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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANNE L. KELLEY, et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

No. C07-475MJP

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION TO COMPEL

This matter comes before the Court on Plaintiffs' motion to compel discovery and to deem certain requests for admission admitted. (Dkt. No. 36.) This is a putative class action challenging the lawfulness of Microsoft's "Windows Vista Capable" program. In this motion, Plaintiffs request that the following Requests for Admission ("RFAs") be deemed admitted: RFAs 4-6, 10-13, 16-23, 25, 27, 29, 31, 33, 45-46, 62, 64, 76-79, 80-93, and 97. Plaintiffs also request that the Court strike Microsoft's objections to Requests for Production ("RFPs") 2-4 and 8-9 in Plaintiffs' First Set of Interrogatories and Requests for Production of Documents and compel full and complete responses to those RFPs.¹ Finally, Plaintiffs request that the Court strike Microsoft's objections to Interrogatory No. 5. and RFP 20 in Plaintiffs' Third Set of Interrogatories and Requests for Production and compel full and complete answers and responses to that interrogatory and RFP.

¹ Plaintiffs originally made requests regarding a larger number of RFPs, but withdrew some of their requests in their reply brief.

1 Having considered the motion, Defendant's response (Dkt. No. 40), Plaintiffs' reply (Dkt. No.
2 46), all documents submitted in support thereof and the record herein, the Court GRANTS IN PART
3 and DENIES IN PART Plaintiffs' motion and ORDERS as follows:

4 (1) Within ten (10) calendar days, Defendant Microsoft must:

5 (a) review its responses to the RFAs using Webster's English Dictionary to define the at-
6 issue terms;

7 (b) answer all of the disputed RFAs in the following format:

8 (i) admit or deny the RFA as written,

9 (ii) identify each term or word it finds ambiguous,

10 (iii) explain why it cannot answer the RFA as written, and/or

11 (iv) if only a portion of the RFA can be admitted as written, respond by identifying
12 *without re-writing* that portion of the RFA that can be admitted;

13 (2) If Plaintiffs find Microsoft's answers to the RFAs objectionable, they may raise the issues with
14 the Court at a conference before the class certification hearing;

15 (3) Microsoft does not need to respond at this time to RFPs 2-4 and 8-9. The issues raised in
16 these RFPs go to the merits of Plaintiffs' claims and need not be responded to unless and until
17 the Court certifies a class;

18 (4) Microsoft must respond in part to Interrogatory No. 5 and RFP 20. Specifically, Microsoft
19 must respond to requests for all consumer class action lawsuits within the past five (5) years
20 that concern claims related to consumer protection and/or false advertising including but not
21 limited to any class actions concerning Microsoft's 'Windows Vista Capable' and 'Express
22 Upgrade' programs.

23 (5) All other requests are DENIED.

24 Dated: October 12, 2007.



25 Marsha J. Pechman
26 United States District Judge