

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

INSTALLATION SOFTWARE TECHNOLOGIES,)	
INC. d/b/a INSTALLSHIELD SOFTWARE)	
CORPORATION,)	
)	
Plaintiff,)	No. 03 C 4502
)	
v.)	Judge Coar
)	
WISE SOLUTIONS, INC.,)	Magistrate Judge Denlow
)	
Defendant.)	

MOTION FOR ENTRY OF PROTECTIVE ORDER

Plaintiff, INSTALLATION SOFTWARE TECHNOLOGIES, INC., d/b/a
INSTALLSHIELD SOFTWARE CORPORATION ("InstallShield"), hereby moves this Court,
pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, for an entry of a Protective Order
in the above-captioned action. In support thereof, plaintiff states as follows:

1. As this Court is aware, this case concerns (1) defendant Wise's unauthorized
accessing of plaintiff InstallShield's computers and servers and (2) defendant Wise's theft of
certain proprietary InstallShield materials contained on those computers and servers, including
copyrighted publications, proprietary software, advertising and marketing campaigns, and a
103,000 customer mailing list.

2. It is anticipated that the parties will engage in expedited discovery, wherein both
parties will be expected to produce business documentation and information not previously
disclosed publicly which one or more participants consider to be highly confidential, proprietary
and/or containing trade secrets, the public disclosure of which would result in substantial damage

to the producing party. This documentation and/or information falls within the following specific categories:

- (a) Confidential Sales and/or marketing plans;
- (b) Customer mailing lists;
- (c) Documents containing confidential information about either party's customers, including, without limitation, documents identifying contact personnel within customer organizations, documents containing or reflecting customer purchase history, and documents containing or reflecting customer orders;
- (d) Documents containing confidential financial information about either party's business, including, without limitation, ledgers, balance sheets, income statements, and reports from financial/accounting software;
- (e) Documents containing confidential information about either party's computer and software systems used in the ordinary course of its business;
- (f) Documents containing confidential information about either party's employees, including, without limitation, personnel records and records relating to compensation;
- (g) Documents containing confidential information about either party's existing software products and/or software products under development;
and
- (h) Documents containing confidential information about either party's research and development activities.

3. The Seventh Circuit allows for protection of highly confidential, proprietary and trade secret information pursuant to an agreed protective order, such as the one at bar, provided good cause can be shown. *See Jepson Inc. v. Makita Elec. Works, Ltd.*, 30 F.3d 854, 858-59 (7th Cir. 1994).

4. Good cause is demonstrated in this case as the parties are active competitors in a small segment of the software development market, and plaintiff can attest that it is requesting that documents be produced in this litigation that are certain to contain customer and proprietary data. It is more than likely that defendants, when they issue their own set of expedited discovery requests, will request the production of similar documents.

5. Specifically, the documents described in Paragraph No. 2 herein are likely to contain detailed proprietary information regarding the parties' respective customers, including the exact products and prices sold to each customer, the specific customers' orders, product needs and preferences, and advertising material sent to potential customers containing similarly specific information. Information of this sort is extremely valuable to the parties because of the time and resources expended to develop this knowledge and these relationships. Additionally, this information is not publicly available. The use of a protective order is appropriate to safeguard against the potential disclosure of this type of information to competitors that are not involved in the litigation who would seek to profit from the ongoing dispute. *D.J. Madigan Associates, Inc. v. Mag Instrument, Inc.*, 1988 U.S. Dist. LEXIS 180 (N.D. Ill. 1988).

6. Furthermore, the protective order has not been entered to shield the proprietary information in the documents from the general public, but specifically, from any other competitors in the software development market who are not a party to this lawsuit. *Id.* at 859 ("Black and Decker has tried to use the stipulated protective order and the IPO as shields to

prevent highly relevant and nonconfidential information from reaching the ITC. We refuse to assist Black and Decker with its effort.”).

7. Accordingly, the plaintiff moves, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, for entry of a Protective Order to protect the confidentiality of trade secrets and other proprietary information throughout the course of this litigation.

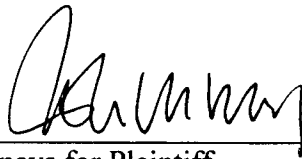
8. The proposed Protective Order is attached hereto as Exhibit A.

9. This Motion is filed in compliance with the Federal Rules of Civil Procedure and is not brought for purposes of harassment or to cause unnecessary delay.

WHEREFORE, plaintiff, INSTALLATION SOFTWARE TECHNOLOGIES, INC., d/b/a INSTALLSHIELD SOFTWARE CORPORATION (“InstallShield”), respectfully requests that this Court enter its proposed Protective Order to be applicable to all parties to this matter.

Dated: June 30, 2003

Respectfully submitted,



Attorneys for Plaintiff,
INSTALLATION SOFTWARE
TECHNOLOGIES, INC. d/b/a INSTALLSHIELD
SOFTWARE CORPORATION

#28
William Lynch Schaller
John M. Murphy
Charles R. Topping
Hillary P. Krantz
BAKER & McKENZIE
One Prudential Plaza
130 East Randolph Drive
Chicago, IL 60601
(312) 861-8000

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