

CASE STUDY

GLOBAL RETAILER SAVES \$9.6M BY UNRAVELING CONTRACTUAL OBLIGATION FROM ORACLE PARTITIONING POLICY

INTRODUCTION

It has been an increasing trend over the past few years for software vendors to target and audit their clients as a means of generating more revenue. This has become such an issue that it has become common for businesses to experience audits from multiple vendors within a single calendar year.

This was the case with our client. The major retailer had been targeted sequentially by Oracle, IBM, VMware, Microsoft, and Cisco. Each of these audits had to be defended against, and for this, the retailer chose – and won – with the LicenseFortress team.

ABOUT THE CUSTOMER

With over 1500 stores spread throughout the USA and the Caribbean, as well as a global retail distribution network, this retail empire has become a household name. The client employs more than 55,000 people and operates multiple nonprofit subsidiaries that directly improve lives worldwide.

CUSTOMER CHALLENGES

The stressors upon this retailer began with an Oracle audit of one of their subsidiaries. As is often the case with Oracle's audits, their investigation into one subsidiary quickly bled into other arms of the company. This audit overreach by Oracle was complicated by:

- A large number of subsidiaries and nonprofits (in which Oracle was utilized) operated by the retailer
- Ambiguous language in Oracle contracts that had been in place and used by the retailer for more than twenty years
- Legal issues emanating from Oracle's assertion that the language ambiguity of the contracts fell in their favor and that the retailer owed them millions.
- License issues stemming from subsidiary use of licenses and license use across diverse regions of the globe

At the core of Oracle's claims against the retailer was Oracle's "Partitioning Policy." This policy intends to ensure that Oracle customers are only Oracle software on machines licensed to use that software. However, in their attempt to ramp up revenue, Oracle has been using the non-contractual language of their Partitioning Policy to push unsuspecting companies into paying for licenses they don't need or use.

For example, under Oracle's partitioning policy, they do not recognize soft partitioning. If you have a five-node VMware cluster (and Oracle runs on two of those nodes and has never been on the other three nodes), Oracle wants to make you pay for all five nodes retroactively. If that VMware cluster can talk to another VMware cluster with five other nodes, Oracle wants to be paid for all ten nodes - even if Oracle isn't running on any but two active nodes.

However, Oracle's Partitioning Policy says that the policy is "not for contractual purposes." But they will try to leverage the policy against a customer and charge them without a contractual basis. Our global retail client faced these and other challenges surrounding the audit when dealing with Oracle.

THE SOLUTION

To help our retail client deal with the non-contractual claims of Oracle in the audit process, the License Fortress team leveraged the following internal resources.

- We determined what devices and nodes throughout their vast organization were running Oracle.
- We outlined for the client and Oracle what licenses and fees were contractually necessary.
- We harnessed the legal power of our law firm to demonstrate to Oracle the overreach of their extra-contractual claims against the retailer.
- We utilized our law firm's extensive experience in dealing with Oracle to produce a "close letter" that prohibited Oracle from reaching back into history and starting up new audits that pre-date the current audit.
- We saved our retail client in the ballpark of \$9.6 million by reviewing their use of licenses and optimizing their license use.

The actions and wins outlined above demonstrate why the retailer chose to partner with LicenseFortress from the start. They recognized that our team has the one-stop-shop legal and technical capabilities to deal with complex Oracle audits across a global corporate infrastructure.



Oracle's Partitioning Policy is extra-contractual and unenforceable.

– Joel Muchmore,
Beeman & Muchmore, LLP

With the heightened appetite for audit-related revenue by vendors, it was prudent and highly beneficial for our retail client to work with LicenseFortress in fighting these audits.

In this case, LicenseFortress used legal baked into the process to combat the Oracle audit. Technical expertise is important but having a team of lawyers on board to deal with the legal side of the equation is critical.

If you're a long-term customer of Oracle and your contract is unclear in certain areas, don't be surprised that more and more legal issues emerge during the audit process. The audit process is no longer as simple as compliance. Legal issues come into the mix as Oracle tries to use a mixture of non-contractual language and poorly defined readings of contractual language to charge your company for licenses you won't use and don't need.

LicenseFortress is well versed in the tactics used by Oracle's audit department, and we're strategically positioned to help you fight and win against them.

RESULTS



MORE ABOUT BEEMAN & MUCHMORE, LLP

Art Beeman and Joel Muchmore have been working in software licensing — particularly with Oracle software licensing — for a number of years. They were the lead counsel for the Mars v. Oracle matter, which is to date the only publicly filed complaint in which a licensee challenged Oracle's deeply unpopular auditing and licensing practices. Over the years, they have defended scores of other licensees against highly contentious Oracle audits to great success. They've seen the script and know where it's going, and with that knowledge, can predict the future to some degree. Beeman & Muchmore are thought leaders on the true vanguard of where software licensing has been and where it's going.



SAFEGUARD YOUR SOFTWARE ASSETS

We help defend your software assets and remove the threat of non-compliance. Stop worrying about software compliance and turn your attention to challenges that really matter for the success of your business.

MANAGE YOUR LICENSES

We work with you to resolve and certify your company's compliance. From there we monitor your compliance 24 hours a day, 365 days a year.

MONITOR YOUR COMPLIANCE

We detect activity in real-time, allowing for the quickest response possible to changes that might threaten your license compliance.

PROTECT YOUR INVESTMENT

We leverage decades of technical and legal expertise to defend your compliance in a software license audit.

ABOUT LICESEFORTRESS

LicenseFortress was developed in 2014 by VLSS's Founder & Chief Architect, Dean Bolton. VLSS has spent over 13 years specializing in Oracle and VMware technologies. LicenseFortress was born after VLSS was approached by VMware about a predicament that many of their customers were facing when trying to license Oracle on VMware. Oracle's aggressive auditing tactics shed light on the dire situation that most companies face when using Oracle's products, especially in a cloud environment. While some companies have been deterred from using Oracle, we believe it is a powerful tool for your business when deployed correctly. That's where LicenseFortress helps you take control of your license investment while removing the threat of being out of compliance.



515 S. Flower Street
Floor 18
Los Angeles, CA 90071
info@licensefortress.com
+1 424.231.4135
licensefortress.com

ANONYMITY STATEMENT

This case study is based upon a customer of LicenseFortress. LicenseFortress takes steps to properly safeguard sensitive and personal information by removing all direct identifiers – e.g., name, location, CSI numbers, etc. This step is taken to protect the identity of our customers.