

IN THE CHANCERY COURT OF HINDS COUNTY
FIRST JUDICIAL DISTRICT

JIM HOOD, ATTORNEY GENERAL
ex rel STATE OF MISSISSIPPI

F I L E D
JUL 16 2008

PLAINTIFF

VS.

EDDIE JEAN CARR, CHANCERY CLERK

Civil Action No. G2004-1542

MICROSOFT CORPORATION

BY _____ D.C.

DEFENDANT

AMENDED COMPLAINT

COMES NOW, JIM HOOD, ATTORNEY GENERAL, ex rel. STATE OF MISSISSIPPI, and complains of and against Defendant Microsoft Corporation, and in support thereof respectfully files this complaint, showing the Court as follows:

INTRODUCTION

1. This lawsuit arises from defendant's combination, contract, understanding and agreement in violation of Miss. Code Ann., § 75-21-1 and § 75-21-3, and defendant's unfair methods of competition, and unfair deceptive trade practices, in violation of Miss. Code Ann. § 75-24-5. Plaintiff seeks penalties pursuant to Miss. Code Ann., § 75-21-7, damages and penalties pursuant to Miss. Code Ann., § 75-21-9, and damages pursuant to Miss. Code Ann., § 75-24-5, for the injury suffered by the State of Mississippi in its purchases of software directly and indirectly from defendant at unlawfully inflated price, and as parens patriae, for the injury suffered by the citizens, businesses, and any other legal entity of the State of Mississippi, who purchased defendant's products at inflated prices.

2. The Attorney General also brings this action, so it can secure an honest marketplace and to promote proper business practices in the State of Mississippi.

PLAINTFF

3. JIM HOOD, Attorney General ex rel. the State of Mississippi, brings this action for unjust enrichment.

4. JIM HOOD, Attorney General, ex rel. the State of Mississippi, brings this action for penalties pursuant to Miss. Code Ann., § 75-21-7.

5. JIM HOOD, Attorney General, ex rel. the State of Mississippi, brings this action for damages and penalties pursuant to Miss. Code Ann., § 75-21-9, for the injury suffered by the State of Mississippi in its purchases of software directly and indirectly from the Defendant and the coconspirators.

6. JIM HOOD, Attorney General, ex rel. the State of Mississippi, as *parens patriae*, brings this action for damages and penalties pursuant to Miss. Code Ann., § 75-21-9, and for damages pursuant to Miss. Code Ann., § 75-24-15, on behalf of the citizens of the State of Mississippi who were injured as a result of Defendant's unlawful conduct described herein.

DEFENDANT

7. Microsoft Corporation ("Microsoft") is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Redmond, Washington. Microsoft is the world's largest supplier of computer software for personal computers, which it supplies largely through sellers of personal computers and independent distributors.

VENUE

8. Venue is proper pursuant to Miss. Code Ann., § 75-24-15 and 11-11-3

FACTS

9. On May 18, 1998, the Department of Justice and nineteen other States filed Complaints against Microsoft in the United States District Court for the District of Columbia,

alleging numerous violations of the antitrust laws.

10. On November 5, 1999, Judge Jackson ruled that Microsoft held monopoly power with its Windows operating system and that it used that power to harm consumers, computer makers, and other companies.

11. Microsoft appealed the decision to the U.S. Supreme Court on September 26, 2000. The Supreme Court would not hear a direct appeal of the case and sent the case back to the U.S. Court of Appeals for the District of Columbia.

12. On June 28, 2001, a federal appeals court reversed a trial judge's order to break up Microsoft, but found merit in the findings that the world's largest software company violated the federal antitrust law.

13. On November 2, 2001, Microsoft and the United States Justice Department announced that they had arrived at a settlement agreement to the antitrust case.

14. On November 6, 2001, nine states announced that they were not willing to join the settlement. The states continued to pursue their case against Microsoft in Court.

15. On February 20, 2002, it is reported that Richard Fade, a Microsoft vice president in charge of its relations with computer manufactures, acknowledged in a deposition for the States' case that Microsoft was using language in the settlement agreement to gain more favorable licensing terms with computer manufacturers than it previously had.

RELEVANT MARKETS

A. RELEVANT MARKET FOR PERSONAL COMPUTER OPERATING SOFTWARE

16. The geographic market for operating systems for Intel based PCs is worldwide, but is limited to the State of Mississippi for this action.

17. Microsoft Windows operating software is sold and licensed in a relevant market

for operating software compatible with an Intel x86/Pentium architecture personal computer (“relevant market for personal computer operating software”).

18. In the antitrust trial referenced above, the States’ expert economist recently testified as follows: “Using the basic methodology for defining markets supplied by the 1992 Horizontal Merger Guidelines - an accepted approach for delineating antitrust markets in Sherman Act cases - I conclude that operating software compatible with Intel x86/Pentium architecture personal computers...comprise a relevant market.”

19. Microprocessors perform central processing unit (“CPU”) functions for the vast majority of personal computers and operating software manages the interaction between the CPU and the various pieces of hardware, such as a monitor or printer, attached to such computers. Operating software also controls and directs the interaction between application software, such as word processing or spreadsheet programs, and the CPU. No other product duplicates or fully substitutes for the operating software. The geographic market for personal computer operating software is worldwide.

20. Because of the complex interactions among operating software, application software, and the hardware attached to a personal computer, sellers of personal computers and personal computer users do not consider operating software that is incompatible with an Intel-based personal computer to be an effective substitute for operating software that is compatible with an Intel-based personal computer.

MICROSOFT’S OPERATING SOFTWARE MONOPOLY

21. Throughout the time period of Microsoft’s monopoly (1990 to the present), Microsoft has marketed a variety of personal computer operating software products including (without limitation) MS-DOS, Windows 3.11, Windows For Workgroups, Windows NT Workstation,

Windows 95, Windows 98, and Windows XP.

22. In the early 1980's, Microsoft marketed a product called the "Microsoft Disk Operating software" ("MS-DOS"). Microsoft licensed MS-DOS to IBM, a manufacturer of personal computers. Throughout this arrangement, Microsoft acquired a dominant share of the relevant market for personal computer operating software before the relevant time period.

23. In 1985, Microsoft introduced a product called "Windows", which at first acted as a graphical interface between the user of a personal computer and the MS-DOS operating software. Characteristic of Microsoft's business mode, Microsoft originally offered Windows and MS-DOS as separate products but eventually bundled them together for a new product offering called Windows 95.

24. Microsoft has maintained a monopoly share (approximately 90 percent) of the personal computer operating software market for the past several years. In its Motion for Summary Judgment in the antitrust trial referenced above, Microsoft conceded that it is a monopolist in the relevant market for operating software compatible with Intel x86/Pentium architecture. Microsoft's market share among personal computers shipped with operating software since the early 1990s has been in excess of 90 percent. As the U.S. District Court for the District of Columbia found in denying Microsoft's Motion For Summary Judgment in September 6, 1998, sellers of personal computers believe they have no commercially reasonable alternative to Microsoft's operating software. This monopoly power could not be maintained by Microsoft in the absence of its unlawful conduct alleged herein below.

25. The primary channel through which Microsoft distributes its operating software is the installation on new personal computers by sellers of personal computers. In 1997, 87.6 percent of all copies of Microsoft's Windows operating software were installed by personal

computer sellers. A personal computer can perform virtually no useful tasks without an operating software. For this reason, sellers of personal computers consider it a commercial necessity to install operating software on nearly all of the personal computers they sell. Because there is no realistic competitive alternative to the Windows operating software compatible with Intel-based computers, sellers of personal computers find it a commercial necessity to install Windows on nearly all of their personal computers. Both sellers of personal computers and Microsoft recognize that sellers of personal computers have no commercially viable substitute for Windows.

For example:

- a. A Packard Bell executive testified in the antitrust trial referenced above that there was no commercially feasible operating software alternative to Windows 98;
- b. A Micron executive asserted in the trial referenced above that: "I am not aware of any other non-Microsoft operating software product to which Micron could or would turn as a substitute for Windows '95 at this time";
- c. A Hewlett Packard executive testified in the trial referenced above that "[a]bsolutely there's no choice" except to install Windows on Hewlett Packard's personal computers; and
- d. A Gateway executive testified in the trial referenced above that Gateway had to install Windows because "[w]e don't have a choice." This same executive also testified that if Windows were to face competition, such competition "would drive prices lower" and promote innovation.

**B. RELEVANT MARKET FOR PERSONAL COMPUTER
WORD PROCESSING SOFTWARE**

26. The geographic market for personal computer word processing software for Intel

based PCs is worldwide, but is limited to the State of Mississippi for this action.

27. Microsoft and others market application software compatible with the Windows operating software performing word processing functions in a relevant market (“the relevant market for personal computer word processing software”). Microsoft sells Microsoft Word, largely as part of Microsoft’s Windows “Works” and Windows “Office” software suites. However, some personal computer end users demand word processing software separately for installation on their personal computer at the time of purchase.

MICROSOFT’S WORD PROCESSING SOFTWARE MONOPOLY

28. Microsoft’s share of this market is in excess of 90 percent and has been in excess of 80 percent throughout the above referenced time period. Microsoft’s dominance of the operating software market (described above) gives it an advantage in the sale of word processing application software because users want to be assured inter-operability between their Windows operating software and their applications. Thus, as with the Windows operating software, economies of scale and network effects reinforce one another and result in high entry barriers to Microsoft competitors. This monopoly power could not be maintained by Microsoft in the absence of its unlawful conduct alleged herein.

C. RELEVANT MARKET FOR PERSONAL COMPUTER SPREADSHEET SOFTWARE

29. The geographic market for personal computer spreadsheet software for Intel based PCs is worldwide, but is limited to the State of Mississippi for this action.

30. Microsoft and others market spreadsheet application software compatible with the Windows operating software performing spreadsheet functions in a relevant market (“the relevant market for personal computer spreadsheet software”). Microsoft sells Microsoft Excel

spreadsheet software largely as a part of Microsoft's "Works" and "Office" software suites. However, some personal computer end users demand spreadsheet software separately (not as part of a software suite) for installation on their personal computers at the time of purchase.

MICROSOFT'S SPREADSHEET SOFTWARE MONOPOLY

31. Microsoft's share of the personal computer spreadsheet software market is in excess of 90 percent and has been in excess of 80 percent throughout the time period, giving Microsoft a monopoly of this market as well. This monopoly could not be maintained by Microsoft in the absence of its unlawful conduct alleged herein.

MICROSOFT'S COMBINATIONS TO RESTRAIN TRADE AND MONOPOLIZE THE RELEVANT MARKETS

32. Microsoft has, through exertion of its monopoly power, imposed upon many others a variety of restrictive licensing arrangements and other practices to exclude competition with Microsoft in the relevant markets defined herein. These restrictive agreements have included, but have not been limited to, per-processor licensing fees, long-term contracts, bundling of Windows with Internet Explorer, and exclusive dealing arrangements. Both the purpose and the effect of Microsoft's arrangements have been to restrain competition in the relevant markets, thereby enabling Microsoft to maintain a monopoly of those markets.

33. By imposing such restrictive agreements on others, Microsoft has engaged in unfair competition and has entered into combinations of capital, skill, and acts for the purpose and with the intent and effect of creating and carrying out restrictions in trade and commerce; increasing the price and limiting and reducing the supply of personal computer operating software, personal computer word processing software, and personal computer spreadsheet software; restraining trade and preventing competition in the relevant markets for personal computer

operating software; personal computer word processing software; and personal computer spreadsheet software; and preserving and enhancing Microsoft's dominance of the relevant markets.

34. Those upon whom Microsoft has imposed its restrictive arrangement include various sellers of personal computers, distributors of Microsoft products, and (as defined herein) Internet Service Providers and Internet Content Providers. As reflected in the facts alleged in this Complaint, most of those who have succumbed to Microsoft's demands were given little choice due to Microsoft's market dominance; the impossibility or virtual impossibility of carrying on their businesses without cooperating with Microsoft; and Microsoft's power to prevail upon those parties to accept Microsoft's terms.

35. If Microsoft is allowed to continue to engage in combinations to restrain competition in the relevant markets so as to perpetuate its monopoly of those markets, the harm caused by Microsoft to the Plaintiffs will be grave and irreparable.

A. RESTRICTING COMPETITION IN THE OPERATING SOFTWARE MARKET

36. Microsoft has employed a variety of restrictive licensing provisions and other practices to exclude competition for Microsoft's Windows operating software. These restrictive agreements have included, but have not been limited to, per-processor licensing fees, long-term distribution contract, bundling of Windows with Internet Explorer so as to exclude browser and Java competition, and many exclusive dealing arrangements. Both the purpose and the effect of Microsoft's arrangements have been to restrain competition in the relevant market for personal computer operating software, thereby enabling Microsoft to exclude competition and charge monopoly software prices.

EXCLUSION OF DR-DOS

37. One type of exclusionary arrangement Microsoft has successfully used (until the federal court enjoined Microsoft in 1995) has been its “per processor” license, whereby sellers of personal computers were forced to pay Microsoft a royalty based on the number of manufactured computers sold even if those computers did not contain Microsoft’s operating software. Such license arrangements give sellers of personal computers compelling financial incentives not to sell personal computers that contain non-Microsoft operating software. This practice and others enabled Microsoft to eliminate DR-DOS, a competitive product, from the operating software market by the end of 1994. The price of Microsoft MS-DOS operating software then doubled.

EXCLUSION OF INTERNET BROWSER AND JAVA INNOVATION SO AS TO REMOVE THREAT TO THE WINDOWS OPERATING MONOPOLY

38. Because of the high barriers to entry and expansion in the relevant market for personal computer operating software erected by Microsoft’s conduct alleged herein, the most significant potential threat to the Windows operating software monopoly is not from a direct, frontal assault by existing or new operating software but from new software products that may support, or themselves become, alternative platforms to which applications can be written and which can be used in conjunction with multiple operating software, including, but not limited to, Windows.

39. As the United States District Court declared in its September 1998 Order denying Microsoft’s Motion For Summary Judgment in the antitrust trial referenced above, “[d]espite its strong position in the market for operating software, internal Microsoft correspondence indicates that the company recently discerned a threat to its operating software monopoly in the growing popularity of Internet browsers . Because browsers offer the potential to overcome the incompatibility between different operating software by allowing applications to run

on a variety of operating software, browsers threaten to reduce or eliminate the key barrier to entry that protects Microsoft's [monopoly] share of the operating software market."

40. This could be done in part by the combination of browser technology with a new program and language known as "Java". Java is designed in part to permit applications written in it to be run on different operating software. Non-Microsoft browsers, such as Netscape Navigator, are perhaps the most significant vehicle for distribution of Java technology to end-users. Microsoft has recognized that the widespread use of browsers other than its own threatens to increase the distribution and use of Java and, in so doing, threatens Microsoft's operating software monopoly.

41. Microsoft responded in part to this competitive threat to its monopoly by introducing its own Internet browser, which it called the Internet Explorer. Microsoft released the initial version of Internet Explorer (version 1.0) in or about July 1995. Microsoft has since released three subsequent version (2.0, 3.0, 4.0) and sub-version thereof (3.01, 3.02, 4.01, etc.).

42. To protect the valuable Windows monopoly against such a competitive threat, Microsoft has, throughout the monopoly time period, concertedly engaged in a series of exclusionary acts and restrictive practices with the purpose and effect of suppressing this competition in the relevant market for personal computer operating software.

43. This campaign has not included competition on the merits. For example, as Microsoft's Christian Wildfeuer wrote in February 1997, Microsoft concluded that it would "be very hard to increase browser share on the merits of [Internet Explorer] alone. It will be more important to leverage the [operating system] asset to make people use [Internet Explorer] instead of [Netscape] Navigator."

(1) ALLOCATION OF BROWSER MARKETS

44. Initially, Microsoft attempted to eliminate competition from Netscape by seeking

from Netscape an express “horizontal” agreement (i.e., between actual or potential competitors) not to compete. Because of their pernicious effects on competition, horizontal agreements not to compete have traditionally been disapproved as per se illegal under antitrust laws.

45. In May 1995, not long before Microsoft released the first version of Internet Explorer, Microsoft’s executives visited Netscape and met with its top executives. During this meeting, Microsoft offered Netscape a deal. For Windows 95, Microsoft proposed to draw a hypothetical line between the operating software and browser. If Netscape agreed not to compete below the line (i.e., in operating software) or, alternatively, in the production of browsers in the Windows 95 “space”, Microsoft would agree not to compete above the line (i.e., in browser applications) or, alternatively, in the production of browsers for platforms other than Windows 95. As one participating Microsoft executive subsequently admitted, Microsoft “absolutely” hoped to persuade Netscape not to compete with Microsoft.

46. Microsoft’s proposal, if accepted, would have divided the browser market between Netscape (the early leader) and Microsoft (on the verge of entering) and would have eliminated the competitive threat Netscape’s competing browser posed to Microsoft’s operating software monopoly. Microsoft’s proposal was not intended to advance, and would not have advanced, any legitimate pro-competitive interests. Rather, it was a blatant undertaking to restrain trade and monopolize markets by collaboration with a competitor.

47. Netscape’s executives refused Microsoft’s proposal. It chose instead to continue to compete to serve all computer users with successive versions of Navigator that work on Windows 95 as well as other personal computer operating software.

48. Microsoft refused to abandon its anti-competitive strategy. Instead, it escalated its predatory course of conduct aimed at eliminating the browser threat to the Windows operating

software monopoly by forcibly combining with others to eliminate competing Internet browsers from the market and to extend the Windows monopoly to the browser market.

(2) EXCLUSIONARY AGREEMENTS WITH INTERNET SERVICE PROVIDERS

49. Microsoft has entered into anti-competitive agreements with major Internet Service Providers for the exclusive or nearly exclusive distribution of Internet Explorer.

50. Starting in early 1996, as a condition to placement of an Internet Service Provider on the "Internet Connection Wizard" screens or the Online Services folder in Windows 95, Microsoft began to require Internet Service Providers to agree to deny most or all of their subscribers a choice of Internet browser.

51. Because nearly all personal computers in the United States are shipped with a copy of Windows pre-installed and because Microsoft and sellers of personal computers have agreed that sellers of personal computers will not replace or materially modify the default "desktop" screen on personal computers shipped with the Windows operating system installed, computers users are forced to see the Windows desktop when they turn on their personal computers. Accordingly, placement on the Windows desktop confers a competitive advantage upon software firms (including Internet Service Providers and Internet Content Providers) in promoting and distributing their products and services. Indeed, only this placement offers nearly ubiquitous distribution and advantageous promotion in precisely the place and context in which users are deciding which software to use. No other distribution channel matches the level of convenience, the number of users reached or the ideal placement that Microsoft's Windows desktop offers.

52. In return for attractive placement by Microsoft in its Internet Connection Wizard or Online Services Folder, Internet Service Providers have agreed:

- a. To distribute and promote to their subscribers Internet Explorer exclusively or nearly exclusively;
- b. To eliminate links on their web sites from which their subscribers could download a competing browser over the Internet;
- c. To abstain from expressing or implying to their subscribers that a competing browser is available (and from displaying a logo for a non-Microsoft browser on the service provider's home page or elsewhere);
- d. To include Internet Explorer as the only browser they ship with their access software (i.e., the software that enables a personal computer user to subscribe to the service) most or all of the time; and,
- e. To limit the percentage of competing browsers they distribute, even in response to specific requests from customers.

53. Microsoft's agreements with Internet Service Providers also require the Internet Service Providers to use Microsoft-specific programming extensions and tools in connection with the Internet Service Providers' own web sites. Web sites developed with these Microsoft-specific programming extensions and tools will consequently look better when they are viewed with Internet Explorer than with a non-Microsoft browser.

54. Under Microsoft's Internet Service Provider contracts, the penalty for promoting a competing browser, for distributing a competing browser more than permitted by Microsoft, or for otherwise failing to provide preferential treatment for Microsoft's Internet browser, is deletion from the Windows desktop. Even the largest Internet Service Providers are unwilling to risk this penalty.

55. Microsoft recognizes the importance to Internet Service Providers of favorable

placement on Windows screens. For example, Brad Silverberg (Microsoft's former Senior Vice-President of its Application and Internet Client Group) described such placement as a "distribution facility" for service providers that is of "tremendous value to them".

56. Approximately one-third of Internet browser users obtained their browsers from their service provider; hence Microsoft's exclusionary agreements with those firms substantially foreclose Microsoft's browser competitors from a vital means of distribution.

57. The exclusionary restrictions in Microsoft's Internet Service Provider agreements are not reasonably necessary to further any legitimate pro-competitive purpose and impair competition in an unnecessarily restrictive way.

58. Microsoft's exclusionary Internet Service Provider contracts, expressly targeted at its primary Internet browser competitors, further foreclose these browser firms from access to customers and further impede their ability to distribute Java and other software capable of competing with Microsoft's monopoly of operating software.

(3) EXCLUSIONARY AGREEMENTS WITH INTERNET CONTENT PROVIDERS

59. Microsoft has also entered into exclusionary agreements with Internet Content Providers, which provide news, entertainment and other information from sites on the web. One of the new features included in Internet Explorer 4.0 is the provisions of "channels" that appear on the right side of the Windows desktop screen after Internet Explorer 4.0 has been installed on a Windows 95 personal computer. The same channels will appear automatically on the Windows 98 desktop screen if Microsoft is permitted to bundle Internet Explorer 4.0 with Windows 98 in license agreements with sellers of personal computers and to prohibit licensees from unbundling these products.

60. Microsoft provides different levels of channel placement, "platinum" being the most

prominent. Under Microsoft's Internet Explorer 4.0 channel agreements, beginning in mid-1997, Internet Content Providers who desired "platinum" placement (and those seeking lower-level placement) were required to agree:

- a. Not to compensate in any manner the manufacturer of any "Other Browser" (defined as either of the top two non -Microsoft browsers), for example by distribution of the "Other Browsers" for distribution, marketing or promotion of the Internet Content Provider's contents;
- b. Not to promote any "Other Browser";
- c. Not allow the manufacturer of any "Other Browser" to promote and highlight the Internet Content Provider's "channel" content on or for its browser; and,
- d. To design the Internet Content Provider's web sites using Microsoft- specific, proprietary programming extensions so that those sites look better when viewed with Internet Explorer than when viewed through a competing browser.

61. These exclusionary restrictions are not reasonably necessary to further any legitimate pro- competitive purpose and they impair competition in an unnecessarily restrictive way.

62. Internet Content Providers have entered into Internet Explorer 4.0 channel agreements with Microsoft despite Microsoft's insistence upon the stringent conditions set forth in the above paragraphs above. Internet Content Providers had to agree to those conditions in order to gain valuable means distribution and promotion.

63. Microsoft's exclusionary Internet Content Provider contracts, expressly targeted at its primary Internet browser competitors, further foreclose those browser firms from access to customers and further impede their ability to distribute Java and other software capable of

competing with Microsoft's operating software monopoly.

(4) MICROSOFT'S RESTRICTIONS ON BOOT-UP SEQUENCE AND SCREENS

64. Beginning in or about August 1996, Microsoft has prohibited sellers of personal computers from altering the Windows 95 boot-up sequence. Specifically, among other things, Microsoft's license agreements prohibit them from:

- a. Modifying or obscuring the sequence or appearance of any screens displayed by Windows from the time the user first begins the boot-up process with a new personal computer until the "Welcome to Windows" screens have run and the Windows desktop screen first appears;
- b. Modifying or obscuring the sequence or appearance of any screens displayed by Windows on all subsequent boot-ups unless the purchaser initiates some action to change the sequence;
- c. Displaying any content, including visual displays, sounds, welcome or tutorial screens, until after the Windows desktop first appears;
- d. Modifying or obscuring the appearance of the Windows desktop screen, beyond a narrowly limited range of permitted changes; or,
- e. Adding a screen that would automatically appear after the initial boot-up sequence or in place of the Windows desktop screen.

65. These contractual restrictions are intended to have and do have two exclusionary effects on competing browser suppliers. First, they enhance Microsoft's control over the screens presented to users and thus increase Microsoft's ability to require preferential treatment for Internet Explorer from Internet Service Providers and Internet Content Providers in return for such Internet Service Providers' and Internet Content Providers' access to Windows

desktop. Second, these contractual restrictions severely limit a personal computer seller's ability to modify or customize the screens – in response to customer demand, or to difference their products, or to substitute or feature a non Microsoft browser or other applications.

66. The Windows desktop screen is the device which most personal computer users access application programs and the other functionality on their personal computers. The desktop screen contains, among other things, icons (i.e., graphical representations of certain features or functions) that, when selected by clicking on the icon with the left button of the “mouse”, provide quick access to other installed software. Microsoft places a number of icons on the Windows desktop screen, prohibits sellers of personal computers from removing any of them, and places strict limitations on the ability of sellers of personal computers to add others.

67. Although Microsoft allows some customization of the “Active Desktop” in Windows 98 and Internet Explorer 4.0, a seller of personal computers that does not pre-install the Active Desktop may not add to Windows desktop screens new icons or folders that are a size or appearance different from those already placed on the desktop by Microsoft.

68. These anti-competitive restrictions preserve the advantageous desktop position that Microsoft secures for Internet Explorer and other Microsoft or Microsoft - designated software, foreclose competing Internet browsers from securing preferential placement and foreclose sellers of personal computers from choosing among competing browsers on the merits. The effect of these restrictions is significantly to restrict the access of competing browsers to the important personal computer channel and thereby fortify Microsoft's personal computer operating software monopoly.

69. Sellers of personal computers (including Micron, Hewlett Packard and Gateway) have requested that Microsoft allow them to provide new personal computer purchasers with an

alternative user interface, boot-up sequence, or Initial or default screens. Microsoft has refused their request.

70. Microsoft recognizes and intends by its restrictions to consolidate its strategic power over the valuable real estate that the desktop screen represents for the provision of software, advertising, and promotion.

71. These exclusionary restrictions are not reasonably necessary to further any legitimate pro- competitive purpose and impair competition in an unnecessarily restrictive way.

72. Microsoft's exclusionary contracts further foreclose these browser firms from access to customers and further impede their ability to distribute Java and other software capable of competing with Microsoft's monopoly of operating software.

(5) THE "BUNDLING" OF MICROSOFT'S INTERNET BROWSER WITH WINDOWS 95

73. Internet Explorer is recognized by both Microsoft and the industry as a distinct product separate and apart from Windows. For example:

- a. Microsoft has always sold Internet Explorer separately at retail, distributed it separately through the Internet, and paid for it to be distributed separately;
- b. Microsoft has distributed Internet Service Explorer as a separate product through Internet Service Providers and other channels and has conditioned the access of numerous companies (e.g., Internet Content Providers and Internet Service Providers) to Windows facilities on such companies' distribution of Internet Explorer as a separate product;
- c. Microsoft and the industry separately track browser market share and

operating software market share;

d. Microsoft bundles, and plans to continue to bundle, the stand -alone version of the Internet Explorer 4.0 with package that will be the successor to the Microsoft Works and Microsoft Home Essentials packages;

e. Microsoft promotes, and enlists others to promote, the distribution and use of Internet Explorer as a separate product;

f. Internet Service Providers consider Internet Explorer to be a separate product from Windows and, recognizing the demand for a browser separate from the operating software, Microsoft deliberately markets it as such to Internet Service Providers;

g. Internet Browsers and operating software perform different functions; and,

h. Microsoft markets Internet Explorer for non-windows operating software, including operating software produced by Apple Computer and Sun Microsystems. Indeed, Microsoft devoted substantial effort in developing these versions of its Internet Explorer ---- even though it would arguably enhance the capabilities and functionality of non— Microsoft operating software ----- in order to foreclose opportunities for non- Microsoft browsers to establish themselves.

74. There is a demand for Internet browsers that is separate from the demand for Microsoft's operating software. For example:

a. Many personal computer users (who, of course, require an operating software) do not need or want a browser;

- b. For many customers, the forced inclusion of a browser with the operating software is a significant negative – including (1) corporate customers who do not want their employees connected to the Internet or (2) customers that would prefer a different browsers. Microsoft had acknowledged that some sellers of personal computers and personal computers users want to be able to delete Internet Explorer from Windows 95 and has provided the ability, through the “Add/ Remove” utility, for them to do so;
- c. Many customers who want a browser already have (and do not need additional) operating software — a majority of all browsers distributed to date have been distributed to users who already have a personal computer with an operating software installed; and,
- d. Other personal computer customers want an up- to - date Windows operating software, both internally and in agreements with other companies.

75. Microsoft has consistently treated and referred to its browser software as a separate product and not merely as a component of its operating software, both internally and in agreements with other companies.

76. Microsoft recognized there was a serious danger that a competing Internet browser would eventually displace the Windows operating software monopoly. Microsoft’s senior executives internally declared that gaining browser market share for Internet Explorer and depriving Netscape of market share was a top priority.

77. Microsoft recognized, however, that it could not win what it described as “the browser war” on the merits alone, even if it gave its browsers away free of charge — indeed, even if it paid bounties for its distribution. Microsoft concluded that to win the browser war and

preserve its Windows operating software monopoly, it would have to tie its Internet browser to the Windows 95 operating software that was being pre-installed on most new personal computers.

78. Accordingly, Microsoft bundled Internet Explorer with Windows 95 in licensing agreements with other sellers of personal computers. It continued to do so until January 1998, when it was forced to comply with an Order previously entered by the United States District Court for the District of Columbia which prohibited Microsoft from distributing its Internet Explorer browser as a condition of licensing Windows 95.

79. Microsoft bundled its Internet Explorer software with Windows not because Microsoft believed the market wanted only a bundled product but rather to foreclose choice by personal computer sellers and ultimately their customers.

80. By foreclosing personal computer choice, Microsoft has substantially foreclosed competing Internet browsers from a significant channel of distribution and as a consequence suppressed competition with the Windows operating software monopoly.

81. These exclusionary restrictions are not reasonably necessary to further any legitimate pro-competitive purpose and impair competition in an unnecessarily restrictive way. Microsoft has distributed and continues to distribute Internet Explorer separate from its Windows 95 operating software, and it is efficient for it to do so. Microsoft can also efficiently distribute or permit the distribution of Windows 95 without Microsoft's Internet browser software.

(6) THE "BUNDLING" OF MICROSOFT'S INTERNET BROWSER WITH WINDOWS 98

82. Microsoft concluded in January 1997 that, for Windows 98, priority "# 1 is to build Internet Explorer share via personal computer distribution." Accordingly, Microsoft decided to bundle Internet Explorer with the Windows 98 operating software in licensing agreements with

sellers of personal computers.

83. In December 1997, the United States District Court for the District of Columbia entered an order prohibiting Microsoft from distributing its Internet Explorer browser as a condition of licensing Windows 95. For several weeks after entry of this Order, published news reports quoted Microsoft as saying that it planned to offer Windows 98 in two versions - one with Internet Explorer included and one with Internet Explorer removed. But, since then, Microsoft has made it clear that its policy is to bundle the two products and to require - as a condition to its Windows 98 license - that sellers of personal computers license, install, and distribute Microsoft's Internet browser software.

84. These exclusionary restrictions are not reasonably necessary to further any legitimate pro-competitive purpose and impair competition in an unnecessary restrictive way. Microsoft has acknowledged that some sellers of personal computers and personal computer users want the ability to delete Microsoft's Internet browser software from Windows 98 (and Microsoft provided the ability to remove such software from Windows 95 for this reason). Nevertheless, to thwart such a deletion from Windows 98, even by end users, Microsoft has designed Windows 98 so that the "Add/Remove" utility will not remove all or any part of the Internet Explorer.

85. Microsoft is bundling Internet Explorer with Windows 98 in order to achieve a monopoly of the Internet browser market and to stifle potential competition with Microsoft's operating software monopoly. Microsoft has distributed and continues to distribute Internet Explorer separately from its Windows operating software, and it is efficient for it to do so. Microsoft intends to continue marketing the Internet Explorer, 5.0, in multiple distribution channels and for multiple non-Windows operating software as a stand-alone product, without Windows. In short, Microsoft will let customers have Internet Explorer without Windows 98 - but

will not let them have Windows 98 without taking Internet Explorer too.

86. Microsoft can, at a minimum, efficiently distribute or permit the distribution of Windows 98 without its Internet Explorer. Microsoft's refusal to permit sellers of personal computers to delete such software from Windows 98, or to offer sellers of personal computers a version of Windows 98 from which it has already been deleted or in which it is not included, furthers no legitimate competitive interest. Microsoft can, at a minimal cost per copy of Windows 98, either include in Windows 98 a ready means for sellers of personal computers and end users to delete its Internet Explorer or test any such means that are developed by or on behalf of sellers of personal computers. The deletion of such software will not impair any non-web browsing function of Windows 98.

87. One consequence of bundling is that the Internet Explorer is made available to purchasers of Windows at no apparent additional charge. Microsoft has devoted more than 1,000 people and hundreds of millions of dollars to various aspects of browser development. Microsoft has also recognized that it would ordinarily be desirable for the company to earn a direct return on some of this investment by charging customers of Windows 98 separately for the Internet Explorer. Even though the leading browser supplier (Netscape) was charging sellers of personal computers for its browser, Microsoft made a decision to forego the revenue that would have resulted from charging separately for Internet Explorer in Windows in order to gain Internet browser market share and exclude competition for its Windows operating software monopoly.

B. RESTRICTING COMPETITION IN THE WORD PROCESSING AND SPREADSHEET SOFTWARE MARKETS

88. Microsoft has also combined with others to restrain trade in the relevant markets for the sale of word processing and spreadsheet software, as well as to monopolize those markets. This

conduct has allowed Microsoft to achieve and maintain market shares well in excess of 80 percent in the markets for word processing and spreadsheet software throughout the time period. It presently enjoys approximately 90 percent of each market.

89. Microsoft Word and Excel products are sold at monopoly prices. In a recent study, the Consumer Federation of America revealed that the installed price for the Microsoft suite Office, which includes its Word and Excel products, was over twelve times the price of comparable suites providing competing competitors Lotus and Corel, which sell comparable or superior suite prices but still have lost market share to Microsoft.

**(1) SUPPRESSION OF BROWSER AND JAVA INNOVATION TO
MAINTAIN SOFTWARE APPLICATION MONOPOLIES**

90. Because of the dominance of the Windows operating software, firms selling software competitive with Microsoft Word and Excel need access to the technical programming interfaces for the Windows operating software – or “application programming interfaces” (“APIs”) - - if their word processing and spreadsheet applications are to work well and efficiently with the Windows operating software.

91. Microsoft has not disclosed - - or has delayed disclosing - - all needed APIs to its word processing and spreadsheet competitors as its operating software has evolved, while making this hidden code available to its own Word and Excel programmers (as well as third parties aligned with Microsoft in the development of applications). In fact, it has advertised its programming advantages so as to deliberately create fear, uncertainty and doubt about the capacity of competing word processing and spreadsheet applications to work reliably and efficiently with the Windows operating system.

92. To further disadvantage its application software competitors, Microsoft has made

agreements and engaged in other concerted actions, as set forth above, with the purpose and effect of suppressing browser and Java software innovations and thereby excluding competition not only for Windows operating software but also for Microsoft Word and Excel applications. If such innovations succeeded, Microsoft would lose the competitive advantage of owning with interface with its Windows operating software. Were it not for such exclusionary arrangements by Microsoft, word processing and spreadsheet software applications competitive with Microsoft Word and Excel could be written for the open Java platform, not for Microsoft's proprietary operating software. As a consequence, Microsoft would lose its capacity to exclude its Word and Excel competitors.

93. Such agreements and other concerted actions undertaken by Microsoft have included the attempted division of browser markets, exclusionary agreements with internet service and content providers, exclusionary agreements restricting desktop screens and boot-up sequences, and exclusionary agreements which bundle Microsoft's Internet browser with Windows 95 and 98.

(2) BLOCKING THE DISTRIBUTION OF COMPETING APPLICATIONS BY THREATENING TO WITHHOLD WINDOWS OPERATING SOFTWARE

94. Apart from offering various economic inducements to exclude application software competition, Microsoft has forcibly enlisted the aid of the sellers of personal computers by threatening to stop selling them Windows operating software, or its upgrades or corrections, which they require to remain in the business of selling personal computers.

(3) ECONOMIC BUNDLING OF MICROSOFT APPLICATION SOFTWARE WITH WINDOWS OPERATING SOFTWARE TO SUPPRESS APPLICATION SOFTWARE COMPETITION

95. Microsoft has also entered into licensing arrangements that bundle Microsoft Word and Excel applications with Windows operating software. In essence, Microsoft has accomplished

this bundling by price discriminating in two ways: It has offered and given price reduction to sellers of personal computers for Windows operating software in exchange for their bundled pick up Word and Excel market share early in the time period, it has changed little or nothing for Word or Excel, so long as Word or Excel were bundled with Windows operating software.

96. Such discriminatory pricing by Microsoft makes it difficult, if not impossible, for competitors for Word and Excel to sell their products to personal computer sellers regardless of the products' competitive merits. Such conduct has denied competitive pricing and free choice to the Plaintiffs.

**(4) MICROSOFT'S RESTRICTIONS ON BOOT-UP SEQUENCE
AND SCREENS TO PROTECT MICROSOFT'S
APPLICATION SOFTWARE MONOPOLIES**

97. Microsoft's boot-up and desktop licensing agreements, as set forth above, have the purpose and effect of also suppressing application software competition in addition to the suppression of browser and Java innovation.

98. Such agreements entrench the Windows monopoly of the relevant markets for personal computer word processing and spreadsheet software by raising distribution barriers to entry by competing sellers of word processing and spreadsheet software.

HARM TO THE STATE OF MISSISSIPPI

99. Microsoft's exclusionary and restrictive practices described herein have caused significant harm to the State of Mississippi by increasing the price it and its citizens and every other legal entity and association have paid for Microsoft's Windows operating system, Word and Excel software above competitive levels and/or by denying them a free choice in a competitive market, as well as the benefits of software innovation.

100. As a result of the many exclusionary and restrictive practices it has imposed on others

described herein, Microsoft has succeeded in raising and reinforcing barriers to market entry so as to forestall development of actual competition in the relevant markets. Its result monopoly power has enabled Microsoft to price Windows operating, Word and Excel software virtually without regard to the prices of competing software. Sellers of personal computers and distributors of Microsoft products have passed these monopoly prices onto consumers, including particularly to the citizens and other legal entities of the State of Mississippi.

101. Microsoft's supra competitive prices have given Microsoft profit margins of approximately 25 percent, or five times the national average and four times the rates for other firms in the software industry. Microsoft's return on equity has consistently been in excess of 30 percent, twice the national average and at least 50 percent more than other firms in the software industry.

102. Microsoft's supra competitive prices and extraordinary profits are not the result of superior products or competition on the merits. Instead, Microsoft has been able, at the State of Mississippi's financial expense, artificially to inflate its profits only by concertedly engaging in a series of exclusionary acts and restrictive practices with the purpose and effect of restraining and preventing competition and unlawfully maintaining its monopoly of the relevant markets for personal computer operating, word processing and spreadsheet software.

MISSISSIPPI'S MONOPOLY

103. Defendant Microsoft, its co-conspirators, agents, employees has had sales and distributions of its operating system software, spreadsheet software, and word processing software to Mississippi consumers, Mississippi corporations, and Mississippi vendors. These co-conspirators, agents, and employees were in the State of Mississippi doing these activities.

104. Defendant Microsoft's monopoly of operating software, spreadsheet software, and

word processing software of intrastate commerce was one of the material objects of its interstate conspiracy. The intrastate monopoly of Mississippi was material to the maintenance of the interstate monopoly and the monopoly of the commerce of Mississippi was a powerful factor in bringing about the interstate a monopoly.

105. Defendant Microsoft and its agents, employees, business partners, and co-conspirators by oral and written agreements created a monopoly in the State of Mississippi in the operating software, spreadsheet software, and word processing software markets but one having for its object the creation of a monopoly in both the inter and intra state commerce in a commodity is necessarily subject to the laws of both the federal government and of Mississippi.

106. Defendant Microsoft and its agents, employees, vendors, manufacturers, partners and coconspirators accomplished its illegal monopolies in the operating software, spreadsheet software, and word processing software in part by transactions which are wholly intrastate, i.e., contracting with Mississippi residents through their licensing agreements; selling its software directly in Mississippi through its agents, employees, partners, manufacturers, and co-conspirators; advertising through its agents, employees, partners, and co-conspirators; and, distributing its products in the state of Mississippi through its agents, employees, partners, manufacturers, and coconspirators.

107. Each and every sale and license of the Defendant's operating software, spreadsheet software, and word processing software in Mississippi restrained trade, increased the price, limited the production, hindered competition in the production, importation, and transportation of operating software for personal computers, spreadsheet software, and word processing software in Mississippi and the in the nation.

CLAIMS FOR RELIEF

**COUNT ONE
RESTITUTION / UNJUST ENRICHMENT**

108. The State realleges and incorporates herein the foregoing allegations of this Amended Complaint.

109. By common law and the Miss. Code § 75-24-11, the Defendant should refund any and all illegal overcharges for software directly and indirectly by the State of Mississippi, refund any and all damages suffered by the economy of the State of Mississippi, and refund any and all illegal overcharges suffered by the citizens and all legal entities of Mississippi.

**COUNT TWO
MISSISSIPPI ANTITRUST ACT**

110. The State realleges and incorporates herein the foregoing allegations of this Amended Complaint.

111. The Defendant's actions complained of herein violate the provisions of Mississippi law governing "Trusts and Combines in Restraint or Hindrance of Trade," Miss. Code Ann. § 75-21-1 et seq.

112. The Plaintiff seeks compensatory damages, punitive damages, statutory damages, and civil penalties for the State of Mississippi, which includes damages to its economy, its corporations, and its citizens.

**COUNT THREE
MISSISSIPPI CONSUMER PROTECTION ACT**

113. The State realleges and incorporates herein the foregoing allegations of this Amended Complaint.

114. The Defendant's actions complained of herein violate the provisions of Mississippi

law governing "Regulation of Business for Consumer Protection," Miss. Code Ann. § 75-24-1 et seq. The Defendant sold goods, primarily for personal, family or household purposes, i.e. its software, that violated the Consumer Protection Act.

115. The Plaintiff seeks compensatory damages, punitive damages, civil penalties, and injunctive relief for the State of Mississippi and its citizens.

**COUNT FOUR
CIVIL CONSPIRACY**

116. The State realleges and incorporates herein the foregoing allegations of this Amended Complaint.

117. The Defendant's actions complained of herein constitute a combination of entities for the purpose of accomplishing an unlawful purpose or a lawful purpose unlawfully.

118. The Plaintiff seeks compensatory and punitive damages for the State of Mississippi, its citizens, and its other entities for the Defendant's civil conspiracy.

**COUNT FIVE
DAMAGE TO THE
ECONOMY OF THE STATE OF MISSISSIPPI**

119. The State realleges and incorporates herein the foregoing allegations of this Amended Complaint.

120. The unlawful contracts, combination and conspiracy in restraint of trade, unlawful combination and conspiracy to monopolize and monopolization, hereinbefore alleged, have injured and adversely affected the economy and prosperity of the State of Mississippi in, among others, the following ways:

- a) revenues have been wrongfully extracted from the State of Mississippi;
- b) taxes by the State have been affected by the illegal monopoly;
- c) opportunities in manufacturing, shipping and commerce as to software have been

restricted and curtailed;

d) The full and complete utilization of the natural wealth of the state has been prevented;

e) The high cost of manufacturing software in Mississippi has precluded goods made there from equal competitive access with those of other states to the national market;

f) measures taken by the State to promote the general progress and welfare of its people have been frustrated;

g) The Mississippi economy has been held in a state of arrested development.

121. The Plaintiff seeks compensatory, punitive and statutory damages and penalties for the damages to the economy of the State of Mississippi.

**COUNT SIX
PARENS PATRIAE**

122. The State realleges and incorporates herein the foregoing allegations of this Amended Complaint.

123. As stated previously, the State of Mississippi, acting through its Attorney General, brings this action by virtue of its duty to protect the general welfare of the State and its citizens, acting herein as parens patriae, trustee, guardian and representative of its citizens, to recover damages for, and secure injunctive relief against, the violations of the laws hereinbefore alleged.

124. The Attorney General is a constitutional officer possessed of all the power and authority inherited from the common law as well as that specifically conferred upon him by statute. This includes the right to institute, conduct and maintain all suits necessary for the enforcement of the laws of the State, preservation of order and the protection of public rights.

125. Although the citizens of Mississippi that purchased Microsoft software were injured, the effects of Microsoft's illegal monopolies harmed, directly and indirectly, all

schools, all cities, all counties, all state agencies, and all competitors in the markets described above.


126. The injury suffered by the citizens has been addressed by the State Legislature in the Mississippi Antitrust Act and the Mississippi Consumer Protection Act. This fact evidences that the State of Mississippi has *parens patriae* standing in this action.

127. In addition to damages for the private parties who allegedly overpaid for Microsoft's products, the State seeks injunctive relief. This type of prospective relief goes beyond addressing the claims of previously injured organizations or individuals. It is aimed at securing an honest marketplace, promoting proper business practices, protecting Mississippi consumers, and advancing Mississippi's interest in the economic well-being of its residents. The fact that private parties may benefit monetarily from a favorable resolution of this case does not minimize nor negate plaintiff's substantial interest.

128. The Plaintiff seeks compensatory, punitive and statutory damages and penalties for damage to the State of Mississippi, and its citizens, as *parens patriae*, for the Defendant's wrongful conduct as described hereinabove.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL, ex
rel. STATE OF MISSISSIPPI

By: 
Brent Hazzard, (MSB #99721)
HAZZARD LAW, LLC
162 E. Amite Street
P.O. Box 24382
Jackson, MS 39225
Tel: 601.352.4299
Fax: 601.352.4288

Of Counsel:

David A. Barrett
(dbarrett@bsflp.com)
Jeffrey S. Shelly
(jshelly@bsflp.com)
Boies, Schiller & Flexner LLP
575 Lexington Avenue
New York, NY 10022
Tel. (212) 446-2300
Fax (212) 446-2350

William A. Isaacson
(wisaacson@bsflp.com)
Robert M. Cooper
(rcooper@bsflp.com)
Boies, Schiller & Flexner LLP
5301 Wisconsin Avenue, N.W.
Washington, DC 20015
Tel. (202) 237-2727
Fax. (202) 237-6131

James T. Southwick
Harry P. Susman
Susman Godfrey LLP
1000 Louisiana
Houston, Texas 77002
Tel: (713) 651-9366
Fax: (713) 654-6666

Stephen Shackelford, Jr.
Susman Godfrey LLP
Suite 5100
901 Main Street
Dallas, TX 75202-3775
(214) 754-1900
Fax: (214) 754-1933

A. Lee Abraham, Jr.
Preston Davis Rideout Jr.
ABRAHAM & RIDEOUT
305 West Market
P.O. Box 8407
Greenwood, MS 38935-8407
Tel: 662.453.3000

Precious T. Martin
Attorney at Law
P.O. Box 373
Jackson, MS 39205
Tel: 601.944.1447
Fax: 601.944.1448

John Gadow
Blake Tyler
Attorney at Law
502 South President Street
Tel: 601.948.4878
Fax: 601.948.3549
Jackson, MS

Richard Schwartz
David G. Galyon
Schwartz & Associates, P.A.
162 East Amite Street
P. O. Box 3949
Jackson, MS 39207-3949
(601) 353-1215
fax: (601) 353-0217

CERTIFICATE OF SERVICE

I, Brent Hazzard, do hereby certify that I have this day caused to be delivered a true and correct copy of the foregoing document to:

David W. Clark, Esq.
BRADLEY, ARANT, ROSE & WHITE, LLP
One Jackson Place, Suite 450
188 E. Capitol Street
Post Office Box 1789
Jackson, MS 39215-1789

SO CERTIFIED, this the 17th day of July, 2008.



Brent Hazzard