

Sinan Karaca

From: [REDACTED]@foley.com
Sent: Friday, January 11, 2019 10:07 PM
To: [REDACTED]@installaware.com
Cc: 'Emil Mesropian (DevExpress)'; [REDACTED]@foley.com; 'Julian M Bucknall'; [REDACTED]@installaware.com
Subject: RE: Developer Express // [REDACTED] InstallAware License Violation // Foley & Lardner # [REDACTED]

Dear Mr. Shubow:

Your statement that there has never been any infringement runs contrary to our findings. Although we are aware that InstallAware X9 has been recently re-assembled, previous versions of InstallAware X9 before Jan. 9, 2019 included infringing features that were not available in Developer Express's VCL v.15.1.x. Infringing features not available in v.15.1.x have also been found in previous versions dating back to 2016 such as InstallAware X6. The presence of such features in InstallAware's products cannot possibly be accidental or unintentional, so it is unnecessary for us to provide further evidence of how InstallAware assembles its products or what components are included in them.

As we have stated, InstallAware's uses as outlined above are unlicensed and so payment is required. The deadline for an amicable resolution via confirmation of such payment continues to be Jan. 19, 2019.

Regards – Mark Danielson

From: Drew Shubow <[REDACTED]@installaware.com>
Sent: Thursday, January 10, 2019 3:23 PM
To: Danielson, Mark J. <[REDACTED]@foley.com>
Cc: 'Emil Mesropian (DevExpress)' <[REDACTED]@devexpress.com>; Mou, Kathy <[REDACTED]@foley.com>; 'Julian M Bucknall' <[REDACTED]@devexpress.com>; [REDACTED]@installaware.com
Subject: RE: Developer Express // [REDACTED] InstallAware License Violation // Foley & Lardner # [REDACTED]

***** Externally sourced email message *****

Dear Mr. Danielson:

Your request for controlling caselaw is rendered moot until such time as you have disclosed the means and the nature of your analysis of the InstallAware product.

Notwithstanding the foregoing, your analysis that any features from any refunded Developer Express renewals may have been used in the InstallAware product remains entirely incorrect.

Since there never has been any infringement, it logically follows that evidence of infringing features absent in DevExpress VCL 15.1.11, as has been repeatedly requested by this office, cannot and will not be provided.

Based on the foregoing facts, or rather the lack of, DevExpress is not entitled to any amounts. If you would like to contact us again to discuss this matter further, provide immediate evidence of infringing features absent in DevExpress VCL 15.1.11.

Drew Shubow
InstallAware General Counsel
[REDACTED]@installaware.com

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From: [REDACTED]@foley.com [REDACTED]@foley.com>
Sent: Friday, January 11, 2019 1:20 AM
To: [REDACTED]@installaware.com
Cc: 'Emil Mesropian (DevExpress)' <[REDACTED]@devexpress.com>; [REDACTED]@foley.com; 'Julian M Bucknall' <[REDACTED]@devexpress.com>; [REDACTED]@installaware.com
Subject: RE: Developer Express // [REDACTED] InstallAware License Violation // Foley & Lardner # [REDACTED]

Dear Mr. Shubow:

Regarding our analysis of InstallAware's product, an infringer cannot seek damages based solely on the ground that his lawfully obtained and used product was found to be infringing. If you have controlling caselaw that holds to the contrary, we will be happy to review it.

As for Developer Express's refund policy, it appears you are confused. When the refund is requested and given, the license is terminated. Although Developer Express has a liberal policy of granting refunds, this does not excuse subsequent unlicensed uses of the refunded product.

To simplify things, it appears that we agree that [REDACTED] InstallAware received two VCL subscription renewals and two refunds therefor: \$1,049.99 on June 22, 2016 and \$1,124.99 on Dec. 20, 2018. Our analysis has determined that components from both of these renewals were and/or are currently being used in InstallAware's products. Accordingly, this situation can be resolved amicably upon payment by InstallAware to Developer Express in the amount of \$2,174.98 within 10 days of our initial email, which is January 19, 2019.

We continue to look forward to confirmation that this payment has been made.

Regards – Mark Danielson

From: Drew Shubow <[REDACTED]@installaware.com>
Sent: Wednesday, January 9, 2019 2:49 PM
To: Danielson, Mark J. <[REDACTED]@foley.com>
Cc: 'Emil Mesropian (DevExpress)' <[REDACTED]@devexpress.com>; Mou, Kathy <[REDACTED]@foley.com>; 'Julian M Bucknall' <[REDACTED]@devexpress.com>; [REDACTED]@installaware.com
Subject: RE: Developer Express // [REDACTED] and InstallAware License Violation // Foley & Lardner # [REDACTED]
Importance: High

*** Externally sourced email message ***

Dear Mr. Danielson,

Would you kindly share a detailed breakdown of your analysis with me, specifically:

1) The feature or features of DevExpress VCL, which you claim to have been used by InstallAware, that are unavailable in version 15.1.11,

- 2) The version or versions of InstallAware which you allege you have found to be infringing in the above manner,
- 3) When and where these version or versions of InstallAware were sourced,
- 4) Whether your analysis breached our EULA.

We ask for your understanding that we are unable to render payment for software versions for which we have obtained refunds per your publicly advertised 60 day money back guarantee.

We also explicitly reserve any and all rights in this matter pertaining to any willful or accidental breach of our EULA, for which we will vigorously seek damages from the breaching party.

InstallAware may seek other remedies not addressed in this letter and may raise additional concerns connected with the foregoing. This letter is not intended to be an exhaustive enumeration of required remedies or concerns.

Drew Shubow
InstallAware General Counsel
[REDACTED]@installaware.com

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From: [REDACTED]@foley.com <[REDACTED]@foley.com>
Sent: Thursday, January 10, 2019 1:27 AM
To: [REDACTED]@installaware.com
Cc: 'Emil Mesropian (DevExpress)' <[REDACTED]@devexpress.com>; [REDACTED]@foley.com; 'Julian M Bucknall' <[REDACTED]@devexpress.com>; [REDACTED]@installaware.com
Subject: RE: Developer Express // [REDACTED] InstallAware License Violation // Foley & Lardner # [REDACTED]

Dear Mr. Shubow:

By analyzing publicly available copies of InstallAware's products, we have confirmed that they use functionality that is only available in versions of Developer Express's VCL product after v.15.1.

Thank you again in advance for providing confirmation within 10 days that payment for a valid license has been made in connection with InstallAware's past, present and future uses of versions after v.15.1.

Regards – Mark Danielson

From: Drew Shubow <[REDACTED]@installaware.com>
Sent: Wednesday, January 9, 2019 10:33 AM
To: Danielson, Mark J. <[REDACTED]@foley.com>
Cc: 'Emil Mesropian (DevExpress)' <[REDACTED]@devexpress.com>; Mou, Kathy <[REDACTED]@foley.com>; 'Julian M Bucknall' <[REDACTED]@devexpress.com>; [REDACTED]@installaware.com
Subject: RE: Developer Express // [REDACTED] InstallAware License Violation // Foley & Lardner # [REDACTED]

***** Externally sourced email message *****

Dear Mr. Danielson,

Would you kindly clarify what has informed your incorrect assertion that InstallAware is using a version of DevExpress later than our latest licensed version, 15.1.11, other than the fact that InstallAware attempted upgrades to newer versions on two previous occasions, which attempts were unsuccessful as documented earlier on this thread?

Drew Shubow
InstallAware General Counsel
[REDACTED]@installaware.com

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From: [REDACTED]@foley.com <[REDACTED]@foley.com>
Sent: Wednesday, January 09, 2019 9:23 PM
To: [REDACTED]@installaware.com
Cc: 'Emil Mesropian (DevExpress)' <[REDACTED]@devexpress.com>; [REDACTED]@foley.com; 'Julian M Bucknall' <[REDACTED]@devexpress.com>
Subject: RE: Developer Express // [REDACTED] InstallAware License Violation // Foley & Lardner #112693-0118

Dear Mr. Shubow:

Your prompt attention to this matter is greatly appreciated. However, there is nothing false about the assertions in our email.

We are aware of the old license from 2014. However, this license covers VCL Subscription v.15.1. As our email indicated, there is no valid license for any of the latest versions, including any versions after v.15.1, which latest versions are currently being used by InstallAware.

Thank you in advance for providing confirmation within 10 days that payment for a valid license to versions after v.15.1 has been made.

Regards – Mark Danielson

From: Drew Shubow <[REDACTED]@installaware.com>
Sent: Wednesday, January 9, 2019 9:40 AM
To: Danielson, Mark J. <[REDACTED]@foley.com>
Cc: 'Emil Mesropian (DevExpress)' <[REDACTED]@devexpress.com>; Mou, Kathy <[REDACTED]@foley.com>; 'Julian M Bucknall' <[REDACTED]@devexpress.com>
Subject: RE: Developer Express // [REDACTED] InstallAware License Violation // Foley & Lardner #112693-0118

***** Externally sourced email message *****

Dear Mr. Danielson,

Contrary to your assertions, we have discovered that InstallAware is in legal use of your DevExpress IP with appropriate licensing as attached.

Invoice_P857457 - This is the DevExpress license InstallAware is entitled to, associated with the following DevExpress account:

User name: [REDACTED] [installaware.com](mailto:[REDACTED]@installaware.com)

User password: [REDACTED]

This user account is still active and in good standing on your customer portal, flying in the face of your assertions regarding InstallAware's alleged intellectual property licensing violations.

In fact, it is still possible to download your product from the very same customer portal, as of this writing.

Moreover, a support thread created by InstallAware once again confirms our entitlement to your intellectual property as seen in the attached thread:

T358172 - License status clarification _ DevExpress Support Center

I have also attached two further invoices, both of which were refunded due to technical issues, shortly after the respective orders:

Invoice_P971466 and Invoice_P2267260.

The support thread indicating the failure of these products to function as advertised is also enclosed for your convenience:

T358010 - How to implement an interface similar to _Office Tell Me_ in MS Office _ DevExpress Support Center

It would appear that when InstallAware obtained refunds for these improperly functioning newer releases, you mistakenly assumed that InstallAware was operating without a license at all.

I would remind you that our two companies have been partners for more than a decade, with your CTO Mr. Julian M Bucknall [REDACTED] keeping in touch from time to time.

Should the requisite functionality discussed in the support thread referenced above be implemented, InstallAware would be happy to upgrade to your latest component version as well.

Until such time, we ask that you do not engage the time of this office with false positives understandably triggered by your internal compliance checks.

Thanking you very much for your cooperation,

Drew Shubow
InstallAware General Counsel

[REDACTED] [installaware.com](mailto:[REDACTED]@installaware.com)

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From: [REDACTED]@foley.com <[REDACTED]@foley.com>

Sent: Wednesday, January 09, 2019 8:35 PM

To: [REDACTED]@installaware.com

Cc: Emil Mesropian (DevExpress) <[REDACTED]@devexpress.com>; [REDACTED]@foley.com

Subject: Developer Express // [REDACTED] installAware License Violation // Foley & Lardner # [REDACTED]

Dear Mr. Shubow:

We represent Developer Express in intellectual property and other legal matters. Your email of January 3, 2019 to Emil Mesropian has been forwarded to us.

As [REDACTED] acknowledged, on December 18, 2018 he purchased a subscription to Developer Express's VCL product and downloaded an up-to-date version of that product. On December 19, 2018, [REDACTED] requested a refund of the subscription fee from Developer Express, which Developer Express promptly provided in full. By requesting and receiving this refund, [REDACTED] installAware has any current valid license to the latest versions of Developer Express's VCL product. Without any current valid license, [REDACTED] installAware are required to remove any and all use of Developer Express's unlicensed VCL products from any applications distributed by [REDACTED] installAware. This has not been done, and so such use is unauthorized and constitutes at least infringement.

Within 10 days of the date of this email, please provide confirmation that all necessary subscription fees have been paid to Developer Express. In the absence of such prompt confirmation, Developer Express reserves the right to take any appropriate action to which it is entitled under the law.

Regards – Mark Danielson

Mark J. Danielson

Foley & Lardner LLP
975 Page Mill Road
Palo Alto, CA 94304
(Dir.) [REDACTED]

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