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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

MICROSOFT CORPORATION, a  
Washington Corporation,  
  
Plaintiff,  
  
v.  
  
FUNMOBILE, LTD., a Private Limited  
Company; MOBILEFUNSTER, INC., a  
Delaware Corporation; CHRISTIAN  
KWOK-LEUN YAU HEILESEN, an  
individual; HENRICK KWOK-HANG YAU  
HEILESEN, an individual; and JOHN  
DOES 5-20,  
  
Defendants.

No. 09-2-21247-3 SEA  
  
FIRST AMENDED COMPLAINT  
FOR DAMAGES AND  
EQUITABLE RELIEF

Plaintiff Microsoft Corporation (“Microsoft”) brings this action against  
FUNMOBILE, LTD., MOBILEFUNSTER, INC., CHRISTIAN KWOK-LEUN YAU  
HEILESEN, HENRICK KWOK-HANG YAU HEILESEN, and JOHN DOES 5-20  
(collectively “Defendants”), and alleges as follows:

**I. INTRODUCTION**

1. This is a complaint for an injunction, damages and other appropriate relief  
to stop Defendants’ unauthorized solicitation, storage and use of Microsoft users’ login

1 information to gain unauthorized access to Microsoft’s protected computer network, and  
2 Defendants’ unauthorized use of Microsoft user accounts to send unsolicited commercial  
3 messages to other Microsoft users.

4           2.       Microsoft is a world leader in the market for software and online services.  
5  
6 Windows Live Messenger (formerly named MSN Messenger, and colloquially referred to  
7 as simply MSN) is an instant messaging client created by Microsoft. Windows Live  
8 Messenger, which currently has over 320 million active users worldwide, allows its users  
9 to send instant messaging (“IM”) a form of real-time text-based communication – to other  
10 users over Microsoft’s proprietary network.

11           3.       Microsoft vigilantly protects the privacy and security of its users.  
12  
13 Microsoft tightly controls access to its networks, and implements a variety of features to  
14 protect its users’ privacy and security. One such security measure is the prohibition of  
15 soliciting or sharing user login information.

16           4.       Microsoft also devotes substantial resources to combat the unauthorized  
17 use of its online services, and to protect its users from unsolicited commercial messages  
18 and from phishing attempts to obtain users’ credentials, passwords and other personal  
19 information.

20           5.       This case arises from Defendants’ abuse of Microsoft’s Windows Live  
21 Messenger service, and the abuse of Microsoft’s users, through a phishing and instant  
22 messaging spam (“spim”) campaign. Defendants are using false and misleading messages  
23 to induce Windows Live Messenger users to visit websites designed to deceive them into  
24 divulging their Windows Live usernames and passwords. Defendants then use the login  
25

1 credentials to gain unauthorized access to Windows Live Messenger user accounts for the  
2 purpose of sending unsolicited commercial spam to other Windows Live Messenger users.

3 6. Defendants have ignored Microsoft's requests to respect its property rights,  
4 to cease their unauthorized access of Microsoft's computer system and to stop interfering  
5 with Microsoft's relationships with its users.

6  
7 7. In this action, Microsoft asserts violations of the federal Computer Fraud  
8 and Abuse Act (18 U.S.C. § 1030(a)), the federal CAN-SPAM Act of 2003 (15 U.S.C.  
9 §7701 et seq.), the Washington Anti-Phishing statute (RCW 19.190.080), the Washington  
10 Consumer Protection Act (RCW Ch. 19.86), and Washington common law.

## 11 **II. THE PARTIES**

12 8. Plaintiff Microsoft is a Washington corporation with its principal place of  
13 business in Redmond, Washington.

14 9. Defendant Funmobile, Ltd. is a Private Limited Company with its principal  
15 place of business in Hong Kong. Funmobile, Ltd. is a distributor of ring-tones and  
16 premium SMS content.

17 10. Defendant Mobilefunster, Inc. is a Delaware Corporation with its principal  
18 place of business in Foster City, California. Upon information and belief, Mobilefunster,  
19 Inc. is a wholly-owned subsidiary of Funmobile, Ltd.

20 11. Defendant Christian Kwok-Leun Yau Heilesen is the founder and CEO of  
21 Funmobile, Ltd. Upon information and belief, Defendant uses the aliases "Christian K-L  
22 Yau", "Chris Yau", "Top Yau", and others.

1           12. Defendant Henrick Kwok-Hang Yau Heilesen is the brother of Defendant  
2 Christian Kwok-Leun Yau Heilesen, hired by Funmobile, Ltd. in August of 2008. Upon  
3 information and belief, Defendant uses the aliases “Henrick Yau”, “HKHY Heilesen”,  
4 “Jennie Johnson”, “Jennie Smith”, “Plasticbrunette”, “Plastic-Jennie”, “Scommé”,  
5 “Henrick Y”, “Henrick Heile”, and others.  
6

7           13. Microsoft is unaware of the true names and capacities of defendants sued  
8 herein as JOHN DOES 5-20 and therefore sues these defendants by such fictitious names.  
9 Microsoft will amend this Complaint to allege their true names and capacities when  
10 ascertained. Microsoft is informed and believes and therefore alleges that each of the  
11 fictitiously named defendants is responsible in some manner for the occurrences herein  
12 alleged, and that Microsoft’s injuries as herein alleged were proximately caused by such  
13 defendants. These fictitiously named defendants, together with the named defendants, are  
14 herein referred to collectively as “Defendants.”  
15

16           14. The actions alleged herein to have been undertaken by the Defendants were  
17 undertaken by each defendant individually, were actions that each defendant caused to  
18 occur, were actions that each defendant authorized, controlled, directed, or had the ability  
19 to authorize, control or direct, and/or were actions in which each defendant assisted,  
20 participated or otherwise encouraged, and are actions for which each defendant is liable.  
21 Each defendant aided and abetted the actions of the defendants set forth below, in that  
22 each defendant had knowledge of those actions, provided assistance and benefited from  
23 those actions, in whole or in part. Each of the defendants was the agent of each of the  
24  
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1 remaining defendants, and in doing the things hereinafter alleged, was acting within the  
2 course and scope of such agency and with the permission and consent of other defendants.

### 3 **III. JURISDICTION AND VENUE**

4 15. This Court has personal jurisdiction over the Defendants, all of whom have  
5 conducted business activities in and directed to Washington, are primary participants in  
6 tortious acts in and directed to Washington, and have consented to jurisdiction in this  
7 Court.  
8

9 16. Venue is proper in this Court pursuant to RCW § 4.12.020 and .025 in that  
10 a substantial part of the events or omissions giving rise to the claims pled herein occurred  
11 in King County, Microsoft seeks damages for personal injury or damage to personal  
12 property in King County, Microsoft's causes of action arose in King County, and  
13 defendants transact business in King County.  
14

### 15 **IV. FACTS AND BACKGROUND**

#### 16 **A. Microsoft's Windows Live Messenger Service**

17 17. Microsoft is a world leader in the market for software and online services.

18 18. One of Microsoft's interactive computer services is Windows Live  
19 Messenger (formerly named MSN Messenger) which provides free instant messaging  
20 between Windows Live Messenger users. Windows Live Messenger allows its users to,  
21 among other things, send text, graphical messages, and files ("instant messages" or "IM")  
22 to fellow users' computers, mobile phones, and other Internet devices. Microsoft's  
23 Windows Live Messenger service also allows users to conduct audio and video chats and  
24 play games with other users.  
25

1 19. Windows Live Messenger is one of the world's most popular instant  
2 messaging services, having over 320 million active users spread across the globe.

3 20. Windows Live Messenger has been part of Microsoft's Windows Live set  
4 of online services since 2005. The service was first released as MSN Messenger on July  
5 22, 1999 and as Windows Live Messenger on December 13, 2005.  
6

7 21. Microsoft owns and maintains computers and other equipment, including  
8 servers that process IM and otherwise support its Windows Live Messenger service.  
9 Microsoft maintains this equipment in Washington and California, among other states.  
10 IM sent to and from Microsoft's users is processed through and stored on these computers.  
11 Microsoft is an internet service provider ("ISP"), an "interactive computer service" as  
12 defined in RCW 19.190.010, and a provider of "Internet Access Service" as defined in 15  
13 U.S.C. §7702(11). Microsoft's computers and computer systems are "protected  
14 computers" as defined in 15 U.S.C. § 7702(13) and 18 U.S.C. § 1030(e)(2).  
15

16 22. Microsoft's computers and computer systems are designed and created  
17 solely for the benefit and use of its customers. The computers and computer systems have  
18 finite capacity and are not designed to accommodate innumerable unsolicited instant  
19 messages. Microsoft does not permit the use of its service for sending spam. Microsoft  
20 has invested substantial time and money in efforts to disassociate itself from spam and the  
21 persons who promote and profit from spam, as well as in seeking to protect its registered  
22 users worldwide from receiving spam.  
23

24 23. To access its Windows Live Messenger service, Microsoft requires each  
25 user to register and obtain a unique Windows Live ID and to create an associated

1 password. Only registered users may access the Windows Live Messenger service and  
2 communicate with other Windows Live Messenger users. Trustworthy communication  
3 between Windows Live Messenger users is vital to the integrity of Microsoft's proprietary  
4 computer networks as well as to the level of confidence that users have in using Windows  
5 Live Messenger. Registered users may also utilize other Windows Live services,  
6 including Windows Live Hotmail, Skydrive and Spaces.  
7

8         24. In order to permit efficiently communications with friends, family,  
9 associates and others, Windows Live Messenger allows users to create and maintain a  
10 "contact list" of other Windows Live Messenger users and their associated Windows Live  
11 IDs. An important aspect of Windows Live Messenger is that users generally interact  
12 only with and receive communications from their contacts.  
13

14         25. A user of the Windows Live Messenger service must first accept the  
15 Microsoft Service Agreement. Use of Microsoft's Windows Live Messenger services is  
16 also governed by an express Code of Conduct.  
17

18         26. The Microsoft Service Agreement requires that a user keep his or her  
19 service account password secret. It also prohibits a user from authorizing "any third party  
20 to access and/or use the service" on his or her behalf. The Microsoft Service Agreement  
21 also provides that a user may not:

- 22         • use the service in a way that harms Microsoft or its advertisers, affiliates,  
23         resellers, distributors and/or vendors, or any customer of Microsoft or  
24         Microsoft's advertisers, affiliates, resellers, distributors and/or vendors;
- 25         • use any portion of the service as a destination linked from any unsolicited  
       bulk messages or unsolicited commercial messages ("spam");

- use any unauthorized third party software or service to access the Microsoft instant messaging network;
- use any automated process or service to access and/or use the service (such as a BOT, a spider, periodic caching of information stored by Microsoft, or “meta-searching”);
- use any unauthorized means to modify or reroute, or attempt to modify or reroute, the service;
- damage, disable, overburden, or impair the service (or the network(s) connected to the service) or interfere with anyone’s use and enjoyment of the service; or
- resell or redistribute the service, or any part of the service.

27. The Windows Live Messenger service Code of Conduct prohibits the use of the service in any way that:

- invades anyone’s privacy by attempting to harvest, collect, store, or publish private or personally identifiable information, such as passwords, account information, credit card numbers, addresses, or other contact information without their knowledge and willing consent;
- harms or disrupts, or intends to harm or disrupt, another user’s computer or would allow you or others to illegally access software or bypass security on Web sites, or servers, including but not limited to spamming;
- attempts to impersonate a Microsoft employee, agent, manager, host, administrator, moderator, another user or any other person through any means; or
- contains or could be considered ‘junk mail’, ‘spam’, ‘chain letters’, ‘pyramid schemes’, ‘affiliate marketing’ or unsolicited commercial advertisement.

**B. The Nature of Defendants’ Phishing and Spamming Scheme**

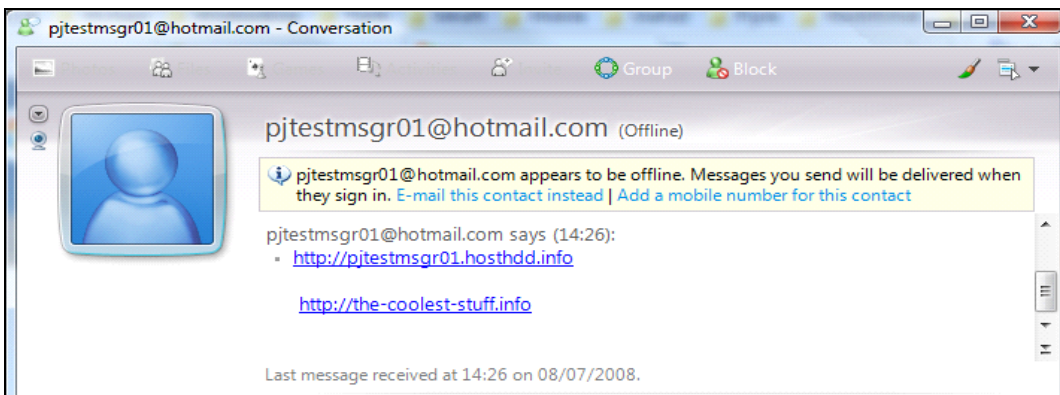
28. Defendants are engaged in a wide-spread scheme to harvest the Windows Live IDs of Microsoft users and to use those Windows Live IDs to send vast quantities of

1 spim to Microsoft's users through the Windows Live Messenger service.

2 29. Upon information and belief, defendants have on one or more occasions  
3 subscribed to Microsoft's Windows Live Messenger service and other Microsoft  
4 Windows Live services, and have accepted the terms of the Microsoft Service Agreement.  
5 In addition, defendants' actions are governed by the Windows Live Messenger service  
6 Code of Conduct.

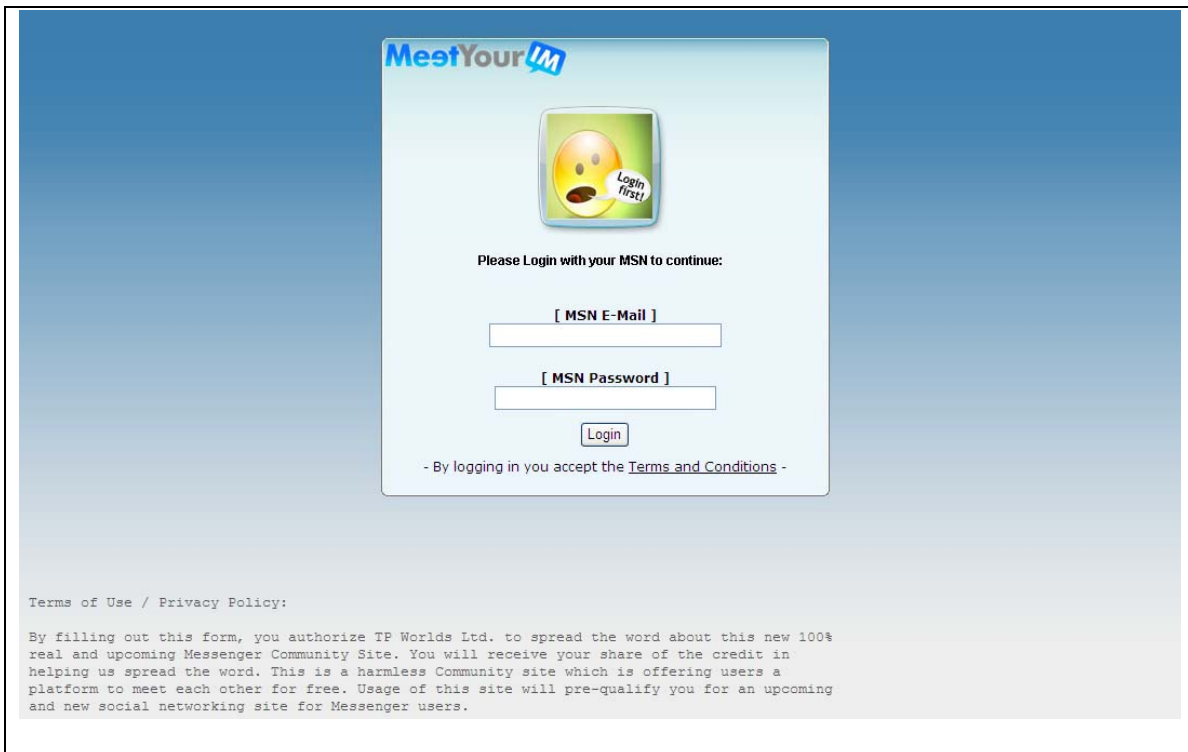
7 30. Defendants have undertaken numerous steps to obfuscate their identities,  
8 including the use of multiple aliases such as "TST Management, Inc.," "CSS  
9 Management, Inc.," "Top Priority, Ltd.," "T P Ltd.," "T P Worlds, Ltd.," "TPP Ltd.,"  
10 "Topyaa," and others.

11 31. Defendants have established numerous websites at which they attempt to  
12 harvest the Windows Live IDs of Microsoft's users. Defendants promote those websites  
13 through misleading instant messages to Windows Live Messenger users which are  
14 designed to appear to have been sent by the users' friends or contacts. The misleading  
15 IMs contain a link to one of defendants' websites. An example of defendants' misleading  
16 and unauthorized instant message is shown here:  
17  
18



1 The message purports to have been sent by user “pjtestmsgr01@hotmail.com” when, in  
2 fact, it was actually sent by Defendants.

3 32. The messages sent by Defendants contain a link to Defendants’ websites.  
4 By clicking on the link, a user is taken to a site that attempts to obtain the user’s Microsoft  
5 Windows Live username and password. An example of Defendants’ websites is set forth  
6 below:  
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21 33. If a user enters his credentials, the user is then redirected to a commercial  
22 advertisement promoted by the Defendants. In the meantime, however, the Defendants  
23 collect and store the user’s Windows Live ID login credentials. They then utilize those  
24 login credentials to access Microsoft’s proprietary systems and to access the user’s  
25 account. Defendants then “scrape” or “harvest” all of the contacts within the user’s

1 account, and send unsolicited bulk IMs to each of the user's contacts. As described  
2 above, those IMs erroneously purport to be from the user when, in fact, they are simply  
3 more misleading commercial solicitations promoting Defendants' websites.

4           34. To implement this scheme, Defendants have contracted with numerous  
5 hosting service providers around the world. Upon notification of violations of a  
6 provider's Acceptable Use Policies prohibiting the transmission of illegal spam and the  
7 harvesting of user credentials, Defendants simply terminate that service provider and  
8 move to another one of the many servers at their disposal.

9  
10           35. To further mask their identities, Defendants have utilized aliases in the  
11 registration of domain names involved in the operation, including "Chris Yau", "Topyaa",  
12 "Top Yau", "TP", and others, and also use domain registration privacy protection  
13 services.

14  
15           36. Upon receipt of complaints from registrars for inaccurate Whois  
16 information provided by Defendants in domain name registrations, Defendants change the  
17 contact information to privacy protection services. Complaints from registrars related to  
18 spam, phishing and other areas of abuse are routinely ignored by defendants, and the  
19 domains are disabled by the registrars without comment from Defendants. Complaints  
20 from affiliate program operators regarding methods used to drive traffic to their sites are  
21 frequently met with false explanations.

22  
23           37. Defendants' use of the Windows Live Messenger service harms Microsoft  
24 and its customers. Defendants have used unauthorized software to access Microsoft's  
25 instant messaging network, and have used automated processes and services to access

1 and/or use the Windows Live Messenger service. Defendants' activities damage, disable,  
2 overburden, or impair the service and or interfere with Microsoft's users' use and  
3 enjoyment of the service. As a result of the Defendants' actions, Microsoft's computer  
4 equipment and servers were required to process millions of improper spam messages.  
5 This overwhelming number of messages threatens to delay legitimate messages and  
6 otherwise adversely affect Microsoft's Windows Live services and users, and has resulted  
7 in and continues to result in significant costs to Microsoft.  
8

9  
10 **COUNT I**  
11 **(Breach of Contract)**

12 38. Microsoft realleges and incorporates by this reference each and every  
13 allegation set forth in paragraphs 1 through 37 above.

14 39. Defendants agreed to be bound by the Microsoft Service Agreement and  
15 consented to abide by the Code of Conduct for Microsoft's Windows Live services.

16 40. By their actions described above, Defendants breached the Microsoft  
17 Services Agreement and violated the Code of Conduct.

18 41. Microsoft has been injured by Defendants' breaches in an amount to be  
19 proven at trial.

20 **COUNT II**  
21 **(Tortious Interference with Business Relationships)**

22 42. Microsoft realleges and incorporates by this reference each and every  
23 allegation set forth in paragraphs 1 through 41 above.

24 43. Microsoft had valid contractual relationships with Microsoft Windows  
25 Live users.



1           51. Defendants knowingly caused the transmission of a program, information,  
2 code, or command, thereby intentionally causing damage without authorization to  
3 Microsoft's protected computer system.

4           52. Defendants intentionally accessed Microsoft's protected computer system  
5 without authorization, thereby causing damage and loss.  
6

7           53. Defendants intentionally accessed Microsoft's protected computer system  
8 without authorization, or in excess of authorized access, and thereby obtained information  
9 from that computer system.

10           54. Defendants knowingly and with intent to defraud trafficked in any  
11 password or similar information through which Microsoft's protected computer system  
12 may be accessed without authorization. Defendant's trafficking affects interstate and  
13 foreign commerce.  
14

15           55. Defendants' conduct caused loss aggregating at least \$5,000 in value to one  
16 or more persons during a one-year period.

17           56. Microsoft suffered damage or loss by reason of defendants' conduct in  
18 violation of 18 U.S.C. § 1030.

19           57. Defendants' activity constitutes a violation of the federal Computer Fraud  
20 and Abuse Act, 18 U.S.C. §1030(a)(4), and Microsoft is entitled to damages under that  
21 Act. Microsoft is also entitled under the Act to injunctive and equitable relief against  
22 Defendants.  
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**COUNT IV  
(Trespass to Chattels)**

58. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 57 above.

59. The computers, computer networks and computer services that comprise Microsoft's Windows Live Messenger service are the personal property of Microsoft.

60. Defendants were aware that their actions were specifically prohibited by the Microsoft Service Agreement and Code of Conduct by which they had agreed to be bound, and were on notice that their actions were not authorized by Microsoft in any way.

61. Defendants have knowingly, intentionally and without authorization used and intentionally trespassed upon Microsoft's property.

62. Defendants' trespass caused damage to Microsoft's property and interfered with Microsoft's use of and intended purpose for that property.

63. As a result of Defendants' actions, Microsoft has been damaged in an amount to be proven at trial.

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**COUNT V  
(Conversion)**

64. Microsoft realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 63 above.

65. Defendants have willfully interfered with and converted Microsoft's personal property, without lawful justification, as a result of which Microsoft has been deprived of possession and use of its property.



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d) that failed to provide a clear and conspicuous notice of the opportunity to decline to receive further commercial electronic mail messages from the sender; and

e) that failed to provide a valid physical postal address of the sender.

70. Defendants initiated the transmission, to protected computers, of electronic mail messages that violate 15 U.S.C. § 7704(a), and assisted in the initiation of such messages by providing electronic mail addresses, knowing that the electronic mail addresses of the recipients were obtained using automated means from an Internet website or proprietary online service operated by another person, and such website or service included a notice stating that the operator will not give, sell, or otherwise transfer addresses maintained by such website or service to any other party for the purpose of initiating, or enabling others to initiate, electronic mail messages.

71. Defendants used scripts or other automated means to register for multiple electronic mail accounts or online user accounts from which to transmit to a protected computer, or enable another person to transmit to a protected computer, commercial electronic mail messages that violate 15 U.S.C. § 7704(a).

72. Defendants' actions were willful and knowing.

73. Microsoft is a provider of Internet access service as that term is used in CAN-SPAM.

74. Microsoft has been adversely affected by Defendants' violation of CAN-SPAM.





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- a) accessing, in any manner, Microsoft's computers and computer systems, including but not limited to Microsoft's Windows Live Messenger service; or
  - b) soliciting or obtaining, by any means, account names, passwords or other credentials of users of any of Microsoft's Windows Live services;
2. For an award of compensatory damages in an amount to be proven at trial;
  3. For an award of statutory damages, aggravated damages, and treble damages in an amount to be proven at trial;
  4. For an award of Microsoft's attorney's fees and costs; and
  5. For such other and additional relief as the Court deems just and proper.

DATED this 15<sup>th</sup> day of July, 2009.

K&L Gates LLP

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