

Press information

Munich, June 9th 2008

usedSoft succeeds in getting an injunction against Microsoft

The Regional Court of Hamburg renders a prohibition order against the software monopolist based on which the software monopolist is prohibited from publishing misleading allegations regarding the lawfulness of the trade with used software.

On June 2, 2008, the Regional Court of Hamburg rendered a prohibitory injunction against the company Microsoft (file number: 416 O 103/08). Based on such injunction, the software monopolist is prohibited from publishing any misleading allegations in future which relate to a judgment rendered by the Regional Court of Hamburg. In such judgment, the lawfulness of the trade with split-up Microsoft volume licences had been confirmed.

In particular, Microsoft is no longer allowed to claim that on February 7, 2007, the Higher Regional Court of Hamburg (file number 5 U 140/06) would have overruled the judgment of the Regional Court of Hamburg of June 29, 2006. In addition, Microsoft is prohibited from claiming that the judgment of the Higher Regional Court of Hamburg judges in quintessence that the advertising for used software would be allowed, but not the trade with it.

“This prohibitory injunction of the Regional Court of Hamburg clearly shows that the monopolist by habit Microsoft cannot simply make whatever it wants to make within the constitutional state of Germany”, the court’s decision was commented by usedSoft’s managing director Peter Schneider. “Moreover, this decision is a clear signal for a free software market within Europe and against the policy of monopoly of the American software giants.”

As background: By judgment of June 29, 2006, the Regional Court of Hamburg had to decide whether an advertisement of the HHS usedSoft GmbH would be unlawful. Obviously, the court was not willing to decide such issue without generally checking the lawfulness of the trade with used software under copyright law aspects. Finally, the Regional Court passed a trend-setting judgment that only parts of Microsoft volume licences could be resold. Any contrary terms provided in any Microsoft licence conditions would be generally ineffective. Of course, Microsoft would not be entitled to request that it must be asked for permission before any transfer of licences.

In the subsequent period, the licensed Microsoft dealer filing suit lodged an appeal to the Higher Regional Court of Hamburg. The Higher Regional Court of Hamburg dismissed the appeal, thereby confirming the judgment rendered by the Regional Court. However, the Higher Regional Court of Hamburg did not provide any arguments under copyright law aspects, but under law on competition aspects. As a result, Microsoft used to wrongfully claim again and again that the judgment of the Regional Court would therefore be ineffective. “By means of this prohibitory injunction, this intentional misleading has now been finally proven to be nothing but false allegations”, emphasized Schneider.

The Regional Court of Hamburg imposed strict conditions upon Microsoft in connection with such prohibitory injunction as provided under law. In case of any infringement by Microsoft, Microsoft could get a disciplinary fine of up to 250,000.00 EURO, or a six-months’ term of imprisonment as a substitute. Microsoft may lodge an appeal against such decision.

The court’s decision is the most recent decision of a series of decisions which contents have been

disadvantageous to Microsoft. It was only in April that the Regional Court of Munich decided in a litigation because of a purchase price payment that individual software licences originating from Microsoft volume licence contracts may be resold "second-hand" (file number 30 O 8684/07).

About usedSoft

usedSoft was set up in 2003, and it is a leading European supplier of used software originating from all application fields. Buyers of usedSoft licences are companies as well as software dealers. Customers of usedSoft are, among others, companies such as Edeka, KarstadtQuelle, Neckermann, Rewe, the Law Office Holme Roberts & Owen, as well as a leading soccer club belonging to the German Soccer League and a number of different Savings Banks. German authorities are more and more using used software as well: Next to the Bavarian State Capital of Munich, the German Federal Social Court in Kassel, the Municipal Administration of Bad Salzuffen and the Data Central Office of Baden-Württemberg, there were more than 100 additional local authorities benefiting from usedSoft licences. The cost-saving benefit when buying used licenses ranges between 20 and 50 percent.

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