

Media Update

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

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Coverage Notes:

1. The testimony of expert witness Ronald S. Alepin continued today.
2. Microsoft refers to developers as “pawns” and convincing them to do business with Microsoft similar to a one-night stand.
3. Microsoft’s head of development called Vista, Microsoft’s latest version of Windows, a “pig” and delayed its release for almost three years, and Microsoft kept developers in the dark about the delay.
4. Microsoft planted unnecessary warning messages and bugs in Windows to discourage the use of Windows with non-Microsoft operating systems.

Software expert Ronald S. Alepin testifies about Microsoft’s use of tactics that manipulated developers, suppressed innovation, and reduced choices for consumers.

The *Comes vs. Microsoft* case continued Friday before a Polk County, Iowa jury, with more testimony from software technology expert Ronald S. Alepin.

1. Microsoft: applications developers are “pawns.”

Alepin discussed a transcript of a speech given at Microsoft by James Plamondon, in which he compared the “evangelism” of developers to Microsoft’s platform as similar to manipulating a woman into having a one-night stand: “You’re going out with a girl, what you really want to do is have a deep, close and intimate relationship, at least for one night....So you have to talk long term and white picket fence and all these other wonderful things, or else you’re never going to get what you’re really looking for. So you can’t let them feel like pawns, no matter how much they really are.” Alepin testified that withholding critical information from developers was part of this manipulative “evangelism.”

2. “Vaporware” and “fear, uncertainty, and doubt” (“FUD”).

Alepin described how Microsoft also manipulated developers with “vaporware,” or “freezing” the market with pre-announcements of Microsoft products that are months or even years away from launch. For example, Alepin recounted the now-infamous 2004 memorandum from Microsoft executive James Allchin, which described Vista as a “pig” and said, “I would buy a Mac today if I was not working at Microsoft.” Developers were not informed that Vista’s launch, originally scheduled for 2003, would be delayed for nearly three years.

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Alepin also explained that Microsoft engaged in “fear, uncertainty and doubt” (“FUD”), to undermine confidence in a rival’s product by calling into the question its compatibility with existing technology. He cited deceptive warning messages and bugs in Windows that discouraged end-users from loading Windows with DR-DOS and other non-Microsoft operating systems.

3. Non-disclosure of Application Programming Interfaces (“APIs”).

Alepin continued to testify about Microsoft’s use of Application Programming Interfaces (“APIs”) as a means of shutting out rivals and enhancing Microsoft’s dominance. Microsoft also changed the definition of its Windows product from a “graphical user interface” to an “operating system,” which Microsoft used as an excuse to blacklist Digital Research.

4. “Embrace, extend and extinguish.”

During yesterday’s testimony, Microsoft’s counsel accused Alepin of “making it up” when he testified that Microsoft uses an “embrace, extend and extinguish” strategy to defeat its rivals. Today, the jury was provided with prior testimony that shows a Microsoft executive used the phrase, and internal Microsoft documents showing that the company used the strategy to supplant Sun’s Java technology (which enabled applications developers to write software for any operating system) with Microsoft’s version of the technology (which enabled development of applications for Windows only).

5. Alternative Technological Development.

Alepin testified that Microsoft’s engagement in these tactics, prevented software technology from developing more openly. There could have been greater availability of less expensive, higher quality operating systems instead of the limited choices offered by Microsoft’s monopoly. There also could have been faster and more frequent development of significant “killer apps,” which would have enhanced hardware and software value for consumers.

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. Co-Lead Counsel Richard Hagstrom has successfully pursued Microsoft in two other class actions. 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,

The following information was provided by Wixted Pope Nora Thompson & Associates (WPNT). WPNT is working on behalf of Plaintiffs to assist with media inquiries. Questions regarding the *Comes v. Microsoft* case can be directed to Eileen Wixted or Jim Hibbs at 515.226.0818.

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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.

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