

Philips DVD+Rewritable Trademark Enforced

Koninklijke Philips Electronics N.V. v. KXD Technology, Inc., et al.
Case No. CV 05-1532 RLH (GWF)

Koninklijke Philips Electronics N.V., or Royal Philips, successfully protected its intellectual property rights by filing a lawsuit in the U.S. District Court for the District of Nevada against the defendants Shenzhen Kaixinda Electronics Co. Ltd., KXD Technology, Inc., Shenzhen KXD Multimedia Co. Ltd., KXD Digital Entertainment Ltd., Astar Electronics, Inc., and Jingyi "James" Luo, based on their unauthorized sale and distribution of DVD players bearing Royal Philips' DVD+ReWritable & Design trademark. On August 1, 2007, the court granted Royal Philips' motion to freeze KXD's assets, including all real property and bank accounts. The court also ordered an impoundment of KXD's entire inventory, an assignment to Royal Philips of the outstanding payments owed to KXD by third party debtors and the certification and registration for execution of the court's order for civil contempt sanctions against KXD for enforcement in other jurisdictions. Finally, the court ordered KXD to repatriate all funds transferred to China during the litigation, to deposit those funds into a bank within the Central District of California and to disburse those funds only after giving notice to Royal Philips and upon obtaining court approval. The court's findings and conclusions in the order show that defendants should not play loose and fast with the federal courts of the United States.

Asset Freeze Ruling:
Asset Freeze Ruling

KXD Inventory Impounded:
KXD Inventory Impounded

KXD China Funds Repatriated to Philips:
KXD China Funds Repatriated to Philips

KXD's Customers Must Pay Philips:
KXD's Customers Must Pay Philips

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KONINKLIJKE PHILIPS ELECTRONICS)
N.V., a Netherlands Corporation,)

Plaintiff,)

Case No.: 2:05-cv-01532-RLH-GWF
Case No.: 2:06-cv-00101-RLH-GWF

ORDER

vs.

(*Ex Parte* Motion to Freeze Assets-#604)

KXD TECHNOLOGY, INC.; ASTAR)
ELECTRONICS, INC.; SHENZHEN KXD)
MULTIMEDIA CO., LTD.; SHENZHEN)
KAIXINDA ELECTRONICS CO., LTD.; KXD)
DIGITAL ENTERTAINMENT, LTD.; JINGYI)
LUO, a/k/a JAMES LUO; SUNGALE GROUP,)
INC.; SUNGALE ELECTRONICS)
(SHENZHEN), LTD.; AMOI ELECTRONICS,)
INC.; AMOI ELECTRONICS CO., LTD.;)
AMOI ELECTRONICS, LTD.; CHINA)
ELECTRONICS CORPORATION;)
AMOISONIC ELECTRONIC ELECTRONICS,)
INC.; INTERNATIONAL NORCET)
TECHNOLOGY, INC.; NORCENT)
HOLDINGS, INC.; SHANGHAI)
HONGSHENG TECHNOLOGY CO., LTD.;)
SHENZHEN NEWLAND ELECTRONIC)
INDUSTRY CO., LTD.; DESAY A&V (USA),)
INC.; DESAY A&V SCIENCE &)
TECHNOLOGY CO., LTD.; DESAY)
HOLDINGS CO., LTD.; XORO)
ELECTRONICS (SHANGHAI), LTD.;)
SHENZHEN XORO ELECTRONICS CO.,)
LTD.; MAS ELEKTRONIK AG)
CORPORATION; SHENZHEN ORIENTAL)
DIGITAL TECHNOLOGY CO., LTD.; and)
JOHN DOES 1 THROUGH 20,)

Defendants.

1 Before the Court is Plaintiff's *Ex Parte Motion for an Order to Freeze Assets*
2 ("Asset Freeze Motion") (#604), filed April 5, 2007. The Court has also considered Plaintiff's
3 sealed supplements to the Asset Freeze Motion (#671 & #677), filed July 20, 2007, and July 27,
4 2007.

5 This matter, having come before the Court on Koninklijke Philips Electronics
6 N.V.'s ("Philips") Asset Freeze Motion against KXD Technology, Inc. ("KXD Technology"),
7 Astar Electronics, Inc. ("Astar"), Shenzhen KXD Multimedia Co., Ltd., Shenzhen Kaixinda
8 Electronics Co., Ltd., KXD Digital Entertainment, Ltd., Jingyi Luo, a/k/a James Luo and Astar
9 Electronics USA, Inc. (collectively, "KXD Defendants") and the Court having reviewed and
10 considered all papers submitted in support of Plaintiff's Asset Freeze Motion, such as the relevant
11 pleadings, evidence presented in this matter, and arguments of counsel, the Court now makes the
12 following ruling:

13 **FINDINGS OF FACT**

14 1. On February 28, 2007, at the hearing on the KXD Defendants' emergency
15 application to stay the Court's contempt order ("Emergency Stay Hearing"), the Court found that
16 the KXD Defendants have a history of avoiding this Court's orders and moving assets out of
17 California.

18 2. The Court found that: "[T]here have been efforts, which were only avoided by a
19 seizure order, to hurriedly, secretly remove assets from California so that they would not be
20 accessible." (Dkt. #579, Emerg. Stay Hr'g 9:19-25; 10:1-17.)

21 3. The Court has found that the KXD Defendants have a track record in not
22 complying with the Court's Orders. (*Id.* at 22:15-25.)

23 4. The Court has already recognized that the KXD Defendants "quite frankly, have
24 not shown that they are going to make it easy for anyone to collect" anything, or whether the assets
25 are truly available. (*Id.* at 10:14-17.)
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1 5. The KXD Defendants have failed and refused to comply with the Court’s
2 temporary restraining order (“TRO”) (Dkt. #39), preliminary injunction (“PI”) (Dkt. #252) and
3 civil contempt order (“Civil Contempt Order I”) (Dkt. #558).

4 6. The TRO and PI enjoined and restrained the KXD Defendants from, among
5 other things, “manufacturing, importing, exporting, distributing, shipping, introducing into
6 commerce, offering for sale, selling, returning, disposing of, packaging, re-packing, marketing,
7 advertising, or supplying any goods that bear, embody, display, or affix the DVD+ReWritable &
8 Design mark” (the “Counterfeit Products”).

9 7. Despite the Court’s issuance of the PI on March 14, 2006, the KXD Defendants
10 have failed to submit a sufficient compliance report “in writing and under oath setting forth in
11 detail the manner and form in which compliance with [the PI] was made.”(Dkt. #252, Prelim. Inj.
12 6.)

13 8. On February 23, 2007, the KXD Defendants filed an Emergency Ex Parte
14 Application for Stay of Order Imposing Sanctions for Civil Contempt (“Emergency Application
15 for Stay”). (Dkt. #562.)

16 9. Despite this Court’s denial of the Emergency Application for Stay and finding
17 that the order was not appealable, the KXD Defendants applied to the Ninth Circuit for a stay.

18 10. The Ninth Circuit also denied the KXD Defendants’ request for a stay. (Dkt.
19 #618, Hedrick Dec. Ex. A.)

20 11. The KXD Defendants have refused to pay the sanctions ordered in Civil
21 Contempt Order I despite continual assertions in papers filed with the Court, and at hearings, that
22 KXD Defendants are more than capable of paying the ordered amounts. (Transcript of Contempt
23 Sanction Hearing, Dkt. #544, p. 37); (*see also* Mot. for Stay, Dkt. # 562, 5) (counsel for KXD
24 Defendants stated: “The KXD Defendants . . . are more than capable of satisfying the sanctions
25 award.”)
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1 12. There is evidence that the KXD Defendants are liquidating and encumbering
2 their assets. (Dkt. #671 & #677.)

3 13. Mr. Luo has made false statements to this Court. Mr. Luo falsely assured the
4 Court that he, Astar, and KXD Technology were complying with the TRO, when in fact, Mr. Luo
5 was informed of, expressly authorized, or ratified business transactions in violation of the TRO.
6 (See Dkt. #424, Mot. for Civil Contempt Sanctions 13; see also Dkt. #426 & #427, Nezik Decl., ¶¶
7 19-50, Exhs. 17-48.)

8 14. The KXD Defendants have represented to this Court under penalty of perjury
9 that they have a net worth of \$50,000,000.00. (Dkt. #562, Liu Decl. ¶ 5.)

10 15. The KXD Defendants have declared that they have inventory in the United
11 States valued at more than \$10,000,000.00 that demonstrates the ability to pay “any ultimate
12 judgment.” (*Id.* at ¶ 6.)

13 16. Despite these resources and the additional thirty days granted by the Court to
14 pay the monetary sanctions, the KXD Defendants have failed to pay Philips any of the damages,
15 costs and attorneys’ fees of \$1,674,799.84, failed to file a certification with the court of proof of
16 payment, failed to pay any of the \$10,000.00 per diem sanctions and failed to post the
17 \$2,000,000.00 bond.

18 **CONCLUSIONS OF LAW**

19 17. This Court has already expressed its distrust of the KXD Defendants, based
20 upon the KXD Defendants’ track record of secretly moving and attempting to move assets out of
21 reach. (Dkt. #579, Emerg. Stay Hr’g 9:19-25; 10:1-17.)

22 18. Philips has sufficiently established why it filed this motion ex parte without
23 notice as the KXD Defendants are likely to conceal, transfer or otherwise hide their assets if they
24 are notified of Philips’ request that this Court freeze the KXD Defendants’ assets.

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1 19. In determining whether to grant a preliminary injunction that freezes assets to
2 protect a potential recovery, this Circuit applies the standard test that is used to evaluate claims for
3 preliminary injunctive relief. *FTC v. Evans Product Co.*, 775 F.2d 1084, 1088 (9th Cir. 1985).

4 20. Under the first part of the test, the movant must show 1) irreparable injury, 2)
5 probable success on the merits, 3) that the balance of hardships tips in the movant’s favor, and 4)
6 that a preliminary injunction freezing assets is in the public interest. *Id.* “Alternatively, a court
7 may issue an injunction if the moving party demonstrates *either* a combination of probable success
8 on the merits and irreparable injury *or* that serious questions are raised and the balance of
9 hardships tips in his favor.” *Id.* at 1088-89.

10 21. The purpose of a temporary restraining order is to preserve the status quo and
11 prevent irreparable harm just so long as is necessary to hold a hearing, and no longer. *Granny*
12 *Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974).

13 22. Federal Rule of Civil Procedure 65(b) allows a court to issue a temporary
14 restraining order without written or oral notice to the adverse party if it is clear from affidavit or
15 verified complaint that immediate and irreparable injury, loss, or damage will result, and adequate
16 reasons are given supporting the claim that notice should not be required.

17 23. The Ninth Circuit has recognized that an order freezing a defendant’s assets is
18 appropriate to preserve the status quo so that assets can be preserved to satisfy an equitable decree.
19 *Reebok Intern. Ltd. v. Marnatech Enters., Inc.*, 970 F.2d 552, 558-561 (9th Cir. 1992).

20 24. Fed. R. Civ. P. 64 permits seizures of property as authorized by federal law,
21 including by way of “attachment . . . and other corresponding or equivalent remedies.”

22 Irreparable Injury

23 25. The Court found in its Civil Contempt Order I that the KXD Defendants did
24 not comply with the Court’s PI and TRO and continued to actively violate both orders. Thus, the
25 record establishes that the KXD Defendants were in contempt of the Court’s PI and TRO. (Civil
26 Contempt Order I, 4.)

1 26. The KXD Defendants are also in contempt of the Civil Contempt Order I.
2 They have not complied with Civil Contempt Order I, despite the Court’s leniency as to the
3 amount of monetary sanctions and the timing of the payments. (Dkt. #579, Emerg. Stay Hr’g.)

4 27. As established by the KXD Defendants’ behavior, in willfully disobeying the
5 TRO, the PI, and the Civil Contempt Order I (including the previous behavior of the KXD
6 Defendants’ counsel, attempting to aid in the concealment of Counterfeit Products by shipping
7 assets to China despite the Court’s seizure orders), the KXD Defendants are likely to dissipate
8 their bank accounts and liquidate or hide their other assets unless the Court intervenes and
9 removes this option by freezing their assets. The KXD Defendants have yet to make any payment
10 as ordered by the Civil Contempt Order I.

11 28. Plaintiff also brings to the Court’s attention that since the issuance of the Civil
12 Contempt Order I, the KXD Defendants have encumbered their resources within the United States
13 with liens from Chinese banks; and Defendant James Luo is liquidating his property and
14 transferring title to his wife. (Dkt. #671 & #677) (supplementing the Asset Freeze Motion). Thus,
15 the Court finds that absent this Order to freeze assets, it is likely that the KXD Defendants will
16 make the injury to Plaintiff irreparable.

17 Probable Success on the Merits

18 29. The Court has already found previously that there is a probability of success on
19 the merits in issuing the previous preliminary injunction (Dkt. #252, Prelim. Inj. 3-4.)

20 The Balance of Hardships Favors the Issuance of the Asset Freeze Order

21 30. If the Court does not issue an asset freeze order, Philips would be irreparably
22 harmed because the assets in the KXD Defendants’ bank accounts and other assets would likely be
23 secreted away and dissipated. Given the KXD Defendants track record, they are likely to conceal,
24 transfer or otherwise hide their assets. Under these circumstances, an order limiting the KXD
25 Defendants’ access to their assets is the only means that this Court has of ensuring that Philips will
26 be able to recover any of the damages that this Court awarded in its Civil Contempt Order I, or that

1 are likely to be found with a successful trial on the merits. The threat of irreparable injury to
2 Philips causes the “balance of hardships” to tip decidedly in favor of Philips.

3 A Preliminary Injunction is in the Public’s Interest

4 31. It is in the public’s interest to protect trademarks so that consumers are not
5 deceived into buying a product that is not what it purports to be. Issuing an injunction here will
6 promote the protection of Philips’ trademark. Therefore, the Court finds that the Public interest
7 favors a injunction.

8 Reasons that Notice Should Not Be Required

9 32. Plaintiff has submitted adequate reasons and evidence to show that the KXD
10 Defendants will likely liquidate and hide their assets if notice were given on this Motion.
11 Furthermore, the KXD Defendants have already shown their desire to avoid seizures by shipping
12 assets out of the country. Therefore, the Court finds that preliminary notice is not required.

13 KXD Defendants’ Assets Can Be Impounded until they have Complied with the Orders of
14 this Court

15 33. The KXD Defendants have claimed that they have inventory worth
16 \$10,000,000.00 located in their warehouse in Baldwin Park, California, which could be used as
17 “security for their performance” on Civil Contempt Order I. (Dkt. #562, Liu Decl. ¶ 6.) In order to
18 prevent the KXD Defendants from liquidating their inventory without first complying with the
19 Court’s orders and tendering payment to Philips, the Court has the authority to impound the
20 inventory until the KXD Defendants comply with the Civil Contempt Order I and any further
21 orders issued by the Court.

22 Philips Has Already Provided Security

23 34. Fed. R. Civ. P. 65(c) requires that security be posted in an amount to be
24 determined by this Court. Philips has already posted security in this action in the amount of
25 \$50,000.00. Therefore, the Court will only require a nominal bond of \$1,000 to be posted for this
26 injunction.

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CONCLUSION

Accordingly, and for good cause appearing,
IT IS HEREBY ORDERED that Plaintiff’s Motion for an Order to Freeze Assets
(#604) is GRANTED as follows:

(1) The KXD Defendants and their officers, directors, affiliates, agents, employees and attorneys, their successors and assigns and all persons in active concert or participation with any of the KXD Defendants, and all banks, financial institutions, brokerages, or others in possession or control of their assets are hereby enjoined from directly or indirectly transferring, concealing, secreting, distributing, disposing of, transferring (except to Philips as set forth herein), shipping in any way or otherwise hiding assets and making unavailable to Philips or their officers, agents, employees and attorneys any funds in the KXD Defendants’ possession, control or in the possession or control of others on behalf of the KXD Defendants including, but not limited to:

(a) KXD Technology, Inc.’s bank account (authorized agent, Jingyi Luo, aka James Luo), account numbers 080312408, 80312424, and 0080312309, located at East West Bank, 2601 N. Broadway Los Angeles, CA 90031;

(b) Astar Electronics, Inc. and KXD Technology, Inc.’s bank account, account numbers 765-029699 and 765255773, located at Bank of the West at the South Pasadena Office #765 and 1833 N. Atlantic Blvd., #765;

(c) Jingyi Luo aka James Luo’s bank account at Downey Savings Bank, 17120 Colima Road, Hacienda Heights, CA 91745;

(d) any other bank or other financial accounts under the names KXD Technology, Inc., Astar Electronics, Inc., Shenzhen KXD Multimedia Co., Ltd., Shenzhen Kaixinda Electronics Co., Ltd., KXD Digital Entertainment, Ltd., Astar Electronics USA, Inc., Jingyi Luo, aka James Luo, including variations of the forgoing names and alias;

(2) The known and unknown accounts, including additional accounts at the above listed banks are to be frozen up to **\$5,000,000.00**, except that the KXD Defendants may pay

1 ordinary and necessary business expenses, and Jingyi Luo may pay ordinary and necessary
2 personal expenses, with respect to the foregoing accounts of KXD Technology, Inc., Astar
3 Electronics, Inc., Jingyi Luo aka Jimmy Luo. Ordinary expenses referred to herein may be paid as
4 follows:

5 (a) rent or mortgage in the amount normally paid as required in any lease or
6 loan on any premises, upon presentation of said lease or loan document to Philips and verification
7 thereof;

8 (b) ordinary and regular salaries to any bonafide employees, other than any
9 of the KXD Defendants themselves, or any relatives or dependents thereof, to the extent that such
10 salaries are not excessive; provided, however, that such salaries shall be paid to persons on the
11 payroll of the KXD Defendants as of January 1, 2007, and such salaries do not exceed the prior
12 month's level and further provided that the KXD Defendants shall first present to Philips' counsel
13 written documentation identifying and verifying all individuals proposed to be paid and the
14 particulars of the salaries proposed therefor;

15 (c) ordinary and necessary bills for utilities, after such bills have been
16 verified by Philips;

17 (d) payments of any amounts less than Two Thousand Dollars (\$2,000), not
18 to exceed an aggregate of more than Five Thousand Dollars (\$5,000) per month, for ordinary
19 business expenses (or ordinary personal expenses for Jingyi Luo aka James Luo), which transfers
20 shall be documented and such documentation shall be provided to Philips' counsel within ten (10)
21 calendar days following the end of each month; in the event that the documentation is not provided
22 to Philips' counsel within ten (10) calendar days, no ordinary expenses will be allowed until the
23 documentation of the previous month is provided to Philips' counsel;

24 (3) Jingyi Luo, aka James Luo shall be enjoined from selling or otherwise
25 encumbering his personal residence located at 16178 Wedgeworth Drive, Hacienda Heights, CA
26 91745, until the amount of **\$2,000,000.00** is paid to Philips;

1 (4) Jingyi Luo, aka James Luo shall be enjoined from selling or otherwise
2 encumbering his personal residence located at 18319 art Street, Unit 17, Reseda, CA 91335, until
3 the amount of **\$2,000,000.00** is paid to Philips;

4 (5) Jingyi Luo, aka James Luo shall be enjoined from selling or otherwise
5 encumbering his personal residence located at 7001 Etiwanda Avenue, Reseda, CA 91335, until
6 the amount of **\$2,000,000.00** is paid to Philips;

7 (6) In accordance with Fed. R. Civ. P. 64 and 65 that KXD Defendants, and their
8 agents, servants, employees, and any other person in active concert or participation with them, and
9 any person who has benefitted, directly or indirectly from the profits of the KXD Defendants, or
10 such companies, and any banks, savings and loan associations, or other financial institutions, or
11 agencies which engage in the transfer of real property, who receive actual notice of this Order by
12 personal service or otherwise, are temporarily restrained and enjoined from transferring (except to
13 Philips as set forth herein), disposing of, distributing, or secreting any money, stocks, or other
14 assets without prior approval of the Court;

15 (7) The KXD Defendants shall serve upon Philips' attorneys within thirty (30)
16 calendar days after service of the Order on the KXD Defendants, copies of all accountant's reports,
17 bank statements, certificates of deposit, notes, bonds, checking accounts, money market accounts,
18 savings accounts or other financial institution records showing investments or deposits, and
19 documents indicating title to any real or personal property, in the KXD Defendants' actual or
20 constructive possession or control, in whole or in part, or in which they otherwise have an interest,
21 whether domestic or foreign;

22 (8) The Court orders an assignment to Philips of the KXD Defendants' right to
23 payment from third party debtors of the KXD Defendants until the Civil Contempt Order I is
24 satisfied;

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1 (9) The KXD Defendants' inventory located at 5101 Commerce Dr., Baldwin Park,
2 CA 91706 and any other location where such inventory is located is impounded until the KXD
3 Defendants have complied with the TRO, PI, and Civil Contempt Order I;

4 (a) To effect this impoundment, any United States Marshal, federal law
5 enforcement officer, state police, local police, local sheriffs or deputy sheriffs, off-duty officers of
6 the same and persons acting under their supervision (collectively, "Authorized Officers") are
7 hereby authorized to impound the inventory located at the KXD Defendants' warehouse located at
8 5101 Commerce Dr., Baldwin Park, CA 91706 and any other location where such inventory is
9 located during regular business hours after the date of this Order;

10 (b) Representatives of Philips may accompany the U.S. Marshal or law
11 enforcement officer to the impoundment;

12 (c) The impoundment ordered herein may be photographed and videotaped
13 by Philips' attorneys and representatives for the purpose of authenticating and assisting in the
14 obtaining of evidence and to prevent any controversy regarding the activities and events occurring
15 during said impoundment;

16 (d) The Authorized Officers are authorized and shall employ whatever
17 reasonable force is necessary to effect, carry out, and execute this Order. Philips shall hold the
18 Authorized Officers harmless for any liability related to or that may be imposed upon execution of
19 this Order;

20 (e) Anyone interfering with the execution of the impoundment is subject to
21 arrest by the Authorized Officer or other law enforcement personnel; and

22 (f) Plaintiff or Plaintiff's designee shall maintain custody of the inventory
23 impounded pending further Order of the Court.

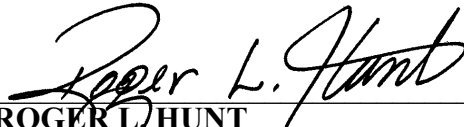
24 IT IS FURTHER ORDERED that the KXD Defendants repatriate all funds
25 transferred overseas, individually or jointly, since January 5, 2006; to deposit those funds into a
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1 bank within the Central District of California; and to disburse those funds only after giving notice
2 to Philips and obtaining Court approval.

3 IT IS FURTHER ORDERED, that Philips, by registration of this Court's Civil
4 Contempt Order I in other federal judicial districts, shall be authorized to levy by writ of
5 execution, in those out-of-state federal judicial districts, against the KXD Defendants' assets
6 including but not limited to such assets listed above. The Clerk of Court shall issue certified
7 copies of this Court's Contempt Order (Dkt. #541) and the Nunc Pro Tunc Correction of Order
8 #541 (Dkt. #558) for the purposes of out-of-state registration.

9 THE COURT HEREBY sets a hearing for Plaintiffs' Motion on August 20, 2007,
10 at 1:30 p.m. to be held in Courtroom 6C at the Lloyd D. George Federal Courthouse, 333 South
11 Las Vegas Boulevard, Las Vegas, NV. The Court's Order shall remain in force until that time.
12 KXD Defendants may appear at the hearing and show cause why this Order should not become
13 permanent for the duration of this case. Failure to appear at the hearing will constitute consent to
14 making the Order permanent for the duration of the case.

15 Dated: August 1, 2007.

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18 **ROGER L. HUNT**
19 **Chief United States District Judge**
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