

<b>TO: Mail Stop 8</b> <b>Director of the U.S. Patent &amp; Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Northern District of California on the following  Patents or  Trademarks:

DOCKET NO. <b>CV 08-05128 CRB</b>	DATE FILED <b>11/12/08</b>	U.S. DISTRICT COURT <b>450 Golden Gate Ave., 16<sup>th</sup> Floor, San Francisco, CA 94102</b>
PLAINTIFF <b>MICROSOFT CORPORATION</b>		DEFENDANT <b>JUN LI, ET AL.</b>
	PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK
1	<b>11 T<sup>ms</sup> 7-8</b>	HOLDER OF PATENT OR TRADEMARK <b>See attached copy of complaint</b>
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
	PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK
1		HOLDER OF PATENT OR TRADEMARK
2		
3		
4		
5		

In the above —entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK <b>Richard W. Wicking</b>	(BY) DEPUTY CLERK <b>Maria Loo</b>	DATE <b>November 13, 2008</b>
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Copy 1—Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to Commissioner  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

ADRMOP, AO279, E-Filing

**U.S. District Court  
California Northern District (San Francisco)  
CIVIL DOCKET FOR CASE #: 3:08-cv-05128-CRB  
Internal Use Only**

Microsoft Corporation v. Li et al  
Assigned to: Hon. Charles R. Breyer  
Cause: 17:501 Copyright Infringement

Date Filed: 11/12/2008  
Jury Demand: None  
Nature of Suit: 820 Copyright  
Jurisdiction: Federal Question

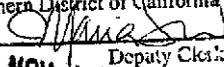
**Plaintiff**

**Microsoft Corporation**  
*a Washington corporation*

represented by **Jennifer N. Chiarelli**  
Perkins Coie LLP  
1620 26th Street  
Sixth Floor - South Tower  
Santa Monica, CA 90404  
310-788-9900 X3256  
Fax: 310-788-3399  
Email: Jchiarelli@perkinscoie.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

I hereby certify that the annexed  
instrument is a true and correct copy  
of the original on file in my office.  
ATTEST:

**RICHARD W. WIEKING**  
Clerk, U.S. District Court  
Northern District of California

By  Deputy Clerk

Date **NOV 13 2008**

**Katherine M. Dugdale**  
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**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Jun Li**  
*also known as*  
Sunnie Li

**Defendant**

**Gong Qi**  
*also known as*  
Qi Gong

**Défendant**  
**Jingtao Jin**

Date Filed	#	Docket Text
11/12/2008	1	COMPLAINT against all defendants (Filing fee \$ 350, Receipt # 54611004204.) SUMMONS ISSUED. Filed by Microsoft Corporation. (mcl, COURT STAFF) (Filed on 11/12/2008) (Entered: 11/13/2008)
11/12/2008	2	Summons Issued as to Jun Li, Gong Qi, Jingtao Jin. (mcl, COURT STAFF) (Entered: 11/13/2008)
11/12/2008	<del>1</del> 3	MOTION for Temporary Restraining Order Enjoining Distribution of Microsoft Items, MOTION for Temporary Order Impounding Microsoft Items, MOTION for Order to Show Cause filed by Microsoft Corporation. (mcl, COURT STAFF) (Filed on 11/12/2008) (mcl, COURT STAFF). (Entered: 11/13/2008)
11/12/2008	<del>2</del> 4	MOTION for Temporary Restraining Order Freezing Defendants' Financial Accounts and Assets, MOTION for Order to Show Cause filed by Microsoft Corporation. (mcl, COURT STAFF) (Filed on 11/12/2008) (mcl, COURT STAFF). (Entered: 11/13/2008)
11/12/2008		CASE DESIGNATED for Electronic Filing. (mcl, COURT STAFF) (Entered: 11/13/2008)
11/12/2008	5	Declination to Proceed Before a U.S. Magistrate Judge by Microsoft Corporation. (mcl, COURT STAFF) (Filed on 11/12/2008) (Entered: 11/13/2008)
11/12/2008	6	MEMORANDUM in Support re 3 MOTION for Temporary Restraining Order MOTION for Temporary Order MOTION for Order to Show Cause filed by Microsoft Corporation. (Related document(s) 3 ) (mcl, COURT STAFF) (Filed on 11/12/2008) (Entered: 11/13/2008)
11/12/2008	7	Proposed Order re 3 MOTION for Temporary Restraining Order, MOTION for Temporary Order, MOTION for Order to Show Cause by Microsoft Corporation. (mcl, COURT STAFF) (Entered: 11/13/2008)
11/12/2008	8	MEMORANDUM in Support re 4 MOTION for Temporary Restraining Order, MOTION for Order to Show Cause filed by Microsoft Corporation. (Related document(s) 4 ) (mcl, COURT STAFF) (Filed on 11/12/2008) (Entered: 11/13/2008)
11/12/2008	9	Proposed Order re 4 MOTION for Temporary Restraining Order, MOTION for Order to Show Cause by Microsoft Corporation. (mcl, COURT STAFF) (Entered: 11/13/2008)
11/12/2008	10	Appendix of Exhibits re 3 MOTION for Temporary Restraining Order, MOTION for Temporary Order, MOTION for Order to Show Cause, 4 MOTION for Temporary Restraining Order, MOTION for Order to Show Cause filed by Microsoft Corporation. (Related document(s) 3 , 4 ) (mcl,

		COURT STAFF) (Filed on 11/12/2008) (Entered: 11/13/2008)
11/12/2008	11	Declaration of Giselle Kirsty Brasier filed by Microsoft Corporation. (mcl, COURT STAFF) (Filed on 11/12/2008) (Entered: 11/13/2008)
11/12/2008	12	Declaration of Sue Ventura filed by Microsoft Corporation. (mcl, COURT STAFF) (Filed on 11/12/2008) (Entered: 11/13/2008)
11/12/2008	13	Declaration of Steve Studhalter filed by Microsoft Corporation. (mcl, COURT STAFF) (Filed on 11/12/2008) (Entered: 11/13/2008)
11/12/2008	<del>14</del> 14	MOTION for leave to appear in Pro Hac Vice (Brian C. Roche) ( Filing fee \$ 210, receipt number 54611004205.) filed by Microsoft Corporation. (Attachments: # <u>1</u> Proposed Order)(mcl, COURT STAFF) (Filed on 11/12/2008) (Entered: 11/13/2008)
11/12/2008	<del>15</del> 15	MOTION for leave to appear in Pro Hac Vice (Gerald C. Pia) ( Filing fee \$ 210, receipt number 54611004206.) filed by Microsoft Corporation. (Attachments: # <u>1</u> Proposed Order)(mcl, COURT STAFF) (Filed on 11/12/2008) (Entered: 11/13/2008)
11/12/2008	16	Certificate of Interested Entities by Microsoft Corporation (mcl, COURT STAFF) (Filed on 11/12/2008) (Entered: 11/13/2008)
11/12/2008	17	RULE 7.1 DISCLOSURE STATEMENT by Microsoft Corporation. (mcl, COURT STAFF) (Filed on 11/12/2008) (Entered: 11/13/2008)
11/12/2008	<u>18</u>	ADR SCHEDULING ORDER: Case Management Statement due by 2/13/2009. Case Management Conference set for 2/20/2009 08:30 AM. (Attachments: # <u>1</u> Order setting CMC, # <u>2</u> Standing Order, # <u>3</u> CM Standing Order for All Judges)(mcl, COURT STAFF) (Filed on 11/12/2008) (Entered: 11/13/2008)
11/13/2008	<u>19</u>	REPORT on the filing or determination of an action regarding Copyright Infringement (cc: form mailed to register). (mcl, COURT STAFF) (Entered: 11/13/2008)
11/13/2008	<u>20</u>	REPORT on the filing or determination of an action regarding Trademark Infringement. (cc: form mailed to register). (mcl, COURT STAFF) (Entered: 11/13/2008)

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E-filing

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NOV 19 2008

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Northern District of California  
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ADR

11 Attorneys for Plaintiff  
MICROSOFT CORPORATION

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

CRB

16 C08 05128

17 MICROSOFT CORPORATION, a  
Washington corporation,

Case No.

18 Plaintiff,

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF

19 v.

20 JUN LI a/k/a SUNNIE LI; GONG QI a/k/a  
21 QI GONG; JINGTAO JIN; and JOHN  
DOES  
22 1-10,

23 Defendants.

MEJ



1 occurrences herein alleged, and that Microsoft's injuries as herein alleged were proximately  
2 caused by such defendants.

3 5. The actions alleged herein to have been undertaken by Defendants were  
4 undertaken by each defendant individually, were actions that each defendant authorized,  
5 controlled, directed, or had the ability to authorize, control, or direct, and/or were actions in  
6 which each defendant assisted, participated or otherwise encouraged, and are actions for which  
7 each defendant is liable. Each defendant aided and abetted the actions of the Defendants set forth  
8 below, in that each defendant had knowledge of those actions, provided assistance and benefited  
9 from those actions, in whole or in part. Each of the Defendants was the agent of each of the  
10 remaining Defendants, and, in doing the things hereinafter alleged, was acting within the course  
11 and scope of such agency and with the permission and consent of other Defendants.

#### 12 JURISDICTION AND VENUE

13 6. This Court has subject matter jurisdiction over Microsoft's claims for trademark  
14 infringement, copyright infringement and related claims pursuant to 15 U.S.C. § 1121, 17 U.S.C.  
15 § 501, 18 U.S.C. § 2318, and 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental  
16 jurisdiction over Microsoft's claims arising under the laws of California pursuant to 28 U.S.C. §  
17 1367(a) because the claims are so related to Microsoft's claims under federal law that they form  
18 part of the same case or controversy and derive from a common nucleus of operative facts.

19 7. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §  
20 1391(d) because Defendants, as aliens, may be sued in any District. In the alternative, venue is  
21 also proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to  
22 Microsoft's claims occurred in this District – namely the processing of Defendants' illicit  
23 transactions. Venue is also proper in the Northern District of California under 28 U.S.C. § 1400.

#### 24 INTRADISTRICT ASSIGNMENT

25 7a. Pursuant to United States District Court, Northern District Civil Local Rules 3-  
26 5(b) and 3-2(e) assignment to the San Jose Division is proper because a substantial part of the  
27 events giving rise to Microsoft's claims occurred in Santa Clara County.

28

FACTS COMMON TO ALL CLAIMS

1  
2           8.       Microsoft develops, advertises, markets, distributes, and licenses a number of  
3 computer software programs. Microsoft's software programs are recorded on magnetic diskettes  
4 and/or CD-ROMs, and they are packaged and distributed together with associated proprietary  
5 materials such as user's guides, user's manuals, end-user license agreements ("EULAs"),  
6 Certificates of Authenticity ("COAs"), and other components. Microsoft COAs are special  
7 certificates or labeling components that are distributed with Microsoft software programs in order  
8 to help end-users verify whether they have genuine Microsoft software. COAs are manufactured  
9 with holograms, heat sensitive threads and other security features that make unauthorized  
10 duplication difficult.

11           9.       Microsoft distributes unique Product Keys to its licensees. Each Product Key  
12 consists of a 25-character alphanumeric code arranged in five groups of five characters each.  
13 Product Keys are needed to unlock certain software programs and enable their use. Because a  
14 CD-ROM containing Microsoft's copyrighted software is capable of being installed on a  
15 potentially unlimited number of computers, Microsoft relies on the unique Product Keys, and  
16 special installation and in some cases activation features within the software, to prevent or at least  
17 restrict the installation and use of its software by unauthorized third parties.

18           10.       Microsoft and its partners distribute some software and other components to  
19 Original Equipment Manufacturers ("OEMs") and System Builder ("SB") customers. OEMs and  
20 SBs typically install Microsoft software on a specified number of computers manufactured by  
21 them, and subject to other conditions set forth in their License Agreements with Microsoft.

22           11.       Microsoft Windows XP: Microsoft has developed, advertises, markets, distributes,  
23 and licenses software packages known as Microsoft Windows XP Professional ("Windows XP").  
24 Windows XP is an operating system for desktop and laptop systems. It performs a number of  
25 computer-related operations including, but not limited to, providing support for various  
26 applications and allowing remote access to data and applications stored in Windows XP desktops  
27 from network connections. Microsoft holds a valid copyright in Windows XP (including user's  
28 reference manuals, user's guides, and screen displays) that was duly and properly registered with

1 the United States Copyright Office. A true and correct copy of the Registration Certificate for  
2 Microsoft Windows XP, bearing the number TX 5-407-055 is attached hereto as Exhibit 1 and is  
3 incorporated by reference.

4 12. Microsoft Windows Vista: Microsoft has developed, advertises, markets,  
5 distributes, and licenses software packages known as Microsoft Windows Vista Ultimate  
6 ("Windows Vista"). Windows Vista is an operating system for desktop and laptop systems. It  
7 performs a number of computer-related operations including, but not limited to, providing support  
8 for various applications and allowing remote access to data and applications stored in Windows  
9 Vista desktops from network connections. Microsoft holds a valid copyright in Windows Vista  
10 (including user's reference manuals, user's guides, and screen displays) that was duly and  
11 properly registered with the United States Copyright Office. A true and correct copy of the  
12 Registration Certificate for Microsoft Windows Vista, bearing the number TX-6-508-905 is  
13 attached hereto as Exhibit 2 and is incorporated by reference.

14 13. Microsoft Office Professional 2007: Microsoft Office Professional 2007 ("Office  
15 2007") is a complete suite of productivity and database software that helps users save time and  
16 stay organized. Microsoft holds a valid copyright in Office 2007 (including user's reference  
17 manuals, user's guides, and screen displays) that was duly and properly registered with the United  
18 States Copyright Office. Office 2007 is subsumed by the Copyright Registration for Microsoft  
19 Office Ultimate 2007. A true and correct copy of the Registration Certificate for Microsoft  
20 Office Ultimate 2007, bearing number TX 6-504-552, is attached as Exhibit 3 and is incorporated  
21 by reference. Office 2007 includes the following popular programs:

22 A. Microsoft Office Access 2007, a program which includes predefined  
23 database tracking applications and the Office Fluent user interface that helps users create and  
24 manage databases to track their business information. Microsoft holds a valid copyright in  
25 Microsoft Office Access 2007 (including user's reference manuals, user's guides, and screen  
26 displays) that was duly and properly registered with the United States Copyright Office. A true  
27 and correct copy of the Copyright Registration Certificate for Microsoft Office Access 2007,  
28 bearing number TX 6-524-395, is attached as Exhibit 4 and is incorporated by reference.

1           B.     Microsoft Office Excel 2007, a program offering new tools for filtering,  
2 sorting, and visualizing information to make it easier for users to get an insight into their  
3 business. Microsoft holds a valid copyright in Microsoft Office Excel 2007 (including user's  
4 reference manuals, user's guides, and screen displays) that was duly and properly registered with  
5 the United States Copyright Office. A true and correct copy of the Copyright Registration  
6 Certificate for Microsoft Office Excel 2007, bearing number TX 6-524-399, is attached as  
7 Exhibit 5 and is incorporated by reference.

8           C.     Microsoft Office Outlook 2007, a program with Business Contact Manager  
9 including a new To-Do Bar and Outlook task integration on the calendar to help users manage  
10 time and tasks more effectively. This program also includes Instant Search capabilities and a  
11 Color Category feature to help users locate, prioritize, and act upon their growing volume of e-  
12 mail. Microsoft holds a valid copyright in Microsoft Office Outlook 2007 (including user's  
13 reference manuals, user's guides, and screen displays) that was duly and properly registered with  
14 the United States Copyright Office. A true and correct copy of the Copyright Registration  
15 Certificate for Microsoft Office Outlook 2007, bearing number TX 6-524-393, is attached as  
16 Exhibit 6 and is incorporated by reference.

17           D.     Microsoft Office PowerPoint 2007, a program which makes it quicker and  
18 easier for users to create dynamic presentations with an extensive library of customizable themes  
19 and slide layouts. Microsoft holds a valid copyright in Microsoft Office PowerPoint 2007  
20 (including user's reference manuals, user's guides, and screen displays) that was duly and  
21 properly registered with the United States Copyright Office. A true and correct copy of the  
22 Copyright Registration Certificate for Microsoft Office PowerPoint 2007, bearing number TX 6-  
23 524-389, is attached as Exhibit 7 and is incorporated by reference.

24           E.     Microsoft Office Publisher 2007, a program which helps users create and  
25 publish a wide range of marketing publications for print, e-mail, and the Web using their own  
26 brand elements. Microsoft holds a valid copyright in Microsoft Office Publisher 2007 (including  
27 user's reference manuals, user's guides, and screen displays) that was duly and properly  
28 registered with the United States Copyright Office. A true and correct copy of the Copyright

1 Registration Certificate for Microsoft Office Publisher 2007, bearing number TX 6-524-388, is  
2 attached as Exhibit 8 and is incorporated by reference.

3 F. Microsoft Office Word 2007, a program which includes enhanced  
4 templates and tools to make it easier for users to reuse content, apply professional formatting, and  
5 quickly preview changes. Microsoft holds a valid copyright in Microsoft Office Word 2007  
6 (including user's reference manuals, user's guides, and screen displays) that was duly and  
7 properly registered with the United States Copyright Office. A true and correct copy of the  
8 Copyright Registration Certificate for Microsoft Office Word 2007, bearing number TX 6-524-  
9 398, is attached as Exhibit 9 and is incorporated by reference.

10 G. Microsoft Accounting Express 2007, a program that provides a  
11 comprehensive set of accounting tools that help manage everyday tasks and grow a business  
12 online. Microsoft holds a valid copyright in Accounting Express 2007 (including user's reference  
13 manuals, user's guides, and screen displays) that was duly and properly registered with the United  
14 States Copyright Office. A true and correct copy of the applicable Copyright Registration  
15 Certificate, bearing the number TX 6-624-817, is attached hereto as Exhibit 10 and is  
16 incorporated by reference.

17 14. Microsoft has also duly and properly registered a number of trademarks and a  
18 service mark in the United States Patent and Trademark Office on the Principal Register,  
19 including, but not limited to:

20 A) "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236  
21 and Renewal for computer programs and computer programming services;

22 B) "MICROSOFT," Trademark Registration No. 1,256,083, for computer  
23 hardware and software manuals, newsletters, and computer documentation;

24 C) "WINDOWS," Trademark Registration No. 1,872,264 for computer  
25 programs and manuals sold as a unit;

26 D) WINDOWS FLAG LOGO, Trademark Registration No. 1,816,354, for  
27 computers, computer peripherals, and computer programs and manuals sold as a unit;  
28

1 E) COLORED WINDOWS LOGO, Trademark Registration No. 1,815,350,  
2 for computers, computer peripherals, and computer programs and manuals sold as a unit;

3 F) "WINDOWS VISTA," Trademark Registration No. 3,235,107, for  
4 computer software, namely, operating system programs.

5 G) "POWERPOINT," Trademark Registration No. 1,475,795, for pre-  
6 recorded computer programs recorded on magnetic disks;

7 H) "MICROSOFT ACCESS," Trademark Registration No. 1,741,086, for  
8 computer programs for use with databases and manuals sold as a unit;

9 I) PUZZLE PIECE LOGO, Trademark Registration No. 1,982,562 for  
10 computer programs and instruction manuals sold as a unit;

11 J) COLORED FLAG DESIGN, Trademark Registration No. 2,744,843, for  
12 computer software and manuals sold as a unit therewith;

13 K) "OUTLOOK," Trademark Registration No. 2,188,125, for computer  
14 programs, specifically programs providing enhanced electronic mail and scheduling  
15 capabilities and instructional manuals sold as a unit

16 15. True and correct copies of the Trademark Registrations for Paragraphs 14.a  
17 through 14.k are attached hereto as Exhibits 11 through 21 respectively, and are incorporated by  
18 reference.

19 **DEFENDANTS' INFRINGEMENT**

20 16. Beginning at a time unknown and continuing to the present, Defendants have  
21 conspired to and are actively engaged in the illegal and unlawful business of trafficking in  
22 counterfeit and infringing Microsoft software, Certificates of Authenticity ("COAs"), and other  
23 software components.

24 17. Defendants advertise and distribute counterfeit and infringing Microsoft software  
25 in interstate and international commerce and on the Internet.

26 18. Microsoft has been contacted by numerous customers/individuals who have  
27 reported concerns about the genuineness of purported Microsoft software acquired from  
28 Defendants, which, upon information and belief, Defendants obtained from John Does 1-10.

1 Many of those customers/individuals have submitted the materials they acquired from Defendants  
2 to Microsoft for analysis, to determine whether the materials were counterfeit. The following is a  
3 representative sample of those customer submissions:

4           A.     In June 2008, Microsoft received a suspect copy of Windows XP  
5 Professional from a consumer. The consumer provided documentation evidencing the  
6 distribution of one copy of purported Windows XP Professional by a seller identified as  
7 "tonyflyfly" via Oztion on June 5, 2008. The Oztion invoice confirmed that seller name  
8 tonyflyfly is actually Qi Gong (believed to be Gong Qi) of 8 Boardman Lane, Newton, NZ. The  
9 consumer made payment of \$102.00 AUD (approximately \$64 U.S. Dollars), \$90.00 AUD for the  
10 software and \$12.00 AUD for shipping, via PayPal to Jingtao Jin with an associated email address  
11 of yoyoyocup@hotmail.com. The consumer declined the offer of a replacement and requested a  
12 refund from the Defendants. On June 20, 2008, the consumer received a complete refund via  
13 PayPal from Jingtao Jin, again via the yoyoyocup@hotmail.com email address. The suspect  
14 Windows XP Professional that the consumer obtained from tonyflyfly was analyzed by a  
15 Microsoft product identification specialist and it was determined to be a complete **counterfeit**.

16           B.     In September 2008, Microsoft received a suspect copy of Windows Server  
17 2003 software from a consumer. The consumer provided documentation evidencing the  
18 acquisition of one copy of purported Windows Server 2003 from seller name yoyoyocup via eBay  
19 on August 22, 2008. The consumer made payment of \$135.40 AUD (approximately \$85 U.S.  
20 Dollars), \$122.50 AUD for the software and \$12.90 AUD for shipping, via PayPal to yoyoyocup.  
21 Upon receipt, the consumer contacted yoyoyocup with concerns about the software. Seller  
22 yoyoyocup responded, stating, among other things, that any returns could be delivered to  
23 yoyoyocup at "5B knightsBridgge apt, 5 Boardman Lane, Newton, Auckland city, New Zealand."  
24 The consumer delivered the suspect Windows Server 2003 software to Microsoft, where it was  
25 analyzed by a Microsoft product identification specialist and determined to be **counterfeit**.

26           19.     Private investigators working for Microsoft have also made several controlled  
27 acquisitions from Defendants. The acquired software and components were analyzed, and all of  
28 the units were found to be **counterfeit**, including the following examples:

1           A.     On March 20, 2008, an investigator working for Microsoft in the United  
2 States initiated the controlled acquisition of what was purported to be five [5] copies of Windows  
3 Vista Ultimate from iOffer.com seller googleqii. The software cost \$129.00 each and payment of  
4 \$670.00, including shipping and handling of \$25.00, was made via PayPal to YOYOYOCUP,  
5 with an associated email address of yoyoyocup@hotmail.com. The iOffer invoice identified  
6 seller name googleqii to be Sunnie Li with an address of 6b Knightbridge Apt., 6 Boardman Lane,  
7 Newton, Auckland City 1001, New Zealand and an email address of sunniecutie@yahoo.co.nz.  
8 Via an email from sunniecutie@yahoo.co.nz, Sunnie Jin advised the investigator that payment by  
9 Western Union could be made in the name of, and delivered to, Jun Li. The order for the  
10 purported Microsoft software was placed from the U.S. and was delivered to the U.S. The order  
11 appears to have been shipped from New Zealand via EMS to the U.S. and was then delivered by  
12 USPS Global Express Mail. The EMS Consignment Note identifies the sender as "Fabien (Li  
13 Jun)" at 9D Knightsbridge Apt., 6 Boardman Lane, Newton, Auckland City, New Zealand. The  
14 software was analyzed by a Microsoft product identification specialist and all five [5] copies of  
15 the purported Windows Vista Ultimate were determined to be **counterfeit**.

16           B.     On June 1, 2008, an investigator working for Microsoft in the United States  
17 initiated the controlled acquisition of what was purported to be five [5] copies of Windows Vista  
18 Ultimate and five [5] copies of Microsoft Office Professional 2007 from iOffer.com seller  
19 googleqii. The software cost \$99.00 each and payment of \$1,020.00, including shipping of  
20 \$30.00, was made via PayPal to yoyoyocup@hotmail.com. The iOffer profile for googleqii  
21 identified an associated physical address of 62 Browns Bay Road, Browns Bay, Auckland City,  
22 New Zealand and an email address of sunniecutie@yahoo.co.nz. The order for the purported  
23 Microsoft software was placed from the U.S. and was delivered to the U.S. The order appears to  
24 have been shipped from New Zealand via EMS to the U.S. and was then delivered by USPS. The  
25 USPS tracking details indicate that the package was shipped from Auckland, New Zealand. The  
26 EMS Consignment Note identifies the sender as "Tony" at 8 Boardman Lane, Newton, Auckland  
27 City, New Zealand. The package contained six [6] copies of purported Windows Vista Ultimate  
28 (versus the five [5] that had been ordered) and five [5] copies of purported Microsoft Office

1 Professional 2007. The software was analyzed by a Microsoft product identification specialist  
2 and all six [6] copies of the purported Windows Vista Ultimate were determined to be  
3 **counterfeit**. Additionally, all five [5] copies of the purported Microsoft Office Professional 2007  
4 were also determined to be **counterfeit**.

5 C. On July 8, 2008, an investigator working for Microsoft in Australia  
6 initiated the controlled acquisition of what was purported to be one [1] copy of Microsoft Office  
7 Professional 2007 from Oztion seller tonyflyfly. The investigator asked to make payment by  
8 direct deposit to the defendant's bank account and tonyflyfly, responding via email address  
9 tonyflyfly@hotmail.com, provided banking coordinates for New Zealand bank account in the  
10 name G. Qi. On July 11, 2008, the investigator transferred NZ \$210.00 to the New Zealand  
11 account in payment for the software. The order was delivered to an address in New Zealand via  
12 New Zealand Courier Post Pak. The software was analyzed by a Microsoft product identification  
13 specialist and the purported Microsoft Office Professional 2007 was determined to be  
14 **counterfeit**.

15 D. On August 6, 2008, an investigator working for Microsoft in the United  
16 States initiated the controlled acquisition of what was purported to be five [5] copies of Windows  
17 Vista Ultimate and five [5] copies of Microsoft Office Professional 2007 from iOffer seller  
18 googleqii. The software cost \$99.00 each and payment of \$1,015.00, including shipping of  
19 \$25.00, was made via PayPal to Jingtao Jin, by way of email address yoyovocup@hotmail.com.  
20 The iOffer invoices identify seller googleqii as Sunnie Li with an address of 62 Browns Bay Rd,  
21 Browns Bay, Auckland City 1001, New Zealand and an email of sunniecutie@yahoo.co.nz. The  
22 order for the purported Microsoft product was placed from the U.S. and was delivered to the U.S.  
23 The software was analyzed by a Microsoft product identification specialist and all five [5] copies  
24 of the purported Windows Vista Ultimate were determined to be **counterfeit** and all five [5]  
25 copies of the purported Microsoft Office Professional 2007 were determined to be **counterfeit**.

26 20. The aforementioned software packages included several unauthorized  
27 reproductions of Microsoft's registered trademarks, including the "MICROSOFT" mark, the  
28 "WINDOWS" mark and other intellectual property of Microsoft.



1 Office Excel 2007, Microsoft Office Outlook 2007, Microsoft Office PowerPoint 2007, Microsoft  
2 Office Word 2007, Microsoft Office Publisher 2007, Microsoft Accounting Express 2007, and  
3 other software and components covered by Microsoft's registered copyrights, and of all  
4 corresponding copyrights and Certificates of Registration, including, but not limited to, the right  
5 to make and/or distribute copies of such software and components within the United States.

6 25. Defendants have infringed the copyrights in Microsoft's software, including, but  
7 not limited to Windows XP Professional, Windows Vista Ultimate, Microsoft Office Professional  
8 2007, Microsoft Office Access 2007, Microsoft Office Excel 2007, Microsoft Office Outlook  
9 2007, Microsoft Office PowerPoint 2007, Microsoft Office Word 2007, Microsoft Office  
10 Publisher 2007, Microsoft Accounting Express 2007, the software and components referenced in  
11 this Complaint and evidenced by Microsoft's copyright registrations attached to this Complaint,  
12 and other software and components covered by Microsoft's registered copyrights and bearing  
13 Microsoft's registered trademarks or imitations thereof, by distributing infringing materials in the  
14 United States of America, without approval or authorization from Microsoft.

15 26. Defendants' conduct has been willful within the meaning of the Copyright Act. At  
16 a minimum, Defendants have acted with willful blindness to and in reckless disregard of  
17 Microsoft's registered copyrights.

18 27. As a result of their wrongful conduct, Defendants are liable to Microsoft for  
19 copyright infringement. Microsoft has suffered, and will continue to suffer, substantial losses,  
20 including, but not limited to, damage to its business reputation and goodwill. Microsoft is  
21 entitled to recover damages, which include its losses and all profits Defendants have made as a  
22 result of their wrongful conduct, pursuant to 17 U.S.C. § 504(b).

23 28. Alternatively, Microsoft is entitled to statutory damages pursuant to 17 U.S.C.  
24 § 504(c). In addition, because Defendants' infringement has been willful within the meaning of  
25 the Copyright Act, the award of statutory damages should be enhanced pursuant to 17 U.S.C. §  
26 504(c)(2).

27 29. Microsoft is also entitled to recover its attorney's fees and costs of suit pursuant to  
28 17 U.S.C. § 505.



1 distributing originate with or are authorized by Microsoft, to the damage and harm of Microsoft,  
2 its licensees, and the public.

3 37. Defendants used, offered, advertised, marketed, installed, offered or distributed  
4 infringing material with the willful and calculated purposes of (a) misleading, deceiving, or  
5 confusing customers and the public as to the origin and authenticity of the infringing materials,  
6 and (b) trading upon Microsoft's business reputation and goodwill. At a minimum, Defendants  
7 acted with willful blindness to and in reckless disregard of Microsoft's registered marks.

8 38. As a result of their wrongful conduct, Defendants are liable to Microsoft for  
9 trademark infringement. Microsoft has suffered, and will continue to suffer, substantial losses,  
10 including, but not limited to, damage to its business reputation and goodwill. Microsoft is  
11 entitled to recover damages, which include its losses and all profits Defendants have made as a  
12 result of their wrongful conduct, pursuant to 15 U.S.C. § 1117(a).

13 39. Alternatively, Microsoft is entitled to statutory damages pursuant to 15 U.S.C. §  
14 1117(c). In addition, because Defendants' infringement of Microsoft's trademarks and service  
15 mark was willful, within the meaning of the Lanham Trademark Act, the award of damages and  
16 profits should be trebled pursuant to 15 U.S.C. § 1117(b).

17 40. Microsoft is also entitled to recover its attorney's fees and costs of suit pursuant to  
18 15 U.S.C. § 1117.

19 41. Pursuant to 15 U.S.C. §§ 1116 and 1118 and/or other applicable law, Microsoft is  
20 further entitled to injunctive relief enjoining Defendants' wrongful conduct, an order impounding  
21 all counterfeit and/or infringing articles, and an order freezing the electronic and other banking  
22 accounts utilized by Defendants to profit from and further invest in their unlawful counterfeiting  
23 and trafficking of infringing materials, and which are in fact being held in constructive trust for  
24 Microsoft, at least until such time as a hearing can be held and Microsoft's rights to relief  
25 (including an accounting) can be adjudicated.

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1 CLAIM III

2 (False Designation of Origin, 15 U.S.C. § 1125, et seq.)

3 42. Microsoft repeats and incorporates by this reference each and every allegation set  
4 forth in paragraphs 1 through 42, inclusive.

5 43. Because Microsoft advertises, markets, distributes, and licenses its software under  
6 the trademarks and service mark described in this Complaint, these trademarks and service mark  
7 are the means by which Microsoft's software is distinguished from the software or products of  
8 others in the same field or related fields.

9 44. Because of Microsoft's long, continuous, and exclusive use of these trademarks  
10 and service mark, they have come to mean, and are understood by customers, end users, and the  
11 public to signify software or services of Microsoft.

12 45. Microsoft has designed distinctive and aesthetically pleasing displays, logos,  
13 icons, graphic images, and packaging (collectively, "Microsoft visual designs") for its software  
14 programs.

15 46. Defendants' wrongful conduct includes the use, advertising, marketing, offering,  
16 or distribution of Microsoft's marks, name, and/or imitation visual designs (specifically displays,  
17 logos, icons, graphic designs, and/or packaging) that are virtually indistinguishable from  
18 Microsoft visual designs, in connection with their goods and services.

19 47. Defendants engaged in such wrongful conduct with the willful purpose of (a)  
20 misleading, deceiving, or confusing customers and the public as to the origin and authenticity of  
21 the goods and services offered, marketed or distributed in connection with Microsoft's marks,  
22 name, and imitation visual designs, and (b) trading upon Microsoft's business reputation and  
23 goodwill.

24 48. Defendants' conduct constitutes (a) false designation of origin, (b) false or  
25 misleading description, and (c) false or misleading representation that the imitation visual designs  
26 originate from or are authorized by Microsoft, all in violation of § 43(a) of the Lanham  
27 Trademark Act, set forth at 15 U.S.C. § 1125(a).

28 49. Defendants' wrongful conduct is likely to continue unless restrained and enjoined.



1 58. Defendants' wrongful conduct is likely to continue unless restrained and enjoined.

2 59. Microsoft is also entitled to recover its attorney's fees and costs of suit pursuant to  
3 18 U.S.C. § 2318(f)(2)(C)(i).

4 60. Microsoft is further entitled to injunctive relief enjoining Defendants' wrongful  
5 conduct pursuant to 18 U.S.C. § 2318(f)(2)(A), an order impounding all counterfeit and/or illicit  
6 articles pursuant to 18 U.S.C. § 2318(f)(2)(B), and an order freezing the electronic and other  
7 banking accounts utilized by Defendants to profit from and further invest in their unlawful  
8 counterfeiting and trafficking of infringing materials, and which are in fact being held in  
9 constructive trust for Microsoft, at least until such time as a hearing can be held and Microsoft's  
10 rights to relief (including an accounting) can be adjudicated.

11 **CLAIM V**

12 **(Constructive Trust upon Illegal Profits)**

13 61. Microsoft repeats and incorporates by this reference each and every allegation set  
14 forth in paragraphs 1 through 60, inclusive.

15 62. Defendants' acts and conduct constitute deceptive, fraudulent, and wrongful  
16 conduct in the nature of passing off the infringing software or related components as approved or  
17 authorized by Microsoft.

18 63. By virtue of Defendants' wrongful acts and conduct, Defendants have illegally  
19 received money and profits that rightfully belong to Microsoft.

20 64. Microsoft is entitled, pursuant to 15 U.S.C. § 1117(a), 17 U.S.C. § 504(b), and 18  
21 U.S.C. § 2318(f)(3) to recover all profits of Defendants that are attributable to their acts of  
22 infringement or violations thereof.

23 65. Upon information and belief, Defendants and/or their agents hold the illegally  
24 received money and profits in the form of bank, real property, and personal property (including  
25 motor vehicles) that can be located and traced.

26 66. Defendants and/or their agents hold the money and profits they have illegally  
27 received as constructive trustee for the benefit of Microsoft.

28

1 **CLAIM VI**

2 **(Accounting)**

3 67. Microsoft repeats and incorporates by this reference each and every allegation as  
4 set forth in paragraphs 1 through 66, inclusive.

5 68. Microsoft is entitled, pursuant to 15 U.S.C. § 1117(a), 17 U.S.C. § 504(b), and 18  
6 U.S.C. § 2318(f)(3), to recover all profits of Defendants that are attributable to their acts of  
7 infringement or violations thereof.

8 69. The amount of money due from Defendants to Microsoft is unknown to Microsoft  
9 and cannot be ascertained without a detailed accounting by Defendants of the precise number of  
10 units of infringing material offered for distribution and distributed by Defendants.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Microsoft respectfully requests judgment as follows:

13 1. That the Court enter a judgment against Defendants finding that they have:

14 a) willfully infringed Microsoft's rights in the following federally registered  
15 copyrights, in violation of 17 U.S.C. § 501, *et seq.*:

16 i) TX 5-407-055 ("Windows XP Professional");

17 ii) TX 6-508-905 ("Windows Vista")

18 iii) TX 6-504-552 ("Office Ultimate 2007");

19 iv) TX 6-524-395 ("Office Access 2007");

20 v) TX 6-524-399 ("Office Excel 2007");

21 vi) TX 6-524-393 ("Office Outlook 2007");

22 vii) TX 6-524-389 ("Office PowerPoint 2007");

23 viii) TX 6-524-398 ("Office Word 2007");

24 ix) TX 6-524-388 ("Office Publisher 2007"); and

25 x) TX 6-624-817 ("Accounting Express 2007");

26 b) willfully infringed Microsoft's rights in the following federally registered  
27 trademarks and service mark, in violation of 15 U.S.C. § 1114:

28 i) 1,200,236 ("MICROSOFT");

- 1                                   ii)    1,256,083 (“MICROSOFT”);
- 2                                   iii)   1,872,264 (“WINDOWS”);
- 3                                   iv)   1,816,354 (WINDOWS FLAG LOGO);
- 4                                   v)    1,815,350 (COLORED WINDOWS LOGO);
- 5                                   vi)   3,235,107 (“WINDOWS VISTA”);
- 6                                   vii)  1,475,795 (“POWERPOINT”);
- 7                                   viii) 1,741,086 (“MICROSOFT ACCESS”);
- 8                                   ix)   1,982,562 (PUZZLE PIECE LOGO);
- 9                                   x)    2,744,843 (COLORED FLAG DESIGN); and
- 10                                  xi)   2,188,125 (“OUTLOOK”);

11                   c)    committed and are committing acts of false designation of origin, false or  
12 misleading description of fact, and false or misleading representation against Microsoft, in  
13 violation of 15 U.S.C. § 1125(a);

14                   d)    trafficked in counterfeit and/or illicit Microsoft COAs, in violation of 18  
15 U.S.C. § 2318; and

16                   e)    otherwise injured the business reputation and business of Microsoft by the  
17 acts and conduct set forth in this Complaint.

18           2.    That the Court issue preliminary and permanent injunctive relief against  
19 Defendants, and that Defendants, their agents, representatives, servants, employees, attorneys,  
20 successors and assigns, and all others in active concert or participation with them, be enjoined and  
21 restrained from:

22                   a)    imitating, copying, or making any other infringing use or infringing  
23 distribution of the software and/or materials now or hereafter protected by the following  
24 copyright Certificates Registration Nos.:

- 25                                   i)    TX 5-407-055 (“Windows XP Professional”);
- 26                                   ii)   TX 6-508-905 (“Windows Vista”)
- 27                                   iii)  TX 6-504-552 (“Office Ultimate 2007”);
- 28                                   iv)   TX 6-524-395 (“Office Access 2007”);

- 1 v) TX 6-524-399 ("Office Excel 2007");
- 2 vi) TX 6-524-393 ("Office Outlook 2007");
- 3 vii) TX 6-524-389 ("Office PowerPoint 2007");
- 4 viii) TX 6-524-398 ("Office Word 2007");
- 5 ix) TX 6-524-388 ("Office Publisher 2007");
- 6 x) TX 6-624-817 ("Accounting Express 2007"); and
- 7 xi) Any other items or works now or hereafter protected by any

8 Microsoft copyright;

9 b) imitating, copying, or making any other infringing use or infringing  
10 distribution of the software and/or materials now or hereafter protected by Microsoft's registered  
11 trademarks and service mark, including, but not limited to, the following Trademark Registration  
12 Nos.:

- 13 i) 1,200,236 ("MICROSOFT");
- 14 ii) 1,256,083 ("MICROSOFT");
- 15 iii) 1,872,264 ("WINDOWS");
- 16 iv) 1,816,354 (WINDOWS FLAG LOGO);
- 17 v) 1,815,350 (COLORED WINDOWS LOGO);
- 18 vi) 3,235,107 ("WINDOWS VISTA");
- 19 vii) 1,475,795 ("POWERPOINT");
- 20 viii) 1,741,086 ("MICROSOFT ACCESS");
- 21 ix) 1,982,562 (PUZZLE PIECE LOGO);
- 22 x) 2,744,843 (COLORED FLAG DESIGN);
- 23 xi) 2,188, 125 ("OUTLOOK"); and
- 24 xii) Any other items or works now or hereafter protected by any

25 Microsoft trademark;

26 c) manufacturing, assembling, producing, distributing, offering for  
27 distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying  
28 any software, component, or thing bearing any simulation, reproduction, counterfeit, copy, or

1 colorable imitation of any of Microsoft's registered Trademarks, Service Mark or Copyright  
2 Registration Numbers, including, but not limited to, those listed in Sections 2.a and 2.b above;

3           d)     using any simulation, reproduction, counterfeit, copy, or colorable  
4 imitation of Microsoft's registered Trademarks, Service Mark, or Copyright Registration  
5 Numbers including, but not limited to, those listed in Sections 2.a and 2.b above, in connection  
6 with the manufacture, assembly, production, distribution, offering for distribution, circulation,  
7 sale, offering for sale, import, advertisement, promotion, or display of any software program,  
8 component, and/or item not authorized or licensed by Microsoft;

9           e)     using any false designation of origin or false or misleading description or  
10 false or misleading representation that can or is likely to lead the trade or public erroneously to  
11 believe that any software program, component, or item has been manufactured, assembled,  
12 produced, distributed, offered for distribution, circulation, sold, offered for sale, imported,  
13 advertised, promoted, displayed, licensed, sponsored, approved, or authorized by or for  
14 Microsoft, when such is not true in fact;

15           f)     using reproductions, counterfeits, copies or colorable imitations of  
16 Microsoft's copyrighted and trademark protected software and other materials in the distribution,  
17 offering for distribution, circulating, sale, offering for sale, advertising, importing, promoting, or  
18 displaying of any merchandise not authorized or licensed by Microsoft;

19           g)     using the names, logos, or other variations thereof of any of Microsoft's  
20 copyright and/or trademark-protected software in any of Defendants' trade or corporate names;

21           h)     engaging in any other activity constituting an infringement of any of  
22 Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's rights in, or right to use  
23 or to exploit, these trademarks, service mark, and/or copyrights;

24           i)     trafficking, distributing or intending to distribute any counterfeit or illicit  
25 Microsoft COAs or COA Labels; and

26           j)     assisting, aiding, or abetting any other person or business entity in  
27 engaging in or performing any of the activities referred to in subparagraphs a through i above.  
28

1           3.       That the Court enter an order, pursuant to 15 U.S.C. § 1116(d)(1)(A), 17 U.S.C. §§  
2 503(a) and 509(a), 18 U.S.C. § 2318(f)(2)(B), and 28 U.S.C. § 1651(a), impounding all  
3 counterfeit and infringing Microsoft software and/or materials bearing any of Microsoft's  
4 trademarks or service mark, counterfeit or illicit Microsoft COAs or COA Labels, or any  
5 Microsoft documentation or packaging, and any related items, including business records, that are  
6 in Defendants' possession or under their control (including Defendants' agents), and ordering the  
7 remedial destruction of all impounded items;

8           4.       That the Court enter an order, pursuant 15 U.S.C. § 1117(a), 17 U.S.C. § 504(b),  
9 and 18 U.S.C. § 2318(f)(3), declaring that Defendants hold in trust, as constructive trustees for  
10 the benefit of Microsoft, all "profits" received by them from their distribution of counterfeit and  
11 infringing Microsoft software and/or materials, and issue temporary, preliminary and permanent  
12 injunctive relief enjoining and restraining Defendants and their agents from transferring,  
13 concealing or dissipating all profits and assets acquired in whole or in part with those profits;

14           5.       That the Court enter an order requiring Defendants to provide Microsoft a full and  
15 complete accounting of all profits received by them from their distribution of counterfeit and  
16 infringing Microsoft software and/or materials, and of any other amounts due and owing to  
17 Microsoft as a result of their illegal activities;

18           6.       That the Court order Defendants to pay Microsoft's general, special, actual, and  
19 statutory damages as follows:

20               a)       Microsoft's damages and Defendants' profits pursuant to 17 U.S.C. §  
21 504(b) or, alternatively, enhanced statutory damages pursuant to 17 U.S.C. § 504(c), for  
22 Defendants' willful infringement of Microsoft's copyrights;

23               b)       Microsoft's damages and Defendants' profits pursuant to 15 U.S.C. §  
24 1117(a), trebled pursuant to 15 U.S.C. § 1117(b) for Defendants' willful violation of Microsoft's  
25 registered trademarks and service mark, or alternatively, enhanced statutory damages pursuant to  
26 15 U.S.C. § 1117(c) for Defendants' willful circulation of Microsoft's registered trademarks and  
27 service marks;

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c) Microsoft's damages and Defendants' profits pursuant to 18 U.S.C. § 2318(f)(3) or, alternatively, statutory damages pursuant to 18 U.S.C. § 2318(f)(4);

d) Microsoft's other damages in an amount to be determined pursuant to applicable law;

7. That the Court order Defendants to pay to Microsoft the costs of this action and the reasonable attorney's fees incurred by Microsoft in prosecuting this action; and

8. That the Court grant Microsoft such other and additional relief as is just and proper.

Dated: November 12, 2008

PERKINS COIE LLP

By:   
Jennifer N. Chiarelli  
Attorneys for Plaintiff  
MICROSOFT CORPORATION