



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOFTWARE FREEDOM CONSERVANCY,
INC., et al.

Plaintiffs,

- against -

BEST BUY CO, INC., et al.

Defendants.

SCHEDULING ORDER

09 Civ. 10155 (SAS)

Conference Date: February 22, 2010

SHIRA A. SCHEINDLIN, U.S.D.J.:

WHEREAS, the Court issued an Order for a Conference in accordance with Fed. R. Civ. P. 16(b) on February 1, 2010 (the "Order"); and

WHEREAS, the Order requires that the parties jointly prepare and sign a proposed scheduling order containing certain information;

NOW, THEREFORE, the parties hereby submit the following information as required by the Order:

- (1) the date of the conference and the appearances for the parties;

February 22, 2010, 4:30PM

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(2) a concise statement of the issues as they then appear;

This case is based on claims by Plaintiffs that Defendants have infringed Plaintiffs' copyrights in a particular software program known as BusyBox. Plaintiffs are an individual copyright holder in BusyBox and the not-for-profit corporate home for BusyBox, which is also the designated copyright enforcement agent for the individual Plaintiff. Defendants are various corporations that distribute various electronic devices. Plaintiffs allege that Defendants redistributed Plaintiffs' copyrighted software program – either embedded within their physical products, electronically online through their websites, or both – without Plaintiffs' permission.

Plaintiffs seek an award of damages and attorneys fees and the issuance of a permanent injunction barring Defendants from continuing to do so.

No Defendant has answered yet, and Defendants are continuing to investigate and evaluate the defenses that may be available. Pending the results of the Defendants' investigations, Defendants expect to show that Plaintiffs have no damages, that Defendants did nothing actionable under copyright law, that any alleged copying was not willful, that Plaintiffs are the not proper parties, that the copyright held by Mr. Andersen is not applicable, and that, since being put on notice of the purported requirements of the general public license, Defendants have endeavored in good faith to come into compliance with what can only be described as a "moving target."

(3) a scheduling order including

- (a) the names of persons to be deposed and a schedule of planned depositions;

Names of persons to be deposed include Plaintiff Erik Andersen and other individuals yet to be determined. Depositions of fact witnesses to be completed by December 17, 2010. *start - MAY -*

- (b) a schedule for the production of documents;

The parties will serve initial requests for production of documents by May 21, 2010. *initial disclosures by 3/8*
MAR 22

- (c) dates by which (i) each expert's reports will be supplied to the adverse side and Initial expert reports due February 11, 2011; rebuttal expert reports due March 11, 2011.

- (ii) each expert's deposition will be completed;

April 15, 2011

- (d) time when discovery is to be completed;

Fact discovery to be completed by December 17, 2010. Expert discovery to be completed by April 15, 2011.

- (e) the date by which plaintiffs will supply its pre-trial order matters to defendants;

July 1, 2011

- (f) the date by which the parties will submit a pre-trial order in a form conforming with the Court's instructions together with trial briefs and either (1) proposed findings of fact and conclusions of law for a non-jury trial, or (2) proposed voir dire questions and proposed jury instructions, for a jury trial; and

July 29, 2011

(g) a space for the date for a final pre-trial conference pursuant to Fed. R. Civ. P. 16(d), to be filled in by the Court at the conference.

JAN. 6 at 4³⁰ 2011

(4) a statement of any limitations to be placed on discovery, including any protective or confidentiality orders;

The Parties anticipate moving for entry of a general protective order. The Parties are not aware of any other limitations, but anticipate that issues relating to prohibitions or restrictions on taking foreign discovery may arise as to some defendants.

(5) a statement of those discovery issues, if any, on which counsel, after a good faith effort, were unable to reach an agreement;

None.

(6) anticipated fields of expert testimony, if any;

Plaintiffs anticipate expert testimony concerning the following issues: (i) technological issues, including the relationship between source code and object code and how to determine if certain object code is derived from particular source code; and, (ii) damages, including the scope of infringement of Plaintiff's copyrighted works.

Defendants anticipate expert testimony in the areas of (a) technological issues, including but not limited to the identity of the source code at issue in the accused products, and (2) damages. Insofar as Defendants are competitors and the subjects of expert testimony involved may be competitively sensitive, Defendants may individually retain independent experts in order to safeguard their trade secrets and confidential information.

(7) anticipated length of trial and whether to court or jury;

Counsel for the parties have conferred and their present best estimate of the length of trial is fifteen (15) days . Certain Defendants contemplate that they may request a jury trial.

(8) a statement that the Scheduling Order may be altered or amended only on a showing of good cause not foreseeable at the time of the conference or when justice so requires;

This ORDER may be altered or amended only on a showing of good cause not foreseeable at the time of the conference or when justice so requires;

(9) names, addresses, phone numbers and signatures of counsel;

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SO ORDERED



SHIRA A. SCHEINDLIN
United States District Judge

Dated: New York, New York

Feb. 22, 2010