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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.

GIANTLINKS, INC., a foreign corporation,
BCHC, INC. (F/K/A THE PLANETCLICK
HOLDING COMPANY), a Delaware
corporation, and JOHN DOES 1-20,

Defendants.

No. **03-2-27986-2 SEA**
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF.

Plaintiff Microsoft Corporation ("Microsoft") brings this action against
GIANTLINKS, INC., BCHC, INC. (F/K/A THE PLANETCLICK HOLDING CO.), 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

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF - 1

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1 unsolicited commercial e-mail messages, or "spam," in violation of Microsoft's policies and
2 state and federal law.

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

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

10 II. THE PARTIES

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

13 5. Microsoft is informed, and upon that basis alleges, that defendant
14 GIANTLINKS, INC. is a foreign corporation with its principal place of business in New
15 York.

16 6. Microsoft is informed, and upon that basis alleges, that defendant BCHC, INC.
17 (f/k/a THE PLANETCLICK HOLDING COMPANY) is a Delaware corporation with its
18 principal place of business in New York. BCHC, Inc. is the registrant of the domain
19 "giantlinks.com."

20 7. Microsoft is unaware of the true names and capacities of defendants sued
21 herein as DOES 1 - 20, inclusive, and therefore sues these defendants by such fictitious
22 names. Microsoft will amend this complaint to allege their true names and capacities when
23 ascertained. Microsoft is informed and believes and therefore alleges that each of the
24 fictitiously named defendants is responsible in some manner for the occurrences herein
25 alleged, and that Microsoft's injuries as herein alleged were proximately caused by such
26

1 defendants. These fictitiously named defendants, along with Giantlinks, Inc. and BCHC, Inc.,
2 are herein referred to as “defendants.”

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

13 **III. NATURE OF PLAINTIFF’S INTERNET E-MAIL SERVICES**

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

24 10. One of Microsoft’s services is “MSN Hotmail” which provides free and
25 subscription based email on the Internet through a web-based e-mail service that can be
26 accessed at www.hotmail.com. MSN Hotmail allows account-holders to exchange e-mail

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

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

10 **IV. THE NATURE OF UNSOLICITED E-MAIL OR “SPAM”**

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

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

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

25 15. Spamming also can and does result in the degradation and disruption of
26 Microsoft’s computers and computer systems. Spam demands storage space and processing

1 capacity of Microsoft's computers and computer systems, making those resources unavailable
2 to serve the legitimate needs of Microsoft's customers. The diversion of these resources from
3 processing authorized e-mail impairs the normal operation of the computers and computer
4 systems. Therefore, the value of that equipment is diminished by spamming.

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

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

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

1 19. 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 20. 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 21. 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 22. Microsoft has a clearly articulated policy prohibiting the use of its services for
15 junk e-mail, 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 23. 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.

25 24. Microsoft is informed and believes, and on that basis alleges, that its MSN
26 Hotmail service has received millions of unsolicited e-mail messages from defendants.

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

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

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

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

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

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

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

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

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

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

24 39. Defendants' actions affected the public interest, are unfair or deceptive acts in
25 trade or commerce and unfair methods of competition, and violated the Washington
26 Consumer Protection Act, RCW Ch. 19.86. Microsoft is entitled to treble damages and an
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 40. Microsoft realleges and incorporates by this reference each and every
4 allegation set forth in paragraphs 1 through 39 above.

5 41. 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 42. 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 43. 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 44. Microsoft realleges and incorporates by this reference each and every
17 allegation set forth in paragraphs 1 through 43 above.

18 45. 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 46. 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 47. Defendants' activity constitutes 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 **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 12th day of June, 2003.

2 PRESTON GATES & ELLIS LLP

3
4 By 
5 David A. Bateman, WSBA # 14262
6 Robert J. Dzielak, WSBA #26178
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