

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MICROSOFT CORPORATION)	CASE NO. 1:17-CV-4566
)	
Plaintiff,)	
)	
v.)	
)	
JOHN DOES 1-51,)	
CONTROLLING MULTIPLE)	
COMPUTER BOTNETS)	
THEREBY INJURING)	
MICROSOFT AND ITS)	
CUSTOMERS)	
)	
Defendants.)	

**[PROPOSED] DEFAULT JUDGMENT AND ORDER FOR PERMANENT
INJUNCTION**

This matter came before the Court on Plaintiff Microsoft Corporation’s (“Microsoft”) Motion for Default Judgment and Permanent Injunction. Microsoft has established the elements of its claims pursuant to: (1) the Computer Fraud and Abuse Act (18 U.S.C. § 1030), (2) the Georgia Computer Systems Protection Act (O.C.G.A. § 16-9-93), (3) the Lanham Act (15 U.S.C. § 1114 et seq.), (4) the Uniform Deceptive Trade Practices Act (O.C.G.A. § 10-1-372), (5) the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962), (6) conversion and trespass (O.C.G.A. § 51-10-1 et seq.), (7) the common law of tortious interference

with contractual or business relations, (8) unjust enrichment, and (9) the All Writs Act, (28 U.S.C. § 1651). Defendants have failed to appear, plead, or otherwise defend this action. Microsoft is entitled to default judgment under Rule 55(b) of the Federal Rules of Civil Procedure and a permanent injunction pursuant to Rule 65 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, memorandum, and all other pleadings and papers relevant to Microsoft's Motion for Default Judgment and Entry of a Permanent Injunction, the Court hereby makes the following findings of fact and conclusions of law:

1. The Defendants were properly served with Microsoft's summons, complaint, and other pleadings in this action and were provided with adequate notice of this action through means authorized by law, satisfying Due Process, satisfying Fed. R. Civ. P. 4 and reasonably calculated to provide Defendants with notice. Specifically, Defendants have been served via e-mail at e-mail addresses associated with infrastructure used by Defendants to carry out the activity that is the subject of the complaint and by publication on the public website www.noticeofpleadings.net/gamarue.

2. Defendants failed to appear, plead, or otherwise defend against the

action.

3. The time for responding to Microsoft's complaint was 21 days from service of the summons and complaint, and more than 21 days have elapsed since Microsoft effected service. The Clerk properly entered default pursuant to Rule 55(a) on April 17, 2018.

4. This Court has jurisdiction over the subject matter of the case and venue is proper in this judicial district.

5. Microsoft is entitled to entry of judgment and a permanent injunction against Defendants.

6. The evidence of record indicates that no Defendant is an infant or incompetent.

7. Defendants have engaged in and are likely to engage in acts or practices that violate (1) the Computer Fraud and Abuse Act (18 U.S.C. § 1030), (2) the Georgia Computer Systems Protection Act (O.C.G.A. § 16-9-93), (3) the Lanham Act (15 U.S.C. § 1114 et seq.), (4) the Uniform Deceptive Trade Practices Act (O.C.G.A. § 10-1-372), (5) the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962), (6) conversion and trespass (O.C.G.A. § 51-10-1 et seq.), (7) the common law of tortious interference with contractual or business relations, (8) unjust enrichment, and (9) the All Writs Act, (28 U.S.C. § 1651).

8. Microsoft owns the registered trademarks or brands: "Microsoft,"

“Windows,” and “Internet Explorer” used in connection with its services, software and products.

9. There is good cause to believe that Defendants are likely to continue the foregoing conduct and to engage in the illegal conduct and purposes enjoined by the Preliminary Injunction, unless Defendants are permanently restrained and enjoined and unless final relief is ordered to expeditiously prevent Defendants from maintaining the registration of domains for such prohibited and unlawful purposes, on an ongoing basis.

10. There is good cause to believe that, unless Defendants are permanently restrained and enjoined and unless further relief is ordered to expeditiously prevent Defendants from maintaining the registration of domains for purposes enjoined by the Preliminary Injunction, on an ongoing basis, immediate and irreparable harm will result to Microsoft, Microsoft’s customers and to the public, from the Defendants’ ongoing violations.

11. There is good cause to believe that to halt the injury caused by Defendants, they must be prohibited from using domains, as set forth below.

12. The hardship to Microsoft and its customers that will result if a permanent injunction does not issue weighs in favor of an injunction. Defendants will suffer no cognizable injury as a result of being enjoined from further illegal conduct.

13. There is good cause to permit notice of the instant Order, further orders of the court and service of the Complaint by formal and alternative means. 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: (1) transmission by email, facsimile, mail and/or personal delivery to the contact information provided by Defendants to their domain registrars and hosting companies, and (2) publishing notice on the publicly available website www.noticeofpleadings.net/gamarue.

FINAL JUDGMENT AND PERMANENT INJUNCTION

IT IS THEREFORE ORDERED that in accordance with Fed. R. Civ. P. 65(b) and 53(a)(1)(C), 15 U.S.C. § 1116(a) and 28 U.S.C. § 1651(a) and the court's inherent equitable authority, good cause and the interests of justice, Microsoft's Motion for Default Judgment and Entry of a Permanent Injunction is Granted.

IT IS FURTHER ORDERED that Defendants are in default, and that judgment is awarded in favor of Microsoft and against Defendants.

IT IS FURTHER ORDERED that, Defendants, Defendants' representatives, and persons who are in active concert or participation with Defendants, are permanently restrained and enjoined from: (1) intentionally accessing and sending malicious software or code to Microsoft and the protected computers and operating systems of Microsoft and Microsoft's customers, without

authorization, in order to infect those computers; (2) intentionally attacking and compromising computers or computer networks of Microsoft or Microsoft's customers, to monitor the activities of the owners or users of those computers or computer networks, and to steal information from those computers or networks; (3) configuring, deploying, operating, or otherwise participating in or facilitating a command and control infrastructure, or any component or element of the command and control infrastructure at any location; (4) stealing information from Microsoft's customers; (5) misappropriating that which rightfully belongs to Microsoft, its customers, or in which Microsoft or its customers have a proprietary interest; (6) downloading or offering to download additional malicious software onto the computers of Microsoft's customers; or (7) undertaking any similar activity that inflicts harm on Microsoft, Microsoft's customers, or the public, including but not limited through the Internet domains set forth in Appendix A attached to this Order ("Appendix A").

IT IS FURTHER ORDERED that, Defendants, Defendants' representatives, and persons who are in active concert or participation with Defendants are permanently restrained and enjoined from (1) using and infringing Microsoft's trademarks, trade names, service marks, or Internet Domain addresses or names to carry out the enjoined activity; (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 Microsoft 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 Microsoft, or passing off Defendants' activities, products or services as Microsoft's.

IT IS FURTHER ORDERED that Defendants shall forfeit ownership and control of all domains used to carry out the activities enjoined herein, including the domains identified at Appendix A.

IT IS FURTHER ORDERED, pursuant to the All Writs Act (28 U.S.C. § 1651) that the terms of this Permanent Injunction shall be enforced against the Defendants, Defendants' representatives, and persons who are in active concert or participation with Defendants, as follows:

1. With respect to the domains set forth at Appendix A, the domain registry shall take the following actions:

- A. Transfer the domains to the permanent control of Microsoft, such that Microsoft is the registrant with control over hosting and administration of the domain. The domains should be transferred to Microsoft's account at the sponsoring registrar MarkMonitor or such other registrar and account details specified by Microsoft. The domains shall be made active and shall resolve in the manner set

forth in this order, or as otherwise specified by Microsoft, upon taking control of the domains;

B. The domains shall be redirected to secure servers by changing the authoritative name servers to b66.microsoftinternetsafety.net and b67.microsoftinternetsafety.net and, as may be necessary, the IP addresses associated with name servers 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 make unauthorized access to computers, infect computers, compromise computers and computer networks, monitor the owners and users of computers and computer networks, steal information from them or engage in any other activities prohibited by this Permanent Injunction;

C. The WHOIS registrant, administrative, billing and technical contact and identifying information should be the following, or other information as may be specified by Microsoft:

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

D. Prevent transfer, modification or deletion of the domains by Defendants and prevent transfer or control of the domains to the account of any party

other than Microsoft;

E. Take all steps required to propagate to the foregoing changes through the Domain Name System (“DNS”), including domain registrars.

IT IS FURTHER ORDERED that copies of this Order and all other pleadings and documents in this action may be served by any means authorized by law, including (1) transmission by email, facsimile, mail and/or personal delivery to the contact information provided by Defendants to Defendants’ domain registrars and/or hosting companies and as agreed to by Defendants in the domain registration or hosting agreements, (2) publishing notice on a publicly available Internet website, (3) by personal delivery upon Defendants, to the extent Defendants provided accurate contact information in the U.S.; (4) personal delivery through the Hague Convention on Service Abroad or similar treaties upon Defendants, to the extent Defendants provided accurate contact information in foreign countries that are signatory to such treaties.

IT IS SO ORDERED

Entered this ____ day of _____, 2018

Hon. Mark H. Cohen
United States District Judge