

Macrovision v. Sima Products Corp.
S.D.N.Y., 2006.

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United States District Court, S.D. New York.

MACROVISION, a Delaware corporation, Plaintiff,
v.

SIMA PRODUCTS CORPORATION, an Illinois
corporation, Defendant.

No. 05 Civ. 5587(RO).

May 26, 2006.

MEMORANDUM & ORDER

OWEN, J.

*1 Before me is defendant Sima Products Corporation's motion for reconsideration of the Court's Order granting a preliminary injunction, which was issued April 20, 2006, familiarity with which is presumed.

For reconsideration, a movant must show that the Court has overlooked controlling decisions or factual matters that, had they been considered, might reasonably have altered the result. See *Range Road Music, Inc. v. Music Sales Corp.*, 90 F.Supp.2d 390, 391-92 (S.D.N.Y.2000). A motion for reconsideration is "not a motion to reargue those issues already considered when a party does not like the way the original motion was resolved." *In re Houbigant, Inc.*, 914 F.Supp. 997, 1001 (S.D.N.Y.1996).

Sima correctly asserts that the Order was erroneously issued pursuant to Section 1201(a)(2) of the Digital Millennium Copyright Act, 17 U.S.C. § 1201(a)(2). The correct section, which mirrors the language of § 1201(a)(2) almost exactly, is § 1201(b). It reads:

(b) Additional violations.—(1) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that—

(A) is primarily designed or produced for the purpose of circumventing protection afforded by a technological measure that *effectively protects a right of a copyright owner* under this title in a work or a portion thereof;

(B) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological measure that effectively protects a right of a copyright owner under this title

in a work or a portion thereof; or

(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof.

(2) As used in this subsection—

(A) to "circumvent protection afforded by a technological measure" means avoiding, bypassing, removing, deactivating, or otherwise impairing a technological measure; and

(B) a technological measure "effectively protects a right of a copyright owner under this title" if the measure, *in the ordinary course of its operation, prevents, restricts, or otherwise limits the exercise of a right of a copyright owner* under this title.

17 U.S.C. § 1201(b) (emphasis added). ^{FN1}

FN1. Section 1201(a)(2) differs from § 1201(b) in that the former covers technological measures "that effectively controls access" to a protected work, where as the latter covers those "that effectively protects a right of a copyright owner" in a protected work. "[A] technological measure 'effectively controls access to a work' if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work." 17 U.S.C. § 1201(a)(3)(B). Such is not the case with Macrovision's ACP.

Sima strains greatly to argue that Macrovision's Analog Copy Protection (ACP) does not "effectively protect the rights of a copyright owner" because it allegedly does not "in the ordinary course of its operation" prevent, restrict, or limit the exercise of a copyright owner's rights. This assertion does not hold up, because it is contrary to the plain meaning of the statute. Macrovision's ACP, in the ordinary course of this operation, is to hinder the making of videotape copies of protected DVDs. Such copying is among a copyright owner's rights. Furthermore, if Macrovision's technology were not thus effective, why would Sima have to manufacture devices that circumvent it?

*2 My earlier determination as to the purpose and

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marketing of Sima's devices remain. The additional arguments Sima makes in support of its motion are merely improper repetitions of or elaborations upon its prior arguments, which have already been considered and rejected. Accordingly, the motion for reconsideration of the Court's Order of April 20, 2006 is denied.

So Ordered.

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