

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

IMMERSION CORPORATION, a
Delaware corporation,

Defendant.

No. CV7-936RSM

**MICROSOFT'S REPLY IN
SUPPORT OF ITS MOTION TO
COMPEL RESPONSES TO
DISCOVERY RELATED TO
IMMERSION'S COUNTERCLAIM**

**NOTED ON MOTION CALENDAR:
MAY 9, 2008**

Immersion responds to Microsoft's Motion to Compel by making yet another promise to answer Microsoft's interrogatories and to produce documents.

Microsoft has been waiting since October 2007 to learn the basis for Immersion's claim that it was harmed by Microsoft's inadvertent and limited disclosure of two numbers relating to the Sony Option. In January 2008, Microsoft conferred with Immersion regarding its lack of response to which Immersion agreed to produce all evidence in its possession by February 18, 2008. (Marks-Dias Decl. ¶¶5, Dkt. #81). Immersion did not produce any responsive documents, nor did it supplement its interrogatory responses. *Id.* ¶7. On April 17, 2008, when disclosures of expert reports were due, Immersion did not disclose an expert on

MICROSOFT'S REPLY IN SUPPORT OF ITS MOT. TO COMPEL RESP. TO
DISCOVERY RELATED TO COUNTERCLAIM (No. CV7-936RSM) - 1
4853-0637-0306.01
050908/0959/20363.00411

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1 any subject related to its Counterclaim, even though it has implied that it could not
2 answer these interrogatories until expert disclosures.

3 Now, Immersion asks for additional time, insisting that the Court should
4 accept its promises and decline to rule on Microsoft's motion. Immersion offers no
5 reason why it could not respond to Microsoft's requests in a timely fashion.
6 Immersion does not indicate in any way what its responses will state or how such
7 responses will be satisfy its discovery obligations. It merely states that it will
8 provide an unspecified response. Further delay is not justified.

9 The Court should dismiss Immersion's Counterclaim for the reasons set
10 forth in Microsoft Corporation's Motion for Partial Summary Judgment Regarding
11 Immersion's Counterclaim (Dkt. #74). Immersion's failure to respond to discovery
12 on this claim provides another ground for dismissing the claim.

13 If the Court does not grant Microsoft's motion to dismiss the counterclaim,
14 Microsoft requests that the Court issue an order granting Microsoft's Motion to
15 Compel, requiring Immersion to fully answer Microsoft's First Interrogatories Nos.
16 6 and 7 and to produce any responsive documents to Microsoft's First Request for
17 Production No. 31 by May 15, 2008. This is necessary in order to avoid additional
18 Court involvement if Immersion fails to follow through on its promises.

19 DATED this 9th day of May, 2008.

20 RIDDELL WILLIAMS P.S.

21 By /s Wendy E. Lyon

22 Paul J. Kundtz, WSBA #13548

23 Blake Marks-Dias, WSBA #28169

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Attorneys for Plaintiff MICROSOFT CORPORATION

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies that on the date noted below, I electronically filed the
3 foregoing document titled **MICROSOFT'S REPLY IN SUPPORT OF ITS MOTION**
4 **TO COMPEL RESPONSES TO DISCOVERY RELATED TO IMMERSION'S**
5 **COUNTERCLAIM** with the Clerk of the Court using the CM/ECF system which will send
6 notification of such filing to the following:

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17 Executed at Seattle, Washington this 9th day of May, 2008.

18
19 

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