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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.

INTERWEB HOSTING, L.L.C, a foreign
limited liability company; PHILIP
ADELBERG, a resident of Pennsylvania;
INTERWEB HOSTING, INC., a foreign
corporation; INTERWEBHOSTING, INC., a
foreign corporation; IWH, a foreign
corporation; and JOHN DOES 1-20,

Defendants.

No. 03-2-27980-3 SEA
COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF
03-2-27980-3 SEA

Plaintiff Microsoft Corporation ("Microsoft") brings this action against INTERWEB
HOSTING, L.L.C., PHILIP ADELBERG, INTERWEB HOSTING, INC.,
INTERWEBHOSTING, INC., IWH, and JOHN DOES 1-20.

I. JURISDICTION AND VENUE

1. This is an action for trespass to chattels, conversion and for violations of the
Washington Commercial Electronic Mail Act (RCW Ch. 19.190), the Washington Consumer
Protection Act, the federal Computer Fraud and Abuse Act (18 U.S.C. § 1030(a)), and the

1 Lanham Act (15 U.S.C. § 1125). Microsoft seeks damages and injunctive relief to remedy
2 defendants' unauthorized use of Microsoft's computers and computer systems to send
3 millions of misleading and deceptive unsolicited commercial e-mail messages, or "spam," in
4 violation of Microsoft's policies and state and federal law.

5 2. This Court has personal jurisdiction over the defendants, who have engaged in
6 business activities in and directed to Washington, have committed a tortious act within the
7 state, and have used personal property in the state.

8 3. Venue is proper in this Court pursuant to RCW § 4.12.020-.025 in that a
9 substantial part of the events or omissions giving rise to the claims pled herein occurred in
10 King County, the causes of action arose in King County, and work was performed in King
11 County.

12 II. THE PARTIES

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

15 5. Defendant INTERWEB HOSTING, L.L.C., is a Pennsylvania Limited
16 Liability Company, with its principal place of business in Pittsburgh.

17 6. Defendant PHILIP ADELBERG is President, Secretary, and Treasurer of
18 Interweb Hosting, L.L.C. Microsoft is informed and believes, and on that basis alleges, that
19 Mr. Adelberg is a resident of Pennsylvania.

20 7. Microsoft is informed and believes, and on that basis alleges, that defendant
21 Interweb Hosting, Inc. is a foreign business entity that does business under that and other
22 names.

23 8. Microsoft is informed and believes, and upon that basis alleges, that defendant
24 Interwebhosting, Inc., is a foreign business entity that does business under that and other
25 names.
26

1 9. Microsoft is informed, and on that basis alleges, that defendant IWH is a
2 foreign business entity that does business under that and other names.

3 10. Microsoft is unaware of the true names and capacities of defendants sued
4 herein as DOES 1 - 20, and therefore sues these defendants by such fictitious names.
5 Microsoft will amend this complaint to allege their true names and capacities when
6 ascertained. Microsoft is informed and believes and therefore alleges that each of the
7 fictitiously named defendants is responsible in some manner for the occurrences herein
8 alleged, and that Microsoft's injuries as herein alleged were proximately caused by such
9 defendants. These fictitiously named defendants, along with Interweb Hosting, LLC, Philip
10 Adelberg, Interweb Hosting, Inc., InterwebHosting, Inc., and IWH, are herein referred to
11 collectively as "defendants."

12 11. The actions alleged herein to have been undertaken by the defendants were
13 undertaken by each defendant individually, were actions that each defendant caused to occur,
14 were actions that each defendant authorized, controlled, directed, or had the ability to
15 authorize, control or direct, and/or were actions each defendant assisted, participated in, or
16 otherwise encouraged, and are actions for which each defendant is liable. Each defendant
17 aided and abetted the actions of the defendants set forth below, in that each defendant had
18 knowledge of those actions, provided assistance and benefited from those actions, in whole or
19 in part. Each of the defendants was the agent of each of the remaining defendants, and in
20 doing the things hereinafter alleged, was acting within the course and scope of such agency
21 and with the permission and consent of other defendants.

22 **III. NATURE OF PLAINTIFF'S INTERNET E-MAIL SERVICES**

23 12. Microsoft owns and operates interactive computer services that enable its
24 customers to, among other things, access the Internet and exchange electronic mail ("e-mail")
25 on the Internet. Microsoft owns and maintains computers and other equipment, including
26 specialized computers or "servers" that process e-mail messages and otherwise support its e-

1 mail services. Microsoft maintains this equipment in Washington and California, among
2 other states. E-mail sent to and from Microsoft's customers is processed through and stored
3 on these computers. Microsoft is an internet service provider ("ISP"), is an "interactive
4 computer service" as defined by RCW § 19.190.010. Microsoft's computers and computer
5 systems are "protected computers" under the federal Computer Fraud and Abuse Act, 18
6 U.S.C. § 1030(e)(2).

7 13. One of Microsoft's services is "MSN Hotmail" which provides free and
8 subscription-based e-mail on the Internet through a web-based e-mail service that can be
9 accessed at www.hotmail.com. MSN Hotmail allows account-holders to exchange e-mail
10 messages with any other e-mail user who has an Internet e-mail address throughout the world.
11 MSN Hotmail has millions of registered accounts, whose users all have unique e-mail
12 addresses ending in "@hotmail.com."

13 14. Another of Microsoft's services is "MSN Internet Access" (referred to herein
14 as "MSN") which provides free and subscription-based e-mail services that can be accessed
15 on the web or via Microsoft's proprietary network. MSN allows account-holders to exchange
16 e-mail messages with any other e-mail user who has an Internet e-mail address throughout the
17 world. MSN has millions of registered accounts, whose users all have unique e-mail
18 addresses ending in "@msn.com."

19 **IV. THE NATURE OF UNSOLICITED E-MAIL OR "SPAM"**

20 15. Unsolicited commercial e-mail is often referred to as "spam." The
21 transmission of spam, a practice referred to as "spamming," by persons known as
22 "spammers," is widely condemned in the Internet community, and is of significant concern
23 and economic detriment to Microsoft and its customers.

24 16. By using the Internet to send commercial e-mail messages, spammers not only
25 obtain significant cost savings, but impose significant economic burdens on ISPs such as
26 Microsoft. Although it costs very little for a spammer to transmit innumerable e-mail

1 messages, handling the enormous volume of e-mail initiated by spammers places a
2 tremendous burden on Microsoft.

3 17. Microsoft's computers and computer systems are designed and created solely
4 for the benefit and the non-commercial personal use of its customers. The computers and
5 computer systems have finite capacity and are not designed to accommodate innumerable
6 mass mailings from spammers. Microsoft has been required to expend substantial amounts
7 for new equipment to handle the mass mailings by spammers.

8 18. Spamming also can and does result in the degradation and disruption of
9 Microsoft's computers and computer systems. Spam demands storage space and processing
10 capacity of Microsoft's computers and computer systems, making those resources unavailable
11 to serve the legitimate needs of Microsoft's customers. The diversion of these resources from
12 processing authorized e-mail impairs the normal operation of the computers and computer
13 systems. Therefore, the value of that equipment is diminished by spamming.

14 19. Spamming also has significant impact on the recipients of spam. Individuals
15 who receive spam must take the time and effort to sort through larger volumes of received e-
16 mail, must attempt to distinguish spam from legitimate e-mail, and ultimately discard this
17 unsolicited material. In an effort to mislead e-mail recipients and to make it more difficult for
18 them to identify and discard these unsolicited advertisements, spammers frequently use
19 deceptive methods, such as using a false or misleading information in the e-mail headers and
20 subject lines. When a spammer uses deceptive information to disguise spam as legitimate
21 personal or business e-mail, it causes additional inconvenience and frustration to spam
22 recipients.

23 20. Spam frequently involves products or services of questionable value, or
24 materials of an adult or pornographic nature. Unsolicited advertisements for such products or
25 services, often disguised, are a particularly obtrusive form of spam and are often the subject of
26 customer complaints.

1 21. Spammers know that their bulk e-mailing practices inevitably lead to a
2 significant portion of their e-mail being undeliverable. When an e-mail message is
3 undeliverable, additional e-mail messages (“bounce-back messages”) are generated to advise
4 the sender and the ISP of this fact. Rather than have their own computer equipment burdened
5 with voluminous bounce-back messages, spammers craft their messages to direct the bounce-
6 back messages to others. Thus, a spammer who sends spam by using a MSN or MSN
7 Hotmail return address can be assured that the inevitable, innumerable bounce-back messages
8 will be returned to that address, not to the spammer’s own computer system. This adds to
9 Microsoft’s burdens, as its computers must process and store the bounce-back messages from
10 these spam mailings.

11 22. In an attempt to protect itself and its customers from spam, Microsoft has
12 expended significant resources to developing technologies and practices to prevent its
13 subscribers from sending or receiving spam. Spammers, however, continue to adopt practices
14 and technological devices to evade Microsoft’s technologies and to frustrate Microsoft’s
15 efforts.

16 23. In passing the Commercial Electronic Mail Act, RCW Ch. 19.190, in 1998,
17 Washington became one of the first states to regulate spam. The legislature has recognized
18 that the spamming practices prohibited by the Act are “matters vitally affecting the public
19 interests” and are unfair and deceptive practices which impact Washington businesses and
20 consumers.

21 24. Microsoft has invested substantial time and money in efforts to disassociate
22 itself from spam and the spammers who promote and profit from spam, as well as in seeking
23 to protect its registered users worldwide from receiving spam.

24 25. Microsoft has a clearly articulated policy prohibiting the use of its services for
25 junk email, spamming, or any unsolicited messages (commercial or otherwise). Microsoft’s
26 policies also prohibit automated queries of any sort, harvesting or collection of e-mail

1 addresses, and any use of the services that is not personal and non-commercial. These
2 policies are included in the Terms of Use for MSN and MSN Hotmail, which can be accessed
3 via a clearly marked link on www.msn.com, as well as on the home pages for each of the
4 services.

5 **V. DEFENDANTS' UNLAWFUL CONDUCT**

6 26. Microsoft is informed and believes, and on that basis alleges, that defendants
7 have been—and are currently involved in—widespread spamming by sending misleading,
8 deceptive, and unsolicited commercial email to MSN Hotmail account holders.

9 27. Microsoft is informed and believes, and on the basis alleges, that its MSN
10 Hotmail service has received millions of unsolicited e-mail messages from defendants.

11 28. Many of those e-mail messages purport to originate from the domains
12 hotmail.com and msn.com, when, in fact, they originated from defendants' domains.
13 Defendants did not have permission to use Microsoft's hotmail.com or msn.com domain
14 names.

15 29. Many of defendants' commercial e-mails use the domain names Yahoo.com,
16 AOL.com, Juno.com, and IBM.com. Microsoft is informed and believes, and on that basis
17 alleges, that defendants did not have permission to use those domain names.

18 30. Many of those e-mail messages contain random characters in place of the
19 sending domain name, thereby obscuring the point of origin and transmission path of the e-
20 mail.

21 31. Many of those e-mail messages contain false and misleading subject lines
22 including, but not limited to: "Hello . . .," "Re: Hello . . .," "Hey . . .," "Re: Hey . . .," "Oh . .
23 .," "Wow . . .," and "Yes . . ."

24 32. As a result of the defendants' actions, Microsoft's computer equipment and
25 servers were required to process millions of improper spam e-mails. These e-mails threaten to
26 delay and otherwise adversely affect MSN Hotmail subscribers in sending and receiving

1 legitimate e-mail, and have resulted in and continue to result in significant costs to Microsoft.
2 Additionally, defendants' illegitimate spam campaign has resulted in complaints by the
3 recipients of defendants' spam.

4 **COUNT I**
5 **(Trespass to Chattels)**

6 33. Microsoft realleges and incorporates by this reference each and every
7 allegation set forth in paragraphs 1 through 32 above.

8 34. The computers, computer networks and computer services that constitute
9 Microsoft's MSN Hotmail e-mail system are the personal property of Microsoft.

10 35. Defendants were aware that their actions were specifically prohibited by
11 Microsoft's Terms of Service and/or were on notice that their actions were not authorized by
12 Microsoft in any way.

13 36. Defendants have knowingly, intentionally and without authorization used and
14 intentionally trespassed upon Microsoft's property.

15 37. As a result of defendants' actions, Microsoft has been damaged in an amount
16 to be proven at trial.

17 **COUNT II**
18 **(Conversion)**

19 38. Microsoft realleges and incorporates by this reference each and every
20 allegation set forth in paragraphs 1 through 37 above.

21 39. Defendants have willfully interfered with and converted Microsoft's personal
22 property, without lawful justification, as a result of which Microsoft has been deprived of
23 possession and use of its property.

24 40. As a result of defendants' actions, Microsoft has been damaged in an amount
25 to be proven at trial.
26

1 **COUNT III**
2 **(Violation of the Washington Commercial Electronic Mail Act (RCW Ch. 19.190) and**
3 **the Washington Consumer Protection Act (RCW Ch. 19.86))**

4 41. Microsoft realleges and incorporates by this reference each and every
5 allegation set forth in paragraphs 1 through 40 above.

6 42. Defendants initiated the transmission, conspired with one another to initiate the
7 transmission, or assisted in the transmission of commercial e-mail messages from a computer
8 located in Washington and/or to an e-mail address that they knew, or had reason to know, is
9 held by a Washington resident. Those commercial e-mail messages:

10 a) used Microsoft's or another third party's internet domain names without
11 permission;

12 b) misrepresented or obscured information identifying the point of origin or the
13 transmission path of a commercial electronic e-mail message; or

14 c) contained false or misleading information in the subject line.

15 43. As a result of defendants' actions, Microsoft has been damaged in an amount
16 to be proven at trial.

17 44. Defendants' actions violated RCW § 19.190.020, and entitle Microsoft to
18 actual damages or statutory damages of \$1,000 per email, whichever is greater.

19 45. Defendants' actions affected the public interest, are unfair or deceptive acts in
20 trade or commerce and unfair methods of competition, and violated the Washington
21 Consumer Protection Act, RCW Ch. 19.86. Microsoft is entitled to treble damages and an
22 award of its attorneys' fees and costs under that Act.

23 **COUNT IV**
24 **(Violation of the federal Computer Fraud and Abuse Act – 18 U.S.C. § 1030(a)(4), (g))**

25 46. Microsoft realleges and incorporates by this reference each and every
26 allegation set forth in paragraphs 1 through 45 above.

1 47. By the actions alleged above, defendants knowingly and with intent to defraud,
2 accessed Microsoft's protected computer system, without authorization and/or in excess of
3 authorized access.

4 48. By the actions alleged above, defendants furthered the intended fraud and
5 obtained unauthorized use of Microsoft's protected computer system, and the value of that use
6 exceeds more than \$5,000 in any 1-year period.

7 49. Defendants' activity constitutes a violation of the federal Computer Fraud and
8 Abuse Act, 18 U.S.C. § 1030(a)(4), and Microsoft is entitled to damages under that Act.
9 Microsoft is also entitled under the Act to injunctive and equitable relief against defendants.

10 **COUNT V**
11 **(Violation of the federal Computer Fraud and Abuse Act – 18 U.S.C. § 1030(a)(5), (g))**

12 50. Microsoft realleges and incorporates by this reference each and every
13 allegation set forth in paragraphs 1 through 49 above.

14 51. By the actions alleged above, defendants intentionally and knowingly accessed
15 Microsoft's protected computer system, and knowingly caused the transmission of a program,
16 information, code, or command, without authorization and/or in excess of authorized access.

17 52. By the actions alleged above, defendants intentionally caused damage, without
18 authorization, to Microsoft's protected computer system, and the aggregate loss resulting
19 therefrom exceeds at least \$5,000 in value.

20 53. Defendants' activity constitutes a violation of the federal Computer Fraud and
21 Abuse Act, 18 U.S.C. § 1030(a)(5), and Microsoft is entitled to damages under that Act.
22 Microsoft is also entitled under the Act to injunctive and equitable relief against defendants.

23 **COUNT VI**
24 **(Violation of the Lanham Act – 15 U.S.C. § 1125(a))**

25 54. Microsoft realleges and incorporates by this reference each and every
26 allegation set forth in paragraphs 1 through 53 above.

1 55. Defendants used the designations "msn.com" and "hotmail.com," which
2 incorporate Microsoft's registered trademarks and service marks and which are words, terms,
3 names, or combinations thereof, or false designations of origin, or false or misleading
4 descriptions or representations of fact.

5 56. Defendants' activities involved interstate commerce in connection with goods
6 and services.

7 57. Defendants' conduct is likely to cause confusion, mistake, or deception as to
8 defendants' affiliations, connection, or association with Microsoft, or as to the origin,
9 sponsorship, or approval of their goods or services, or commercial activities.

10 58. Microsoft has been damaged by these acts in an amount to be proved at trial.
11 Microsoft is also entitled under the Act to injunctive and equitable relief against defendants.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Microsoft respectfully requests that the Court enter judgment against
14 defendants, jointly and severally, as follows:

15 1. That the Court issue temporary and permanent injunctive relief against
16 defendants, and that defendants, their officers, agents, representatives, servants, employees,
17 attorneys, successors and assignees, and all others in active concert or participation with
18 defendants, be enjoined and restrained from:

- 19 a) establishing any accounts with Microsoft's MSN or MSN Hotmail
20 services;
- 21 b) using Microsoft's computers and computer systems in connection with
22 sending commercial e-mail messages;
- 23 c) making unauthorized use of Microsoft's computers and computer
24 systems;
- 25 d) continuing to violate Microsoft's Terms of Service;
- 26 e) continuing to violate the Washington Commercial Electronic Mail Act;

1 f) continuing falsely to designate Microsoft as the origin of its e-mails;
2 and

3 g) assisting, aiding, or abetting any other person or business entity in
4 engaging in or performing any of the activities referred to in subparagraphs a) through
5 f) above.

6 2. That the Court award Microsoft actual damages, liquidated damages and
7 statutory damages, in amount to be proven at trial;

8 3. That the Court award Microsoft its attorneys' fees and costs incurred herein;
9 and

10 4. That the Court grant Microsoft such other or additional relief as is just and
11 proper.

12 DATED this 12th day of June, 2003.

13 PRESTON GATES & ELLIS LLP

14
15 By 

16 David A. Bateman, WSBA # 14262
17 Robert J. Dzielak, WSBA #26178
18 Theodore J. Angelis, WSBA #30300

19 Attorneys for Plaintiff
20 Microsoft Corporation
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22
23
24
25
26