

In the matter of the Crown versus ~~Media Corp~~, MSC Network Limited, MS
Computers Associates Limited

At Snaresbrook Crown Court as of the 12th November 2001

Independent Expert Report

ON ISSUES ASSOCIATED WITH THE INTENDED SUPPLY OF A PERSONAL
COMPUTER AND ASSOCIATED PERIPHERAL DEVICES

09th November 2001

Prepared in response to instructions received from ~~Media Corp~~ on Behalf of MSC
Network Limited

I understand that the evidence enclosed is factual and true based upon the information
presented to me and that I am liable for prosecution if I make a statement which I
know to be untrue.



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Purpose of the Report

The present examiner has been instructed to examine, as independent expert for MSC Network Ltd (hereinafter referred to as MS Computers), the intended supply of a Personal Computer (PC) to Mr. Chris Williams during November 1999. The purpose of the report is to set out the results of an examination of circumstances relating to the intended supply which was abandoned by Mr Williams in early December, and on the basis of written evidence and examination of the withdrawn system components, advise on the justification or otherwise for their withdrawal.

It is disclosed to the examiner that on the 30th of November 1999, Mr Williams collected a PC from MS Computers in relation to an order placed against a quotation previously prepared. Thereafter, on the 6th of December Mr. Williams presented the PC to PC World for examination for which PC World prepared a report automatically generated through the use of diagnostic/audit software. Subsequently, Islington Trading Standards (ITS) took possession of the PC sometime following the report prepared by PC World. Thereafter, additional examinations were made on behalf of/by ITS notably an external report was prepared by Cerplex on behalf of ITS and further examination reports exist identified as being performed by EDS Internal Services – MIS, ('GASP Report', 08.02.2000).

Scope of the Report

The present examiner was engaged by MS Computers on the 8th November 2001 and performed a physical examination of the PC and related system components on the same day, having received various related documentation on the previous day. Following examination of the PC, documentation and discussion with Melinda Serpes the report was required for submission on the 9th of November.

Due to the restriction in timescale the instruction from MS Computers was as follows;

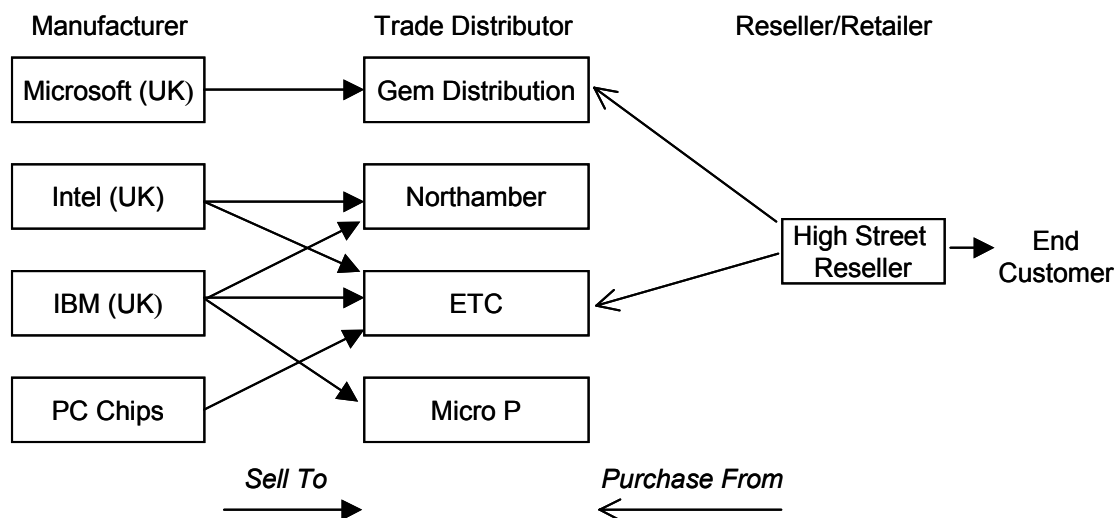
- To make summary review of the original sale process.
- To examine the PC and system components and comment on their general fitness for purpose.

- To review the aspect of conformance in relation to the component level devices within the PC and peripheral monitor device with particular reference to the charges detailed. More accurately those items implied in counts 1-9, 13 and Count 2 Under Section 41 of Criminal Justice Act 1988
- To review and comment on the findings and/or processes of the various third party reports previously generated.

1.0 Summary of sale process

MS Computers offered/offer a service to custom build a PC to an agreed specification as an ‘Original Equipment Manufacturer’ (OEM) reseller. In general this allows customers/potential customers to specify core elements of the PC and include/exclude components and peripheral devices to meet their requirements. The amount of choice in terms of components/peripherals is usually restricted by the channels of distribution the reseller has access to or accounts with, i.e. if those channels of distribution stock and/or supply a particular manufacturer component product. Figure 1 illustrates in outline the nature of the distribution channel.

Figure 1. Overview of Distribution Channel



Under typical circumstance a customer requiring a custom built PC will approach an OEM reseller and agree upon a level of specification - generally but not exclusively

for functionality – for items such as processor speed, hard disk drive capacity, memory capacity, graphics handling, monitor size etc. On acceptance of a customer order the OEM reseller will construct the PC base unit using the components agreed upon taken from their own stocks or ordered from distribution. To this they will configure with the selected operating system software and package with peripheral and supporting devices (keyboard, mouse, monitor, printer, etc.) Upon completion of the build the goods are released to the customer and payment transaction takes place according to agree terms and conditions.

1.1 Summary of actual sale

With particular reference to this case and by way of commercial background, during the specification process MS Computers submitted quotations for supply, as both initial and final quotation. The final quotation [REFMS-MSPC-DPS1-P350-351] representing a scaled down version of the original. It is stated by MS Computers that the modifications arose from negotiations with their proposed client Mr. Chris Williams prior to order.

On review of the quotation document (exhibit CW/7) used it is supported that this document is typical of an OEM reseller standard quotation form. Various fields are listed on the left hand side for which a description is entered according to the requirements of the customer. Generally the electronic form of this document will be a spreadsheet that will further allow the reseller to enter individual component prices for internal use in calculating the cost of the final system.

It is noted that towards the bottom of the document there is reference to additional charges namely that delivery is £10.00 and an 8hr response on-site warranty is £99.00

It is noted by absence that the quotation does not carry any standard clauses usually found in this type of document within the industry such as, '*components are subject to availability*', '*payment terms*', *E&OE*, etc. In addition, such documents usually carry a privacy or disclosure clause to prevent the customer presenting the quotation directly to another reseller for comparative quotations. These items may be within a separate document for terms and conditions but the examiner has reviewed no such items in this case.

1.2 Summary of initial complaint/rejection

It is understood through discussion with M S Computers that Mr Williams initial complaint focused on the graphics capabilities in that, after he installed certain gaming software on the PC, he was not happy with the quality of graphical representation within the game play of the newly installed software. His initial argument apparently centred on not having a 'Voodoo 3' hardware graphics card or compatibility within the configuration of the PC. [Voodoo 3 is reference to a particular manufactures 3D graphics accelerator card that produces high-level 3d rendering and scrolling for use with game play software.]

Whilst this particular item is referenced in the video card field of the quotation document it does carry the wording 'ADD £89.00'. This is assumed as additional cost to the quotation value of £1250.00 in accordance with other additional charges previously highlighted. Therefore, if included within the agreed order it is assumed that final invoice price would be £1339.00 (£1250.00 + £89.00).

It is understood that Mr. Williams collected the PC following completion of his order, thereby not incurring delivery charge (£10) and accepted a 'return-to-base' warranty without upgrade to on-site warranty (charged at £99.00). It is noted from the final invoice (Invoice # 14469) that Mr Williams was charged a total of £1250.20. Therefore, it is assumed that the additional charge of £89.00 for 'Voodoo' graphics was NOT ACCEPTED by Mr. Williams and therefore not supplied as a component part of the PC. *Subsequently this questions the validity of Counts 5 and 6 of the charges against MS Computers.*

It is noted that at time of complaint Mr. Williams did not present or reject the system in full or part to MS Computers.

2.0 Practical Examination of the MS Computers system and systems components

At the premises of Islington Council offices, 159 Upper Street London N1 on Thursday 8th March 2001

Inspection Start Time: 1:50PM Inspection Finish Time 15:30

Items not referenced within the Counts of charges against MS Computers were not inspected to assist with the timescale in production of this report these are as follows; Keyboard, Mouse, Printer (not present), Speakers and Scanner. However, with reference to the keyboard and mouse these were used during the inspection of the PC as a working system. Furthermore, review of software media is not made as this is outside of the scope from examination requested by MS computers to the examiner.

Initial action in inspection of the system was to unpack and review any item and subsequent component called into question by the charges against MS Computers.

An initial inspection for physical damage/non conformity was made and it is noted that the PC tower case has surface scratches mainly focused to the underside of the case. It is noted that two years have passed since MS Computers released the PC to Mr Williams and that during that time a number of third parties have taken possession examined/inspected the PC. It is suggested but not concluded that there is possibility the surface damage has accrued sometime after the system left possession of MS Computers.

To the rear of the PC the shroud plate surrounding the keyboard input socket is loose on closer internal inspection it is noted that this plate is held in position by masking tape. MS computers deny the use of this claiming that a 2nd fixing plate was used to hold the shroud in position and they further claim that Mr Williams or one of the third parties who have held the PC within their possession has subsequently removed this.

2.1 Component specification (internal inspection)

2.1.1 Motherboard

Motherboard: Main controlling component to which all other device internal to the PC attach. The motherboard is a PC Chips, PC100, system board model number M748LMRT. The motherboard bears the CE marking is secured and earthed to the PC casing. Visual inspection shows,

- 1 x PCI expansion slots 1 x ISA expansion slot (both unpopulated)
- 1 x Slot1 Processor populated with Intel Slot1 Pentium processor
- 1 x Socket 370 processor provision
- 3 x DIMM memory module slots, one populated with 128MB memory module
- 1 x On board sound component with actual reference on chip stating 'Sound Pro HT 8738AM/PCI. To this there is a ribbon riser that attaches to the case to make presentation for connecting devices such as speakers and microphone.
- 1 x On-board modem riser card making presentation to the rear of the PC a socket for connection of telephone cable to access the PSTN.
- On-board graphics chip with riser to 15 way D-type presentation to the rear of the PC for attachment of monitor.

2.1.2 Hard disk drive

The Hard Disk drive was removed from the case to inspected the manufacturers release date (1999-10) and manufacturers specified capacity size (13.66GB)

2.1.3 Power supply

The power supply TAX Tk-923TX (S/N G199036764) within the case (supplied to trade fitted as part of the case) is rated to 100-120V 6A / 200-240v 4A

2.1.4 Monitor

The 17" colour monitor that accompanies the PC base unit is manufactured by TVM and is defined as Low radiation model AS65 with a serial number 4294000553

The manufacturer states in the supplied manual that it is a CE approved device and conforms to EN50082-1 and EN55022 Class B

2.2 Configuration Inspection (working system)

Following internal inspection the panel of the case were refitted and keyboard, mouse and monitor were attached to the PC so the a working system could be switched on to perform interrogation/inspection of the PC via the software components loaded, namely, Microsoft Windows 98 operating system

2.2.1 Operating Software

As indicated above the installed operating system software is Microsoft Windows 98 The Windows product ID defined in the system registry of the PC is 13199-OEM-0076825-28227 with a version number of 4.10.2222A. This references Microsoft Windows 98 2nd edition. The installation media used for this installation of the software is dated 23rd April 1999.

2.1.2 Modem device/software

The software element of the Modem component is referenced as HSP56 Audio modem within the systems device database, (accessed via the system icon in the control panel through the device manager tab) The installed software driver for this device shows a date of 17/05/1999. The modem was queried by the diagnostic component in the modems setting within the systems control panel and presented the expected results from a modem in normal working order.

2.1.3 Sound device/software

The software element of the Sound component is referenced as a CM18738/C3DX PCI Audio device within the systems device database, (accessed via the system icon in the control panel through the device manager tab) The installed software driver for this device shows a date of 12/05/1999 and bears reference to the driver manufacturer C Media.

2.1.4 BIOS (Basic Input Output System)

The BIOS is a small yet very important software element of the PC. It provides all the necessary setting information and controlling code to allow the PC to verify itself and to start the system up when first switched on. It is the bios that initiates the

system and controls the starting of the operating systems software installed to the hard drive of the PC. The BIOS is supplied with and resides on the Motherboard
The BIOS information screen was accessed for review and displays that the BIOS is AMIBIOS Version 120 Copyright 1998

2.3 Inspection Summary

Build quality is adequate and typical of many OEM system builders. Components are fitted appropriately (with exception to the fixing plate around the keyboard port discussed previously). Software is configured as expected and no version conflicts or device errors are present or reported by the system. Furthermore, upon review of the components and peripheral equipment and with reference to component pricing for late 1999 the system is considered equitably priced.

3.0 Previous examination/reports

SiSoft Sandra Report

Having made brief review of the report and when cross referenced to the investigations detailed above the examiner concludes that further independent tests are required on the actual software (SiSoft Sandra Professional, Un-reregistered) used by Mr Williams to diagnose and or audit the system to determine the validity and interrogation process and quality of extracted data.

The validity is questioned as the reported Bios information shown in the report (06/12/99) states it was manufactured in 1995 by American Megatrends, from this it is implied that the system is old furthermore it is alleged by MS Computers that PC World implied to Mr Williams that this represented the manufactured date of the motherboard. However this dates relates to elements of the source code within the Bios. The copyright date of the bios is clearly indicated in the bios administration screen and simply accessed by pressing the delete key on the keyboard when prompted at start-up. As previously stated this shows a copyright date of 1998.

4.0 Response to counts within charges brought against MS

Computers

Before responding to each separate count it should be mentioned that MS computers have stated that all components used within the custom build of the PC were sourced through appropriate UK distribution channels and that invoices are available for all items. Furthermore, it is understood by MS Computers that all components purchased for the build were verified and marked with CE approval.

Count 1 & 2

Items within these counts reference the provision of anti virus software as a component of the PC. It is stated on the quotation (Exhibit CW/7) that 'Free Anti-Virus Software would be supplied with the PC. It does not state one way or the other as to whether this free software would be supplied already installed on the machine or if Mr. Williams was expected to install it from a disk provided. MS Computers state that this software was included as free issue on the CD disk supplied with the PC CHIPS motherboard. The examiner has reviewed the disk normally supplied with the referenced board and Anti-virus software is included within its contents in the form of 'PC-cillin 98 (OEM)' a product of Trend Micro. It is normal practice for OEM system builders to supply the motherboard manual and drive/utility disk with the system.

Counts 3 & 4

As previously stated the system was supplied with on-board sound as inspected. This is specified in the manual of the supplied motherboard -of which the on-board sound is a component- that the sound chip is Sound Blaster compatible and acknowledges Sound Blaster as a trademark of Creative Technology Limited.

Counts 5 & 6

Counts 5 & 6 refer to the supply of a 32mb Voodoo Graphics card. As previously stated this was quoted on the basis of additional charge. The examiner has seen no

evidence to say that Mr. Williams paid the additional premium therefore had no right to expect a Voodoo Graphics card.

Counts 7&8

Expansion slot provision is ambiguous within the quotation as to if the board would have 2 PCI slots or no PCI Slots and 1 ISA slot. Therefore, the examiner cannot give conclusions. On inspection the board has 1 PCI expansion slot and 1 ISA expansion slot. MS Computers claim to have shown the motherboard to be used to Mr Williams prior to taking his order.

Count 9

It is believed that the system was supplied with the operating system pre-installed. Although this may not have been installed from the same copy of Microsoft Windows 98 that was supplied to the customers. It is common practice amongst OEM system builders to fully install the product for the purpose of testing and then to delete the registered owner and serial number entries from the registry. Under this process when the machine is next started the customer is prompted to input this information from his supplied licence to comply with the End User License Agreement, EULA. The customer therefore is the one to break the seal on the supplied software pack thereby agreeing to Microsoft's licensing requirements.

Counts 10, 11, 12

Outside the scope for which the examiner is engaged.

Count 13

The modem supplied is not at any time referenced within any documentation or communication with Mr Williams as a BABT approved device. The manufacturer states the device has passed the CE test for the CE Telecom Terminal Equipment Directive 91/263/EEC.

Charges Under Section 41 of Criminal Justice Act 1988

Count 2

Accessible live parts

Following investigation and examination of the PC it is assumed that accessible live parts make reference to the various device ports at the rear on the PC. Under normal operating conditions these would be populated by the peripheral devices attached to the PC. Furthermore, it is commented that there was a risk of electrical shock if passing a hand over the modem component of the system with reference to the low voltage pins exposed within the open port of the modem. This is considered an over zealous remark as it applies to a vast number of modems devices and internetworking devices such as Hubs, in production and apparent in both internal and external devices

5.0 Declaration of witness

I, DAREN MAXWELL GREENER state that : -

I understand that my primary duty in preparing written reports and giving evidence is to the Court, rather than the party who engaged me.

I understand my duty to the Court and have complied with that duty.

This report has been written on the basis of instructions received from Defendants to examine the system and the documents disclosed between the parties and to provide my opinion, in particular, on the following questions: -

- .1 Whether the system was supplied and worked to the extent required by the relevant contractual documents.
- .2 If not, then in what way and if possible, why?

In addition to the disclosed documents and the Statements of Claim I have had the Opportunity to conduct first hand tests on the System itself.

I believe that the facts I have stated in this report are true and accurate and that the opinions I have expressed are correct.

Signed

(Daren Maxwell Greener)

**FOR PUBLIC
RELEASE**

9th November 2001