

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

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

**DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION’S
MOTION TO DISMISS THE AMENDED COMPLAINT**

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 Amended Complaint fails to meet even the most liberal pleading requirements in an antitrust case. Plaintiff’s minimal allegations, coupled with the language of the GNU General Public License attached to the original Complaint, demonstrate that Plaintiff has pled himself out of court by alleging facts that show he has no recoverable antitrust injury. These facts that are inherent in who the Plaintiff is and therefore cannot be cured by further amendment. Plaintiff also fails to allege 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, and IBM's brief in support of its Motion to Dismiss the original Complaint, which are incorporated as if fully stated herein. For all of these reasons, as well as the arguments set out in detail in the briefs, Plaintiff fails to state a Sherman Act claim as a matter of law. Therefore, IBM requests that the Court dismiss his Amended 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 19th day of July, 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
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s/ Kendall Millard

Kendall Millard