

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

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STEPHEN J. ... CLERK
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

MICROSOFT CORPORATION, a)
Washington Corporation,)
)
Plaintiff,)
)
v.)
)
ANTHONY PEPLER, an individual,)
260.COM, INC., a Delaware Corporation;)
REALTIMEINTERNET.COM, INC., a)
Delaware Corporation; MODERN LIMITED -)
CAYMAN WEB DEVELOPMENT;)
EXPRESS PERSONNEL ADVERTISING;)
CAYMAN TRADEMARK TRUST; JIT)
LIMITED, and JOHN DOES 1-10,)
)
Defendants.)

Case No.:

1107CV0233AS

COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF

Plaintiff Microsoft Corporation (“Microsoft”) brings this action against DEFENDANTS ANTHONY PEPLER; 260.COM, INC.; REALTIMEINTERNET.COM, INC.; MODERN LIMITED – CAYMAN WEB DEVELOPMENT; EXPRESS PERSONNEL ADVERTISING; CAYMAN TRADEMARK TRUST; JIT LIMITED; and JOHN DOES 1-10 and alleges as follows:

I. JURISDICTION AND VENUE

1. This is a complaint for an injunction, damages and other appropriate relief to stop Defendants from infringing Microsoft’s trade and service marks by registering Internet domain names that are identical or confusingly similar to Microsoft’s trademarks and service marks, and by using those domain names in bad faith to profit from Microsoft’s marks. In this action, Microsoft asserts violations of the Anticybersquatting and Consumer Protection Act, 15 U.S.C. § 1125(d); of sections 32 and 43 Lanham Act, 15 U.S.C. § 1114(1) (Trademark Infringement) and

1125(a) (False Designation of Origin, Unfair Competition/False Advertising); and of Indiana common law (Unfair Competition and Unjust Enrichment).

2. This Court has subject matter jurisdiction over Microsoft's claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338.

3. This court has supplemental jurisdiction over the claims in this Complaint that arise under the common law in the state of Indiana pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

4. This Court has personal jurisdiction over Defendant Pepler who resides in this judicial district. This Court has personal jurisdiction over the remaining Defendants who have: (a) committed intentional and tortuous acts within this State; (b) conducted substantial business within this State related to the unlawful activity at issue in this Complaint; and (c) otherwise have availed themselves of this forum.

5. Venue is proper in this court pursuant to 28 U.S.C. § 1391 because one or more Defendants reside in this district, have their principal place of business within this judicial district, conduct substantial business within this judicial district related to the unlawful activity at issue in this Complaint, and because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

II. THE PARTIES

6. Plaintiff Microsoft is a Washington corporation with its principal place of business in Redmond, WA.

7. Defendant Anthony Pepler ("Pepler") is an individual residing in Fort Wayne, Indiana.

8. Defendant 260.com, Inc. is a Delaware corporation with its principal place of business in Fort Wayne, Indiana. Upon information and belief, Pepler is the owner, operator and managing officer and agent of 260.com, Inc., and personally controls and directs its activities.

9. Defendant Realtimeinternet.com, Inc. is a Delaware corporation with its principal place of business in Fort Wayne, Indiana. Upon information and belief, Pepler is the owner, operator and managing officer and agent of Realtimeinternet.com, Inc., and personally controls and directs its activities.

10. Upon information and belief, Defendant Modern Limited - Cayman Web Development is an entity of unknown registration doing business in this district with its principal place of business purportedly in the Cayman Islands. Upon information and belief, Pepler is the owner, operator and managing officer and agent of Modern Limited - Cayman Web Development, and personally controls and directs its activities.

11. Upon information and belief, Defendant Express Personnel Advertising is an entity of unknown registration doing business in this district with its principal place of business purportedly in the Cayman Islands. Upon information and belief, Pepler is the owner, operator and managing officer and agent of Express Personnel Advertising, and personally controls and directs its activities.

12. Upon information and belief, Defendant Cayman Trademark Trust is an entity of unknown registration doing business in this district with its principal place of business purportedly in the Cayman Islands. Upon information and belief, Pepler is the owner, operator and managing officer and agent of Cayman Trademark Trust, and personally controls and directs its activities.

13. Upon information and belief, Defendant JIT Limited is an entity of unknown registration doing business in this district with its principal place of business purportedly in the Cayman Islands. Upon information and belief, Pepler is the owner, operator and managing officer and agent of JIT Limited, and personally controls and directs its activities.

14. Microsoft is unaware of the true names and capacities of defendants sued herein as JOHN DOES 1 – 10, inclusive, and therefore sues these Defendants by such fictitious names. Microsoft will amend this complaint to allege their true names and capacities when ascertained. Microsoft is informed and believes and therefore alleges that each of the fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Microsoft's injuries as herein alleged were proximately caused by such Defendants.

15. The actions alleged herein to have been undertaken by Pepler; 260.com, Inc.; Realtimelnternet.com, Inc.; Modern Limited - Cayman Web Development; Express Personnel Advertising; Cayman Trademark Trust; JIT Limited; and John Does 1-10 (collectively "Defendants") were undertaken by each Defendant individually, were actions that each Defendant caused to occur, were actions that each Defendant authorized, controlled, directed, or had the ability to authorize, control or direct, and/or were actions in which each Defendant assisted, participated or otherwise encouraged, and are actions for which each Defendant is liable. Each Defendant aided and abetted the actions of the Defendants set forth below, in that each Defendant had knowledge of those actions, provided assistance and benefited from those actions, in whole or in part. Each of the Defendants was the agent of each of the remaining Defendants, and in doing the things hereinafter alleged, was acting within the course and scope of such agency and with the permission and consent of other Defendants.

III. MICROSOFT'S BUSINESS AND TRADEMARKS

16. Microsoft is a world leader in the market for software and related products. Microsoft offers a wide range of products and services, including but not limited to computer software such as the Microsoft Windows operating system and Microsoft Office; computer hardware and accessories including keyboards and mice; gaming systems such as the Microsoft XBOX and XBOX 360; and internet service and electronic mail services such as the MSN and Windows Live Hotmail services, to name a few.

17. Microsoft owns registrations for a number of trademarks and service marks that it uses to identify its products and services in the marketplace. Among the marks owned by Microsoft are the following registered marks (collectively the "Microsoft Marks"): ACCESS, ACTIVEX, AGE OF MYTHOLOGY, AUTOROUTE, EXCEL, HALO, HOTMAIL, INTELLIMIRROR, INTERNET EXPLORER, MICROSOFT, MS-DOS, MSN, NETMEETING, OUTLOOK, POWERPOINT, VISUAL BASIC, WEBTV, WINDOWS, WINDOWS MEDIA, WINDOWS VISTA, WINDOWS XP, XBOX.

18. Since at least November 1992, Microsoft has used, in commerce, the trademark "ACCESS" to promote general-purpose computer database software.

19. On February 2, 2005, Microsoft applied for the registration of the ACCESS trademark. United States Trademark Registration No. 3,238,869 was issued on May 8, 2007. *See Exhibit A.* The ACCESS trademark is broadly recognized as a brand identifier for general-purpose computer database software and related products.

20. Since at least March 12, 1996, Microsoft has used, in commerce, the trademark "ACTIVEX" to promote computer programs for use in the design, development and execution of other programs.

21. On February 6, 1996, Microsoft applied for the registration of the ACTIVEX trademark. United States Trademark Registration No. 2,114,649 was issued on November 18, 1997. *See* Exhibit B. The ACTIVEX trademark is broadly recognized as a brand identifier for computer programs for use in the design, development and execution of other programs.

22. Since at least October 31, 2002, Microsoft has used, in commerce, the trademark “AGE OF MYTHOLOGY” to promote game software and other related products.

23. On February 21, 2000, Microsoft applied for the registration of the AGE OF MYTHOLOGY trademark. United States Trademark Registration No. 2,698,189 was issued on March 18, 2003. *See* Exhibit C. The AGE OF MYTHOLOGY trademark is broadly recognized as a brand identifier for Microsoft’s game software and related products.

24. Since at least 1991, Microsoft has used, in commerce, the trademark “AUTOROUTE” to promote computer programs for use in travel planning and driving instructions.

25. On August 28, 2003, Microsoft applied for the registration of the AUTOROUTE trademark. United States Trademark Registration No. 3,133,726 was issued on August 22, 2006. *See* Exhibit D. The AUTOROUTE trademark is broadly recognized as a brand identifier for Microsoft’s computer programs for use in travel planning and driving instructions.

26. Since at least September 30, 1985, Microsoft has used, in commerce, the trademark “EXCEL” to promote spreadsheet software and related products.

27. On April 12, 2004, Microsoft applied for the registration of the EXCEL trademark. United States Trademark Registration No. 2,942,050 was issued on April 19, 2005. *See* Exhibit E. The EXCEL trademark and service mark is broadly recognized as a brand identifier for Microsoft’s spreadsheet software and related products.

28. Since at least November 15, 2001, Microsoft's predecessor used, in commerce, the trademark "HALO" to promote game software and other related products.

29. On February 11, 1999, Microsoft's predecessor applied for the registration of the HALO trademark. United States Trademark Registration No. 2,598,381 was issued on July 23, 2002. The HALO trademark is also the subject of United States Trademark Registration No. 2,837,420. *See* Exhibit F. The HALO trademark is broadly recognized as a brand identifier for Microsoft's game software and related products.

30. Since at least July 4, 1996, Microsoft has used, in commerce, the trademark and service mark "HOTMAIL" to promote advertising and marketing services, including promoting the goods and services of others by placing advertisements and promotional displays in an electronic site accessed through computer networks.

31. On April 10, 1997, Microsoft's predecessor, Hotmail Corporation, applied for the registration of the Hotmail trademark and service mark. United States Trademark Registration No. 2,165,601 was issued on June 16, 1998. *See* Exhibit G. The Hotmail trademark and service mark is broadly recognized as a brand identifier for Microsoft's software and hardware products and for electronic communications services.

32. Since at least September 23, 1997, Microsoft has used, in commerce, the trademark "INTELLIMIRROR" to promote computer programs for memory management and file storage and for accessing files over computer networks.

33. On June 26, 1997, Microsoft applied for the registration of the INTELLIMIRROR trademark. United States Trademark Registration No. 2,298,600 was issued on December 7, 1999. *See* Exhibit H. The INTELLIMIRROR trademark is broadly recognized as a brand identifier for Microsoft's computer programs for memory management and file storage and for

accessing files over computer networks

34. Since at least January 1, 1995, Microsoft's predecessor has used, in commerce, the trademark "INTERNET EXPLORER" to promote software for browsing the global computer network and secure private networks and related programs.

35. On August 13, 1997, Microsoft's predecessor applied for the registration of the INTERNET EXPLORER trademark. United States Trademark Registration No. 2,277,112 was issued on September 14, 1999. See Exhibit I. The INTERNET EXPLORER trademark is broadly recognized as a brand identifier for Microsoft's software for browsing the global computer network and secure private networks and related programs.

36. Since at least November 12, 1975, Microsoft has used, in commerce, the trademark and service mark "MICROSOFT" to promote its products and services.

37. On October 22, 1979, Microsoft's predecessor applied for the registration of the MICROSOFT trademark and service mark. United States Trademark Registration No. 1,200,236 was issued on July 6, 1982. The MICROSOFT trademark and service mark is also the subject of United States Trademark Registration Nos. 1,966,382, 2,250,973, and 2,285,870. See Exhibit J. Microsoft's MICROSOFT trademark and service mark is broadly recognized as identifying plaintiff Microsoft and its various products and services.

38. Since at least December 1981, Microsoft has used, in commerce, the trademark "MS-DOS" to promote computer software.

39. On March 15, 1984, Microsoft applied for the registration of the MS-DOS trademark. United States Trademark Registration No. 1,315,570 was issued on January 22, 1985. The MS-DOS trademark is also the subject of United States Trademark Registration No. 1,314,584. See Exhibit K. The MS-DOS trademark is broadly recognized as a brand identifier

for Microsoft's computer software and other products.

40. Since at least March 7, 1995, Microsoft has used, in commerce, the trademark and service mark "MSN" to promote computer hardware and software as well as electronic communications services.

41. On April 25, 1997, Microsoft applied for the registration of the MSN trademark and service mark. United States Trademark Registration No. 2,153,763 was issued on April 28, 1998. The MSN trademark and service mark is also the subject of United States Trademark Registration Nos. 2,201,105, 2,418,517, and 2,459,987. *See* Exhibit L. The MSN trademark and service mark is broadly recognized as a brand identifier for Microsoft's software and hardware products and for electronic communications services.

42. Since at least May 29, 1996, Microsoft has used, in commerce, the trademark "NETMEETING" to promote computer software and electronic communications services.

43. On May 21, 1996, Microsoft applied for the registration of the NETMEETING trademark. United States Trademark Registration No. 2,182,726 was issued on August 18, 1998. *See* Exhibit M. The NETMEETING trademark is broadly recognized as a brand identifier for Microsoft's computer software and electronic communications services.

44. Since at least January 1, 1997, Microsoft has used, in commerce, the trademark "OUTLOOK" to promote computer software and electronic communications services.

45. On February 5, 1996, Microsoft applied for the registration of the OUTLOOK trademark. United States Trademark Registration No. 2,188,125 was issued on September 8, 1998. *See* Exhibit N. The OUTLOOK trademark is broadly recognized as a brand identifier for Microsoft's computer software and electronic communications services.

46. Since at least April 20, 1987, Microsoft has used, in commerce, the trademark

“POWERPOINT” to promote computer software.

47. On June 29, 1987, Microsoft applied for the registration of the POWERPOINT trademark. United States Trademark Registration No. 1,475,795 was issued on February 9, 1988. *See* Exhibit O. The POWERPOINT trademark is broadly recognized as a brand identifier for Microsoft’s computer software.

48. Since at least May 15, 1991, Microsoft has used, in commerce, the trademark and service mark “VISUAL BASIC” to promote computer software.

49. On November 1, 1990, Microsoft applied for the registration of the VISUAL BASIC trademark. United States Trademark Registration No. 1,787,376 was issued on August 10, 1993. *See* Exhibit P. The VISUAL BASIC trademark is broadly recognized as a brand identifier for Microsoft’s computer software.

50. Since at least May 5, 1996, Microsoft has used, in commerce, the service mark “WEBTV” to promote computer services for real-time interaction with other global computer network users and on-line hosting.

51. On May 25, 1995, Microsoft applied for the registration of the WEBTV service mark. United States Trademark Registration No. 2,480,933 was issued on August 21, 2001. *See* Exhibit Q. The WEBTV service mark is broadly recognized as a brand identifier for Microsoft’s computer services for real-time interaction with other global computer network users and on-line hosting.

52. Since at least October 18, 1983, Microsoft has used, in commerce, the trademark and service mark “WINDOWS” to promote computer hardware, software, and other electronic services.

53. On August 20, 1990, Microsoft applied for the registration of the WINDOWS

trademark and service mark. United States Trademark Registration No. 1,872,264 was issued on January 10, 1995. The WINDOWS trademark and service mark is also the subject of United States Trademark Registration Nos. 1,875,069, 1,989,386, 2,005,901, 2,212,784, 2,463,509, 2,463,510, 2,463,526, 2,513,051, and 2,565,965. *See* Exhibit R. The WINDOWS trademark and service mark is broadly recognized as a brand identifier for Microsoft's software and hardware products and for other electronic services.

54. Since at least July 1998, Microsoft has used, in commerce, the trademark "WINDOWS MEDIA®" to promote computer software.

55. On July 13, 1998, Microsoft applied for the registration of the WINDOWS MEDIA trademark. United States Trademark Registration No. 2,601,424 was issued on July 30, 2002. *See* Exhibit S. The WINDOWS MEDIA trademark is broadly recognized as a brand identifier for Microsoft's computer software.

56. Since at least August 3, 2005, Microsoft has used, in commerce, the trademark "WINDOWS VISTA" to promote computer software.

57. On July 22, 2005, Microsoft applied for the registration of the WINDOWS VISTA trademark. United States Trademark Registration No. 3,235,107 was issued on April 24, 2007. *See* Exhibit T. The WINDOWS VISTA trademark is broadly recognized as a brand identifier for Microsoft's computer software.

58. Since at least March 14, 2001, Microsoft has used, in commerce, the trademark and service mark "WINDOWS XP" to promote operating systems and related products.

59. On January 19, 2001, Microsoft applied for the registration of the WINDOWS XP trademark and service mark. United States Trademark Registration No. 2,640,353 was issued on October 22, 2002. The WINDOWS XP trademark and service mark is also the subject of United

States Trademark Registration Nos. 2,640,357, 2,691,662, 2,705,442, 2,710,133, and 2,789,690. *See* Exhibit U. The WINDOWS XP trademark and service mark is broadly recognized as a brand identifier for Microsoft's operating system and related products.

60. Since at least November 1, 2001, Microsoft has used, in commerce, the trademark and service mark "XBOX" to promote television and video converters and related products, including the XBOX home entertainment system.

61. On October 18, 1999, Microsoft applied for the registration of the XBOX trademark and service mark. United States Trademark Registration No. 2,646,465 was issued on November 5, 2002. The XBOX trademark and service mark is also the subject of United States Trademark Registration Nos. 2,663,880, 2,698,179, 2,730,847, 2,738,849, 2,775,859, 2,776,769, 2,786,794, 2,792,744, 2,811,895, 2,841,854, 2,907,179, 2,934,666 and others. *See* Exhibit V. The XBOX trademark and service mark is broadly recognized as a brand identifier for Microsoft's entertainment products.

62. The Microsoft Marks, as well as others owned by Microsoft, are used in interstate commerce in connection with the sale, offering for sale, distribution, and advertising of Microsoft's products and services. The Microsoft Marks are distinctive and were distinctive at the time of all acts alleged herein. As a result of Microsoft's substantial investment, the Microsoft Marks have developed extensive goodwill in the market. Accordingly, the Microsoft Marks are extremely valuable to Microsoft.

IV. MICROSOFT'S INTERNET PRESENCE

63. Microsoft also maintains a substantial presence on the Internet. Via the Internet, Microsoft advertises its products and services, transacts business with its customers, offers its customers access to many of its services, and provides product support, among other things.

64. In order to provide its customers with easy access to its online products and services, Microsoft has registered a number of Internet domain names. Many of these domain names correspond to Microsoft's trademarks and service marks. Examples of such domain names are <microsoft.com>, <microsoftwindows.com>, <xbox.com>, and <msn.com>.

65. Each of these domain names, as well as others registered to Microsoft, resolves to a Microsoft-created website that provides Microsoft's customers with information related to Microsoft's products and services. These websites generate business for Microsoft and allow Microsoft to maintain relationships with its customers.

V. DEFENDANTS' UNLAWFUL ACTIONS

66. Upon information and belief, Defendants are presently, or once were, either the registrants or users (as the registrants' authorized licensees) of numerous Internet domain names that contain or consist of Microsoft Marks and/or intentional misspellings of Microsoft Marks. These domain names are hereinafter referred to as the "Infringing Domain Names." A representative, though not necessarily exhaustive, list of ninety-five (95) of the Infringing Domain Names registered and used by Defendants is attached hereto as Appendix A.

67. The Infringing Domain Names are identical or confusingly similar to Microsoft's marks. The Infringing Domain Names do not resolve to websites owned or endorsed by Microsoft.

68. Upon information and belief, Defendants have registered the Infringing Domain Names using registration information that is either identical to, or a minor variation of, the names of three known defendants (Anthony Pepler; 260.com, Inc.; and Realtimeinternet.com, Inc.) and four defendants of unknown corporate registration (Modern Limited - Cayman Web Development, Express Personnel Advertising, Cayman Trademark Trust, and JIT Limited)

which are personally controlled by Defendant Pepler.

69. Upon information and belief, Defendants have employed a variety of pseudonyms to either register the Infringing Domain Names or use the Infringing Domains Names as the registrants' authorized licensee. While many of these public WHOIS domain registration records contain incomplete or unreliable information, they are connected by one or more of the following elements: common registrant addresses in the Cayman Islands, common registrant phone numbers, common registrant e-mail address, and common domain name servers. Defendants also may have registered additional Infringing Domain Names using other pseudonyms or as entities of which Microsoft is not currently aware.

70. Many of the Infringing Domain Names resolve to websites that are controlled by Defendants (collectively referred to as "Defendants' Websites"). Many of these websites display advertisements and/or hyperlinks featuring goods or services that are directly competitive with Microsoft products and services.

71. Many of Defendants' Websites contain numerous advertisements and/or hyperlinks for a variety of products and services. When a person looking for a Microsoft website lands on one of Defendants' Websites, that person may click on one of the advertisements or hyperlinks on the site either because the person finds it easier to click on the advertisement or hyperlink than to continue searching for the Microsoft site, or because the person mistakenly believes Microsoft has authorized or endorsed the advertisements or hyperlinks. In either case, the person has been diverted from the Microsoft website he or she was seeking to visit, and Microsoft has lost that opportunity to interact with that person.

72. Defendants use the Infringing Domain Names to profit from the Microsoft Marks. Upon information and belief, Defendants receive a payment when Internet users click on one or

more links or advertisements on the websites of the Infringing Domain Names. Defendants receive these payments from one or more advertisers, affiliate programs, or search engines.

73. Defendants are not affiliated with, or sponsored by, Microsoft and have not been authorized by Plaintiff to use the Microsoft Marks. Defendants have not now or ever been authorized by Plaintiff to use or register any name or mark that includes the Microsoft Marks.

74. Upon information and belief, Defendants' registration and/or use of the Infringing Domain Names is to primarily capitalize on the goodwill associated with the Microsoft Marks.

FIRST CLAIM FOR RELIEF

(Cybersquatting under the Anticybersquatting Consumer Protection Act – 15 U.S.C. § 1125(d))

75. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 74 above.

76. The Microsoft Marks were distinctive at the time Defendants registered the Infringing Domain Names and remain distinctive today.

77. The Infringing Domain Names were identical or confusingly similar to the Microsoft Marks at the time Defendants registered the Infringing Domain Names, and remain so today.

78. Defendants have registered and used the Infringing Domain Names with bad faith intent to profit from the goodwill established by Microsoft in the Microsoft Marks.

79. Defendants' registration and use of the Infringing Domain Names has caused and will continue to cause damage to Microsoft, in an amount to be proved at trial, and is causing irreparable harm to Microsoft for which there is no adequate remedy at law. Therefore, Plaintiff is entitled to injunctive relief.

80. Microsoft is also entitled to recover Defendants' profits, actual damages and costs in an amount to be proven at trial or statutory damages of up to \$100,000 per domain name,

treble damages, attorneys' fees and transfer of the Infringing Domain Names to Microsoft.

SECOND CLAIM FOR RELIEF

(Trademark Infringement Under the Lanham Act- 15 U.S.C. § 1114)

81. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 80 above.

82. Defendants' use of the Microsoft Marks and counterfeits of the Microsoft Marks to promote, market, or sell products and services constitutes trademark infringement pursuant to 15 U.S.C. § 1114.

83. Defendants' intentional and willful infringement of the Microsoft Marks has caused and will continue to cause damage to Microsoft, in an amount to be proved at trial, and is causing irreparable harm to Microsoft for which there is no adequate remedy at law. Microsoft is also entitled to statutory and treble damages.

THIRD CLAIM FOR RELIEF

(False Designation of Origin Under the Lanham Act - 15 U.S.C. § 1125(a))

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

85. Defendants have used and continue to use the Microsoft Marks in connection with goods or services, in commerce, in a manner that is likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of such goods or services.

86. Microsoft has been damaged by these acts in an amount to be proved at trial and attorneys' fees. Microsoft is also entitled to injunctive and equitable relief against Defendants.

FOURTH CLAIM FOR RELIEF

(Unfair Competition/False Advertising Under the Lanham Act - 15 U.S.C. § 1125(a))

87. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 86 above.

88. Defendants have used and continue to use the Microsoft Marks in connection with

goods or services and false and misleading descriptions or representations of fact in commercial advertising or promotion, thereby misrepresenting the nature, characteristics, and qualities of his or another person's goods, services, or commercial activities.

89. Microsoft has been damaged by these acts in an amount to be proved at trial and attorneys' fees. Microsoft is also entitled to injunctive and equitable relief against the Defendants.

FIFTH CLAIM FOR RELIEF
(Indiana Common Law of Unfair Competition)

90. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 89 above.

91. Defendants' use of the Microsoft Marks has infringed on their distinctive features in a manner that tends to confuse, in the public mind, Defendants' products and advertising with Microsoft's products and advertising, in violation of the common law of Indiana. Defendants' conduct has caused and will continue to cause damage to Microsoft, and is causing irreparable harm to Microsoft for which there is not adequate remedy at law.

SEVENTH CLAIM FOR RELIEF
(Indiana Common Law of Unjust Enrichment)

92. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 91 above.

93. The acts of Defendants complained of herein constitute unjust enrichment of Defendants at Microsoft's expense in violation of the common law of Indiana.

94. Microsoft is entitled to disgorgement of ill-gotten gains in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Microsoft respectfully requests that the Court enter judgment against Defendants as follows:

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

- a) infringing Microsoft's trademarks and service marks;
- b) registering, using or trafficking in any domain name that is identical or confusingly similar to Microsoft's marks, including but not limited to domain names containing Microsoft's marks and domain names containing misspellings of Microsoft's marks;
- c) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs a) through b) above.

2. That the Court order the forfeiture or cancellation of the Infringing Domain Names or the transfer of the Infringing Domain Names to Microsoft;

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

4. that the Court award Microsoft treble damages, in an amount to be proven at trial, pursuant to Section 35(a) of the Lanham Act;

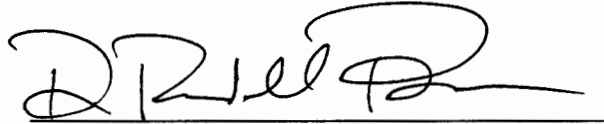
5. That the Court orders Defendants to disgorge all ill-gotten gains;

6. that the Court award Microsoft its attorneys' fees and costs incurred herein; and

7. 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 this 11th day of September, 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Randall Brown', written over a horizontal line.

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