

VIRGINIA:

IN THE CIRCUIT COURT, CITY OF RICHMOND

THOMSON REUTERS (SCIENTIFIC) INC.

Plaintiff,

v.

DAVID A. VON MOLL, COMPTROLLER OF THE COMMONWEALTH OF VIRGINIA
Department of Accounts
The James Monroe Building
101 North 14th Street, 2nd Floor
Richmond, VA 23219-3638

and

GEORGE MASON UNIVERSITY
SERVE: Dr. Alan G. Merten
Office of the President
4400 University Drive MSN 3A1
Fairfax, VA 22030

Defendants.

Civil Action No. 08-4-225-8

JURY TRIAL DEMANDED

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COMPLAINT

Introduction

1. This action is brought by Thomson Reuters (Scientific) Inc. ("Thomson") to permanently enjoin George Mason University ("GMU"), and all those directly or indirectly affiliated with GMU, from making available and distributing any version of GMU's web-browser application known as Zotero (www.zotero.org) ("Zotero"), which accesses, uses, converts and/or distributes, in whole or in part, Thomson's proprietary EndNote® Desktop

software product (the “EndNote Software”), without authorization and in direct violation of the express terms and conditions of GMU’s license agreement with Thomson, and which, due to the freely distributable, open-source nature of Zotero, has caused and continues to cause irreparable harm to Thomson.

2. Thomson also seeks recovery of damages from GMU’s wrongful conduct in direct violation of its license agreement with Thomson. On information and belief, GMU has willfully reverse engineered or de-compiled the EndNote Software and is blatantly and freely distributing to third parties converted proprietary .ens style files from the EndNote Software (which are the automatically formatted, proprietary footnote or endnote reference citations generated using the EndNote Software), in direct violation of GMU’s license agreement with Thomson, causing significant monetary damage to Thomson for which the Defendants are responsible.

Parties

3. Plaintiff, Thomson Reuters (Scientific) Inc., is a Pennsylvania corporation having a place of business at 3501 Market Street, Philadelphia, PA 19104.

4. Defendant, George Mason University, is an independent member of the Commonwealth of Virginia’s system of colleges and universities, with a principal address of 4400 University Drive, Fairfax, Virginia 22030.

5. Defendant, David A. Von Moll, is the Comptroller of the Commonwealth of Virginia having an official office in the City of Richmond, Virginia.

Jurisdiction and Venue

6. This Court has jurisdiction over this action pursuant to Va. Code Ann. §§ 8.01-192 and 2.2-814. Venue is proper under Va. Code Ann. §8.01-261(2) because the Comptroller's official office is in the City of Richmond.

Facts

7. Thomson is the sole and exclusive owner of the EndNote Software.

8. In 1999, the Institute for Scientific Information, Inc. ("ISI") acquired all right, title and interest in the EndNote Software, and all licenses relating thereto, from Niles Software, Inc. In 2004, ISI became Thomson Scientific Inc., which ultimately became Thomson.

9. The EndNote Software allows end users to search online bibliographic databases, organize their references, images and .pdfs in any language, and instantly create bibliographic reference style files and figure lists (in Thomson's proprietary .ens style format) for over 3,500 journals and publications.

10. Thomson licenses the EndNote Software to individuals through end user license agreements and to institutions and entities through site license agreements.

11. To date, there are millions of licensed end users of the EndNote Software.

12. GMU entered into a site license agreement, dated December 1, 2003 with ISI (which was subsequently renewed with Thomson) to access and use the EndNote Software (the "License Agreement"), a true and accurate copy of which is attached as Exhibit A.

13. Section 3(a) of the License Agreement provides, inter alia, that, "Licensee shall have the non-exclusive, non-transferable right to install the [EndNote] Software (and any upgrades thereto) on a network server, [*sic*] used to install or run the [EndNote] Software on other computers owned or operated by Licensee over an internal network at the Authorized

Site(s),” and “transfer the [EndNote] Software (including upgrades) to or duplicate the [EndNote] Software (including upgrades) for individual Users only,” under certain limited conditions.

14. Furthermore, Section 3(c) of the License Agreement requires an express acknowledgement by GMU that the “Licensee recognizes the importance of the Company maintaining its proprietary rights over the [EndNote] Software and of avoiding improper use of the [EndNote] Software as defined in this Agreement. Licensee shall use *best efforts* to ensure that Users comply with the foregoing limitations on usage.” [Emphasis added.]

15. Specifically, Section 3(d) of the License Agreement expressly *prohibits* the following activities in connection with the use of the EndNote Software:

- duplication of the [EndNote] Software except as specified herein;
- *separation of components* ([EndNote] Software is licensed as a single product. *Its component parts may not be separated* for use on more than one computer);
- *distribution or transfer* of the [EndNote] Software *in any form* (printed, electronically relayed, posted to public list services or bulletin boards, or magnetically stored); or
- *reverse engineering, de-compiling, translation, modification, distribution, broadcasting, dissemination, or creation of derivative works from the [EndNote] Software.* [Emphasis added.]

16. In addition, the License Agreement limits GMU’s use of Thomson’s trademarks and trade names solely to uses “connected with the identification of the [EndNote] Software.”

17. On information and belief, Dr. Daniel J. Cohen, Associate Professor, Department of History and Art History, and the Director of GMU’s Center for History and New Media, developed Zotero, which is a freely distributable, open-source software based research tool that allows users to gather, organize and analyze sources, including citations, and freely share the results with others.

18. On or about July 8, 2008, the Center for History and New Media at GMU released a new beta version of Zotero to the general public.

19. One element of the new beta version of Zotero, similar to and in direct competition with the EndNote Software, is the open source application's ability to store author, title and publication fields for scholarly journals and publications and to export that information as references in style files (using Zotero's open source .csl format, which, similar to the EndNote Software's proprietary .ens style files, creates formatted footnote or endnote reference citations for end users). Unlike the EndNote Software, however, on information and belief, the new beta version of Zotero has only created such .csl style files for approximately fifteen (15) journals or publications.

20. A significant and highly-touted feature of the new beta version of Zotero, however, is its ability to convert—in direct violation of the License Agreement—Thomson's 3,500 plus proprietary .ens style files contained within the EndNote Software into free, open source, easily distributable Zotero .csl files.

21. On information and belief, GMU reverse engineered or de-compiled the EndNote Software and the proprietary .ens style files contained within the EndNote Software in order to determine how to convert the EndNote Software .ens style files into the open source Zotero .csl style files, in direct and material violation of the License Agreement.

22. GMU is distributing the new beta version of Zotero, which allows for the unauthorized, free conversion of the EndNote Software .ens style files, in direct violation of the prohibited uses of the EndNote Software, as specified in Section 3(d) of the License Agreement.

23. GMU is willfully and intentionally destroying Thomson's customer base for the EndNote Software, in direct violation of the License Agreement, by allowing and encouraging

users of Zotero to freely convert the EndNote Software's proprietary .ens style files into open source Zotero .csl style files and further distributing such converted files to others.

24. By letter dated August 4, 2008, a true and accurate copy of which (without attachments) is attached as Exhibit B, counsel for Thomson notified Dr. Alan G. Merten, President of GMU, that GMU's actions are a direct violation of the terms and conditions of the License Agreement, and requested that GMU immediately take all necessary steps to cure the unauthorized use of the EndNote Software through Zotero (the "Cease and Desist Letter").

25. The Cease and Desist Letter demanded that GMU immediately terminate Zotero's unauthorized use and conversion of the EndNote Software's proprietary .ens style files and revise the beta version of Zotero to prohibit future conversion of the EndNote Software's proprietary .ens style files.

26. Furthermore, the Cease and Desist Letter demanded that the beta version of Zotero be made unavailable until such revisions were made by GMU.

27. The Cease and Desist Letter set forth a deadline of August 15, 2008 for GMU to comply with Thomson's demands.

28. On or about August 11, 2008, counsel for Thomson received a telephone call from David Drummey, in-house counsel at GMU, ("Mr. Drummey") asking to extend the August 15, 2008 deadline until August 25, 2008, in order for GMU to assess the matter and respond to the Cease and Desist Letter. Thomson's counsel granted this request to GMU.

29. On August 25, 2008, Mr. Drummey spoke via telephone with counsel for Thomson and stated that GMU was seeking a collaborative arrangement between Thomson and GMU as a means of resolving the conflict between the parties.

30. By e-mail to Mr. Drummey dated August 25, 2008, a true and accurate copy of which is attached as Exhibit C, counsel for Thomson granted an extension of the response deadline until August 29, 2008, insisting, however, that, prior to any collaboration discussions between the parties, GMU must first comply with the demands set forth in the Cease and Desist Letter as a result of the material breach of its obligations set forth in the License Agreement.

31. On August 28, 2008, Mr. Drummey contacted counsel for Thomson asking for yet another extension of the August 29, 2008 deadline. When told that Thomson would provide no further extensions, Mr. Drummey informed counsel to Thomson that GMU had no intention of curing its breach of the terms and conditions of the License Agreement and had referred the matter to outside counsel.

32. Without any justification, GMU willfully continues to refuse to cure its material breach of the License Agreement. Instead, GMU continues to promote and freely distribute Zotero, which allows for the conversion of the EndNote Software's 3,500 plus proprietary .ens style files to GMU's Zotero open source, freely distributable .csl style files, in direct breach of the terms and conditions of the License Agreement.

Count I
Breach of Contract

33. Thomson repeats and realleges the allegations contained in each and every preceding paragraph as if set forth fully herein.

34. GMU has breached its obligations under the License Agreement by separating the components of the EndNote Software in direct violation of Section 3 of the License Agreement.

35. In addition, GMU has further breached its obligations under Section 3 of the License Agreement by distributing and transferring the EndNote Software's proprietary .ens style files *in any form* through Zotero.

36. Furthermore, GMU has breached its obligations under the License Agreement by reverse engineering, de-compiling, modifying, broadcasting, disseminating or creating a derivative work of the EndNote Software, all in direct violation of the express terms and conditions of Section 3 of the License Agreement.

37. Moreover, GMU has breached its obligations under Section 7 of the License Agreement with respect to the use of Thomson's registered trademark EndNote[®], by willfully and inappropriately using the trademark to direct and induce users of Zotero to convert the EndNote Software's proprietary .ens style files to Zotero's .csl style files.

38. GMU is contractually obligated to use the EndNote Software solely in accordance with the terms and conditions of the License Agreement.

39. Since at least August 25, 2008, however, GMU has refused to cure the material breach of its obligations under the License Agreement.

40. As a direct and proximate result of the material breach of the License Agreement by GMU, and due to the freely distributable, open-source nature of the converted Zotero .csl style files, Thomson has suffered irreparable harm for which the law will afford it no adequate remedy.

41. As a direct and proximate result of the material breach of the License Agreement by GMU, Thomson has suffered substantial monetary damages in an amount to be determined at trial, but which, due to the open-source nature of the Zotero .csl style files, at a minimum are equal to about ten million dollars (\$10,000,000) annually until such time as GMU is permanently enjoined.

RELIEF SOUGHT

WHEREFORE, Thomson respectfully requests the following relief:

- A. that the Court permanently enjoin GMU, and all those directly or indirectly affiliated with GMU, from the use or distribution of any version of Zotero that permits the conversion of or is capable of converting the EndNote Software's proprietary .ens style files into freely distributable, open source Zotero .csl files.
- B. that the Court award to Thomson damages in an amount which will compensate Thomson for the damages it has suffered as a result of GMU's wrongful conduct, together with interest, which, at a minimum, are equal to about ten million dollars (\$10,000,000) annually until such time as GMU is permanently enjoined.
- C. that the Court cause GMU to terminate the ability of each Zotero user to use and/or further distribute any .csl style files that were converted from the EndNote Software's proprietary .ens style files using Zotero.
- D. that the Court permanently enjoin GMU, and all those directly or indirectly affiliated with GMU, from the willful and inappropriate use of Thomson's registered trademark EndNote[®] to direct and induce users of Zotero to convert the EndNote Software's proprietary .ens style files to Zotero's .csl style files.
- E. that the Court award to Thomson its costs, expenses and disbursements in this action, including reasonable attorneys' fees; and
- F. that the Court grant such further and other relief as it deems just and proper.

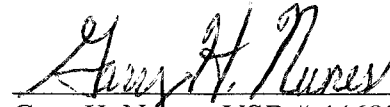
DEMAND FOR JURY TRIAL

Thomson demands a jury trial on all issues so triable.

Dated: September 5, 2008

Respectfully submitted,

THOMSON REUTERS (SCIENTIFIC)
INC.



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