

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

HANNA INSTRUMENTS, INC.,
a Rhode Island corporation,
Plaintiff

V.

BUSINESS SOFTWARE ALLIANCE,
a non-profit trade association; and
MICROSOFT CORPORATION,
a Washington corporation.
Defendants.

Civil Action No. 1:17-cv-522

**COMPLAINT FOR DECLARATORY
JUDGMENT**

Plaintiff, Hanna Instruments, Inc. (“Hanna” or “Plaintiff”), brings this action against Defendant, Business Software Alliance (“BSA”) and Defendant, Microsoft Corporation (“Microsoft”) (collectively the “Defendants”), for a declaratory judgment pursuant to 28 U.S.C. 2201 and 2202. By this Complaint, Hanna seeks a declaration by the Court that it has not infringed any Microsoft copyrights, that Hanna has been harmed by BSA’s relentless and unsupported charges, and that Defendants pay Hanna’s costs and expenses for this action, together with reasonable attorney fees, and any additional monetary award this Court deems appropriate.

THE PARTIES

1. Hanna is a Rhode Island corporation having a place of business located at 584 Park East Drive, Woonsocket, Rhode Island 02895.

2. Upon information and belief, BSA is an association with its headquarters located at 20 F. Street, NW, Suite 800, Washington, DC 20001. It is the enforcement arm of various software publishers, including Microsoft, and has power of attorney to enforce Microsoft’s copyrights.

3. Upon information and belief, Microsoft is a Washington corporation having its principal place of business at One Microsoft Way, Building 8, North Office 2211, Redmond, Washington 98502,

JURISDICTION AND VENUE

4. This action arises under the Copyright Laws of the United States, 17 U.S.C. §101 et seq., and is a civil action seeking damages and declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. This court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §1338(a).

5. Plaintiff is informed and believes that this Court may properly exercise *in personam* jurisdiction over the Defendants because the Defendants have threatened Plaintiff with litigation in this jurisdiction, and thus has sufficient minimum contacts with Rhode Island.

6. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and/or § 1400(a).

FACTUAL ALLEGATIONS

7. The Plaintiff incorporates the previous paragraphs of this Complaint by reference and re-alleges them as if originally and fully set forth herein.

8. On June 6, 2017, a law firm representing Defendants (Venable, LLP) sent a letter to Plaintiff. The letter requested that a representative of the Plaintiff contact them immediately to receive guidelines for undertaking an internal audit of Microsoft software residing on Hanna's computers (Exhibit A).

9. On June 16, 2017, Venable LLP sent a second letter to Plaintiff repeating its request for a response, and directing Plaintiff to initiate a software audit of its computers and network system in accordance with Venable's instructions (Exhibit B).

10. Defendants' counsel claims to have further attempted to contact Plaintiff via electronic mail and/or by telephone on July 6, 2017 and July 18, 2017 (Exhibit C).

11. On July 25, 2017, Venable LLP sent a third letter to Plaintiff alleging that BSA and Microsoft possess "credible information indicating that Hanna Instruments has installed on its computers" unlicensed copies of Microsoft Office. In a footnote, Microsoft Office was listed as the product that had allegedly been illegally copied (Exhibit C). In closing, through counsel in its July 25, 2017 letter, BSA and Microsoft threatened Hanna with litigation alleging copyright infringement of the Microsoft Office computer programs.

12. Hanna, in response to Exhibit C, contacted its counsel, McInnes & McLane LLP, who assisted Hanna in reviewing its records and software to determine if there was any validity to Defendants' allegations.

13. On September 18, 2017, counsel for Plaintiff sent a written reply to Defendants through counsel (Exhibit D). In its reply, Plaintiff denied BSA's allegations in full. An Excel spreadsheet was enclosed with Exhibit D listing all copies of Microsoft Office currently installed on Hanna's computers (Exhibit E). The spreadsheet includes four columns entitled: Product; Software Copies; Copies in Use; and Microsoft Account Record. The information reflected on the spreadsheet shows that Hanna purchased one hundred twenty six (126) copies of Microsoft software, but is only using one hundred twenty (120) copies of Microsoft Office, fewer than Plaintiff had paid for and is legally entitled to use.

14. Hanna's September 18, 2017 letter (Exhibit D) details the efforts of the Plaintiff's IT manager to locate copies of all software procurement documents in Hanna's possession. The materials described in Exhibit D, and provided to Defendants' counsel, include purchase orders,

requisitions, price quotes and photocopies of the Microsoft issued key cards for Microsoft Office 2016, 2013, 2011, 2010 and 2007 products (Exhibit F).

15. Plaintiff's reply (Exhibit D) provided further particularity with regard to Microsoft Office 2013 and 2016 products. Specifically, Hanna has three (3) Microsoft accounts which are managed by its IT manager (the "IT Accounts"). Documents showing the IT Account activity were provided to Defendants' counsel (Exhibit G).

16. In some instances, copies of Microsoft Office were purchased by Hanna and downloaded via a Microsoft account associated with an employee's professional email account or personal email account, and not via an IT Account. Documents showing the licenses purchased via Microsoft accounts associated with these Hanna email accounts were also provided to BSA (Exhibit G).

17. In addition to documents showing Plaintiff's Microsoft account activity, Plaintiff provided copies of the Microsoft generated key cards. A key card is provided to the purchaser upon purchase of a valid license, and contains a product key which enables the purchaser to download the licensed Microsoft software. (Exhibit F).

18. Plaintiff also provided procurement documents to prove the purchase of licenses to the thirty-three (33) copies of Microsoft Office 2016 and the forty-eight (48) copies of Microsoft Office 2013 that Hanna had purchased (Exhibit F).

19. Microsoft Office 2011, 2010, and 2007 were not downloaded via the IT Accounts or other Microsoft accounts using a key card. Therefore, to show the purchase of Microsoft licenses for these versions, Hanna provided extensive procurement documents, including purchase orders, requisitions, and price quotes, indicating valid purchases of Microsoft Office licenses (Exhibit F).

20. Plaintiff's thorough and exhaustive internal review of its Microsoft procurement activities over a ten (10) year period establishes that BSA's claims are entirely unfounded. Plaintiff further noted that it complied with Defendants' request for an audit "in spite of the fact that BSA presented no evidence in support of its accusations that Hanna allegedly downloaded copies of Microsoft Office in excess of licenses purchased." Plaintiff therefore advised Defendants that Plaintiff considered the matter "closed" (Exhibit D).

21. To date, Hanna has expended approximately twenty-five thousand dollars (\$25,000) in the form of employee time, internal resources, and legal fees in order to comply with the Defendants' baseless demands.

22. On September 26, 2017, Defendants' counsel sent a response letter to Plaintiff's Counsel (Exhibit H). Specifically, Defendants' counsel reiterated its unsupported claim of "unauthorized" works on Plaintiff's computers, and threatened a potential financial penalty ranging from nine hundred ninety thousand dollars (\$990,000.00) to four million nine hundred fifty thousand dollars (\$4,950,000.00), which Hanna would allegedly face if the matter proceeded to litigation.

23. Defendants' counsel then proposed onerous demands including requirements: (1) that Hanna remove all copies of Microsoft from Hanna's computers alleged to be unlicensed by BSA and provide documentation of the same to Defendants; (2) permit BSA to conduct two inspections per year in order to prove the "absence of copyright infringement;" (3) pay damages "equal to three times the manufacturer's suggested retail price ("MSRP") for Microsoft Office 2007, 2010, and 2013;" and (4) that Hanna "absorb" Defendants' attorney's fees. In total, Defendants demanded payment of seventy-two thousand seventy-four dollars and ninety cents (\$72,074.90). (Exhibit H).

24. Defendants have accepted that Plaintiff's copies of Microsoft account records and key cards are proof of Plaintiff's legal licenses to Microsoft 2013 and 2016 (Exhibit H).

25. Defendants proposed a total payment of seventy-two thousand seventy-four dollars and ninety cents (\$72,074.90), an inflated calculation of alleged damages based on a multiplier of the MSRP for Microsoft Office 2007, 2010, and 2013; and the Defendants' attorney's fees (Exhibit H).

26. To date, the Defendants have not provided any documentation supporting the baseless allegation that Hanna illegally copied Microsoft Office, in spite of repeated requests by Plaintiff's counsel that BSA produce such information.

27. In a follow-up email dated September 26, 2017, Defendants stated that the purchase orders, requisitions and price quotes provided by Hanna with regard to Microsoft Office 2007, 2010, and 2011 do not prove "a *completed* purchase of software licensing rights," but only showed the "the step(s) leading up to a possible purchase," thereby imposing an unreasonable and burdensome obligation that Plaintiff produce financial records, some dated as much as ten years ago, in order to prove its licenses (Exhibit I).

28. In a letter dated October 11, 2017, McInnes & McLane LLP responded to Defendants' counsel on behalf of the Plaintiff (Exhibit J). The letter reiterated Hanna's valid Microsoft licensing activity, referred to the 197 pages of documentation previously provided to Defendants' counsel, and urged that BSA seek payment confirmation from Microsoft and/or its authorized distributors. The purchase orders, requisitions and price quotes associated with each transaction identify the distributor selling the license and the date of sale.

29. On October 18, 2017, BSA's counsel sent an email reply to Plaintiff's counsel (Exhibit K). The email states that "the BSA is a trade association and it is neither appropriate nor

efficient for them to request from their members in every single case for evidence that the customer should be keeping as long as the software at issue is installed on their computers.” It is noteworthy that the Defendants impose an obligation on purchasers of Microsoft software to retain financial and accounting records indefinitely, when Microsoft is apparently unwilling or unable to maintain such information.

30. The October 18, 2017 email also states that Hanna should “be assured that the BSA has internally vetted [Hanna’s] matter and the evidence it had,” prior to consulting with its members who “authorized this inquiry,” while maintaining its refusal to disclose any documents or information associated with its internal vetting process (Exhibit K).

31. Defendant’s October 18, 2017 email states that BSA approached Hanna directly because an “initial investigation” led BSA’s counsel to “the conclusion the [Hanna] would be interested in working with [Venable] cooperatively” (Exhibit K). To date, Defendants have provided no evidence to prove, or even suggest, that Plaintiff is in possession of unlicensed Microsoft software.

32. The Defendants state that they could have commenced litigation immediately and sought a court ordered raid of Hanna’s facility by US Marshalls (Exhibit K).

33. Defendants have made numerous references to an “investigation” and the “evidence” they possess, but have refused to share this information with Plaintiff, and demanded Plaintiff pay an absurd sum in order to put a stop to the Defendants’ unreasonable demands.

34. The significant resources expending by Hanna to document its legal purchases of licenses to Microsoft Office for a period of over ten (10) years illustrate Hanna’s initial willingness to cooperate with the Defendants. In contrast, the Defendants have continually referenced investigations and evidence that allegedly provide the basis for BSA’s accusations,

but will not provide that information to Plaintiff, and have threatened both litigation and a raid by Federal Marshalls.

35. An actual case and controversy exists between Hanna and the Defendants.

COUNT ONE
DECLARATORY JUDGEMENT

36. The Plaintiff incorporates the previous paragraphs of this Complaint by reference and re-alleges them as if originally and fully set forth herein.

37. This count arises under 28 U.S.C. §§ 2201 and 2202 and the Copyright Laws of the United States 17 U.S.C. §101 et seq.

38. Correspondence received from the BSA suggests a violation of the Copyright Laws of the United States by the Plaintiff, and further threatens the remedies available pertinent to such allegations, including statutory damages and attorney's fees under 17 U.S.C. §101 et seq.

39. The communications from the BSA clearly threaten litigation under the Copyright Laws of the United States, thus an actual controversy has arisen and now exists between Hanna and BSA with respect to payment of license fees allegedly due to Microsoft for the use of certain Microsoft Office products.

40. BSA, Microsoft, and their counsel have, without supplying one scintilla of evidence, issued a series of letters for the sole purpose of extorting inflated monetary damages from Plaintiff. Hanna chooses to conduct its business affairs in an atmosphere from uncertainty and threats of litigation.

41. Hanna operates under the belief that its Microsoft software is the subject of proper licensing.

42. Pursuant to 28 U.S.C. Sections 2201 and 2202, a judicial determination of the respective rights of the parties with respect to the alleged licensing fees and use of certain Microsoft Office products is required.

DEMANDS FOR RELIEF

WHEREFORE, Hanna respectfully requests that the Court:

1. Issue a judicial declaration that Hanna is not infringing any Microsoft software copyrights;
2. An Order awarding Hanna its costs, expenses and reasonable attorney's fees as provided by law; and
3. Fashion such other and further relief that is just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all counts of this Complaint so triable.

HANNA INSTRUMENTS, INC.,

By his attorneys,

/s/ Jodi-Ann McLane

Jodi-Ann McLane, Esq.

jodi@mcmcip.com

John T. McInnes, Esq.

john@mcmcip.com

McInnes & McLane, LLP

11 Broadcommon Road, Suite 214

Bristol, RI 02809

Phone: (401) 223-5853

Fax: (866) 610-0507

Dated: November 9, 2017