UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

Data Access Corporation,
a Florida corporation,

        Plaintiff,

        vs.

Microsoft Corporation,
a Washington corporation,

        Defendant.

_____/

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Data Access Corporation, by and through undersigned counsel, files its Complaint and Demand for Jury Trial against Defendant, Microsoft Corporation as follows:

NATURE OF THE ACTION

1. This is a civil action for trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. § 1114(1)(a) and § 1125(a), common law trademark infringement, and violations of the Florida Deceptive and Unfair Trade Practices Act, F.S. §§ 501.201, et seq.

2. Plaintiff, Data Access Corporation (hereinafter "Data Access") is organized under the laws of Florida with its principal place of business in at 14000 S.W. 119th Avenue, Miami, FL 33186 and also with offices in Hengelo, Netherlands, and São Paulo, Brazil.

3. Data Access was founded in 1976 and in 1982 created DataFlex, which is now a programming language and a visual tool for developing Windows, web, and mobile software applications on one development and deployment framework-based platform. DataFlex allows application code to run on almost any system architecture, regardless of hardware or database

environment (Oracle database, Microsoft SQL Server, IBM DB2, MySQL, PostgreSQL and any ODBC database).

4.   The DataFlex platform powers web, mobile, and Windows applications in large, medium & small enterprises in almost every industry sector.

5.   On information and belief, Defendant, Microsoft Corporation (hereinafter "Defendant" or "Microsoft"), is a corporation organized and existing under the laws of the State of Washington and has a principal place of business at One Microsoft Way, Redmond, WA 98052-6399. Microsoft is a well-known international company and manufacturer of software, computer hardware, and related goods, and markets such goods to residents of the United States and the State of Florida.

JURISDICTION AND VENUE

6.   This Court has subject matter jurisdiction over Data Access' Lanham Act claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a).

7.   This action also arises under 28 U.S.C.A. § 1332 by reason of diversity of citizenship, and the amount in controversy, exclusive of interests and costs, exceeds the sum or value of $75,000.

8.   This Court has supplemental jurisdiction over Data Access' pendent state law claims pursuant to 28 U.S.C. § 1367 in that the state law claims are integrally interrelated with Data Access' federal claims and arise from a common nucleus of operative facts such that the administration of Data Access' state law claims with its federal claims furthers the interest of judicial economy.

9.   This Court has personal jurisdiction over Microsoft (a) who has committed intentional and tortious acts within the state; (b) who has conducted substantial business within

this state related to the unlawful activity at issue in this Complaint; (c) who resides and has offices within the state; and (d) due to the continuous and systematic activities of Microsoft within the state.

10.   Venue is proper in this District pursuant to 28 U.S.C. 1391 (b) and (c).

THE TRADEMARK

11.   Data Access has been using the mark DATAFLEX for almost 40 years in connection with software for building and deploying business applications and has developed substantial domestic and international goodwill and name recognition in this valuable trademark.

12.   Data Access owns three federal registrations for the mark DATAFLEX (attached hereto as **Exhibits 1-3**):

- Registration No. 3,307,027 for DATAFLEX in standard characters, which registered on Oct. 9, 2007 for the following goods: "COMPLETE SOFTWARE FOR CREATING BUSINESS APPLICATIONS, NAMELY, SOFTWARE USED TO CREATE WINDOWS AND WEB APPLICATIONS;"

- Registration No. 5,062,611 for DataFlex (stylized), which registered on Oct. 18, 2016 for the following goods and services: "Complete computer programs used to create desktop, web and mobile business applications and program manuals that document the installation and use of the computer programs all sold as a unit;" and "maintenance and updating of computer software, computer software rental, rental and maintenance of computer software, computer software consulting;"

- Registration No. 5,036,033 for DATAFLEX in standard characters, which registered Sep. 06, 2016 for the following services: "maintenance and updating of computer

software, computer software rental, rental and maintenance of computer software, computer software consulting."

13.   The three registrations are in good standing.

14.   Registration No. 3,307,027 has become incontestable under Section 15 of the Lanham Act, rendering it conclusive evidence of (i) the validity of the registered mark and its registration; (ii) the registrant's ownership of the mark; and (iii) the owner's exclusive right to use the registered mark in commerce.

MICROSOFT'S INFRINGING AND UNLAWFUL ACTS

15.   On July 21, 2020, Microsoft introduced a software platform for building and deploying applications under the name DATAFLEX. See attached hereto **Exhibits 4 and 5**.

16.   The DATAFLEX mark adopted by Microsoft is the same and essentially the same as the DATAFLEX marks covered by Data Access' federal registrations and common law trademark rights.

17.   Microsoft uses the DATAFLEX mark in connection with the same and essentially the same goods and services as covered by Data Access' federal registrations and common law trademark rights.

18.   Upon discovery of Microsoft's confusingly similar trademark use, Data Access advised its U.S. legal counsel the next day, July 22, 2020, to send a cease and desist letter. A true and accurate copy of the Cease and Desist Letter is attached hereto as **Exhibit 6**.

19.   To date, Microsoft continues to promote and offer the products on its website and through other channels under the infringing DATAFLEX mark.

20.   To protect its rights in the DATAFLEX mark, Data Access must take legal action to enforce those rights and avoid implied consent or acquiescence to Microsoft's infringement.

21.   Data Access has been compelled to hire undersigned counsel and is obligated to pay them a reasonable fee, and all conditions precedent have occurred, been satisfied or been waived.

COUNT ONE
Infringement of Federally Registered Trademarks and Service Marks
15 U.S.C. § 1114(1)(a)

22.   Data Access realleges and incorporates each and every allegation contained in paragraphs 1-21 above as if said allegations were fully set forth herein.

23.   Data Access has used its US registered DATAFLEX mark in commerce in connection the goods and services noted in the Registrations, namely, software used to create business applications, web applications, windows applications, mobile applications, and desktop applications, and related computer software rental and updating services.

24.   Microsoft had both actual and constructive knowledge of Data Access' ownership of and rights in its federally registered mark prior to Microsoft's infringing use of those marks.

25.   Microsoft adopted, and continued to use in commerce, Data Access' federally registered mark, and marks confusingly similar thereto, with full knowledge of Data Access' superior rights, and with full knowledge that its infringing use of Data Access' mark was likely to cause confusion, mistake and/or deception.

26.   Microsoft's acts were without license or consent of Data Access.

27.   Microsoft offer its goods under the infringing marks in the same channels of trade as those in which Data Access offers its legitimate goods.

28.   Microsoft's unauthorized and infringing use of Data Access' name and mark in connection with the marketing and sale of its products is likely to cause confusion, mistake or

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