

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

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

ROCKIN TIME HOLDINGS, INC., a
Florida corporation, and JOHN DOES 1-20
d/b/a RTH, Inc.,
BEEFUPYOURPENIS.COM, MAX-
GIRTH.COM and
TREMENDOUSPENIS.COM

Defendants.

No. **03-2-27977-3 SEA**
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COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

Plaintiff Microsoft Corporation ("Microsoft") brings this action against ROCKIN
TIME HOLDINGS, INC., and JOHN DOES 1-20 d/b/a RTH, INC.,
BEEFUPYOURPENIS.COM, MAX-GIRTH.COM and TREMENDOUSPENIS.COM.

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
Lanham Act (15 U.S.C. § 1125). Microsoft seeks damages and injunctive relief to remedy

1 defendants' unauthorized use of Microsoft's computers, computer systems and trademarks to
2 send millions of misleading and deceptive unsolicited commercial e-mail messages, or
3 "spam," in violation of Microsoft's policies and state and federal law.

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

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

11 **II. THE PARTIES**

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

14 5. Defendant ROCKIN TIME HOLDINGS, INC. is a Florida corporation, which
15 does business in the State of Washington.

16 6. Microsoft is unaware of the true names and capacities of defendants sued
17 herein as DOES 1 - 20, inclusive, and therefore sues these defendants by such fictitious
18 names. Microsoft will amend this complaint to allege their true names and capacities when
19 ascertained. ROCKIN TIME HOLDINGS, INC. and DOES 1 - 20 do business as RTH, Inc.,
20 and own or operate the internet websites WWW.BEEFUPYOURPENIS.COM, WWW.MAX-
21 GIRTH.COM and WWW.TREMENDOUSPENIS.COM. Microsoft is informed and believes
22 and therefore alleges that each of the fictitiously named defendants is responsible in some
23 manner for the occurrences herein alleged, and that Microsoft's injuries as herein alleged
24 were proximately caused by such defendants.

25 7. The actions alleged herein to have been undertaken by the defendants were
26 undertaken by each defendant individually, were actions that each defendant caused to occur,

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

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

10 8. Microsoft owns and operates interactive computer services that enable its
11 customers to, among other things, access the Internet and exchange electronic mail ("e-mail")
12 on the Internet. Microsoft owns and maintains computers and other equipment, including
13 specialized computers or "servers" that process e-mail messages and otherwise support its e-
14 mail services. Microsoft maintains this equipment in Washington and California, among
15 other states. E-mail sent to and from Microsoft's customers is processed through and stored
16 on these computers. Microsoft is an internet service provider ("ISP"), and is an "interactive
17 computer service" as defined by RCW § 19.190.010. Microsoft's computers and computer
18 systems are "protected computers" under federal Computer Fraud and Abuse Act, 18 U.S.C.
19 § 1030(e)(2).

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

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

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

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

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

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

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

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

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

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

1 18. In an attempt to protect itself and its customers from spam, Microsoft has
2 expended significant resources to developing technologies and practices to prevent its
3 subscribers from sending or receiving spam. Spammers, however, continue to adopt practices
4 and technological devices to evade Microsoft's technologies and to frustrate Microsoft's
5 efforts.

6 19. In passing the Commercial Electronic Mail Act, RCW Ch. 19.190, in 1998,
7 Washington became one of the first states to regulate spam. The legislature has recognized
8 that the spamming practices prohibited by the Act are "matters vitally affecting the public
9 interests" and are unfair and deceptive practices which impact Washington businesses and
10 consumers.

11 20. Microsoft has invested substantial time and money in efforts to disassociate
12 itself from spam and the spammers who promote and profit from spam, as well as in seeking
13 to protect its registered users worldwide from receiving spam.

14 21. Microsoft has a clearly articulated policy prohibiting the use of its services for
15 junk email, spamming, or any unsolicited messages (commercial or otherwise). Microsoft's
16 policies also prohibit automated queries of any sort, harvesting or collection of e-mail
17 addresses, and any use of the services that is not personal and non-commercial. These
18 policies are included in the Terms of Use for MSN and MSN Hotmail, which can be accessed
19 via a clearly marked link on www.msn.com, as well as on the home pages for each of the
20 services.

21 **V. DEFENDANTS' UNLAWFUL CONDUCT**

22 22. Microsoft is informed and believes, and on that basis alleges, that defendants
23 have been—and are currently involved in—widespread spamming by sending misleading,
24 deceptive and unsolicited commercial email to MSN Hotmail account holders.
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1 23. Microsoft is informed and believes, and on the basis alleges, that its MSN
2 Hotmail service has received millions of unsolicited e-mail messages from defendants
3 advertising products for penis enlargement.

4 24. Many of those e-mail messages purport to originate from the domains
5 hotmail.com and msn.com, when, in fact, they originated from defendants' domains.
6 Defendants did not have permission to use Microsoft's hotmail.com or msn.com domain
7 names.

8 25. Many of defendants' commercial e-mails use the domain names of other
9 internet service providers. Microsoft is informed and believes, and on that basis alleges, that
10 defendants did not have permission to use those domain names.

11 26. Many of those e-mail messages contain random characters as part of the
12 sending email address, thereby obscuring the point of origin and transmission path of the e-
13 mail.

14 27. Many of those e-mail messages contain false or misleading "From" lines. By
15 placing false names or random characters in place of the name of the true sender, defendants
16 obscure the point of origin and transmission path of the e-mail.

17 28. Many of those e-mail messages contain false and misleading subject lines,
18 comprised of random characters or text, such as "Info: P Yy x DZMHM."

19 29. As a result of the defendants' actions, Microsoft's computer equipment and
20 servers were required to process millions of improper spam e-mails. These e-mails threaten to
21 delay and otherwise adversely affect MSN Hotmail subscribers in sending and receiving
22 legitimate e-mail, and have resulted in and continue to result in significant costs to Microsoft.
23 Additionally, defendants' illegitimate spam campaign has resulted in complaints by the
24 recipients of defendants' spam.

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**COUNT I
(Trespass to Chattels)**

30. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 29 above.

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

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

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

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

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**COUNT II
(Conversion)**

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

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

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

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

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

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

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

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

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

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

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

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

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

20 43. Microsoft realleges and incorporates by this reference each and every
21 allegation set forth in paragraphs 1 through 42 above.

22 44. By the actions alleged above, defendants knowingly and with intent to defraud,
23 accessed Microsoft's protected computer system, without authorization and/or in excess of
24 authorized access.
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1 53. Defendants' activities involved interstate commerce in connection with goods
2 and services.

3 54. Defendants' conduct is likely to cause confusion, mistake, or deception as to
4 defendants' affiliations, connection, or association with Microsoft, or as to the origin,
5 sponsorship, or approval of their goods or services, or commercial activities.

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

8 **PRAYER FOR RELIEF**

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

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

15 a) establishing any accounts with Microsoft's MSN or MSN Hotmail
16 services;

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

19 c) making unauthorized use of Microsoft's computers and computer
20 systems;

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

22 e) continuing to violate the Washington Commercial Electronic Mail Act
23 or the Lanham Act;

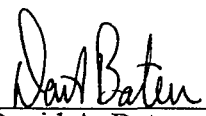
24 f) assisting, aiding, or abetting any other person or business entity in
25 engaging in or performing any of the activities referred to in subparagraphs a) through
26 e) above.

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- 2. That the Court award Microsoft actual damages, liquidated damages and statutory damages, in amount to be proven at trial;
- 3. That the Court award Microsoft its attorneys' fees and costs incurred herein; and
- 4. That the Court grant Microsoft such other or additional relief as is just and proper.

DATED this 12th day of June, 2003.

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