

SILICON CITY — From the Valley to the Alley

# Lawyers close in on dot-coms

## 'Burned' investors seek revenge

By PAUL ZAKRZEWSKI

TWO days after Razorfish Inc. announced it would miss fourth-quarter estimates by a sizable amount, attorneys have filed a class-action lawsuit, alleging the company's forward-looking statements misled stockholders.

But this type of legal action isn't an isolated incident, say legal experts. Indeed, it's increasingly common in the Alley and beyond. And with the prolonged drop in technology stock prices creating unhappy stockholders, these experts predict the Alley is likely to see a rise in such class-action lawsuits in the coming months.

This week, Razorfish said it expects a fourth-quarter pro forma net loss per share of 17 cents and 22 cents for the quarter on revenues of about \$50 million, before amortization and an unspecified restructuring charge.

Attorneys at Scott & Scott LLC, who filed the claim on behalf of shareholders, were unavailable for comment. But in a written statement, the law firm said that unidentified Razorfish officers are liable for misleading stockholders by allegedly making "false and misleading statements" about the

company's performance.

The complaint further alleges "substantive allegations concerning false and misleading statements" during the class period culminating in a 43 percent drop in stock price to \$5 per share on Oct. 5 and, more dramatically, a



91 percent drop from \$55 on Oct. 15.

Attorneys for Razorfish, which was founded by Jeff Dachis, did not respond to messages seeking comment.

The action is only the latest in a litany of claims by jilted stockholders in the Alley. In mid-November, Crain's New York reported that angry shareholders launched a class-action lawsuit against MarchFirst, alleging company executives issued "materi-

ally false and misleading statements to the market." The company's share price hovered around \$3.75 at the time of the lawsuit, down 95 percent from its 52-week high of \$81.13.

In August, shareholders of online music seller CDNow filed a class-action suit. The complaint accused the company of hiding its financial troubles.

And in one of the most visible cases this year, lawyers in New York filed a class-action suit against Internet Wire and Bloomberg during the so-called "Emulex Hoax."

Legal experts say the surge in class-action lawsuits brought on by unhappy stockholders is simply a reaction to the recent market declines.

"There's no question that as the market falls there are more lawsuits," said Frank Penski, a partner at law firm Nixon Peabody. "Whenever there are precipitous declines — when a company loses half its market cap, as we've seen in some cases — you see close scrutiny by plaintiff lawyers."

Another legal expert who asked not to be identified was more blunt. "When the markets go south, litigation goes up," he said.

In fact, unhappy stockholders don't instigate many of these lawsuits at all. According to Penski, law firms themselves keep track of technology companies, watching public filings for discrepancies between positive "forward-looking" and bad stock performance. And when they find these examples, attorneys close in.

Many class-action shareholder suits will eventually be thrown out of the courts, or settled for



NOT THE FIRST: Razorfish, lead by Jeff Dachis, is just the latest to feel the sting of an investor lawsuit alleging misleading financial statements.

nominal amounts, according to Penski.

In what is considered a major shift in strategy, Net2Phone Inc. announced it plans to stop offering free PC-to-phone calls. PC-to-PC calls would still be free.

In a conference call with investors, Net2Phone's CEO Howie Balter said the company will gradually wind down free PC-to-phone services in coming months.

Having cornered the marketplace for Web-enabled telephone

calls, Balter now believes that customers are willing to pay for domestic and international calls that are routed through the Net.

It is a tricky subject for dot-coms operating in the free Web phone service. Companies have fought hard-to-convince customers to use the PC-to-PC calling service rather than the PC-to-phone service because the IP provider has to absorb a termination fee which is paid to the telco network provider.

PhoneFree.com, New York-based Deltathree, DialPad, HotTelephone and a host of other telephony plays are battling for a position in the lucrative telephony space.

DeltaThree has also moved away from the free service, explaining that the termination fee is indeed a financial burden. Last month, DeltaThree stopped offering free telephony calls to destinations in the USA and Canada.

Net2Phone, which is backed by AT&T Corp. and a slew of big-name investors, has managed to trim its net losses, which stood at \$5.2 million (9 cents per diluted share) in the first quarter, against losses of \$8.4 million, or 17 cents per share, in the same period a year ago.

Alley-based ProAct Technologies, which provides online human resource information for Fortune 1000 companies, said it would acquire Interlynx Technology in a stock-and-cash deal valued at \$60 million.

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### CITY OF NEW YORK Department of Housing Preservation and Development

Availability of lead-based paint training to all contractors seeking residential rehabilitation contracts with the City of New York

Availability of the City's plan to implement the Department of Housing and Urban Development's lead safe housing regulation

The City of New York conducts rehabilitation activities in publicly and privately-owned residential properties. A significant number of these projects are funded through programs administered by the Department of Housing and Urban Development (HUD). Recently implemented HUD regulations at 24 CFR Part 35 impose new requirements regarding residential lead-based paint hazard reduction and abatement. HUD-funded rehabilitation of residential units which contain or are presumed to contain lead-based paint may require that work be conducted by Environmental Protection Agency (EPA) certified lead-based paint supervisors and/or workers and dwelling unit clearance be provided by certified risk assessors, certified lead-based paint inspectors or trained technicians. The City has determined that there currently exists a severe shortage of these trained and certified personnel.

In an effort to address this shortage, the City will provide contractors with lead-based paint training by accredited trainers. The cost of the training will be paid for with Community Development Block Grant Program funds from HUD.

HUD has provided localities with a 6-month transition period (9/15/00 - 3/15/01) in which to build adequate capacity of trained personnel and comply with the new regulations. On December 18, 2000, the City's Transition Implementation Plan will be available. The Transition Implementation Plan and information about the lead-based paint training and the EPA certification process may be obtained by calling the office of Assistant Commissioner Pansy Mullings at (212) 863-6117.

Jerilyn Perine, Commissioner, Department of Housing Preservation and Development Date: December 18, 2000.

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