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16 MICROSOFT CORPORATION

17 UNITED STATES DISTRICT COURT
18 DISTRICT OF NEVADA

20 MICROSOFT CORPORATION,

21 Plaintiff,

22 vs.

23 NASER AL MUTAIRI, an individual;
24 MOHAMED BENABDELLAH, an individual;
25 VITALWERKS INTERNET SOLUTIONS,
26 LLC, d/b/a NO-IP.com; and DOES 1-500,

27 Defendants.

) Case No. 14-cv-0987

) **FILED UNDER SEAL**

) **[PROPOSED] EX PARTE TEMPORARY**
) **RESTRAINING ORDER AND ORDER TO**
) **SHOW CAUSE REGARDING**
) **PRELIMINARY INJUNCTION**

1 Plaintiff Microsoft Corporation (“Microsoft”) has filed a complaint for injunctive and other
2 relief pursuant to: (1) the Computer Fraud and Abuse Act (18 U.S.C. § 1030); (2) the Anti-
3 Cybersquatting Consumer Protection Act (15 U.S.C. § 1125); (3) Nevada’s Unlawful Acts
4 Regarding Computers and Information Services (N.R.S. § 205.4765); and the common law of (4)
5 trespass to chattels, (5) conversion, and (6) negligence. Microsoft has moved *ex parte* for an
6 emergency temporary restraining order and an order to show cause why a preliminary injunction
7 should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Civil Local
8 Rule 7-5.

9 **FINDINGS**

10 The Court has considered the pleadings, declarations, exhibits, and memorandum filed in
11 support of Microsoft’s motion and finds that:

12 1. This Court has jurisdiction over the subject matter of this case, and there is good
13 cause to believe that it will have jurisdiction over all parties; the Complaint states a claim upon
14 which relief may be granted against Defendants Mutairi, Benabdellah, and Does 1-500 (“Malware
15 Defendants”) under the Computer Fraud and Abuse Act (18 U.S.C. § 1030), the Anti-Cybersquatting
16 Consumer Protection Act (15 U.S.C. § 1125), Nevada’s Unlawful Acts Regarding Computers and
17 Information Services (N.R.S. § 205.4765), and the common law of trespass to chattels, conversion,
18 and negligence, and against Defendant Vitalwerks under the Anti-Cybersquatting Consumer
19 Protection Act (15 U.S.C. § 1125) and the common law of negligence.

20 2. There is good cause to believe that Malware Defendants have engaged in and are
21 likely to engage in acts or practices that violate the Computer Fraud and Abuse Act (18 U.S.C. §
22 1030), the Anti-Cybersquatting Consumer Protection Act (15 U.S.C. § 1125), Nevada’s Unlawful
23 Acts Regarding Computers and Information Services (N.R.S. § 205.4765), and the common law of
24 trespass to chattels, conversion, and negligence, and that Microsoft is, therefore, likely to prevail on
25 the merits of this action.

26 3. There is good cause to believe that, unless the Malware Defendants are restrained and
27 enjoined by Order of this Court, immediate and irreparable harm will result from their ongoing
28 violations of the Computer Fraud and Abuse Act (18 U.S.C. § 1030), the Anti-Cybersquatting

1 Consumer Protection Act (15 U.S.C. § 1125), Nevada’s Unlawful Acts Regarding Computers and
2 Information Services (N.R.S. § 205.4765), and the common law of trespass to chattels, conversion,
3 and negligence. The evidence set forth in Microsoft’s Brief in Support of Application for a
4 Temporary Restraining Order and Order to Show Cause Regarding Injunctive Relief (“TRO
5 Motion”), and the accompanying declarations and exhibits, demonstrates that Microsoft is likely to
6 prevail on its claim that these Defendants have engaged in violations of the foregoing laws through
7 one or more of the following:

8 Defendants Mutairi and Benabdellah:

- 9 a. Knowingly, willfully, and without authorization publishing and transferring
10 malware to Doe Defendants;

11 All Malware Defendants:

- 12 b. Intentionally and knowingly accessing and sending malicious code to the
13 protected computers and operating systems of Microsoft and its customers
14 without authorization, in order to infect those computers and intending to
15 cause damage and benefiting therefrom;
- 16 c. Sending malicious code to access the protected computers without
17 authorization or in excess of any authorization to control and/or obtain
18 information from the computers;
- 19 d. Delivering malicious code;
- 20 e. Using sub-domains containing Microsoft’s protected marks; and
- 21 f. Negligently engaging in such acts and permitting, enabling and encouraging
22 other defendants to participate in illegal acts harmful to Microsoft,
23 Microsoft’s customers, and the general public.

24 4. There is good cause to believe that Defendant Vitalwerks has engaged in and is likely
25 to engage in acts or practices that violate the Anti-Cybersquatting Consumer Protection Act (15
26 U.S.C. § 1125) and the common law of negligence, and that Microsoft is, therefore, likely to prevail
27 on the merits of this action.

1 5. There is good cause to believe that, unless the Defendant Vitalwerks is restrained and
2 enjoined by Order of this Court, immediate and irreparable harm will result from its ongoing
3 violations the Anti-Cybersquatting Consumer Protection Act (15 U.S.C. § 1125) and the common
4 law of negligence. The evidence set forth in Microsoft's TRO Motion, and the accompanying
5 declarations and exhibits, demonstrate that Microsoft is likely to prevail on its claim that this
6 Defendant has engaged in violations of the foregoing laws through one or more of the following:

- 7 a. Leasing to Malware Defendants No-IP sub-domains containing Microsoft's
8 protected marks; and
- 9 b. Negligently enabling Malware Defendants to participate in illegal acts, and
10 failing to take sufficiently corrective action to stop and prevent the abuse of its
11 services, all of which harms Microsoft, Microsoft's customers, and the general
12 public.

13 6. There is good cause to believe that if such conduct continues, irreparable harm will
14 occur to Microsoft, its customers, and the public. There is good cause to believe that the Malware
15 Defendants will continue to engage in such unlawful actions if not immediately restrained from
16 doing so by Order of this Court.

17 7. There is good cause to believe that immediate and irreparable damage to this Court's
18 ability to grant effective final relief will result from the sale, transfer, or other disposition or
19 concealment by Defendants of the Internet domains at issue in Microsoft's TRO Motion and other
20 discoverable evidence of Defendants' misconduct available through such Internet domains if the
21 Defendants receive advance notice of this action. Based on the evidence cited in Microsoft's TRO
22 Motion and accompanying declarations and exhibits, Microsoft is likely to be able to prove the
23 following:

- 24 a. Defendants have engaged in activities that directly violate United States and
25 Nevada law and harm Microsoft, its customers and the public;
- 26 b. Defendants have continued their unlawful and/or negligent conduct despite
27 the clear injury to Microsoft, its customers, and the public;

- 1 c. Defendants are likely to relocate beyond the jurisdiction of U.S. courts the
2 information and evidence of their misconduct stored at the Internet domains at
3 issue in Microsoft’s TRO Motion and the harmful and malicious code
4 disseminated through these Internet domains;
- 5 d. Defendants are likely to warn its associates engaged in such activities if
6 informed of Microsoft’s action; and
- 7 e. Defendants have negligently allowed other defendants to use their business
8 and resources for illegal activities.

9 8. Microsoft’s request for this emergency *ex parte* relief is not the result of any lack of
10 diligence on Microsoft’s part, but instead based upon the nature of Defendants’ unlawful conduct.
11 Therefore, in accordance with Federal Rule of Civil Procedure 65(b) and Civil Local Rule 7-5, good
12 cause and the interest of justice require that this Order be Granted without prior notice to
13 Defendants, and accordingly, Microsoft is relieved of the duty to provide Defendants with prior
14 notice of Microsoft’s motion.

15 9. There is good cause to believe that Defendants have engaged in intentionally illegal
16 and/or negligent activity using the No-IP domains that are maintained by the top level domain
17 registries Verisign, Inc., Neustar, Inc., Aflias, Ltd., and Public Interest Registry (“Registry
18 Operators”).

19 10. There is good cause to believe that to immediately halt the injury caused by
20 Defendants, it must be ordered as follows:

- 21 a. To immediately, on all authoritative name servers for the .COM, .NET, .ORG,
22 .BIZ, and .INFO top level domains,¹ change the Domain Name System
23 authoritative name servers for the No-IP domains associated with the malware
24 (“Malware Domains”), listed in Appendix A, to
25 “ns7.microsoftinternetsafety.net” and “ns8.microsoftinternetsafety.net,” and
26 remove all other authoritative name servers for the Malware Domains. The

27 ¹ Microsoft has also identified No-IP domains ending in .ME that are associated with the malware.
28 However, Malware Domains ending in .ME are expressly excluded from this Order because .ME is a
global Top Level Domain that is controlled by the country of Montenegro.

1 Registry Operators shall reasonably cooperate with Microsoft to implement
2 this order through one or more of the foregoing changes, as may be necessary
3 to effectuate the terms of this order;

4 b. To immediately take all steps required to propagate the foregoing change to
5 the Domain Name System to all parts of the Domain Name System necessary
6 to effect this change; and

7 c. To take all necessary steps to ensure that the foregoing changes remain in
8 effect for the duration of this order.

9 11. There is good cause to permit notice of the instant order, notice of the Preliminary
10 Injunction hearing and service of the Complaint by formal and alternative means, given the exigency
11 of the circumstances and the need for prompt relief. The following means of service are authorized
12 by law, satisfy Due Process and Federal Rule of Civil Procedure 4(f)(3), and are reasonably
13 calculated to notify Defendants of the instant order, the Preliminary Injunction hearing and of this
14 action:

- 15 (1) personal delivery on Defendant Vitalwerks at its business address in Nevada;
16 (2) transmission by e-mail, Facebook, and Skype on Defendants Mutairi and
17 Benabdellah; and
18 (3) publishing notice on a publicly available Internet website.

19 **TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE**

20 **IT IS THEREFORE ORDERED** that, Malware Defendants and their representatives are
21 temporarily restrained and enjoined from intentionally accessing and sending malicious software or
22 code to Microsoft's and its customers' protected computers and operating systems, without
23 authorization, in order to infect those computers with the Bladabindi/Jenxcus malware for illegal
24 purposes.

25 **IT IS FURTHER ORDERED** that, Defendants and their representatives are temporarily
26 restrained and enjoined from configuring, deploying, operating or otherwise participating in or
27 facilitating the spread of Bladabindi/Jenxcus malware including, but not limited to the command-
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1 and-control software hosted at and operating through the IP addresses at No-IP sub-domains set forth
2 herein and through any other component or element of the malware scheme in any location.

3 **IT IS FURTHER ORDERED** that the Registry Operators must:

- 4 a. To immediately, on all authoritative name servers for the .COM, .NET, .ORG,
5 .BIZ, and .INFO top level domains, change the Domain Name System
6 authoritative name servers for the No-IP domains associated with the
7 malware, listed in Appendix A, to “ns7.microsoftinternetsafety.net” and
8 “ns8.microsoftinternetsafety.net,” and remove all other authoritative name
9 servers for the Malware Domains. The Registry Operators shall reasonably
10 cooperate with Microsoft to implement this order through one or more of the
11 foregoing changes, as may be necessary to effectuate the terms of this order;
- 12 b. Immediately take all steps required to propagate the foregoing change to the
13 Domain Name System to all parts of the Domain Name System necessary to
14 effect this change;
- 15 c. Take all necessary steps to ensure that the foregoing changes remain in effect
16 for the duration of the order;
- 17 d. Shall completely refrain from providing any notice or warning to, or
18 communicating in any way with Defendants or Defendants’ representatives
19 and shall refrain from publicizing this Order until this Order is executed in
20 full, except as necessary to propagate the changes ordered herein to all parts of
21 the Domain Name System;
- 22 e. Shall save all communications to or from Defendants or Defendants’
23 Representatives and/or related to the domains and sub-domains set forth in
24 Appendix A; and
- 25 f. Shall preserve and retain all records and documents associated with
26 Defendants’ or Defendants’ Representatives’ use of or access to the domains
27 set forth in Appendix A, including billing and contact information relating to
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1 the Defendants or Defendants’ representatives using these servers and all logs
2 associated with these servers.

3 **IT IS FURTHER ORDERED** that the authoritative name server set up and managed by
4 Microsoft to respond to requests for the IP addresses of the sub-domains of No-IP may respond to
5 requests for the IP address of any domain listed in Appendix A or later determined to be associated
6 with malware activity either by (1) giving no reply; or (2) replying with the address of a special
7 Microsoft “sink-hole” computer, which, when contacted, shall log the date and time of the request,
8 the IP address and related information from the requesting computer but otherwise not respond to the
9 request.

10 **IT IS FURTHER ORDERED** that copies of this Order, notice of the Preliminary Injunction
11 hearing and service of the Complaint may be served by any means authorized by law, including (1)
12 by personal delivery upon Defendants who provided contact information in the U.S.; (2) by
13 transmission by e-mail, Facebook, or Skype to the extent that there is no known postal address for
14 the Defendant; and (4) by publishing notice to Defendants on a publicly available Internet website
15 and/or in newspapers in the communities in which Defendants are believed to reside.

16 **IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil Procedure 65(b) that the
17 Defendants shall appear before this Court on June __, 2014, to show cause, if there is any, why this
18 Court should not enter a Preliminary Injunction, pending final ruling on the Complaint against the
19 Defendants, enjoining them from the conduct temporarily restrained by the preceding provisions of
20 this Order.

21 **IT IS FURTHER ORDERED** that Microsoft shall post bond in the amount of
22 \$_____ to be paid to the Court Clerk.

23 **IT IS FURTHER ORDERED** that the Defendants shall file with the Court and serve on
24 Microsoft’s counsel any answering affidavits, pleadings, motions, expert reports or declarations
25 and/or legal memoranda no later than two (2) days prior to the hearing on Microsoft’s request for a
26 preliminary injunction. Microsoft may file responsive or supplemental pleadings, materials,
27 affidavits, or memoranda with the Court and serve the same on counsel for the Defendants no later
28 than one (1) day prior to the preliminary injunction hearing in this matter. Provided that service

1 shall be performed by personal or overnight delivery, facsimile or electronic mail, and documents
2 shall be delivered so that they shall be received by the other parties no later than 4:00 p.m. (Pacific
3 Daylight Time) on the appropriate dates listed in this paragraph.

4 **IT IS SO ORDERED**

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7 Entered this ____ day of June, 2014.

United States District Judge

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