

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF CONNECTICUT

MICROSOFT CORPORATION	)	
	)	CIVIL ACTION
Plaintiff	)	NO.
	)	3:08cv1602 (RNC)
vs.	)	
	)	
KENT JOHNSON, an individual, d/b/a	)	
COMPATIBLE COMPUTERS,	)	
	)	
Defendant.	)	January 22, 2009
	)	
	)	

**PLAINTIFF’S REPORT OF PARTIES’ PLANNING MEETING**

Pursuant to D. Conn. L. Civ. R. 26(e), the Plaintiff, Microsoft Corporation (“Microsoft”), hereby submits this unilateral Report of Parties’ Planning Meeting for the Court’s consideration in this matter.

Date Complaint Filed: October 20, 2008

Date Complaint Served: October 24, 2008

Date of Defendant’s Appearance: December 9, 2008

Pursuant to Fed. R. Civ. P. 16(b), 26(f) and D. Conn. L. Civ. R. 16, on January 6, 2009, Microsoft corresponded with Defendant and advised the Defendant of the parties’ obligation to submit a report of parties’ planning meeting for the Court’s consideration. On January 7, 2009, Microsoft initiated communications with Defendant regarding the proposed scheduling order by forwarding on a draft report for discussion purposes to the Defendant. Microsoft invited a telephone call and/or an exchange of written drafts, at Defendant’s option. On that same date, the Defendant acknowledged receipt and indicated that he would provide input by January 15,

2009. As of the time of this filing, the Defendant has not proposed any changes to the draft report submitted to him for his consideration.

1. Certification

Counsel for Microsoft, after consultation with their client, certify that they have discussed the nature and basis of the parties' claims and defenses and any possibilities for achieving a prompt settlement or other resolution of the case and, in consultation with their client, have developed the following proposed Case Management Plan. Counsel for Microsoft further certifies that they have forwarded a copy of this report to their client.

2. Jurisdiction

(a) Subject Matter Jurisdiction

Jurisdiction over this matter arises under 15 U.S.C. § 1121, 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a).

(b) Personal Jurisdiction

Personal jurisdiction is not contested.

3. Brief Description of Case

In this action, Microsoft alleges that Defendant has infringed Microsoft's copyrights and trademarks, violated the Lanham Act by falsely designating the origin of software, and engaged in unfair competition. Specifically, Microsoft alleges that Defendant distributed counterfeit and infringing Microsoft software to an investigator in July 2008 despite receiving prior notice from Microsoft of possible infringement. Microsoft seeks to enjoin Defendant's future infringement and seeks damages arising from infringement of Microsoft's copyrights and trademarks in its

software by Defendant, an accounting and the imposition of a constructive trust upon Defendant's illegal profits.

(a) Claims of Plaintiff

Plaintiff states that Defendant has infringed Microsoft's copyrights and trademarks, violated the Lanham Act by falsely designating the origin of software, and engaged in unfair competition by distributing counterfeit and infringing Microsoft software programs.

(b) Defenses and/or Claims of Defendant

Other than the points articulated in the Defendant's motion to dismiss and subsequently-filed memorandum of law [docs 11 and 15, respectively], Microsoft has no information on this issue.

(c) Defenses and Claims of Third Party Defendants

N/A

4. Statement of Undisputed Facts

Microsoft certifies that it has made a good faith attempt to determine whether there are any material facts that are not in dispute. Microsoft believes that the following material facts are undisputed:

- A. Microsoft is a Washington corporation with its principal place of business located at One Microsoft Way, Redmond, Washington. Microsoft develops, markets, distributes and licenses computer software.
- B. Defendant Kent Johnson does business as Compatible Computers in Torrington, Connecticut and on the Internet.
- C. Kent Johnson is an individual who does business as Compatible Computers and/or owns, operates, or otherwise controls Compatible Computers. Kent Johnson resides and transacts substantial business in this district.
- D. Microsoft develops, advertises, markets, distributes, and licenses a number of computer software programs. Microsoft's software programs are recorded on

magnetic diskettes and/or CD-ROMs, and they are packaged and distributed together with associated proprietary materials such as user's guides, user's manuals, end user license agreements, certificates of authenticity, and other related components, including Microsoft Windows XP Professional ("Windows XP Pro") and Office 2003 Professional ("Office 2003 Pro"), to which Microsoft holds the following valid copyrights:

- i. TX 5-407-055 ("Windows XP Professional");
- ii. TX 5-837-617 ("Office 2003 Professional");
- iii. TX 5-837-636 ("Office Excel 2003");
- iv. TX 5-900-087 ("Office Outlook 2003");
- v. TX 5-852-649 ("Office PowerPoint 2003");
- vi. TX 5-900-088 ("Office Word 2003");
- vii. TX 5-837-618 ("Publisher 2003");
- viii. TX 5-877-513 ("Business Contact Manager for Outlook 2003"); and
- ix. TX 5-901-713 ("Access 2003")

E. Microsoft owns a number of trademarks and a service mark, including, but not limited to:

- i. "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236, for computer programs and computer programming services;
- ii. "MICROSOFT," Trademark Registration No. 1,256,083, for computer hardware and software manuals, newsletters, and computer documentation;
- iii. WINDOWS, Trademark Registration No. 1,872,264 for computer programs and manuals sold as a unit;
- iv. COLORED FLAG DESIGN, Trademark Registration No. 2,744,843, for computer software;
- v. "POWERPOINT," Trademark Registration No. 1,475,795, for pre-recorded computer programs recorded on magnetic disks;
- vi. "MICROSOFT ACCESS," Trademark Registration No. 1,741,086, for computer programs for use with databases and manuals sold as a unit;

- vii. "OUTLOOK," Trademark Registration No. 2,188,125, for computers programs, specifically programs providing enhanced electronic mail and scheduling capabilities and instructional manuals sold as a unit.
- viii. COLOR FOUR SQUARE LOGO, Trademark Registration No. 2,999,281, for computer software, including application and business software for use in word processing, spreadsheets, presentation graphics, e-mail, and scheduling;

5. Case Management Plan

(a) Standing Order on Scheduling in Civil Cases

Microsoft requests modification of the deadlines in the Standing Order on Scheduling in Civil Cases as follows:

(b) Scheduling Conferences with the Court

Microsoft does not request a pretrial conference with the Court before entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b). If necessary, the parties prefer a conference by telephone.

(c) Early Settlement Conference

1. The parties certify that they have considered the desirability of attempting to settle the case before undertaking significant discovery or motion practice. Settlement appears to be unlikely at this time.

2. Microsoft requests an early settlement conference.

3. Microsoft prefers a settlement conference with a magistrate judge.

4. Microsoft does not request a referral for alternative dispute resolution pursuant to D. Conn. L. Civ. R. 16 at this time.

(d) Joinder of Parties and Amendment of Pleadings

1. Microsoft does not anticipate needing to amend the pleadings at this time.

2. Microsoft does not anticipate the need to add additional parties at this time. Based upon discovery compliance, however, the need to add additional parties may become necessary.

(e) Discovery

1. Microsoft anticipates that discovery will be needed on the following subjects:

- Defendant's employees and business formation;
- The nature and extent of Defendant's acquisition and distribution of Microsoft items;
- The revenue or other compensation earned by Defendant related to the distribution of Microsoft and/or purported Microsoft items;
- The nature of the infringing materials sold by Defendant;
- Issues related to infringing distributions, including the identity of customers, the number of distributions, and revenues earned from same;
- All forms of notice Defendant may have had regarding possible infringement of Microsoft intellectual property;
- The willfulness of Defendant's infringement;
- Defendant's installation of Microsoft software on computers;
- Issues related to Defendant's sources of Microsoft and/or purported Microsoft items and the volume acquired.

Microsoft does not anticipate that there will be substantial electronic discovery in this case. Microsoft may request electronically stored information related to solicitations or sales of Microsoft and/or purported Microsoft software and other intellectual property. Microsoft may

further conduct third-party electronic discovery of vendors and witnesses, if appropriate.

Microsoft suggests that electronically stored information be produced in printed format where it is reasonable to do so.

Microsoft would further suggest that the parties return any and all privileged information upon determining that such material was produced by an opposing party or having been notified by opposing counsel that such material has been produced, subject to the parties' rights to seek Court intervention with respect to a final determination that such material is in fact privileged.

2. All discovery, including depositions of expert witnesses pursuant to Fed. R. Civ. P. 26(b)(4), will be commenced upon the Court's approval of this plan and completed (not propounded) by July 31, 2009.

3. Discovery will not be conducted in phases.

4. The parties anticipate that the Plaintiff will require a total of approximately 2-3 depositions of fact witness. The Defendant's position on this issue is unknown. The depositions will commence upon approval of this Report, and be completed by July 31, 2009.

6. Microsoft does not request permission to serve more than twenty-five Interrogatories.

7. Plaintiff will designate all trial experts and provide opposing counsel with reports from retained experts pursuant to Fed. R. Civ. P. 26(a)(2) by April 30, 2009. Depositions of any such experts will be completed by May 29, 2009.

8. The Defendant may call expert witnesses at trial to the extent necessary to rebut Plaintiff's experts. Defendant will designate all trial experts and provide opposing counsel with reports from retained experts pursuant to Fed. R. Civ. P. 26(a)(2) by June 30, 2009. Depositions of any such experts will be completed by July 31, 2009.

9. A damage analysis will be provided by any party who has a claim or counterclaim for damages by May 31, 2009.

(f) Dispositive Motions

Dispositive motions will be filed on or before August 31, 2009.

(g) Joint Trial Memorandum

The Joint Trial Memorandum required by the Standing Order on Trial Memorandum in Civil Cases will be filed within thirty (30) days from the Court's ruling on any Motion for Summary Judgment, or if no such motion is filed, by September 30, 2009.

(h) Initial Disclosures

Initial disclosures will be made within twenty (20) days from the Court's approval of this Report.

5. Trial Readiness

The case will be ready for trial after November 2, 2009, or 30 days after the filing of the Joint Trial Memorandum, whichever is later.



As officers of the Court, the undersigned counsel agree to cooperate with Defendant and the Court to promote the just, speedy and inexpensive determination of this action.

THE PLAINTIFF,  
MICROSOFT CORPORATION

/s/ \_\_\_\_\_

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Roche Pia LLC

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Shelton, CT 06484

Telephone 203.944.0235

Facsimile 203.225.1244

Its Attorneys

**CERTIFICATION**

I hereby certify that, on the date hereon, a copy of the foregoing was mailed postage prepaid to the following parties:

Kent Johnson

Compatible Computers

233 East Main Street

Torrington, CT 06790

\_\_\_\_\_  
/s/  
Gerald C. Pia, Jr.  
Brian C. Roche