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MULTIVIDEO LAB v. INTEL CORPORATION

Karen A. Gibbs[†]

I. BACKGROUND

Multivideo Labs, Inc. (“MVL”) asserted the following causes of action against Intel Corporation (“Intel”)¹: (1) actual and attempted monopolization in violation of Section 2 of the Sherman Act; (2) false advertising in violation of Section 43(a) of the Lanham Act; and (3) tortious interference with prospective business advantage.² Intel moved for summary judgment on MVL’s claims.³

Central to the dispute was Intel’s involvement in the Ease-of-Use Initiative (“the Initiative”), which Intel and other computer industry participants hope will increase consumer demand for personal computers (“PCs”) by making PCs easier for consumers to use. One of the biggest challenges that the Initiative has taken on is the lack of a standard for peripheral connections to PCs. Because there was no standardized connection, if a consumer wanted to connect a new peripheral to his or her PC, he or she often would have to go through several steps to connect the peripheral, including shutting down the PC, opening up the PC, and adding an insert or a card that would enable the peripheral to connect and work.

To alleviate the peripheral connection problem, the Initiative seeks to establish the reality of “Plug and Play,” meaning that a

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1. *Multivideo Labs, Inc. v. Intel Corp.*, 2000 WL 12122 (S.D.N.Y. Jan. 7, 2000).
2. *See id.* at *12.
3. *See id.* at *1.

customer can simply buy a peripheral device, plug it in, and go to work. To this end, Intel, Compaq, Digital Equipment, NEC, Microsoft, IBM, and Northern Telecom developed a standard and corresponding Universal Serial Bus⁴ ("USB") specification ("the Specification") to enable easy attachment of peripherals. The USB technology not only provides a standard for ports and protocols but also provides the means to manage power consumption for a system of computer components. To manage power consumption, the Specification provides a way for the host computer to identify attached peripherals and then, based on a specified power budget for each USB peripheral, to manage power running through the bus in a way that supports as many peripherals as possible. To avoid a system crash, each USB peripheral must be designed and manufactured in conformance with its specified power budget. If a device exceeds its power budget, the manufacturer is required to reengineer the device to fit within its power budget.

To further assist its Plug and Play efforts, the Initiative also promotes the use of USB-compliant extension cables. USB-compliant cables have an upstream USB "A" plug at one end and a downstream USB "B" plug at the other. Series "A" plugs are always oriented upstream, that is towards the PC, and can connect only with "A" sockets, and series "B" plugs are always oriented downstream and can connect only with "B" sockets. Because of this configuration, compliant cables cannot be connected together, or "cascaded." Non-compliant cables use an "A" socket at one end and an "A" plug at the other. Non-compliant cables therefore can be linked together without limit and result in cable lengths exceeding the Specification's five-meter limit—often resulting in a system crash.

Even though Intel's competitive role in the USB market is minimal and intentionally diminishing, Intel has contributed substantial resources to the development and promotion of the USB standard and Plug and Play effort, including creating a group within Intel whose sole responsibility is to support USB. And Intel and the other drafters of the Specification formed the Universal Serial Bus Implementation Forum ("USB-IF"), an unincorporated, voluntary membership organization engaged in all aspects of PC development. USB-IF has over 500 member companies, including MVL. Intel is the designated administrator and Chair of the UBS-IF, and regularly

4. The "bus" refers to the lines through which computer components, including the host computer and computer peripherals, communicate. *See id.* at *2.

answers questions about the interpretation of the Specification without consulting other members.

To further the adoption of the USB Specification, several times each year, the USB-IF sponsors "Plugfests," where the USB-IF tests products for compliance with the USB Specification. If a product passes the test, the USB-IF includes it on an "Integrators' List," which is given to developers and members of the USB-IF. Products on the list are allowed to display USB logos.

So why did MVL sue Intel? MVL's main USB product is the Active Extension Cable ("AEC"), which MVL invented to help PC users connect USB peripherals to PCs or to each other from a distance up to eighty feet. To keep power levels sufficiently high in order to avoid a crash, the AEC used a "repeater" to amplify and sustain electrical signals. Upon completion of the AEC, MVL announced that the AEC was 100% compatible with the Specification and brought it to the April 1998 Plugfest for testing. After testing, however, the USB-IF found that the AEC was not 100% compatible. One of the main problems was that MVL designed the AEC so that a customer could link several AECs together to create a longer cord. With each AEC extension, the level of effectiveness fell. If a customer linked five AECs together, for example, the level of effectiveness fell to 66%.

Despite the AEC's failure to obtain a place on the "Integrators' List," MVL proceeded to manufacture the AEC. And when MVL first launched its AEC product in January 1999, the AEC's packaging prominently displayed the letters "USB." The front of the package even stated that the AEC was "100% Compatible w/ the USB Electrical & Timing Specs for USB hub . . . Connect up to 5 cables in a series."⁵ Even the plug itself contained a USB icon.

In response, an Intel employee sent a letter to MVL and other companies believed to be manufacturing AECs stating that the AEC is not USB compliant. The letter also stated that the AEC had no Specification-required hub, which allows a computer to recognize the device when plugged in. The letter asked that MVL cease representing that the AEC was USB compliant unless it was a hub by itself and had passed USB-IF testing. As a result of receiving this letter, one AEC manufacturer ceased negotiating a deal for the purchase of chips that would have enabled the manufacturer to produce AECs, and orders from several customers were "relegated to

5. *Id.* at *11.

the back burner.”⁶ In other words, there was a “general cooling of the market” for the AEC.⁷

II. HOLDING, RATIONALE AND DISCUSSION

A. *Sherman Act Claims*

MVL alleged both actual and attempted monopolization, but focused on monopoly leveraging—in other words, that Intel used its “monopoly power in one market to gain a competitive advantage in another, albeit without an attempt to monopolize the second market.”⁸ The court found no genuine issue of material fact for trial because MVL failed to provide evidence that Intel’s products compete with the AEC in the relevant market, that Intel’s statements were anything but truthful, and that Intel’s motives or actions were anti-competitive.⁹

The threshold requirement for establishing a Section 2 claim is whether the defendant has sufficient market power in the relevant market. In antitrust law, the relevant market is the “area of effective competition.”¹⁰ Here, MVL defined the relevant market as that for USB interconnect devices. The court, however, found that there was no evidence establishing that MVL and Intel were competitors in the USB interconnect devices market, or that Intel had the requisite market power in the USB market.¹¹ In fact, the court found that Intel offered credible evidence to the contrary, establishing that Intel offers very few USB products or components, and that it does not manufacture any USB hubs, cables, or other interconnect products.¹² MVL’s argument that Intel’s Ethernet products “may” be an alternative to USB products and therefore may compete with MVL’s products also fell flat.

MVL also tried to argue that Intel leveraged its monopoly in the

6. *Id.* at *12.

7. *Multivideo*, 2000 WL 12122 at *12.

8. Section 2 of the Sherman Act provides that “[e]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any person or persons, to monopolize any part of the trade or commerce among the several States . . . shall be deemed guilty of a felony.” 15 U.S.C. § 2 (1994). Plaintiffs can bring a variety of claims under Section 2, including claims of illegal monopoly maintenance, monopolization, attempt to monopolize, and in some forums, monopoly leveraging.

9. *See Multivideo*, 2000 WL 12122 at *15.

10. *AD/SAT, Inc. v. Associated Press*, 181 F.3d 216, 227 (2d Cir. 1999).

11. *See Multivideo*, 2000 WL 12122 at *13.

12. *See id.*

worldwide market for microprocessors.¹³ MVL stated that Intel had substantial market power in the market for central processing units (“CPUs”) and that Intel exercised that power through the USB-IF to prevent MVL from competing in the market for the USB interconnect products. But the court rejected this argument, too, because MVL’s AEC does not compete with products in the microprocessor market. The court cited the Second Circuit’s ruling in *Berkey Photo, Inc. v. Eastman Kodak Co.*,¹⁴ which held that a commercial actor can violate Section 2 of the Sherman Act “by using its monopoly power to gain a competitive advantage in another market, albeit without any attempt to monopolize the second market.”¹⁵ The court then, referring to *Spectrum Sports, Inc. v. McQuillan*,¹⁶ noted that the idea of monopoly leveraging claims under Section 2 has been questioned by the Supreme Court. The court noted that even if leveraging survived *Spectrum Sports*, the doctrine most likely would be limited to activity that injures competition, not competitors.¹⁷ The court then found no evidence that Intel had used its power in the microprocessor market to exclude competition in the AEC market.¹⁸ Instead, just the opposite, the court found that Intel was enthusiastic to hear about a possible USB-compliant cable and that it encouraged MVL to develop a compliant product.¹⁹

MVL also contended that Intel employees’ statements that the AEC was non-compliant were anti-competitive.²⁰ To establish that a defendant has engaged in false and misleading advertising, a plaintiff “[m]ust overcome a presumption that the effect on competition of such a practice was de minimis.”²¹ To overcome the de minimis presumption, a plaintiff must show that the representations were: (1) clearly false; (2) clearly material; (3) clearly likely to induce reasonable reliance; (4) made to buyers without knowledge of the subject matter; (5) continued for prolonged periods; and (6) not

13. *See id.*

14. 603 F.2d 263 (2d Cir. 1979).

15. *Id.* at 275.

16. 506 U.S. 447 (1993).

17. *See Multivideo*, 2000 WL 12122 at *14.

18. *See id.*

19. *See id.*

20. *See id.* at *15.

21. *National Ass’n of Pharm. Mfrs., Inc. v. Ayerst Labs., Inc.*, 850 F.2d 904, 916 (2d Cir. 1988).

readily susceptible of neutralization or other offset by rivals.²² Because MVL admitted that Intel's statements were true, MVL failed to clear even the first hurdle of this standard.²³

B. Lanham Act Claim

MVL contended that Intel violated Section 43(a) of the Lanham Act by sending a letter to MVL manufacturers and distributors.²⁴ To establish a Section 43(a) violation, a plaintiff must prove: (1) the statements were false or misleading; and (2) the statements were made in commercial advertising or promotion.²⁵ The court found that MVL failed to satisfy these two elements of a Lanham Act claim, and granted Intel's motion for summary judgment.

The court found that MVL did not satisfy the requirement that the statements be false or misleading. The court found that the plaintiff "must demonstrate, by extrinsic evidence, that the challenged [statements] tend to mislead or confuse consumers."²⁶ MVL did not contend that the Intel letter was intentionally deceptive, but only that it was confusing and misleading. MVL claimed that recipients of the letter believed that the AEC did not work. The court, however, found that since there was no evidence that the consumers held this belief, it was not actionable.²⁷ Additionally, the court found that the AEC failed to meet the Specification's requirements because it lacked the controller to communicate with the computer and connecting five AECs in series as stated on the box resulted in failure.²⁸

The court also found that the statements at issue were not in commercial advertising or promotion. "In order for representations to constitute 'commercial advertising or promotion' under [the Lanham Act], they must be: (1) commercial speech; (2) by a defendant who is in commercial competition with plaintiff; (3) for the purpose of influencing consumers to buy defendant's goods or services. . . . [and;] (4) . . . disseminated sufficiently to the relevant purchasing public to constitute 'advertising' or 'promotion' within that

22. *See id.* at 916 (internal quotation omitted).

23. *See Multivideo*, 2000 WL 12122 at *15.

24. *See* 15 U.S.C. § 1125(a) (1994).

25. *See id.*

26. *Johnson & Johnson * Merck Consumer Pharm. Co. v. Smithkline Beecham*, 960 F.2d 294, 297 (2d Cir. 1992).

27. *See Multivideo*, 2000 WL 12122 at *17.

28. *See id.*

industry.”²⁹ MVL provided no evidence to show that the purpose of the letter was to influence the purchase of Intel products. In fact, both parties presented evidence that the motive behind the statements was to promote compliance with an industry standard, which Intel and its employees believed would benefit customers and competition within the personal computing industry.³⁰

C. Tortious Interference with Prospective Economic Advantage Claim

MVL also alleged that Intel’s statements to AEC manufacturers and distributors constituted tortious interference with MVL’s business relations.³¹ To establish a tortious interference claim, a plaintiff must prove: (1) a business relationship between the plaintiff and a third party; (2) the defendant, knowing of that relationship, intentionally interfered with it; (3) the defendant acted with the sole purpose of harming the plaintiff, or used dishonest, unfair, or improper means; and (4) the relationship was injured.³²

The court granted Intel’s summary judgment motion and dismissed MVL’s tortious interference claims. The court found that MVL had offered no evidence to support the third element of its claim by failing to establish, or even contend, that Intel had used “dishonest, unfair or improper means.”³³ The court also found that MVL failed to establish that Intel had acted with the sole purpose of harming MVL.³⁴

29. *Gordon & Breach Science Publishers v. American Inst. Of Physics*, 859 F. Supp. 1521, 1535-36 (S.D.N.Y. 1994).

30. *See Multivideo*, 2000 WL 12122 at *17.

31. *See id.* at *18.

32. *See id.* (citing *Goldhirsh Group Inc. v. Alpert*, 107 F.3d 105, 108-09 (2d Cir. 1997)).

33. *Id.*

34. *See id.*

