



IN THE HIGH COURT OF JUSTICE

CLAIM NO.:

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INTELLECTUAL PROPERTY LIST (ChD)

INTELLECTUAL PROPERTY ENTERPRISE COURT

BETWEEN

(1) ORACLE AMERICA, INC.

(formerly known as SUN MICROSYSTEMS, INC.)

(2) ORACLE INTERNATIONAL CORPORATION

Claimants

-and-

TXO SYSTEMS LTD

Defendant

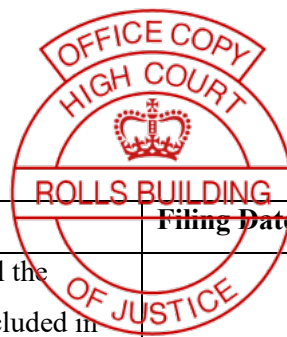
PARTICULARS OF CLAIM

1. The Claim herein is brought against the Defendant in respect of its unlawful dealings in goods bearing the Claimants' registered trade marks which have not been put on the market in the UK or the EEA by the Claimants or with their consent.

The Claimants and the Registered Trade Marks

2. The First Claimant ("**Sun**") and Second Claimant ("**Oracle**") are part of the Oracle group of companies (the "**Oracle Group**") which design, manufacture, and market network computing infrastructure solutions, including data storage products, cloud platforms, databases, microprocessors and other related products and solutions.
3. Sun is the registered proprietor of the following UK trade marks (the "**Sun Trade Marks**") registered *inter alia* in respect of the following goods in Class 9:

Number	Mark	Goods	Filing Date
00001502557	Sun + device	computer apparatus and instruments; computer hardware;	8 June 1992



Number	Mark	Goods	Filing Date
		parts and fittings for all the aforesaid goods; all included in Class 9;	
00001256594	Sun device	Computing apparatus;	17 December 1985
00001502653	SUN	Computers, computer hardware; parts and fittings for all the aforesaid goods;	8 June 1992
00900124594	Sun + device	Computers, computer hardware, computer peripherals	1 April 1996
00900125781	Sun device	Computers, computer hardware, computer peripherals;	1 April 1996
00900124610	SUN	Computers, computer hardware, computer peripherals;	1 April 1996

4. Oracle is the registered proprietor of the following UK trade marks (the “**Oracle Trade Marks**”) registered *inter alia* in respect of the following goods in Class 9:

Number	Mark	Goods	Filing Date
00003014718	ORACLE	Computer hardware, and computer peripherals.	22 July 2013
00902843019	ORACLE	computers, computer hardware and computer peripherals.	10 September 2002

5. Print-outs showing the registrations of the Sun Trade Marks and the Oracle Trade Marks (collectively the “**Registered Trade Marks**”) are attached as Annex 1 hereto.
6. The Registered Trade Marks are and at all material times have been subsisting registrations.

The Defendant

7. The Defendant is a private limited company incorporated under number 05479601 on 13 June 2005 under the laws of England and Wales having its registered office at Finance & Administration Dept, Unit 3 Severn Cross Distribution Park, Newhouse Farm Ind Estate, Chepstow, Monmouthshire, NP16 6UP.



8. According to its website at www.txo.com, the Defendant is a provider of critical telecom network hardware and asset management services. To the best of the Claimants' knowledge and belief, the Defendant sources or recovers equipment in bulk, from *inter alia* large telecommunications businesses around the world, which it sells/resells or recycles globally.
9. In the course of its business, the Defendant may acquire and has acquired IT related equipment which it offers for sale/resale, including goods bearing the Sun Trade Marks and/or the Oracle Trade Marks.

The acts complained of

10. The Defendant has, in the course of its business, offered for sale and/or sold goods bearing the Sun Trade Marks and/or the Oracle Trade Marks which have not been put on the market in the UK or the EEA by or with the consent of the Claimants or the Oracle Group. Pending disclosure and/or responses to requests for further information, the Claimants rely upon the following facts and matters:
 - a. In December 2020, the Defendant offered 38 products for sale in the UK to Wildfire Systems Limited (“**Wildfire**”), as identified in the spreadsheet attached hereto as Annex 2. Each of those products bore the Sun Trade Marks. Further, the T3-1 product identified as the last entry on the first page of Annex 2 bore the Oracle Trade Marks as shown in the photograph in Annex 3. Without prejudice to the burden being upon the Defendant if it wishes to contend otherwise, none of those goods had been put on the market in the UK or the EEA by or with the consent of the Claimants or the Oracle Group. As shown in Annex 2, those goods had been put on the market in the USA, Australia, Andorra and Bosnia & Herzegovina.
 - b. The Defendant offered for sale in the UK a further 305 products to Wildfire, as identified in the spreadsheet attached hereto as Annex 4. Each of those products bore the Sun Trade Marks. Without prejudice to the burden being upon the Defendant if it wishes to contend otherwise, none of those goods had been put on the market in the UK or the EEA by or with the consent of the Claimants or the Oracle Group. As shown in Annex 4, those goods had been put on the market in the USA, Australia, India and China.
 - c. It is to be inferred that the Defendant offered for sale and/or sold the two servers which bore the Sun Trade Marks referred to in paragraph 11.c below.



11. The manner and extent of the Defendant's dealings in Sun/Oracle goods is outside the Claimants' knowledge; however, the Claimants will rely upon the following facts and matters as indicating that such dealings have been extensive (and have included new as well as second-hand equipment) over the preceding six years:
- a. The Defendant has previously listed dozens of pages of Sun and Oracle products for sale on its www.txo.com website, on which it has specifically stated that it '*carries an extensive range of new, used and refurbished Oracle equipment*' in respect of which it has '*large volume stock holding*' and '*quick turnaround times*'.
 - b. On 5 February 2015, one of the Defendant's sales brokers (Jack Stewart) offered to a Danish company, Epoka A/S, four new Sun products, as shown in the email attached as Annex 5.
 - c. In 2019, the Defendant placed an order with IMN GmbH for two Sun servers, as shown in the invoice attached as Annex 6. The Claimants have subsequently identified that those servers contained components which had not been put on the market in the UK or the EEA by or with the consent of the Claimants or the Oracle Group.

Legal consequences of the Defendant's acts

12. By reason of the foregoing the Defendant has without the consent of the Claimants used in the course of trade signs identical with the Registered Trade Marks in relation to goods which are identical with those for which they are registered, and has thereby infringed the Registered Trade Marks pursuant to s. 10(1) Trade Marks Act 1994 (the '**Act**').
13. For the avoidance of doubt, by reason of the facts and matters set forth in paragraph 10 above, the Defendant has offered and exposed goods for sale and stocked them for those purposes under the Registered Trade Marks within the meaning of s. 10(4)(b) of the Act. It is further to be inferred, by reason of the facts and matters set forth in paragraph 11 above, that the Defendant has imported or exported goods under the Registered Trade Marks within the meaning of s. 10(4)(c) of the Act.
14. By reason of the foregoing, the Claimants have suffered loss and damage.
15. The Defendant threatens and intends to persist in the activities complained of.



16. The Claimants are not presently aware of all of the Defendant's acts which infringe their rights, but at trial will seek to rely upon each and every act in the nature of those complained of herein in the six years preceding the issue of this Claim.
17. The Claimants are entitled to and claim interest under section 35A of the Senior Courts Act 1981 or the equitable jurisdiction of this Honourable Court upon all sums awarded to them.
18. The Claimants seek an order for appropriate measures for the dissemination and publication of the Judgment to be taken at the expense of the Defendant in accordance with paragraph 26.2 of CPR Practice Direction 63.
19. The Claimants seek relief in materially the form approved and granted in Sun Microsystems Inc v. Amtec Computer Systems Corp Ltd [2006] EWHC 62 (Ch) and Sun Microsystems Inc v. M-Tech Data Limited [2009] EWHC 2992 (Pat) as upheld by the Supreme Court in Oracle America, Inc. v. M-Tech Data Limited [2012] UKSC 27.

Statement pursuant to CPR 63.20(2)

20. By letter before action dated 15 January 2021 and subsequent letter dated 8 February 2021, the Claimants have complied with paragraph 6 of the Practice Direction (Pre-Action Conduct)

AND THE CLAIMANTS CLAIM:

Injunction

1. An Injunction to restrain the Defendant, whether acting by itself, its officers, servants, agents, or otherwise howsoever, from doing the following acts or any of them:
 - a. Importing into, exporting out of, advertising for sale, offering for sale or selling within the UK any computer hardware or computer peripheral (“**Computer Product**”) bearing any sign that is identical to any of the trade marks details of which are set out in the Particulars of Claim herein (the “**Registered Trade Marks**”) where the Computer Product has not been put on the market within the UK or the European Economic Area (EEA) by the Claimants or with the consent of the Claimants (within the meaning of section 12 of the Trade Marks Act 1994)



PROVIDED THAT the Defendant is not prevented from dealing in a Computer Product bearing any such sign if:

- (i) the Defendant has informed the duly appointed UK representative of the Claimants in writing or by email of the serial number and part number of the Computer Product in question giving at the same time a description of the Computer Product, stating whether it is new or second-hand either (a) prior to a knowing purchase of a Computer Product bearing any of the Registered Trade Marks or (b) promptly after an unknowing purchase of a Computer Product bearing any of the Registered Trade Marks; and
- (ii) the Claimants have not responded (subject to '2' below, the Claimants to provide any such response as soon as practicable and in any event within 10 calendar days of receipt of the information from the Defendant) stating that its records and/or information available to it show to its satisfaction that the Computer Product in question has not been put on the market in the UK or the EEA by it or with its consent;

but only if the Defendant does not know or believe that the Computer Product in question has not in fact been put on the market in the UK or the EEA by, or with the consent of, the Claimants.

2. An Order that, in any case where the Defendant provides information to the duly appointed UK representative of the Claimants concerning the serial number, part number and description of any Computer Product where the Computer Product or its packaging bear any sign that is identical to any of the Registered Trade Marks, and as soon as practicable but in any event within the 10 day period in '1(ii)' above, the Claimants raise a reasonable query over the information provided, the time within which the Claimants have to respond to the Defendant is extended until 10 calendar days after the duly appointed UK representative of the Claimants receives a response from the Defendant to the query.
3. An Order that, if the Defendant provides information pursuant to the above paragraphs which includes serial number or part number information, such information must be provided in a convenient format and if the Defendant has such information in electronic form, it must be provided in convenient electronic form.



Disclosure and delivery up in connection with the proviso to the injunction

4. An Order that, in any case where (under the operation of the Proviso to the Injunction set out at Paragraph 1 above) within the periods in '1(ii)' or (if applicable) 2^a above, the Claimants respond to the Defendant stating that the Computer Product in question has not been put on the market in the UK or EEA by the Claimants or with their consent, and where that Computer Product has been imported into, exported out of, advertised for sale, offered for sale and / or sold within the UK by the Defendant and / or the Defendant's supplier (or potential supplier) thereof, the Defendant must forthwith provide to the duly appointed UK representative of the Claimants the following information, namely the name, address and contact details of the person, firm or company which offered to supply (in respect of '1(i)(a)' above) or supplied (in respect of '1(i)(b)' above) the product in question, together with copies of any documentation relating to the offer for sale or sale. In respect of '1(i)(b)' above, the Defendant shall forthwith deliver up to the duly appointed UK representative of the Claimants all products, materials or articles where the Computer Product was identified by the Claimants as not having been put on the market in the UK or EEA by the Claimants or with their consent.

Delivery up

5. An Order that the Defendant shall provide to the duly appointed UK representative of the Claimants the following information in writing in relation to each Computer Product in its possession, power, custody or control where the product or its packaging bear any sign that is identical to any of the Registered Trade Marks, namely, the serial number and part number and description of the Computer Product.
6. An Order that the Claimants shall notify the Defendant in writing which of the Computer Products notified pursuant to the preceding paragraph were not put on the market in the UK or the EEA by the Claimants or with their consent.
7. An Order that the Defendant shall deliver up to the duly appointed UK representative of the Claimants all products, materials or articles where the Computer Product was the subject of the Claimants' notification in the preceding paragraph.
8. An Order that, in relation to the Computer Products which were the subject of the Claimants' notification in paragraph '6', the Defendant shall by a duly authorised officer, make and serve on the Claimants' solicitors a witness statement disclosing to the best of the knowledge, information and belief of the Defendant:



- a. The full names, addresses and contact details of all persons, firms or companies who have supplied to the Defendant any of the said Computer Products together with details of the dates and quantities of every such supply and complete and legible copies of all orders, invoices, delivery notes, documents and records in the Defendant's power, custody, possession or control relating to the supply of such to the Defendant.

Disclosure

9. An Order that the Defendant shall, by a duly authorised officer, make and serve on the Claimants' solicitors a witness statement disclosing to the best of the knowledge, information and belief of the Defendant the serial number and part number and description of each Computer Product purchased in, imported into, exported out of or sold within the UK by the Defendant in the preceding 6 years where the product or its packaging carried any sign that is identical to any of the Registered Trade Marks.
10. An Order that, as soon as practicable, the Claimants shall notify the Defendant in writing which of the Computer Products notified pursuant to the preceding paragraph were not put on the market in the UK or the EEA by the Claimants or with their consent, and the products so notified shall be referred to as "the Specified Items".
11. An Order that, in relation to the Specified Items, the Defendant shall by a duly authorised officer, make and serve on the Claimants' solicitors a witness statement disclosing to the best of the knowledge, information and belief of the Defendant:
 - (a) the full names, addresses and contact details of all persons, firms or companies who have supplied to the Defendant any Specified Items together with
 - (i) details of the dates and quantities of every such supply of Specified Items; and
 - (ii) complete and legible copies of all orders, invoices, delivery notes, documents and records in the Defendant's power, custody, possession or control relating to the supply of Specified Items to the Defendant.
 - (b) the full names, addresses and contact details of all persons, firms or companies to whom the Defendant has supplied any Specified Items and setting out in the form of a schedule:
 - (i) details of the dates and quantities of every such supply of Specified Items; and
 - (ii) the identity of each Specified Item including the serial number, part number and description of each such item.

12. An inquiry as to damages or, at the Claimants' option, an account of profits by reason of the acts of the Defendant the repetition of which would be a breach of any of the injunctions set forth in paragraph 1 above.
13. An Order for payment to the Claimants of the sums found due in answer to the said inquiry or upon taking the said account, together with interest pursuant to Section 35 A of the Senior Courts Act 1981 or under the Court's equitable jurisdiction.
14. An Order for dissemination and publication of the Judgment at the expense of the Defendant.
15. Costs.
16. Further or other relief.

GUY HOLLINGWORTH

Statement of Truth

The Claimants believe that the facts stated in these Particulars of Claim are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:



Full Name: John Michael Sanders

Date: 13 May 2021

Served this day of May 2021 by CMS Cameron McKenna Nabarro Olswang LLP of Cannon Place, 78 Cannon Street, London EC4N 6AF, solicitors for the Claimants.