



May, 2004

3Com wins nearly US\$10 million in two grey marketing fraud cases

W. Michael G. Osborne, Affleck Greene Orr LLP.

[3Com](#), a manufacturer of computer networking equipment and voice over IP telephones, won a total of US\$9.9 million in damages in two recent Ontario decisions.

On April 29, 2004, Mr Justice Juriansz awarded 3Com US\$6.5 million in damages against re-seller Zorin International Corp. and its principals, Sam Marotta and Domenic Sicilia for deceit. Earlier, on March 19, 2004, Madam Justice Lang awarded 3Com US\$3.4 million in damages against re-seller Intelligent Decisions Inc. (IDI). These are believed to be the largest damage awards ever in grey marketing fraud cases in North America.

These cases are significant because they involve a novel way of dealing with grey marketing. Grey marketing of computer equipment is a serious problem that costs high tech companies up to US\$5 billion in lost profits annually, according to a 2003 study by KPMG. However, grey marketing by itself is generally not unlawful.

Because of this, 3Com's counsel, [Jim Orr](#) and [Michael Osborne](#), of [Affleck Greene Orr LLP](#), focussed not on the fact that Zorin and IDI were grey marketing 3Com product, but on the fact that they had lied to 3Com in order to obtain the product at a large discount. These misrepresentations supported findings that Zorin and its principals, and IDI, were liable for the tort of deceit.

3Com's senior vice president and general counsel Neal Goldman stated in press releases announcing the decisions: "This a significant victory because it reflects our willingness to investigate and aggressively prosecute fraud committed against 3Com in order to protect the company and maintain our corporate and brand reputation in the channel and networking industry".

In the IDI case, Justice Lang found that IDI's general manager "fashioned false business cases to entice 3Com [Corporation] to provide him product at special pricing". She held that 3Com acted "responsibly, swiftly and effectively" in conducting its investigation into the deception.

Justice Lang dismissed a counterclaim by IDI against 3Com and certain of its former employees but also dismissed 3Com's claims against IDI's parent company and its owner.

In the Zorin case, Justice Juriansz found Zorin sent emails to 3Com setting out current requirements for 3Com equipment in various countries in order to obtain special pricing, as well as purchase orders and shipping documents purporting to show that the 3Com product was delivered where it was supposed to go. Justice Juriansz held that the representations in these documents false. He rejected Zorin's "most desperate attempt at justification". Justice Juriansz awarded damages to 3Com equal to the rebates 3Com had paid to its distributor,

Tech Data Canada, on account of the special pricing. He also dismissed as meritless Zorin's third party claim against Tech Data Canada.

Links:

- [3Com Awarded \\$3.39 Million in Reseller Fraud Case \(3Com press release dated April 15, 2004\)](#)
- [3Com awarded \\$6.5 million in reseller fraud case \(3Com press release dated May 3, 2004\)](#)

To learn more about grey marketing of computer equipment:
[Alliance for Gray Market and Counterfeit Abatement](#)