

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5 10 CV 27

SAS INSTITUTE INC.,)
)
Plaintiff,)
)
v.) **COMPLAINT**
)
WORLD PROGRAMMING LIMITED)
)
Defendant.)
_____)

Summary of the Action

1. This is an action by SAS Institute Inc. (“SAS”), a North Carolina-based software company, against World Programming Limited (“WPL”), an English company which competes with SAS. As more fully described below, WPL has engaged in a series of unfair and deceptive acts designed to unfairly compete with SAS by appropriating to itself the long-standing efforts of SAS in creating the market for business intelligence software and convincing SAS users worldwide to license WPL’s software in place of SAS. WPL has done this by, among other things, misrepresenting itself to SAS as a “financial services” company rather than a software competitor in order to obtain access to SAS proprietary information, violating a license agreement with SAS by using certain SAS software for its own impermissible commercial purposes, violating SAS’s copyrights, touting the ability of WPL’s knock-off software to “emulate” key features of SAS’s software, and targeting SAS’s customer base developed over years at great effort and expense on the part of SAS. Indeed, WPL’s *only* market for its software are the existing customers of SAS which already use SAS software under licenses with SAS. SAS is seeking injunctive relief and ultimately damages (including treble and punitive damages) and other relief from WPL for (1) copyright infringement, (2) breach of a license agreement (or,

alternatively, tortious interference with contract), (4) tortious interference with prospective economic advantage and (5) unfair and deceptive trade practices/unfair competition.¹

The Parties

2. Plaintiff SAS is a corporation organized under the laws of the State of North Carolina with its principal place of business in Cary, North Carolina. SAS has been in business for over thirty years and during that time has become the world's largest privately-held software company. As more fully described below, SAS is considered the world leader in business intelligence software and services primarily offered through an integrated range of software products which are known as the "SAS System."

3. Defendant WPL is a private limited company incorporated under the laws of England and Wales with its registered office address listed as Worsley Lodge, Common Hill, Braishfield, Romsey SO51 0QF. WPL was incorporated in 1998 under the name Management Technologies Limited and thereafter changed its name on at least two occasions, adopting its current name in 2006.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction of this action under 28 U.S.C. § 1338(a), as an action arising under an Act of Congress relating to copyrights, 17 U.S.C. §§ 101, *et seq.*; as an action arising under 28 U.S.C. § 1338(b), as an action arising under an Act of Congress relating to copyrights joined with a claim for unfair competition; and this Court's supplemental jurisdiction. This Court has personal jurisdiction over WPL under 17 U.S.C. §

¹ SAS earlier instituted an action against WPL in the courts of the United Kingdom for WPL's violations of the laws of the United Kingdom and, potentially, the laws of other European Union countries.

501, as well as the North Carolina long-arm statute, N.C.G.S. § 1-75.4, based on facts more fully described below.

5. Venue is proper in this District under 28 U.S.C. § 1391(b) as a substantial part of the acts giving rise to the allegations of this Complaint occurred in this District and based on WPL's agreement to venue as more fully described below.

The Business of SAS

The SAS System

6. The SAS System enables users to perform a variety of tasks primarily relating to data access, data management, data analysis (including statistical analysis) and data presentation. It consists of a number of software components which users can install separately. The core component of the SAS System is known as "Base SAS." The other components of the SAS System require the use of Base SAS and provide a user with additional capabilities.

7. Users cause the SAS System to access data and then to manage and analyze such data and to present or provide results by issuing instructions to the SAS System. Those instructions are typically provided by a user in the form of a text file containing the required instructions and are generally referred to as "SAS Programs."

8. SAS Programs are written in a programming language developed by SAS and known as the "SAS Language." Instructions which call software routines included in the SAS System and which perform specific predetermined tasks are known as "SAS Procedures." Thus, Base SAS allows users to develop and run SAS Programs.

9. SAS also publishes for the benefit of its users a wide range of reference materials in both electronic and printed form ("SAS Manuals"). Those publications describe the features of the SAS System and provide instructions and assistance to users of the SAS System.

10. SAS Manuals also provide readers with a detailed description of aspects of SAS System including a detailed description of the instructions which form part of the SAS Language and SAS Procedures.

Licensing of the SAS System

11. Customers of the SAS System are required to enter into a license agreement with SAS. While the terms and conditions of SAS's license agreements have varied from time to time, such agreements are generally in the form of a Master License Agreement ("SAS MLA"), which among other things:

a. restricts the use of the licensed SAS System software to the Customer's employees and on site contractors while doing work solely for the Customer;

b. prohibits the Customer from (i) using the licensed SAS System software for the benefit of other persons in exchange for compensation (ii) using the licensed SAS System software for provision of data services, outsourcing or similar arrangements or to process data of other persons and (iii) allowing any unauthorized user to edit, modify or otherwise access the SAS System software and thereby prohibit the Customer from using the SAS System for purposes other than the business of the Customer; and

c. agrees that North Carolina law will govern.

SAS Learning Edition Software

12. In order to enable individuals to learn how to use the SAS System without entering into a full SAS MLA, SAS has developed certain software which is known as the SAS Learning Edition.

13. The SAS Learning Edition includes versions of Base SAS and certain other components of the SAS System including SAS/GRAPH (procedures for graphing capabilities),

SAS/STAT (procedures for providing statistical information such as analysis of variance, regression, multivariate analysis, and categorical data analysis), SAS/QC (quality improvement tools) and SAS/ETS (procedures for econometric and time series analysis). The components of the SAS System which are included in the SAS Learning Edition are restricted as to the quantity of data which can be processed.

14. The SAS Learning Edition also includes a selection of SAS Manuals in printed and electronic form.

Licensing of SAS Learning Edition Software

15. Before an individual is entitled to use the SAS Learning Edition software, that individual is required to accept the terms of a license agreement (the “LE License Agreement”).

Clause 1.1 of the LE License Agreement provides:

1.1 In exchange for Customer's payment of all applicable fees and compliance with the terms of this Agreement, SAS hereby grants Customer a nonassignable, nontransferrable and nonexclusive license to use the Software on one (1) workstation at a time, for Customer's non-production purposes only. Concurrent usage or use on a network is not authorized.

16. Clause 1.2 of the LE License Agreement provides:

1.2 Customer may not use the Software in any outsourcing, facilities management or service bureau arrangement or any data or information technology management operation by or for third parties.

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