

## Press information

Munich, July 4<sup>th</sup> 2008

# usedSoft appeals to the German Federal Supreme Court

**As expected, the Higher Regional Court of Munich confirmed the Oracle-judgment/ Microsoft software is not affected by this decision**

In the proceedings relating to the trade with "used" Oracle licences, the lower court's decision was confirmed by the Higher Regional Court of Munich ("OLG") yesterday. As a result, usedSoft must not trade with used Oracle licences. However, this judgment has not become final and absolute.

The trade with used Microsoft licences is not affected by this judgment. In the course of these proceedings, even Oracle itself had explicitly emphasized before the OLG that the case regarding Oracle software would be different from the Microsoft licences matter.

Above all, the Regional Court of Munich had recently decided in a judgment which has become final and absolute (file number 30 O 8684/07) "that the sale respectively disposal of individual Microsoft software licences which had been sold within the scope of any volume licence contracts is possible in an effective way even without Microsoft's consent." The Regional Court had explicitly pointed out as well that the trade with Microsoft licences cannot be compared with the Oracle proceedings at issue.

usedSoft has already announced that it will submit a motion for judgment in an appeal on points of law against the OLG - judgment to the German Federal Supreme Court (= "BGH"). Due to the fact that the Higher Regional Court did not grant leave to appeal on points of law, usedSoft will directly submit a motion for judgment on points of law to the German Supreme Court still in this months in order to get a decision by the German Federal Supreme Court.

"In principle, the judgment is not relevant to us anymore, as we do not trade with Oracle software at present, and as the judgment rendered by the Regional Court of Munich being final and absolute is constituting a reasonable legal basis for our main business", commented usedSoft's Managing Director Peter Schneider on the recent Oracle judgment. "But this is also a matter of principle: " We will not accept that a German court is disregarding fundamental principles of law to such an extent. Before the German Federal Supreme Court, we will fight for a fully liberalized software market."

In 2000, the BGH had already decided in a leading decision that the exhaustion rule under copyright law – the legal basis of the trade with used software – cannot be limited by any licence conditions of the software developer. A decision of the BGH in the Oracle matter is not to be expected within the next two to three years.

Even the lower courts' decision in the Oracle proceedings had caused general disapproval amongst companies, experts of jurisprudence and media for the most part: The well-known commentator of copyright law Malte Grützmacher had also criticized in the juristic journal ZUM (journal for copyright and media law) that in this regard the established case law "... has not reached the point of an information society."

### **Information about usedSoft [www.usedsoft.com](http://www.usedsoft.com)**

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 Salzflun 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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