

Media Update

RE:
IOWA COURT CASE
Comes vs. Microsoft, Inc.

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Contact: Eileen Wixted 515-240-6115

Jim Hibbs 515-201-9004

Office 515-226-0818

Coverage Notes:

1. Jury hears about anticompetitive smear campaigns against Microsoft's rivals.
2. Over 3,100 trial exhibits now available on: www.iowaconsumercase.com

Trial continued today with the prior deposition testimony of former Microsoft product manager Richard Freedman.

1. **Former Microsoft DOS product manager Richard Freedman testifies about anticompetitive smear campaigns against Microsoft's rivals.**

Plaintiffs presented the prior deposition testimony of former Microsoft DOS Product Manager Richard Freedman. An internal Microsoft document showed that in 1993, Microsoft was concerned about press reports that DR DOS was "leapfrogging" Microsoft's latest version of MS-DOS. In an email, Freedman wrote that the newest version of DR DOS was going to put MS-DOS twelve to eighteen months behind DR DOS, which would make it "impossible to shake this MS as follower image."

He said that Microsoft was behind in features for three DOS releases in a row. Freedman was also concerned that press reports would make it appear "impressive that a little company like [Digital Research] captured five percent against big bad MS who had all its OEM's locked in on long term contracts."

Freedman admitted receiving a memorandum describing one of Microsoft's "competitive objectives" as to "FUD DR DOS with every editorial contact made," and to "develop key DR DOS FUD points for all press tours." Freedman denied any independent recollection of the FUD memorandum or its contents.

2. **Over 3,100 trial exhibits are now available on Plaintiffs' web site.**

Over 3,100 admitted Plaintiffs' trial exhibits have now been posted to Plaintiffs' web site. Fifty-five exhibits have been withheld because Microsoft has asserted confidentiality concerns.

Among the posted exhibits are:

- Documents demonstrating Microsoft's use of FUD to exclude competitors from the market and Microsoft's awareness of its effect on competitors. After closing a license agreement with an original equipment manufacturer ("OEM"), Microsoft Vice President Jeremy Butler writes that: "It only takes a couple of reports about non-compatibility to give the kiss of death to a PC: we've seen that on the hardware side as well in as in the

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operating system area.” (PX 151) In another document, Microsoft’s public relations firm, Waggener Edstrom, advises:

“Over the next couple months, Kathryn and I are going to be in touch with a lot of editors regarding MS-DOS 5.0. We’ll basically be covering all the key editors

We recommend that we ‘informally’ plant the bug of FUD in their ears. ‘Have you heard about problems with DR DOS?’ ‘That security feature is a neat idea and, gosh, such a feature would be great, but it’s just too easily circumvented.’ ‘Gee, it’s unfortunate that DR DOS can’t be loaded high all the time. MS-DOS 5.0 can.’ We’ll do this very tactfully.

*If Digital Research came to Microsoft for help making DR DOS work with Windows, would Microsoft help them? Maybe not?” (PX 425)

- Internal Microsoft documents in which Microsoft executives admit that Microsoft’s use of “vaporware” was designed to crush the demand for a competing product. In one such document, Microsoft executive Nathan Mhryvold, in discussing a threat from Sun Microsystems, admits that “[t]he purpose of announcing early like this is to freeze the market at the OEM and ISV level. In this respect it is JUST like the original Windows announcement.... [W]e need to get our message out there.” (PX 0411A)
- Documents illustrating Microsoft’s use of threats and other acts of intimidation to prevent distribution of competing products. For example, when OEM Commodore Business Machines was interested in distributing Digital Research, Inc.’s (“DRI”) DR DOS, Microsoft issued the following letter: “If you were to take your consumer machines to DRI, this is what would happen. Your DOS contract would go from a per processor agreement to a per copy agreement, when it expires at the end of January. . . . If you choose to take your consumer business to DRI, your unit volume decreases 75% and you no longer have a per processor agreement. Therefore, your new price on all DOS products will jump to \$30.00 per copy.” (PX 402)
- Internal Microsoft documents revealing Microsoft’s awareness that its per processor licenses excluded DRI from the market and that is what they are expected and intended to do.
 - “Opus agreement has finally been signed by Redmond. Another DRI prospect bites the dust with a per processor DOS agreement.” (PX 409)
 - “Congratulations are in order for John ‘DRI Killer’ McLaughlan (No, he isn’t having another baby) who signed a \$2.5M agreement with Acbel (Sun Moon

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Star). The agreement licenses DOS 5 per processor on a worldwide basis for 3 years (they will be replacing DRI DOS which they currently ship outside the US).” (PX 484)

In future releases, Plaintiffs will point out additional significant information in these and other posted exhibits.

Case background:

Comes v. Microsoft is an Iowa state court class action brought by consumers, small businesses, and other indirect purchasers of Microsoft software products. Plaintiffs allege that from May 18, 1994 through June 30, 2006, Microsoft engaged in illegal monopolization and other anticompetitive conduct in the markets for operating systems, word processing, spreadsheets, and office suite software. Plaintiffs contend that Microsoft charged higher prices than it would have charged had it not engaged in the anticompetitive conduct. Plaintiffs also contend that Microsoft’s conduct caused its operating systems software to be more vulnerable to security breaches. Plaintiffs seek damages for their injuries. Trial is expected to continue until the spring of 2007.

About the firms:

Roxanne Conlin & Associates P.C. is owned by Roxanne Barton Conlin, a Plaintiffs’ attorney whose practice is focused on personal injury and civil rights cases. Ms. Conlin is a former President of the Association of Trial Lawyers of America and a member of the Inner Circle of Advocates. She is co-editor of a 6-volume treatise, *ATLA’s Litigating Tort Cases*, published by West Publishing Company (June, 2003). She has also served as United States Attorney for the Southern District of Iowa.

Zelle, Hofmann, Voelbel, Mason & Gette LLP is a national dispute resolution and litigation law firm with offices in Boston, Dallas, Los Angeles, Minneapolis, San Francisco and Washington, D.C. The Zelle Firm handles complex litigation and disputes on a national and international basis. The Firm has about 85 attorneys and represents both defendants and plaintiffs in its trial and dispute resolution practice. The Firm’s broad litigation experience includes antitrust, banking, business torts, class action, commercial, employment, environmental, ERISA, financial services, insurance coverage, intellectual property, mass tort, mold claims, personal injury, product liability, professional liability, reinsurance, securities, subrogation third-party recovery, unfair business practice and unfair competition litigation. Co-Lead Counsel Rick Hagstrom has successfully pursued Microsoft in two other class actions. In 2004, Rick, as co-lead counsel, was successful in reaching a settlement with Microsoft of \$182 million on behalf of Minnesota businesses and consumers. In 2006 on behalf of Wisconsin businesses, consumers, school districts, and governmental entities, Rick and co-lead counsel reached a \$224 million settlement with Microsoft. In 2005, Rick was honored as a Minnesota Attorney of the Year.