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Plaintiff Microsoft Corporation

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

03 - 4269 R VBKx

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

DANIEL KHOSHNOOD, an
individual;

POINTCOM, INC, a California
corporation;

JOSHUATHAN INVESTMENTS,
INC., a foreign corporation; and

JOHN DOES 1-10

Defendants.

Case No. _____

COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF

2003 JUN 16 PM 3:03
CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FILED

1 Plaintiff Microsoft Corporation (“Microsoft”) brings this action against
2 DANIEL KHOSHNOOD, POINTCOM, INC., JOSHUATHAN INVESTMENTS,
3 INC., and JOHN DOES 1-10.

4 I. JURISDICTION AND VENUE

5 1. This is a Complaint for violations of the Computer Fraud and Abuse Act
6 (18 U.S.C. § 1030), the Washington Commercial Electronic Mail Act (RCW Ch.
7 19.190) and Washington Consumer Protection Act (RCW Ch. 19.86), sections 32 and
8 43 of the Lanham Act, 15 U.S.C. § 1114(1) (Trademark Infringement), 15 U.S.C.
9 § 1125(a) (False Designation of Origin, Unfair Competition/False Advertising);
10 15 U.S.C. § 1125(d) (Cyberpiracy Prevention), for Unfair Business Practice arising
11 under RCW § 19.86.090, for breach of contract, and for common law trespass to
12 chattels and conversion.

13 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331
14 and 28 U.S.C. § 1338(a). The Court has supplemental jurisdiction over the state law
15 claims pursuant to 28 U.S.C. § 1367.

16 3. The Court has personal jurisdiction over defendants because they reside
17 in this district, have engaged in business activities in this district, and have initiated
18 tortious acts within the district.

19 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because
20 substantial part of the events or omissions giving rise to the claims pled herein
21 occurred in the Central District of California. In addition, on information and belief,
22 venue is proper in this district pursuant to 28 U.S.C. § 1391(d) as to defendant
23 Joshuathan Investments, Inc. in that this defendant is an alien residing in, located in,
24 or existing in Belize City, Belize.

25 II. THE PARTIES

26 5. Plaintiff Microsoft is a Washington corporation with its principal place
27 of business in Redmond, Washington.

28 6. Defendant Daniel Khoshnood (“Khoshnood”), is a California resident.

1 7. Defendant Pointcom, Inc. (“Pointcom”), is a California Corporation with
2 its principal place of business in Canoga Park, California.

3 8. Microsoft is informed and believes, and on that basis alleges, that
4 Defendant Joshuathan Investments, Inc., a/k/a Johuathan Investments, Inc.
5 (“Joshuathan”), is an organizational unit of defendant Pointcom, Inc., and is a name
6 under which defendant Pointcom.com does business. Joshuathan Investments, Inc.,
7 also lists a business address in Belize City, Belize.

8 9. Microsoft is unaware of the true names and capacities of defendants sued
9 herein as JOHN DOES 1 - 10 and therefore sues these defendants by such fictitious
10 names. Microsoft will amend this complaint to allege their true names and capacities
11 when ascertained. Microsoft is informed and believes and therefore alleges that each
12 of the fictitiously named defendants is responsible in some manner for the
13 occurrences herein alleged, and that Microsoft’s injuries as herein alleged were
14 proximately caused by such defendants. These fictitiously named defendants, along
15 with Daniel Khoshnood, Pointcom, Inc., and Joshuathan Investments, Inc., are herein
16 referred to collectively as “defendants.”

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

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

2 11. Microsoft owns and operates interactive computer services that enable
3 its customers to, among other things, access the Internet and exchange electronic mail
4 (“e-mail”) on the Internet. To provide these services, herinafter referred to as the
5 “MSN Services,” Microsoft owns and maintains computers and other equipment,
6 including specialized computers or “servers” that process e-mail messages and
7 otherwise support its MSN services. Microsoft maintains this equipment in
8 Washington and California, among other states. E-mail sent to and from Microsoft’s
9 customers is processed through and stored on these computers. Microsoft is an
10 internet service provider (“ISP”) and is an “interactive computer service” as defined
11 by RCW § 19.190.010. Microsoft’s computers and computer systems are “protected
12 computers” under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(e)(2).

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

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

26 **IV. MICROSOFT’S TRADEMARKS AND SERVICE MARKS**

27 14. Microsoft Corporation is a world leader in the market for software and
28 related products.

1 15. Since at least November 12, 1975, Microsoft has used, in commerce, the
2 trademark and service mark “MICROSOFT®” to promote its products and services.

3 16. On October 22, 1979, Microsoft’s predecessor applied for the
4 registration of the MICROSOFT trademark and service mark. United States
5 Trademark Registration No. 1200236 was issued on July 6, 1982. The MICROSOFT
6 trademark and service mark is also the subject of United States Trademark
7 Registration Nos. 1966382, 2250973, 2285870, among others. *See* Exhibit A.
8 Microsoft’s MICROSOFT trademark and service mark is broadly recognized as
9 identifying plaintiff Microsoft and its various products and services.

10 17. Since at least October 18, 1983, Microsoft has used, in commerce, the
11 trademark “WINDOWS®” to promote software products for personal computers and
12 related programs and services.

13 18. On August 20, 1990, Microsoft applied for the registration of its
14 WINDOWS trademark. United States Trademark Registration No. 1872264 was
15 issued on January 10, 1995. The WINDOWS trademark and service mark is also the
16 subject of United States Trademark Registration Nos. 2463509, 2463510, 2463526,
17 2513051, among others. *See* Exhibit B. Microsoft’s WINDOWS trademark and
18 service mark is broadly recognized as a brand identifier for Microsoft’s software for
19 personal computers and for related products and services.

20 19. Since at least July 2, 2001, Microsoft has used, in commerce, a
21 trademark and service mark consisting of a flag design, to promote a wide range of,
22 among other things, computer-related products and services (the “Flag Logo”).
23 Microsoft’s Flag Logo is composed of four red, blue, green and yellow squares, and
24 is prominently displayed by Microsoft in connection with its Windows computer
25 software products, including, without limitation, on the Windows home page located
26 at <http://www.microsoft.com/windows/default.mspx>.

27 20. On January 18, 2001, Microsoft applied for the registration of the flag
28 trademark and service mark. United States Trademark Registration No. 2696660 was

1 issued on March 11, 2003. Microsoft's flag trademark is also the subject of United
2 States Trademark Registration No. 2698734, and others, *see* Exhibit C, and is the
3 subject of pending applications. Microsoft's flag trademark and service mark is
4 broadly recognized as a brand identifier for Microsoft's products and services.

5 21. Since at least April 23, 1996, Microsoft has used, in commerce, a
6 trademark consisting of a stylized letter "e" to promote computer programs for
7 connecting to and searching the contents of computers and computer networks.

8 22. On May 3, 1996, Microsoft applied for the registration of this trademark.
9 United States Trademark Registration No. 2118982 was issued on December 9, 1997.
10 *See* Exhibit D. Microsoft's stylized "e" trademark and service mark is broadly
11 recognized as a brand identifier for Microsoft's software for connecting to and
12 searching the contents of computers and computer networks.

13 23. Since at least February 1, 1999, Microsoft has used, in commerce, a
14 trademark consisting of the stylized letter "e" within a rectangle, several partial
15 rectangles, and the words "Microsoft Internet Explorer," to promote computer
16 programs for connecting to and searching the contents of computers and computer
17 networks.

18 24. On March 18, 1999, Microsoft applied for the registration of this stylized
19 trademark. United States Trademark Registration No. 2470273 was issued on July
20 17, 2001. *See* Exhibit E. That trademark is broadly recognized as a brand identifier
21 for Microsoft's software for connecting to and searching the contents of computers
22 and computer networks.

23 25. Since at least 1994, Microsoft has used the trademark and service mark
24 "MICROSOFT INTERNET EXPLORER" to promote computer programs for
25 connecting to and searching the contents of computers and computer networks. The
26 MICROSOFT INTERNET EXPLORER trademark and service mark is broadly
27 recognized as a brand identifier for Microsoft's software for connecting to and
28 searching the contents of computers and computer networks.

1 26. Since at least February 14, 2000, Microsoft has used, in commerce, a
2 butterfly trademark and service mark to promote computer hardware and software as
3 well as electronic communications services, including, without limitation, its MSN
4 services.

5 27. On March 16, 2001, Microsoft applied for the registration of the
6 butterfly trademark. United States Trademark Registration No. 2613552 was issued
7 on August 27, 2002. The butterfly trademark and service mark is also the subject of
8 United States Trademark Registration Nos. 2625741, 2628781, 2629426, 2684124,
9 and others. *See* Exhibit F. The butterfly trademark and service mark is broadly
10 recognized as a brand identifier for Microsoft’s software and hardware products and
11 for electronic communications services, including, without limitation, the MSN
12 Services.

13 28. Since at least June 25, 1998, Microsoft has used, in commerce, the
14 trademark and service mark “WINDOWS UPDATE” to promote its service for
15 updating the WINDOWS products and services. The WINDOWS UPDATE
16 trademark and service mark is broadly recognized as a brand identifier for
17 Microsoft’s software updating its WINDOWS products and services.

18 29. The trademarks and service marks discussed above are collectively
19 referred to hereafter as “Microsoft’s trademarks and service marks.”

20 V. THE NATURE OF UNSOLICITED E-MAIL OR “SPAM”

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

25 31. By using the Internet to send unsolicited, mass quantities of commercial
26 e-mail messages, spammers not only obtain significant cost savings, but impose
27 significant economic burdens on ISPs such as Microsoft. Although it costs very little
28

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

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

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

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

26 35. Spam frequently involves products or services of questionable value, or
27 materials of an adult or pornographic nature. Unsolicited advertisements for such
28

1 products or services, often disguised, are a particularly obtrusive form of spam and
2 are often the subject of customer complaints.

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

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

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

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

23 VI. DEFENDANTS' UNLAWFUL CONDUCT

24 40. Since 1997, Microsoft has initiated legal action against, and has entered
25 into agreements with, defendant Khoshnood and related persons, in a continuing
26 attempt to stop him and those other persons from falsely implying that they are
27 associated with Microsoft.

28

1 A. Defendant Khoshnood’s Agreement To Cease All Activities Suggesting
2 an Association with Microsoft.

3 41. On July 10, 1997, defendant Daniel Khoshnood signed an agreement
4 with Microsoft, on behalf of himself and all persons and businesses under his control
5 or acting in concert with him.

6 42. Khoshnood, and the related persons and entities on whose behalf he
7 signed, agreed “[i]mmediately to cease and desist from using in any manner,
8 including as part of a domain name, all names, titles or trademarks associated with
9 Microsoft products or services, or any confusingly similar variation thereof.”

10 43. Khoshnood, and the related persons and entities on whose behalf he
11 signed, also agreed “[i]mmediately to cease all activities and endeavors which
12 suggest any association between Microsoft and themselves or any other domain
13 names they may have registered.”

14 44. The conduct that gives rise to this action violates the July 1997
15 agreement.

16 B. Defendants’ History of Cybersquatting.

17 45. On June 6, 2000, Microsoft filed a Complaint against Global Net 2000,
18 Inc., with the World Intellectual Property Organization (“WIPO”) Arbitration and
19 Mediation Center. The Complaint explained that defendant Khoshnood was related
20 to Global Net 2000, Inc., a California corporation, because he had represented that he
21 was its president, and he was listed as an officer in papers that Global Net 2000, Inc.
22 had filed with the California Secretary of State.

23 46. Microsoft’s Complaint alleged that Global Net 2000, Inc., had registered
24 domain names that were confusingly similar to Microsoft’s registered trademarks and
25 service marks and had done so in bad faith.

26 47. On July 25, 2000, the WIPO panel ruled that these domain names “were
27 both registered and are being used in bad faith,” and it ordered that those domain
28 names be transferred to Microsoft.

1 48. Since that time, defendant Joshuathan Investments, Inc., has been named
2 in no fewer than nine additional actions before WIPO, alleging that it registered and
3 used, in bad faith, domains that infringed upon the trademarks and service marks of
4 America Online, Inc., American Express Co., BMW AG, CompUSA Management
5 Co., Expedia, Inc., Grolier, Inc., Infospace, Inc., Southwestern Bell Yellow Pages,
6 Inc., and Sunglass Hut Corp.

7 49. In each case, the WIPO panel has ruled that Joshuathan registered and
8 used the infringing domain names in bad faith and transferred the domain names to
9 the firm that brought the action.

10 50. Defendants Pointcom, Inc. and “Nathan Joseph Khoshnood” are
11 mentioned in some of these actions. Microsoft is informed and believes, and on that
12 basis alleges, that “Nathan Joseph Khoshnood,” is a pseudonym for defendant Daniel
13 Khoshnood or is an individual who has acted in concert with him.

14 C. Defendants’ Illegal Toolbar.

15 51. Defendants distribute and publish software that, when installed, creates a
16 “toolbar” for one of Microsoft’s software products: Microsoft Internet Explorer.

17 52. Microsoft is informed and believes, and on that basis alleges, that
18 Defendants use the toolbar to promote their websites and to collect information from
19 Internet users, including the name and e-mail address of the user, queries submitted
20 through the search engine linked to the toolbar, and information about the user’s
21 utilization and navigation of the sites. Upon information and belief, Microsoft alleges
22 that defendants disclose this data in aggregate to advertisers and for marketing or
23 promotional purposes.

24 53. Defendants’ toolbar uses Microsoft’s trademarks and service marks
25 without authorization, in both graphics and text.

26 54. The toolbar contains “icon-buttons” that, among other things, purport to
27 allow users to search the Internet, to access “Free Email” to obtain a “Windows
28 Update.”

1 55. The toolbar and the icon-buttons contain counterfeits of Microsoft's
2 registered and common law trademarks and service marks. The icon-buttons use
3 those counterfeit marks to link to defendants' products and services, many of which
4 compete directly with Microsoft's products and services.

5 56. The toolbar also uses, without authorization, Microsoft's trademarks to
6 link directly into one of Microsoft's websites:

7 <http://v4.windowsupdate.microsoft.com/en/default.asp>.

8 57. Microsoft is informed and believes, and on that basis alleges that
9 Defendants intend to continue to use Microsoft's trademarks and service marks in
10 promoting their toolbar and other products.

11 58. The use of Microsoft's marks to promote Defendant's products—some
12 of which are in direct competition with Microsoft's products—is likely to cause
13 deception, mistake, and consumer confusion.

14 59. The use of Microsoft's marks to promote Defendant's products and
15 services is likely to lead consumers mistakenly to conclude that Defendants' products
16 and services were exclusively or jointly developed by, licensed or certified by, or
17 otherwise sponsored or approved by Microsoft, or that they are somehow otherwise
18 affiliated, connected, or associated with Microsoft. Consumers are likely to be
19 misled as to the true source, sponsorship, or affiliation of Defendants' product.

20 60. Microsoft is informed and believes, and on that basis alleges, that
21 Defendants have intentionally and with knowledge sought to cause consumer
22 deception, mistake, and consumer confusion through the acts described above.

23 D. Defendants' Use of Spam To Promote Their Toolbar.

24 61. Microsoft is informed and believes, and on that basis alleges, that
25 defendants have been—and are currently involved in—a widespread spamming
26 campaign to promote their illegal toolbar. That spamming campaign sends
27 misleading, deceptive, and unsolicited commercial e-mail to MSN Hotmail account
28 holders and to others.

1 62. Microsoft is informed and believes, and on the basis alleges, that its
2 MSN Hotmail service has received millions of unsolicited e-mail messages from
3 defendants.

4 1. The “WINDOWSUPDATE NOTIFICATION” E-mail.

5 63. One of the e-mail campaigns sent by defendants contains e-mails with
6 the subject line “WINDOWS UPDATE NOTIFICATION,” or a similar subject line.
7 That subject line is misleading because the e-mail does not advertise an official or
8 Microsoft authorized update for the WINDOWS software, but rather is a solicitation
9 to download defendant’s toolbar. *See* Exhibit G. The subject line also misrepresents
10 and obscures the point of origin by implying that the e-mail originates from
11 Microsoft.

12 64. Those e-mails further obscure their point of origin, and add to the
13 misleading impression created by the subject line, by purporting to contain a
14 “WINDOWS SECURITY WARNING!!” The messages state that “A VIRUS HAS
15 BEEN DETECTED ON YOUR COMPUTER. IN ORDER FOR YOUR
16 COMPUTER NOT TO CRASH YOU WILL NEED TO GO TO” defendants’
17 website and downloads defendants’ toolbar. This statement is false, and made by
18 defendants for the purpose of inducing Internet users to download defendants’
19 toolbar.

20 65. The e-mails falsely inform the recipient that the toolbar “WILL
21 AUTOMATICALLY UPDATE YOUR COMPUTER’S SECURITY PATCHES.”
22 The e-mail also says that if the recipient does not download defendants’ product, he
23 or she will “KEEP RECEIVING THIS SECURITY ALERT EMAIL EVERY DAY.”
24 *See* Exhibit G.

25 66. The e-mails are addressed to “registered member,” or similar
26 designation, which furthers the false impression that Microsoft sent this e-mail as an
27 update to registered WINDOWS users.

1 67. Defendants' actions have caused and, if not restrained, will continue to
2 cause, Microsoft's computer equipment and servers to process millions of improper
3 spam e-mails. These e-mails threaten to delay and otherwise adversely affect MSN
4 Hotmail subscribers in sending and receiving legitimate e-mail, and have resulted in
5 and continue to result in significant costs to Microsoft. Additionally, defendants'
6 illegitimate spam campaign has resulted in complaints by the recipients of
7 defendants' spam.

8 68. These e-mail messages infringe on Microsoft's WINDOWS and
9 WINDOWS UPDATE trademarks and service marks by using them to market
10 defendants' goods without authorization. The e-mails purport to originate from
11 "windowsupdate" at the domain "windowsupdatenow.com," which is registered to
12 defendant Joshuathan Investments, Inc. They also purport to contain a "WINDOWS
13 SECURITY WARNING!!," and they encourage the recipient to click a link to the
14 website <http://www.windowsupdatenow.com> or to type that address into their web
15 browser.

16 69. The use of the WINDOWS and WINDOWS UPDATE trademarks and
17 service marks is likely to cause confusion, mistake, or to deceive as to the affiliation,
18 connection, or association of the sender with Microsoft or to imply that Microsoft has
19 originated, sponsored or approved of the message and/or the product it advertises.

20 70. The use of the WINDOWS and WINDOWS UPDATE trademarks and
21 service marks constitutes false advertising and unfair competition.

22 71. Defendants' actions show a bad faith intent to profit from Microsoft's
23 WINDOWS and WINDOWS UPDATE trademarks and service marks through use of
24 the Internet domain name windowsupdatenow, which is confusingly similar to
25 Microsoft's WINDOWS and WINDOWS UPDATE marks.

26 72. Through their actions, Defendants have intentionally and with
27 knowledge sought to cause consumer deception, mistake, and consumer confusion.
28

1 2. The “Microsoft Ietoolbar Update” E-mail.

2 73. A second spam campaign sent by the defendants consists of e-mails with
3 the subject line “Microsoft Ietoolbar update,” or similar subject lines. These e-mails
4 do not offer an update to Microsoft’s Internet Explorer product. They instead are a
5 solicitation to download defendant’s toolbar. *See* Exhibit H. The subject line
6 contains false or misleading information and misrepresents and obscures these e-
7 mails’ point of origin.

8 74. The “Microsoft Ietoolbar update” e-mails contain counterfeits of
9 Microsoft’s trademarks and service marks.

10 75. The “Microsoft Ietoolbar update” e-mails use, in commerce, Microsoft’s
11 trademarks and service marks without permission and in a manner that is likely to
12 cause confusion, mistake, or to deceive as to the affiliation, connection, or association
13 of the sender with Microsoft or to imply that Microsoft has originated, sponsored or
14 approved of the e-mail or the product it advertises.

15 76. The use of Microsoft’s trademarks and service marks in these e-mails
16 constitutes false advertising and unfair competition.

17 77. Through their actions, Defendants have intentionally and with
18 knowledge sought to cause consumer deception, mistake, and consumer confusion.

19 **FIRST CLAIM FOR RELIEF**
20 (Violation of the Washington Commercial Electronic Mail Act (RCW Ch. 19.190)
21 and the Washington Consumer Protection Act (RCW Ch. 19.86),
22 (Against All Defendants)

22 78. Microsoft realleges and incorporates by this reference each and every
23 allegation set forth in paragraphs 1 through 78 above.

24 79. Defendants initiated the transmission, conspired with one another to
25 initiate the transmission, or assisted in the transmission of commercial e-mail
26 messages from a computer located in Washington and/or to an e-mail address that
27 they knew, or had reason to know, is held by a Washington resident. Those
28 commercial e-mail messages:

1 a) used Microsoft's or another third party's Internet domain name without
2 permission;

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

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

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

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

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

14
15 SECOND CLAIM FOR RELIEF
(Violation of the Computer Fraud and Abuse Act – 18 U.S.C. §1030(a)(4), (g),
16 Against All Defendants)

17 83. Microsoft realleges and incorporates by this reference each and every
18 allegation set forth in paragraphs 1 through 78 above.

19 84. By the actions alleged above, defendants knowingly and with intent to
20 defraud, accessed Microsoft's protected computer system, without authorization
21 and/or in excess of authorized access.

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

25 86. Defendants' activity constitutes a violation of the Computer Fraud and
26 Abuse Act, 18 U.S.C. § 1030(a)(4), and Microsoft is entitled to damages under that
27 Act. Microsoft is also entitled under the Act to injunctive and equitable relief against
28 defendants.

1 and is causing irreparable harm to Microsoft for which there is no adequate remedy at
2 law. Microsoft is also entitled to statutory and treble damages.

3 FIFTH CLAIM FOR RELIEF

4 (False Designation of Origin Under the Lanham Act – 15 U.S.C. § 1125(a),
5 Against All Defendants

6 93. Microsoft realleges and incorporates by this reference each and every
7 allegation set forth in paragraphs 1 through 78 above.

8 94. Defendants have used and continue to use Microsoft’s trademarks and
9 service marks in connection with goods or services, in commerce, in a manner that is
10 likely to cause confusion, mistake, or deception as to the origin, sponsorship, or
11 approval of their goods or services.

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

15 SIXTH CLAIM FOR RELIEF

16 (Unfair Competition/False Advertising Under the Lanham Act – 15 U.S.C. § 1125(a),
17 Against All Defendants)

18 96. Microsoft realleges and incorporates by this reference each and every
19 allegation set forth in paragraphs 1 through 78 above.

20 97. Defendants have used and continue to use Microsoft’s trademarks and
21 service marks in connection with goods or services and false and misleading
22 descriptions or representations of fact in commercial advertising or promotion,
23 thereby misrepresenting the nature, characteristics, and qualities of their or another
24 person’s goods, services, or commercial activities.

25 98. Microsoft has been damaged by these acts in an amount to be proved at
26 trial. Microsoft is also entitled under the Lanham Act to injunctive and equitable
27 relief against defendants.

1 under his control or acting in concern with him, agreed to take several actions
2 benefiting Microsoft.

3 105. Khoshnood, and the related persons and entities on whose behalf he
4 signed, agreed immediately to cease and desist from using, in any manner, including
5 as part of a domain name, all names, titles or trademarks associated with Microsoft's
6 products or services, or any confusingly similar variation thereof.

7 106. Khoshnood, and the related persons and entities on whose behalf he
8 signed, also agreed immediately to cease all activities and endeavors which suggest
9 any association between Microsoft and themselves or any other domain names they
10 may have registered.

11 107. Microsoft has complied with all of its obligations under the agreement.

12 108. As a result of defendants' actions, Khoshnood, and the related persons
13 and entities on whose behalf he signed, breached their obligations and damaged
14 Microsoft in an amount to be proven at trial.

15 TENTH CLAIM FOR RELIEF
16 (Trespass to Chattels,
17 Against All Defendants)

18 109. Microsoft realleges and incorporates by this reference each and every
19 allegation set forth in paragraphs 1 through 78 above.

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

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

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

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

1 ELEVENTH CLAIM FOR RELIEF
2 (Conversion,
3 Against All Defendants)

4 114. Microsoft realleges and incorporates by this reference each and every
5 allegation set forth in paragraphs 1 through 78 above.

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

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

11 TWELFTH CLAIM FOR RELIEF
12 (Washington Common Law Unfair Competition,
13 Against All Defendants)

14 117. Microsoft realleges and incorporates by this reference each and every
15 allegation set forth in paragraphs 1 through 78 above. Defendants' use of Microsoft's
16 trademarks and service marks have infringed on the their distinctive features in a
17 manner that tends to confuse, in the public mind, defendants' products and
18 advertising with Microsoft's products and advertising. Defendants' conduct has
19 caused and will continue to cause damage to Microsoft, and is causing irreparable
20 harm to Microsoft for which there is no adequate remedy at law.

21 PRAYER FOR RELIEF

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

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

- 28 a) establishing any accounts with Microsoft's MSN or MSN Hotmail
service;

- 1 b) using Microsoft's computers and computer systems in connection
2 with sending commercial e-mail messages;
- 3 c) making unauthorized use of Microsoft's computers and computer
4 systems;
- 5 d) continuing to violate Microsoft's Terms of Service;
- 6 e) using Microsoft's trade names, trademarks, or service marks, or
7 any version thereof, in connection with the description, marketing, promotion,
8 advertising, or sale of any software or other computer product or services;
- 9 f) continuing to violate the Washington Commercial Electronic Mail
10 Act;
- 11 g) continuing falsely to designate Microsoft as the origin of their
12 e-mails; and
- 13 h) infringing Microsoft's trademarks and service marks;
- 14 i) using or registering domain names containing Microsoft's
15 trademarks and service marks or domain names that are confusingly similar to
16 those trademarks and service marks;
- 17 j) 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)
19 through i) above.

20 2. That the Court order defendants to transfer to Microsoft the registrations
21 for all domain names that contain Microsoft's trademarks and service marks or that
22 are confusingly similar to those trademarks and service marks;

23 3. That the Court award Microsoft actual damages, liquidated damages and
24 statutory damages, in amount to be proven at trial;

25 4. That the Court order Microsoft treble damages, in an amount to be
26 proven at trial, pursuant to RCW § 19.86.090 and Section 35(a) of the Lanham Act.

27 5. That the Court award Microsoft its attorneys' fees and costs incurred
28 herein; and

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6. That the Court grant Microsoft all other relief to which it is entitled and such other or additional relief as is just and proper.

Dated: June 16, 2003

ARNOLD & PORTER
SUZANNE V. WILSON
JAMES S. BLACKBURN
TRICIA A. CROSS

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