

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

MICROSOFT CORPORATION,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	
	)	
KENT JOHNSON, an individual, d/b/a	)	
COMPATIBLE COMPUTERS	)	
	)	October 20, 2008
Defendant.	)	
	)	
	)	
	)	
	)	

---

**COMPLAINT**

1. This is an action by Microsoft Corporation (“Microsoft”) to recover damages arising from infringement of Microsoft’s copyrights and trademarks in its software by Kent Johnson, an individual, doing business as Compatible Computers ("Defendant”), and to enjoin Defendant's future infringement.
2. Defendant has infringed Microsoft’s copyrights and trademarks, violated the Lanham Act by falsely designating the origin of software, and engaged in unfair competition.
3. Microsoft seeks damages, an accounting, the imposition of a constructive trust upon Defendant's illegal profits, and injunctive relief.

**THE PARTIES**

4. Microsoft is a Washington corporation with its principal place of business located at One Microsoft Way, Redmond, Washington. Microsoft develops, markets, distributes and licenses computer software.
5. Upon information and belief, defendant Kent Johnson is an individual doing business as Compatible Computers in Torrington, Connecticut and on the Internet. Compatible

Computers is engaged in the business of advertising, marketing, installing, and distributing computer software, including purported Microsoft software.

6. Upon information and belief, Kent Johnson is an individual who does business as Compatible Computers and/or owns, operates, or otherwise controls Compatible Computers. Kent Johnson resides and transacts substantial business in this district. Upon information and belief, Kent Johnson (a) personally participated in and/or had the right and ability to direct and control the wrongful conduct alleged in this Complaint, and (b) derived direct financial benefit from that wrongful conduct.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over Microsoft's claims for trademark infringement, copyright infringement and related claims pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has supplemental jurisdiction over Microsoft's claims arising under the laws of the State of Connecticut pursuant to 28 U.S.C. § 1367(a) because these claims are so related to Microsoft's claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and § 1400(a) because (a) the acts of infringement and other wrongful conduct alleged occurred in the District of Connecticut; (b) the Defendant may be found in the District of Connecticut; and (c) the Defendant has a sufficient connection with the District of Connecticut to make venue proper in this district, all as alleged in this Complaint.

## FACTS COMMON TO ALL CLAIMS

10. Microsoft develops, advertises, markets, distributes, and licenses a number of computer software programs. Microsoft's software programs are recorded on magnetic diskettes and/or CD-ROMs, and they are packaged and distributed together with associated proprietary materials such as user's guides, user's manuals, end user license agreements, certificates of authenticity, and other related components.

11. Microsoft Windows XP Professional: Microsoft has developed, advertises, markets, distributes, and licenses a software package known as Microsoft Windows XP Professional ("Windows XP Pro"). Windows XP Pro is an operating system for desktop and laptop systems. It performs a number of computer-related operations including, but not limited to, providing support for various applications and allowing remote access to data and applications stored on Windows XP Pro desktops from network connections. Microsoft holds a valid copyright in Windows XP Pro (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Windows XP Pro, bearing the number TX 5-407-055, is attached hereto as Exhibit 1 and is incorporated by reference.

12. Microsoft Office 2003 Pro: Microsoft Office 2003 Professional ("Office 2003 Pro") is a suite of popular Microsoft software programs. Microsoft holds a valid copyright in Office 2003 Pro (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Office 2003 Pro, bearing the number TX-5-837-617, is attached hereto as Exhibit 2 and is incorporated by reference. Office 2003 Pro includes the following popular Microsoft software programs:

A. Microsoft Office Excel 2003, a program that allows users to create spreadsheets, perform calculations, and store numerical data. Microsoft holds a valid copyright in Microsoft Office Excel 2003 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Excel 2003, bearing the number TX 5-837-636, is attached hereto as Exhibit 3 and is incorporated by reference.

B. Microsoft Office Outlook 2003, a program that allows users and networked teams to create and manage calendars, tasks, and contacts. Microsoft holds a valid copyright in Microsoft Office Outlook 2003 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Outlook 2003, bearing the number TX 5-900-087, is attached hereto as Exhibit 4 and is incorporated by reference.

C. Microsoft Office PowerPoint 2003, a program that allows users to create, organize, and present overhead and slide presentations. Microsoft holds a valid copyright in Microsoft Office PowerPoint 2003 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office PowerPoint 2003, bearing the number TX 5-852-649, is attached hereto as Exhibit 5 and is incorporated by reference.

D. Microsoft Office Word 2003, a program that allows users to create and edit reports and documents. Microsoft holds a valid copyright in Microsoft Office Word 2003

(including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Word 2003, bearing the number TX 5-900-088, is attached hereto as Exhibit 6 and is incorporated by reference.

E. Microsoft Publisher 2003, a desktop publishing program that allows users to create, customize, and publish materials such as newsletters, brochures, flyers, catalogs, and Web sites. Microsoft holds a valid copyright in Microsoft Publisher 2003 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Publisher 2003, bearing the number TX 5-837-618, is attached hereto as Exhibit 7 and is incorporated by reference.

F. Microsoft Business Contact Manager for Outlook 2003, a program which manages customer relationships. Microsoft holds a valid copyright in Business Contact Manager for Outlook 2003 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Business Contact Manager for Outlook 2003, bearing the number TX 5-877-513, is attached hereto as Exhibit 8 and is incorporated by reference.

G. Microsoft Access 2003, a program that allows users to create and manipulate databases and store data. Microsoft holds a valid copyright in Microsoft Access 2003 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Access 2003, bearing the number TX 5-901-

713, is attached hereto as Exhibit 9 and is incorporated by reference.

13. Microsoft has also duly and properly registered a number of trademarks and a service mark in the United States Patent and Trademark Office on the Principal Register, including, but not limited to:

- A. "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236, for computer programs and computer programming services;
- B. "MICROSOFT," Trademark Registration No. 1,256,083, for computer hardware and software manuals, newsletters, and computer documentation;
- C. WINDOWS, Trademark Registration No. 1,872,264 for computer programs and manuals sold as a unit;
- D. COLORED FLAG DESIGN, Trademark Registration No. 2,744,843, for computer software;
- E. "POWERPOINT," Trademark Registration No. 1,475,795, for pre-recorded computer programs recorded on magnetic disks;
- F. "MICROSOFT ACCESS," Trademark Registration No. 1,741,086, for computer programs for use with databases and manuals sold as a unit;
- G. "OUTLOOK," Trademark Registration No. 2,188,125, for computers programs, specifically programs providing enhanced electronic mail and scheduling capabilities and instructional manuals sold as a unit.

- H. COLOR FOUR SQUARE LOGO, Trademark Registration No. 2,999,281, for computer software, including application and business software for use in word processing, spreadsheets, presentation graphics, e-mail, and scheduling;

True and correct copies of the Trademark Registrations for A through H above are attached hereto as Exhibits 10 through 17, respectively, and are incorporated herein by reference.

### **Defendant's Infringement**

14. Defendant is engaged in the advertising, marketing, installation and distribution of computer software, including programs covered by Microsoft's registered copyrights and bearing Microsoft's registered trademarks or imitations thereof.

15. Microsoft notified Defendant by letter dated May 22, 2008 that it had received a report that Defendant was distributing infringing Microsoft software, and that such conduct constitutes an infringement of Microsoft's intellectual property rights.

16. Nevertheless, in or about July 2008, Defendant distributed to an investigator counterfeit Office 2003 Pro software components and computer systems with infringing Windows XP Pro and Office 2003 Pro software.

17. On information and belief, these are not isolated incidents. Rather, Defendant has been and continues to be involved in advertising, marketing, installing and/or distributing infringing copies of Microsoft's software to unidentified persons or entities. On information and belief, Defendant's distributions of purported Microsoft software are the result of Defendant's advertising and marketing the availability of such materials.

18. On information and belief, Defendant's wrongful conduct includes the advertising, marketing, installing, and/or distribution of "infringing materials," specifically reproductions,

copies, or colorable imitations of the Microsoft copyrighted software and/or the Microsoft trademarks, logos, and service mark described in this Complaint.

19. On information and belief, Defendant has committed and is continuing to commit acts of copyright and trademark infringement against Microsoft. On information and belief, at a minimum, Defendant was willfully blind and acted in reckless disregard of Microsoft's registered copyrights and marks.

20. On information and belief, by the advertising activities and unauthorized use of Microsoft's marks to describe the items that he is distributing, Defendant has misappropriated Microsoft's advertising ideas and style of doing business and have infringed Microsoft's copyrights, titles, and slogans.

21. On information and belief, the injuries and damages that Microsoft has sustained have been directly and proximately caused by Defendant's wrongful misappropriation of Microsoft's advertising ideas and style of doing business and infringement of Microsoft's copyrights, titles, and slogans.

## COUNT I

### **(Copyright Infringement)**

22. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 21, inclusive.

23. Microsoft is the sole owner of Microsoft Windows XP Pro, Office 2003 Pro, Office Excel 2003, Office Outlook 2003, Office PowerPoint 2003, Office Word 2003, Publisher 2003, Business Contact Manager for Office Outlook 2003 and Office Access 2003, and all corresponding copyrights and Certificates of Registration.



24. Defendant has infringed the copyrights in Microsoft's software, including but not limited to Microsoft Windows XP Pro, Office 2003 Pro, Office Excel 2003, Office Outlook 2003, Office PowerPoint 2003, Office Word 2003, Publisher 2003, Business Contact Manager for Office Outlook 2003 and Office Access 2003 software, by distributing infringing materials in the United States without approval or authorization from Microsoft.

25. Defendant's conduct has been willful within the meaning of the Copyright Act. At a minimum, Defendant acted with willful blindness to and in reckless disregard of Microsoft's registered copyrights.

26. As a result of the wrongful conduct, Defendant is liable to Microsoft for copyright infringement. 17 U.S.C. § 501. Microsoft has suffered damages. Microsoft is entitled to recover damages, which include any and all profits Defendant has made as a result of the wrongful conduct. 17 U.S.C. § 504. Alternatively, Microsoft is entitled to statutory damages under 17 U.S.C. § 504(c).

27. In addition, because Defendant's infringement has been willful within the meaning of the Copyright Act, the award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

28. Microsoft is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Microsoft has no adequate remedy at law for Defendant's wrongful conduct because, among other things, (a) Microsoft's copyrights are unique and valuable property which have no readily determinable market value, (b) Defendant's infringement harms Microsoft such that Microsoft could not be made whole by any monetary award, and (c) Defendant's wrongful conduct, and the resulting damage to Microsoft, is continuing.

29. Microsoft is also entitled to recover its attorneys' fees and costs of suit. 17 U.S.C. § 505.

## COUNT II

### **(Trademark Infringement)**

30. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 29, inclusive.

31. Defendant's activities constitute infringement of Microsoft's federally registered trademarks and service mark in violation of the Lanham Trademark Act, including but not limited to 15 U.S.C. § 1114(1).

32. Because Microsoft advertises, markets, distributes, and licenses its software under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Microsoft's software is distinguished from the software or products of others in the same field or related fields.

33. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, software or services of Microsoft.

34. The infringing materials that Defendant has and is continuing to use, offer, advertise, market, install, or distribute are likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.

35. Further, Defendant's activities are likely to lead the public to conclude, incorrectly, that the infringing materials that Defendant is advertising, marketing, installing, or distributing originate with or are authorized by Microsoft, to the damage and harm of Microsoft, its licensees, and the public.

36. Upon information and belief, Defendant used, offered, advertised, marketed, installed or distributed infringing material with the purposes of misleading, deceiving, or confusing customers and the public as to the origin and authenticity of the infringing materials, and of trading upon Microsoft's goodwill and business reputation.

37. Defendant's conduct has been willful within the meaning of the Lanham Act. At a minimum, Defendant acted with willful blindness to and in reckless disregard of Microsoft's registered marks.

38. As a result of the wrongful conduct, Defendant is liable to Microsoft for trademark infringement. 15 U.S.C. § 1114(1). Microsoft has suffered, and will continue to suffer, substantial damages. Microsoft is entitled to recover damages, which include any and all profits Defendant has made as a result of the wrongful conduct. 15 U.S.C. § 1117(a).

39. In addition, because Defendant's infringement of Microsoft's trademarks and service mark was willful within the meaning of the Lanham Act, the award of actual damages and profits should be trebled pursuant to 15 U.S.C. §1117(b). In the alternative, Microsoft is entitled to statutory damages for each counterfeit mark. 15 U.S.C. § 1117(c).

40. Microsoft is also entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a). Microsoft has no adequate remedy at law for Defendant's wrongful conduct because, among other things, (a) Microsoft's trademarks and service mark are unique and valuable property which have no readily determinable market value, (b) Defendant's infringement constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award, (c) if Defendant's wrongful conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin or authenticity of the infringing

materials, and (d) Defendant's wrongful conduct, and the resulting damage to Microsoft, is continuing.

41. Microsoft is also entitled to recover its attorneys' fees and costs of suit. 15 U.S.C. § 1117.

### COUNT III

#### **(False Designation Of Origin, False Description, And False Representation Of Microsoft Packaging)**

42. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 41, inclusive.

43. Because Microsoft advertises, markets, distributes, and licenses its software under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Microsoft's software is distinguished from the software or products of others in the same field or related fields.

44. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, software or services of Microsoft.

45. Microsoft has also designed distinctive and aesthetically pleasing displays, logos, icons, graphic images, and packaging (collectively, "Microsoft visual designs") for its software and related components.

46. Defendant's wrongful conduct includes the use of Microsoft's marks, name, and/or imitation visual designs, specifically displays, logos, icons, graphic designs, and/or packaging virtually indistinguishable from Microsoft visual designs, in connection with its goods and services.

47. Upon information and belief, Defendant engaged in such wrongful conduct with the willful purpose of misleading, deceiving, or confusing customers and the public as to the origin and authenticity of the goods and services offered, marketed or distributed in connection with Microsoft's marks, name, and imitation visual designs, and of trading upon Microsoft's goodwill and business reputation. Defendant's conduct constitutes (a) false designation of origin, (b) false description, and (c) false representation that the imitation visual images originate from or are authorized by Microsoft, all in violation of § 43(a) of the Lanham Trademark Act, set forth at 15 U.S.C. § 1125(a).

48. Defendant's wrongful conduct is likely to continue unless restrained and enjoined.

49. As a result of Defendant's wrongful conduct, Microsoft has suffered and will continue to suffer damages. Microsoft is entitled to injunctive relief and to an order compelling the impounding of all imitation marks and visual designs being used, offered, advertised, marketed, installed, or distributed by Defendant. Microsoft has no adequate remedy at law for Defendant's wrongful conduct because, among other things, (a) Microsoft's marks, name and visual designs are unique and valuable property which have no readily-determinable market value, (b) Defendant's advertising, marketing, installation, or distribution of imitation visual designs constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award, and (c) Defendant's wrongful conduct, and the resulting damage to Microsoft, is continuing.

#### **COUNT IV**

##### **(Common Law Unfair Competition)**

50. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 49, inclusive.

51. The acts and conduct of Defendant as alleged above in this Complaint constitute unfair competition pursuant to the common law of the state of Connecticut.

52. The acts and conduct of Defendant are likely to cause confusion, mistake, and/or uncertainty among customers, end users and the public as to the origin or association of Defendant's infringing Microsoft software. These acts and conduct are likely to deceive and/or mislead the public by, among other things, leading the public to conclude, incorrectly, that the infringing Microsoft software installed, distributed, solicited for distribution, offered, advertised and marketed by Defendant originate with, are sponsored by, or are authorized by Microsoft, causing confusion and uncertainty in the business of Microsoft.

53. Defendant's conduct as alleged above has damaged Microsoft and resulted in an illicit gain of profit to Defendant in an amount that is unknown at the present time.

## **COUNT V**

### **(Connecticut Unfair Trade Practices Act)**

54. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 53, inclusive.

55. Defendant is a "person" within the meaning of Conn. Gen. Stat. § 42-110a.

56. With respect to the foregoing acts and conduct, Defendant was engaged in the conduct of trade or commerce, as those terms are defined in the Connecticut Unfair Trade Practices Act ("CUTPA"), C.G.S. §§ 42-110a, et seq.

57. The foregoing conduct by Defendant constitutes unfair methods of competition, deceptive acts or practices in the conduct of a trade or commerce, and/or unfair acts or practices in the conduct of a trade or commerce, in violation of CUTPA, in that such conduct is offensive

to public policy, egregious, unconscionable, immoral, unethical, oppressive, deceptive and/or unscrupulous, and caused substantial injury to Microsoft, among others.

58. The foregoing conduct by Defendant has caused, and in the future will continue to cause, ascertainable loss to Microsoft.

59. A copy of this Complaint has been mailed to the Attorney General of the State of Connecticut and the Commissioner of Consumer Protection in accordance with Conn. Gen. Stat. § 42-110g.

## COUNT VI

### **(For Imposition Of A Constructive Trust Upon Illegal Profits)**

60. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 59, inclusive.

61. Defendant's conduct constitutes deceptive, fraudulent and wrongful conduct in the nature of passing off the infringing materials as genuine Microsoft software approved or authorized by Microsoft.

62. By virtue of the wrongful conduct, Defendant has illegally received money and profits that rightfully belong to Microsoft.

63. Upon information and belief, Defendant holds the illegally received money and profits in the form of bank accounts, real property, or personal property that can be located and traced.

64. Defendant holds the money and profits illegally received as a constructive trustee for the benefit of Microsoft.

## **COUNT VII**

### **(Accounting)**

65. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 64, inclusive.

66. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to recover any and all profits of Defendant that are attributable to the acts of infringement.

67. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to actual damages or statutory damages sustained by virtue of Defendant's acts of infringement.

68. The amount of money due from Defendant to Microsoft is unknown to Microsoft and cannot be ascertained without a detailed accounting by Defendant of the precise number of units of infringing material offered for distribution and distributed by Defendant.



## **PRAYER FOR RELIEF**

**WHEREFORE**, Microsoft respectfully requests judgment against Defendant as follows:

(1) That the Court enter a judgment against Defendant that Defendant has:

(a) willfully infringed Microsoft's rights in the following federally registered copyrights under 17 U.S.C. § 501:

- (1) TX 5-407-055 ("Windows XP Professional");
- (2) TX 5-837-617 ("Office 2003 Professional");
- (3) TX 5-837-636 ("Office Excel 2003");
- (4) TX 5-900-087 ("Office Outlook 2003");
- (5) TX 5-852-649 ("Office PowerPoint 2003");
- (6) TX 5-900-088 ("Office Word 2003");
- (7) TX 5-837-618 ("Publisher 2003");
- (8) TX 5-877-513 ("Business Contact Manager for Outlook 2003"); and
- (9) TX 5-901-713 ("Access 2003");

(b) willfully infringed Microsoft's rights in the following federally registered trademarks and service mark under 15 U.S.C. § 1114:

- (1) 1,200,236 ("MICROSOFT");
- (2) 1,256,083 ("MICROSOFT");
- (3) 1,872,264 ("WINDOWS");
- (4) 2,744,843 (COLORED FLAG DESIGN);
- (5) 1,475,795 ("POWERPOINT");
- (6) 1,741,086 ("MICROSOFT ACCESS");

(7) 2,188,125 (“OUTLOOK”);

(8) 2,999,281 (COLOR FOUR SQUARE LOGO);

(c) committed and are committing acts of false designation of origin, false or misleading description of fact, and false or misleading representation against Microsoft, in violation of 15 U.S.C. § 1125(a);

(d) engaged in unfair methods of competition in violation of Connecticut statutory and common law; and

(e) otherwise injured the business reputation and business of Microsoft by Defendant’s acts and conduct set forth in this Complaint.

(2) That the Court issue injunctive relief against Defendant, and that Defendant, Defendant's agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with Defendant, be enjoined and restrained from:

(a) imitating, copying, or making any other infringing use or infringing distribution of software program, components, and/or items protected by Microsoft’s registered trademarks and service mark, including, but not limited to, the following Trademark Registration Nos.:

(1) 1,200,236 (“MICROSOFT”);

(2) 1,256,083 (“MICROSOFT”);

(3) 1,872,264 (“WINDOWS”);

(4) 2,744,843 (COLORED FLAG DESIGN);

(5) 1,475,795 (“POWERPOINT”);

(6) 1,741,086 (“MICROSOFT ACCESS”);

- (7) 2,188,125 (“OUTLOOK”);
- (8) 2,999,281 (COLOR FOUR SQUARE LOGO);

or the software programs, components, and/or items protected by the following Certificates of Copyright Registration Nos.:

- (1) TX 5-407-055 ("Windows XP Professional");
- (2) TX 5-837-617 (“Office 2003 Professional”);
- (3) TX 5-837-636 (“Office Excel 2003”);
- (4) TX 5-900-087 (“Office Outlook 2003”);
- (5) TX 5-852-649 (“Office PowerPoint 2003”);
- (6) TX 5-900-088 (“Office Word 2003”);
- (7) TX 5-837-618 (“Publisher 2003”);
- (8) TX 5-877-513 ("Business Contact Manager for Outlook 2003"); and
- (8) TX 5-901-713 (“Access 2003”);

and any other works now or hereafter protected by any Microsoft trademark or copyright;

(b) manufacturing, assembling, producing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any software programs, components, and/or items bearing any simulation, reproduction, counterfeit, copy, or colorable imitation of any of Microsoft’s registered trademarks, service mark, or copyrights, including, but not limited to, the Trademark, Service Mark, and Copyright Registration Numbers listed in Section (2)(a) above;

(c) using any simulation, reproduction, counterfeit, copy, or colorable imitation of Microsoft’s registered trademarks, service mark, or copyright including, but not limited to, the Trademark, Service Mark, and Copyright Registration Numbers listed in Section

(2)(a) above, in connection with the manufacture, assembly, production, distribution, offering for distribution, circulated, sale, offering for sale, import, advertisement, promotion, or display of any software program, component, and/or item not authorized or licensed by Microsoft;

(d) using any false designation of origin or false description which can or is likely to lead the trade or public or individuals, erroneously to believe that any software, component, and/or item has been manufactured, assembled, produced, distributed, offered for distribution, circulated, sold, offered for sale, imported, advertised, promoted, displayed, licensed, sponsored, approved, or authorized by or for Microsoft, when such is not true in fact;

(e) engaging in any other activity constituting an illegal distribution of any Microsoft item and/or an infringement of any of Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's rights in, or right to use or to exploit these trademarks, service mark, and/or copyrights; and

(f) 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 (e) above.

(3) That the Court enter an order declaring that Defendant hold in trust, as constructive trustee for the benefit of Microsoft, the illegal profits obtained from the distribution of infringing copies of Microsoft's software, and requiring Defendant to provide Microsoft a full and complete accounting of all amounts due and owing to Microsoft as a result of Defendant's illegal activities.

(4) That the Court order Defendant to pay Microsoft's damages as follows:

(a) Microsoft's damages and Defendant's profits pursuant to 17 U.S.C. § 504(b), or in the alternative, enhanced statutory damages

pursuant to 17 U.S.C. § 504(c)(2), for Defendant's willful infringement of Microsoft's copyrights;

- (b) Microsoft's damages and Defendant's profits pursuant to 15 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b) for Defendant's willful violation of Microsoft's registered trademarks and service mark, or in the alternative statutory damages pursuant to 15 U.S.C. § 1117(c) for each counterfeit mark; and
- (c) Damages pursuant to Connecticut common law and CUTPA, C.G.S. § 42-110g, including, but not limited to, compensatory and punitive damages.

(5) That the Court order Defendant to pay to Microsoft both the costs of this action and the reasonable attorneys' fees incurred by it in prosecuting this action; and

(6) That the Court grant to Microsoft such other and additional relief as is just and proper.

Microsoft Corporation  
By Its Attorneys

/s/

---

Brian C. Roche – ct17975  
Gerald C. Pia, Jr. – ct21296  
Roche Pia LLC  
Two Corporate Dr., Suite 234  
Shelton, CT 06484  
203.944.0235 (telephone)  
203.225.1244 (facsimile)  
[broche@rochepia.com](mailto:broche@rochepia.com)  
[gpia@rochepia.com](mailto:gpia@rochepia.com)