

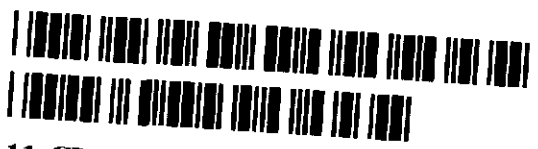
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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY
BY _____

The Honorable James L. Robart



11-CV-00222-ORD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
Plaintiff,

v.

JOHN DOES 1-11 CONTROLLING A
COMPUTER BOTNET THEREBY
INJURING MICROSOFT AND ITS
CUSTOMERS,
Defendants.

Case No. 2:11-cv-00222

~~PROPOSED~~ ORDER FOR
PRELIMINARY INJUNCTION

Plaintiff Microsoft Corporation ("Microsoft") 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 Lanham Act (15 U.S.C. §§ 1114(a)(1), 1125(a), (c)); and (4) the common law of trespass, conversion and unjust enrichment. On March 9, 2011, the Court granted Microsoft's Application for an Emergency Temporary Restraining Order, Seizure Order and Order to Show Cause Re Preliminary Injunction. Microsoft now moves for an Order for Preliminary Injunction seeking to keep in place the relief granted by the March 9th order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the papers, declarations, exhibits, and memorandum filed in support of Microsoft's Application for *Ex Parte* Temporary Restraining Order, *Ex Parte* Seizure and Order to Show Cause Re Preliminary Injunction ("TRO Application"), as well as supplemental

1 declarations and a status report regarding notice and service of process submitted by Microsoft
2 on April 4, 2011, the Court hereby makes the following findings of fact and conclusions of law:

3 1. This Court has jurisdiction over the subject matter of this case and there is good
4 cause to believe that it will have jurisdiction over all parties hereto; the Complaint states a claim
5 upon which relief may be granted against the Defendants under the Computer Fraud and Abuse
6 Act (18 U.S.C. § 1030); CAN-SPAM Act (15 U.S.C. § 7704); the Lanham Act (15 U.S.C. §§
7 1114, 1125); and the common law of trespass to chattels, conversion and unjust enrichment.

8 2. Microsoft owns the registered trademarks "Microsoft," "Windows," and
9 "Hotmail," used in connection with its services, software, and products.

10 3. There is good cause to believe that Defendants have engaged in and are likely to
11 engage in acts or practices that violate the Computer Fraud and Abuse Act (18 U.S.C. § 1030);
12 CAN-SPAM Act (15 U.S.C. § 7704); the Lanham Act (15 U.S.C. §§ 1114, 1125); and the
13 common law of trespass to chattels, conversion and unjust enrichment. The evidence set forth in
14 Microsoft's Application for an Emergency Temporary Restraining Order, Seizure Order and
15 Order to Show Cause Re Preliminary Injunction ("TRO Motion"), and the accompanying
16 declarations and exhibits, demonstrates that Microsoft is likely to prevail on its claim that
17 Defendants have engaged in violations of the foregoing laws by: (1) intentionally accessing and
18 sending malicious software to Microsoft's and its customers' protected computers and operating
19 systems, without authorization, in order to infect those computers and make them part of the
20 botnet; (2) sending malicious software to configure, deploy and operate a botnet; (3) sending
21 unsolicited spam e-mail to Microsoft's Hotmail accounts; and (4) sending unsolicited spam e-
22 mails that falsely indicate that they are from or approved by Microsoft and that promote
23 counterfeit pharmaceuticals and other fraudulent schemes. Therefore, Microsoft is likely to
24 prevail on the merits of this action.

25 4. There is good cause to believe that unless they are preliminarily enjoined by
26 Order of this Court, immediate and irreparable harm will result from the Defendants' further
27 violations of the Computer Fraud and Abuse Act (18 U.S.C. § 1030); CAN-SPAM Act (15
28 U.S.C. § 7704); the Lanham Act (15 U.S.C. §§ 1114, 1125); and the common law of trespass to

1 chattels, conversion and unjust enrichment. There is good cause to believe that if such conduct
2 continues, irreparable harm will occur to Microsoft and the public, including Microsoft's
3 customers. There is good cause to believe that the Defendants will continue to engage in such
4 unlawful actions if not preliminarily enjoined from doing so by Order of this Court.

5 5. There is good cause to believe that the hardship to Microsoft, its customers, and
6 the public resulting from denying this Motion for Preliminary Injunction far outweighs the
7 hardship that will be suffered by Defendants if the Preliminary Injunction issues. Defendants are
8 accused of illegally infecting end-user computers to enlist them into Rustock, a network of
9 infected end-user computers operated over the Internet and used for illegal purposes. Microsoft,
10 its customers, and the public are harmed by this activity through the high-volume of spam e-mail
11 generated by Rustock, the various schemes promoted by Rustock e-mail such as the sale of
12 counterfeit pharmaceuticals, and the ongoing infection of end-user computers and their use in
13 illegal purposes. Therefore, the balance of hardships tips in favor of granting a Preliminary
14 Injunction.

15 6. There is good cause to believe that the preliminary injunction will benefit the
16 public. Maintaining the relief put in place under the Court's TRO will keep the operators of
17 Rustock from reconstituting its Command and Control Infrastructure, will sharply curtail its
18 ability to propagate spam e-mail, will reduce its involvement in promoting illegal schemes
19 including infringement of Microsoft's trademarks and the sale of counterfeit pharmaceuticals,
20 and will keep it from using the current tier of Rustock-infected end-user computers in illegal
21 activity without their owner's permission or knowledge. Therefore, a Preliminary Injunction will
22 have a favorable impact on the public interest.

23 7. There is good cause to believe that the Defendants have engaged in illegal activity
24 using the data centers and/or Internet hosting providers identified in Appendix A to host the
25 command and control software and the malicious botnet code and content used to maintain and
26 operate the botnet at computers, servers, electronic data storage devices or media at the IP
27 addresses identified in Appendix A.

28 8. There is good cause to believe that to keep Defendants from resuming actions

1 injurious to Microsoft and others, Defendants' IP addresses identified in Appendix A must
2 remain in a disabled state; Defendants' computing resources related to such IP addresses must
3 remain disconnected from the Internet; and Defendants must be prohibited from accessing
4 Defendants' computer resources related to such IP addresses.

5 9. There is good cause to believe that the Defendants have engaged in illegal activity
6 using the Internet domains identified at Appendix B to this order to host the command and
7 control software and content used to maintain and operate the botnet. There is good cause to
8 believe that to immediately halt the injury caused by Defendants, each of Defendants' current
9 and prospective domains set forth in Appendix B must be maintained in an inaccessible state,
10 and/or removed from the Internet zone file.

11 10. There is good cause to direct that third party data centers, hosting providers and
12 Internet registries/registrars reasonably assist in the implementation of the Order and refrain from
13 frustrating the implementation and purposes of this Order, pursuant to 28 U.S.C. § 1651(a) (the
14 All Writs Act).

15 11. There is good cause to believe that Microsoft has provided adequate notice to
16 Defendants of the TRO and this Preliminary Injunction. The following means of service
17 employed by Microsoft are authorized by law, satisfy Due Process, satisfy Fed. R. Civ. Pro.
18 4(f)(3); and are reasonably calculated to notify defendants of the TRO, the Preliminary
19 Injunction hearing and of the Complaint: (1) transmission by e-mail, facsimile, and mail to the
20 contact information provided by defendants to the data centers, Internet hosting providers, and
21 domain registrars who host the software code associated with the IP addresses in Appendix A, or
22 through which domains in Appendix B are registered; and (2) publishing notice to the
23 Defendants on a publicly available Internet website.

24 12. Therefore, in accordance with Fed. R. Civ. P. 65(a) and the All Writs Act, good
25 cause and the interests of justice require that this Order be Granted.

26 **PRELIMINARY INJUNCTION**

27 **IT IS THEREFORE ORDERED** as follows:

28 A. Defendants, their representatives and persons who are in active concert or

1 participation with them are preliminarily enjoined from intentionally accessing and sending
2 malicious software to Microsoft's and its customers' protected computers and operating systems,
3 without authorization, in order to infect those computers and make them part of the botnet;
4 sending malicious software to configure, deploy and operate a botnet; sending unsolicited spam
5 e-mail to Microsoft's Hotmail accounts; and sending unsolicited spam e-mail that falsely indicate
6 that they are from or approved by Microsoft; or undertaking any similar activity that inflicts
7 harm on Microsoft or the public, including Microsoft's customers.

8 B. Defendants, their representatives and persons who are in active concert or
9 participation with them are preliminarily enjoined from configuring, deploying, operating or
10 otherwise participating in or facilitating the botnet described in the TRO Application, including
11 but not limited to the command and control software hosted at and operating through the IP
12 addresses and domains set forth herein and through any other component or element of the
13 botnet in any location.

14 C. Defendants, their representatives and persons who are in active concert or
15 participation with them are preliminarily enjoined from using the trademarks "Microsoft,"
16 "Windows," "Hotmail," and/or other trademarks; trade names; service marks; or Internet Domain
17 addresses or names; or acting in any other manner which suggests in any way that Defendants'
18 products or services come from or are somehow sponsored or affiliated with Microsoft, and from
19 otherwise unfairly competing with Microsoft, misappropriating that which rightfully belongs to
20 Microsoft, or passing off their goods as Microsoft's.

21 D. Defendants, their representatives and persons who are in active concert or
22 participation with them are preliminarily enjoined from infringing Microsoft's registered
23 trademarks, Registration Nos. 1200236, 2165601, 2463510 and others.

24 E. Defendants, their representatives and persons who are in active concert or
25 participation with them are preliminarily enjoined from using in connection with Defendants'
26 activities any false or deceptive designation, representation or description of Defendants' or of
27 their representatives' activities, whether by symbols, words, designs or statements, which would
28 damage or injure Microsoft or give Defendants an unfair competitive advantage or result in

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deception of consumers.

F. Microsoft shall maintain its bond in the amount of \$173,000 that it has paid into the Court's Registry.

G. Pursuant to the All Writs Act, the data centers and hosting providers identified in Appendix A and the domain registries identified in Appendix B to this Order, shall, during the pendency of this action:


1. Maintain in a disabled state Defendants' IP addresses set forth in Appendix A (including through any backup systems) so that they cannot be accessed over the Internet, connected to, or communicated with in any way except as explicitly provided for in this order;

2. Maintain in a disabled state Defendants' domains set forth in Appendix B so that they cannot be accessed over the Internet, connected to, or communicated with in any way except as explicitly provided for in this order by (1) keeping the domains locked and keeping such domains from being entered into the zone file; and (2) taking all steps required to propagate the foregoing domain registry changes to domain name registrars;

3. provide reasonable assistance in implementing the terms of this Order and shall take no action to frustrate the implementation of this Order.

IT IS SO ORDERED

Entered this th 6 day of April, 2011.


The Honorable James L. Robart
United States District Judge