Rosenthal) Honorable George H.King
)

15
16
17 DECLARATION OF CORRY S. HONG
18

19 I, Corry S. Hong, do declare as follows:

20 1. I am over eighteen years of age and if called to
21 testify I could and would testify to the following from my own
22 personal knowledge. I am President, Chief Executive Officer, and
23 principal shareholder of Unicom Systems, Inc. ("Unicom"), a
24 closely-held corporation and plaintiff in this action.

25 2. Unicom's business includes developing and providing
26 mainframe systems software as well as providing critical
27 technical support for the software that Unicom provides to it's
28 customers. Unicom's support services include providing

1 maintenance, consulting, and technical expertise that can be
2 accessed seven days per week, twenty-four hours per day via e-
3 mail, telephonically, and the internet. Unicom's customers
4 include small businesses, banks, hospitals, law enforcement
5 agencies, government entities, schools, insurance companies,
6 publishers, and a myriad of Fortune 500 clients. It is essential
7 that our clients' service needs for their mainframe computer
8 operations are readily accessible without confusion and
9 resulting delay. In the event that a client should encounter
10 technical problems in their mainframe system that is not timely
11 addressed, their computer systems may be "down" and their
12 business operations may be compromised.

13 3. I have reviewed Rosenthal's Motion to Dismiss wherein
14 he contends that he does not have sufficient contacts with this
15 forum to justify this Court's assumption of jurisdiction. Based
16 upon my perusal of Rosenthal's highly interactive web site ("Web
17 Site"), which is the bases for this action, I believe that he
18 has numerous contacts with California that support jurisdiction.

19 4. The Web Site home page contains a number of hyperlinks
20 that direct the viewer to various California corporations. For
21 example, the "Mail Abuse Prevention Systems" ("MAPS") hyperlink
22 takes users to an advertisement and information page for "Mail
23 Abuse Prevention System LLC," a California non-profit
24 corporation. True and correct copies of the Web Site home page
25 and linked MAPS page, are attached hereto as Exhibit A.

26 5. The Web Site home page includes a "devil" icon that
27 links users to an advertisement/information page for Wind River
28 Systems, Inc., a corporation headquartered in Alameda,

1 California ("Wind River"). True and correct copies of the Web
2 Site home page and Wind River linked pages are attached hereto
3 as Exhibit B.

4 6. The Web Site home page includes a "What's this Place?"
5 link that directs viewers to a web page that contains a "plenty"
6 link that accesses advertisements for and links to hundreds of
7 Internet Service Providers ("ISP"), including approximately
8 twenty links to California-based ISP companies. Other ISPs
9 listed by Rosenthal on this page do business in or have offices
10 in California such as EarthLink, which has offices in Pasadena,
11 California. True and correct copies of the Web Site home page,
12 the "plenty" page and the "ISP" linked pages are attached hereto
13 as Exhibit C.

14 7. The Web Site home page includes a "Regional Newsgroups
15 Information Center" link that directs viewers to an interactive
16 web page from which viewers can conduct searches of the database
17 of various UseNet Newsgroups. In addition to conducting
18 searches on these databases, viewers can also submit information
19 or entries for posting on the databases. Approximately eighteen
20 of the Newsgroup web sites linked on Rosenthal's Web Site reveal
21 that they were posted on the Web Site and maintained by
22 California residents and/or California-based entities. True and
23 correct copies of the Web Site home page and "Regional
24 Newsgroups Information Center" linked pages are attached hereto
25 as Exhibit D.

26 8. The Web Page includes a "*Chip Rosenthal*" link that
27 directs the viewer to Rosenthal's resume. Not only does his
28 resume further establish the commercial nature of his Web Page,

1 hyperlinks on the resume for a prior employer, Covad
2 Communications, once again directs the viewer to a California-
3 based company's web site. True and correct copies of the Web
4 Site home page, "Rosenthal resume" linked pages and Covad
5 Communications linked pages are attached hereto as Exhibit E.

6 9. Rosenthal's interactive Web Page also invites viewers,
7 including California residents, to send comments or suggestions
8 via a contact form to be filled in by the user. At least one
9 person that has signed Rosenthal's Web Site guest book is
10 identified as being located in California. True and correct
11 copies of the Web Site home page and guest book link page are
12 attached hereto as Exhibit F. All of these contacts with
13 California arise from Rosenthal's conduct, which is the basis of
14 this suit. It is respectfully submitted that they are
15 sufficient to warrant assumption of jurisdiction by this Court.

16 10. Next, Rosenthal asserts in his motion that he is the
17 senior user of the mark "Unicom" ("Mark"). In fact, Plaintiff
18 has been using the Mark since 1981 and is the "senior user" of
19 the Mark.

20 11. The Complaint states that Unicom has used the Mark
21 since "at least" 1989. Specifically, Unicom has been using the
22 Mark since 1981 as a trade name and trademark, relative to and
23 including, but not limited to, developing and licensing computer
24 software, computer consulting services, educational training
25 services, programming services, and design services. Unicom has
26 been in business as either a "Unicom dba" or Unicom corporation
27 since 1981 and has been using the Mark nation-wide since its
28 inception. A Fictitious Business Name Statement for Unicom

1 Systems Research Company was filed with the County Clerk of Los
2 Angeles, California, on or about April 23, 1981. A true and
3 correct copy of said Business Name Statement is attached hereto
4 as Exhibit G. Subsequently, I used the fictitious business
5 name, "Unicom Systems International" under which Unicom
6 continued to provide computer-related software products and
7 support services. On July 21, 1995 Unicom Systems, Inc. was
8 incorporated. The above facts and accompanying exhibits should
9 lay to rest any dispute regarding who the senior user of the
10 Mark was.

11 12. Unicom registered the Mark with the United States
12 Patent and Trademark Office ("USPTO"), on or about January 26,
13 1994, Serial Number 74483489. The record from the USPTO search
14 database, a true and correct copy of which is attached hereto as
15 Exhibit H also reflects that first use of the Mark was in 1981.
16 This application for registration of the Mark was inadvertently
17 allowed to lapse and was deemed abandoned by the USPTO as of
18 January 30, 1995.

19 13. Unicom filed a subsequent registration application on
20 June 19, 1997, and successfully registered the Mark. A true and
21 correct copy of, Federal Trademark Registration No. 2308224, is
22 attached hereto as Exhibit I. Hence not only is Unicom the
23 senior user of the Mark based on its continued use since 1981,
24 Unicom is the valid registered owner of the subject Mark.

25 14. In addition to Plaintiff's use and registration of the
26 Mark, Unicom's first use of the Mark is further supported by the
27 fact that I authored a software product entitled "UNICOM/CICS",
28 which was registered with United States Copyright Office,

1 Registration Number Txu-215-658, on October 29, 1985. A true and
2 correct copy of the registration is attached hereto as Exhibit
3 J.

4 15. Since 1981, Unicom has expended time, effort, and
5 money in order to promote its name, "Unicom" nation-wide. Unicom
6 has advertised and promoted its products and services at
7 national trade shows and conventions, through the Internet, and
8 through publication in appropriate domestic and international
9 trade periodicals. True and correct copies of three
10 advertisements from the December 8, 1986, January 12, 1987, and
11 February 9, 1987, issues of the national trade magazine
12 "Computerworld" are attached hereto as Exhibit K.

13 16. Rosenthal's continued use of Unicom's Mark as his
14 domain name is likely to cause confusion among consumers. As
15 noted above, Plaintiff's clients rely upon our software and
16 technical support in order to maintain their business
17 operations. It is very likely that a customer, in need of a
18 technical "fix" for his mainframe system will inadvertently
19 access Rosenthal's www.Unicom.com while seeking Plaintiff's
20 www.Unicomsi.com. Once inadvertently accessed, Rosenthal's Web
21 Site will not inform the user regarding the specific nature of
22 computer services he offers. Users may waste valuable time
23 wading through numerous links to try to determine the true
24 nature of the Web Site, which remain ambiguous at best.

25 17. Rosenthal's suggestion that he provides technical
26 support for systems other than mainframe and hence there is no
27 confusion is disingenuous at best. His Web Site makes no such
28 distinction and provides no clarification whatsoever. Indeed,

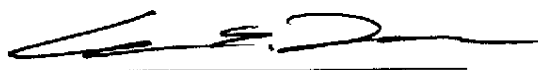
1 the fact that Rosenthal does provide some kind of computer
2 technical support coupled with his resume on the Web Site may
3 lead a Unicom customer to believe that they have contacted an
4 appropriate Unicom mainframe software technician.

5 18. In addition to the immediate likelihood of confusion,
6 Unicom is looking to expand its products and services to include
7 web design and development, as well as systems administration
8 and engineering. I have recently brought onto Unicom's staff an
9 engineer skilled in providing these types of services, which are
10 similar to services purportedly offered through Rosenthal's Web
11 Site.

12 19. Unicom's web site may be accessed at www.unicomsi.com.
13 The site includes promotional and informational material
14 relative to our products and services. The site also provides
15 clients immediate access to technical support via a secure
16 interactive link. A true and correct copy of Unicom's home page
17 is attached hereto as Exhibit L.

18 20. As previously stated, Unicom has been using the Mark
19 in business for over twenty years. Years before Rosenthal
20 registered the domain name and/or he actually used it in
21 connection with his web site, UNCIOM had become a nationally
22 recognized provider of software products and services.

23
24 I declare under penalty of perjury, in accordance with 28
25 U.S.C. § 1746, that the foregoing testimony is true and correct.
26 Executed this 14 day of January, 2002 in Mission Hills,
27 California.

28 
Corry S. Hong