

JUDGE FALLA

23 CV 10685

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICROSOFT CORPORATION, :
: :
Plaintiff, : Case No.
-against- : :
: :
DUONG DINH TU, :
LINH VAN NGUYEN, and :
TAI VAN NGUYEN, : **REQUEST TO FILE UNDER SEAL**
: :
Defendants. :
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~~PROPOSED~~ ^g **EMERGENCY EX PARTE TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE**

Plaintiff Microsoft Corp. (“Microsoft”) has filed a Complaint for injunctive and other relief for (1) violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962; (2) trademark infringement under the Lanham Act, 15 U.S.C. § 1114 *et seq.*; (3) false designation of origin, federal false advertising, and federal unfair competition under the Lanham Act, 15 U.S.C. § 1125(a); (4) trademark dilution under the Lanham Act, 15 U.S.C. § 1125(c); (5) tortious interference with business relationships; (6) conversion; (7) trespass to chattels; and (8) unjust enrichment. Plaintiff has also moved *ex parte* for an emergency temporary restraining order pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, 15 U.S.C. § 1116(d) (the Lanham Act) and 28 U.S.C. § 1651(a) (the All Writs Act), and an order to show cause why a preliminary injunction should not be granted.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the papers, declarations, exhibits, and memorandum filed in support of Plaintiff's Motion for an Emergency *Ex Parte* Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction ("TRO Motion"), 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 adequately states claims upon which relief may be granted against Defendants for (1) violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962; (2) trademark infringement under the Lanham Act, 15 U.S.C. § 1114 *et seq.*; (3) false designation of origin, federal false advertising, and federal unfair competition under the Lanham Act, 15 U.S.C. § 1125(a); (4) trademark dilution under the Lanham Act, 15 U.S.C. § 1125(c); (5) tortious interference with business relationships; (6) conversion; (7) trespass to Chattels; and (8) unjust enrichment.

2. Microsoft owns the following registered trademarks: (1) Outlook launch icon mark, (2) Outlook word mark, and (3) Hotmail word mark. Copies of the trademark registrations for the Microsoft marks are attached as **Appendix B** to the Complaint.

3. There is good cause to believe that Defendants have engaged in and are likely to engage in acts or practices that constitute (1) violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962; (2) trademark infringement under the Lanham Act, 15 U.S.C. § 1114 *et seq.*; (3) false designation of origin, federal false advertising, and federal unfair competition under the Lanham Act, 15 U.S.C. § 1125(a); (4) trademark dilution under the Lanham

Act, 15 U.S.C. § 1125(c); (5) tortious interference with business relationships; (6) conversion; (7) trespass to chattels; and (8) unjust enrichment.

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 Defendants' ongoing (1) violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962; (2) trademark infringement under the Lanham Act, 15 U.S.C. § 1114 *et seq.*; (3) false designation of origin, federal false advertising, and federal unfair competition under the Lanham Act, 15 U.S.C. § 1125(a); (4) trademark dilution under the Lanham Act, 15 U.S.C. § 1125(c); (5) tortious interference with business relationships; (6) conversion; (7) trespass to chattels; and (8) unjust enrichment. The evidence set forth in Plaintiff's TRO Motion and the accompanying declarations and exhibits demonstrates that Plaintiff is likely to prevail on its claims that Defendants have engaged in violations of the foregoing laws, including by participating in the conduct and affairs of a criminal enterprise, hereinafter referred to as the "Fraudulent Enterprise," through a pattern of racketeering activity, by perpetrating an ongoing scheme to use Internet "bots" to hack into and deceive Microsoft's security systems into believing that they are legitimate human consumers of Microsoft services, open Microsoft Outlook email accounts in names of fictitious users, and sell those fraudulent accounts to cybercriminals for use as tools in perpetrating a wide variety of online crimes. There is good cause to believe that if such conduct continues, irreparable harm will occur to Plaintiff and the public, including Plaintiff's customers. There is good cause to believe that the Defendants are engaging, and will continue to engage, in such unlawful actions if not immediately restrained from doing so by Order of this Court.

5. 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 the technological infrastructure used by the Fraudulent Enterprise to carry out its illegal objectives that is hosted at and otherwise operates through the Internet domains listed in **Appendix A**, through (1) VeriSign, Inc., as the manager and operator of 1stcaptcha.com, anycaptcha.com, and nonecaptcha.com; (2) Identity Digital Inc. (formerly Afilias Inc.), as the manager and operator of hotmailbox.me; (3) Cloudflare, Inc., as the service provider of 1stcaptcha.com, anycaptcha.com, nonecaptcha.com, and hotmailbox.me; (4) Cloud South, as the service provider of 1stcaptcha.com, anycaptcha.com, nonecaptcha.com, and hotmailbox.me, and (5) through the following Internet Protocol (“IP”) addressees, which are associated with Defendants’ Fraudulent Enterprise: 104.22.5.58, 104.22.4.58, 172.67.13.19, 104.26.11.230, 172.67.69.233, 172.67.12.153, 154.27.66.194, 154.27.66.246, 172.66.41.15, 172.66.42.241, 188.114.98.229, 104.26.13.192, 172.67.72.186, 104.26.12.192, 188.114.98.229, and 188.114.99.229 (“Defendants’ IP Addresses”), and from the destruction or concealment of other discoverable evidence of Defendants’ misconduct available at those locations if Defendants receive advance notice of this action. Based on the evidence cited in Plaintiff’s TRO Motion and accompanying declarations and exhibits, Plaintiff is likely to be able to prove that: (1) Defendants are engaged in activities that directly violate U.S. law and harm Plaintiff and the public, including Plaintiff’s customers; (2) Defendants have continued their unlawful conduct despite the clear injury to the foregoing interests; (3) Defendants are likely to delete or relocate the Fraudulent Enterprise infrastructure at issue in Plaintiff’s TRO Motion and the harmful, malicious, and trademark-infringing products and services disseminated through Defendants’ IP Addresses and the domains listed in **Appendix A** and to warn their associates engaged in such activities if informed of Plaintiff’s action. Plaintiff’s request for this emergency *ex parte* relief is not the result of any lack of diligence on Plaintiff’s part, but instead is based upon the nature of Defendants’

unlawful conduct and the likelihood that notice of this action before the temporary restraining order sought by Plaintiff can be fully executed risks frustrating the relief sought. Therefore, in accordance with Fed. R. Civ. P. 65(b) and 15 U.S.C. § 1116(d), good cause and the interests of justice require that this Order be granted without prior notice to Defendants, and accordingly Plaintiff is relieved of the duty to provide Defendants with prior notice of Plaintiff's TRO Motion.

6. There is good cause to believe that Defendants have specifically directed their products and services to cybercriminals located in the Southern District of New York. There is also good cause to believe that, in carrying out their Fraudulent Enterprise, Defendants utilize an Internet Service Provider ("ISP") data center located in the Southern District of New York, as well as services provided by third parties located in the Southern District of New York, including payment processors and ISPs.

7. There is good cause to believe that Defendants have engaged in illegal activity using the data centers and/or Internet hosting providers identified in **Appendix A** to host the Hotmailbox and 1stCAPTCHA Websites, which Defendants use to operate and maintain their Fraudulent Enterprise.

8. There is good cause to believe that to immediately halt the injury caused by Defendants, data and evidence at Defendants' IP Addresses must be preserved and held in escrow pending further order of the court, Defendants' computing resources related to such IP addresses must then be disconnected from Defendants' infrastructure, Defendants must be prohibited from accessing Defendants' computer resources related to such IP addresses, and the data and evidence located on those computer resources must be secured and preserved.

9. There is good cause to believe that Defendants have engaged in illegal activity using the Internet domains identified in **Appendix A** to this order to host the Hotmailbox and

1stCAPTCHA Websites, which are used to maintain and operate the Defendants' Fraudulent Enterprise. 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 transferred to the control of Microsoft where they can be secured and thus made inaccessible to Defendants.

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

11. There is good cause to believe that if Defendants are provided advance notice of Plaintiff's TRO Motion or this Order, they would move the technological infrastructure supporting their Fraudulent Enterprise, permitting them to continue their misconduct, and would destroy, move, hide, conceal, or otherwise make inaccessible to the Court evidence of their misconduct, the Defendants' infrastructure's activity, the infringing materials, the instrumentalities used to make the infringing materials, and the records evidencing the manufacture and distributing of the infringing materials.

12. 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, 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) personal delivery upon Defendants at any physical addresses in the United States provided to the data centers and Internet hosting providers; (2) personal delivery through the

Hague Convention on Service Abroad or other treaties upon Defendants who provided contact information outside the United States; (3) transmission by e-mail, electronic messaging addresses, facsimile, and mail to the known email and messaging addresses of Defendants and to their contact information provided by Defendants to the domain registrars, registries, data centers, Internet hosting providers, and website providers who host the software code associated with Defendants' IP Addresses or the domains identified in **Appendix A**; and (4) publishing notice to the Defendants on a publicly available Internet website.

13. There is good cause to believe that the harm to Plaintiff of denying the relief requested in their TRO Motion outweighs any harm to any legitimate interests of Defendants and that there is no undue burden to any third party.

II. TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

IT IS THEREFORE ORDERED as follows:

14. Defendants, their representatives, and persons who are in active concert or participation with them are temporarily restrained and enjoined from: making or causing others to make false or misleading representations or omissions to obtain any access to any Microsoft accounts or services; using Internet "bots" to hack into Microsoft's security systems; using Internet "bots" to deceive Microsoft's security systems into believing that they are legitimate human consumers of Microsoft services; creating Microsoft Outlook email accounts in names of fictitious users or otherwise in violation of Microsoft's Services Agreement; selling those fraudulently-procured accounts to cybercriminals for use as tools in perpetrating a wide variety of online crimes;

and otherwise configuring, deploying, operating, or maintaining the Hotmailbox and 1stCAPTCHA Websites.

15. Defendants, their representatives and persons who are in active concert or participation with them are temporarily restrained and enjoined from infringing or otherwise misappropriating Plaintiff's registered trademarks, as set forth in **Appendix B**.

16. Defendants, their representatives and persons who are in active concert or participation with them are temporarily restrained and enjoined from using in connection with Defendants' activities any false or deceptive designation, advertisement, representation or description of Defendants' or of their representatives' activities, whether by symbols, words, designs or statements, which would damage or injure Plaintiff or give Defendants an unfair competitive advantage or result in deception of consumers.

IT IS FURTHER ORDERED, pursuant to the All Writs Act:

17. VeriSign, Inc., the manager and operator of the .com registry, shall change the registrar of record for 1stcaptcha.com, anycaptcha.com, and nonecaptcha.com in the .com registry to Plaintiff's registrar of choice, MarkMonitor, Inc., and that MarkMonitor, Inc., shall change the registrant of those domains to Plaintiff;

18. Identity Digital, (formerly Afilias Inc.), the manager and operator of the .me registry, shall change the registrar of record for hotmailbox.me in the .me registry to Plaintiff's registrar of choice, MarkMonitor, Inc., and that MarkMonitor, Inc., shall change the registrant of those domains to Plaintiff;

19. Cloudflare, Inc. and Cloud South, the service providers of 1stcaptcha.com, anycaptcha.com, nonecaptcha.com, and hotmailbox.me, shall (1) preserve the computers, servers, electronic data storage devices, software, data, or media assigned to or otherwise associated with

Defendants' IP Addresses and the domains listed in **Appendix A**; (2) preserve all evidence of any kind related to the content, data, software or accounts associated with such IP addresses, domains, and such computer hardware; (3) completely disable the computers, servers, electronic data storage devices, software, data, or media assigned to or otherwise associated with Defendants' use of Defendants' IP Addresses and the domains listed in **Appendix A** and make them inaccessible from any other computer on the Internet, any internal network, or in any other manner, to Defendants, Defendants' representatives, and all other persons, except as otherwise ordered herein; (4) completely, and until further order of this Court, suspend all services to Defendants or Defendants' representatives or resellers associated with Defendants' IP Addresses and the domains listed in **Appendix A**; and (5) isolate and disable any content and software associated with the Defendants hosted at Defendants' IP Addresses in a manner that does not impact any content or software not associated with Defendants' IP Addresses. In determining the method and mechanism to disable content and software associated with the Defendants, the relevant data centers and/or hosting providers shall reasonably confer with Plaintiff's counsel, Brian T. Markley, Cahill Gordon & Reindel LLP, 32 Old Slip, 19th Floor, New York, NY 10005, bmarkley@cahill.com, (Tel: 212.701.3230) and Samson A. Enzer, Cahill Gordon & Reindel LLP, 32 Old Slip, 19th Floor, New York, NY 10005, senzer@cahill.com, (Tel: 212.701.3125), to facilitate any follow-on action;

20. VeriSign, Inc., Identity Digital, Cloudflare, Inc., and Cloud South shall (1) 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 hosting companies, data centers, the Plaintiff, or other ISPs to execute this order; (2) not enable, and shall take all reasonable steps to prevent, any circumvention of this order by Defendants or Defendants' representatives associated with

Defendants' IP Addresses or the domains listed in **Appendix A**, including but not limited to enabling, facilitating, and/or allowing Defendants or Defendants' representatives or resellers to rent, lease, purchase, or otherwise obtain another IP Address associated with your services; (3) preserve, retain, and produce to Plaintiff all documents and information sufficient to identify and contact Defendants and Defendants' representatives operating or controlling Defendants' IP Addresses, including any and all individual or entity names, mailing addresses, e-mail addresses, facsimile numbers, and telephone numbers or similar contact information, including but not limited to such contact information reflected in billing, usage, access and contact records and all records, documents and logs associated with Defendants' or Defendants' Representatives' use of or access to Defendants' IP Addresses or the domains listed in **Appendix A**; and (4) provide reasonable assistance in implementing the terms of this Order and take no action to frustrate the implementation of 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 any one or combination of (1) personal delivery upon Defendants who provided to the data centers and Internet hosting providers contact information in the United States; (2) personal delivery through the Hague Convention on Service Abroad or other treaties upon Defendants who provided contact information outside the United States; (3) transmission by e-mail, electronic messaging addresses, facsimile, and mail to the known email and messaging addresses of Defendants and to their contact information provided by Defendants to the domain registrars, registries, data centers, Internet hosting providers, and website providers who host the software code associated with

~~Plaintiffs are directed to attempt~~
via

Defendants' IP Addresses or the domains identified in **Appendix A**; and (4) publishing notice to the Defendants on a publicly available Internet website.

Plaintiffs are directed to ~~attempt~~ service by all available such means, and to effect service by December 13, 2023.

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b) that the Defendants shall appear before the Hon. Paul A. Engelmayer on December 20, 2023, at 9 a.m. to show cause, if there is any, why the 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.

in courtroom 1305 of the Thurgood Marshall United States Courthouse, 40 Centre St., NYC, NY 10007.

IT IS FURTHER ORDERED that Microsoft, on behalf of Plaintiff, shall post bond in the amount of \$15,000 as cash to be paid into the Court registry.

IT IS FURTHER ORDERED that the Defendants shall file with the Court and serve on Plaintiff's 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 Plaintiff's request for a preliminary injunction, i.e., by Monday, December 18, 2023, at 9 a.m. Plaintiff 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 7th day of December, 2023.

Paul A. Engelmayer
Hon. Paul A. Engelmayer