NBI – MICROSOFT CORPORATION & LOTUS DEVELOPMENT CORP., PETITIONERS, VS. JUDY C. HWANG, BENITO KEH & YVONNE K. CHUA/BELTRON COMPUTER PHILIPPINES INC., JONATHAN K. CHUA, EMILY K. ...

G.R. NO. 147043. June 21, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari[1] of the Resolutions[2] of the Department of Justice dismissing for "lack of merit and insufficiency of evidence" petitioner Microsoft Corporation's complaint against respondents for copyright infringement and unfair competition.

The Facts

Petitioner Microsoft Corporation ("Microsoft"), a Delaware, United States corporation, owns the copyright and trademark to several computer software.[3] Respondents Benito Keh and Yvonne Keh are the President/Managing Director and General Manager, respectively, of respondent Beltron Computer Philippines, Inc. ("Beltron"), a domestic corporation. Respondents Jonathan K. Chua, Emily K. Chua, Benito T. Sanchez, and Nancy I. Velasco are Beltron's Directors. On the other hand, respondents Alfonso Chua, Alberto Chua, Judy K. Chua Hwang, Sophia Ong, and Deanna Chua are the Directors of respondent Taiwan Machinery Display & Trade Center, Inc. ("TMTC"), also a domestic corporation.[4]

In May 1993, Microsoft and Beltron entered into a Licensing Agreement ("Agreement"). Under Section 2(a) of the Agreement, as amended in January 1994, Microsoft authorized Beltron, for a fee, to:

> (i) xxx reproduce and install no more than one (1) copy of [Microsoft] software on each Customer System hard disk or Read Only Memory ("ROM"); [and]
>
> (ii) xxx distribute directly or indirectly and license copies of the Product (reproduced as per Section 2(a)(i) and/or acquired from Authorized Replicator or Authorized Distributor) in object code form to end users[.] xxxx[5]

The Agreement also authorized Microsoft and Beltron to terminate the contract if the other fails to comply with any of the Agreement's provisions. Microsoft terminated the Agreement effective 22 June 1995 for Beltron's non-payment of royalties.[6]

Afterwards, Microsoft learned that respondents were illegally copying and selling Microsoft software. Consequently, Microsoft, through its Philippine agent,[7] hired the services of Pinkerton Consulting Services ("PCS"), a private investigative firm. Microsoft also sought the assistance of the National Bureau of Investigation ("NBI"). On 10 November 1995, PCS employee John Benedic[8] Sacriz ("Sacriz") and NBI agent Dominador

Samiano, Jr. ("Samiano"), posing as representatives of a computer shop,[9] bought computer hardware (central processing unit ("CPU") and computer monitor) and software (12 computer disks ("CDs") in read-only memory ("ROM") format) from respondents. The CPU contained pre-installed[10] Microsoft Windows 3.1 and MS-DOS software. The 12 CD-ROMs, encased in plastic containers with Microsoft packaging, also contained Microsoft software.[11] At least two of the CD-ROMs were "installers," so-called because they contain several software (Microsoft only or both Microsoft and non-Microsoft).[12] Sacriz and Samiano were not given the Microsoft end-user license agreements, user's manuals, registration cards or certificates of authenticity for the articles they purchased. The receipt issued to Sacriz and Samiano for the CPU and monitor bore the heading "T.M.T.C. (PHILS.) INC. BELTRON COMPUTER."[13] The receipt for the 12 CD-ROMs did not indicate its source although the name "Gerlie" appears below the entry "delivered by."[14]

On 17 November 1995, Microsoft applied for search warrants against respondents in the Regional Trial Court, Branch 23, Manila ("RTC").[15] The RTC granted Microsoft's application and issued two search warrants ("Search Warrant Nos. 95-684 and 95-685").[16] Using Search Warrant Nos. 95-684 and 95-685, the NBI searched the premises of Beltron and TMTC and seized several computer-related hardware, software, accessories, and paraphernalia. Among these were 2,831 pieces of CD-ROMs containing Microsoft software.[17]

Based on the articles obtained from respondents, Microsoft and a certain Lotus Development Corporation ("Lotus Corporation") charged respondents before the Department of Justice ("DOJ") with copyright infringement under Section 5(A) in relation to Section 29 of Presidential Decree No. 49, as amended, ("PD 49")[18] and with unfair competition under Article 189(1)[19] of the Revised Penal Code. In its Complaint ("I.S. No. 96-193"), which the NBI indorsed, Microsoft alleged that respondents illegally copied and sold Microsoft software.[20]

In their joint counter-affidavit, respondents Yvonne Keh ("respondent Keh") and Emily K. Chua ("respondent Chua") denied the charges against respondents. Respondents Keh and Chua alleged that: (1) Microsoft's real intention in filing the complaint under I.S. No. 96-193 was to pressure Beltron to pay its alleged unpaid royalties, thus Microsoft should have filed a collection suit instead of a criminal complaint; (2) TMTC bought the confiscated 59 boxes of MS-DOS CDs from a Microsoft dealer in Singapore (R.R. Donnelly); (3) respondents are not the "source" of the Microsoft Windows 3.1 software pre-installed in the CPU bought by Sacriz and Samiano, but only of the MS-DOS software; (4) Microsoft's alleged proof of purchase (receipt) for the 12 CD-ROMs is inconclusive because the receipt does not indicate its source; and (5) respondents Benito Keh, Jonathan K. Chua, Alfonso Chua, Alberto Chua, Judy K. Chua Hwang, Sophia Ong, and Deanna Chua are stockholders of Beltron and TMTC in name only and thus cannot be held criminally liable.[21]

The other respondents did not file counter-affidavits.

Meanwhile, respondents moved to quash Search Warrant Nos. 95-684 and 95-685. The RTC partially granted their motion in its Order of 16 April 1996. Microsoft sought reconsideration but the RTC denied Microsoft's motion in its Order of 19 July 1996. Microsoft appealed to the Court of Appeals in CA-G.R. CV No. 54600. In its Decision of 29 November 2001, the Court of Appeals granted Microsoft's appeal and set aside the RTC Orders of 16 April 1996 and 19 July 1996. The Court of Appeals' Decision became final on 27 December 2001.

The DOJ Resolutions

In the Resolution of 26 October 1999, DOJ State Prosecutor Jocelyn A. Ong ("State Prosecutor Ong") recommended the dismissal of Microsoft's complaint for lack of merit and insufficiency of evidence. State Prosecutor Ong also recommended the dismissal of Lotus Corporation's complaint for lack of interest to prosecute and for insufficiency of evidence. Assistant Chief State Prosecutor Lualhati R. Buenafe ("Assistant Chief State Prosecutor Buenafe") approved State Prosecutor Ong's recommendations.[22] The 26 October 1999

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Resolution reads in part:

> [T]wo (2) issues have to be resolved in this case, namely:
>
> a) Whether or not Beltron Computer and/or its stockholders should be held liable for the offenses charged.
>
> b) Whether or not prima facie case exist[s] against Taiwan Machinery Display and Trade Center, Inc. (TMTC) for violation of the offense charged.
>
> Complainant had alleged that from the time the license agreement was terminated, respondent/s is/are no longer authorized to copy/distribute/sell Microsoft products. However, respondent/s averred that the case is civil in nature, not criminal, considering that the case stemmed only out of the desire of complainant to collect from them the amount of US$135,121.32 and that the contract entered into by the parties cannot be unilaterally terminated.
>
> In the order of Honorable William Bayhon dated July 19, 1996 [denying reconsideration to the Order partially quashing the search warrants], he observed the following:
> "It is further argued by counsel for respondent that the act taken by private complainant is to spite revenge against the respondent Beltron for the latter failed to pay the alleged monetary obligation in the amount of US$135,121.32. That respondent has some monetary obligation to complainant which is not denied by the complainant."
>
> ["]It appears therefore that prior to the issuance of the subject search warrants, complainant had some business transactions with the respondent [Beltron] along the same line of products. Complainant failed to reveal the true circumstances existing between the two of them as it now appears, indeed the search warrant[s] xxx [are] being used as a leverage to secure collection of the money obligation which the Court cannot allow."

From said order, it can be gleaned that the [RTC] xxx, had admitted that the search warrants applied for by complainant were merely used as a leverage for the collection of the alleged monetary obligation of the respondent/s.

From said order, it can be surmise (sic) that the obligations between the parties is civil in nature not criminal.

Moreover, complainant had time and again harped that respondent/s is/are not authorized to sell/copy/distribute Microsoft products at the time of the execution of the search warrants. Still, this office has no power to pass upon said issue for one has then to interpret the provisions of the contract entered into by the parties, which question, should be raised in a proper civil proceeding.

Accordingly, absen[t] a resolution from the proper court of (sic) whether or not the contract is still binding between the parties at the time of the execution of the search warrants, this office cannot pass upon the issue of whether respondent/s is or are liable for the offense charged.

As to the second issue, we find for the respondent/s. TMTC had provided sufficient evidence such as pro-forma invoice from R.R. Donnelley; Debt Advice of the Bank of Commerce; Official Receipts from the Bureau of Customs; and Import Entry Declaration of the Bureau of Customs to prove that indeed the Microsoft software in their possession were bought from Singapore.

Thus, respondent/s in this case has/have no intent to defraud the public, as provided under Article 189 of the Revised Penal Code, for they bought said Microsoft MS-DOS 6.0 from an alleged licensee of Microsoft in Singapore, with all the necessary papers. In their opinion, what they have are genuine Microsoft software, therefore no unfair competition exist.

Moreover, violation of P.D. 49 does not exist, for respondent/s was/were not the manufacturers of the Microsoft

software seized and were selling their products as genuine Microsoft software, considering that they bought it from a Microsoft licensee.

Complainant, on the other hand, considering that it has the burden of proving that the respondent/s is/are liable for the offense charged, has not presented any evidence that the items seized namely the 59 boxes of MS-DOS 6.0 software are counterfeit.

The certification issued on December 12, 1995 by Christopher Austin, Corporate Attorney of the complainant, does not disclose this fact. For the term used by Mr. Austin was that the items seized were unauthorized.

The question now, is whether the products were unauthorized because TMTC has no license to sell Microsoft products, or is it unauthorized because R.R. Donnelley has no authority to sell said products here in the Philippines.

Still, to determine the culpability of the respondents, complainant should present evidence that what is in the possession of the respondent/s is/are counterfeit Microsoft products.

This it failed to do.[23]

Microsoft sought reconsideration and prayed for an ocular inspection of the articles seized from respondents. However, in the Resolution of 3 December 1999, Assistant Chief State Prosecutor Buenafe, upon State Prosecutor Ong's recommendation, denied Microsoft's motion.[24]

Microsoft appealed to the Office of the DOJ Secretary. In the Resolution of 3 August 2000, DOJ Undersecretary Regis V. Puno dismissed Microsoft's appeal.[25] Microsoft sought reconsideration but its motion was denied in the Resolution of 22 December 2000.[26]

Hence, this petition. Microsoft contends that:

> - THE DOJ ERRED IN RULING THAT THE LIABILITY OF RESPONDENTS WAS ONLY CIVIL IN NATURE BY VIRTUE OF THE LICENSE AGREEMENT.
>
> - THE DOJ MISAPPRECIATED THE FACT THAT RESPONDENTS WERE ENGAGED IN THE ILLEGAL IMPORTATION, SALE AND DISTRIBUTION OF COUNTERFEIT SOFTWARE AS EVIDENCED BY THE ITEMS PURCHASED DURING THE TEST-BUY AND THE ITEMS SEIZED FROM RESPONDENTS' PREMISES.
>
> - THE DOJ MISAPPRECIATED THE LAW ON COPYRIGHT INFRINGEMENT AND UNFAIR COMPETITION.
>
> - ONLY TWO OUT OF THE NINE RESPONDENTS BOTHERED TO FILE COUNTER-AFFIDAVITS; HENCE, THE CHARGES AGAINST SEVEN [RESPONDENTS] REMAIN UNCONTROVERTED.[27]

In its Comment, filed by the Solicitor General, the DOJ maintains that it did not commit grave abuse of discretion in dismissing Microsoft's complaint.[28]

For their part, respondents allege in their Comment that Microsoft is guilty of forum-shopping because its petition in CA-G.R. CV No. 54600 was filed ahead of, and has a "common interest" with, this petition. On the merits, respondents reiterate their claims in their motion to quash Search Warrant Nos. 95-684 and 95-685 that the articles seized from them were either owned by others, purchased from legitimate sources, or not produced by Microsoft. Respondents also insist that the Agreement entitled Beltron to "copy and replicate or reproduce" Microsoft products. On the confiscated 2,831 CD-ROMs, respondents allege that a certain corporation[29] left the CD-ROMs with them for safekeeping. Lastly, respondents claim that there is no proof that the CPU Sacriz and

Samiano bought from them contained pre-installed Microsoft software because the receipt for the CPU does not indicate "[s]oftware hard disk." [30]

In its Reply, Microsoft counters that it is not liable for forum-shopping because its petition in CA-G.R. CV No. 54600 involved the Orders of the RTC partially quashing Search Warrant Nos. 95-684 and 95-685 while this petition concerns the DOJ Resolutions dismissing its complaint against respondents for copyright infringement and unfair competition. On the merits, Microsoft maintains that respondents should be indicted for copyright infringement and unfair competition.[31]

The Issues

The petition raises the following issues:

> (1) Whether Microsoft engaged in forum-shopping; and
>
> (2) Whether the DOJ acted with grave abuse of discretion in not finding probable cause to charge respondents with copyright infringement and unfair competition.

The Ruling of the Court

The petition has merit.

Microsoft did not Engage in Forum-Shopping

Forum-shopping takes place when a litigant files multiple suits involving the same parties, either simultaneously or successively, to secure a favorable judgment.[32] Thus, it exists where the elements of litis pendentia are present, namely: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to res judicata in the other case.[33] Forum-shopping is an act of malpractice because it abuses court processes.[34] To check this pernicious practice, Section 5, Rule 7 of the 1997 Rules of Civil Procedure requires the principal party in an initiatory pleading to submit a certification against forum-shopping.[35] Failure to comply with this requirement is a cause for the dismissal of the case and, in case of willful forum-shopping, for the imposition of administrative sanctions.

Here, Microsoft correctly contends that it is not liable for forum-shopping. What Microsoft appealed in CA-G.R. CV No. 54600 were the RTC Orders partially quashing Search Warrant Nos. 95-684 and 95-685. In the present case, Microsoft is appealing from the DOJ Resolutions dismissing its complaint against respondents for copyright infringement and unfair competition. Thus, although the parties in CA-G.R. CV No. 54600 and this petition are identical, the rights asserted and the reliefs prayed for are not such that the judgment in CA-G.R. CV No. 54600 does not amount to res judicata in the present case. This renders forum-shopping impossible here.

The DOJ Acted with Grave Abuse of Discretionin not Finding Probable Cause to Charge Respondents withCopyright Infringement and Unfair Competition

Generally, this Court is loath to interfere in the prosecutor's discretion in determining probable cause[36] — unless such discretion is shown to have been abused.[37] This case falls under the exception.

Unlike the higher quantum of proof beyond reasonable doubt required to secure a conviction, it is the lower standard of probable cause which is applied during the preliminary investigation to determine whether the accused should be held for trial. This standard is met if the facts and circumstances incite a reasonable belief that the act or omission complained of constitutes the offense charged. As we explained in Pilapil v. Sandiganbayan:[38]

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> The term [probable cause] does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

PD 49 and Article 189(1)

Section 5[39] of PD 49 ("Section 5") enumerates the rights vested exclusively on the copyright owner. Contrary to the DOJ's ruling, the gravamen of copyright infringement is not merely the unauthorized "manufacturing" of intellectual works but rather the unauthorized performance of any of the acts covered by Section 5. Hence, any person who performs any of the acts under Section 5 without obtaining the copyright owner's prior consent renders himself civilly[40] and criminally[41] liable for copyright infringement. We held in Columbia Pictures, Inc. v. Court of Appeals:[42]

> Infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and, therefore, protected by law, and infringement of copyright, or piracy, which is a synonymous term in this connection, consists in the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by statute on the owner of the copyright. (Emphasis supplied)

Significantly, under Section 5(A), a copyright owner is vested with the exclusive right to "copy, distribute, multiply, [and] sell" his intellectual works.

On the other hand, the elements of unfair competition under Article 189(1)[43] of the Revised Penal Code are:

> (a) That the offender gives his goods the general appearance of the goods of another manufacturer or dealer;
>
> (b) That the general appearance is shown in the (1) goods themselves, or in the (2) wrapping of their packages, or in the (3) device or words therein, or in (4) any other feature of their appearance[;]
>
> (c) That the offender offers to sell or sells those goods or gives other persons a chance or opportunity to do the same with a like purpose[; and]
>
> (d) That there is actual intent to deceive the public or defraud a competitor.[44]

The element of intent to deceive may be inferred from the similarity of the goods or their appearance.[45]

On the Sufficiency of Evidence toSupport a Finding of Probable CauseAgainst Respondents

In its pleadings filed with the DOJ, Microsoft invoked three clusters of evidence to support its complaint against respondents, namely: (1) the 12 CD-ROMs containing Microsoft software Sacriz and Samiano bought from respondents; (2) the CPU with pre-installed Microsoft software Sacriz and Samiano also purchased from respondents; and (3) the 2,831 CD-ROMs containing Microsoft software seized from respondents.[46] The DOJ, on the one hand, refused to pass upon the relevance of these pieces of evidence because: (1) the "obligations between the parties is civil and not criminal" considering that Microsoft merely sought the issuance of Search Warrant Nos. 95-684 and 95-685 to pressure Beltron to pay its obligation under the Agreement, and (2) the validity of Microsoft's termination of the Agreement must first be resolved by the "proper court." On the other hand, the DOJ ruled that Microsoft failed to present evidence proving that what were obtained from respondents were counterfeit Microsoft products.

This is grave abuse of discretion.[47]

First. Being the copyright and trademark owner of Microsoft software, Microsoft acted well within its rights in

filing the complaint under I.S. No. 96-193 based on the incriminating evidence obtained from respondents. Hence, it was highly irregular for the DOJ to hold, based on the RTC Order of 19 July 1996, that Microsoft sought the issuance of Search Warrant Nos. 95-684 and 95-685, and by inference, the filing of the complaint under I.S. No. 96-193, merely to pressure Beltron to pay its overdue royalties to Microsoft. Significantly, in its Decision in CA-G.R. CV No. 54600 dated 29 November 2001, the Court of Appeals set aside the RTC Order of 19 July 1996. Respondents no longer contested that ruling which became final on 27 December 2001.

Second. There is no basis for the DOJ to rule that Microsoft must await a prior "resolution from the proper court of (sic) whether or not the [Agreement] is still binding between the parties." Beltron has not filed any suit to question Microsoft's termination of the Agreement. Microsoft can neither be expected nor compelled to wait until Beltron decides to sue before Microsoft can seek remedies for violation of its intellectual property rights.

Furthermore, some of the counterfeit CD-ROMs bought from respondents were "installer" CD-ROMs containing Microsoft software only or both Microsoft and non-Microsoft software. These articles are counterfeit per se because Microsoft does not (and could not have authorized anyone to) produce such CD-ROMs. The copying of the genuine Microsoft software to produce these fake CD-ROMs and their distribution are illegal even if the copier or distributor is a Microsoft licensee. As far as these installer CD-ROMs are concerned, the Agreement (and the alleged question on the validity of its termination) is immaterial to the determination of respondents' liability for copyright infringement and unfair competition.

Lastly, Section 10(b)[48] of the Agreement provides that Microsoft's "rights and remedies" under the contract are "not xxx exclusive and are in addition to any other rights and remedies provided by law or [the] Agreement." Thus, even if the Agreement still subsists, Microsoft is not precluded from seeking remedies under PD 49 and Article 189(1) of the Revised Penal Code to vindicate its rights.

Third. The Court finds that the 12 CD-ROMs ("installer" and "non-installer") and the CPU with pre-installed Microsoft software Sacriz and Samiano bought from respondents and the 2,831 Microsoft CD-ROMs seized from respondents suffice to support a finding of probable cause to indict respondents for copyright infringement under Section 5(A) in relation to Section 29 of PD 49 for unauthorized copying and selling of protected intellectual works. The installer CD-ROMs with Microsoft software, to repeat, are counterfeit per se. On the other hand, the illegality of the "non-installer" CD-ROMs purchased from respondents and of the Microsoft software pre-installed in the CPU is shown by the absence of the standard features accompanying authentic Microsoft products, namely, the Microsoft end-user license agreements, user's manuals, registration cards or certificates of authenticity.

On the 2,831 Microsoft CD-ROMs[49] seized from respondents, respondent Beltron, the only respondent who was party to the Agreement, could not have reproduced them under the Agreement as the Solicitor General[50] and respondents contend. Beltron's rights[51] under the Agreement were limited to:

(1) the "reproduc[tion] and install[ation of] no more than one copy of [Microsoft] software on each Customer System hard disk or Read Only Memory ("ROM")"; and

(2) the "distribut[ion] xxx and licens[ing of] copies of the [Microsoft] Product [as reproduced above] and/or acquired from Authorized Replicator or Authorized Distributor) in object code form to end users."

The Agreement defines an authorized replicator as "a third party approved by [Microsoft] which may reproduce and manufacture [Microsoft] Product[s] for [Beltron] xxx."[52] An authorized distributor, on the other hand, is a "third party approved by [Microsoft] from which [Beltron] may purchase MED[53] Product."[54] Being a mere reproducer/installer of one Microsoft software copy on each customer's hard disk or ROM, Beltron could only

have acquired the hundreds of Microsoft CD-ROMs found in respondents' possession from Microsoft distributors or replicators.

However, respondents makes no such claim. What respondents contend is that these CD-ROMs were left to them for safekeeping. But neither is this claim tenable for lack of substantiation. Indeed, respondents Keh and Chua, the only respondents who filed counter-affidavits, did not make this claim in the DOJ. These circumstances give rise to the reasonable inference that respondents mass-produced the CD-ROMs in question without securing Microsoft's prior authorization.

The counterfeit "non-installer" CD-ROMs Sacriz and Samiano bought from respondents also suffice to support a finding of probable cause to indict respondents for unfair competition under Article 189(1) of the Revised Penal Code for passing off Microsoft products. From the pictures of the CD-ROMs' packaging,[55] one cannot distinguish them from the packaging of CD-ROMs containing genuine Microsoft software. Such replication, coupled with the similarity of content of these fake CD-ROMs and the CD-ROMs with genuine Microsoft software, implies intent to deceive.

Respondents' contention that the 12 CD-ROMs Sacriz and Samiano purchased cannot be traced to them because the receipt for these articles does not indicate its source is unavailing. The receipt in question should be taken together with Microsoft's claim that Sacriz and Samiano bought the CD-ROMs from respondents.[56] Together, these considerations point to respondents as the vendor of the counterfeit CD-ROMs. Respondents do not give any reason why the Court should not give credence to Microsoft's claim. For the same reason, the fact that the receipt for the CPU does not indicate "[s]oftware hard disk" does not mean that the CPU had no pre-installed Microsoft software. Respondents Keh and Chua admit in their counter-affidavit that respondents are the "source" of the pre-installed MS-DOS software.

WHEREFORE, we GRANT the petition. We SET ASIDE the Resolutions dated 26 October 1999, 3 December 1999, 3 August 2000, and 22 December 2000 of the Department of Justice.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

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[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

[2] Dated 26 October 1999, 3 December 1999, 3 August 2000, and 22 December 2000.

[3] Microsoft owns the copyright to, among others, the following software: Microsoft Windows, Windows '95, Microsoft Excel, Microsoft Word, Microsoft Access, Microsoft Works, Microsoft Powerpoint, Microsoft Office, Microsoft Flight Simulator, and Microsoft FoxPro (Rollo, p. 20).

[4] Individual respondents and respondent corporations are referred to as "respondents."

[5] Rollo, p. 81.

[6] The Agreement provided the following obligations upon its termination (Ibid., pp. 72-73):

"11. OBLIGATIONS UPON TERMINATION

(a) Within ten (10) days after termination or expiration of this Agreement, [BELTRON] shall return to [MICROSOFT] (i) all full or partial copies of each Product including OEM Adaptation Kit(s) and OEM Distribution Kit(s) in [BELTRON's] possession or under its control for which a royalty has not been paid and (ii)

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all copies of the Product in source code form. [BELTRON] and each [BELTRON] Subsidiary may, however, retain one copy of each Product in object code form and one copy of the Product documentation to be used solely for support purposes.

(b) From and after termination or expiration, [BELTRON] shall not use internally nor employ any Product as part or portion of any product that [BELTRON] may use, sell, assign, lease, license, or transfer to third parties. [BELTRON] shall cease and desist from all use of any Product name(s) and associated trademark(s) and, upon request, deliver to [MICROSOFT] or its authorized representatives or destroy all material upon which the Product name(s) and the associated trademarks appear.

(c) Termination of this Agreement as a result of [BELTRON's] default shall result in acceleration of [BELTRON's] obligation to pay all sums [BELTRON] contracted to pay under this Agreement, including all minimum commitment payments as described in Exhibit B.

(d) End user licenses properly granted pursuant to this Agreement and prior to termination of this Agreement shall not be diminished or abridged by termination or expiration of this Agreement.

(e) Sections 5, 12, 13, 14, 15(a), 16, 17, 18(a), and 18(b) shall survive termination or expiration of this Agreement." (Underlining in the original)

[7] The law firm Quisumbing Torres.

[8] Also spelled as "Benedict" (Rollo, p. 142).

[9] Phardette Computer Shop.

[10] The process of pre-installing software into the CPU's resident hard disk is also called "hard-loading."

[11] E.g. Microsoft Windows '95, Microsoft Publisher, Microsoft Encarta '95, MS-DOS 6.22, Microsoft Money, Microsoft Windows for Workgroups, and Microsoft Word (Rollo, pp. 126, 128-129).

[12] A CD-ROM containing Microsoft, Adobe Systems, Inc., and Corel Corporation software and a four-in-one CD-ROM containing the Microsoft software MS-DOS 6.22, Microsoft Money, and Microsoft Windows for Workgroups (Ibid., pp. 127, 129).

[13] Ibid., p. 125.

[14] Ibid., p. 131.

[15] Presided by Judge William M. Bayhon.

[16] Rollo, pp. 135-140.

[17] The following were seized from respondents (Ibid., pp. 141, 243):

1. MS-DOS 6.2 (Manual) @ 20 pcs. per box - - - - -- 59 boxes

2. Compact Disc - - - - - - 2,831 pcs.

3. Tray - -- - - - 251 pcs.

4. J Case - - - -- - 700 pcs.

5. Label - -- - - - 188 pcs.

6. CD File - - - - -- 1 folder

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7. Credit Memo File - - - - -- 1 folder

8. Delivery Receipt - - - -- 11 booklets

9. Monitor SN # IV1502733 - - - - - - 1 unit

10. Keyboard - - - -- - 1 unit

11. Central Processing Unit (CPU) - - - - - - 1 unit

12. Monitor (Dynamic, Leslie G. & Robert-Small - - - - - - 3 units

13. Central Processing Units (MGB, SM, EWC, STI, J. Estrella[,] System & Data, Leslie G., Benjamin SY, Octagon, Mega) - - - - - 20 units

14. Printer KX P1540 SN# 9KMANEO2931 - - - - - - 1 pc.

15. Monitor 14" SVGA, 15" UVGA (Beltron) - - - - - 2 units

16. CPU 386 DX40 Desk Top, 386DX40-4MB (Slim case) - - - - - 2 units

17. Mouse -- - - - 1 pc.

18. Computer Notebook - - - -- 7 pcs.

19. Central Processing Unit w/ Multi Media - - - - - 12 pcs.

20. Compaq Notebook - - - -- 1 pc.

Microsoft also alleges that a "credit memo" (Ibid., p. 132) and a delivery receipt (Ibid., p. 133) of a Microsoft software (Windows '95) for third persons were also seized from respondents (Ibid., p. 28).

[18] The Decree on Intellectual Property. PD 49 was repealed by Republic Act No. 8293 ("RA 8293") or the Intellectual Property Code of the Philippines which took effect on 1 January 1998.

[19] Repealed by RA 8293.

[20] Rollo, pp. 48-60.

[21] Ibid., pp. 201-203. Lotus Corporation later desisted from pursuing its complaint against respondents (Ibid., p. 143).

[22] Ibid., pp. 142-152.

[23] Ibid., pp. 149-151.

[24] Ibid., pp. 160-161.

[25] Ibid., pp. 180-181.

[26] Ibid., pp. 199-200.

[27] Ibid., pp. 30-31.

[28] Ibid., pp. 292-305.

[29] FUS Plastic Machinery Works Co., Ltd.

[30] Rollo, pp. 223-237.

[31] Ibid., pp. 310-325.

[32] Casupanan v. Laroya, 436 Phil. 582 (2002).

[33] Spouses Melo v. Court of Appeals, 376 Phil. 204 (1999).

[34] Buan v. Lopez, Jr., G.R. No. L-75349, 13 October 1986, 145 SCRA 34 citing E. Razon, Inc. et al. v. Philippine Port Authority, et al., Minute Resolution, G.R. No. 75197, 31 July 1986.

[35] Rule 7, Section 5 provides: "Certification against forum shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions."

[36] See Acuña v. Deputy Ombudsman for Luzon, G.R. No. 144692, 31 January 2005; Camanag v. Guerrero, G.R. No. 121017, 17 February 1997, 268 SCRA 473.

[37] See Filadams Pharma, Inc. v. Court of Appeals, G.R. No. 132422, 30 March 2004, 426 SCRA 460. See also Dr. Baylon v. Ombudsman, 423 Phil. 705 (2001).

[38] G.R. No. 101978, 7 April 1993, 221 SCRA 349 (internal citations omitted).

[39] This provision states: "Copyright shall consist in the exclusive right[:]

(A) To print, reprint, publish, copy, distribute, multiply, sell, and make photographs, photo-engravings, and pictorial illustrations of the works;

(B) To make any translation or other version or extracts or arrangements or adaptations thereof; to dramatize it if it be a non-dramatic work; to convert it into a non-dramatic work if it be a drama; to complete or execute it if it be a model or design;

(C) To exhibit, perform, represent, produce, or reproduce the work in any manner or by any method whatever for profit or otherwise; if not reproduced in copies for sale, to sell any manuscripts or any records whatsoever thereof;

(D) To make any other use or disposition of the work consistent with the laws of the land." This has been superseded by Section 177 of RA 8293. (Emphasis supplied)

[40] Under Section 28, PD 49, now superseded by Section 216 of RA 8293.

[41] Section 29, PD 49 provides: "Any person infringing any copyright secured by this Decree or aiding or abetting such infringement shall be deemed guilty of a crime punishable by imprisonment not exceeding one year

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or by fine not less than Two Hundred Pesos nor more than Two Thousand Pesos or both, in the discretion of the court." This has been superseded by Section 217 of RA 8293.

[42] 329 Phil. 875 (1996). Reported as Columbia Pictures, Inc. v. CA.

[43] This provision states: "Unfair competition, fraudulent registration of trade-name, trade-mark, or service mark, fraudulent designation of origin, and false description. — The penalty provided in the next preceding article shall be imposed upon:

1. Any person who, in unfair competition and for the purpose of deceiving or defrauding another of his legitimate trade or the public in general, shall sell his goods giving them the general appearance of the goods of another manufacturer or dealer, either as to the goods themselves, or in the wrapping of the packages in which they are contained, or the device or words thereon, or in any other feature of their appearance which would be likely to induce the public to believe that the goods offered are those of a manufacturer or dealer other than the actual manufacturer or dealer, or shall give other persons a chance or opportunity to do the same with a like purpose. xxxx"

[44] L. Reyes, The Revised Penal Code, vol. II, p. 282 (15th ed.).

[45] See Rueda Hermanos & Co. v. Feliz Paglinawan & Co., 33 Phil. 196 (1916); L. Reyes, supra note 44, p. 283.

[46] Regarding the confiscated 59 boxes of MS-DOS CDs, Microsoft, in this petition, no longer contests the DOJ's findings that TMTC bought these MS-DOS CDs from a Microsoft dealer in Singapore.

[47] Grave abuse of discretion is committed "where power is exercised in an arbitrary or despotic manner xxx as to amount to evasion of positive duty or virtual refusal to perform a duty xxxx" (Garcia-Rueda v. Pascasio, 344 Phil. 323 [1997] citing Comm. of Internal Revenue v. CA, 327 Phil. 1 [1996]).

[48] "10. DEFAULT AND TERMINATION

xxxx

(b) Termination due to a breach of Sections 6, 13, 14(b) or (if applicable) S1 shall be effective upon notice. In all other cases termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period. The rights and remedies of the parties provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement." (Underlining in the original; italicization supplied) (Rollo, p. 72).

[49] Microsoft contends that these CD-ROMs are all "installers" (Rollo, p. 26). For lack of corroborative evidence on record, the Court refrains from passing upon this question without prejudice to Microsoft's presentation of relevant evidence during the trial.

[50] Ibid., pp. 299-300.

[51] Microsoft contends, for the first time in this appeal, that the Agreement authorized Beltron to copy only one Microsoft software, i.e., "Microsoft MS-DOS 6.0" (Ibid., p. 33). However, the terms of the Agreement do not bear out this contention.

[52] Agreement, Section 1(i) (Rollo, p. 66).

[53] A MED is a Microsoft product in "Easy Distribution Package" form available for purchase from an authorized distributor (Agreement, Section 1(e), ibid.).

[54] Agreement, Section 1(j) (Ibid.).

[55] Rollo, pp. 126, 128, 130.

[56] Ibid., pp. 25-26.

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