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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.

TRANZACT MEDIA, INC. and JOHN
DOES 1-20,

Defendants.

No. **03-2-27984-6SEA**

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

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

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

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

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

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

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

1 world. MSN Has millions of registered accounts, whose users all have unique e-mail
2 addresses ending in "@msn.com."

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

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

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

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

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

24 15. Spamming also has significant impact on the recipients of spam. Individuals
25 who receive spam must take the time and effort to sort through larger volumes of received e-
26 mail, must attempt to distinguish spam from legitimate e-mail, and ultimately discard this

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

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

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

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

25 19. In passing the Commercial Electronic Mail Act, RCW Ch. 19.190, in 1998,
26 Washington became one of the first states to regulate spam. The legislature has recognized

1 that the spamming practices prohibited by the Act are “matters vitally affecting the public
2 interests” and are unfair and deceptive practices which impact Washington businesses and
3 consumers.

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

7 21. Microsoft has a clearly articulated policy prohibiting the use of its services for
8 junk e-mail, spamming, or any unsolicited messages (commercial or otherwise). Microsoft’s
9 policies also prohibit automated queries of any short, harvesting or collection of e-mail
10 addresses, and any use of the services that is not personal and non-commercial. These
11 policies are included in the Terms of Use for MSN and MSN Hotmail, which can be accessed
12 via a clearly marked link on www.msn.com, as well as on the home pages for each of the
13 services.

14 **V. DEFENDANTS’ UNLAWFUL CONDUCT**

15 22. Microsoft is informed and believes, and on that basis alleges, that defendants
16 have been—and are currently involved in—widespread spamming by sending misleading,
17 deceptive and unsolicited commercial email to MSN Hotmail account holders.

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

20 24. Many of those e-mail messages contain false and misleading subject lines
21 including, but not limited to: “Did you take care of this?,” “Please answer two questions,”
22 and “Final Notice—Reward will be forfeited.”

23 25. As a result of the defendants’ actions, Microsoft’s computer equipment and
24 servers were required to process thousands of improper spam e-mails. These e-mails threaten
25 to delay and otherwise adversely affect MSN Hotmail subscribers in sending and receiving
26 legitimate e-mail, and have resulted in and continue to result in significant costs to Microsoft.

1 Additionally, defendants' illegitimate spam campaign has resulted in complaints by the
2 recipients of defendants' spam.

3 **COUNT I**
4 **(Trespass to Chattels)**

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

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

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

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

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

16 **COUNT II**
17 **(Conversion)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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

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

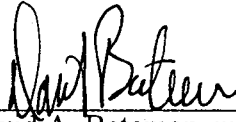
20 2. That the Court award Microsoft actual damages, liquidated damages and
21 statutory damages, in amount to be proven at trial;

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

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

1 DATED this 12th day of June, 2003.

2 PRESTON GATES & ELLIS LLP

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