

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SOFTEX LLC,

Plaintiff,

vs.

**DELL TECHNOLOGIES INC. AND
DELL INC.**

Defendants.

Civil Action No. 1:22-cv-01309-DAE

JURY TRIAL DEMANDED

**SOFTEX LLC’S SECOND SET OF INDIVIDUAL REQUESTS FOR PRODUCTION TO
DELL TECHNOLOGIES INC. AND DELL INC. (NOS. 10-22)**

Pursuant to Rule 26 and 34 of the Federal Rules of Civil Procedure and the applicable Local Rules of the United States District Court for the Western District of Texas, Plaintiff Softex LLC (“Plaintiff”) hereby requests Dell Technologies Inc. and Dell Inc. (collectively “Dell” or “Defendants”) produce documents and things in response to the following requests in accordance with the Definitions and Instructions within thirty (30) days.

DEFINITIONS

1. Softex incorporates by reference the Definitions provided in Softex’s First Set of Individual Requests for Production.
2. “Customer” means any Entity or Person to which you sold, licensed, received a subscription payment from for, or otherwise directly or indirectly provided any Absolute Functionality or Microsoft Functionality.

INSTRUCTIONS

3. Softex incorporates by reference the Instructions provided in Softex’s First Set of Individual Requests for Production.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 10:

Documents sufficient to show any modifications, customization or changes You made or requested to be made (and were made) to the Absolute Functionality or Microsoft Functionality.

REQUEST FOR PRODUCTION NO. 11:

All Documents relating to Dell Custom Factory Integration (CFI) and Absolute.

REQUEST FOR PRODUCTION NO. 12:

Documents sufficient to verify Defendants' claims on its website that:

Absolute is the industry standard for endpoint security and resilience. Through a digital tether embedded in the firmware of Dell devices, Absolute ensures you have persistent line of sight to your endpoints to monitor device health metrics and automate critical security controls, fortifying your fleet's resilience against today's varied cyber threats.

While Absolute is present on the device's firmware at the factory, it is activated through the deployment of an operating system agent which calls into Absolute's Monitoring Center to complete enrollment. This activation process can be performed at the factory through Dell Custom Factory Integration (CFI).

<https://www.dell.com/en-us/shop/help-me-choose/cp/hmc-absolute-computrace>

REQUEST FOR PRODUCTION NO. 13:

Documents sufficient to verify Defendants' claims on its website that:

Absolute Persistence technology is the only security agent embedded in the firmware of most Dell PCs, laptops, and tablets. Absolute can repair and restore any endpoint agent or control – on and off the corporate network. IT and security teams trust Absolute and Dell to protect data, prevent breaches, and maintain regulatory compliance. Dell is a select OEM that can activate Absolute at the factory – so you can ensure your devices are protected from the very beginning of their lifecycle.

https://i.dell.com/sites/csdocuments/Merchandizing_Docs/en/absolute-visibility-control-resilience-datasheet.pdf?ref=cpcl_de-de-bsd-debsdt1-fcca82af-9bb0-4ca0-a440-2bbb2a2cf418-security-month-item9_cta_link_absolutefrsichtbarkeitkontrolleundaussfallsicherheit

REQUEST FOR PRODUCTION NO. 14:

Documents sufficient to verify Defendants' claims on its website, responding to the question "Why do I need Absolute and Dell for Security," that:

Absolute is designed to address specific needs tied to device control and resilience, including the ability to survive OS reimages and hard drive wipes, access any device over an Internet connection, and carry out remote security measures. Absolute does not include threat prevention, detection and response or encryption; however, it does provide visibility into the health of these tools and the ability to self-heal unhealthy agents through its cloud based console.

Absolute ensures visibility across all your devices, on or off the corporate network. Through a digital tether embedded in the firmware of Dell devices, you maintain a direct two-way connection even when the OS is reimaged or hard drive is swapped. Absolute also provides a range of device metrics, including hardware information, software deployed on devices, sensitive data residing on devices as well as security vitals such as Encryption and Anti-Virus.

<https://www.dell.com/en-us/shop/help-me-choose/cp/hmc-absolute-computrace>

REQUEST FOR PRODUCTION NO. 15:

All Documents provided by Defendant to Absolute or customers concerning the installation, download, activation, sale, license, subscription, promotion, or marketing of any Dell Accused Instrumentality.

REQUEST FOR PRODUCTION NO. 16:

All Documents concerning Dell's factory pre-install of Absolute Functionality or Microsoft Functionality in any Dell Accused Instrumentality, including documents sufficient to identify where the factory installation occurs, what is installed, why factory installation occurs and any benefits of factory floor installation.

REQUEST FOR PRODUCTION NO. 17:

All Documents exchanged between Dell and Absolute or Phoenix concerning the Absolute Functionality or Dell Accused Instrumentalities.

REQUEST FOR PRODUCTION NO. 18:

All Documents exchanged between Dell and Microsoft concerning the Microsoft Functionality or Dell Accused Instrumentalities.

REQUEST FOR PRODUCTION NO. 19:

Documents sufficient to identify Dell's Customers of Dell Accused Devices, including documents sufficient to separately identify customers with the Absolute Functionality or Microsoft Functionality and the time period during which customers had the ability to use the Absolute Functionality.

REQUEST FOR PRODUCTION NO. 20:

Documents sufficient to show the amount of money customers paid to Dell for the Absolute Functionality or Microsoft Functionality and the amount of such monies retained by Dell and amount of such monies paid to Absolute or Microsoft.

REQUEST FOR PRODUCTION NO. 21:

Documents sufficient to show Dell's process to create firmware images and how Dell integrates the Absolute Functionality into the firmware image during this process.

REQUEST FOR PRODUCTION NO. 22:

Documents sufficient to show Your white labeling of the Absolute Functionality, including when You use Your branding or the branding of another instead of Absolute's branding for the Absolute Functionality.

Dated: September 15, 2023

Respectfully submitted,
McKool Smith, P.C.

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5, I hereby certify that, on September 15, 2023, all counsel of record who have appeared in this case are being served with a copy of the foregoing via electronic mail.

/s/ Blair M. Jacobs

Blair M. Jacobs