

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DANIEL WALLACE,

Plaintiff,

v.

Case No. 1:05-cv-618-JDT-TAB

FREE SOFTWARE FOUNDATION, INC.,

Defendant.

**MOTION TO STAY BRIEFING
ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Defendant, Free Software Foundation, Inc. ("FSF"), moves to stay the briefing on Plaintiff's Motion for Summary Judgment pending the resolution of FSF's Motion to Dismiss, which has been filed contemporaneously with this Motion. In further support of its Motion, FSF would show the Court the following:

1. On April 28, 2005, Plaintiff filed his Complaint.
2. On May 20, 2005, Plaintiff filed his Motion for Summary Judgment.
3. On June 22, 2005, pursuant to Fed. R. Civ. P. 12(b)(6), FSF timely filed its Motion to Dismiss, along with a supporting brief.
4. For the reasons set out in Defendants' brief on the Motion to Dismiss, the Complaint fails to state a claim upon which relief can be granted. The Complaint fails to allege facts to establish a violation of the antitrust laws. Furthermore, the Complaint shows that Plaintiff lacks standing to sue because any harm suffered by Plaintiff is not the sort of harm that the antitrust laws are meant to remedy.
5. These are threshold issues that, under controlling Seventh Circuit authority, should be addressed at the outset of the lawsuit under Fed. R. Civ. P. 12(b)(6). "When the

requisite elements are lacking, the costs of modern federal antitrust litigation and the increasing caseload of the federal courts counsel against sending the parties into discovery when there is no reasonable likelihood that the plaintiffs can construct a claim from the events related in the complaint." *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101 (7th Cir. 1984).

6. In the interests of judicial economy, therefore, the Court should stay the briefing on Plaintiff's Motion for Summary Judgment until after it rules on FSF's Motion to Dismiss.

WHEREFORE, FSF prays for the Court to stay briefing on Plaintiff's Motion for Summary Judgment pending its ruling on FSF's Motion to Dismiss, and for all other necessary and proper relief.

Respectfully submitted,

ICE MILLER

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Counsel for Defendant Free Software
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon the following by first-class United States mail, postage prepaid, this 22d day of June, 2005.

Daniel Wallace
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s/ Philip A. Whistler
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