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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AMAZON.COM, INC., a Delaware corporation, and MICROSOFT CORPORATION, a Washington corporation,

Plaintiffs,

v.

GOLD DISK CANADA, INC., a foreign corporation, ERIC HEAD, MATTHEW HEAD, and BARRY HEAD d/b/a "LEADS CANADA" and "INFINITE TECHNOLOGIES" and JOHN DOES 1-20,

Defendants.

No.

COMPLAINT FOR TRADEMARK INFRINGEMENT, CYBERPIRACY, AND OTHER VIOLATIONS OF STATE AND FEDERAL LAW

Jury Trial Demanded

Plaintiffs Amazon.com, Inc. ("Amazon.com") and Microsoft Corporation ("Microsoft"), through their attorneys, allege as follows:

**I. SUMMARY**

Defendants have engaged in widespread spamming campaigns in which they have sent e-mails to consumers with forged "from" lines and other e-mail routing information, creating the impression that the e-mails are from Amazon.com. Defendants' illegal and deceptive spamming campaigns have been directed to Microsoft's MSN Hotmail

1 customers, have misused Microsoft's MSN Hotmail services, and have violated  
2 Microsoft's Terms of Service, state law and federal law.

3 Defendants have intentionally used the AMAZON.COM® trademark in their e-  
4 mail marketing campaign to immediately convey to consumers an association with  
5 Amazon.com, to circumvent e-mail filters, and to unfairly trade off the reputation and  
6 goodwill of the AMAZON.COM® mark. Defendants do not have permission to use the  
7 AMAZON.COM® mark and are not affiliated in any way with Amazon.com. Similarly,  
8 defendants were aware that their actions were specifically prohibited by Microsoft's  
9 Terms of Service and were on notice that Microsoft did not authorize their actions in any  
10 way.

11 By this complaint, Amazon.com and Microsoft join to seek to prevent consumer  
12 confusion and annoyance, to protect the property and reputation of Microsoft's MSN  
13 Hotmail service, and to protect AMAZON.COM®, one of the world's best-known brands,  
14 from intentional infringement and cyberpiracy.

## 15 **II. JURISDICTION AND VENUE**

16 1. This is a Complaint for violations of §§ 32 and 43 of the Lanham Act , 15  
17 U.S.C. § 1114(1) (Trademark Infringement), 15 U.S.C. § 1125(a) (False Designation of  
18 Origin, Unfair Competition), 15 U.S.C. § 1125(d) (Cyberpiracy Prevention), the federal  
19 Computer Fraud and Abuse Act (18 U.S.C. § 1030(a)), the Washington Commercial  
20 Electronic Mail Act (RCW Ch. 19.190), the Washington Consumer Protection Act, and  
21 for other claims arising under state law. Plaintiffs seek damages and injunctive relief to  
22 remedy defendants' unauthorized use of the trade name and trademark AMAZON.COM®  
23 for the marketing and sale of their products, and defendants' unauthorized use of  
24 Microsoft's computers and computer systems to send millions of misleading and  
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1 deceptive unsolicited commercial e-mail messages, or “spam,” in violation of Microsoft’s  
2 policies and state and federal law.

3 2. The Court has original subject matter jurisdiction over this action pursuant  
4 to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a). The Court has supplemental jurisdiction  
5 over the state law claims pursuant to 28 U.S.C. § 1367.

6 3. The Court has personal jurisdiction over the defendants because the  
7 defendants have engaged in business activities in and directed to Washington, have  
8 committed a tortious act within the state, have consented to jurisdiction in Washington,  
9 and have used personal property in the state. Defendants have purposefully availed  
10 themselves of the opportunity to conduct commercial activities in this forum, and this  
11 Complaint arises out of those activities.

12 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c), because a  
13 substantial part of the events giving rise to the claim occurred, and continue to occur, in  
14 this District.

### 15 **III. THE PARTIES**

16 5. Plaintiff Amazon.com is a Delaware corporation with its principal place of  
17 business in Seattle, Washington. On or about July 15, 1997, Amazon.com registered the  
18 trademark AMAZON.COM® with the United States Patent and Trademark Office.

19 6. Plaintiff Microsoft is a Washington corporation with its principal place of  
20 business in Redmond, Washington.

21 7. Defendant Gold Disk Canada, Inc (“Gold Disk”) is a Canadian corporation  
22 with its principal place of business in Kitchener, Ontario, Canada.

23 8. Defendant Eric Head is a resident of Kitchener, Ontario, Canada, and is an  
24 owner and operator of Gold Disk.

1           9.       Defendant Matthew Head is a resident of Kitchener, Ontario, Canada, and  
2 is an owner and operator of Gold Disk.

3           10.       Defendant Barry Head is a resident of Kitchener, Ontario, Canada, and is  
4 an owner and operator of Gold Disk.

5           11.       Defendants Eric, Matthew and Barry Head do business as “Leads Canada”  
6 and “Infinite Technologies.”

7           12.       Plaintiffs are unaware of the true names and capacities of defendants sued  
8 herein as DOES 1-20, and therefore sue these defendants by such fictitious names.

9 Plaintiffs will amend this complaint to allege their true names and capacities when  
10 ascertained. Plaintiffs are informed and believe and therefore allege that each of the  
11 fictitiously named defendants is responsible in some manner for the occurrences herein  
12 alleged, and that plaintiffs’ injuries as herein alleged were proximately caused by such  
13 defendants.  
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15           13.       The actions alleged herein to have been undertaken by the defendants were  
16 undertaken by each defendant individually, were actions that each defendant caused to  
17 occur, were actions that each defendant authorized, controlled, directed, or had the ability  
18 to authorize, control or direct, and/or were actions in which each defendant assisted,  
19 participated or otherwise encouraged, and are actions for which each defendant is liable.  
20 Each defendant aided and abetted the actions of the defendants set forth below, in that  
21 each defendant had knowledge of those actions, provided assistance and benefited from  
22 those actions, in whole or in part. Each of the defendants was the agent of each of the  
23 remaining defendants, and in doing the things hereinafter alleged, was acting within the  
24 course and scope of such agency and with the permission and consent of other defendants.  
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1 **IV. THE AMAZON.COM® TRADEMARK**

2 14. The term “Amazon.com” is not only the name of Plaintiff’s company, but  
3 also the most important and easily recognized identifier of the goods and services it offers.  
4 There is a particularly close association among consumers between Amazon.com the  
5 business, the AMAZON.COM® mark, and the products and services offered under the  
6 Amazon.com designation. For millions of consumers, the name “Amazon.com” has come  
7 to represent wide selection, fast delivery, fair pricing, and excellent security for Internet  
8 transactions. Courts in the United States and Greece have entered judgments for  
9 Amazon.com that attest to the fame and/or the strong association between the  
10 AMAZON.COM® mark and the services offered by Amazon.com.

11 15. AMAZON.COM® mark is one of the best-known trademarks on the  
12 Internet. The AMAZON.COM® mark is famous by virtue of its inherent distinctiveness  
13 and substantial secondary meaning as a designation of the source of the products  
14 Amazon.com sells and by its continuous and broad use for virtually the entire life of the  
15 Internet as a commercial medium. The AMAZON.COM® mark is registered in over 125  
16 individual countries, and has hundreds of additional registration applications pending all  
17 over the world. AMAZON.COM® is a registered trademark with the United States Patent  
18 and Trademark Office for a variety of services including, but not limited to, auctioneering,  
19 automated and computerized trading of goods and services for others provided over a  
20 global communication information network, and online retail store services featuring  
21 books, music, videotapes and more.

22 16. The AMAZON.COM® mark is particularly well known among Internet  
23 users, the trading areas and channel of trade used by both Amazon.com and Defendants.  
24 There are no similar marks in common commercial use. A recent review of the database  
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1 maintained by the United States Patent and Trademark Office reveals not a single  
2 registration for any mark that included both “amazon” and “com.”

3 17. Amazon.com is one of the best-known Internet retailers in the world today.  
4 Jeff Bezos (“Bezos”), the company’s founder, was a pioneer in the use of the Internet as a  
5 medium of commerce. In 1995, Bezos created an Internet Web site (“Amazon.com Site”)  
6 that permitted consumers around the world to purchase books on-line. Amazon.com was  
7 one of the first corporations to make the name of its business identical to the domain name  
8 from which its business operates—such that anyone using the Internet to find its Web site  
9 need only remember the name of the company.

10 18. Since its inception, the Amazon.com Site has continuously operated from  
11 the Internet address <www.amazon.com>. When Amazon.com opened its cyber-doors, its  
12 site primarily featured books, which is still an integral part of Amazon.com’s business.  
13 Since then, Amazon.com has expanded its operations to include an even broader selection  
14 of products, offering full line of goods ranging from computer products and electronics to  
15 toys, compact discs and movies on videotape and DVD.

16 19. Since at least as early as 1995, Amazon.com has used the trademark  
17 AMAZON.COM® to promote its business and its websites.

## 18 **V. THE NATURE OF MICROSOFT’S INTERNET E-MAIL SERVICES**

19 20. Microsoft owns and operates interactive computer services that enable its  
20 customers to, among other things, access the Internet and exchange electronic mail (“e-  
21 mail”) on the Internet. Microsoft owns and maintains computers and other equipment,  
22 including specialized computers or “servers” that process e-mail messages and otherwise  
23 support its e-mail services. Microsoft maintains this equipment in Washington and  
24 California, among other states. E-mail sent to and from Microsoft’s customers is  
25 processed through and stored on these computers. Microsoft is an internet service

1 provider (“ISP”), is an “interactive computer service” as defined by RCW § 19.190.010.  
2 Microsoft’s computers and computer systems are “protected computers” under the federal  
3 Computer Fraud and Abuse Act, 18 U.S.C. § 1030(e)(2).

4 21. One of Microsoft’s services is “MSN Hotmail” which provides free and  
5 subscription-based e-mail on the Internet through a web-based e-mail service that can be  
6 accessed at www.hotmail.com. MSN Hotmail allows account-holders to exchange e-mail  
7 messages with any other e-mail user who has an Internet e-mail address throughout the  
8 world. MSN Hotmail has millions of registered accounts, whose users all have unique e-  
9 mail addresses ending in “@hotmail.com.”

10 **VI. THE NATURE OF UNSOLICITED E-MAIL OR “SPAM”**

11 22. Unsolicited commercial e-mail is often referred to as “spam.” The  
12 transmission of spam, a practice referred to as “spamming,” by persons known as  
13 “spammers,” is widely condemned in the Internet community, and is of significant  
14 concern and economic detriment to Microsoft and its customers.

15 23. By using the Internet to send commercial e-mail messages, spammers not  
16 only obtain significant cost savings, but also impose significant economic burdens on ISPs  
17 such as Microsoft. Although it costs very little for a spammer to transmit innumerable e-  
18 mail messages, handling the enormous volume of e-mail initiated by spammers places a  
19 tremendous burden on Microsoft.

20 24. Microsoft’s computers and computer systems are designed and created  
21 solely for the benefit and the non-commercial personal use of its customers. The  
22 computers and computer systems have finite capacity and are not designed to  
23 accommodate innumerable mass mailings from spammers. Microsoft has been required to  
24 expend substantial amounts for new equipment to handle the mass mailings by spammers.

1           25.     Spamming also can and does result in the degradation and disruption of  
2 Microsoft's computers and computer systems. Spam demands storage space and  
3 processing capacity of Microsoft's computers and computer systems, making those  
4 resources unavailable to serve the legitimate needs of Microsoft's customers. The  
5 diversion of these resources from processing authorized e-mail impairs the normal  
6 operation of the computers and computer systems. Therefore, the value of that equipment  
7 is diminished by spamming.

8           26.     Spamming also has significant impact on the recipients of spam.  
9 Individuals who receive spam must take the time and effort to sort through larger volumes  
10 of received e-mail, must attempt to distinguish spam from legitimate e-mail, and  
11 ultimately discard this unsolicited material. In an effort to mislead e-mail recipients and  
12 to make it more difficult for them to identify and discard these unsolicited advertisements,  
13 spammers frequently use deceptive methods, such as using false or misleading  
14 information in the e-mail headers and subject lines. When a spammer uses deceptive  
15 information to disguise spam as legitimate personal or business e-mail, it causes additional  
16 inconvenience and frustration to spam recipients.

17           27.     In this instance, defendants used "amazon.com" as a sending domain for  
18 their spam. The use of that domain, and the AMAZON.COM® mark, in connection with  
19 their marketing of goods or services is likely to confuse consumers. Defendants' use of  
20 AMAZON.COM® will lead some consumers to conclude that Amazon.com is a partner,  
21 has a business relationship, or is somehow associated with defendants or their products.

22           28.     Additionally, spammers know that their bulk e-mailing practices inevitably  
23 lead to a significant portion of their e-mail being undeliverable. When an e-mail message  
24 is undeliverable, additional e-mail messages ("bounce-back messages") are generated to  
25 advise the sender and the ISP of this fact. Rather than have their own computer  
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1 equipment burdened with voluminous bounce-back messages, spammers craft their  
2 messages to direct the bounce-back messages to others. Thus, a spammer who sends  
3 spam by using a “amazon.com” return address can be assured that the inevitable,  
4 innumerable bounce-back messages will be returned to that address, not to the spammer’s  
5 own computer system. This adds to Amazon.com’s burdens, as it receives bounce-back  
6 messages from these falsified spams. It also increases Microsoft’s burdens, as its  
7 computers must process and store the bounce-back messages from these spam mailings.

8 29. In passing the Commercial Electronic Mail Act, RCW Ch. 19.190, in 1998,  
9 Washington became one of the first states to regulate spam. The legislature has  
10 recognized that the spamming practices prohibited by the Act are “matters vitally  
11 affecting the public interests” and are unfair and deceptive practices which impact  
12 Washington businesses and consumers.

13 30. Microsoft has a clearly articulated policy prohibiting the use of its services  
14 for junk e-mail, spamming, or any unsolicited messages (commercial or otherwise).  
15 Microsoft’s Terms of Service for MSN Hotmail (the “Terms of Service”) specifically  
16 prohibit the use of Microsoft’s service to facilitate spamming. The Terms of Service  
17 provide that MSN Hotmail may only be used for a subscriber’s personal and non-  
18 commercial use, and prohibit a subscriber from using the service in any commercial  
19 manner. The Terms of Use also prohibit the use of any automated queries of any sort, and  
20 also specifically prohibit sending of junk e-mail, spam, and any duplicative or unsolicited  
21 messages.

## 22 VII. DEFENDANTS ILLEGAL ACTS

23 31. On information and belief, sometime on or before January 1, 2003,  
24 defendants began conducting extensive e-mail campaigns. As part of those campaigns,  
25 defendants, acting together and in concert, created and sent large volumes of e-mail  
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1 messages advertising the sale of “Human Growth Hormone,” cable descramblers, penis  
2 enlargement products, debt consolidation, merchant card processing services, and other  
3 goods and services of questionable value. The e-mails directed respondents to websites  
4 operated by defendants or by their customers, including websites at domains  
5 <www.healthproductsnow.net>, <www.betterhealth.bz>, <www.cheapfilter.com>,  
6 <www.esalez-bizop.biz>, <www.esalez-cash.biz> and many others, at which the products  
7 could be ordered. Some of the e-mails were designed so that they appeared to be sent  
8 from Amazon.com, and used the AMAZON.COM® mark in the e-mail header as the  
9 “from” address. *See* Exhibit A.

10 32. Amazon.com did not provide permission to defendants to use its  
11 AMAZON.COM® trademark for any reason, including their e-mail marketing campaign.

12 33. On information and belief, defendants intentionally adopted the  
13 AMAZON.COM® mark to trade on the fame and goodwill associated with the  
14 AMAZON.COM® mark, and to evade anti-spam filters specifically designed to permit  
15 the receipt of e-mail from Amazon.com.

16 34. Defendants’ use of the AMAZON.COM® mark is likely to cause  
17 consumer confusion, mistake, and deception. This likelihood of confusion, mistake, and  
18 deception is even greater because both Amazon.com and Defendants operate their  
19 businesses over the Internet.

20 35. Defendants’ use of the AMAZON.COM® mark is likely to lead consumers  
21 to mistakenly conclude that the e-mail from defendants was exclusively or jointly sent by,  
22 licensed or certified by, or otherwise sponsored or approved by Amazon.com, or that  
23 defendants’ products or websites are somehow otherwise affiliated, connected, or  
24 associated with Amazon.com. Consumers are likely to be misled as to the true source,  
25 sponsorship, or affiliation of the e-mail.

1           36.     On information and belief, through their use of the AMAZON.COM®  
2 mark, defendants have intentionally and with knowledge sought to cause consumer  
3 confusion, mistake, and deception.

4           37.     In their spamming campaigns, defendants sent enormous volumes of  
5 unsolicited e-mail messages to MSN Hotmail. Microsoft is informed and believes, and on  
6 the basis alleges, that its MSN Hotmail service has received hundreds of millions of  
7 unsolicited e-mail messages from defendants.

8           38.     Many of those e-mail messages contain false or misleading “From” lines.  
9 By placing false names or random characters in place of the name of the true sender,  
10 defendants obscure the point of origin and transmission path of the e-mail.

11          39.     Many of those e-mail messages contain false and misleading subject lines.

12          40.     To facilitate their spamming campaigns, defendants began establishing  
13 countless MSN Hotmail accounts and sending millions of unsolicited spam  
14 advertisements from those accounts, knowing and intending to violate the Terms of  
15 Service. Over time, defendants have opened hundreds of thousands of MSN Hotmail  
16 accounts.

17          41.     Knowing that Microsoft’s technological measures would prevent the  
18 sending of large volumes of spam from a single MSN Hotmail account, defendants  
19 designed and activated automated programs to register for and open thousands of  
20 individual MSN Hotmail accounts under fictitious names. In doing so, defendants became  
21 aware of and agreed to the Terms of Service.

22          42.     In a conscious effort to avoid detection by Microsoft, defendants sent fewer  
23 than 100 spam e-mail messages from each individual account, resulting in a collective  
24 daily spamming of millions of messages. In order to avoid using their own computer  
25 resources and to avoid handling the inevitable “bounce back” e-mails which had been sent  
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1 by defendants to non-existent, out-dated or incorrect e-mail addresses, defendants used  
2 technological means to route their e-mail messages through, and send them via, these  
3 MSN Hotmail accounts. This practice had the result of obscuring the true sender of the  
4 spam e-mail, instead identifying the fictitious MSN Hotmail account name as the sender.

5 43. As a result of the defendants' actions, Microsoft's computer equipment and  
6 servers were required to process hundreds of millions of improper spam e-mails. These e-  
7 mails threaten to delay and otherwise adversely affect MSN Hotmail subscribers in  
8 sending and receiving legitimate e-mail, and have resulted in and continue to result in  
9 significant costs to Microsoft.

10 **COUNT I**  
11 **(Trademark Infringement Under Lanham Act 15 U.S.C. § 1114)**

12 44. Plaintiffs reallege paragraphs 1 through 43 of this Complaint as if fully set  
13 forth herein.

14 45. Defendants' use of the AMAZON.COM® to promote, market, or sell  
15 products and services constitutes trademark infringement pursuant to 15 U.S.C. § 1114.  
16 Defendants' intentional and willful infringement of the AMAZON.COM® registered  
17 trademark has caused and will continue to cause damage to Amazon.com, and is causing  
18 irreparable harm to Amazon.com for which there is no adequate remedy at law.  
19 Defendants are directly, contributorily, and/or vicariously liable for these actions.

20 **COUNT II**  
21 **(False Designation Of Origin Under Lanham Act 15 U.S.C. § 1125(a))**

22 46. Plaintiffs reallege paragraphs 1 through 45 of this Complaint as if fully set  
23 forth herein.

24 47. Defendants have used and continue to use AMAZON.COM® in  
25 connection with goods or services, in commerce, in a manner that is likely to cause  
26 confusion, mistake, or deception as to the origin, sponsorship, or approval of their goods

1 or services. Defendants are directly, contributorily, and/or vicariously liable for these  
2 actions. Amazon.com has been damaged by these acts in an amount to be proved at trial.  
3 Amazon.com is also entitled under the Lanham Act to injunctive and equitable relief  
4 against defendants.

5 **COUNT III**  
6 **(Cyberpiracy Prevention Under Lanham Act 15 U.S.C. § 1125(d))**

7 48. Plaintiffs reallege paragraphs 1 through 47 of this Complaint as if fully set  
8 forth herein.

9 49. Defendants' bad faith intent to profit from use of AMAZON.COM®, by  
10 sending e-mail messages that state they are from AMAZON.COM® that are confusingly  
11 similar to Amazon.com's distinctive marks, constitutes cyberpiracy under 15 U.S.C. §  
12 1125(d). Defendants' cyberpiracy of AMAZON.COM® has caused and will continue to  
13 cause damage to Amazon.com, in an amount to be proved at trial, and is causing  
14 irreparable harm to Amazon.com for which there is not an adequate remedy at law.  
15 Defendants are directly, contributorily, and/or vicariously liable for these actions.

16 **COUNT IV**  
17 **(Unfair Competition Under Lanham Act 15 U.S.C. § 1125(a))**

18 50. Plaintiffs reallege paragraphs 1 through 49 of this Complaint as if fully set  
19 forth herein.

20 51. Defendants' use of the AMAZON.COM® mark to promote, market, or sell  
21 their products or services, including on their website, constitutes Unfair Competition  
22 pursuant to 15 U.S.C. § 1125(a). Defendants' use of the AMAZON.COM® mark is likely  
23 to cause confusion, mistake, and deception among consumers. Defendants' unfair  
24 competition has caused and will continue to cause damage to Amazon.com, and is causing  
25 irreparable harm to Amazon.com for which there is no adequate remedy at law.  
26 Defendants are directly, contributorily, and/or vicariously liable for these actions.

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**COUNT V**  
**(Violation of the federal Computer Fraud and Abuse Act –**  
**18 U.S.C. § 1030(a)(4), (g))**

52. Plaintiff Microsoft realleges paragraphs 1 through 51 of this Complaint as if fully set forth herein.

53. By the actions alleged above, defendants knowingly and with intent to defraud, accessed Plaintiff Microsoft's protected computer systems, without authorization and/or in excess of authorized access.

54. By the actions alleged above, defendants furthered the intended fraud and obtained unauthorized use of Plaintiff Microsoft's protected computer systems, and the value of that use exceeds more than \$5,000 in any 1-year period.

55. Defendants' activity constitutes a violation of the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(4), and Plaintiff Microsoft is entitled to damages under that Act. Plaintiff Microsoft is also entitled under the Act to injunctive and equitable relief against defendants.

**COUNT VI**  
**(Violation of the federal Computer Fraud and Abuse Act –**  
**18 U.S.C. § 1030(a)(5), (g))**

56. Plaintiff Microsoft realleges paragraphs 1 through 55 of this Complaint as if fully set forth herein.

57. By the actions alleged above, defendants intentionally and knowingly accessed Plaintiff Microsoft's protected computer systems, and knowingly caused the transmission of a program, information, code, or command, without authorization and/or in excess of authorized access.

58. By the actions alleged above, defendants intentionally caused damage, without authorization, to Plaintiff Microsoft's protected computer systems, and the aggregate loss resulting therefrom exceeds at least \$5,000 in value.





1 amount of junk e-mail, utilizing the limited resources of Amazon.com's systems and  
2 making those resources unavailable for authorized uses.

3 72. Additionally, by spoofing Amazon.com's domain name in the e-mail  
4 header, defendants insured that Amazon.com's computer equipment – rather than  
5 defendants' own equipment – was burdened by the innumerable bounce messages  
6 resulting from the e-mail campaign.

7 73. Defendants have knowingly, intentionally and without authorization used  
8 and intentionally trespassed upon plaintiffs' property.

9 74. As a result of defendants' actions, plaintiffs have been damaged in an  
10 amount to be proven at trial.

11 **COUNT X**  
12 **(Conversion)**

13 75. Plaintiffs reallege paragraphs 1 through 74 of this Complaint as if fully set  
14 forth herein.

15 76. Defendants have willfully interfered with and converted plaintiffs' personal  
16 property, without lawful justification, as a result of which plaintiffs have been deprived of  
17 possession and use of their property.

18 77. As a result of defendants' actions, plaintiffs have been damaged in an  
19 amount to be proven at trial.

20 **COUNT XI**  
21 **(Breach of Contract)**

22 78. Plaintiffs reallege paragraphs 1 through 77 of this Complaint as if fully set  
23 forth herein.

24 79. In registering for one or more MSN Hotmail accounts, defendants  
25 expressly agreed to be bound by the Terms of Service. Microsoft has fully performed its  
26 obligations under the Terms of Service.

1 80. Defendants' activities as alleged above constitute breaches of the Terms of  
2 Service.

3 81. As a result of defendants' actions, Microsoft has been damaged and should  
4 be awarded damages in an amount to be proven at trial.

5  
6 **COUNT XII**  
**(Unfair Competition)**

7 82. Plaintiffs reallege paragraphs 1 through 81 of this Complaint as if fully set  
8 forth herein.

9 83. Defendants' use of the AMAZON.COM® mark to promote, market, or sell  
10 their products constitutes Unfair Competition. Defendants' use of the AMAZON.COM®  
11 mark is likely to cause confusion, mistake, and deception among consumers. Defendants  
12 have acted in bad faith and/or deliberately or willfully to infringe upon the  
13 AMAZON.COM® mark. Defendants are directly, contributorily, and/or vicariously liable  
14 for these actions.

15 **VIII. PRAYER FOR RELIEF**

16 WHEREFORE, plaintiffs respectfully pray that this Court:

17 1. Issue a permanent injunction, enjoining and prohibiting Defendants, or  
18 their agents, servants, employees, officers, attorneys, successors and assigns, and all  
19 others in active concert or participation with defendants, from:

20 (A) using the AMAZON.COM® trademark, or any version thereof, in  
21 connection with the description, marketing, promotion, advertising, or sale of any  
22 products or services, including defendants' e-mails or websites; and

23 (B) infringing Amazon.com's AMAZON.COM® trademark;

24 (C) establishing any accounts with Microsoft's MSN or MSN Hotmail  
25 services;

1 (D) using Microsoft's computers and computer systems in connection  
2 with sending commercial e-mail messages;

3 (E) making unauthorized use of Microsoft's computers and computer  
4 systems;

5 (F) continuing to violate Microsoft's Terms of Service;

6 (G) continuing to violate the Washington Commercial Electronic Mail  
7 Act; and

8 (H) assisting, aiding, or abetting any other person or business entity in  
9 engaging in or performing any of the activities referred to in subparagraphs (A)  
10 through (G) above.

11 2. Order an award of damages in an amount to be determined at trial; and

12 3. Order an award of treble damages, in an amount to be determined at trial,  
13 pursuant to R.C.W. Ch. 19.86, and

14 4. Order an award of treble damages as provided by Section 35(a) of the  
15 Lanham Act; and

16 5. Order an award of attorney's fees and costs as provided by Section 35(a) of  
17 the Lanham Act and R.C.W. 19.190 and 19.86, and

18 6. Order an award of punitive damages to be determined at trial; and

19 Any other or further relief that the Court deems appropriate.

20 **IX. JURY DEMAND**

21 Plaintiff hereby demands a trial by jury of all issue in this case.

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1 DATED this 27th day of September, 2004.

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PRESTON GATES & ELLIS LLP

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COMPLAINT FOR TRADEMARK  
INFRINGEMENT, CYBERPIRACY, AND  
OTHER VIOLATIONS OF FEDERAL AND  
STATE LAW- 20

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