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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

MICROSOFT CORPORATION, a  
Washington corporation,  
  
Plaintiff,  
  
v.  
  
KAI-FU LEE and GOOGLE INC., a  
Delaware corporation,  
  
Defendants.

No.  
  
COMPLAINT

Plaintiff Microsoft Corporation (“Microsoft”) is suing defendants Kai-Fu Lee (“Lee”) and Google Inc. (“Google”) because Lee is breaking contractual promises to Microsoft, and Google is intentionally assisting Lee. Microsoft hired Lee as a Vice President almost five years ago, and has richly rewarded him for the fine work he has performed on behalf of the company. As a condition of becoming an executive at Microsoft, Lee agreed to certain contractual provisions, including a limited non-compete agreement, aimed at protecting Microsoft’s confidential, proprietary and trade secret information. During his tenure as a Vice President at Microsoft, Lee lead the development of certain proprietary search technologies, including Microsoft technologies that directly compete with substantially similar services offered by Google. In addition,

1 Lee is one of the main architects of Microsoft's business strategies in China. By virtue of  
2 his position, Lee was afforded access to highly confidential, proprietary and trade secret  
3 technological data and business plans regarding Microsoft's search strategies and business  
4 plans for China. Lee recently announced that he is leaving Microsoft to join Google to  
5 become the head of Google's new office in China. Accepting such a position with a direct  
6 Microsoft competitor like Google, violates the narrow non-competition promise Lee made  
7 when he was hired as an executive. It may also violate, or threatens to violate, Lee's other  
8 contractual obligations, such as his promises to maintain in strict confidence Microsoft  
9 confidential, proprietary and trade secret information. Google is fully aware of Lee's  
10 promises to Microsoft, but has chosen to ignore them, and has encouraged Lee to violate  
11 them.

## 12 I. PARTIES

13 1. Microsoft is a Washington corporation with its principal place of business  
14 in Redmond, Washington.

15 2. Lee is a resident of Bellevue, Washington. Lee held the position of Vice  
16 President at Microsoft for most of the last five years. For at least the last three years, Lee  
17 has worked in Microsoft's Natural Interactive Services Division. His duties included  
18 managing the creation of new search technologies and methodologies for Microsoft.  
19 Search technologies and innovations developed by Lee are utilized throughout Microsoft,  
20 and incorporated into products and services that directly compete with Google. In  
21 addition, throughout his career at Microsoft, Lee has held leadership roles with respect to  
22 Microsoft's strategies for doing business in China.

23 3. Google is a Delaware corporation with its principal place of business in  
24 California. Google maintains an office in Kirkland, Washington and does business  
25 throughout the State of Washington. Google purports to have the world's largest internet  
search engine. Google profits from this search engine by selling advertising targeted at

1 consumers that use the free service. Microsoft's MSN search engine is one of Google's  
2 major competitors. Google has also developed software that allows consumers to search  
3 their personal computers. When consumers have this software and run this kind of search  
4 on their personal computers, the Google product returns results both from the hard drive  
5 of the personal computer and from the internet. The MSN division of Microsoft offers a  
6 similar desktop search service. The MSN service was recently developed by Lee's group  
7 at Microsoft.

## 8 II. JURISDICTION AND VENUE

9 4. This is an action for monetary damages and injunctive relief arising out of  
10 Defendant Lee's breach of his written employment agreement(s) with Microsoft, in which  
11 he promised (a) to devote his entire working time, abilities, and efforts to Microsoft in  
12 furtherance of Microsoft's best interests and to refrain from engaging in other activities  
13 that may conflict with Microsoft's business interests; (b) never to disclose Microsoft's  
14 confidential and proprietary information and trade secrets to others outside of Microsoft;  
15 (c) never to use such confidential and proprietary information or trade secrets for any  
16 purpose other than his work for Microsoft; (d) not to solicit or induce other Microsoft  
17 employees to leave Microsoft and work for other companies; and (e) for a period of one  
18 year following termination of his employment, not to compete with Microsoft in certain,  
19 defined ways or provide services to any other person or entity that competes with  
20 Microsoft in certain, defined ways. Defendant Lee has either actually breached or  
21 threatened to breach one or more of these promises.

22 5. This Court has jurisdiction over the action pursuant to RCW § 2.08.010.  
23 Defendant Google is subject to the jurisdiction of this Court because it does business and  
24 maintain offices in Washington. Defendant Lee is subjected to the jurisdiction of this  
25 Court because his agreement with Microsoft was entered into in Washington and because  
he has expressly consented to the jurisdiction of this Court Venue is proper in this Court

1 pursuant to the express terms of the agreement between Microsoft and Lee and RCW §  
2 4.12.025.

### 3 III. FACTS

4 6. On August 8, 2000, Lee entered into an Employee Agreement  
5 (“Agreement”) with Microsoft. Microsoft required Lee to enter into this Agreement as a  
6 condition of his employment by Microsoft and in conjunction with his promotion to the  
7 position of Vice President. In return for entering into the Agreement, Lee received  
8 substantial compensation and benefits.

9 7. Paragraph 1 of the Agreement provides, in relevant part:

10 **1. Best Efforts/Conflicting Interest/Moonlighting.** I will  
11 diligently perform my assigned duties and devote my entire  
12 working time, abilities and efforts to such duties and to furthering  
13 the best interests of Microsoft. During my employment, I will not  
14 engage in any activity or investment that (a) conflicts with  
15 Microsoft’s business interests, (b) occupies my attention so as to  
16 interfere with the proper and efficient performance of my duties for  
17 Microsoft, or (c) interferes with the independent exercise of my  
18 judgment in Microsoft’s best interest. . . .

16 8. Paragraph 3 of the Agreement provides, in relevant part:

17 **3. Non-Disclosure.** During my employment and at all times  
18 thereafter, I will neither disclose to anyone outside Microsoft nor  
19 use for any purpose other than my work at Microsoft . . . any  
20 confidential or proprietary information or trade secrets of  
21 Microsoft or its subsidiaries . . . . “Confidential or proprietary  
22 information or trade secrets” means all data and information in  
23 whatever form, tangible or intangible, that is not generally known  
24 to the public and that relates to the business, technology, practices,  
25 products, marketing, sales, services, finances, or legal affairs of  
Microsoft . . . , including without limitation: information about  
actual or prospective customers, suppliers and business partners;  
business, sales, marketing, technical, financial and legal plans,  
proposals and projections; concepts, techniques, processes,  
methods, systems, designs, programs, code, formulas, research,  
experimental work and work in progress.

9. Paragraph 9 of the Agreement provides, in relevant part:

1 **9. Non-Competition and Non-Solicitation.** While employed at  
2 Microsoft and for a period of one year thereafter, I will not (a)  
3 accept employment or engage in activities competitive with  
4 product, services or projects (including actual or demonstrably  
5 anticipated research or development) on which I worked or about  
6 which I learned confidential or proprietary information or trade  
7 secrets while employed at Microsoft; (b) render services to any  
8 client or customer of Microsoft for which I performed services  
9 during the twelve months prior to leaving Microsoft's employ; (c)  
10 induce, attempt to induce, or assist another to induce or attempt to  
11 induce any person to terminate his employment with Microsoft or  
12 to work for me or for any other person or entity. If during or after  
13 my employment with Microsoft I seek work elsewhere, I will  
14 provide a copy of this Agreement to any persons or entities by  
15 whom I am seeking to be hired before accepting employment with  
16 or engagement by them.

17 10. Paragraphs 12 and 13 of the Agreement provide, in relevant part:

18 **12. Equitable Relief.** I acknowledge that any violation of this  
19 Agreement by me will cause irreparable injury to Microsoft and  
20 shall entitle Microsoft to extraordinary relief in court, including but  
21 not limited to temporary restraining orders and preliminary and  
22 permanent injunctions, without the necessity of posting bond or  
23 security.

24 **13. Non-Waiver and Attorneys' Fees.** . . . If court proceedings  
25 are brought to enforce or interpret any provision of this  
Agreement, the prevailing party shall be entitled to an award of  
reasonable and necessary expenses of litigation, including  
reasonable attorneys' fees.

11. Paragraph 14 of the Agreement provides, in relevant part:

I agree that . . . exclusive venue and exclusive personal jurisdiction  
for any action arising out of this Agreement shall lie in state or  
federal court located in King County, Washington. . . . The terms  
and conditions of this Agreement shall survive termination of my  
employment.

12. Lee worked as a Vice President for Microsoft beginning in August 2000.

For the last several years he has worked in Microsoft's Natural Interactive Services  
Division. Although Lee has worked on several technologies during his employment with  
Microsoft, search technologies were a primary focus. For example, at one point Lee was

1 responsible for the overall development of the MSN internet search application. Lee  
2 subsequently led the development of search technologies and applications that ultimately  
3 became the recently released MSN desktop search service. Over the past several years,  
4 Lee and his team have contributed significantly to the development of MSN's new  
5 internet search service that was just released this year. All of these search technologies  
6 and services compete directly with substantially similar technologies and services offered  
7 by Google.

8 13. As a result of his leadership role with respect to the development of various  
9 Microsoft search technologies, Lee was privy to confidential and proprietary information  
10 and trade secrets related to search strategies, architecture of search engines, natural  
11 language advancements for search engines and algorithms designed to improve search  
12 engines and search results. In addition, Lee learned of Microsoft's confidential and  
13 proprietary plans to monetize the search technologies it developed.

14 14. In addition to his leadership role with respect to search technologies, Lee  
15 was one of the lead executives in charge of developing and implementing Microsoft's  
16 business strategies with respect to China. Prior to joining Microsoft Corporation, Lee  
17 worked for an affiliate company in China where he was in charge of Microsoft's China  
18 research laboratory. Since his return, Lee has continued to lead on issues related to China.  
19 As a result, he has had access to confidential and proprietary information and trade secrets  
20 related to Microsoft's overall China business strategy, Microsoft's target areas for  
21 expansion, Microsoft's plans for gaining market share with respect to internet search in  
22 China, and Microsoft's key employees, partners and contacts in China.

23 15. In addition, Lee has been exposed to a great deal of other high level  
24 company strategic information by virtue of his executive status with the company. Lee  
25 regularly received "executive only" confidential business plans and strategies, and

1 regularly attended “executive only” meetings wherein these confidential business plans  
2 and strategies were discussed.

3 16. On July 5, 2005, Lee informed the head of his department, Eric Rudder,  
4 that he did not plan to return from sabbatical. Lee stated he had contacted Google  
5 regarding employment six weeks before leaving for sabbatical, and had spoken with  
6 Google attorneys, whom he said warned him Microsoft would become angry and escort  
7 him off the premises when he admitted he had spoken with them. Lee stated Google  
8 offered him the opportunity to build and lead its China office “end to end.” Were Lee to  
9 accept such a role, he would necessarily work on Google search technologies that directly  
10 compete with the search technologies he helped develop for Microsoft. In addition, were  
11 he to accept the position with Google, he would necessarily be helping Google compete  
12 against Microsoft’s business strategies for China – strategies that he helped develop on  
13 behalf of Microsoft.

14 17. Prior to offering Lee the position in China, Google was well aware of the  
15 fact that every Microsoft employee is required to execute an Employee Agreement that  
16 contains restrictions similar to those found in Lee’s Employee Agreement. Nevertheless,  
17 simultaneously with the service of this Complaint on Lee, Microsoft specifically informed  
18 Google of Lee’s Employee Agreement and provided it with a copy of that Agreement.

19 18. Although Google is aware that employing Lee as the head of its China  
20 operations will cause Lee to breach his contractual obligations to Microsoft, Google has  
21 wrongfully continued to employ Lee, and thus intentionally interfered with Microsoft’s  
22 contractual rights, and put at risk Microsoft’s confidential, proprietary and trade secret  
23 information.

24 19. The information Lee obtained and had access to while employed at  
25 Microsoft—including, but not limited to, confidential search plans and technologies,  
confidential plans to compete with Google and confidential plans for Microsoft’s business

1 strategies in China---were considered and treated as confidential and proprietary by  
2 Microsoft and constitutes Microsoft's proprietary trade secrets. For example, the search  
3 engine source code and architectural plans are maintained by Microsoft in a manner to  
4 ensure that they are accessed only by individuals who have expressly agreed to maintain  
5 them as confidential. Moreover, the confidential business plans and strategies regarding  
6 China are accessible only by a select number of Microsoft employees. Access to such  
7 confidential and proprietary information would be strategically and economically  
8 advantageous to any company or individual seeking to compete with Microsoft such as  
9 Google. Lee's intimate knowledge of such confidential and proprietary information  
10 would undoubtedly be beneficial to him and Google, in competing with Microsoft.

11 20. Lee's current and threatened continuing violations of the Agreement have  
12 caused and will continue to cause irreparable harm to Microsoft.

#### 13 **IV. COUNT I: BREACH OF CONTRACT**

14 21. Microsoft incorporates the allegations of Paragraphs 1 through 20 as  
15 though fully set forth herein.

16 22. Lee entered into a valid and binding agreement with Microsoft in which he  
17 promised that he would not, for a period of one year following termination of his  
18 employment with Microsoft, compete with Microsoft in certain, defined ways or provide  
19 services to any other person or entity that competes with Microsoft in certain, defined  
20 ways---i.e., he would not accept employment or engage in activities competitive with  
21 products, services or projects (including actual or demonstrably anticipated research or  
22 development) on which he worked or about which he learned confidential or proprietary  
23 information or trade secrets while employed at Microsoft.

24 23. Lee received adequate consideration to support the Agreement.  
25



1           24.     Lee breached the Agreement by accepting employment with Google, which  
2 competes with Microsoft in the provision on search services worldwide and specifically in  
3 the China market.

4                                   **V. COUNT II: BREACH OF NON-DISCLOSURE PROMISES AND**  
5                                   **MISAPPROPRIATION OF TRADE SECRETS**

6           25.     Microsoft incorporates the allegations of Paragraphs 1 through 24 as  
7 though fully set forth herein.

8           26.     While an employee of Microsoft, Lee was privy to sensitive, privileged,  
9 confidential, and proprietary information that constitutes trade secrets of Microsoft.

10          27.     Based on information and belief, Lee's conduct threatens to disclose or Lee  
11 inevitably will disclose Microsoft's trade secrets to Google and/or others for his and/or  
12 Google's financial gain in the course of working to improve Google search products that  
13 compete with Microsoft, and in the course of establishing and building Google's presence  
14 in China to compete with Microsoft's efforts in China. Such actions by Lee violates the  
15 non-disclosure provisions of the Agreement.

16          28.     Moreover, the conduct of Lee and Google constitutes threatened  
17 misappropriation of trade secrets in violation of RCW 19.108 et seq.

18          29.     Defendants' threatened misappropriation of Microsoft's trade secrets is  
19 causing and, if not enjoined, will continue to cause substantial and irreparable injury and  
20 damages to Microsoft.

21                                   **VI. COUNT III: TORTIOUS INTERFERENCE WITH CONTRACTUAL**  
22                                   **RELATIONS**

23          30.     Microsoft incorporates the allegations of Paragraphs 1 through 29 as  
24 though fully set forth herein.

25          31.     Microsoft has a valid contract with Lee which, amongst other things,  
prohibits Lee from working for a competitor like Google for a period of one year after  
leaving Microsoft.

1 32. Google knew that Lee had a non-competition agreement with Microsoft  
2 and still offered Lee a job (or has continued to employ him) knowing that his employment  
3 would violate Microsoft's legitimate contractual rights, and would allow Google to obtain  
4 an unfair and improper competitive advantage against Microsoft.

5 33. The conduct of Google constitutes or threatens to constitute tortuous  
6 interference with contractual relations. This conduct has and will continue to result in  
7 damages to plaintiff.

8 **VIII. PRAYER FOR RELIEF**

9 WHEREFORE, Microsoft prays for the following relief:

10 A. Entry of a preliminary injunction and permanent injunction that:

11 (i) Enjoins Lee and Google from all actions in  
12 violation of Lee's Employee Agreement;

13 (ii) Enjoins Defendants or any person or entity acting in  
14 concert with them from disclosing or misappropriating for their  
15 own use or benefit, any of Microsoft's trade secrets or other  
16 confidential and proprietary information in violation of the  
17 Agreement and RCW 19.108 et seq.; and

18 (iii) Requires Defendants to return to Microsoft's  
19 counsel within 24 hours all property, documents, files, reports,  
20 and/or other materials that Defendants have in their possession,  
21 custody, or control that were obtained from Microsoft;

22 (iv) Prohibits Defendants from destroying any  
23 documents of any kind, whether in written or electronic form, that  
24 relate in any way to Microsoft and Google's employment of Lee;

25 (v) Enjoins Lee, or Google on Lee's behalf, from  
soliciting, encouraging, or attempting to induce employees of


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Microsoft or its subsidiaries to terminate their employment and go to work for any other entity, including Google; and

- B. Compensatory damages in an amount to be determined at trial;
- C. An award of Microsoft's attorneys' fees and costs incurred pursuant to the Agreement; and
- D. Such further relief as the Court deems just and equitable.

DATED this 18th day of July, 2005.

PRESTON GATES & ELLIS LLP

By   
Jeffrey C. Johnson, WSBA # 23066  
Attorneys for Plaintiff  
Microsoft Corporation