

In The United States District Court
FILED or The Northern District of Alabama
Southern Division

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Rodney Alverson
Prose Plaintiff

Case no: _____

CV-08-J-2125-S

vs.

- ① Microsoft Corporation,
 - ② Bill Gates,
 - ③ Scott Stein,
- Defendants

Civil Action Complaint

Alverson v. Microsoft Corporation et al

Comes now the plaintiff proceeding prose and Doc. 1
hereby files this Complaint pursuant to 15 U.S.C.
§ 1125 (a) at section 43 (a) of the Lanham Act, and in
violation of False advertising, and Unfair Trade
Regulation's,

History

In 2007, the plaintiff received a legal copy of a
Microsoft Windows XP Professional C.D. from Debra
Wilson (exhibit A) so he may re-install XP Professional
on his personal Computer, (here on out referred to as
P.C. and XP) and the (End-Users License Agreement)

(2)

here on out will be referred to as (EULA),

The plaintiff knew a Kevin James at the Company called Jewelry Pawn Outlet, the manager of that Company, at which the plaintiff allowed him, (Kevin James) to use the X.P; C.D. to re-install XP on his Company Computers, because the previous full version of XP had Crashed, and Mr. James needed a full version of XP to re-install and activate using his previous license on each Computer, Kevin James re-installed the XP C.D. on four 4 of his Company Computers and had them activated,

In August 2007, the plaintiff did replace his P.C.'s hard drive with a 80 gig, a new one because his old hard drive had Crashed as well, the previous version of Windows was XP Professional and was installed before the plaintiff bought his Computer from Jewelry Pawn Outlet, XP Professional with service pack (2).

Plaintiff re-installed XP Professional (exhibit A) on his P.C. but did not activate the product.

The plaintiff re-installed Windows XP Professional on his Computer, because Microsoft's End-User License Agreement, (EULA) (exhibit B) allows the plaintiff a limited 30 days use after the product is installed before being activated, further the (EULA) allows the plaintiff to activate the XP product on a separate license, the original license that came with the plaintiff's Computer when he first bought it, the Activation box to activate the product allows the Key Code (license Key) to be changed for a separate license, but to use the product

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(3)

in (exhibit A) you or a user must use the key code that came with the product, furthermore the (EULA) also tells the plaintiff that the product may be re-installed upon a hardware change,

The plaintiff allowed Kevin James to use the XP C.D. because the instructions on the product clearly read that a Company may use the product on its P.C.'s that already had a full version of Windows XP with service pack (2) and Mr James activated each Computer with its current license, (C.O.A)

On August 27th 2007, the Jefferson County Sheriff's department executed a search warrant on the plaintiff and his property (exhibit C) looking or searching for the Microsoft XP, product C.D. The search warrant was based on a search warrant affidavit (exhibit D) and in that affidavit was alleged by a Microsoft's legal Counsel Scott Stein by a E-Mail (exhibit E), that the Key Code, (license key) supplied with the XP product was only good for one Computer, the Jefferson County Sheriff's department seized a lot of property that had nothing to do with the XP product or Key Code (license key) (exhibit F), executing the warrant at the time that the plaintiff's Computer was seized, he was in or on his 18th eighteenth day use of his 30 day trial limited use of the XP product, which had not been activated on his Computer,

On January 11th 2008, a grand jury returned (2) indictment's against the plaintiff for his use

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of the Microsoft X P product, (exhibit G, H) the plaintiff proceeded to trial on September 22nd 2008, at trial the plaintiff explained the following facts to the Court and to the jury, that were not disputed by the State:

① The plaintiff explained that he thought he could re-install the X P product and activate it with his current license that came with his computer which was on a label or sticker on the side panel of his computer which has a different key code (license key) for X P, Pro, and as explained by the (EULA) called (C.O.A)

② And that until he does activate the product, he thought he had a 30 day limited use until a mandatory activation.

③ And that the plaintiff thought he could re-install the X P product because he changed hardware (his hard drive)

④ And that the plaintiff allowed Kevin James to use the X P product on his company's computer's because they already had a full version installed, as instructed by the product's instructions (exhibit A)

⑤ The (EULA) leads the plaintiff to conclude and or to believe that he can use the X P product for 30 days before activation.

⑥ The (EULA) leads the plaintiff to conclude and or to believe that he can re-install the X P product because he replaced his hardware (hard drive)

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⑦ The (EULA) leads the plaintiff to conclude and/or to believe that he can activate the XP product with his separate license that came with his computer thru activating the product after the 30 day limit has expired, his original Certificate of Authenticity (C.O.A) on a sticker and label on his computer.

⑧ The product CD (exhibit A) even reads "All use subject to volume license agreement, meaning more than one use and can be activated with other license (C.O.A), which is a false depiction based on the E-mail (exhibit E) and even contradicts the (EULA); Evidence at trial was that Kevin James re-installed the XP product which the trial court did not refute, nor did Mr. James; Kevin James testified to the fact he had the plaintiff clean the P.C.'s up, and the plaintiff testified that he did clean up the computer's, from dust, grime and dirt, also by vacuuming the P.C.'s to remove dust ect, from the fan's on each machine so they would run better and cooler, and that plaintiff charged \$10 to \$20 per machine depending on how dirty it was.

On September 25th 2008, a jury of 12 found the plaintiff guilty on the indictments charged (exhibit's G, H); for his (fair use) of the Microsoft Windows product.

Also the State of Alabama was allowed by Microsoft, to change Microsoft's (EULA) to fit within the meanings of the indictments (exhibit, K) which was admitted into evidence at trial over the plaintiff's objection

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Other evidence presented at trial which the State of Alabama refused to refute was the plaintiff testimony that Officer Venita Edge who executed the search warrant, who told the plaintiff that she (Edge) "did not" care about Microsoft or its product, but that she did what she wanted to do.

Statement of Claim

Plaintiff brings this Complaint pursuant to 15 U.S.C. § 1125 (a) and Section 43 (a) of the Lanham Act, under False advertising and unfair practices; and Trade Regulations.

The Lanham Act imposes liability on any person who, in connection with any goods... uses in Commerce any word, term, name... or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which... is likely to cause confusion, or cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services or commercial activities by another person [-]

King v. AMES 179 F.3d 370 (5th Cir. 1999)

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(7)

The Supreme Court of Puerto Rico also relied extensively on Greenman as it identified (3) three types of product defects that could result in strict product's liability: which are; Manufacturing defects; design, defects; and defects arising from "inadequate" warnings or (Instructions); Greenman v. Yuba Power Products, INC., 59 Cal.2d 57, 27 Cal. Rptr. 697, 377 P.2d 897, 901 (1963)

① The (EULA) (exhibit B) instructs and informs the plaintiff that he has a 30 day limited use of the XP product, this is a false and misleading instruction, because the plaintiff was found guilty by a Court of law for using the XP product as it instructs him to do, and for his fair use of the product, before mandatory activation, his privacy was invaded, his property seized and he was humiliated, because he was in his 18th day of his 30 day limited use before mandatory activation,

② Again the (EULA) informs the plaintiff that he may activate the product with a separate license for the product and or activate the product under a different license key, this being done thru the activation process, this is misleading, and is a false instruction's on the part of Microsoft and the product and the (EULA), the plaintiff was found guilty for using a un-activated Windows XP product, and could activate the product using his original (C.O.A) that came with his P.C. at the end of the 30 day limited use of the product.

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③ Defendant Scott Stein a Microsoft representative, informed the Jefferson County Sheriff's department, (exhibit E) by E-mail, that the license Key provided with the XP product was only valid for one Machine, this is a false fact and a misleading fact, and at trial, Deputy Bridges agreed it was misleading and conflicts with the product's instructions (exhibit A) which clearly read it can be used on a Company (P.C.'s) with full version's of XP already installed, meaning more than (1) this was an inadequate disclosure and a misrepresentation by defendant Scott Stein, further more being a legal Counsel for Microsoft, he knows that different products and product Key's have different and many use's, so this representation was completely misleading and caused the Sheriff's department to execute a search warrant against the XP product which lead to (2) indictments and Criminal Convictions and caused the plaintiff to be humiliated and his privacy invaded and the seizure of his personal property

④ The instructions that were supplied with the XP product (exhibit A) is misleading and false, the plaintiff allowed Kevin James to use the XP product, because he run's a Company, and his Company's Computer's already had a full version of the product, this inadequate, and misleading instructions and or lable caused the plaintiff to be criminally indicted, convicted and humiliated and his property seized and his privacy invaded also without due process of law,

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(5) The plaintiff used the XP product for its intended use, and foreseeably how it could be used, furthermore, it had to be installed to a Computer for it to even be used, which was the proximate cause of the plaintiff's convictions, and loss of his property, liberty and humiliation and invasion of his privacy.

(6) The XP product had to be installed to even accept or decline to accept the (EULA) and in order to use the XP product, a user had to use the product Key that could be changed thru activation of the product, with the license Key that came with the Computer.

Conclusion

The facts are, that the (EULA) contains false and misleading statements of fact and descriptions and contradicts with the product's instructions, and mislead the plaintiff into believing he could use the XP product and change the license Key with the license that originally came with his Computer (C.O.A), at the end of the 30 day limited activation process.

Also the (EULA) reads that you may install one copy of the product only on (1) one Computer.

This conflicts with the XP product's instructions, (exhibit A) which says a Company may use it on its (P.C.'s) meaning more than (2) one, the instructions with the XP product conflict with the (EULA), the

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instructions are misleading and misled the plaintiff into believing he could allow Kevin James to use the XP product on his company computers, and activate them with their original (C.O.A) as well,

The plaintiff has been misled by the Microsoft XP products (EULA) and instructions which influenced him into using the XP product in the first place, the plaintiff was damaged by these inadequate instructions in that he lost his liberty, property, was humiliated, and his privacy invaded due to the misleading instructions and (EULA). The injury caused by the plaintiff's use of the XP product "CANNOT" be reversed, because of the product's false and misleading descriptions and the plaintiff has also lost his property without due process of law.

Microsoft and Bill Gates were the Copyright Owner's of the XP product at the time the plaintiff used the product in August 2007, (exhibit A) and Bill Gates refused to defend against his product see (exhibit L), and Microsoft is responsible for Scott Stein's actions and representations of the XP product.

Summary Judgment

The plaintiff hereby request and does demand a trial by jury in this case and

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Cause, The plaintiff also seeks \$ 10,000,000.⁰⁰ ten million dollars from each defendant and for each indictment in (exhibits G, H) and separately from each defendant, the defendants also should be ordered to pay the plaintiff the sum of \$ 50,000,000.⁰⁰ fifty million dollars in punitive damages for the liberty interest he lost due to losing his freedom and using the defendant's X P product based on a fair use standard.

The plaintiff also seeks an injunction requiring that all of Microsoft's products include that Microsoft reserves the right solely to prosecute civilly or criminally as owner of its copyrights,

The plaintiff also seeks attorney fees under 1981 §, and such other relief that this Honorable Court deems just and proper in this case and cause.

Wherefore for the above stated reasons, the plaintiff also states under the penalty of perjury that the above statement and claims are true and correct to the best of his knowledge and belief,

(11)

Sworn to before me
this 29th OCTOBER 2008
by Roger Owen Tyree
Notary Public

Respectfully Submitted
by Rodney Alverson affiant
Prose plaintiff
29769 6B-10
809 21st North
Birmingham Alabama
35203

my commission expires on

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Dec 16, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Defendant's address:

Exhibit List

- ① A, XP Product C.D.
- ② B, (EULA) Microsoft
- ③ C, Search warrant
- ④ D, Search warrant affidavit
- ⑤ E, E-mail / Scott Stein
- ⑥ F, Property Sheet
- ⑦ G, Indictment
- ⑧ H, Indictment
- ~~⑨ I, Computer sheet~~
- ~~⑩ J, Computer sheet~~
- ⑨ K, States (EULA) revised
- ⑩ L, Attorney's letter

- ① Microsoft Corporation
 - ② Bill Gates
 - ③ Scott Stein
- One Microsoft Way
Redmont, Washington
98052-7329