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10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 ROBERT JACOBSEN,) No. C-06-1905-JSW
14)
Plaintiff,)
15) **PLAINTIFF ROBERT JACOBSEN'S**
v.) **SUPPLEMENTAL DECLARATION IN**
16) **SUPPORT OF MOTION FOR**
MATTHEW KATZER, et al.,) **PRELIMINARY INJUNCTION**
17)
Defendants.) Courtroom: 2, 17th Floor
18) Judge: Hon. Jeffrey S. White
Date: Fri., December 19, 2008
19) Time: 9:00 a.m.
20)
21)
_____)

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23 I, ROBERT JACOBSEN, have personal knowledge to the facts stated herein and hereby
24 declare as follows:

25 I am a party to this action. I am submitting this Declaration in Support of the Motion for
26 Preliminary Injunction. I have reviewed Matthew Katzer's declaration, and provide this
27 declaration in response.
28

- 1 1. I have been programming computers professionally for more than 30 years. I have taught
2 programming and computer engineering. I have written data-handling and database programs in
3 more than ten computer languages including FORTRAN, C, C++, Java, and C#. I have used
4 many data-handling and data-storage systems, including the SQL databases referred to by
5 Katzer and the most common libraries for handling XML data. I am familiar with the common
6 ways for writing data-handling programs and methods of converting data.
- 7 2. Katzer says that the JMRI Project was not given any credit in Defendants' decoder template
8 files because JMRI's credit information is contained in the comment fields of the Decoder
9 Definition Files. He says that the "template verifier tool"—the infringing tool—was written
10 only to extract "manufacturer data information" and ignored all other information. He says this
11 was unintentional.
- 12 3. Katzer wrote his tool to make a copy of JMRI files. Making a verbatim copy is very simple,
13 and no tool is necessary; it's done with a couple mouse clicks on modern computers. Katzer's
14 tool was written to make a non-verbatim copy, extracting all of the information from the JMRI
15 file except the copyright notice and author information and then writing it out in Katzer's
16 template format.
- 17 4. In order to select items to copy, Katzer had to review the files and determine what he wanted
18 and what he didn't want. Then he had to write code to skip over the items that he didn't want
19 and to copy the things that he wanted.
- 20 5. The comment lines are at the top of the files. Katzer couldn't avoid seeing the copyright and
21 licensing information in the comment lines when examining the files. He had to write his
22 program to skip over those lines.
- 23 6. As for the author's names, the line that included the author's name also included the version
24 number and date. For example, the JMRI QSI_Electric.xml file contains the line:
25 `<version author="Howard G. Penny" version="1" lastUpdated="20050616"/>`
26 The JMRI MRC_14step.xml file contains:
27 `<version author="Bob Jacobsen" version="1" lastUpdated="20020405"/>`
28 The JMRI Lenz_54.xml file contains:

1
2 <version author="Michael Mosher mjmx@comcast.net" version="5"
lastUpdated="20030815" />

- 3 7. The version number and date are not “manufacturers information”, as Katzer asserts, but are
4 specific to JMRI. Katzer’s program copied the version number and date into his templates. In
5 order to copy those, the program had to be written to read in the entire line, skip over the part
6 containing the author information, and move to the version number and date. It would have to
7 be specifically programmed to ignore the author information and copy just the version number
8 and date.
- 9 8. In fact, Katzer’s template verifier did this. In the KAM template files that are copies of the
10 above three JMRI files, called QSI_Electric.tpl.xml, MRC_14step.tpl.xml and Lenz_54.tpl.xml
11 respectively, the JMRI values for version number and date have been copied.
- 12 9. Katzer discusses the decoder definition format standardization effort that he spearheaded. I
13 was not a part of that effort, nor was any JMRI developer. Also, Katzer says that JMRI’s files
14 “are not themselves foundational works, rather they build on an effort to construct a master,
15 uniform template of manufacturer’s specification data.” JMRI files did not “build” on any such
16 effort because the effort did not exist when JMRI began. JMRI existed long before Katzer
17 made his infringing files and tried to get the NMRA to adopt them as a standard.
- 18 10. Katzer admits to copying the JMRI content in “early 2005”. He copied it again in June 2005,
19 when JMRI made the QSI_Electric.xml and similar files available. Both of those acts
20 significantly predate his attempt to create a NMRA standard in July and August of 2005.
- 21 11. Katzer claims that because he has a copyright assignment to a QSI manual, that he has the right
22 to copy JMRI’s selection of variable names. I have reviewed the QSI manual. It is an
23 instructional text. JMRI created 6 files, using a different subset of variables from this manual.
24 JMRI also used other variable names in creating these files.
- 25 12. Paragraph 51 of Katzer’s declaration purports to show “Exhibits F through AO attached to this
26 declaration demonstrate information directly copied from the QSI Manual into the JMRI
27 Decoder Definition File, including the texttual [sic] information used as examples of my
28

1 alleged infringement by Plaintiff at PP 72, 80 and 109 of his Declaration.” They in fact show
2 the exact opposite: The JMRI decoder definition files contain original content. Katzer’s
3 discussion is misleading because it focuses only on similar content, without discussing the large
4 amount of unique content created by the JMRI authors. I next discuss several of Katzer’s
5 exhibits, but all have the same misleading comparisons.

6 13. For example, in his Exhibits F through H, Katzer points out several places where the JMRI
7 definition includes information from the QSI manual, but fails to point out that the JMRI
8 definition includes the description “Scale mph Report and Status Report”. This string appears
9 nowhere in the QSI manual because it was written by the author of the JMRI description.

10 14. Katzer’s Exhibit I is about “Speed Table Selection”, which Katzer did manage to find in a table
11 on page 24 of the QSI manual. But it also appears in a number of other forms in the QSI
12 manual: Page 49, “Quantum Speed Table Selection Register”; Page 53, “Quantum Speed Table
13 selection”, Page 102, “Speed Tables”, etc. The JMRI author selected one of many alternative
14 forms. (See also his Exhibit K, where he points at “Speed Table Selection”, but not the JMRI
15 descriptive material below it)

16 15. Katzer’s Exhibit J shows eight names being taken from the QSI manual. Many of those are
17 originally from the NMRA documents, so not even original to the QSI manual, and the NMRA
18 probably took them from somewhere else. But it also shows three that are different, “Vstart”,
19 “Max Volts”, “Manufacturer ID” and even one of the ones that Katzer claims is copied had a
20 minor change to it (CV 7 is “Manufacturer Version No”, not “Manufacturer Version No.”).

21 16. Katzer’s Exhibits L and M attempt to show some identical parts, but are more striking for the
22 parts that are not identical. Katzer’s Exhibit M shows that the QSI term “Whistle/Horn” is in
23 the JMRI definition as “Horn”; the QSI term “Chuff/Diesel Motor/Traction Motor” is the JMRI
24 term “Motor”; QSI’s “Air Pump1” “Air Pump2” have been combined as “Air Pump”; QSI’s
25 “Steam Blower (hiss)/Fans” has become JMRI’s “Cooling Fans”, and the “Steam Dynamo”
26 through “Injector” QSI items are not present in the JMRI file. This is because the JMRI author
27 has selected the definitions thought most important for specific uses, and changed the names to
28 be most evocative for those uses. Those missing items are appropriate for a steam locomotive,

1 but the author of the JMRI QSI_Electric.xml file was describing features useful for an electric
2 locomotive. The QSI manual has a lot of entries that make no sense for an electric locomotive,
3 so the author of the JMRI QSI_Electric.xml file chose to omit those. Katzer's Exhibit N is a
4 another good example of this selection process. For example, "Blow Down" and "Pop-off" are
5 sounds that only a steam locomotive makes, so they weren't included.

6 17. None of the exhibits show the origin of "Stobe (sic) Ditch Lights" in the QSI manual, because
7 it's not to be found.

8 18. Katzer does not explain why he had the right to copy 101 other JMRI files, or how he has the
9 right to copy the JMRI Lenz file, a variation of which was in KAM version 312. Katzer did not
10 have a license to copy JMRI's selection of variables, naming, and arrangement.

11 19. Katzer says that his new versions are incompatible with JMRI files, and therefore, he cannot
12 infringe. However, they were incompatible before, and as I showed in my previous declaration,
13 that did not prevent Katzer from copying JMRI content into his own files. No technical reason
14 prevents Katzer from copying JMRI content into his new storage method. I reviewed version
15 312 and noted similarities between variable names. These variable names did not come from
16 the QSI manual, but were JMRI-specific.

17 20. Katzer says that his software does not need decoder definitions to start up. That may be true,
18 but in order to make any significant use, some form of decoder definition is needed.
19 Otherwise, the program does not know what variables to display on a user's screen and what to
20 call them.

21 21. Katzer says that he has "recalled" all his software. I am a registered owner of Katzer's Decoder
22 Commander product, and I have never received a recall notice from him. I am still in
23 possession of the original KAM product CDs that I purchased in 2006. None of the Defendants
24 have ever requested the return of these CDs.

25 22. Mr. Katzer says that "All outstanding copies of version 305 became non-functional on January
26 21, 2007". To test this, on November 17, 2008 I took a new copy of Windows XP and installed
27 KAM's Version 305 of Decoder Commander on it using the default options. Once the
28 installation was complete, the Decoder Commander product started up without error and

- 1 displayed the content that Katzer had copied from JMRI.
- 2 23. I also took a new copy of Windows XP and installed KAM's Version 304 of Decoder
3 Commander on it. After the installation was complete, the entire set of template files made
4 from the JMRI files was present on the disk and easily readable. The KAM template verifier
5 tool was present. The template verifier started without error and functioned as before,
6 converting a JMRI file to the KAM format. Decoder Commander started without error and
7 displayed the content that Katzer had copied from JMRI.
- 8 24. Mr. Katzer claims that he is developing a product with a large market: "The Company and I
9 have studied the market and have budgeted for sales of 45,000 units ... annually". This appears
10 remarkable to me, given the size of the model railroading hobby. JMRI has approximately
11 11,000 users. The National Model Railroad Association has about 20,000 members, which is a
12 rough measure of the number of very active model railroaders. I find it hard to believe that Mr.
13 Katzer's new product will be attractive to 45,000 model railroaders, when Katzer has been able
14 to sell only 2,500 registered copies of his existing software in the last 15 years.
- 15 25. Mr. Katzer states that "Until (he) reviewed the Declaration of Robert Jacobsen stating this, (he)
16 was unaware that Model Railroad News would be reviewing JMRI and KAM software in
17 2009."
- 18 26. On May 20, 2006, Phil Scandura of Model Railroad News (MRN) wrote to a number of model
19 railroad manufacturers, including me, to announce "Project DCC". A true and correct copy of
20 this email is attached as Exhibit A. He was going to put together a lot of model railroad
21 components, and write a series of articles describing how he used them to build a model
22 railroad, what they did, how they worked together, etc. He outlined a semi-formal "RFP"
23 process where people applied to have their product(s) included by filling out forms, etc.
- 24 27. JMRI and other vendors, were selected to take part in July 2006. The scoring that was
25 announced listed KAM as having filled out an RFP and being selected. A true and correct copy
26 of this email is attached as Exhibit B. On November 20, 2006, after work had started (Phil had
27 a copy of JMRI, had asked questions, and was apparently using it), Phil sent a status update
28 email that included Katzer as an addressee. A true and correct copy is attached as Exhibit C.

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The project was delayed for various reasons, but in August 2007 another email, a true and correct copy of which is attached as Exhibit D, went out listing Katzer as a recipient, followed by several others. This selection process is also described in the June 2008 and October 2008 MRN issues. True and correct copies of selected pages of these magazines are attached as Exhibits E and F, respectively.

28. MRN is the only model railroad magazine that Katzer advertises in now. He takes out a quarter-page ad each month for one of his programs, usually the "Layout Commander". He's been doing this for at least a year. See Exhibit E at 3 and Exhibit F at 4.

29. The first Project DCC article was in the June 2008 issue. See Exhibit E at 4-7. It lists KAM as taking part, and shows a screen shot of a KAM screen. Id. at 6-7. It gives a list of the articles in the series and a summary of their content. Id. at 4-7. It states that several articles will cover layout software like JMRI and KAM. Comparing the magazine's issue date and counting the number of articles to be printed, puts the article on JMRI and KAM in early 2009. Id. at 5, 7.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 21st day of November, 2008, in Berkeley, California.

By 
Robert Jacobsen