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DATE OF
ISSUANCE: August 11, 2006

HOUR OF
ISSUANCE: 4:10 p.m.

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Attorneys for Plaintiff Microsoft

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

**MICROSOFT CORPORATION, a
Washington corporation,**

Plaintiff,

V.

KEVIN PIRA, d/b/a BACKUP SOFTWARE
SALES INC., KEVINPIRA@EXCITE.COM,
MICROSOFTWHOLESALE,
WHOLESALESOFTWAREDIRECT,
FLAMINGKEVIN, SWEETKEVSALES,
KEVSCUSTOMTRUCK,
ROYALRUMBLEWWE,
ELECTTECHNOLOGIES, and KEVINPIRA,
an individual,

Defendant.

NO. 1:06-cv-1048 OWW LJO

ORDER GRANTING MICROSOFT'S *EX PARTE* APPLICATION FOR (1) TEMPORARY RESTRAINING ORDER FREEZING DEFENDANT'S ON-LINE AND RELATED ACCOUNTS, AND (2) ORDER TO SHOW CAUSE

THIS MATTER comes before the Court upon plaintiff Microsoft's ("Microsoft") *Ex Parte* Application for (1) a Temporary Restraining Order freezing certain accounts owned

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1 or controlled by defendant Kevin Pira (“Pira”), and (2) an Order requiring Pira to appear
2 and show cause why those accounts should not remain frozen pending a show cause hearing
3 to determine whether the asset freeze shall remain in effect pending the trial in this action.
4 Having reviewed the materials submitted, and being fully advised, the Court GRANTS
5 Microsoft’s application as follows:

6 (1) The Court GRANTS Microsoft’s *Ex Parte* Application without notice to Pira
7 because the Court finds that there is a real and substantial probability that Pira will secrete
8 or transfer beyond the Court’s jurisdiction the funds that are the subject of this Temporary
9 Restraining Order, rendering the relief granted ineffective. The Court bases this finding on
10 Pira’s continued distribution of counterfeit Microsoft software and the fact that Microsoft’s
11 efforts to convince Pira to cease his distribution of counterfeit Microsoft software have
12 failed to persuade Pira to reform his practices. Based upon this evidence and showing, the
13 Court finds good cause to hear Microsoft’s application and issue this Temporary
14 Restraining Order *ex parte*.

15 (2) The Court GRANTS Microsoft’s *Ex Parte* Application for a Temporary
16 Restraining Order freezing Pira’s PayPal, Amazon.com, and certain other accounts upon
17 finding that plaintiff Microsoft has carried its burden of showing (a) irreparable harm, and
18 (b) either a likelihood of success on the merits or sufficient questions on the merits to make
19 them a fair ground for litigation and a balance of hardships tipping decidedly in its favor.
20 Infringement of Microsoft’s copyright and trademark rights in itself causes irreparable harm
21 to Microsoft. Additionally, the Court finds that consumer dissatisfaction with counterfeit
22 software purchased from Pira has irreparably harmed Microsoft and will continue to
23 irreparably harm Microsoft unless enjoined.

24 (3) The Temporary Restraining Order is granted pursuant to Federal Rule of
25 Civil Procedure 65, the Court’s general equitable power, 17 U.S.C. § 504(b) (copyright
26 infringement), and 15 U.S.C. § 1117(a) (trademark infringement).

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(4) The Court hereby RESTRAINS AND ENJOINS defendant Kevin Pira, and any persons or entities acting on his behalf, including but not limited to the financial institutions or third parties identified below, from transferring, disposing of, encumbering or secreting any of the following accounts:

(a) Any PayPal or Amazon.com Honor System account(s) in the name of, linked to, or otherwise associated with Kevin Pira.

(b) Any PayPal or Amazon.com Honor System account(s) in the name of "pirainc" or linked to or otherwise associated with the email addresses iofferpayment@comcast.net and/or pirainc@comcast.net.

(c) Any PayPal or Amazon.com Honor System account(s) in the names of, linked to, or otherwise associated with iOffer.com user names “electechnologies” and/or “kevinspira.”

(d) Any PayPal or Amazon.com Honor System account(s) in the names of, linked to, or otherwise associated with iOffer or eBay user names "kevinpira@excite.com," "microsoftwholesale," "wholesalesoftwaredirect," "flamingkevin," "sweetkevsales," "kevscustomtruck," and/or "royalrumblewwe."

(e) Any bank account(s) or other types of accounts linked to or receiving deposits from any of the PayPal or Amazon.com Honor System account(s) identified in Paragraphs 4(a) through (d) of this Order.

(f) Any Bank of America account(s) in the name of, linked to, or otherwise associated with Kevin Pira, or for which Pira has signature authority

(5) As soon as practical upon service of this Order, PayPal and Amazon.com are directed to identify by bank name and location, account holder, and account number any account(s) that is/are linked to or receiving deposits from any of the PayPal or Amazon.com account(s) identified in Paragraphs 4(a) through (d) of this Order.

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(6) Within three business days upon service of this Order, PayPal, Amazon.com, and Bank of America are directed to provide account information in sufficient detail to identify the (a) account holder, (b) address or contact information, and (c) current balance for each account subject to this Order. The required information shall be delivered to counsel for Microsoft. As soon as practical, counsel for Microsoft is directed to serve Pira with copies of all account information received from PayPal, Amazon.com, and Bank of America.

(7) This Temporary Restraining Order shall take effect immediately and shall remain in effect pending the Show Cause Hearing in Paragraph 9 or further order of this Court. Pira may apply to the Court for dissolution or modification of this Temporary Restraining Order on two court days' notice to Microsoft.

(8) Microsoft is directed to file proof of bond in the amount of \$100,000 no later than 5:00 p.m. on Tuesday, August 15, 2006. The bond shall serve as security for all claims with respect to this Temporary Restraining Order.

(9) Pira is ordered to appear in Courtroom 3 of the United States District Court for the Eastern District of California, 2500 Tulare Street, Fresno, California, on Friday, August 18, 2006, at 10:00 a.m, and show cause why the account(s) that is/are the subject of this Order should not remain frozen pending trial in this action.

(10) Pira shall serve and file any papers in opposition to the continued restraint and impoundment not later than 12:00 p.m. on Thursday, August 17, 2006.

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(11) The Court orders Microsoft to serve Pira with this Order no later than 12:00 p.m. on Monday, August 14, 2006.

DATED this 11th day of August, 2006.

/s/ OLIVER W. WANGER
The Honorable Oliver W. Wanger
United States District Judge

Presented by:

/s/ Paul J. Andre
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