

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

SENTINEL INSURANCE COMPANY, LTD.

Plaintiff,

v.

CHICAGO COMPUTER CLUB, CORP.,  
XIADONG WANG a/k/a DANIEL WANG,  
and MICROSOFT CORPORATION

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY JUDGMENT**

NOW COMES Plaintiff, Sentinel Insurance Company, Ltd. (“Sentinel”), and as its Complaint for Declaratory Judgment against Defendants Chicago Computer Club Corp., Xiadong Wang a/k/a Daniel Wang, and Microsoft Corporation, alleges, states, and avers:

**JURISDICTION AND VENUE**

1. Jurisdiction in this matter is based upon diversity of citizenship pursuant to 28 U.S.C. § 1332(a)(1).
2. Plaintiff Sentinel Insurance Company (“Sentinel”) is a corporation organized under the laws of the State of Connecticut, with its principal place of business in Connecticut.
3. Defendant Chicago Computer Club Corp. (“CCCC”) is an Illinois corporation with its principal place of business in Illinois.
4. Defendants Xiadong Wang a/k/a Daniel Wang is an Illinois resident and is the President of CCCC.
5. Defendant Microsoft Corporation (“Microsoft”) is a Washington corporation with its principal place of business in Washington. Microsoft transacts substantial business in Illinois. It is

named as a potentially interested party by virtue of its status as the plaintiff in the Underlying Lawsuit.

6. Plaintiff brings this action to obtain a declaratory judgment finding that Sentinel has no duty to defend or indemnify CCCC or Wang (hereinafter referred to collectively as “CCCC”) in connection with a lawsuit filed in the United States District Court for the Northern District of Illinois and encaptioned, *Microsoft Corporation v. Chicago Computer Club, Corp. et al.* (N.D. Ill. No. 10-cv-7713) (“Underlying Lawsuit”), which results from CCCC’s alleged infringement of Microsoft’s copyrights and trademarks and unauthorized distribution of Microsoft software. A true and correct copy of the complaint in the Underlying Lawsuit is attached hereto as **Exhibit A**.

7. Diversity jurisdiction exists because: (a) there is complete diversity of citizenship between Sentinel and Defendants, and (b) the amount in controversy, including the potential costs of both defending and indemnifying CCCC in the Underlying Lawsuit, exceeds \$75,000.

8. Venue is appropriate under 28 U.S.C. § 1391 because CCCC’s principal place of business is in the Northern District of Illinois, and many of the acts from which the Underlying Lawsuit originated, *i.e.*, the insurance contracts at issue and the alleged wrongs, occurred in the Northern District of Illinois.

### **UNDERLYING LAWSUIT**

9. The Complaint in the Underlying Lawsuit was filed on December 3, 2010.

10. The Complaint alleges, in pertinent part, that CCCC continued to distribute unauthorized copies of Microsoft software even after it had stipulated to a permanent injunction, which was entered on December 17, 2008, which prohibited CCCC from engaging in such misconduct. The lawsuit that resulted in the permanent injunction was filed in the United States District Court for the Northern District of Illinois on July 14, 2006 and was encaptioned *Microsoft*

*Corporation v. Chicago Computer Club Corp.*, No. 06-C-3812. A true and correct copy of the stipulated permanent injunction against defendants is attached hereto as **Exhibit B**.

11. The Complaint alleges that CCCC infringed Microsoft's copyrights and trademarks, falsely designated the origin of software and/or related components, and engaged in unfair competition.

12. The Complaint alleges that despite the prior lawsuit and permanent injunction, in July 2010, CCCC distributed to an investigator computer systems with unauthorized copies of Windows XP installed.

13. The Complaint alleges that CCCC willfully infringed Microsoft's copyrights and acted with willful blindness and in reckless disregard of Microsoft's copyrights.

14. The Complaint contains the following causes of action against all Defendants:

- Count I – Copyright Infringement – 17 U.S.C. § 501, et seq.;
- Count II – Federal Trademark Infringement – 15 U.S.C. § 1114;
- Count III – False Designation of Origin, False Description and Representation of Microsoft Packaging – 15 U.S.C. § 1125 et seq.;
- Count IV – Illinois Common Law Unfair Competition;
- Count V – Violation of the Illinois Deceptive Business Practices Act – 815 ILCS 505/1, et seq.;
- Count VI – Violation of the Illinois Uniform Deceptive Trade Practices Act – 815 ILCS 510/1, et seq.;
- Count VII – For Imposition of a Constructive Trust Upon Illegal Profits;
- Count VIII – Accounting.

15. The Complaint seeks general, special, actual and statutory damages arising from, in pertinent part, CCCC's willful infringement of Microsoft's copyrights. The Complaint also seeks injunctive relief, an accounting, the imposition of a constructive trust upon Defendants' illegal profits, attorney's fees, and "costs of suit."

### **SENTINEL POLICY**

16. Sentinel issued Policy No. 83 SBA ZV6168 to CCCC effective from November 18, 2010 to November 18, 2011. A true and correct copy of the Policy is attached hereto as **Exhibit C**.

17. The Policy contains the following insuring agreement:

#### **Insuring Agreement**

**a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of ... "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for ... "property damage" or "personal and advertising injury" to which this insurance does not apply.

\* \* \*

**b.** This insurance applies:

**(1)** To ... "property damage" only if:

**(a)** The ... "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

**(b)** The ... "property damage" occurs during the policy period; and

**(c)** Prior to the policy period, no insured listed under Paragraph **1.** of Section **C.** – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the ... "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee"

knew, prior to the policy period, that the ... “property damage” occurred, then any continuation, change or resumption of such ... “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

(2) To “personal and advertising injury” caused by an offense arising out of your business, but only if the offense was committed in the “coverage territory” during the policy period.

c. ... “[P]roperty damage” will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. – Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim:

(1) Reports all, or any part, of the ... “property damage” to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the ... “property damage”; or

(3) Becomes aware by any other means that ... “property damage” has occurred or has begun to occur.

18. The Policy contains the following definitions, as amended by a Cyberflex Endorsement (SS 40 26 04 05):

1. “Advertisement” means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;
- (6) The Internet;

b. The Internet, but only that part of a web site that is about goods, products or services for the purpose of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

\* \* \*

2. “Advertising idea” means any idea for an “advertisement”.

\* \* \*

16. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

17. “Personal and advertising injury” means injury, including consequential “bodily injury”, arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products or services;
- e. Oral, written or electronic publication of material that violates a person’s right of privacy.
- f. Copying, in your “advertisement” or on “your web site” a person’s or organization’s “advertising idea” or style of “advertisement”;
- g. Infringement of copyright, slogan, or title of any literary or artistic work, in your “advertisement” or on “your web site”;  
or
- h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

\* \* \*

20. “Property damage” means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of “occurrence” that caused it.

As used in this definition, “electronic data” is not tangible property.

19. The Policy contains the following definition of “your web site”:

“Your web site” means a web page or set of interconnected web pages prepared and maintained by you, or by others on your behalf, that is accessible over a computer network.

20. The Policy contains the following exclusions, as amended by the Cyberflex

Endorsement:

**B. EXCLUSIONS**

**1. Applicable To Business Liability Coverage**

This insurance does not apply to:

**a. Expected Or Intended Injury**

- (1) “Bodily injury” or “property damage” expected or intended from the standpoint of the insured. ...
- (2) “Personal and advertising injury” arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting “personal and advertising injury”.

\* \* \*

**p. Personal And Advertising Injury**

“Personal and advertising injury”:

(1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;

(2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;

\* \* \*

(4) Arising out of any breach of contract ...;

\* \* \*

(7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement" or on "your web site", of

(a) Copyright;

(b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work.

### **GROUND FOR DECLARATORY JUDGMENT**

21. Hartford incorporates by reference paragraphs 1-19 above as if fully stated herein.

22. The Underlying Lawsuit does not allege "property damage" caused by an "occurrence," as those terms are defined in the Policy.

23. The Underlying Lawsuit does not allege "personal and advertising injury," as that term is defined in the Policy.



24. To the extent any “personal and advertising injury” is alleged in the Underlying Lawsuit, Exclusion (p)(7) of the Policy precludes coverage because any such “personal and advertising injury” did not occur in CCCC’s “advertisement.”

25. To the extent any “property damage” is alleged in the Underlying Lawsuit, Exclusion (a)(1) of the Policy precludes coverage because any such “property damage” would have been expected or intended from the standpoint of the insured, *i.e.*, that the infringement of Microsoft’s copyrights and distribution of unauthorized copies of Microsoft’s software was wrongful and in violation of the permanent injunction.

26. To the extent any “personal and advertising injury” is alleged in the Underlying Lawsuit, Exclusion (a)(2) of the Policy precludes coverage because any such “personal and advertising injury” would have been with the expectation of inflicting “personal and advertising injury,” *i.e.*, that CCCC was aware that its use of Microsoft’s copyrighted materials would harm Microsoft.

27. To the extent any “personal and advertising injury” is alleged in the Underlying Lawsuit, Exclusion (p)(1) of the Policy precludes coverage because any such “personal and advertising injury” would have arisen out of the publication of material with knowledge of falsity, *i.e.*, the use, reproduction, copies, or imitations of Microsoft’s copyrighted materials in CCCC’s advertisements would signify to a consumer that the product was endorsed, sponsored, or approved by Microsoft, wherein fact it was not approved or authorized by Microsoft.

28. To the extent any “property damage” or “personal and advertising injury” is alleged in the Underlying Lawsuit, the known loss doctrine precludes coverage because CCCC by virtue of the permanent injunction was or should have been aware when it purchased the Policy that there was

a substantial probability that its use of Microsoft's copyrights and distribution of the counterfeit software would result in it being liable to Microsoft for damages.

29. To the extent any "personal and advertising injury" is alleged in the Underlying Lawsuit, Exclusion (p)(2) of the Policy precludes coverage for any publication of infringing materials following the inception date of the Policy, *i.e.*, November 18, 2010, which are substantially similar to material published prior to inception date of the Policy, including but not limited to any advertising and marketing of copies of Microsoft's software, including reproductions, copies, or imitations of Microsoft's copyrighted materials and logos.

30. To the extent any "personal and advertising injury" is alleged in the Underlying Lawsuit, Exclusion (p)(4) of the Policy precludes coverage for any "personal and advertising injury" arising out of a breach of the stipulated permanent injunction.

31. There is no coverage under the Policy for any statutory damages to the extent they are fines or penalties.

32. There is no coverage under the Policy for attorneys' fees, "costs of suit," injunctive relief, disgorgement of profits, an accounting, or a constructive trust.

33. There is no coverage under the Policy for any special or treble damages to the extent they are punitive in nature because they would be uninsurable under Illinois law and/or public policy.

34. Hartford has no duty to defend or indemnify CCCC in connection with the Underlying Lawsuit.

35. An actual controversy exists between Hartford, on the one hand, and all Defendants, on the other hand, and by the terms and provisions of Rule 57 of the Federal Rules of Civil

Procedure and 28 U.S.C. §§ 2201 and 2202, this Court is invested with the power to declare the rights and liabilities of the parties hereto and to grant such relief as it deems necessary and proper.

WHEREFORE, Plaintiff, Sentinel Insurance Company respectfully requests this Honorable Court to declare and adjudge the controversy as follows:

A. Declare that Sentinel has no duty to defend Chicago Computer Club Corp. in the Underlying Lawsuit;

B. Declare that Sentinel has no duty to defend Xiadong Wang a/k/a Daniel Wang in the Underlying Lawsuit;

C. Declare that Sentinel has no duty to indemnify Chicago Computer Club Corp. for any loss or damages arising from Underlying Lawsuit;

D. Declare that Sentinel has no duty to indemnify Xiadong Wang a/k/a Daniel Wang for any loss or damages arising from Underlying Lawsuit;

E. Grant any other relief that this Honorable Court deems just and equitable under the circumstances, including the award of costs.

Respectfully submitted,

SENTINEL INSURANCE COMPANY

By: /s/ Jeffrey A. Goldwater  
One of its Attorneys

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