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## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA

## OAKLAND DIVISION

| | |
|---|---|
| ELASTICSEARCH, INC., a Delaware corporation, ELASTICSEARCH B.V., a Dutch corporation, <br><br> Plaintiffs, <br><br> v. <br><br> FLORAGUNN GmbH, a German corporation, <br><br> Defendant. | CONSOLIDATED CASE<br>Case No. 4:19-cv-05553-YGR <br><br><br> **ANSWER TO COMPLAINT** |

Defendant floragunn GmbH ("floragunn") answers the Complaint of Elasticsearch, Inc.
and elasticsearch B.V. (together "Elastic") filed on October 26, 2020, as follows:

**Paragraph 1**

Allegation:   Through its creation and distribution of its Search Guard software,
floragunn GmbH ("floragunn") has knowingly and willfully infringed Elasticsearch, Inc.
and elasticsearch B.V.'s (collectively "Elastic") copyrights in the source code for
Elastic's Elasticsearch X-Pack and Kibana X-Pack software and their predecessors,

Elasticsearch Shield and Kibana Shield. (Unless otherwise specified, Elastic refers to Shield and X-Pack collectively herein as "X-Pack.")

Response: floragunn denies Elastic's allegations set forth in paragraph 1 of the Complaint, and further states that it has not infringed any of plaintiff's source code.

**Paragraph 2**

Allegation:   On September 4, 2019, Elastic brought an action against floragunn to remedy floragunn's infringement of certain Elastic copyrights in the source code for X-Pack. *See Elasticsearch, Inc. et al. v. floragunn GmbH*, Case No. 4:19-cv-05553-YGR (N.D. Cal.) ("*floragunn I*"). On November 26, 2019, Elastic filed a First Amended Complaint ("FAC") in the *floragunn I* lawsuit, alleging additional instances of copyright infringement and identifying additional Elastic X-Pack copyrights infringed by floragunn.

Response: floragunn acknowledges that Elastic filed such complaints. floragunn denies that it has infringed any of Elastic's code.

**Paragraph 3**

Allegation:   In the course of subsequent discovery and investigation, Elastic has identified yet more instances of infringement by floragunn and additional Elastic X-Pack copyrights that floragunn has infringed. Elastic has now registered each of those additional copyrights with the United States Copyright Office.

Response:   floragunn acknowledges that Elastic has filed registrations with the United States Copyright Office, but denies that the code in those registrations is eligible for copyright protection. floragunn also denies that it has infringed any of Elastic's code.

**Paragraph 4**

Allegation:   Elastic files this new lawsuit in light of recent Northern District of California decisions interpreting 17 U.S.C. § 411(a). *See* Order re: Joint Motion for Clarification, ECF No. 59, *UAB "Planner 5D" v. Facebook, Inc.*, No. 19-cv-03132-WHO (N.D. Cal. March 5, 2020); *Izmo, Inc. v. Roadster, Inc.*, No. 18-cv-06092-NC, 2019 WL 2359228 (N.D. Cal. June 4, 2019). Elastic will seek relation of this case to *floragunn I* pursuant to Civil Local Rule 3-12 and consolidation with *floragunn I* for all purposes.

**Response:**  As of the time of filing of this Answer, the two cases have been consolidated.

**Paragraph 5**

Allegation:   Plaintiff Elasticsearch, Inc. is incorporated in Delaware; it has its principal place of business in Mountain View, California. Plaintiff elasticsearch B.V. is incorporated in the Netherlands.

Response: floragunn denies having knowledge or information sufficient to respond to Elastic's

allegations set forth in paragraph 5 of the complaint, and therefore denies such allegations.

**Paragraph 6**

Allegation:   Defendant floragunn is a German company with a principal place of business in Berlin, Germany.

Response: floragunn admits the allegations in paragraph 6.

**Paragraph 7**

Allegation:   Elastic's claims for copyright infringement arise under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*

Response: floragunn denies that it has engaged in any copyright infringement and therefore

denies Elastic's allegations in paragraph 7 of the complaint.

**Paragraph 8**

Allegation:   This Court has original subject matter jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338.

Response: floragunn admits that this Court has jurisdiction over this action, but denies that it

engaged in any infringement of Elastic's code.

**Paragraph 9**

Allegation:   This Court has specific personal jurisdiction over floragunn because, among other reasons, floragunn has extensively offered and distributed its infringing

product containing Elastic's copyrighted material to companies in California and purposefully committed within California the acts from which Elastic's claims arise. Additionally, to the extent floragunn has committed the illegal acts described herein outside of California, it did so knowing and intending that such acts would cause injury to Elastic at its principal place of business within California.

Response: floragunn denies the allegations in paragraph 9, but does not challenge this Court's exercise of personal jurisdiction over floragunn.

**Paragraph 10**

Allegation:   Venue is proper in the Northern District of California under 28 U.S.C.  § 1391(b)(2) and 1391(c)(3) because a substantial part of the events or omissions giving rise to  the claims alleged in this complaint occurred in this judicial district.

Response: floragunn denies that it engaged in any "events or omissions giving rise to the claims alleged in [the] complaint," but does not challenge the propriety of venue in this district.

**Paragraph 11**

Allegation:   Because this action arises from Elastic's assertion of its intellectual property rights, Northern District of California Civil Local Rule 3-2(c) excludes this action from the division-specific venue rule and subjects this action to assignment on a district-wide basis.

Response: floragunn denies that Elastic's "assertion of its intellectual property rights" has merit, but does not challenge the applicability of Local Rule 3-2(c).

**Paragraph 12**

Allegation:   Elastic produces a core suite of search and analytics products known as the Elastic Stack (formerly known as ELK Stack). The Elastic Stack consists of Elasticsearch, Logstash, Kibana, and Beats. Elasticsearch is a search and analytics engine. Logstash is a server-side data processing pipeline that ingests data from multiple sources simultaneously, transforms it, and then sends it to a "stash" like Elasticsearch. Kibana lets users visualize data with charts and graphs in Elasticsearch. Beats is a family of "data shipper" software that collects and centralizes data that feeds into the other products in Elastic Stack.

Response: floragunn admits the allegations in paragraph 12.

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2    **Paragraph 13**

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4         Allegation:    X-Pack is a set of add-on features to Elastic's core Elastic Stack suite of
        products. X-Pack includes security, altering, monitoring, reporting, and other add-ons to
        Elasticsearch, Kibana, and other products in the Elastic Stack. The predecessor to much

5        of X-Pack was known as Shield. (Unless otherwise specified, Elastic refers to Shield and
        X-Pack collectively herein as "X-Pack.")

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8    Response: floragunn admits the allegations in paragraph 13.

9    **Paragraph 14**

10        Allegation:    Elastic has a longstanding commitment to opening the source code
        underlying many of its products in order to facilitate building a community that helps

11       improve and advance Elastic's products to produce the best software possible. When
        Elastic releases the source code for its software, it does so under clearly delineated

12       conditions.

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14   Response: (1) floragunn denies the allegations in paragraph in paragraph 14 of the complaint.

15   Specifically, Elastic misleads when it claims that "it has a longstanding commitment to opening

16   source code underlying many of its products," since it has no "longstanding" commitment to

17   opening source in the case of X-Pack (including Shield) because the code for X-Pack was closed

18   source software from the time it was first released in 2015 until Elastic finally opened the source

19   code to the public in 2018. Before April 2018, it was impossible for third-party developers to

20   contribute anything to the proprietary and closed-source X-Pack code.  Search Guard, on the

21   other hand, has been publicly available open code since it was first released in 2015.  (2) Second,

22   it is false that "[w]hen Elastic releases the source code for its software, it does so under clearly

23   delineated conditions."  For example, Elastic released both its Apache 2 licensed code and its

24   own Elastic-licensed code in the same GitHub repository, causing significant confusion as to

25   which license applied to which files.  This practice is commonly referred to as "code mingling"

26   and is highly discouraged by the Open Source community because it leads to situations where a

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