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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMIGA, INC., a Delaware corporation,
Plaintiff,
vs.
HYPERION VOF, a Belgium corporation,
Defendant.

CASE NO.: CV07-0631-RSM

**[PROPOSED] ORDER GRANTING
AMIGA, INC.'S MOTION FOR
PRELIMINARY INJUNCTION**

**NOTE ON MOTION CALENDAR
MAY 25, 2007**

ORAL ARGUMENT REQUESTED

COURT: HON. RICARDO MARTINEZ

1 Plaintiff Amiga, Inc. (“Amiga”), having moved for a Preliminary Injunction, for
2 the reason that Defendant Hyperion VOF (“Hyperion) appears to be (1) infringing Amiga’s
3 trademarks, (2) unjustifiably withholding the source code, object code and intellectual property
4 to Amiga’s operating system 4.0 (“OS 4.0”) in violation of Amiga’s rights and the parties’
5 Agreement dated November 21, 2001 (“Agreement”), and (3) marketing, distributing,
6 advertising, and selling products in violation of the Agreement, and the Court having considered
7 all the pleadings, moving papers, exhibits and declarations submitted by the parties and the oral
8 argument and any evidence presented at the hearing, and good cause showing, the Court hereby
9 finds that:

- 10 1. Amiga is likely to succeed in showing that (a) Hyperion has infringed and
11 continues to infringe Amiga’s trademarks, including the AMIGA ®,
12 “Powered by Amiga” and “Boing Ball” marks and logos; (b) Hyperion has
13 breached the Agreement by selling and distributing products outside the
14 scope of its license; (c) Amiga justifiably and properly terminated the
15 Agreement after which Hyperion continued its distribution and sale of
16 unauthorized products; (d) although Amiga has tendered performance
17 under the Agreement and the Agreement’s terms are clear and definite,
18 Hyperion has refused to transfer to Amiga the source code, object code
19 and intellectual property to OS 4.0 that is in Hyperion’s possession and/or
20 has refused to take the steps necessary to secure possession of, and then
21 transfer to Amiga, such source code, object code and intellectual property
22 to OS 4.0 in violation of the Agreement;
- 23 2. Defendant’s breaches, infringements and refusal to transfer to Amiga the
24 code and intellectual property to OS 4.0 has resulted and will continue to
25 result in irreparable injury to Amiga if the Defendant is not immediately
26 restrained from further unlawful activities;

1 3. The harm to Amiga of denying the requested Preliminary Injunction
2 greatly outweighs the harm to any legitimate interests of Defendant from
3 granting the requested Preliminary Injunction, particularly because in the
4 absence of the preliminary injunctive relief, Amiga will continue to
5 experience irreparable harm for which monetary damages cannot
6 compensate; and

7 4. The public interest, and specifically the interest of the public in avoiding
8 confusion as to source and sponsorship of products and the interest of Amiga's
9 actual and potential customers weighs heavily in favor of the requested relief.

10
11 Accordingly, IT IS HEREBY ORDERED THAT Amiga's Motion for Preliminary
12 Injunction is granted as follows:

13 1. Defendant Hyperion VOF ("Hyperion"), and its successors, predecessors,
14 agents, servants, employees, contractors and each person acting in concert and participation with
15 Hyperion are prohibited and enjoined from the following:

16 (a) advertising, marketing, promoting, distributing and selling any
17 computers, software, hardware or other products using or containing the "AMIGA,"
18 "POWERED BY AMIGA" and/or "Boing Ball" trademarks (collectively referred to as "Amiga
19 trademarks"), or otherwise using or displaying the Amiga trademarks on Hyperion's website or
20 in promotional and marketing materials;

21 (b) refusing to promptly provide to Amiga all of the object code,
22 source code and intellectual property to OS 4.0 in Hyperion's possession, custody or control and
23 refusing to take steps necessary to secure possession of such code and intellectual property for
24 transfer to Amiga;

25 (c) advertising, marketing, promoting, distributing and selling OS 4.0
26 as a standalone product or in conjunction with any computers, platforms, products or other
27 hardware; and

1 (d) engaging in any other activity constituting unfair competition with
2 Amiga, or constituting an infringement of Amiga's intellectual property, or constituting any
3 damage to Amiga's reputation or goodwill.

4 2. Within 10 days of service of this Order, defendant Hyperion is further
5 ordered to deliver to counsel for Amiga all copies and all versions in Hyperion's possession of
6 the source code and object code and other intellectual property for software developed by
7 Hyperion or anyone acting in concert with Hyperion pursuant to the Agreement, including but
8 not limited to, the source code, object code and intellectual property for OS 4.0.

9 3. To the extent that Hyperion is not in possession of the source code, object
10 code and/or intellectual property for OS 4.0 at the time this Order is served on Hyperion,
11 Hyperion, within 10 days of service of this Order, is hereby ordered to take whatever steps are
12 necessary to secure possession of, and then transfer to Amiga, such source code, object code
13 and/or intellectual property for OS 4.0.

14 4. Within 20 days of service of this Order, Hyperion shall file with the Court
15 and serve upon counsel for Amiga a sworn affidavit detailing the manner in which Hyperion has
16 complied with this Order.

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1 This Order shall become effective immediately upon the posting of a bond in the
2 amount of \$10,000 by plaintiff Amiga. The injunction shall remain in effect during the
3 pendency of this suit unless otherwise ordered by the Court.
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5 Presented by:

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23 Attorneys for Plaintiff

24 **IT IS SO ORDERED.**

25 DATED this ___ day of April 2007

26 _____
27 United State District Court Judge
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