



Federal Court of Australia  
District Registry: New South Wales  
Division: General

No: NSD1677/2016

**SAPPHIRE ONE PTY LTD ACN 003 419 930**  
Applicant

**SAPPHIRE SYSTEMS PTY LTD ACN 155 709 381**  
Respondent

### **ORDER**

**JUDGE:** JUSTICE BROMWICH

**DATE OF ORDER:** 17 May 2017

**WHERE MADE:** Sydney

#### **IN THESE ORDERS, THE FOLLOWING DEFINITIONS APPLY:**

**‘Respondent’s Software Products’** means the products referred to and defined in paragraph 8 of the Statement of Claim filed 27 September 2016, which are software products produced by third parties.

**“Trade Marks”** means Australian Registered Trade Mark Number 1028376 and Australian Registered Trade Mark Number 970125.

#### **BY CONSENT, THE COURT DECLARES THAT:**

1. By the conduct admitted in paragraph 8 of its defence filed 4 November 2016, the respondent has infringed:

(a) Australian Registered Trade Mark Number 1028376; and

(b) Australian Registered Trade Mark Number 970125,

within the meaning of s 120(1) of the *Trade Marks Act 1995* (Cth).



**THE COURT ORDERS THAT:**

2. Orders 7 and 8 of the orders made on 22 November 2016 are vacated.
3. Order 1 of the orders made on 11 April 2017 is vacated.
4. Paragraphs 2 and 6 of the originating application be dismissed.
5. The respondent's notice of cross-claim dated 28 October 2016 is dismissed.
6. As and from 5 June 2017, the respondent whether by itself, its directors, officers, agents, employees or otherwise howsoever during the period in which the Trade Marks remain entered on the Register of Trade Marks be restrained from:
  - (a) infringing each of the Trade Marks including by but not limited to, selling, offering for sale, marketing for sale, supplying, distributing or otherwise dealing in the Respondent's Software Products under or by reference to each of the Trade Marks;
  - (b) using as a trade mark any mark which is substantially identical with or deceptively similar to each of the Trade Marks;
  - (c) authorising any other party or entity to infringe either of the Trade Marks; and
  - (d) authorising any other party or entity to use as a trade mark any mark which is substantially identical with or deceptively similar to each of the Trade Marks.
7. By 4 pm on 3 July 2017, the respondent deliver up to the applicant or destroy (at the respondent's election) all brochures, marketing materials and packaging bearing either of the Trade Marks which are or have been used by the respondent for the purpose of, selling, offering for sale, marketing for sale, supplying, distributing or otherwise dealing in the Respondent's Software Products.
8. There be an inquiry in relation to the assessment of damages or account or profits.
9. On or before 4 pm on 16 June 2017, the respondent is to provide the applicant with a statement which:



- (a) provides an estimate of the profits (if any) it says were made from the respondent's conduct in selling, distributing or otherwise dealing with the respondent's Software Products and engaging in consultancy, training and education in relation to the Respondent's Software Products;
  - (b) provides details of the methodology and basis for the calculation of the estimate provided pursuant to (a); and
  - (c) is accompanied by the documents relied upon for the purpose of providing the estimate pursuant to (a).
10. In the event the respondent regards any of the information to be provided pursuant to order 9 as subject to a claim for confidentiality, then the respondent may withhold documents containing that information from production to the applicant until the parties have agreed on an access regime.
11. The proceedings be listed for a case management hearing at 9.00 am on Friday, 16 June 2017 for the making of directions as necessary for the purpose of:
  - (a) enabling the applicant to make an election between its claims for damages and account of profits in respect of trade mark infringement; and
  - (b) the conduct of the damages inquiry or the taking of an account of profits, including the filing of evidence.
12. The name of the respondent / cross-claimant in the proceeding be amended to Argentis Systems Pty Ltd (formerly Sapphire Systems Pty Ltd).
13. Liberty to apply on 4 days' notice to the Court and the other party.
14. The question of each party's costs of the proceeding in relation to liability be deferred until the determination of questions of quantum.
15. Costs of and incidental to the case management hearing giving rise to these orders be reserved.



Date that entry is stamped: 17 May 2017

*Warrick Soden*  
Registrar



**Schedule**

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**CROSS CLAIM**

Cross-Claimant	SAPPHIRE SYSTEMS PTY LTD ACN 155 709 381
Cross Respondent	SAPPHIRE ONE PTY LTD ACN 003 419 930
Cross Defendant	ADAMS & CO LAWYERS