

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

DANIEL WALLACE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Complaint No.: 1:05-cv-0678-SEB-VSS
	)	
INTERNATIONAL BUSINESS	)	
MACHINES CORPORATION;	)	
RED HAT INC.;	)	
NOVELL, INC.,	)	
	)	
Defendants.	)	

**DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION’S  
MOTION TO DISMISS**

Pursuant Federal Rule of Civil Procedure 12(b)(6), Defendant International Business Machines Corporation (“IBM”) moves to dismiss plaintiff’s attempted claims under the Sherman Act, 15 U.S.C. § 1, *et seq.* Plaintiff’s two-page complaint fails to meet even the most liberal pleading requirements in an antitrust case. These minimal allegations, coupled with the language of the GNU General Public License attached to the complaint, demonstrate that plaintiff has pled himself out of court by alleging facts that show he has neither antitrust standing nor recoverable antitrust injury, facts that are inherent in who the plaintiff is and therefore cannot be cured by amendment. Plaintiff also fails to allege any facts whatsoever concerning any combination or conspiracy under Section 1. Further, under the rule of reason, plaintiff fails to allege any unreasonable restraint of trade, anticompetitive effects, or market power in a relevant market.

These arguments are set out in IBM's brief in support of this motion, which is incorporated as if fully stated herein. For all of these reasons, as well as the arguments set out in detail in the brief, plaintiff fails to state a Sherman Act claim as a matter of law. Therefore, IBM requests that the Court dismiss his complaint with prejudice under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted,

s/ Michael Gottschlich  
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Attorneys for Defendant, International  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 30th day of June, 2005, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following by operation of the Court's electronic filing system:

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The above filing will also be served via U.S. mail on the following, and all attorneys that the Court's notice of delivery indicates will be delivered by other means:

Daniel Wallace  
P. O. Box 572  
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s/ Kendall Millard  
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Kendall Millard