

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

MICROSOFT CORPORATION, a  
Washington corporation,  
  
Plaintiff,  
  
v.  
  
RHC DIRECT LLC and JOHN DOES 1-20,  
  
Defendants.

No. **03-2-27983-8SEA**  
COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF

Plaintiff Microsoft Corporation ("Microsoft") brings this action against RHC DIRECT LLC 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, and the federal Computer Fraud and Abuse Act (18 U.S.C. § 1030(a)). Microsoft seeks damages and injunctive relief to remedy defendants' unauthorized use of Microsoft's computers, computer systems and to send millions of misleading and deceptive unsolicited commercial e-mail messages, or "spam," in violation of Microsoft's policies and state and federal law.



1 otherwise encouraged, and are actions for which each defendant is liable. Each defendant  
2 aided and abetted the actions of the defendants set forth below, in that each defendant had  
3 knowledge of those actions, provided assistance and benefited from those actions, in whole or  
4 in part. Each of the defendants was the agent of each of the remaining defendants, and in  
5 doing the things hereinafter alleged, was acting within the course and scope of such agency  
6 and with the permission and consent of other defendants.

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

8 8. Microsoft owns and operates interactive computer services that enable its  
9 customers to, among other things, access the Internet and exchange electronic mail ("e-mail")  
10 on the Internet. Microsoft owns and maintains computers and other equipment, including  
11 specialized computers or "servers" that process e-mail messages and otherwise support its e-  
12 mail services. Microsoft maintains this equipment in Washington and California, among  
13 other states. E-mail sent to and from Microsoft's customers is processed through and stored  
14 on these computers. Microsoft is an internet service provider ("ISP"), is an "interactive  
15 computer service" as defined by RCW 19.190.010. Microsoft's computers and computer  
16 systems are "protected computers" under the federal Computer Fraud and Abuse Act, 18  
17 U.S.C. § 1030(e)(2).

18 9. One of Microsoft's services is "MSN Hotmail" which provides free and  
19 subscription based email on the Internet through a web-based e-mail service that can be  
20 accessed at [www.hotmail.com](http://www.hotmail.com). MSN Hotmail allows account-holders to exchange e-mail  
21 messages with any other e-mail user who has an Internet e-mail address throughout the world.  
22 MSN Hotmail has millions of registered accounts, whose users all have unique e-mail  
23 addresses ending in "@hotmail.com."

24 10. Another of Microsoft's services is "MSN Internet Access" (referred to herein  
25 as "MSN") which provides free and subscription-based e-mail services that can be accessed  
26 on the web or via Microsoft's proprietary network. MSN allows account-holders to exchange

1 e-mail messages with any other e-mail user who has an Internet e-mail address throughout the  
2 world. MSN Has millions of registered accounts, whose users all have unique e-mail  
3 addresses ending in "@msn.com."

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

5 11. Unsolicited commercial e-mail is often referred to as "spam." The  
6 transmission of spam, a practice referred to as "spamming," by persons known as  
7 "spammers," is widely condemned in the Internet community, and is of significant concern  
8 and economic detriment to Microsoft and its customers.

9 12. By using the Internet to send commercial e-mail messages, spammers not only  
10 obtain significant cost savings, but impose significant economic burdens on ISPs such as  
11 Microsoft. Although it costs very little for a spammer to transmit innumerable e-mail  
12 messages, handling the enormous volume of e-mail initiated by spammers places a  
13 tremendous burden on Microsoft.

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

19 14. Spamming also can and does result in the degradation and disruption of  
20 Microsoft's computers and computer systems. Spam demands storage space and processing  
21 capacity of Microsoft's computers and computer systems, making those resources unavailable  
22 to serve the legitimate needs of Microsoft's customers. The diversion of these resources from  
23 processing authorized e-mail impairs the normal operation of the computers and computer  
24 systems. Therefore, the value of that equipment is diminished by spamming.

25 15. Spamming also has significant impact on the recipients of spam. Individuals  
26 who receive spam must take the time and effort to sort through larger volumes of received e-

1 mail, must attempt to distinguish spam from legitimate e-mail, and ultimately discard this  
2 unsolicited material. In an effort to mislead e-mail recipients and to make it more difficult for  
3 them to identify and discard these unsolicited advertisements, spammers frequently use  
4 deceptive methods, such as using a false or misleading information in the e-mail subject lines.  
5 When a spammer uses a deceptive subject line to disguise spam as legitimate personal or  
6 business e-mail, it causes additional inconvenience and frustration to spam recipients.

7 16. Spam frequently involves products or services of questionable value, or  
8 materials of an adult or pornographic nature. Unsolicited advertisements for such products or  
9 services, often disguised, are a particularly obtrusive form of spam and are often the subject of  
10 customer complaints.

11 17. Spammers know that their bulk e-mailing practices inevitably lead to a  
12 significant portion of their e-mail being undeliverable. When an e-mail message is  
13 undeliverable, additional e-mail messages ("bounce-back messages") are generated to advise  
14 the sender and the ISP of this fact. Rather than have their own computer equipment burdened  
15 with voluminous bounce-back messages, spammers craft their messages to direct the bounce-  
16 back messages to others. Thus, a spammer who sends spam by using a MSN or MSN  
17 Hotmail return address can be assured that the inevitable, innumerable bounce-back messages  
18 will be returned to that address, not to the spammer's own computer system. This adds to  
19 Microsoft's burdens, as its computers must process and store the bounce-back messages from  
20 these spam mailings.

21 18. In an attempt to protect itself and its customers from spam, Microsoft has  
22 expended significant resources to developing technologies and practices to prevent its  
23 subscribers from sending or receiving spam. Spammers, however, continue to adopt practices  
24 and technological devices to evade Microsoft's technologies and to frustrate Microsoft's  
25 efforts.



1 to delay and otherwise adversely affect MSN Hotmail subscribers in sending and receiving  
2 legitimate e-mail, and have resulted in and continue to result in significant costs to Microsoft.  
3 Additionally, defendants' illegitimate spam campaign has resulted in complaints by the  
4 recipients of defendants' spam.

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

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

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

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

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

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

18 **COUNT II**  
19 **(Conversion)**

20 31. Microsoft realleges and incorporates by this reference each and every  
21 allegation set forth in paragraphs 1 through 30 above.

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

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

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 34. Microsoft realleges and incorporates by this reference each and every  
5 allegation set forth in paragraphs 1 through 33 above.

6 35. 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 true 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 36. As a result of defendants' actions, Microsoft has been damaged in an amount  
16 to be proven at trial.

17 37. 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 38. 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 39. Microsoft realleges and incorporates by this reference each and every  
26 allegation set forth in paragraphs 1 through 38 above.



1 **PRAYER FOR RELIEF**

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

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

8 a) establishing any accounts with Microsoft's MSN or MSN Hotmail  
9 services;

10 b) using Microsoft's computers and computer systems in connection with  
11 sending commercial e-mail messages;

12 c) making unauthorized use of Microsoft's computers and computer  
13 systems;

14 d) continuing to violate Microsoft's Terms of Service;

15 e) continuing to violate the Washington Commercial Electronic Mail Act;  
16 and

17 f) assisting, aiding, or abetting any other person or business entity in  
18 engaging in or performing any of the activities referred to in subparagraphs a) through  
19 e) above.

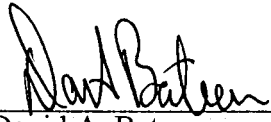
20 2. That the Court award Microsoft actual damages, liquidated damages and  
21 statutory damages, in amount to be proven at trial;

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

24 4. That the Court grant Microsoft such other or additional relief as is just and  
25 proper.  
26

1 DATED this 12<sup>th</sup> day of June, 2003.

2 PRESTON GATES & ELLIS LLP

3  
4 By   
5 David A. Bateman, WSBA # 14262  
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