

Microsoft seeks injunctive relief to further disrupt the Defendants' criminal scheme, which has recently been reconstituted on a new website, and to ultimately recover damages, for Defendants' (1) violations of the Lanham Act (15 U.S.C. §§ 1114 *et seq.*, 1125(a), (c)), (2) violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962) ("RICO"), (3) tortious interference with Microsoft's business relationships with its customers, (4) conversion of Microsoft's property, (5) trespass to Microsoft's chattels, and (6) unjust enrichment at Microsoft's expense.

I. BACKGROUND

On December 7, 2023, this Court granted an *Ex Parte* temporary restraining order ("TRO") tailored to halt the illegal activities of the Fraudulent Enterprise.¹ Working with the third parties whose infrastructure had been abused by the Defendants to perpetrate their fraudulent activity, Microsoft finished effectuating the TRO on December 12, 2023 (*see* ECF No. 5), and on December 13, 2023, served Defendants with the TRO and other case documents (*see* ECF No. 20 at 2–3 (detailing Microsoft's efforts to effectuate service on Defendants "by all available means")). On December 19, 2023, the Court converted the TRO into an Order for Preliminary Injunction (ECF No. 23), and Microsoft served Defendants with the Preliminary Injunction Order (*see* ECF No. 26). Since then, Microsoft has been conducting third-party discovery to support a default judgment in this proceeding (*see* ECF No. 32).

Microsoft has confirmed through its own investigation that Defendants, in blatant violation of the Court's Preliminary Injunction Order, have reconstituted the unlawful marketplace

¹ Microsoft respectfully notes that that apparently the TRO was never published on the case docket. For the Court's convenience, Microsoft attaches a true and correct copy of the TRO as Exhibit 1 to the Declaration of Jason Rozbruch in Support of Microsoft's Motion for an *Ex Parte* Supplemental Preliminary Injunction Order ("Rozbruch Decl.").

supporting their Fraudulent Enterprise under the RockCAPTCHA Website. *See* Declaration of Jason Lyons in Support of Microsoft’s Motion for an *Ex Parte* Supplemental Preliminary Injunction Order. (“Lyons Decl.”) ¶¶ 6–10. Plaintiff asks the Court for an order directing the RockCAPTCHA Website’s (1) registry operator to change the registrar of record for the domain to Plaintiff’s registrar of choice, which will then change the registrant of the domain to Plaintiff, and to take reasonable steps to work with Plaintiff to ensure the transfer of the domain; and (2) hosting service provider to disable all services provided thereto.

II. ARGUMENT

The supplemental relief Plaintiff seeks has been granted in similar prior cases when defendants began using new domains after the court granted preliminary relief. *See, e.g.*, Order Granting *Ex Parte* Motion to Supplement the Preliminary Injunction, *Microsoft Corp. v. John Does 1-2*, No. 1:23-cv-02447 (E.D.N.Y. June 16, 2023) (Hall, J.), ECF No. 24 (Rozbruch Decl. Ex. 2) (granting supplemental injunction to seize additional domains associated with defendants’ unlawful infrastructure); Supplemental Preliminary Injunction Order, *Microsoft Corp. v. John Does 1-2*, No. 1:16-cv-00993 (E.D. Va. Dec. 6, 2016) (Lee, J.), ECF No. 49 (Rozbruch Decl. Ex. 3) (same); Supplemental Injunction Order, *Microsoft Corp. v. John Does 1-2*, No. 1:19-cv-00716 (D.D.C. May 22, 2019) (Berman Jackson, J.), ECF No. 21 (Rozbruch Decl. Ex. 4) (same).

Here, absent the requested relief, Microsoft and its customers will continue to suffer irreparable harm, as detailed in Microsoft’s prior submissions. Microsoft is likely to succeed on the merits because the domain at issue in this motion is used for the same unlawful purposes and generally in the same unlawful manner as the domains that were the subject of Plaintiff’s TRO Motion. Lyons Decl. ¶¶ 6–11. Disabling the additional domain at issue is necessary to prevent irreparable harm to Plaintiff and its customers.

It is imperative that this supplemental relief be ordered and effectuated on an *ex parte* basis, shielded from anyone associated with the Fraudulent Enterprise until it is complete. Lyons Decl. ¶ 12. If Defendants are alerted to these efforts prior to completion, there is substantial risk they will relocate the infrastructure to an alternative domain or domains, thwarting this effort to further discourage and ultimately stop the Fraudulent Enterprise. *Id.* As discussed in Microsoft’s TRO Motion, *ex parte* relief is appropriate here because Microsoft has set forth facts showing immediate and irreparable injury and a sound basis for why notice should not be required. *See* ECF No. 13 (Memorandum of Law in Support of TRO Motion) at 49–51. In this case, Defendants have already demonstrated that they have the technical sophistication and ability to move their malicious infrastructure, and would likely immediately do so if given the opportunity before a Court order is issued. Lyons Decl. ¶¶ 12–13; *see also* Fed. R. Civ. P. 65(b)(1); *In re Vuitton et Fils S.A.*, 606 F.2d 1, 4–5 (2d Cir. 1979) (holding that notice prior to issuing temporary restraining order was not necessary where notice would “serve only to render fruitless further prosecution of the action”); *id.* at 2 (plaintiff’s “[prior] experience . . . taught it that once one member of this community of counterfeiters learned that he had been identified by [plaintiff] and was about to be enjoined from continuing his illegal enterprise, he would immediately transfer his inventory to another counterfeit seller, whose identity would be unknown to [plaintiff]”); *AT&T Broadband v. Tech Commc’ns, Inc.*, 381 F.3d 1309, 1319–20 (11th Cir. 2004) (affirming *ex parte* search and seizure order to seize contraband technical equipment, given evidence that, in the past, defendants and persons similarly situated had secreted evidence once notice was given); *Little Tor Auto Ctr. v. Exxon Co., USA*, 822 F. Supp. 141, 143 (S.D.N.Y. 1993) (*ex parte* temporary restraining order is appropriate where contraband “may be destroyed as soon as notice is given”). Although the Defendants have already demonstrated an ability to reconstitute their malicious infrastructure following Microsoft’s

disruption efforts, their new, reconstituted websites operate on a much lesser scale, with far fewer customers. Lyons Decl. ¶ 12. As demonstrated in the Lyons Declaration, additional unannounced disruptions of these illicit operations will further frustrate Defendants' efforts to maintain and add customers, weaken their credibility in the marketplace, and ultimately cause the Fraudulent Enterprise to fail. *Id.* Immediately upon execution of the requested Supplemental Preliminary Injunction Order and disabling of the RockCAPTCHA Website, Plaintiffs will provide appropriate notice to the Defendants, consistent with the email and publication alternative service methods already authorized by this Court. *See* ECF Nos. 20, 23, 26.

III. CONCLUSION

For the reasons set forth in this memorandum of law and the Lyons Declaration submitted herewith, and based on the evidence previously submitted by Microsoft in this proceeding, Microsoft respectfully requests that the court grant its Motion for an *Ex Parte* Supplemental Preliminary Injunction Order.

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