DVD Copy Control Assoc. (DVDCCA) Files Opening Brief in Appeal of Kaleidescape Decision

On Monday, December 17, 2007, the DVDCCA filed its opening appellate brief with the California Court of Appeal in its case against Kaleidescape for breach of the CSS license agreement. This brief demonstrates that, under long-settled principles of California law, the trial court erred in its interpretation of the CSS licensing agreement and in limiting the remedies for Kaleidescape's alleged breaches of that agreement. The following is a summary of the DVDCCA argument:

As the DVDCCA's brief emphasizes, enforcing the CSS license – which is granted to all prospective licensees on exactly the same terms – serves two vital purposes. First, it protects against the unlawful copying of DVD content and, thus, helps assure the broadest possible digital distribution to consumers of television, movies, and other entertainment products. Second, the uniform licensing system that the DVDCCA administers guarantees equal access to the patented CSS technology for all companies interested in manufacturing devices that play back DVD content.

Under the CSS License agreement, licensees must follow the "CSS Specifications," which include both "Procedural Specifications" and "Technical Specifications." The Procedural Specifications are publicly available, whereas the Technical Specifications contain trade secrets and are delivered to licensees in certain membership categories after they sign the license agreement and pay an administrative fee.

The main question in the pending appeal is whether a document entitled "CSS General Specifications," which was delivered to Kaleidescape after it entered into the license agreement and paid its fee, is a component of the Technical Specifications with which Kaleidescape must comply. As the brief explains, the General Specifications contain crucial protections against unauthorized copying of DVD content, including, the requirement that when a machine plays back DVD content for viewing, the physical DVD itself must be present in the device.

The trial court ruled that the General Specifications are *not* a subset of the Technical Specifications. But this interpretation is clearly wrong.

In California, courts interpret disputed contract terms by looking at the language of the contract at issue in light of other evidence showing the mutual intent of the parties. One type of evidence that is considered particularly powerful in determining this mutual intent is how the parties conducted themselves after entering into the agreement.

Here, overwhelming evidence, including the language of the license agreement and a wealth of undisputed evidence regarding Kaleidescape's conduct, shows that the parties mutually understood the General Specifications to be a subset of the Technical Specifications. Kaleidescape's own witnesses consistently testified that this was their understanding. Moreover, during almost the entire course of this litigation – at the summary judgment stage and right up to the moment of trial – Kaleidescape affirmatively took the position that the General Specifications were Technical Specifications.

As the DVDCCA brief explains, the trial court could reach a contrary reading of the Agreement (adopting a new and self-contradicting argument that Kaleidescape conjured up on the eve of trial) only by committing a number of significant legal errors. Perhaps most egregiously, the court mistakenly refused to consider all the post-contractual evidence showing that Kaleidescape shared the DVDCCA's view that the General Specifications are a component of the Technical Specifications. In so doing, the court reached the absurd result of reading out of the license agreement provisions that are essential to the agreement's central purpose of preventing the unauthorized copying of copyrighted DVD content.

The trial court also ruled in passing that, regardless of whether Kaleidescape had to comply with the General Specifications, the DVDCCA was not entitled to the injunctive remedies it had sought in the case. With respect to all its remedies-related rulings, the DVDCCA brief shows that the court misapprehended the governing law and disregarded the unequivocal intent of the parties that, to preserve uniformity among companies licensing CSS, injunctive remedies should be available for breaches of the license agreement.

For more than a decade, consumers and businesses alike have shared the enormous benefits that come from widely distributing content through a secure digital medium. The CSS licensing regime has helped ensure this success. Accordingly the DVDCCA is seeking reversal of a trial court ruling that would upset this carefully-wrought system for no sound reason.

A .pdf of the entire DVDCCA opening brief can be found here:

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