

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of _____
MSC SOFTWARE CORPORATION, _____
a corporation. _____

Docket No. 9299

**RESPONDENT MSC SOFTWARE CORPORATION'S
OPPOSITION TO COMPLAINT COUNSEL'S
MOTION TO COMPEL DEPOSITIONS**

On April 15, 2002, a mere six weeks before the close of discovery, with dozens of third-party depositions yet to be taken, Complaint Counsel expressed its interest in scheduling the depositions of six MSC executives and the former Chief Executive Officer of CSAR. This simply represents one more of Complaint Counsel's many devices to harass and burden MSC, disrupting MSC's business at a critical time and impairing MSC's attorneys from preparing MSC's case for trial.

The latest round of depositions requested by Complaint Counsel is absolutely not needed, as the explanation Complaint Counsel provide make obvious. Contrary to Complaint Counsel's claim, not all of the executives noticed are on MSC's witness list: Mr. Dyer and Mr. Blakely will not be called to testify. While it is true that these seven individuals have knowledge about issues in the trial, by that standard every employee in the company would have knowledge. The issue is when does the discovery become cumulative, duplicative, and rise to the level of harassment. MSC submits it has reached this point.

Complaint Counsel has taken 14 depositions in this administrative proceeding. The first reason Complaint Counsel gives to take seven more is the need to ask questions on paid-up licenses. Complaint Counsel has questioned 14 MSC employees about the move to paid-up pricing. There is

substantial testimony about the pro-competitive benefits of this pricing system; how it is common in the industry; and that for existing customers who prefer annual licenses, the option is still available. Complaint Counsel hardly needs to depose six more MSC people to learn more about this non-event.

The second stated reason for the need to depose six people for several days is the Dassault Systems Alliance. This Alliance was the subject of an inquiry during the Part 2 investigation. MSC provided documents and information at that time and this Alliance is not the subject of the FTC's Complaint.

The third reason provided is that MSC is in the process of turning over electronic discovery. MSC finds it curious that before even reviewing these documents, Complaint Counsel expects that it will have to question these six individuals (as opposed to the 37 others for whom we are submitting electronic discovery) on the new documents.

Finally, Complaint Counsel's offer to limit *all* depositions to one day is ludicrous. Complaint Counsel cannot be so naive to equate the deposition of fact witnesses to that of an expert. Dr. Hilke produced a 291 paragraph tome replete with unsubstantiated hearsay and questionable economic conclusions. Confining his deposition to one day would constitute legal malpractice. On the other hand, depositions of fact witnesses are routinely limited to one seven hour in federal proceedings. *See* Fed. R. Civ. P. 30 (d)(2). Complaint Counsel has provided no compelling reason why any of these depositions need to be carried over to a second day.

For these reasons, MSC requests that Complaint Counsel's Motion be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tefft W. Smith", written over a horizontal line.

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MSC Software Corporation

Dated: May 2, 2002

CERTIFICATE OF SERVICE

This is to certify that on May 2, 2002, I caused a copy of Respondent MSC Software Corporation's Opposition to Complaint Counsel's Motion to Compel Depositions to be served upon the following persons by hand delivery:

The Honorable D. Michael Chappell
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