

1 Apple, Inc. v. Psystar Corp., 586 F. Supp. 2d 1190 (N.D.Cal. 2008)

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3 ORDER GRANTING MOTION TO DISMISS COUNTERCLAIMS

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5 WILLIAM ALSUP, District Judge.

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7 INTRODUCTION

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9 Plaintiff Apple Inc. brought this lawsuit against defendant Psystar Corporation asserting  
... copyright and trademark violations related to Psystar's alleged use of Apple's operating  
... system. Psystar filed counterclaims against Apple alleging violations of federal and state  
... antitrust laws. Apple moved to dismiss Psystar's antitrust counterclaims. For the reasons  
... stated below, {1193} Apple's motion to dismiss the counterclaims is GRANTED.

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11 STATEMENT

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13 Apple Inc. manufactures and markets the Macintosh Computer and the OS X Operating System  
... ("Mac OS"). ... Apple is the exclusive manufacturer and master licensor of Mac OS. {1193}

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15 Psystar manufactures and distributes a tailored line of computers called Open Computers.  
... Psystar's Open Computers support a wide range of operating systems including Mac OS,  
... Microsoft Windows XP and XP 64-bit, Windows Vista and Vista 64-bit and Linux 32 and 64-bit  
... kernels. Psystar allows its customers to choose the operating system on the computers they  
... purchase. {1193}

16

17 Numerous companies manufacture entire computer hardware systems, including (but not  
... limited to) Dell, Acer, Lenovo, Sony and Hewlett-Packard. In addition, numerous companies  
... manufacture and sell components—such as hard drives, processors and graphics processing  
... cards— used by those computer manufacturers. {1193}

18

19 The counterclaim, however, identifies no companies other than Apple and Psystar that  
... currently sell computers compatible with Mac OS. Apple manufactures an exclusive line of  
... hardware systems that support Mac OS, including the Mac Pro, the Mac Mini, the MacBook the  
... MacBook Air, the MacBook Pro, and the iMac. The counterclaim alleges that, by virtue of  
... Apple's End User License Agreement and other anti-competitive conduct, consumers wishing  
... to use Mac OS have no alternative to the Apple-label computer hardware systems. The  
... counterclaim alleges that there is no compelling technological reason why other  
... manufacturers could not produce computer hardware systems capable of hosting, executing  
... and running MAC OS, and that, but for the exclusionary conduct of Apple, such third  
... parties could and would assemble hardware components capable of running Mac OS. {1193}

20

21 The counterclaim avers that there exist two relevant markets. The first alleged market  
... consists of one product: Mac OS. The complaint asserts that Apple's Mac OS is not  
... reasonably interchangeable with other operating systems such as Microsoft Windows and  
... therefore comprises its own market. {1193}

22

23 The second alleged market consists of computer hardware systems capable of executing Mac  
... OS. The counterclaim avers that, through its anti-competitive conduct, Apple's exclusive  
... line of computer hardware systems dominate the market for Mac OS-capable computer hardware  
... systems. {1193}

24

25 Psystar offers several (related) allegations in support of its claim that Mac OS  
... constitutes an independent market. First, Psystar alleges that Apple has undertaken  
... extensive advertising campaigns—including the "think different" campaign and the "get a

25... Mac" campaign—to define the Mac OS as a product separate and distinct from other operating  
... systems, and that through those efforts customers and merchants have come to recognize Mac  
... OS as a separate and distinct market. {1193}

26

27 Second, the counterclaim avers that, across the spectrum of the Apple label computer line,  
... Apple computers with traditional computer components are significantly more expensive than  
... similarly configured computers with comparable (or superior) hardware sold by other  
... computer companies utilizing operating systems other than Mac OS, such as Windows. {1194}

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29 [...]

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31 Psystar claims that Apple has utilized its monopoly power in the alleged "Mac OS  
... market"—in which Apple is, by definition, the only participant—in order to dominate the  
... market for Mac OS-capable computer hardware systems. Psystar alleges that Apple has  
... engaged in various forms of anti-competitive conduct in order to "protect its valuable  
... monopoly in the Mac OS market and, by extension, Apple-Labeled Computer Hardware Systems  
... from potential threats.'" The counterclaim asserts that the following actions constitute  
... the illegal tying of Mac OS to Apple-labeled computer systems, monopoly maintenance or  
... other unlawful behavior. {1194}

32

33 First, Psystar avers that Apple's End User License Agreement for the Mac OS specifically  
... prohibits customers from installing the operating system on non-Apple computers. The  
... license agreement states:

34

35 2. Permitted License Uses and Restrictions.

36

37 A. Single Use. This license allows you to install, use and run (1) copy of the Apple  
... Software on a single Apple-labeled computer at a time. You agree not to install, use or  
... run the Apple Software on any non-Apple-Labeled computer or enable another to do so.

38

39 Customers, therefore, are contractually precluded from utilizing Mac OS on any computer  
... hardware system that is not an Apple-labeled computer system. {1194}

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41 Second, Psystar avers that Apple has erected technical barriers that prevent Mac OS from  
... operating on non-Apple computers. Apple, the counterclaim alleges, intentionally embeds  
... code in Mac OS that causes the operating system to recognize any computer hardware system  
... that is not an Apple computer. If Mac OS recognizes a non-Apple computer, Mac OS will not  
... operate properly. The Mac OS will enter "kernel panic," meaning that the operating system  
... believes that it has detected an internal and fatal error from which it can not recover,  
... and discontinues operation. This renders the computer non-functional. {1194}

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43 [...]

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45 ANALYSIS

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49 1. FEDERAL CLAIMS.

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53 A. MARKET DEFINITION: ALLEGED "MAC OS" MARKET.

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55 As stated, Psystar asserted three federal claims:

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57 a tying claim under Section 1 of the Sherman Act,  
58  
59 a monopoly-maintenance claim under Section 2 of the Sherman act, and  
60  
61 an exclusive-dealing claim under Section 3 of the Clayton Act.[2]

62  
63 Each of these claims requires plaintiff to establish market power in a "relevant market."  
64 {1196}

65  
66 [...]

67  
68 The parties dispute whether Psystar may rely on a relevant market comprised of a single  
... brand of a product—a market consisting only of Apple's Mac OS but excluding other  
... operating systems such as Microsoft's Windows. Apple asserts that the relevant markets  
... alleged in the counterclaim are neither legally nor factually plausible. Psystar responds  
... that market definition is normally a factual question, not to be decided at the pleading  
... stage, and that single-brand markets are permissible.

69  
70 The definition of an antitrust "relevant market" is typically a factual rather than a  
... legal inquiry, but certain legal principles govern the definition. [...]

71  
72 Psystar relies on Newcal Industries. That decision, plaintiff emphasizes, stated that "the  
... law permits an antitrust claimant to restrict the relevant market to a single brand of the  
... product at issue (as in Eastman Kodak)." Id. at 1048. Newcal Industries, however, merely  
... held that a market may be comprised of a single brand in the situation the Supreme Court  
... addressed in Kodak: a derivative aftermarket for products related to or dependent on a  
... specific company's products. [...] Here ... Psystar alleges not a single-brand aftermarket  
... dependent on and derivative of a specific company's primary product but instead that a  
... single brand of primary product (Apple's operating system) constitutes an independent  
... market. Neither Newcal Industries nor Kodak addressed such a situation. Psystar has cited  
... no decision lending support to its single-brand product market theory.[3] {1197}

73  
74 [...]

75  
76 The pleading as a whole does not allege facts that, if true, plausibly indicate that Mac  
... OS is an independent, single product market. The counterclaim itself explains that Mac OS  
... performs the same functions as other operating systems (Countercl. ¶ 21):

77  
78 Operating systems—like the Mac OS— manage the interaction between various pieces of  
... hardware such as a monitor or printer. The operating system also manages various software  
... applications running on a computer device.

79  
80 [...]

81  
82 Psystar fails to explain why these "competitor[s]" should be excluded from the definition  
... of the relevant market.

83  
84 Psystar also points to Apple's extensive advertising campaigns. Those advertising  
... campaigns more plausibly support an inference contrary to that asserted in the  
... counterclaim—vigorous advertising is a sign of competition, not a lack thereof. If Mac OS  
... simply had no reasonable substitute, Apple's vigorous advertising would be wasted money.  
... The advertising campaigns suggest a need to enhance brand recognition and lure consumers  
... from a {1200} competitor. The "brand leadership" and brand loyalty Psystar alleges, if

84... true, suggest that Apple's efforts have borne fruit.

85

86 [...]

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88 For the above-stated reasons, this order concludes that the counterclaim does not  
... plausibly allege that Mac OS is an independent market.

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90 B. MARKET DEFINITION: ALLEGED "MAC OS-CAPABLE COMPUTERS" MARKET.

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92 As stated, the complaint alleges two relevant markets: Mac OS, and computer hardware  
... systems which utilize Mac OS. All of Psystar's federal claims require the existence of  
... these two distinct markets. Psystar has alleged tying, monopoly maintenance and exclusive  
... dealing. The tying theory requires a plausible allegation that Apple tied sale of one  
... market in which it enjoys market power (the "tying market") to a product in a second,  
... distinct market (the "tied market"). [...]

93

94 Psystar alleges that, by tying or other exclusionary behavior, Apple seeks to dominate a  
... distinct aftermarket, the market for Mac OS-compatible computer hardware systems.

95

96 [...]

97

98 Psystar relies on United States v. Microsoft Corp., 253 F.3d 34 (C.A.D.C. 2001). In  
... Microsoft, the District Court had defined a relevant market consisting of "the licensing  
... of all Intel-compatible PC operating systems worldwide,' finding that there [were]  
... 'currently no products— and ... there [were] not likely to be any in the near future—that  
... a significant percentage of computer users worldwide could substitute for [these operating  
... systems] without incurring substantial costs.'" Id. at 52. The court of appeals affirmed  
... the district court's factual findings. Ibid. Psystar argues that those findings aid its  
... cause. Although some of those factual findings arguably support Psystar's claims,[5]  
... others directly contradict it.[6] The district court made those factual findings nearly  
... ten years ago and their continued applicability is far from certain. Moreover, although  
... the decision found that Microsoft had attained a very large market share in the  
... above-described operating system market, it did not limit the relevant market to a single  
... brand or product, as Psystar seeks to do. [...] This order places no weight on the  
... decision.

99

100 For the above-stated reasons, Psystar's claim that Mac OS-compatible computer hardware  
... systems constitute a distinct submarket or aftermarket contravenes the pertinent legal  
... standards, and Apple's motion to dismiss Psystar's federal counterclaims is therefore  
... granted.

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102 2. STATE CLAIMS.

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106 CONCLUSION

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108 For all of the above-stated reasons, Apple's motion to dismiss Psystar's counterclaims is  
... GRANTED. [...]

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110 IT IS SO ORDERED.