

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF _____
MSC.SOFTWARE CORPORATION, _____
a corporation. _____

PUBLIC VERSION

Docket No. 9299



~~CONFIDENTIAL AND PROPRIETARY INFORMATION~~

[REDACTED]

[REDACTED]

[REDACTED]

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS
MOTION TO COMPEL (BASED UPON COMPLAINT COUNSEL'S
BELATED "REVISED" AMENDED INTERROGATORY ANSWERS)**

This is not a game. This is government litigation firing a headshot at a relatively small corporation for two *de minimus* (one \$6 million, the other \$11 million) acquisitions, demanding not just divestiture of the acquired assets but the expropriation of MSC's flag ship property: MSC Nastran (See Complaint "Notice of Contemplated Relief" at 8-9)

This is game playing, plain and simple. The Revised Responses underscore Complaint

CONFIDENTIAL - ATTORNEY WORK PRODUCT - NOT FOR DISSEMINATION

[REDACTED]

[REDACTED]

[REDACTED]

of various companies conducted by analyst Eric Koval on 7/14/09 1:40 PM '09

[REDACTED]

Complaint Counsel identified the relevant product market *not* simply as “gravure printing with higher volumes than other printing runs” but specifically as “high volume, multi-color, commercial printing”

which is approximated by four-color gravure printing jobs with at least five million copies, at least sixteen pages, and fewer than four four-color versions (or the equivalent in one-color versions).” *In re R. R. Donnelly & Sons Co.*, No. 9243, 1995 WL 461663 (F.T.C. July 21, 1995).

In order for MSC to conduct direct sales, it must first obtain the necessary

that MSC can price discriminate to those customers (i.e. charge a higher price)?

Second, Complaint Counsel may not continue to use qualifying language to avoid disclosing information. Throughout its responses, Complaint Counsel sprinkles the terms:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Counsel's or the FTC's investigation in any way, the fact of the matter is that Complaint Counsel is simply gaming its response to withhold key information.²

Fifth, Complaint Counsel cannot continue to rely on documents without specifically

identifying them. Complaint Counsel continues to avoid stating the following:

[REDACTED]

[REDACTED]

[REDACTED]






[REDACTED]

[REDACTED]


and general references to documents. For example, in response to Interrogatory No. 2, Complaint Counsel makes reference to as "Respondent's employees and documents show" with *no* specific citations or document identification. As discussed in MSC's opening brief, both Rule 3.35(c) and the

Therefore, despite -- and, indeed, because of -- Complaint Counsel's "revised interrogatory responses," MSC continues to seek the relief identified in its brief in support of its Motion to Compel.

~~Moreover, the fact that Complaint Counsel did not~~ ~~submit~~ ~~interrogatory~~ ~~responses~~ ~~in~~ ~~its~~ ~~brief~~ ~~in~~ ~~support~~ ~~of~~ ~~its~~ ~~Motion~~ ~~to~~ ~~Compel~~



Responses -- but affirmatively abandoned many of its earlier "responses," substituting new ones -- is an acknowledgment of the inadequacy of the Interrogatory Responses Complaint Counsel has



CERTIFICATE OF SERVICE

This is to certify that on January 31, 2002, I caused a copy of the attached "Public

~~Version" of the proposed MSC Subpart C to be served upon the following persons by hand:~~

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

its Motion to Compel (Based Upon Complaint Counsel's Belated "Revised" Amended Interrogatory Answers) to be served upon the following persons by hand:

Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Richard B. Dagen, Esquire
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20580



ALL IN FUTURE. EDUCATION FROM RECYCLES.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

R E C E I V E
JAN 28 2002
K & E

_____)
In the Matter of _____)
_____)
_____)
_____)
_____)

[REDACTED]

[REDACTED]

_____)
a corporation. _____)
_____)

COMPLAINT COUNSEL'S REVISED RESPONSES AND OBJECTIONS
TO RESPONDENT MSC.SOFTWARE CORPORATION'S
FIRST SET OF INTERROGATORIES

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RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY
FTC Docket No. 9299

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Karen A. Mills

Patrick J. Roach

Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
(202) 326-2695
Facsimile (202) 326-3496

Dated: January 25, 2002

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FTC Docket No. 9299

CERTIFICATE OF SERVICE

This is to certify that on January 25, 2002, I caused a copy of Complaint Counsel's Revised Responses and Objections to Respondent MSC Software Corporation's First Set of Interrogatories to be served via facsimile transmission and followed by hand-delivery of a copy to the following person:

Marimichael O. Skubel, Esquire
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Washington, D.C. 20005

Fax (202) 879-5200