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MICROSOFT CORPORATION,
FS-ISAC, INC. and NATIONAL AUTOMATED
CLEARING HOUSE ASSOCIATION

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

MICROSOFT CORP., FS-ISAC, INC., and
NATIONAL AUTOMATED CLEARING HOUSE
ASSOCIATION,

Plaintiffs

v.

JOHN DOES 1-39 D/B/A Slavik, Monstr, IOO,
Nu11, nvidiag, zebra7753, lexa_Mef, gss, iceIX,
Harderman, Gribodemon, Aqua, aquaSecond, it,
percent, cp01, hct, xman, Pepsi, miami, miamibc,
petr0vich, Mr. ICQ, Tank, tankist, Kusunagi,
Noname, Lucky, Bashorg, Indep, Mask, Enx,
Benny, Bentley, Denis Lubimov, MaDaGaSka,
Vkontake, rfcid, parik, reronic, Daniel, bx1, Daniel
Hamza, Danielbx1, jah, Jonni, jtk, D frank, duo,
Admin2010, h4x0rdz, Donsft, mary.J555,
susanneon, kainehave, virus_e_2003, spanishp,
sere.bro, muddem, mechan1zm, vlad.dimitrov,
jheto2002, sector.exploits AND JabberZeus Crew,
AND YEVHEN KULIBABA AND YURIY
KONOVALENKO, CONTROLLING COMPUTER
BOTNETS THEREBY INJURING PLAINTIFFS,
AND THEIR CUSTOMERS AND MEMBERS,

Defendants.

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

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BROOKLYN OFFICE

Hon. Sterling Johnson, Jr.

Case No. 12-cv-01335 (SJ/RLM)

[PROPOSED] ORDER FOR PERMANENT INJUNCTION

THIS MATTER came before the Court on Plaintiffs' Motion for Default Judgment and Permanent Injunction against Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has considered Plaintiffs' motion, the brief submitted in support of the motion, and the other pleadings, papers and evidence filed in this action. Based on the foregoing, the Court finds:

1. Defendants identified in the Complaint as John Does 23, 24, and 36 have been dismissed with prejudice. Defendants John Does 1-21, 25-35, and 37-39 ("Defendants") remain in the case.
2. As noted in the Court's November 13, 2012 Memorandum and Order (Dkt. 38), Defendants were properly served with Plaintiffs' summons and complaint in this action. Defendants were properly served and adequate notice to Defendants was provided through means authorized by law, satisfying Due Process, satisfying Fed. R. Civ. Pro. 4(f)(3); and reasonably calculated to notify defendants of the Complaint and this action.
3. Defendants failed to appear, plead, or otherwise defend against Plaintiffs' action.
4. The time for answering Plaintiffs' complaint was 21 days from service of the summons and complaint, and more than 21 days have elapsed since Defendants were served.
5. This Court has jurisdiction over the subject matter of this case.
6. This Court has jurisdiction over all parties hereto and venue in this action is proper.
7. Notice of default of Defendants John Does 1-21, 25-35, and 37-39 was entered pursuant to Order of this Court (Dkt. 38) and Rule 55(a) of the Federal Rules of

Civil Procedure on November 13, 2012.

8. Plaintiffs are entitled to entry of judgment against Defendants.

9. Defendants are neither incompetent nor infants.

10. Plaintiffs' claims against Defendant for relief pursuant to 1) Computer Fraud and Abuse Act (18 U.S.C. § 1030); 2) CAN-SPAM Act (15 U.S.C. § 7704); 3) Electronic Communications Privacy Act (18 U.S.C. § 2701); 4) trademark infringement under the Lanham Act (15 U.S.C. § 1114), 5) false designation of origin under the Lanham Act (15 U.S.C. § 1125(a)); 6) trademark dilution under the Lanham Act (15 U.S.C. § 1125(c)); 7) the Racketeer Influence and Corrupt Organizations Act (18 U.S.C. § 1962(c)); and 8) the common law of unjust enrichment, trespass to chattels, and conversion, can be made certain by entry of judgment and a permanent injunction.

11. Microsoft owns the registered trademarks "Microsoft," "Windows," and "Outlook" used in connection with its services, software, and products. FS-ISAC's members have invested in developing their brands, trademarks and trade names in association with the financial services they offer. NACHA owns the registered trademark "NACHA" and the NACHA logo used in conjunction with its services.

12. The requirements for a permanent injunction are met. Plaintiffs are entitled to prevail on the merits of this action. Defendants have engaged in and are likely to engage in acts or practices that violate the 1) Computer Fraud and Abuse Act (18 U.S.C. § 1030); 2) CAN-SPAM Act (15 U.S.C. § 7704); 2) Electronic Communications Privacy Act (18 U.S.C. § 2701); 3) Lanham Act (15 U.S.C. § 1114), 4) Racketeer Influence and Corrupt Organizations Act (18 U.S.C. § 1962(c)); and 5) common law of unjust enrichment; trespass to chattels; and common law conversion. The evidence set forth in Plaintiffs' Complaint and

further set forth in Plaintiffs' Application for an Emergency Temporary Restraining Order, Seizure Order and Order to Show Cause Re Preliminary Injunction ("TRO Motion"), and the accompanying declarations and exhibits and other briefs and evidence submitted in this action, demonstrates that Plaintiffs are entitled to prevail on its claim that Defendants have engaged in violations of the foregoing laws by: 1) intentionally sending malicious software to Plaintiffs and their customers' protected computers and operating systems and accessing those computers and operating systems without authorization in order to infect those computers and make them part of the botnets; 2) sending malicious software to configure, deploy and operate botnets; 3) sending unsolicited spam e-mail to Microsoft's Hotmail accounts; 4) sending unsolicited spam e-mails that falsely indicate that they are from or approved by Plaintiffs and that induce computer users to take actions resulting in the infection of their computers with botnet malware; 5) using the botnet malware to steal financial account credentials; and 6) using the stolen credentials to steal money from the financial accounts of the computer users so infected.

13. Unless permanently enjoined by Order of this Court, irreparable harm will result from the Defendants' further violations of Computer Fraud and Abuse Act (18 U.S.C. § 1030); 2) CAN-SPAM Act (15 U.S.C. § 7704); 3) Electronic Communications Privacy Act (18 U.S.C. § 2701); 4) Lanham Act (15 U.S.C. § 1114), 5) the Racketeer Influence and Corrupt Organizations Act (18 U.S.C. § 1962(c)); and 6) the common law of unjust enrichment, trespass to chattels, and conversion. If such conduct continues, irreparable harm will occur to Plaintiffs and the public, including Plaintiffs' customers and associated member organizations. There is good cause to believe that the Defendants will continue to engage in such unlawful actions if not permanently enjoined from doing so by Order of this

Court.

14. The hardship to Plaintiffs, their customers, and the public resulting if injunctive relief were not entered far outweighs any burden to Defendants from entry of a permanent injunction. Defendants have illegally infected end-user computers to enlist them into the Zeus botnets, a network of infected end-user computers operated over the Internet and used for illegal purposes. Plaintiffs, their customers, and the public are harmed by this activity through the high-volume of spam e-mail generated by Zeus, the theft of financial account credentials, and the theft of money from compromised financial accounts, and the ongoing infection of end-user computers and their use in illegal purposes. Therefore, the balance of hardships tips in favor of granting a permanent injunction.

15. The permanent injunction will benefit the public. Maintaining the relief put in place under the temporary restraining order and preliminary injunction will keep the operators of the Zeus botnets from reconstituting its Command and Control Infrastructure and thereby reconnecting with infected end-user computers, will sharply curtail its ability to propagate spam e-mail, infect end-user computers, steal financial account credentials, steal money from financial accounts, and infringement of Plaintiffs' trademarks, and will keep it from using the current tier of infected end-user computers in illegal activity without their owners' permission or knowledge. Therefore, a permanent injunction will have a favorable impact on the public interest.

16. Defendants have engaged and are likely to engage in illegal activity using the Internet domain names identified in Appendix A to host the command and control software and the malicious botnet code and content.

17. To keep Defendants from resuming actions injurious to Plaintiffs and others,

Defendants must be enjoined from using the Internet domain names identified in Appendix A and Defendants must be prohibited from accessing Defendants' computer resources related to such Internet domain names.

IT IS THEREFORE ORDERED as follows:

- A. Plaintiffs' Motion for Default Judgment and Permanent Injunction is GRANTED.
- B. Defendants are in default.
- C. Plaintiffs are awarded judgment against Defendants.
- D. Defendants, their representatives and persons who are in active concert or participation with them are permanently enjoined from intentionally accessing and sending malicious software to Microsoft's and its customers' protected computers and operating systems, without authorization, in order to infect those computers and make them part of a botnet; sending malicious software to configure, deploy and operate a botnet; sending unsolicited spam e-mail to Microsoft's accounts; and sending unsolicited spam e-mail that falsely indicate that they are from or approved by Plaintiffs; or undertaking any similar activity that inflicts harm on Plaintiffs or the public, including Plaintiffs' customers and associated member entities.
- E. Defendants, their representatives and persons who are in active concert or participation with them are permanently enjoined from configuring, deploying, operating or otherwise participating in or facilitating any botnet, including but not limited to the command and control software hosted at and operating through the Internet domains set forth herein and through any other component or element of the botnet in any location.
- F. Defendants, their representatives and persons who are in active concert or participation with them are permanently enjoined from using the trademarks "Microsoft," "Windows," and "Outlook;" NACHA's registered trademark "NACHA" or any of Plaintiffs' logo trade names; service marks; or Internet Domain addresses or names; or acting in any

other manner which suggests in any way that Defendants' products or services come from or are somehow sponsored or affiliated with Plaintiffs, and from otherwise unfairly competing with Plaintiffs, misappropriating that which rightfully belongs to Plaintiffs, or committing fraud by passing off their goods or services as Plaintiffs'.

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

H. Pursuant to the All Writs Act (28 U.S.C. § 1651), the domain registries with a presence in the U.S. identified in Appendix A to this Order, shall continue, for a period of twenty-four (24) months from the date of this order, to:

1. redirect all traffic to the domains in Appendix A to secure servers at a Microsoft-secured IP address: 199.2.137.141; and
2. take all steps required to propagate the foregoing domain registry changes to domain name registrars.

I. The domain registries outside of the U.S. identified in Appendix A to this Order, are respectfully requested but are not ordered to provide assistance to plaintiffs to prevent the use of the domains in Appendix A for the activity prohibited in this Order.

IT IS SO ORDERED.

Entered this 29 day of November, 2012.

s/Sterling Johnson, Jr.

The Honorable Sterling Johnson, Jr. U.S.D.J.