

PLAINTIFF'S COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. In February 2020, the Plaintiff formed an ad hoc group of health care and Dartmouth computer science experts to develop a smartphone application named “Coronavirus Reporter.” The COVID-19 pandemic was named on February 11, 2020. The first death in France on February 14 was followed by an outbreak in Italy, and the United States reported its first death on February 29. The Coronavirus Reporter app was completed on March 3, 2020, at which time there was not a single Coronavirus app on the Apple iOS App Store. While some debate existed, most of the United States population, government scientists, and healthcare experts did not predict the rapid extent to which COVID would spread nationally and globally. Within a month, the United States led the world in confirmed cases, social distancing became a familiar term, and millions lost their jobs.
2. The Coronavirus Reporter application (“the app”) was developed to capture and obtain critical biostatistical and epidemiological data as it happened. For the first time in the history of pandemics, social media could provide new insights of an entire population that simply could not be obtained from traditional doctor office visits and other screening methods. The app’s operation was a simple and familiar “geolocation” map where users would self-identify disease symptoms such as cough, fever, or other yet to be discovered symptoms.
3. In response to the emerging crisis, on March 3, the same day the app was complete, Apple announced that applications dealing with coronavirus would only be allowed from “recognized institutions such as government, hospital, insurance company, NGO, or a university.” Plaintiff’s app was rejected on these grounds. On appeal, Plaintiff requested

that Apple expand the rule to allow corporations other than insurance companies, such as biotechnology or bioinformatics firms. Apple agreed, and added health care corporations to the list of permissible entities. Apple was then provided with supporting and sponsorship documentation from Coronavirus Reporter's Chief Medical Officer, a former Chief Physician at NASA during the Space Race, and the former President of multiple world-renowned academic medical centers.

4. After a very long twenty days of waiting, Apple informed Plaintiff that the Coronavirus Reporter app would not be permitted on the App Store. Apple alleged that Coronavirus Reporter was not a recognized healthcare company. Additionally, Apple stated that the "user-generated data has not been vetted for accuracy by a reputable source." In other words, Apple told Plaintiff a self-reported symptoms model was not acceptable for the pandemic.
5. About one month after rejecting Plaintiff's app, Apple permitted several employees at a London teaching hospital to distribute a COVID app on the App Store that functioned nearly identically to Coronavirus Reporter. That competing app obtained the so-called first player advantage, and is used by five million individuals daily.
6. In the following months, Apple formed a partnership with Google and several other universities to create a contact-tracing COVID app. After much delay, the contact-tracing App launched in Summer 2020. Although contact-tracing has worked in some limited scope, much resistance in this country exists. The Apple contact-tracing app generally underperformed expectations and failed to obtain a user base in the United States.

7. The Sherman Act prohibits monopolization of any part of the trade or commerce among several States, or with foreign nations. Likewise, the Sherman Act prohibits every contract or conspiracy in restraint of trade among several States, or with foreign nations.
8. The internet was developed by DARPA, a research and development division of the United States Department of Defense. ARPANET was the first packet switched distributed TCP/IP network, the backbone foundation of what we today call the internet. This military research endeavor aimed to provide resilient data transmission infrastructure linking persons around the country and the globe. Considerable taxpayer dollars funded DARPA, and continue to fund urban and rural infrastructure rollout of TCP/IP (internet) data services through fiber optics, wireless spectrum allocations, and other ongoing network infrastructure deployments.
9. The COVID pandemic serves as a prime example of how ARPANET and its subsequent implementations is particularly well-suited for communication during a national emergency.
10. As ARPANET and the internet developed over time, many of its characteristic distributed networking features have become compromised by the growth of corporate entities that control vast access points. Of particular concern is that unfettered growth of a monopolistic trust, as defined by the Sherman Act, could seriously restrict interstate commerce, and the free exchange of information. A computer scientist who writes software applications that rely upon a free and open internet may be encumbered, should one of these monopolistic trusts destroy access to the internet's free markets and information exchanges.

11. Defendant Apple Inc. did just that, denying millions of citizens the benefit of communicating in a pandemic emergency using an app designed by a world-renowned physician. Indeed, that physician had particular experience in dealing with novel medical situations as exemplified by the fact that he personally gave astronauts the green light to explore uncharted territory;
12. Nearly 60% of users and 80% of paid internet commerce access the national internet backbone using Apple devices. For many millions of these users, their *de facto* access to the internet relies upon using an iOS device. Consider, for example, children or elderly who have been taught to access the internet using a relative's Apple device and have absolutely no reasonable alternative. As such, Apple operates a *de facto* monopoly for access to the national internet communication backbone.
13. Apple has restricted trade, communication, and free information exchange, all in violation of the Sherman Act, when it disallowed Plaintiff's reasonable application.

II. JURISDICTION AND VENUE

12. Venue in the New Hampshire District is proper under 15 U.S.C. § 22, which states that any suit proceeding under antitrust laws against a corporation may be brought in any district where it transacts business. Apple transacts business in New Hampshire. Additionally, some officers of the Plaintiff corporation reside in New Hampshire and did not personally waive venue via the Apple Developer Agreement. It is also alleged that the venue waiver is a monopolistic contract that is forced upon any developer who wishes to make applications that access the national internet backbone, and is itself a violation of the Sherman Act. Furthermore, it is alleged that Apple would have an unfair advantage if

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