



## PowerScreen Problem

### Confidential Instructions for Alan Hacker's Attorney

You are a partner in a small local law firm. One of your law school classmates, Dale Levinson, called to ask if she could refer a client to you. She has been representing HackerStar, Inc., for more than four years. But now that there is a problem between the two principals in that company, she feels she should bow out and has recommended that each retain separate counsel. You agreed to talk with one of the principals, Alan Hacker. In the course of a client interview, you found Hacker to be eccentric, clever, and likeable. Hacker seemed to feel that he had been wronged by his partner, Stanley Star. It also appeared that constraints on his creative energy were really troubling him. The following is a summary of what you learned from Hacker in preparing for your upcoming meeting today with Stanley Star's attorney.

For Alan Hacker, starting his own software house was always a dream but one he never had the capital to realize on his own. When Star came along as a possible backer, things finally seemed to fall into place. Hacker had some concerns, of course. Star knew just enough about computers and the industry to understand his ideas but not enough to realize he really didn't know anything important. Hacker had worried that Star might try to force the company to follow some foolish ideas of his own. For example, he once mentioned a screenplay-writing program when he and Hacker were first talking about setting up the company—but that is one thing he has been pretty good about.

On the other hand, your client feels that Star never has understood HackerStar's need for advertising. According to Hacker, Star just looks at advertising as throwing money down a black hole and doesn't seem to grasp that you can get the money back, often in ever-increasing amounts, once you break a certain threshold of market recognition. Star also doesn't understand how important it is to accomplish that early on, before the market gets saturated with competitors. Hacker claims that Star has never understood that market penetration is highly volatile, that high-tech industries such as microcomputer software represent fading opportunities, and that the longer you wait to gain market recognition, the less your market share is likely to be for any given product.

According to Hacker, Star thinks HackerStar's failure to achieve its early sales projections is Hacker's problem. Hacker's response is that, while he may not be the world's best salesperson, he is not totally incompetent or he would never have made it in business on his own for six years. Hacker argues that the money saved by not hiring an extra manager increased the

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revenue available for additional advertising, which paid for itself two-fold by generating additional sales.

Your client seems amazed at the position Star is taking on the PowerScreen program. He doesn't see how Star can justify having his cake and eating it too. Star told him he wasn't interested in the program six times, that it was not marketable, that HackerStar couldn't afford it anyway, and that he couldn't work on it on company time. Then he turned around and claimed that the company owned it! Hacker admits he spent 200 or so hours on the company minicomputer using its sophisticated debugging program that simulates an IBM PC, but he claims he did it late at night and on weekends when no one else needed the machine. Hacker indicates that total development time was approximately 2,000 hours but that the bulk of that time was spent writing code on his personal computer. He says he would not have worked those hours and had no need to work those hours except for his desire to write this program. Your client insists that he did everything else he could to see to the continued best marketing of HackerStar's existing products.

Hacker thinks that Star is just mad at being wrong. He knows that Star is disappointed in the company's performance and that Star attributes this to a lack of effort on the part of Hacker and Jim Sparks. Your client, on the other hand, attributes it to a lack of support for adequate advertising, especially in the first few years of operation. Now the market is so saturated with advertising that it is hard to get any attention. When HackerStar was just starting, however, an extra \$50,000 might have made a big difference. Instead, Star insisted that the company make a profit from the first year. In Hacker's opinion, that is why sales are lower than the company's early projections indicated they would be.

Hacker acknowledges that it must "burn" Star to think of a new income stream coming in and HackerStar not getting it, especially because it was his own decision not to pursue it. But as far as your client is concerned, he did everything conceivable to satisfy his duty of loyalty to HackerStar. He offered the company both the idea and the finished product, and he made no effort to pursue other channels until the company expressed its disinterest finally and unequivocally. Once the company did so, he proceeded to rely on that lack of interest. Consequently, he feels that he should derive the benefit from his unsupported work to develop the program and to find backers for it.

As far as the covenant not to compete in his employment contract goes, Hacker argues that it just does not apply. He explained to you that a graphics program is not in any way competitive with a word-processing package or a peripheral control program. Furthermore, the company stated its lack of interest in developing a competitive product. On the question of "full-time energies," Hacker thinks that means the time it takes to do what the company wants to do. He feels he put that time in. As he put it, there are only so many hours in a day when one can call customers and dealers. Any other time is his, and he says he did virtually all of this development work on his own time. Furthermore, he says that not more than 30 hours of thinking were spent during work time to develop PowerScreen, and this occurred only when things were slow. You remain a little skeptical.

If it comes to it, your client would rather cut the company in for ten to 15 percent of the royalties on PowerScreen than see the company fall apart, but he doesn't want to feel taken, especially not by Star. After all, Hacker thinks this mess is Star's fault. Hacker suggested it would help if an agreement could be reached that the company would support a reasonable number of new products as he develops them and that the company would give him the time and latitude to do so. Indeed, you got a strong sense that creating new products is what Hacker really cares about, that R & D is "where his heart is." After some prodding, you ascertained that, in Hacker's ideal world, he would spend all of his time being a creative genius, working on developing any new programs that struck his fancy. Hacker added, though, that an increase in advertising, especially for new products, would also help.

Your client's backers for PowerScreen, led by Jeremy Gates, have expressed considerable flexibility. They have offered a royalty of five percent of gross sales up to \$30,000, seven-and-a-half percent of gross sales between \$30,000 and \$50,000, ten percent of gross sales between \$50,000 and \$75,000, and 12.5 percent of gross sales above \$75,000. Hacker thinks this is a fair and even generous offer. While he would certainly like to make a lot of money, he seems to be more concerned with having his computer programs recognized and respected than with financial rewards per se.

While Gates and company do intend to set up a software distribution and marketing firm (to be called Software Super Marketing), they might also consider investing in HackerStar directly. If so, your client would want to join them to take control of PowerScreen's marketing away from Star, so he could be sure that his software would be backed properly. If Star raises the possibility, Hacker would like to agree on a package deal for the Gates group to consider. He would also like to agree on what Hacker and Star will do if Gates' group decides they are not interested in anything other than the royalty deal.

Prepare for your meeting with Star's attorney. Hacker wants to avoid litigation and keep the company going if he can, but he doesn't want to feel "ripped-off" by Star. Hacker has given you full authority to develop recommendations and proposals, but he will decide ultimately what he wants to do. It is clear, though, that he will give serious weight to your advice.