

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 00-2006SI

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Microware Systems Corporation,  
an Iowa corporation,

Plaintiff - Appellant,

v.

Apple Computer, Inc.,  
a California corporation,

Defendant - Appellee.

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\* On Appeal from the  
\* United States District Court  
\* for the Southern District  
\* of Iowa.  
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\* [To be published]  
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Submitted: January 8, 2001

Filed: January 16, 2001

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Before RICHARD S. ARNOLD, FAGG, and BOWMAN, Circuit Judges.

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PER CURIAM.

The plaintiff, Microware Systems Corporation, owns a registered trademark, "OS-9," on its software products, which are real-time operating systems. The defendant, Apple Computer, Inc., calls the current generation of its personal computer "MAC OS 9." Microware brought this suit for trademark infringement. The District

Court<sup>1</sup> denied Microware's motion for a preliminary injunction and granted Apple's motion for summary judgment, holding as a matter of law that Apple had established the defense of fair use.

We affirm. The evidence of confusion was minimal. Microware and Apple sold, for the most part, to entirely different markets. Microware does not claim it lost any sales. "MAC OS 9" accurately describes, in a fashion customary in the industry, the current version of Apple's product. For the rest, we refer the reader to the able district judge's full opinion, with which we agree in substance.

Affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

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<sup>1</sup>The Hon. Robert W. Pratt, United States District Judge for the Southern District of Iowa.