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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.

EMAIL GOLD, INC., a foreign corporation;  
LINDA JEAN LIGHTFOOT; EDDIE  
DAVIS; NETGOLD, INC., a foreign  
corporation; and JOHN DOES 1-20,  
  
Defendants.

No. **03-2-27082-0 SEA**  
COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF

Plaintiff Microsoft Corporation ("Microsoft") brings this action against EMAIL  
GOLD, INC., LINDA LIGHTFOOT, EDDIE DAVIS, NETGOLD, INC., 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)), the Lanham  
Act (15 U.S.C. § 1125), and the Ohio Electronic Mail Advertisements Act (R.C. Ohio  
§ 2307.64). Microsoft seeks damages and injunctive relief to remedy defendants'

1 unauthorized use of Microsoft's computers and computer systems to send millions of  
2 misleading and deceptive unsolicited commercial e-mail messages, or "spam," in violation of  
3 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. Microsoft is informed, and upon that basis alleges, THAT EMAIL GOLD,  
15 INC., is a foreign business entity that does business under that and other fictitious names.

16 6. Microsoft is informed, and upon that basis alleges, that defendant LINDA  
17 JEAN LIGHTFOOT is a resident of Ohio, who does business under the names Email Gold  
18 Inc., Netgold, Inc., and under other fictitious names.

19 7. Microsoft is informed, and upon that basis alleges, that defendant EDDIE  
20 DAVIS is a resident of Ohio, who does business under the names Email Gold Inc., Netgold,  
21 Inc., and under other fictitious names.

22 8. Microsoft is informed, and on that basis alleges, that defendant NETGOLD,  
23 INC., is a foreign business entity that does business under that and other fictitious names.

24 9. Microsoft is unaware of the true names and capacities of defendants sued  
25 herein as DOES 1 - 20, inclusive, and therefore sues these defendants by such fictitious  
26 names. Microsoft will amend this complaint to allege their true names and capacities when

1 ascertained. Microsoft is informed and believes and therefore alleges that each of the  
2 fictitiously named defendants is responsible in some manner for the occurrences herein  
3 alleged, and that Microsoft's injuries as herein alleged were proximately caused by such  
4 defendants. These fictitiously named defendants, along with Email Gold, Inc., Linda Jean  
5 Lightfoot, Eddie Davis, and Netgold, Inc., are herein referred to collectively as "defendants."

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

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

17 11. Microsoft owns and operates interactive computer services that enable its  
18 customers to, among other things, access the Internet and exchange electronic mail ("e-mail")  
19 on the Internet. Microsoft owns and maintains computers and other equipment, including  
20 specialized computers or "servers" that process e-mail messages and otherwise support its e-  
21 mail services. Microsoft maintains this equipment in Washington and California, among  
22 other states. E-mail sent to and from Microsoft's customers is processed through and stored  
23 on these computers. Microsoft is an internet service provider ("ISP"), is an "interactive  
24 computer service," as defined by RCW § 19.190.010, and is an "electronic mail service  
25 provider," as defined by R.C. Ohio § 2307.64(A)(7). Microsoft's computers and computer  
26

1 systems are "protected computers" under the federal Computer Fraud and Abuse Act, 18  
2 U.S.C. § 1030(e)(2).

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

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

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

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

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

25 16. Microsoft's computers and computer systems are designed and created solely  
26 for the benefit and the non-commercial personal use of its customers. The computers and

1 computer systems have finite capacity and are not designed to accommodate innumerable  
2 mass mailings from spammers. Microsoft has been required to expend substantial amounts  
3 for new equipment to handle the mass mailings by spammers.

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

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

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

23 20. Spammers know that their bulk e-mailing practices inevitably lead to a  
24 significant portion of their e-mail being undeliverable. When an e-mail message is  
25 undeliverable, additional e-mail messages ("bounce-back messages") are generated to advise  
26 the sender and the ISP of this fact. Rather than have their own computer equipment burdened

1 with voluminous bounce-back messages, spammers craft their messages to direct the bounce-  
2 back messages to others. Thus, a spammer who sends spam by using a MSN or MSN  
3 Hotmail return address can be assured that the inevitable, innumerable bounce-back messages  
4 will be returned to that address, not to the spammer's own computer system. This adds to  
5 Microsoft's burdens, as its computers must process and store the bounce-back messages from  
6 these spam mailings.

7 21. In an attempt to protect itself and its customers from spam, Microsoft has  
8 expended significant resources to developing technologies and practices to prevent its  
9 subscribers from sending or receiving spam. Spammers, however, continue to adopt practices  
10 and technological devices to evade Microsoft's technologies and to frustrate Microsoft's  
11 efforts.

12 22. In passing the Commercial Electronic Mail Act, RCW Ch. 19.190, in 1998,  
13 Washington became one of the first states to regulate spam. The legislature has recognized  
14 that the spamming practices prohibited by the Act are "matters vitally affecting the public  
15 interests" and are unfair and deceptive practices which impact Washington businesses and  
16 consumers.

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

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



1  
2 30. Defendants have used these underhanded techniques to send spam to MSN and  
3 MSN Hotmail. Microsoft is informed and believes, and on that basis alleges, that its MSN  
4 Hotmail service has received millions of unsolicited e-mail messages from defendants.

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

9 32. Many of defendants' commercial e-mails use third-parties' domain names,  
10 such as AOL.com and Yahoo.com. Microsoft is informed and believes, and on that basis  
11 alleges, that defendants did not have permission to use those domain names.

12 33. Many of defendants' commercial e-mails purport to originate from domains in  
13 Brunei Darussalam and Switzerland, even though the e-mail messages originate from  
14 computers within the United States. Microsoft is informed and believes, and on that basis  
15 alleges, that defendants did not have permission to use the those domain names.

16 34. Defendants have misrepresented and obscured the point of origin of their e-  
17 mail messages by inserting random characters and by otherwise obscuring the name of the  
18 sending domain.

19 35. On April 23, 2003, Microsoft sent defendant Email Gold, Inc., a letter, by  
20 certified mail return receipt, demanding that they immediately cease and desist all violations  
21 of Microsoft's Anti-Spam Policies. Defendant Lightfoot signed for the letter on April 28,  
22 2003, but defendants thereafter continued to send unsolicited commercial e-mail to MSN  
23 Hotmail and MSN.

24 36. 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 37. Microsoft realleges and incorporates by this reference each and every  
7 allegation set forth in paragraphs 1 through 36 above.

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

10 39. 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 40. Defendants' knowledge of Microsoft's Terms of Service was reinforced by a  
14 letter dated April 23, 2003, informing defendants of their violations of Microsoft's Terms of  
15 Service and Anti-Spam Policy and demanding that they immediately cease and desist all  
16 violations of the Terms of Use and Anti-Spam Policy.

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

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

21 **COUNT II**  
22 **(Conversion)**

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

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

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

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

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

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

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

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

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

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

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

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

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

3 51. Microsoft realleges and incorporates by this reference each and every  
4 allegation set forth in paragraphs 1 through 50 above.

5 52. By the actions alleged above, defendants knowingly and with intent to defraud,  
6 accessed Microsoft's protected computer system, without authorization and/or in excess of  
7 authorized access.

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

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

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

16 55. Microsoft realleges and incorporates by this reference each and every  
17 allegation set forth in paragraphs 1 through 54 above.

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

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

24 58. Defendants' activity constitute a violation of the federal Computer Fraud and  
25 Abuse Act, 18 U.S.C. § 1030(a)(5), and Microsoft is entitled to damages under that Act.  
26 Microsoft is also entitled under the Act to injunctive and equitable relief against defendants.

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

3 59. Microsoft realleges and incorporates by this reference each and every  
4 allegation set forth in paragraphs 1 through 58 above.

5 60. Defendants used the designation “Hotmail.com,” which incorporate  
6 Microsoft’s registered trademark and service mark and which are words, terms, names, or  
7 combinations thereof, or false designations of origin, or false or misleading descriptions or  
8 representations of fact.

9 61. Defendants’ activities involved interstate commerce in connection with goods  
10 and services.

11 62. Defendants’ conduct is likely to cause confusion, mistake, or deception as to  
12 defendants’ affiliations, connection, or association with Microsoft, or as to the origin,  
13 sponsorship, or approval of their goods or services, or commercial activities.

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

16 **COUNT VII**  
17 **(Violation of the Ohio Electronic Mail Advertisements Act – R.C. Ohio § 2307.64)**

18 64. Microsoft realleges and incorporates by this reference each and every  
19 allegation set forth in paragraphs 1 through 63 above.

20 65. Many of defendants’ messages failed to include in the body of the message a  
21 clear and conspicuous recitation of their name and complete residence or business address and  
22 the electronic mail address of the person transmitting the electronic mail advertisement.

23 66. Many of defendants’ messages failed to include in the body of their unsolicited  
24 commercial e-mail messages—in the same size of type as the majority of the text of the  
25 message—a notice that the recipient may decline to receive any additional electronic mail  
26 advertisements and a detailed procedure for declining to receive any additional mail  
advertisements at no cost.

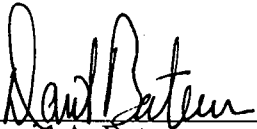


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3. That the Court award Microsoft its attorneys' fees and costs incurred herein;  
and  
4. That the Court grant Microsoft such other or additional relief as is just and proper.

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

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