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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

CALDERA, INC.,

Plaintiff,

vs.

MICROSOFT CORPORATION,

Defendant.

COMPLAINT AND JURY DEMAND

Case No. 2-96CV-00453

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COMPLAINT

Plaintiff Caldera, Inc., ("Caldera") brings this action against defendant Microsoft Corporation ("Microsoft") for damages and injunctive relief under the antitrust laws of the United States, and for damages in tort, and demands trial by jury, complaining and alleging as follows:

I. NATURE OF CASE.

1. This action challenges illegal conduct by Microsoft calculated and intended to prevent and destroy competition in the computer software industry. As the United States Department of Justice alleged in *United States vs. Microsoft*, Civil No. 94-1564 (D.D.C., Complaint filed July 15, 1994), Microsoft has violated Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2. As outlined in the Justice Department's complaint, through various unfair and predatory acts, Microsoft has willfully maintained a monopoly of the market for MS-DOS operating system software and functionally-equivalent software (the "DOS Market"). (For purposes of this complaint, MS-DOS and competing functionally-equivalent operating system software will be referred to as "DOS Software.") Such software is designed to run on personal computers using Intel x86 or Intel x86-compatible microprocessors ("PCs"). The Intel x86 class of microprocessors includes Intel 286, 386, 486, Pentium and Pentium Pro microprocessors, as well as microprocessors manufactured by other companies that use a substantially similar architecture and instruction set.

2. Microsoft has erected artificial barriers to the entry and growth of competing operating systems vendors through its contractual relations with original equipment

manufacturers (OEMs) of PCs and other predatory conduct, which have had the effect of excluding competitors from the DOS Market, a market in which Microsoft has monopoly power. These practices have included the following:

- (a) License agreements which required OEMs to pay royalties to Microsoft not only when they sold PCs containing Microsoft's MS-DOS, but also when they sold PCs containing competing DOS Software or no DOS Software ("per processor licenses");
- (b) Unreasonably long terms for license agreements with OEMs for the use of Microsoft's MS-DOS software;
- (c) In lieu of and in addition to per processor licenses, pricing schemes and other license terms and enforcement practices that effectively have required OEMs to purchase their entire DOS Software requirements from Microsoft;
- (d) Tying arrangements under which Microsoft required OEMs to purchase MS-DOS to the exclusion of competing DOS Software products, in particular DR DOS and Novell DOS, in order to obtain its Windows software programs or to be given access to other essential information, product support and service;
- (e) False public statements by Microsoft executives, and Windows error messages, which have misled the market as to possible incompatibility problems between Microsoft's Windows software programs and non-Microsoft DOS Software, in particular DR DOS and Novell DOS; and

(f) False public statements by Microsoft executives concerning future product features and anticipated shipment dates, known in the industry as "vaporware," timed to match announcements or releases of new versions of competing DOS Software, in particular DR DOS and Novell DOS.

These practices have had the purpose and effect of freezing out competing DOS Software products, in particular DR DOS and Novell DOS, and thereby entrenching Microsoft as the dominant provider of DOS Software.

3. Microsoft's conduct has had a direct, substantial and adverse effect on competition by raising barriers to entry to competing DOS Software, foreclosing competition with Microsoft on the basis of price and performance, and stifling innovation. Buyers of PCs and software have thus been forced to pay higher prices for less innovative, inferior products.

4. Caldera, has acquired from Novell, Inc. ("Novell"), its DR DOS- and Novell DOS-related assets, including this claim (the "DR DOS Business"), pursuant to an Asset Purchase Agreement dated July 23, 1996. (For simplicity's sake, DR DOS and Novell DOS are referred to generically herein as "DR DOS.") Caldera is therefore entitled to recover damages from Microsoft for its anticompetitive and illegal conduct. Moreover, unless restrained by order of this court, Microsoft will permanently destroy competition in the DOS Market in the microcomputer software industry, and Caldera will be artificially and illegally prevented from realizing the full financial potential of the DOS Business.

5. The United States District Court for the District of Columbia entered a Final Judgment in *United States v. Microsoft* on August 21, 1995, which barred certain of Microsoft's anticompetitive practices, including per processor licenses, licenses exceeding one year in length, licenses prohibiting or restricting OEMs from licensing or distributing non-Microsoft operating systems, license agreements conditioning an OEM's license of one Microsoft operating system product upon the license of another Microsoft product or upon the OEM not licensing a non-Microsoft product, minimum commitment licenses, and licenses requiring royalty payments to Microsoft other than on a per-copy or per-system basis. Pursuant to 15 U.S.C. § 16(i), the statute of limitations has been suspended as a result of *United States v. Microsoft*.

II. THE PARTIES.

6. Plaintiff Caldera is a Utah corporation. Caldera's principal place of business is located at 633 South 550 East, Provo, Utah 84606. Caldera develops, markets, sells, licenses and services software used with PCs.

7. Pursuant to the Asset Purchase Agreement with Novell, Caldera is in the business of developing, marketing, selling, licensing and servicing DR DOS products. Caldera competes with Microsoft in the sale, distribution and support of DOS Software and other software products via the Internet, as well as through traditional OEM, distributor, retailer and value-added reseller channels.

8. Defendant Microsoft is a Delaware corporation. Microsoft's principal place of business is located at One Microsoft Way, Redmond, Washington, 98052.

9. Microsoft is the world's largest independent software company with fiscal 1996 sales totaling \$8.67 billion. Microsoft's net income reached \$2.20 billion in 1996, up from \$1.453 billion the prior year, an increase of 52%. Over the last 5 years, Microsoft's average annual growth rate has been 33%. Operating system sales increased 53% during fiscal year 1996 over fiscal year 1995.

10. The Microsoft products chiefly at issue here are MS-DOS, which runs on the Intel x86 class of microprocessors, and Windows, a graphical user interface (GUI), which runs on top of MS-DOS and other DOS Software.

III. JURISDICTION AND VENUE.

11. This Court has jurisdiction over this matter pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, and 28 U.S.C. §§ 1331, 1337 and 1367.

12. Venue is proper in this district under 15 U.S.C. §§ 15, 22 and 26, and under 28 U.S.C. § 1391(b) and (c) because (i) defendant Microsoft transacts business and is found within this district, (ii) plaintiff's principal place of business is within this district, and (iii) a substantial portion of the events giving rise to the claim herein occurred within this district.

IV. PERSONAL COMPUTER TECHNOLOGY AND THE PERSONAL COMPUTER INDUSTRY.

A. Introduction of the PC.

13. IBM was among the first United States companies to introduce microcomputers for personal use. IBM introduced the IBM personal computer in 1981. It was quickly dubbed the

"PC," a term now used (in this Complaint and generally) to refer to any personal computer that is IBM-compatible, whether manufactured by IBM or not. *i.e.*, personal computers that use Intel x86-class microprocessors.

14. The components of a PC are the hardware (which includes the microprocessor, the memory and the disk drive), software (which includes the operating system, other low level programs, and various applications programs), and peripherals (which include the display screen, keyboard and printer).

15. IBM's hardware architecture design was based on a microprocessor chip designed and manufactured by Intel. So-called "clone" PC manufacturers also utilize Intel x86-class microprocessors.

16. The dominant operating system on Intel x86-class microprocessors is Microsoft's MS-DOS.

B. The Importance of the Operating System Software.

17. The software on a PC can be divided into three basic categories: operating system software (*e.g.*, MS-DOS), graphical user interface (GUI) software and applications software.

18. Applications software gives the PC its functionality and consumer utility. Application software provides the PC with instructions for the performance of tasks selected by the user. Primary examples of application software are word processing, spreadsheet, and database programs.

19. The operating system controls the basic functions of the PC and facilitates interaction between application programs and hardware. Operating system software performs the following functions:

(a) controlling the allocation and usage of computer hardware components such as central processing unit, memory, disk space and peripheral devices;

(b) facilitating the execution of applications software by responding to requests or "calls" made by the application programs during their operation that require various hardware components to perform particular functions;

(c) managing the flow of data and communication among various PC components.

20. The operating system constitutes the critical layer of software in every PC. All other software programs installed by a PC user must work with, and therefore be compatible with, the particular operating system running on the PC.

21. In writing applications for a particular operating system, applications developers refer to a set of ground rules for that operating system, known as the Application Programming Interfaces (or APIs). APIs tell the application developer what the operating system will do in response to a defined set of requests or "calls." As long as an application is written in accordance with the rules set by the API, the application will run with a given operating system.

22. Particular operating systems can only work with a certain type of microprocessor. For example, MS-DOS will operate only on PCs, *i.e.*, machines that contain Intel x86-class

microprocessors. MS-DOS will not run on machines manufactured by Apple Computer, which operate on a non-Intel microprocessor platform.

C. The Emergence of Graphical User Interfaces ("GUIs").

23. MS-DOS is character-based, *i.e.*, most of the visual displays generated by MS-DOS are limited to blinking cursors, letters and numbers. To have the computer perform certain tasks -- such as opening a new file -- the user must issue instructions by typing in the correct sequence of letters and numbers or by using rudimentary mouse functions.

24. Graphical user interface or GUI screen displays include icons or symbols to represent programs, functions or information. A GUI, together with a "mouse" pointing device, allows the user to instruct the computer to perform specific functions by merely pointing to and "clicking" on certain graphical images, symbols or words.

25. In 1985, Microsoft introduced its GUI software, called Windows.

26. Although sometimes referred to as an operating system, all versions of Windows, excluding Windows NT and Windows 95, interface with and "run on top of" DOS Software. Windows adds a GUI interface between DOS and the user. Windows takes advantage of more sophisticated microprocessors and increased memory capacity to generate complex visual displays as part of its graphical user interface.

D. Software Distribution Channels.

27. The customer base for DOS Software consists primarily of PC manufacturers, *i.e.*, OEMs. This is commonly referred to as the OEM channel. DOS Software is also sold at retail,

primarily as an upgrade. Because virtually all PCs are sold with operating system software installed, however, there is little opportunity for vendors of DOS Software to make significant sales in retail channels. Hence, by controlling the OEM channel, Microsoft is able to control distribution.

28. OEM licenses for DOS Software (and also Windows software products) typically permit the OEM, through the use of a "golden master" diskette supplied by the software developer (such as Microsoft), to reproduce and install the software on each PC. By contrast, applications programs are generally manufactured onto separate disks and sold in boxes through retail channels.

V. MICROSOFT'S GROWTH AND DOMINATION.

29. In 1981, IBM contracted with Microsoft to design and develop the operating system software for the IBM PC. Since it had practically no background in operating systems, Microsoft entered into an arrangement with a company known as Seattle Computer Products (SCP) to acquire rights to a program under development by SCP known as "QDOS" for Quick and Dirty Operating System.

30. QDOS borrowed heavily from an operating system developed by Digital Research, Inc. ("DRI") called CP/M.

31. Microsoft changed the name of QDOS to MS-DOS, for Microsoft-Disk Operating System. Under its arrangement with IBM, Microsoft retained the right to license MS-DOS to other PC manufacturers. IBM called its version of the product PC DOS.

32. MS-DOS was originally designed to run on the Intel 8088 microprocessor.

Microsoft has introduced several versions of MS-DOS since 1981, which have run on the Intel x86 class of microprocessors.

33. Because Microsoft distributes MS-DOS (and Windows) predominantly through the OEM channel, its costs of sale are minimal. Once Microsoft delivers a master copy of a disk containing the MS-DOS (or Windows) program to a given OEM, it incurs little or no additional costs of sale. OEMs, on the other hand, must copy and package disks, prepare product literature, and ship product to customers.

34. By the mid-1980's, MS-DOS had become entrenched as the standard in the DOS Market, generating millions of dollars of revenues to Microsoft. Not surprisingly, in view of Microsoft's monopoly power and the absence of competition, the price of MS-DOS in the OEM channel escalated from \$2-\$5 per copy in the 1981-1982 period to \$25-\$28 per copy by 1988.

35. At the same time, for much of the 1980s, Microsoft did almost nothing to improve MS-DOS. Microsoft released MS-DOS 3.0 in August 1984, but did not release MS-DOS 4.0 until June 1988, a month after DRI released DR DOS 3.31. Microsoft did not issue an improved release until June 1991, when MS-DOS 5.0 appeared in response to DR DOS 5.0 (which was released in April 1990).

VI. THE DR DOS CHALLENGE.

36. Microsoft's inaction was remarkable given that improvements in hardware technology and applications software had created a demand among PC users for an enhanced operating system. By 1987, users were seeking:

(a) **The ability to support larger disk drives.** Although larger hard disks were becoming available, Microsoft did nothing to improve MS-DOS so that it could support such hard disks until Compaq developed its own version of MS-DOS with such functionality.

(b) **Improved memory management.** Microsoft did nothing to improve memory management so that larger applications programs (such as popular desktop publishing applications) could run on a computer with relatively limited memory.

(c) **Loading the operating system on a ROM chip.** Even though it had become technologically feasible to install certain portions of operating systems on a "read only memory" (ROM) chip, a feature that would improve the function of the program, Microsoft did nothing to create a "ROM-able" version of MS-DOS.

(d) **Improved user interface.** MS-DOS required users to master rather arcane programming commands in order to perform various operations. Microsoft failed to make its commands more user-friendly or to provide any "help" screen for users to enable them to determine which commands they should execute.

37. Because of these deficiencies, a number of OEMs approached DRI and requested that it develop a version of DOS that would fill the gaps in functionality that plagued MS-DOS. At the same time, there were a number of OEMs who simply could not get Microsoft to deal with them (irrespective of product features). Many of these OEMs indicated to DRI that they would be seriously interested in an alternative DOS Software product. Accordingly, in 1987 DRI began planning for a new version of DOS, to be called DR DOS.

37. DRI designed DR DOS to be the functional equivalent of MS-DOS, *i.e.*, to support the same API set. DRI was able to accomplish this largely because of its experience in the development of CP/M, from which QDOS and MS-DOS derived.

38. The result of DRI's initial development effort was a product designated as DR DOS 3.31, introduced on May 28, 1988. DR DOS 3.31 was followed quickly by enhanced versions of the product. Thus DR DOS 5.0, introduced in May 1990, and DR DOS 6.0, introduced in September 1991, were significantly superior to then-existing versions of MS-DOS in many areas, including (a) memory management, (b) a ROM-able core of the operating system, (c) user-friendly commands and on-screen help resources, (d) a graphical user interface option, (e) extended disk commands, (f) password protection, and (g) the ability to store twice as much information on a hard disk through disk compression technology.

39. Industry experts responded enthusiastically to DR DOS. DR DOS 5.0 received several awards including the 1990 BYTE Award of Distinction and Finalist in the 1990 PC Magazine Award for Technical Excellence. DR DOS 6.0 similarly received a number of

industry awards, including the 1991 BYTE Award of Excellence, BEST of COMDEX (Fall 1991), and the Infoworld Buyers Assurance Seal.

40. The technical superiority of DR DOS resulted in a rise in sales from about \$15 million in fiscal year 1990 to \$30 million in fiscal year 1991, notwithstanding Microsoft's anticompetitive conduct. DR DOS sold well in the retail distribution channel, but due to Microsoft's exclusive dealings and other predatory conduct, it was largely locked out of the OEM channel.

VII. MICROSOFT'S PREDATORY RESPONSE TO DR DOS.

41. Microsoft refused to tolerate this PCs to its monopoly position in the DOS Market for at least two (to Microsoft) compelling reasons: (i) Microsoft's DOS Market monopoly enabled it to control the standards or APIs to which all applications for IBM-compatible PCs had to be written; and (ii) MS-DOS enabled Microsoft to collect enormous amounts of money from its license of MS-DOS at negligible ongoing cost or risk.

42. DR DOS posed a particularly significant threat to Microsoft because (i) it was compatible with applications written for MS-DOS; and (ii) since both DR DOS and MS-DOS were technological successors to CP/M, Microsoft could not claim that DR DOS infringed upon any proprietary technology it owned.

43. Microsoft's principal defense against any competitive threat, including DR DOS, was the wall of "per processor" licenses that it had begun to construct in 1988, the year that DR DOS was first released to the market. Under per processor licenses, OEMs were required to pay

Microsoft a royalty on every PC they sold regardless of whether it contained Microsoft's MS-DOS, some other software developer's DOS Software, or no operating system software. This royalty system effectively imposed a tax in favor of Microsoft whenever an OEM sold a PC equipped with any operating system other than MS-DOS. Given the razor-thin margins on the sale of PCs, this royalty scheme caused OEMs to ship MS-DOS exclusively.

44. Microsoft compounded this per processor licensing scheme by insisting on long-term licenses of MS-DOS from its OEM customers, contracts that tended to be longer than typical product cycles. Microsoft also obtained large "take or pay" minimum commitment licenses that also effectively foreclosed the ability of competitors such as Novell to sell competing DOS Software products to OEMs, and engaged in other licensing practices that had the effect of coercing OEMs to deal exclusively with Microsoft.

45. Microsoft responded to DR DOS 5.0 by announcing in May 1990 that it intended to issue a new release of MS-DOS, to be called MS-DOS 5.0, that would mirror the technical advantages already present in DR DOS 5.0. Microsoft indicated that the new release of MS-DOS would be available within a few months. Industry experience indicates that it would have been near impossible for Microsoft to develop and release a commercial version of its product matching the features of DR DOS 5.0 within that period. Nonetheless, Microsoft repeated this vaporware announcement throughout the summer and into the fall of 1990. In fact, MS-DOS 5.0 was not released until June 1991 and, when finally released, it did not offer the features Microsoft had promised.

46. On July 17, 1991, DRI, finding it difficult to compete in the face of Microsoft's onslaught, announced its agreement to be acquired by Novell. The merger was completed October 28, 1991. With the financial, research and development, and marketing support of Novell, DR DOS could have obtained a significant share of the DOS Market, but for Microsoft's anticompetitive conduct.

47. In the fall of 1991, Microsoft announced to the market that DR DOS would not be compatible with the next release of Windows known as Windows 3.1, scheduled for release in April 1992. The market perceived that it was critical for an operating system to support Windows; therefore Microsoft's statements that DR DOS could not do so substantially undercut Novell's efforts to penetrate the DOS Market.

48. To reinforce the impression that DR DOS would be incompatible with Windows 3.1, beginning in December of 1991, Microsoft released beta versions of Windows 3.1 containing code that generated error messages when Windows 3.1 ran on top of DR DOS rather than MS-DOS. Microsoft created these error messages solely for the purpose of creating the impression that DR DOS would be incompatible with Windows in order to dissuade customers from purchasing DR DOS.

49. Even though the Windows 3.1 beta release was at that time the largest such release in history, Microsoft refused to provide a Windows 3.1 beta to Novell. Microsoft's refusal to do so was another predatory effort to impede Novell's ability to test DR DOS with Windows 3.1 and thereby hamper Novell's ability to offer a Windows 3.1-compatible release of

DR DOS to the market. In fact, when Windows 3.1 was finally released to the market, Novell was able to release an enhanced version of DR DOS supporting Windows 3.1 without substantial technical difficulty.

50. Microsoft also informed certain OEM PC manufacturers that they could not obtain Windows or be given access to essential information, product support and service if they did not purchase and ship MS-DOS, to the exclusion of DR DOS.

51. Similarly, Microsoft established a pricing structure for Windows that made it prohibitive to buy that product in the absence of MS-DOS. For example, certain Korean OEMs were informed that the price of Windows without MS-DOS would be double the price of Windows with MS-DOS.

52. Microsoft's most devastating tactic, however, was its massive expansion of per processor licenses in the OEM channel. Following the announcement of Novell's acquisition of DRI, Microsoft substantially stepped up its efforts to coerce OEMs to enter into per processor licenses or comparably exclusionary MS-DOS licenses. Thereafter, Novell's sales force found the OEM channel virtually impenetrable: they were thwarted in account by account by Microsoft's per-processor license wall.

53. The combined effect of Microsoft's anticompetitive practices on DR DOS was devastating. DR DOS sales plummeted during fiscal year 1992, totaling \$15.5 million in the first quarter, \$13.7 million in the second quarter, \$6.9 million in the third quarter, and \$1.4 million in the fourth quarter (which ended October 31, 1992).

54. Microsoft continued with its predatory practices throughout 1992 and up to the present day. Microsoft has employed another tactic for locking OEMs exclusively to MS-DOS, namely, "cliff pricing" through which a commercially-reasonable price is provided to OEMs if and only if they commit to obtain all of their requirements for operating system software from Microsoft.

55. Although various governmental agencies including the United States Department of Justice have sought to bar certain of Microsoft's predatory practices such as the per processor license, Microsoft has been permitted to employ its "cliff pricing" practice with impunity.

56. Novell introduced its final version of the product, Novell DOS 7.0, in the summer of 1993. In September 1994, as a result of Microsoft's predatory and anticompetitive conduct described herein, Novell announced that it would cease the marketing and development of DR DOS.

VIII. RELEVANT MARKETS.

57. There are two relevant product markets: (i) the DOS Market; and (ii) the market for graphical user interfaces that run on top of DOS Software (the "GUI Market").

58. The relevant geographic market is the United States. Microsoft sells and licenses MS-DOS throughout the United States. The major developers of other DOS Software are exclusively U.S. companies.

59. Microsoft has monopoly power in the DOS Market and the GUI Market. In fact, according to the Justice Department's complaint, "Microsoft has monopoly power in the relevant

market and has had monopoly power since at least the mid-1980s. For almost a decade

Microsoft has retained an extremely high market share -- consistently in excess of 70%."

Microsoft's MS-DOS and Windows are the de facto software standards for the Intel x86 class of microprocessors.

60. Microsoft's control of MS-DOS and Windows standards for Intel x86-class microprocessors provides it with several significant advantages over competitors, including the following:

(a) Because of Microsoft's large installed base, for competing DOS Software products to have any chance of commercial success, they must provide the functionality of Microsoft's MS-DOS so that they can support graphical user interfaces and applications written for MS-DOS;

(b) Because Microsoft has early access to its own MS-DOS and Windows APIs, it can develop and deliver complementary products to market more quickly than competitors whose complementary software products must be compatible with Microsoft's products;

(c) By changing APIs, or refusing to support certain APIs in newer versions of its MS-DOS and Windows products, Microsoft can render competitors' complementary products technologically incompatible; and

(d) Microsoft has power over OEMs, such that they can influence OEMs' decisions whether to purchase software products offered by Microsoft competitors.

As a result of these and other advantages, Microsoft holds and has exercised power to exclude competitors and increase prices in the DOS Market and the GUI Markets.

**FIRST CLAIM FOR RELIEF
MONOPOLIZATION OF DOS MARKET
(Violation of Sherman Act, Section 2)**

61. Caldera incorporates by reference and realleges the averments of ¶¶ 1-60 as if fully set forth herein.

62. Microsoft has monopolized the DOS Market in violation of § 2 of the Sherman Act. There is no legitimate business justification or purpose for Microsoft's conduct. Microsoft has not used the least restrictive means for achieving its business objectives.

63. The aforesaid conduct of defendant Microsoft has produced and, unless restrained by Order of this Court, will continue to produce the following anticompetitive effects, among others:

(a) Competition in the manufacture, sale and distribution of operating system software, particularly DOS Software, has been unreasonably restrained and eliminated, and has been monopolized by defendant Microsoft;

(b) Competition with defendant Microsoft in the DOS Market, including competition by Novell and Caldera, has been or will be eliminated;

(c) Barriers to entry in the DOS Market have been raised to a virtually insurmountable level, thereby assuring continued unlawful maintenance of Microsoft's monopoly

and Microsoft's ability to exercise its monopoly power to control prices and eliminate competition; and

(d) Innovation and the development of new and more efficient operating system software has been retarded and is in danger of ceasing.

64. As a direct and proximate result of the predatory acts and practices alleged above, the DR DOS Business, which plaintiff Caldera has acquired, is being and will continue to be immediately and irreparably injured through the following:

(a) The loss of profits that otherwise would have been earned from the sale of DR DOS and related PC operating system software;

(b) The loss of sales of DR DOS and related PC operating system software that otherwise would have been made;

(c) The loss of market presence for DR DOS, as well as the loss of market share that might otherwise have been achieved in a freely competitive market;

(d) The substantial reduction in the value of the DR DOS Business assets;

(e) The loss of good will in the DR DOS Business as a going concern; and

(f) The loss to the DR DOS Business of skilled engineering, product development and marketing personnel and the erosion of its sales and service organization.

65. The precise amount of damages that Caldera is entitled to recover as a result of the foregoing injuries to the DOS Business has not yet been ascertained.

66. In addition, defendant Microsoft's monopolization of the DOS Market is an ongoing wrong causing the DR DOS Business incalculable and irreparable injury for which there is no adequate remedy at law. Unless defendant Microsoft is restrained by an appropriate Order of this Court, Caldera will be unable to compete fully and fairly in the DOS Market.

**SECOND CLAIM FOR RELIEF
ILLEGAL TYING
(Violation of Sherman Act, Section 1)**

67. Caldera incorporates by reference and realleges each and every allegation contained in ¶¶ 1-66 as if fully set forth herein.

68. Microsoft has coerced OEMs to enter into unreasonable and anticompetitive tying arrangements in the form of licenses to MS-DOS. In furtherance of its illegal tying arrangements, Microsoft engaged in the following conduct, among other things:

(a) Demanded that OEMs license MS-DOS in order to obtain a license to Windows;

(b) Set royalty rates on unbundled Windows licenses, *i.e.*, licenses to use Windows only without a license to MS-DOS, such that the only viable economic option for OEMs was to license both MS-DOS (the tied product) and Windows (the tying product) from Microsoft;

(c) Conditioned access to the Windows product as well as critical technical information, product support and service for both MS-DOS and Windows on the purchase of MS-DOS to the exclusion of DR DOS; and

(d) Tied MS-DOS and Windows technologically by deliberately creating technological incompatibilities offering no technical benefit solely for the purpose of creating the impression that DR DOS was incompatible with Windows.

69. Many OEMs did not and do not wish to license MS-DOS from Microsoft on the terms imposed and many users would have preferred to run DR DOS with Windows but for the fears of incompatibility created by Microsoft.

70. Microsoft has appreciable market power in the GUI Market due to, among other things, (i) its dominant market share; (ii) its copyrighted Windows product; and (iii) its unique MS-DOS-compatible graphical user interface.

71. Novell competed with Microsoft in attempting to license its DR DOS operating system to OEMs and in attempting to license DR DOS directly to end users at retail. As a direct result of Microsoft's tying arrangements as described above, Novell and other competitors were foreclosed from selling DOS Software to a substantial portion of the market.

72. Microsoft's illegal tie-ins have resulted in actual substantial foreclosure of DR DOS from the DOS Market. Competition in the DOS Market has been reduced because of Microsoft's anticompetitive conduct.

73. Microsoft's tying arrangements constitute contracts in unreasonable restraint of trade in or affecting a substantial volume of interstate commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

74. The DR DOS Business, now owned by Caldera, suffered injury by reason of these acts. The precise amount of damages has not yet been ascertained.

**THIRD CLAIM FOR RELIEF
EXCLUSIVE DEALING
(Violation of Sherman Act, Section 1)**

75. Caldera incorporates by reference and realleges the averments of ¶¶ 1-74 as if fully set forth herein.

76. Microsoft has coerced OEMs to enter into long-term exclusive dealing arrangements for MS-DOS. These exclusive dealing contracts have taken the form of per-processor licenses, cliff pricing, volume discounts, coercive royalty schedules and other licensing terms and practices having the purpose and the practical effect of forcing OEMs to purchase all of their DOS Software requirements from a single seller -- Microsoft.

77. The effect of Microsoft's exclusive dealing arrangements was to effectively foreclose a substantial number of prospective customers, particularly OEMs, from purchasing DR DOS. OEMs who would like to have licensed DR DOS have been precluded from doing so by their per processor and other exclusive licenses with Microsoft.

78. The actual and probable effect of Microsoft's exclusive dealing arrangements has been to raise prices above the competitive level and substantially lessen competition in the DOS Market. Microsoft possesses monopoly power and has used and, continues to use, exclusive dealing arrangements with OEMs to raise barriers to entry and foreclose actual and potential competition.

79. There is no legitimate business justification for Microsoft's exclusive dealing arrangements.

80. The above-described exclusive dealing arrangements imposed by Microsoft constitute contracts in unreasonable restraint of trade in or affecting a substantial volume of interstate commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

81. Caldera's DOS Business has been injured by reason of these acts. The precise amount of damages has not yet been ascertained.

**FOURTH CLAIM FOR RELIEF
TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS**

82. Caldera incorporates by reference and realleges the averments of ¶¶ 1-81 as if fully set forth herein

83. Microsoft, through various improper means as alleged above, has willfully and intentionally sought to damage Novell's and DRI's existing and prospective business relations. Microsoft, through various false statements, cover-ups, encrypted code, and other fraudulent and deceptive means, has sought to conceal the true nature and extent of such conduct, thus tolling any applicable statute of limitations.

84. Microsoft was and is maliciously motivated and knew, or in the exercise of reasonable care should have known, that its actions would damage and continue to damage the DR DOS Business and existing and prospective contractual relations with DR DOS customers, and has acted in conscious disregard of this effect.

85. As a proximate result of this intentional interference by Microsoft, the DR DOS Business has suffered special damages in the form of lost sales and profits. Caldera, having acquired the DR DOS Business from Novell, is entitled to recover such damages from Microsoft, the amount of which has not yet been ascertained.

86. Caldera, due to Microsoft's willful, malicious and intentionally fraudulent conduct, manifesting a knowing and reckless indifference to, or a reckless disregard of, DRI's and Novell's rights, is entitled to an award of punitive damages in sufficient amount to dissuade Microsoft from similar future conduct.

PRAYER FOR RELIEF

1. For compensatory damages in an amount to be proven at trial.
2. For an order trebling the amount of compensatory damages awarded pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15.
3. For an award of punitive damages.
4. For an order granting permanent injunctive relief requiring that defendant Microsoft hereinafter refrain from the use of per processor licenses on MS-DOS or any other operating system software that is competitive with, or an intended replacement for, DOS Software, including Windows 95 and Windows NT.
5. For an order granting permanent injunctive relief requiring that defendant Microsoft hereinafter refrain from licensing practices and pricing policies which have the purpose and effect of causing exclusive dealing.

6. For an order granting permanent injunctive relief requiring Microsoft, for a period of ten years, to disclose to Caldera all APIs for any operating system it produces, as well as any modifications, enhancements, updates, or new versions of such operating systems at the time that such products are released for beta testing.

7. For an order granting permanent injunctive relief prohibiting Microsoft from including code in any software products that has the sole or primary purpose of creating real or perceived incompatibility between Microsoft's products and Caldera's products.


8. For an order granting permanent injunctive relief as may be reasonably necessary or appropriate to eliminate the effects of Microsoft's violations of the antitrust laws and to restore effective competition in the computer software industry.

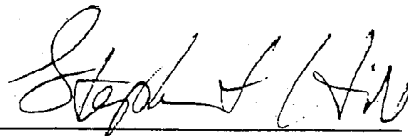
9. For the award to plaintiff of its attorneys' fees and costs of suit.

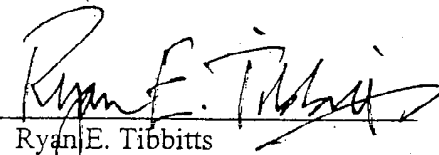
10. For such other and further relief as the Court deems just and equitable.

DATED this 23rd day of July, 1996.

SNOW, CHRISTENSEN & MARTINEAU

By 
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By 
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By 
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