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

Alexandria Division 2015 FEB 20 A 9:22

MICROSOFT CORPORATION, a
Washington corporation, and FS-ISAC, INC.,
a Delaware corporation,

Plaintiffs,

v.

JOHN DOES 1-3 CONTROLLING A
COMPUTER BOTNET THEREBY
INJURING PLAINTIFFS AND THEIR
CUSTOMERS AND MEMBERS,

Defendants.

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

Civil Action No: 1:15 cv 240 LMB/DD

**FILED UNDER SEAL PURSUANT TO
LOCAL CIVIL RULE 5**

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

Plaintiffs Microsoft Corp. (“Microsoft”) and Financial Services – Information Sharing
And Analysis Center, Inc. (“FS-ISAC”) (collectively “Plaintiffs”) have filed a complaint for
injunctive and other relief pursuant to: (1) the Computer Fraud and Abuse Act (18 U.S.C.
§ 1030); (2) the Electronic Communications Privacy Act (18 U.S.C. § 2701); (3) the Lanham Act
(15 U.S.C. §§ 1114(a)(1), 1125(a), (c)); and (4) the common law of trespass, unjust enrichment
and conversion. Plaintiffs have moved *ex parte* for an emergency temporary restraining order
and 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, 15 U.S.C. § 1116(a) (the Lanham Act), and 28
U.S.C. § 1651(a) (the All-Writs Act).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the papers, declarations, exhibits, and memorandum filed in support of Plaintiffs' Application for an Emergency Temporary Restraining Order, the Court hereby makes the following findings of fact and conclusions of law:

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 which relief may be granted against Defendants John Does 1-3 ("Defendants") under the Computer Fraud and Abuse Act (18 U.S.C. § 1030), Electronic Communications Privacy Act (18 U.S.C. § 2701), the Lanham Act (15 U.S.C. §§ 1114, 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), Electronic Communications Privacy Act (18 U.S.C. § 2701), the Lanham Act (15 U.S.C. §§ 1114, 1125) and constitute trespass to chattels, unjust enrichment and conversion, and that Plaintiffs are, therefore, likely to prevail on the merits of this action;

3. Microsoft owns the registered trademarks "Internet Explorer," "Microsoft," and "Windows" used in connection with its services, software and products. FS-ISAC's member organizations have invested in developing their brands, trademarks, and trade names in association with the financial services they offer.

4. There is good cause to believe that, unless Defendants are restrained and enjoined by Order of this Court, immediate and irreparable harm will result from the Defendants' ongoing violations. The evidence set forth in Plaintiffs' Brief in Support of Application for a Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction ("TRO Application"), and the accompanying declarations and exhibits, demonstrates that Plaintiffs are likely to prevail on their claim that Defendants have engaged in violations of the foregoing law by:

- a. intentionally accessing and sending malicious software to the protected computers and operating systems of the customers or associated member organizations of Microsoft and FS-ISAC, without authorization or exceeding authorization, in order to infect those computers and make them part of the computer botnet known as the “Ramnit” botnet (the “botnet”);
- b. sending malicious code to configure, deploy and operate a botnet;
- c. deploying computers and Internet domains to establish a command and control infrastructure for a botnet;
- d. using the command and control servers and Internet domains to actively manage and control a botnet for illegal purposes;
- e. intercepting Plaintiffs’ webpages and altering them to deceptively induce victims to enter sensitive credentials, while falsely indicating that the webpages are created or approved by Plaintiffs or Plaintiffs’ member organizations;
- f. stealing personal and financial account information and files from computer users; and
- g. using stolen information to steal money from the financial accounts of those users.

5. There is good cause to believe that if such conduct continues, irreparable harm will occur to Plaintiffs, Plaintiffs’ customers and member organizations, 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;

6. 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 botnet command and control software that is hosted at and otherwise operates through the Internet domains listed in Appendix A to this Order (“Appendix A”) and from the destruction or concealment of other discoverable evidence

of Defendants' misconduct available via those domains, including on user computers infected with Ramnit, if Defendants receive advance notice of this action. Based on the evidence cited in Microsoft's TRO Application and accompanying declarations and exhibits, Plaintiffs are likely to be able to prove that:

- a. Defendants are engaged in activities that directly violate United States law and harm Plaintiffs and the public, including Plaintiffs' customers and member-organizations;
- b. Defendants have continued their unlawful conduct despite the clear injury to the foregoing interests;
- c. Defendants are likely to delete or to relocate the botnet command and control software at issue in Plaintiffs' TRO Application and the harmful, malicious, and trademark infringing software disseminated through the Internet domains listed in Appendix A;
- d. Defendants are likely to issue a "kill" command to computers infected with Ramnit botnet malware, thereby damaging them irreparably and making any evidence on them irretrievable; and
- e. Defendants are likely to warn their associates engaged in such activities if informed of Plaintiffs' action.

7. Plaintiffs' request for this emergency *ex parte* relief is not the result of any lack of diligence on Plaintiffs' part, but instead based upon the nature of Defendants' unlawful conduct. Therefore, in accordance with Fed. R. Civ. P. 65(b), 15 U.S.C. § 1116(a) and 28 U.S.C. § 1651(a), good cause and the interest of justice require that this Order be Granted without prior notice to Defendants, and accordingly, Plaintiffs are relieved of the duty to provide Defendants with prior notice of Microsoft's motion;

8. There is good cause to believe that Defendants have specifically directed their activities to computers of Plaintiffs' customers and member organizations located in the Eastern District of Virginia, have engaged in illegal activity using the Internet domains identified in

Appendix A to this Order by directing malicious botnet code and content to said computers of Plaintiffs' customers and member organizations, to further perpetrate their fraud on Plaintiffs' customers and member organizations. There is good cause to believe that Defendants have directed said malicious botnet code and content through certain instrumentalities – specifically the domain registration facilities of the domain registries identified in Appendix A.

9. There is good cause to believe that Defendants have engaged in illegal activity by using the domain registration facilities of the domain registries identified in Appendix A to register the Internet domains identified in Appendix A, so as to deliver from those domains the malicious botnet code, content, and commands that Defendants use to maintain and operate the botnet to the computers of Plaintiffs' customers and member organizations, and to receive the information stolen from those computers.

10. There is good cause to believe that Defendants have engaged in illegal activity by using deceptive and fake methods to steal computer users' login and/or financial account credentials and to use such credentials to steal funds from such users.

11. There is good cause to believe that to immediately halt the injury caused by Defendants, Defendants must be prohibited from sending malicious botnet code, content and commands from the Internet domains identified in Appendix A to computers of Plaintiffs' customers.

12. There is good cause to believe that Defendants have engaged in illegal activity using the Internet domains identified in Appendix A to host the command and control software and content used to maintain and operate the botnet. There is good cause to believe that to immediately halt the injury caused by Defendants, each of Defendants' current and prospective domains set forth in Appendix A must be immediately redirected to the Microsoft-secured name-servers named NS11.microsoftinternetsafety.net and NS12.microsoftinternetsafety.net, thus making them inaccessible to Defendants for command and control purposes.

13. There is good cause to believe that to immediately halt the injury, the execution of this Order should be carried out in a coordinated manner by Plaintiffs and by the domain

registries identified in Appendix A on or about 10:00 a.m. Eastern Standard Time on February 24, 2015, or such other date and time within eight days of this Order as may be reasonably requested by Plaintiffs.

14. There is good cause to believe that Defendants will routinely update the Internet domains associated with the Ramnit Botnet, and that Plaintiffs may identify and update the domains listed in Appendix A as may be reasonably necessary to account for additional Internet domains associated with the Ramnit Botnet just prior to the February 24, 2015 execution of this Order.

15. 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 circumstances and the need for prompt relief. The following means of service are authorized by law, satisfy Due Process, and satisfy Fed. R. Civ. P. 4(f)(3) and are reasonably calculated to notify Defendants of the instant order, the Preliminary Injunction hearing and of this action: (1) by personal delivery upon Defendants who provided accurate contact information in the U.S., if any, (2) personal delivery through the Hague Convention on Service Abroad or similar treaties upon defendants who provided accurate contact information in foreign countries that are signatory to such treaties, if any, (3) transmission by email, facsimile, mail and/or personal delivery to the contact information provided by Defendants to their domain registrars and hosting companies and as agreed to by Defendants in their domain registration and/or hosting agreements, (4) publishing notice on a publicly available Internet website and/or in newspapers in the communities where Defendants are believed to reside.

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

IT IS THEREFORE ORDERED that, Defendants, their representatives and persons who are in active concert or participation with them are temporarily restrained and enjoined from: (1) intentionally accessing and sending malicious software or code to Plaintiffs and the protected computers and operating systems of Plaintiffs' customers and associated member organizations, without authorization, in order to infect those computers and make them part of

any botnet, (2) sending malicious code to configure, deploy and operate a botnet, (3) intercepting and altering Plaintiffs webpages such that they falsely indicate that they are associated with or approved by Plaintiffs or Plaintiffs' member organizations; (4) configuring, deploying, operating, or otherwise participating in or facilitating the botnet described in the TRO Application, including but not limited to the command and control software hosted at and operating through the Internet domains set forth in Appendix A and through any other component or element of the botnet in any location; (5) stealing information, money, or property from Plaintiffs, Plaintiffs' customers, or Plaintiffs' member organizations; (6) misappropriating that which rightfully belongs to Plaintiffs, their customers, or their associated member organizations or in which Plaintiffs, their customers, or their associated member organizations has a proprietary interest; or (7) undertaking any similar activity that inflicts harm on Plaintiffs, Plaintiffs' customers or member associations, or the public.

IT IS FURTHER ORDERED that, Defendants, their representatives and persons who are in active concert or participation with them are temporarily restrained and enjoined from (1) using and infringing Microsoft's trademarks, including specifically Microsoft's registered trademarks "Internet Explorer," "Microsoft" or "Windows," bearing registration numbers 2872708, 2463526 and 2277112; the trademarks of financial institution members of FS-ISAC and/or other trademarks, trade names, service marks, or Internet Domain addresses or names; (2) using in connection with Defendants' activities, products or services any false or deceptive designation, representation or description of Defendants' or of their activities, whether by symbols, words, designs or statements, which would damage or injure Plaintiffs or their member organizations or give Defendants an unfair competitive advantage or result in deception of consumers; or (3) acting in any other manner which suggests in any way that Defendants' activities, products or services come from or are somehow sponsored by or affiliated with Plaintiffs, or passing off Defendants' activities, products or services as Plaintiffs' or their member organizations.

IT IS FURTHER ORDERED that, with respect to any currently registered Internet

domains set forth in Appendix A, the domain registries located in the United States shall take the following actions:

A. Maintain unchanged the WHOIS or similar contact and identifying information as of the time of receipt of this Order and maintain the domains with the current registrar;

B. The domains shall remain active and continue to resolve in the manner set forth in this Order;

C. Prevent transfer or modification of the domains by Defendants or third parties at the registrar;

D. The domains shall be redirected to secure servers by changing the authoritative name servers to NS11.microsoftinternetsafety.net and NS12.microsoftinternetsafety.net and, as may be necessary, the IP address associated with name server or taking other reasonable steps to work with Microsoft to ensure the redirection of the domains and to ensure that Defendants cannot use them to control the botnet.

E. Take all steps required to propagate to the foregoing changes through the DNS, including domain registrars;

F. Preserve all evidence that may be used to identify the Defendants using the domains.

G. Refrain from providing any notice or warning to, or communicating in any way with Defendants or Defendants' representatives and refrain from publicizing this Order until this Order is executed in full, except as necessary to communicate with domain registrars and registries to execute this order.

IT IS FURTHER ORDERED that, with respect to any domains set forth in Appendix A that are *currently unregistered*, the domain registries and registrars located in the United States shall take the following actions:

A. Transfer the domains to the control of Microsoft, such that Microsoft is the registrant with control over hosting and administration of the domains. Domains should be transferred to Microsoft's account at the sponsoring registrar MarkMonitor.

B. The WHOIS registrant, administrative, billing and technical contact and identifying information should be the following;

Domain Administrator
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052
United States
Phone: +1.4258828080
Facsimile: +1.4259367329
domains@microsoft.com

C. The domains shall be made active and shall resolve in the manner set forth in this order or as otherwise specified by Microsoft.

D. The domains shall be assigned the authoritative name servers NS11.microsoftinternetsafety.net and NS12.microsoftinternetsafety.net and, as may be necessary, the IP address associated with name servers or taking such other reasonable steps to work with Microsoft to ensure that the domains and subdomains are put within Microsoft's control, and to ensure that Defendants cannot use them to control the botnet.

E. Refrain from providing any notice or warning to, or communicating in any way with Defendants or Defendants' representatives and refrain from publicizing this Order until this Order is executed in full, except as necessary to communicate with domain registrars or registries to execute this order.

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 accurate contact information in the U.S., if any; (2) personal delivery through the Hague Convention on Service Abroad or similar treaties upon defendants who provided accurate contact information in foreign countries that are signatory to such treaties, if any, (3) transmission by email, facsimile, mail and/or personal delivery to the contact information provided by Defendants to their domain registrars and/or hosting companies and as agreed to by Defendants in their domain registration and/or hosting agreements, (4) publishing notice on a publicly available Internet website and/or in

newspapers in the communities where Defendants are believed to reside.

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b) that the Defendants shall appear before this Court on March ___, 2015 at _____ 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 Microsoft shall post bond in the amount of \$200,000 as cash to be paid into the Court registry.

IT IS FURTHER ORDERED that Plaintiffs may identify and update the domains in Appendix A to this Order as may be reasonably necessary to account for additional Internet domains associated with the Ramnit Botnet just prior to the February 24, 2015 execution of this Order.

IT IS FURTHER ORDERED that the Defendants shall file with the Court and serve on Plaintiffs' counsel any answering affidavits, pleadings, motions, expert reports or declarations and/or legal memoranda no later than two (2) days prior to the hearing on Microsoft's request for a preliminary injunction. Plaintiffs 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 SO ORDERED

Entered this ____ day of February, 2015

United States District Judge