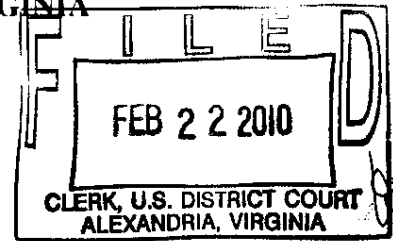


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division



MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

JOHN DOES 1-27, CONTROLLING A
COMPUTER BOTNET THEREBY
INJURING MICROSOFT AND ITS
CUSTOMERS

Defendants.

Civil Action No: 1:10 cv 156 (LMB/JFA)

**EX PARTE TEMPORARY RESTRAINING ORDER AND
ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

Plaintiff Microsoft Corp. ("Microsoft") has filed a complaint for injunctive and other relief pursuant to: (1) the Computer Fraud and Abuse Act (18 U.S.C. § 1030), (2) the CAN-SPAM Act (15 U.S.C. § 7704), (3) the Electronic Communications Privacy Act (18 U.S.C. § 2701), (4) the Lanham Act (15 U.S.C. §§ 1125(a), (c)), and (5) the common law of trespass, unjust enrichment and conversion. Microsoft has moved *ex parte* for an emergency temporary restraining order and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure.

FINDINGS

The Court has considered the pleadings, declarations, exhibits, and memoranda filed in support of Microsoft's motion and finds that:

1. This Court has jurisdiction over the subject matter of this case and there is good cause to believe that it will have jurisdiction over all parties hereto; the Complaint states a claim upon relief may be granted against the Defendants under the Computer Fraud and Abuse Act (18 U.S.C. § 1030), CAN-

SPAM Act (15 U.S.C. § 7704), Electronic Communications Privacy Act (18 U.S.C. § 2701), the Lanham Act (15 U.S.C. § 1125) and the common law of trespass to chattels, unjust enrichment and conversion;

2. There is good cause to believe that Defendants have engaged in and are likely to engage in acts or practices that violate the Computer Fraud and Abuse Act (18 U.S.C. § 1030), CAN-SPAM Act (15 U.S.C. § 7704), Electronic Communications Privacy Act (18 U.S.C. § 2701), the Lanham Act (15 U.S.C. § 1125) and the common law of trespass to chattels, unjust enrichment and conversion, and that Microsoft is, therefore, likely to prevail on the merits of this action;

3. There is good cause to believe that, unless the Defendants are restrained and enjoined by Order of this Court, immediate and irreparable harm will result from the Defendants' ongoing violations of the Computer Fraud and Abuse Act (18 U.S.C. § 1030), CAN-SPAM Act (15 U.S.C. § 7704), Electronic Communications Privacy Act (18 U.S.C. § 2701), the Lanham Act (15 U.S.C. § 1125) and the common law of trespass to chattels, unjust enrichment and conversion. The evidence set forth in Microsoft's Brief in Support of Application for a Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction ("TRO Motion"), and the accompanying declarations and exhibits, demonstrates that Microsoft is likely to prevail on its claim that Defendants have engaged in violations of the foregoing laws by: intentionally accessing and sending malicious code to Microsoft's and its customers' protected computers and operating systems, without authorization, in order to infect those computers and make them part of the botnet, sending malicious code to configure, deploy and operate a botnet, sending unsolicited spam email to Microsoft's Hotmail accounts, sending unsolicited spam email that falsely indicate that they are from Microsoft's Hotmail accounts, collecting personal information including personal email addresses, and delivering malicious code including fake and misleading antivirus software. There is good cause to believe that such if such conduct continues, irreparable harm will occur to Microsoft, its customers and the public. There is good cause to believe that the Defendants

will continue to engage in such unlawful actions if not immediately restrained from doing so by Order of this Court;

4. There is good cause to believe that immediate and irreparable damage to this Court's ability to grant effective final relief will result from the sale, transfer, or other disposition or concealment by Defendants of the domains at issue in Microsoft's TRO Motion and other discoverable evidence of Defendants' misconduct available through such domains if the Defendants receive advance notice of this action. Based on the evidence cited in Microsoft's TRO Motion and accompanying declarations and exhibits, Microsoft is likely to be able to prove that: (1) the Defendants are engaged in activities that directly violate U.S. law and harms Microsoft, its customers and the public; (2) the Defendants have continued their unlawful conduct despite the clear injury to Microsoft, its customers and the public; (3) the Defendants are likely to relocate the domains at issue in Microsoft's TRO Motion and the harmful and malicious code disseminated through these domains and to warn its associates engaged in such activities if informed of Microsoft's action. Microsoft's request for this emergency *ex parte* relief is not the result of any lack of diligence on Microsoft's part, but instead is based upon the nature of Defendants' unlawful conduct. Therefore, in accordance with Fed. R. Civ. P. 65(b) and Civil L.R. 65-1, good cause and the interests of justice require that this Order be Granted without prior notice to the Defendants, and, accordingly, Microsoft is relieved of the duty to provide the Defendants with prior notice of Microsoft's motion;

5. There is good cause to believe that the Defendants have engaged in illegal activity using .com Domains which are maintained by the top level domain registry Verisign, located in the United States and the Eastern District of Virginia.

6. There is good cause to believe that to immediately halt the injury caused by Defendants, Verisign must be ordered:

a. to immediately take all steps necessary to lock at the registry level the domains at

issue in the TRO Motion, and which are set forth at Appendix A hereto, to ensure that changes to the domain names cannot be made absent a court order;

- b. to immediately take all steps required to propagate to the foregoing domain registry changes to domain name registrars; and
- c. to hold the domains in escrow and take all steps necessary to ensure that the evidence of misconduct available through the domains be preserved.

7. There is good cause to permit notice of the instant order, notice of the Preliminary Injunction hearing and service of the Complaint by formal and alternative means, given the exigency of the circumstance and the need for prompt relief. The following means of service are authorized by law, satisfy Due Process, satisfy Fed. R. Civ. Pro. 4(f)(3) and are reasonably calculated to notify defendants of the instant order, the Preliminary Injunction hearing and of this action: (1) personal delivery upon defendants who provided contact information in the U.S., (2) personal delivery through the Hague Convention on Service Abroad upon defendants who provided contact information in China, (3) transmission by e-mail, facsimile and mail to the contact information provided by defendants to their domain name registrars and as agreed to by defendants in their domain name registration agreements, (4) publishing notice on a publicly available Internet website.

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

IT IS THEREFORE ORDERED that, Defendants and its representatives are temporarily restrained and enjoined from intentionally accessing and sending malicious code to Microsoft's and its customers' protected computers and operating systems, without authorization, in order to infect those computers and make them part of the botnet, sending malicious code to configure, deploy and operate a botnet, sending unsolicited spam email to Microsoft's Hotmail accounts, sending unsolicited spam email that falsely indicate that they are from Microsoft's Hotmail accounts, collecting personal information

including personal email addresses, and delivering malicious code including fake antivirus software, or undertaking any similar activity that inflicts harm on Microsoft, its customers or the public.

IT IS FURTHER ORDERED that, Defendants and its representatives are temporarily restrained and enjoined from configuring, deploying, operating or otherwise participating in or otherwise facilitating the botnet described in the TRO Motion, including but not limited to the domains at issue in the TRO motion and any other component or element of the botnet.

IT IS FURTHER ORDERED that Verisign must:

- a. immediately take all steps necessary to lock at the registry level the domains at issue in the TRO Motion, and which are set forth at Appendix A hereto, to ensure that changes to the domain names cannot be made absent a court order;
- b. immediately take all steps required to propagate to the foregoing domain registry changes to domain name registrars; and
- c. hold the domains in escrow and take all steps necessary to ensure that the evidence of misconduct available through the domains be preserved.

IT IS FURTHER ORDERED that copies of this Order, notice of the Preliminary Injunction hearing and service of the Complaint may be served by any means authorized by law, including (1) by personal delivery upon defendants who provided contact information in the U.S., (2) personal delivery through the Hague Convention on Service Abroad upon defendants who provided contact information in China, (3) by transmission by e-mail, facsimile and mail to the contact information provided by defendants to their domain name registrars and as agreed to by defendants in their domain name registration agreements, (4) by publishing notice on a publicly available Internet website.

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on March 8, 2010 at 9:00 a.m., unless within such time, the Order, for good cause shown, is extended for an additional period not to exceed fourteen (14) days, or unless it is further extended pursuant to Federal

Rule of Civil Procedure 65.

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b) that the Defendants shall appear before this Court on March 8, 2010, at 9:00 a.m., to show cause, if there is any, why this Court should not enter a Preliminary Injunction, pending final ruling on the Complaint against the Defendants, enjoining them from the conduct temporarily restrained by the preceding provisions of this order.

IT IS FURTHER ORDERED that the Defendants shall file with the Court and serve on Microsoft's counsel any answering affidavits, pleadings, motions, expert reports or declarations and/or legal memoranda no later than four (4) days prior to the hearing on Microsoft's request for a preliminary injunction. Microsoft may file responsive or supplemental pleadings, materials, affidavits, or memoranda with the Court and serve the same on counsel for the Defendants no later than one (1) day prior to the preliminary injunction hearing in this matter. Provided that service shall be performed by personal or overnight delivery, facsimile or electronic mail, and documents shall be delivered so that they shall be received by the other parties no later than 4:00 p.m. (Eastern Standard Time) on the appropriate dates listed in this paragraph.

IT IS FURTHER ORDERED that Microsoft shall maintain its bond in the amount of \$ \$54,600.⁰⁰, as payment of damages to which Defendants may be entitled for a wrongful injunction or restraint, during the pendency of this Action, or until further Order of the Court.

IT IS SO ORDERED

/s/ LMB
Leonie M. Brinkema
United States District Judge

Entered this 22ND day of February, 2010.

Appendix A

1. bestchristmascard.com
2. bestmirabella.com
3. bestyearcard.com
4. blackchristmascard.com
5. cardnewyear.com
6. cheapdecember.com
7. christmaslightsnow.com
8. decemberchristmas.com
9. directchristmasgift.com
10. eternalgreetingcard.com
11. freechristmassite.com
12. freechristmasworld.com
13. freedecember.com
14. funnychristmasguide.com
15. greatmirabellasite.com
16. greetingcardcalendar.com
17. greetingcardgarb.com
18. greetingguide.com
19. greetingsupersite.com
20. holidayxmas.com
21. itsfatherchristmas.com
22. justchristmasgift.com
23. lifegreetingcard.com
24. livechristmascard.com
25. livechristmasgift.com
26. mirabellaclub.com
27. mirabellamotors.com
28. mirabellanews.com
29. mirabellaonline.com
30. newlifeyearsite.com
31. newmediayearguide.com
32. newyearcardcompany.com
33. newyearcardfree.com
34. newyearcardonline.com
35. newyearcardservice.com
36. smartcardgreeting.com
37. superchristmasday.com
38. superchristmaslights.com
39. superyearcard.com
40. themirabelladirect.com
41. themirabellaguide.com
42. themirabellahome.com
43. topgreetingsite.com
44. whitewhitechristmas.com
45. worldgreetingcard.com
46. yourchristmaslights.com
47. yourdecember.com
48. yourmirabelladirect.com
49. yourregards.com
50. youryearcard.com
51. bestbarack.com
52. bestbaracksite.com
53. bestobamadirect.com
54. expowale.com
55. greatbarackguide.com
56. greatobamaguide.com
57. greatobamaonline.com
58. jobarack.com
59. superobamadirect.com
60. superobamaonline.com
61. thebaracksite.com
62. topwale.com
63. waledirekt.com
64. waleonline.com
65. waleprojekt.com
66. goodnewsdigital.com
67. goodnewsreview.com
68. linkworldnews.com
69. reportradio.com
70. spacemynews.com
71. wapcitynews.com
72. worldnewsdot.com
73. worldnewseye.com
74. worldtracknews.com
75. bestgoodnews.com
76. adorelyric.com
77. adorepoem.com
78. adoresongs.com

- | | |
|-------------------------------|--------------------------------|
| 79. bestadore.com | 120. greatsvallentine.com |
| 80. bestlovelong.com | 121. greatvallentinepoems.com |
| 81. funloveonline.com | 122. macride.com |
| 82. youradore.com | 123. mazdaautomotiveparts.com |
| 83. yourgreatlove.com | 124. mazdacarclub.com |
| 84. orldlovelife.com | 125. mazdaspeedzone.com |
| 85. romanticsloving.com | 126. netcitycab.com |
| 86. adoresong.com | 127. petcabtaxi.com |
| 87. bestlovehelp.com | 128. smartsalesgroup.com |
| 88. chatloveonline.com | 129. superpartycab.com |
| 89. cherishletter.com | 130. supersalesonline.com |
| 90. cherishpoems.com | 131. thecoupondiscount.com |
| 91. lovecentralonline.com | 132. themazdacar.com |
| 92. lovelifeportal.com | 133. themazdaspeed.com |
| 93. whocherish.com | 134. thevallentine lovers.com |
| 94. worldlovelife.com | 135. thevallentineparty.com |
| 95. worshiplove.com | 136. wirelessvallentineday.com |
| 96. yourteamdoc.com | 137. workcaredirect.com |
| 97. yourdatabank.com | 138. workhomegold.com |
| 98. alldatanow.com | 139. worklifedata.com |
| 99. alldataworld.com | 140. yourcountycoupon.com |
| 100. cantlosedata.com | 141. yourmazdacar.com |
| 101. freedoonline.com | 142. yourmazdatribute.com |
| 102. losenowfast.com | 143. yourvallentineday.com |
| 103. mingwater.com | 144. yourvallentinepoems.com |
| 104. theworldpool.com | 145. againstfear.com |
| 105. wagerpond.com | 146. antiterroralliance.com |
| 106. beadcareer.com | 147. antiterroris.com |
| 107. beadworkdirect.com | 148. antiterrornetwork.com |
| 108. bestcouponfree.com | 149. bayhousehotel.com |
| 109. bestmazdadealer.com | 150. bestblogdirect.com |
| 110. bluevallentineonline.com | 151. bestbreakingfree.com |
| 111. buymazdacars.com | 152. bestjournalguide.com |
| 112. codecouponsite.com | 153. bestlifeblog.com |
| 113. deathtaxi.com | 154. bestusablog.com |
| 114. funnyvallentinessite.com | 155. blogginhell.com |
| 115. greatcouponclub.com | 156. blogsitedirect.com |
| 116. greatmazdacars.com | 157. boarddiary.com |
| 117. greatsalesavailable.com | 158. breakingfreemichigan.com |
| 118. greatsalesgroup.com | 159. breakinggoodnews.com |
| 119. greatsalestax.com | 160. breakingkingnews.com |

161.	breakingnewsfm.com	202.	virtualesms.com
162.	breakingnewsfmltd.com	203.	wealthleaf.com
163.	debtbgonesite.com	204.	yourbarrier.com
164.	easyworldnews.com	205.	discountfreesms.com
165.	extendedman.com	206.	eccellentesms.com
166.	farboards.com	207.	freesmsorange.com
167.	fearalert.com	208.	ipersmstext.com
168.	globalantiterror.com	209.	morefreesms.com
169.	gonessite.com	210.	nuovosmsclub.com
170.	longballonline.com	211.	primosmsfree.com
171.	mobilephotoblog.com	212.	smsinlinea.com
172.	photoblogsite.com	213.	smsluogo.com
173.	residencehunter.com	214.	superioresms.com
174.	terroralertstatus.com	215.	4thfirework.com
175.	terrorfear.com	216.	biumer.com
176.	terrorismfree.com	217.	entrunk.com
177.	themostrateblog.com	218.	fireholiday.com
178.	tntbreakingnews.com	219.	fireworksholiday.com
179.	urbanfear.com	220.	fireworksnetwork.com
180.	usabreakingnews.com	221.	fireworkspoint.com
181.	yourbreakingnew.com	222.	freeindependence.com
182.	yourlength.com	223.	gemells.com
183.	yourlol.com	224.	handyphoneworld.com
184.	yourwent.com	225.	happyindependence.com
185.	bakeloaf.com	226.	holidayfirework.com
186.	chinamobilesms.com	227.	holidaysfirework.com
187.	coralarm.com	228.	holifireworks.com
188.	downloadfreesms.com	229.	interactiveindependence.com
189.	freecolorsms.com		
190.	freeservesms.com	230.	miosmschat.com
191.	fryroll.com	231.	movie4thjuly.com
192.	goldfixonline.com	232.	moviefireworks.com
193.	lastlabel.com	233.	movieindependence.com
194.	miosmsclub.com	234.	movies4thjuly.com
195.	moneymedal.com	235.	moviesfireworks.com
196.	nuovosms.com	236.	moviesindependence.com
197.	screenalias.com	237.	outdoorindependence.com
198.	smsclubnet.com	238.	smophi.com
199.	smsdiretto.com	239.	superhandycap.com
200.	smspianeta.com	240.	thehandygal.com
201.	tagdebt.com	241.	video4thjuly.com

- 242. videoindependence.com
- 243. yourhandyhome.com
- 244. yusitymp.com
- 245. aweleon.com
- 246. bedioger.com
- 247. bicodehl.com
- 248. birdab.com
- 249. cismosis.com
- 250. crucism.com
- 251. cycloro.com
- 252. encybest.com
- 253. favolu.com
- 254. framtr.com
- 255. frostep.com
- 256. gumentha.com
- 257. hindger.com
- 258. hornalfa.com
- 259. noloid.com
- 260. nonprobs.com
- 261. oughwa.com
- 262. painkee.com
- 263. pantali.com
- 264. pathoph.com
- 265. prerre.com
- 266. purgand.com
- 267. rascop.com
- 268. sodanthu.com
- 269. specipa.com
- 270. tabatti.com
- 271. tatumen.com
- 272. thingre.com
- 273. tobeyew.com