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Consumerism

Dell customer awarded Windows refund

Customer refused refund guaranteed in Windows licensing agreement sues Dell, settles out of court. Case first of its kind in Israel

Niv Lilian

Zvi Devir from Haifa was recently able to do the impossible: He held Dell to the fine print in its end-user license agreement.

Many laptop manufacturers, such as HP, Lenovo and Dell, have an OEM agreement (Original Equipment Manufacturer) with Microsoft, allowing them to install the Windows operating system on their computers in advance.

The companies add the cost of the system's license to that of the laptop, and that little trick can amount to 10% or more of the computer's selling price.

Many of us, however, simply check the box saying we agree to the terms of use when we turn our new computer on for the first time; but there's money to be made if you read the fine print. And that is exactly what Devir did.

Devir was not interested in the Windows Vista system on his Dell laptop, opting for Linux – an open source system – instead.



Money back guarantee

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Read the fine print (Illustration: Index Open)

Vista's end-user license agreement (EULA) clearly stated that "By using this software, you accept these terms. If you do not accept them, do not use the software. instead, contact the manufacturer or installer to determine their return policy for a refund or credit."

Merits of tenacity

Devir approached Dell for his due refund, but was told that since "all sales, services and technical support are handled by licensed distributors," he should call on the distributor for the refund, despite the fact that the EULA agreement clearly states Dell is liable.

Devir had no choice but to take his case to the Small Claims Court, and so he sued Dell for the cost of the Windows installed on his computer – NIS 550 (\$137.)

Dell presented the court with an aggressive defense, claiming that not only did Devir fail to follow the return policy, he knowingly bought a laptop which had the system already installed on it, instead of buying one free of any operating systems.

The latter claim fails to live up to itself, as Dell Israel's website does not give the private consumer the option of buying a laptop without Windows.

Faced with Devir's tenacity, Dell eventually decided to settle the case by offering him a \$100 compensation – the price of the system as sold by Microsoft to Dell plus tax – providing he drop the case and sign a non-disclosure agreement.

After a brief negotiation, by the end of which Dell forfeited the non-disclosure clause, Devir finally got a check for \$137. The check was signed by CMS – one of Dell's local distributors.

Dell Israel offered the following comment: "Dell manufactures computer components in accordance with the customer's purchase order and requests. That included the operating system."

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