United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

APPLE, INC., a California corporation,

Plaintiff,

v.

PSYSTAR CORPORATION, a Florida corporation,

Defendant.

_____/

AND RELATED COUNTERCLAIMS.

_____/

No. C 08-03251 WHA

ORDER DENYING APPLE'S MOTION TO ENJOIN FLORIDA ACTION AND TO RE-OPEN INSTANT CASE TO INCLUDE FLORIDA ACTION AND DENYING MOTION TO STRIKE

Apple, not Psystar, commenced this action. Apple has fought hard to keep its unreleased product — Snow Leopard — *out* of this action by, among other things, relentlessly objecting to discovery on Snow Leopard as, for example, at its Rule 30(b)(6) witness deposition and in response to document requests. These refusals were express, intentional and specifically directed at Snow Leopard. It is true that some discovery was permitted on Snow Leopard by Apple, but it was adamant that Snow Leopard was not relevant (due to its status as an unreleased product).

Only after the discovery period closed did Apple release Snow Leopard, having successfully kept it out of the case. Perhaps to Apple's surprise, its opponent Psystar then commenced a separate antitrust action directed at Snow Leopard in the United States District Court in the Southern District of Florida, assigned to Judge William Hoeveler. To head off a

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second front, Apple now seeks to reverse field in the instant case and to enlarge it to include Snow Leopard by way of re-opening discovery and resetting the summary judgment timeline. In turn, this may aid Apple having the Florida action transferred here.

Apple's motion should be and is **DENIED**. If Snow Leopard was within the scope of its own complaint herein, as it now suggests, then Apple should have welcomed discovery thereon rather than, as it did, object to discovery directed at Snow Leopard and effectively taking Snow Leopard out of the case. Apple even chose *when* to release Snow Leopard and it chose to do so after all opportunity to take discovery on it had ended. The problem is one largely of Apple's own making. Now that the discovery period has closed, we are well into the summary judgment stage. Trial is looming early next year. It would now be too prejudicial and too disruptive to re-open the case on the theory that maybe the other action will come here too. The motion to re-open is **DENIED**. This is without prejudice to any motion before Judge Hoeveler to transfer the Florida action here, as to which this order expresses no opinion and is without prejudice, in the event of a transfer, to a new motion to modify the case management schedule. The foregoing moots out the Psystar motion to strike, which is therefore **DENIED**.

IT IS SO ORDERED.

Dated: September 24, 2009.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE