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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14 SACRAMENTO DIVISION

15 MICROSOFT CORPORATION, a
16 Washington corporation,

Microsoft Corporation v. Medvedkov et al. Plaintiff,

17 v.

18 OLEG MEDVEDKOV, d/b/a 1ST CHOICE
19 SOFTWARE, 030801, LEJEPEK,
20 LEJEPEKA, and ARTOW, an individual; and
21 LYNN LAYHEE, d/b/a 030801, an
22 individual,

23 Defendants.

NO. CIV S-06-0949 FCD GGH

ORDER GRANTING MICROSOFT'S *EX*
PARTE APPLICATION FOR (1)
TEMPORARY RESTRAINING ORDER
ENJOINING DISTRIBUTION OF
MICROSOFT PRODUCTS, (2)
TEMPORARY ORDER IMPOUNDING
MICROSOFT PRODUCTS, AND
(3) ORDER TO SHOW CAUSE

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[FILED UNDER SEAL]

23 THIS MATTER comes before the Court upon plaintiff Microsoft Corporation's
24 ("Microsoft") *Ex Parte* Application for (1) a Temporary Restraining Order enjoining Oleg
25 Medvedkov and Lynn Layhee (collectively, "Defendants") from distributing Microsoft
26 software products or purported Microsoft software products, (2) a Temporary Impoundment

1 Order directing Defendants to preserve all Microsoft software products or purported
2 Microsoft software products pending an inspection, segregation and impoundment of all
3 counterfeit, tampered and/or infringing products, and (3) a Show Cause Order requiring
4 Defendants to appear and show cause why the Temporary Restraining Order and
5 Temporary Impoundment Order should not remain in place for 21 days pending the
6 inspection and impoundment, or as otherwise ordered by the Court. Having reviewed the
7 materials submitted, and being fully advised, the Court GRANTS Microsoft's application as
8 follows:

9 (1) The Court GRANTS Microsoft's *Ex Parte* Application without notice to
10 Defendants because the Court finds that there is a real and substantial probability that
11 Defendants will secrete or transfer beyond the Court's jurisdiction the Microsoft software
12 products or purported Microsoft software products that are the subject of this Temporary
13 Restraining Order.

14 (2) The Court GRANTS Microsoft's *Ex Parte* Application for a Temporary
15 Restraining Order enjoining Defendants' distribution of Microsoft software products or
16 purported Microsoft software products upon finding that plaintiff Microsoft has carried its
17 burden of showing (a) irreparable harm, and (b) a likelihood of success on the merits.
18 Alternatively, the Court finds that Microsoft has carried its burden of showing sufficient
19 questions on the merits to make them a fair ground for litigation and a balance of hardships
20 tipping decidedly in its favor.

21 (3) The Temporary Restraining Order is granted pursuant to Federal Rule of
22 Civil Procedure 65, 15 U.S.C. § 1116(a) (trademark), 17 U.S.C. § 502 (copyright), 17
23 U.S.C. § 1203(b) (Digital Millennium Copyright Act), and 18 U.S.C. § 2318(f)(2)(A) (Anti-
24 Counterfeiting Amendments Act).

25 (4) The Court hereby RESTRAINS AND ENJOINS Oleg Medvedkov and Lynn
26 Layhee, and any persons or entities acting on their behalf, from advertising, distributing or

1 selling any Microsoft software products or purported Microsoft software products,
2 including, but not limited to the following:

- 3 (a) Windows XP Professional,
- 4 (b) Office 2003 Professional,
- 5 (c) Access 2003,
- 6 (d) Excel 2003,
- 7 (e) Outlook 2003,
- 8 (f) PowerPoint 2003,
- 9 (g) Word 2003,
- 10 (h) Publisher 2003,
- 11 (i) Office 2000 Professional,
- 12 (j) Access 2000,
- 13 (k) Excel 2000,
- 14 (l) Outlook 2000,
- 15 (m) PowerPoint 2000,
- 16 (n) Word 2000,
- 17 (o) Publisher 2000,
- 18 (p) Office 97, and
- 19 (q) Other software products protected by any Microsoft copyright or
20 displaying any Microsoft trademark.

21 (5) The Court hereby RESTRAINS AND ENJOINS Oleg Medvedkov and Lynn
22 Layhee, and any persons or entities acting on their behalf, from advertising, distributing or
23 selling any Microsoft software components or purported Microsoft software components,
24 including, but not limited to the following:

- 25 (a) Certificates of Authenticity ("COAs"),
- 26 (b) End User License Agreements ("EULAs"),

- 1 (c) Client Access Licenses (“CALs”),
- 2 (d) Product keys,
- 3 (e) End user manuals,
- 4 (f) Frontliners and backliners,
- 5 (g) Registration cards, and
- 6 (h) Other documentation, labeling components or packaging designed to
7 be distributed with Microsoft software products.

8 (6) The Temporary Restraining Order shall take effect immediately and shall
9 remain in effect pending the Show Cause Hearing in Paragraph 15, or further order of this
10 Court. Defendants may apply to the Court for dissolution or modification of this
11 Temporary Restraining Order on two court days’ notice to Microsoft.

12 (7) The Court GRANTS Microsoft’s *Ex Parte* Application for a Temporary
13 Impoundment Order upon finding that plaintiff Microsoft has carried its burden of showing
14 (a) irreparable harm, and (b) a likelihood of success on the merits. Alternatively, the Court
15 finds that Microsoft has carried its burden of showing sufficient questions on the merits to
16 make them a fair ground for litigation and a balance of hardships tipping decidedly in its
17 favor.

18 (8) The Temporary Impoundment Order is granted pursuant to Federal Rule of
19 Civil Procedure 65, 15 U.S.C. § 1116(a) (trademark), 17 U.S.C. § 503(a) (copyright), 17
20 U.S.C. § 1203(b)(2) (Digital Millennium Copyright Act), and 18 U.S.C. § 2318(f)(2)(B)
21 (Anti-Counterfeiting Amendments Act).

22 (9) The Court hereby RESTRAINS AND ENJOINS Oleg Medvedkov and Lynn
23 Layhee, and any persons or entities acting on their behalf, from transferring, removing or
24 disposing of any Microsoft software products or purported Microsoft software products, in
25 Defendants’ possession, custody or control.

1 (10) The Court hereby RESTRAINS AND ENJOINS Oleg Medvedkov and Lynn
2 Layhee, and any persons or entities acting on their behalf, from transferring, removing or
3 disposing of any Microsoft software components or purported Microsoft software
4 components, in Defendants' possession, custody or control.

5 (11) The Court hereby IMPOUNDS all Microsoft software products and
6 components, and purported Microsoft software products and components, in Defendants'
7 possession, custody or control. Defendants are further ORDERED to identify in writing to
8 plaintiff's counsel, not less than two court days before the Show Cause Hearing in
9 Paragraph 15, the location or locations of all such products and components.

10 (12) This Temporary Impoundment Order shall take effect immediately and shall
11 remain in effect pending the Show Cause Hearing in Paragraph 15, or further order of this
12 Court. Defendants may apply to the Court for dissolution or modification of this
13 Temporary Impoundment Order on two court days' notice to Microsoft.

14 (13) Defendants are ORDERED to preserve all electronic data files, e-commerce
15 records, e-mail communications, customer records, shipping records, telephone logs and
16 other materials that relate to the business practices of Defendants (including but not limited
17 to records reflecting Defendants' acquisition or distribution of Microsoft software products
18 and components, and purported Microsoft software products and components), or any other
19 person or entity either directly or indirectly under their control, wherever those records are
20 kept, and whether kept electronically or in hard copy.

21 (14) Microsoft is directed to file proof of bond, in the amount of \$10,000, within
22 three court days of this Order. The bond shall serve as security for all claims with respect
23 to this Temporary Restraining Order and Temporary Impoundment Order, and any
24 additional injunctive relief ordered by the Court.

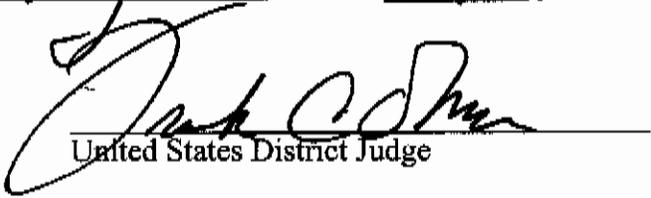
25 (15) Defendants are ordered to appear on May 5, 2006, at 10:00 a.m., and show
26 cause why Temporary Restraining Order and Temporary Impoundment Order should not

1 remain in effect for 21 days pending the inspection, segregation and impoundment of any
2 counterfeit, tampered and/or infringing Microsoft software products and components in
3 Defendants' possession, custody or control.

4 (16) Defendants shall serve and file any papers in opposition to the continued
5 injunction and impoundment not less than two court days before the Show Cause Hearing.
6 Plaintiff Microsoft shall serve and file any reply papers not less than one court day before
7 the Hearing.

8 (17) Defendants may apply to the court for modification or dissolution of this
9 order on two (2) court days notice by personal service or such service as the court shall
10 allow.

11 DATED this 1st day of May, 2006 at 4:45 p.m.

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14 United States District Judge
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