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## *Judge's Decision Against Microsoft Corp. May Threaten the Windows Trademark*

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A court ruling in a trademark-infringement lawsuit brought by Microsoft Corp. against a tiny company called Lindows.com Inc. raises questions about the validity of Microsoft's long-held Windows trademark, intellectual-property lawyers say.

The ruling against Microsoft, handed down by a Seattle federal judge Friday, is only preliminary and doesn't have immediate legal implications. But a more conclusive finding on the trademark issue—which arose when Microsoft challenged Lindows.com's plans to call its new product "LindowsOS"—could open the door for other companies to use the Windows name on competing software products, lawyers say.

If the Windows trademark "is deemed generic and that stands, Microsoft has no footing whatsoever to bar anybody from using it," said Anton J. Hopen, an intellectual-property expert and partner with the Clearwater, Fla., law firm of Smith & Hopen. Based on the 29-page ruling, "the judge seems very predisposed to try to invalidate a valuable asset for Microsoft," he said.

Agreed Rich Gray, a Silicon Valley lawyer who has followed Microsoft's recent antitrust case and is an intellectual-property expert: "This is huge."

A Microsoft spokesman said the company intends to continue to "pursue our claim in order to protect our trademark." The spokesman declined to comment on wider issues, although he noted that "certainly, our view of this is that the Windows trademark is one of the most recognizable brands in the world."

In his ruling, U.S. Judge John C. Coughenour dismissed Microsoft's request for a preliminary injunction to block Lindows.com, a Linux software company based in San Diego, from using that name. He added that Lindows.com "has presented sufficient evidence to rebut the presumption of validity of the Windows mark," partly because the term has generic usage beyond Microsoft's product.

In its lawsuit filed in December, Microsoft argued that LindowsOS was too similar a name to Windows, and would confuse consumers. Microsoft can appeal the ruling. A lawyer for Lindows.com, Daniel R. Harris, said Lindows.com would likely file a motion to dismiss the suit.