



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)	
IN THE MATTER OF)	
MSC SOFTWARE CORPORATION,)	Docket No. 9299
a corporation)	PUBLIC VERSION
_____)	

ANSYS, INC.’S RESPONSE TO MSC’S SUPPLEMENT TO ITS EMERGENCY MOTION TO REMEDY JIM CASHMAN’S REFUSAL TO APPEAR FOR HIS DEPOSITION AND MOTION TO REOPEN DR. SCHAEFFER’S DEPOSITION FOR A LIMITED PURPOSE

MSC’s “Supplement” is little more than a supplemental dose of selective distortion of documents and deposition testimony, coupled with paranoid ravings about an imaginary “Partnership” between ANSYS and Complaint Counsel (which has now apparently expanded to include SAS and even Lockheed, one of MSC’s own customers).¹

Contrary to MSC’s allegations, ANSYS, of course, denies each of the so-called “fundamental facts” listed in MSC’s “Supplement.” However, because ANSYS sees (and is confident that Your Honor also sees) MSC’s motion for what it is – a transparent attempt to use discovery motions as pulpit from which to pre-argue the merits of its case – ANSYS sees no benefit in burdening Your Honor (or the already overcrowded docket) with a point-by-point refutation of MSC’s distortions.²

¹ In MSC’s world, apparently every third party witness possessing information inconsistent with the defenses that MSC seeks to establish is conspiring with Complaint Counsel. ANSYS also finds offensive MSC’s continual efforts to belittle Complaint Counsel (e.g. calling Complaint Counsel a “sledge-hammer carrying puppet”). Such *ad hominem* attacks do little to advance the merits of MSC’s case and do much to drag our profession into ill repute. MSC’s improper tactics have reached crisis proportions and ANSYS respectfully requests that these tactics cease.

² Moreover, because, as MSC surely recognizes, an experienced trial judge such as Your Honor will not formulate prejudicial snap-judgments based one sided, selective, out-of-context citations of documents and deposition transcripts, but instead will wait until he has had an opportunity to evaluate the full factual record in its

However, ANSYS is compelled to respond to MSC's "Supplement" to the limited extent necessary to protect ANSYS's interests with respect to the extraordinary and improper relief that MSC seeks against ANSYS. This relief is: (1) that Mr. Cashman be ordered to endure two days of questioning by MSC's lawyers; and (2) that Mr. Cashman be ordered to answer questions regarding ANSYS's negotiating strategy with respect to the acquisition of the assets that Complaint Counsel seeks to have divested. Each is addressed in turn below.

1. Mr. Cashman Should Not be Ordered to Endure Two Days of Questioning by MSC's Lawyers.

MSC's allegation that Mr. Cashman has "disregarded the subpoena" is not true. To the contrary, Mr. Cashman is now and always has been willing to appear for his deposition, which is now scheduled for June 21. As explained in ANSYS's Reply to MSC's Emergency Motion, there was never an issue with respect to Mr. Cashman's willingness to appear for deposition. The only issue was the appropriate timing of that deposition in light of competing requests from MSC. Moreover, MSC's counsel, Mr. Kass, confirmed the scheduling of Mr. Cashman's deposition with ANSYS's counsel, Mr. Donovan, on the same day that Mr. Kass filed MSC's "Supplement." ANSYS is unable to comprehend how Mr. Kass could confirm Mr. Cashman's deposition and simultaneously file a brief stating that Mr. Cashman has "disregarded the subpoena."

In any event, there is no reason at this point to order Mr. Cashman to endure two days of questioning, and no amount of speculation by MSC's counsel about what Mr. Cashman might know can make it otherwise. The true purpose of MSC's request for two days of deposition is to maximize the extent to which MSC's counsel can harass the witness. MSC's depositions of ANSYS witnesses have not been about the pursuit of information relevant to Your Honor's decision. They have been merely an effort to obtain sound bytes that can be misleadingly drawn out of context in an attempt to portray the testimony as something which it is

proper context as presented by both sides, it is obvious that MSC cannot be writing for Your Honor. For whom then does MSC write? Perhaps it is for the media, which is now following and reporting on the case.

not. Responding to questions from MSC's counsel is, for a deponent, like working a "Where's Waldo" puzzle: What is hidden in this question that does not appear to the naked eye? MSC's purpose in requesting two days of deposition is to so exhaust the witness as to overcome the witness's determination to present an accurate record to this tribunal.

Additionally, if MSC's request is to be taken up by this Court at all, it should be after MSC has taken one day of testimony. If, after taking the deposition, MSC feels that it did not get an adequate opportunity to question Mr. Cashman, MSC can move for a second day of questioning. Tellingly, MSC is choosing not to pursue this course and instead is attempt to obtain two days up-front because it knows that a *post hoc* request for more time would put MSC's counsel's deposition tactics at issue. In this regard, it is worth noting that MSC has not sought any additional time for any of the other ANSYS witnesses that it has already deposed despite the fact that these witnesses have hands-on involvement in facts potentially relevant to this case.

2. Mr. Cashman Should Not be Ordered to Answer Questions Regarding ANSYS's Negotiating Strategy.

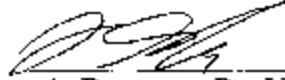
MSC has agreed on at least two prior occasions not to seek the discovery it now wants Your Honor to order.

First, MSC has clearly agreed to forgo this discovery as the result of Mr. Kass's March 13 agreement. MSC's suggestion that Mr. Kass's agreement is limited to MSC's second subpoena to ANSYS, and therefore that MSC is still entitled to this discovery under its first subpoena to ANSYS, is absurd. MSC's second subpoena was specifically negotiated by MSC and ANSYS, at the suggestion of Your Honor, as a compromise resolution to ANSYS's Motion to Limit MSC's first subpocna. Accordingly, MSC's second subpoena clearly supplanted MSC's first subpoena.

Finally, it is worth mentioning that MSC, in an effort to score a victory over a straw man, is attributing to ANSYS arguments (concerning the scope of ANSYS's negotiating strategy) that ANSYS is not making. To be clear, ANSYS is not categorically objecting to MSC inquiring into communications between ANSYS and the FTC, to the extent those communications are relevant and do not reveal ANSYS's negotiating strategy. Additionally, unless MSC is willing to submit for review the questions it proposes to ask Mr. Cashman, there is little point in debating in the abstract what lines of inquiry are inside or outside the permissible scope of discovery. Instead, MSC should ask its questions at the deposition, and ANSYS will object as appropriate. If MSC feels that it has been denied legitimate discovery, it can seek relief from the Court.

For all of the foregoing reasons, ANSYS respectfully requests that all of the relief sought by MSC be denied.

Respectfully submitted,
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Dated: June 19, 2002

CERTIFICATE OF SERVICE AND ELECTRONIC FILING

The undersigned certifies that a true and correct copy of the foregoing public and non-public versions of **ANSYS, INC.'S RESPONSE TO MSC'S SUPPLEMENT TO ITS EMERGENCY MOTION TO REMEDY JIM CASHMAN'S REFUSAL TO APPEAR FOR HIS DEPOSITION AND MOTION TO REOPEN DR. SCHAEFFER'S DEPOSITION FOR A LIMITED PURPOSE** was served this 19th day of June, 2002, upon the following persons by hand:

The Honorable D. Michael Chappell
Administrative Law Judge
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Karen Mills, Esquire
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and that a true and correct electronic copy of the public version of the same was transmitted to the Secretary of the Commission.