

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *JE* D.C.

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ROBERT C. INTROLIO  
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MICROSOFT CORPORATION, )  
 )  
Plaintiff, )  
 )  
v. ) 03 CV 2833 M1/P  
 )  
EAGLE COMPUTER SYSTEMS, INC., )  
and RAY SCOTT, )  
 )  
Defendants. )

ORDER DENYING DEFENDANTS' MOTION FOR MORE DEFINITE STATEMENT

Before the court is Defendants' Motion for More Definite Statement, filed on December 16, 2003 (Docket Entry 7). Defendants argue that Plaintiff's complaint is "so vague and ambiguous" with regard to its assertions that Defendants engaged in conduct that was "counterfeit[ing] and infringing" that they cannot reasonably be required to frame a responsive pleading. Alternatively, Defendants ask that the court hold in abeyance all deadlines related to responding to the complaint until Defendants are able to examine the alleged counterfeit products. On January 5, 2004, Plaintiff filed its response to the motion. On January 21, 2004, Defendants filed their reply brief. For the reasons given below, Defendants' motion is DENIED.

## I. BACKGROUND

On November 12, 2003, Plaintiff Microsoft Corporation ("Microsoft") filed a complaint against Defendants Eagle Computer Systems ("Eagle") and Ray Scott. In the complaint, Microsoft, a computer software company, alleges that Defendants' "wrongful conduct" giving rise to this suit "includes the use, advertising, marketing, offering, and/or distribution of 'infringing materials,' specifically reproductions, counterfeits, copies, or colorable imitations of the Microsoft copyrighted software and/or the Microsoft trademarks, logos, and service mark described in [Plaintiff's] Complaint." Pla.'s Compl. at ¶ 20.

Microsoft further asserts in the complaint that, on August 20, 2002, February 10, 2003, and February 25, 2003, it "provided Defendants with information about how to avoid acquiring counterfeit Microsoft software and/or components." *Id.* at ¶¶ 12, 13. Microsoft alleges that despite these instructions, on or about February 26, 2003, April 17, 2003, June 5, 2003, and August 20, 2003, "Defendants distributed purported Microsoft Windows 2000 Certificate of Authenticity Labels to an investigator. Microsoft analyzed the purported [Labels] and determined that they were not genuine [Labels], but were counterfeit and infringing." *Id.* at ¶ 14; see also ¶¶ 15, 17 & 18. In addition, Microsoft alleges that "[o]n or about April 28, 2003, Defendants distributed materials purported to be Microsoft Windows 2000 [software] and/or related

components to an investigator. Microsoft analyzed these materials and determined that they were not genuine Microsoft Windows 2000, but were counterfeit and infringing." *Id.* at ¶ 16. Based on these factual allegations, Microsoft asserts claims against Defendants for copyright infringement, trademark infringement, and false representation, description, and/or designation of origin, in violation of the Copyright Act, the Lanham Act, and the Tennessee Consumer Protection Act.

Defendants filed the instant motion requesting that the court "require Microsoft to state facts that it alleges establish Defendants' 'wrongful conduct' rather than hide behind vague and ambiguous terms such as 'counterfeit[ing] and infringing.'" Defendants argue that "the Complaint is completely devoid of any factual allegations to support these conclusory assertions." Defendants rely on Microsoft Corp. v. Action Software, 136 F.Supp.2d 735 (N.D. Ohio 2001), to support their position that "[i]t is indisputable that Microsoft, at least in recent, related litigation, has used overly broad definitions of terms such as 'counterfeit' in what it alleges to constitute 'piracy' cases." Alternatively, Defendants ask the court to hold in abeyance all deadlines related to responding to the complaint until Defendants are able to retain an expert and examine the alleged counterfeit items.

In its response to Defendants' motion, Microsoft states that

the definition of "counterfeit" as it is used in the complaint "comports not only with the definitions recognized in the Lanham Act and in Copyright Act cases, but is also consistent with the common English definition of the word," and thus Defendants "cannot reasonably claim that they do not understand what it means." Microsoft maintains that the Lanham Act defines a "counterfeit" trademark as a "spurious mark which is identical with, or substantially indistinguishable from, a registered mark," and that the Copyright Act definition of "counterfeit" includes "an exact copy, made without the permission of the copyright holder." "Like counterfeit money," Microsoft explains, "such counterfeit copies ideally differ from non-counterfeit items only in their source." Microsoft also indicates that its use of the term "counterfeit" is consistent with the Random House Webster's College Dictionary definition, which states that "counterfeit" is synonymous with "forged." Microsoft further contends that pairing the word "counterfeit" with "infringing" does not create an ambiguous term. Microsoft explains that Defendants' alleged "infringing" conduct was the distribution of the counterfeit items.

## II. DISCUSSION

If "a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading," Rule 12(e) permits the party to "move for a more definite statement before interposing a responsive pleading." Fed.R.Civ.P. 12(e). In making such a motion, the moving

party "shall point out the defects complained of and the details desired." Id. Motions for more definite statement are generally disfavored, in light of liberal discovery available under the federal rules, and are granted only when a party is unable to determine the issues requiring a response. Shaffer v. Eden, 209 F.R.D. 460, 464 (D. Kan. 2002) (citing Resolution Trust Corp. v. Thomas, 837 F. Supp. 354, 355 (D. Kan. 1993)). A motion for more definite statement may not be used as a substitute for discovery. Nebout v. City of Hitchcock, 71 F.Supp.2d 702, 706 (S.D. Tex. 1999) (citing Mitchell v. E-Z Way Towers, Inc., 269 F.2d 126, 132 (5th Cir. 1959)); see also Dehn v. Ameritech Corp., No. 02-C-0373, 2003 WL 22064205, at \*2-3 (E.D. Wis. April 30, 2003) (citing 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1376, at 591-92 (2d ed. 1990)). "Further definition of the claim can occur as the case progresses, through interrogatories defendant may serve on the plaintiff, other discovery, and briefing." Dehn, 2003 WL 22064205, at \*5 (denying motion for more definite statement with regard to the meaning of the term "disability"). "[T]he standard to be applied is whether the claims alleged are sufficiently specific to enable a responsive pleading in the form of a denial or admission." Shaffer, 209 F.R.D. at 464; see also Dehn, 2003 WL 22064205, at \*2.

Based upon a review of the complaint, the court finds that Plaintiff's complaint is not so vague and ambiguous as to require a more definite statement. The complaint contains a sufficient

description of the facts that give rise to Plaintiff's claim such that Defendants are able to admit or deny the allegations. Moreover, to the extent that the terms "counterfeit" and "infringing" are arguably ambiguous, the court finds that Plaintiff's response has clarified the purported ambiguity in the use of those terms. Specifically, Microsoft defines the term "counterfeit" as "spurious Microsoft items, not manufactured by Microsoft or with Microsoft's authorization." Pla.'s Resp. at 5 n.2. Microsoft defines the term "infringing" as "the distribution of counterfeit items." Id. at 5.

### III. CONCLUSION

For the reasons above, Defendants' motion is DENIED.

Defendants shall have ten (10) days from the date of this order to file their responsive pleadings.

IT IS SO ORDERED.



TU M. PHAM

United States Magistrate Judge

3/9/04

Date



## Notice of Distribution

This notice confirms a copy of the document docketed as number 22 in case 2:03-CV-02833 was distributed by fax, mail, or direct printing on March 10, 2004 to the parties listed.

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