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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.

OPTIN GLOBAL, INC., a Delaware  
corporation, d/b/a DIT VENTURES, INC.,  
USA LENDERS, and US MORTGAGE  
QUOTE; QING KUANG YANG a/k/a  
RICK YANG, an individual; PEONIE PUI  
TING CHEN, an individual; and JOHN  
DOES 1 – 10,

Defendants.

No. **05-2-12826-7** SEA

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF

Plaintiff Microsoft Corporation brings this action against OPTIN GLOBAL, INC.,  
a Delaware corporation; QING KUANG YANG also known as RICK YANG; PEONIE  
PUI TING CHEN; and JOHN DOES 1 – 10 (collectively “the Defendants”).

**JURISDICTION AND VENUE**

1. This is an action for trespass to chattels and conversion and for violations  
of the Washington Commercial Electronic Mail Act (RCW Ch. 19.190), the Washington  
Consumer Protection Act, the federal CAN-SPAM Act of 2003 (15 U.S.C. §7701 et seq.),  
and the Lanham Act (15 U.S.C. § 1051 et seq.). Microsoft seeks damages and injunctive  
relief to remedy defendants’ unauthorized use of Microsoft’s computers, computer

COMPLAINT FOR DAMAGES AND INJUNCTIVE  
RELIEF - 1

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1 systems and trademarks to send millions of misleading and deceptive unsolicited  
2 commercial e-mail messages, or "spam," including millions of messages advertising  
3 prescription drugs, in violation of Microsoft's policies and state and federal law.

4 2. This Court has personal jurisdiction over the defendants, who have  
5 engaged in business activities in and directed to Washington, have committed a tortious  
6 act within the state, and have used personal property in the state.

7 3. Venue is proper in this Court pursuant to RCW 4.12.020 to 025 in that a  
8 substantial part of the events or omissions giving rise to the claims asserted herein  
9 occurred in King County, the causes of action arose in King County, and work was  
10 performed in King County.

#### 11 I. THE PARTIES

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

14 5. Defendant Optin Global, Inc. is a Delaware corporation with its principal  
15 place of business in Temple City, California. On information and belief, Microsoft  
16 alleges that Optin Global, Inc. does business under a variety of other trade names  
17 including DIT Ventures, Inc., "USA Lenders" and "US Mortgage Quote."

18 6. Defendant Qing Kuang Yang, also known as Rick Yang, is a resident of the  
19 state of California. Yang is a principal and owner of Optin Global, and was the former  
20 principal and owner of a dissolved corporation known as DIT Ventures, Inc.

21 7. Defendant Peonie Pui Ting Chen is a resident of the state of California.  
22 Chen is the president of Optin Global.

23 8. Microsoft is unaware of the true names and capacities of defendants sued  
24 herein as John Does 1-10, inclusive, and therefore sues these defendants by such fictitious  
25 names. Microsoft will amend this complaint to allege their true names and capacities  
when ascertained. Microsoft is informed and believes and therefore alleges that each of

1 the fictitiously named defendants is responsible in some manner for the occurrences  
2 herein alleged, and that Microsoft's injuries as herein alleged were proximately caused by  
3 such defendants.

4 9. The actions alleged herein to have been undertaken by the Defendants were  
5 undertaken by each defendant individually, were actions that each defendant caused to  
6 occur, were actions that each defendant authorized, controlled, directed, or had the ability  
7 to authorize, control or direct, or were actions each defendant assisted, participated in, or  
8 otherwise encouraged, and are actions for which each defendant is liable. Each defendant  
9 aided and abetted the actions of the Defendants set forth below, in that each defendant had  
10 knowledge of those actions, provided assistance and benefited from those actions, in  
11 whole or in part. Each of the Defendants was the agent of each of the remaining  
12 defendants, and in doing the things hereinafter alleged, was acting within the course and  
13 scope of such agency and with the permission and consent of other defendants.

14 **III. NATURE OF MICROSOFT'S INTERNET EMAIL SERVICES**

15 10. Microsoft owns and operates interactive computer services that enable its  
16 customers to, among other things, access the Internet and exchange electronic mail  
17 ("email") on the Internet. Microsoft owns and maintains computers and other equipment,  
18 including specialized computers or "servers" that process email messages and otherwise  
19 support its email services. Microsoft maintains this equipment in Washington and  
20 California, among other states. Email sent to and from Microsoft's customers is processed  
21 through and stored on these computers. Microsoft is an internet service provider ("ISP"),  
22 an "interactive computer service" as defined by RCW 19.190.010, and a provider of  
23 "Internet Access Service" as defined by 15 U.S.C. §7702(11).

24 11. One of Microsoft's services is "MSN Hotmail," which provides free and  
25 subscription-based email on the Internet through a web-based email service that can be  
accessed at [www.hotmail.com](http://www.hotmail.com). MSN Hotmail allows account-holders to exchange email

1 messages with any other email user who has an Internet email address throughout the  
2 world. MSN Hotmail has millions of registered accounts, whose users all have unique  
3 email addresses ending in “@hotmail.com.”

4 12. Another of Microsoft’s services is “MSN Internet Access” (referred to  
5 herein as “MSN”) which provides free and subscription-based email services that can be  
6 accessed on the web or via Microsoft’s proprietary network. MSN allows account-holders  
7 to exchange email messages with any other email user who has an Internet email address  
8 throughout the world. MSN has millions of registered accounts, whose users all have  
9 unique email addresses ending in “@msn.com.”

10 **IV. SPAM AND THE PURPOSES BEHIND THE FEDERAL CAN-SPAM ACT**

11 13. Unsolicited commercial email 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 14. In passing the Commercial Electronic Mail Act, Ch. 19.190 RCW, in 1998,  
16 Washington became one of the first states to regulate spam. The legislature has  
17 recognized that the spamming practices prohibited by the Act are “matters vitally  
18 affecting the public interests” and are unfair and deceptive practices which impact  
19 Washington businesses and consumers.

20 15. The United States Congress, in passing the CAN-SPAM<sup>1</sup> Act of 2003,  
21 concluded that “[u]nsolicited commercial email, commonly known as ‘spam’, has quickly  
22 become one of the most pervasive intrusions in the lives of Americans.” Congress  
23 estimated that by the end of 2003, if not sooner, spam would account for more than 50  
24 percent of all email. This is in sharp contrast to two years earlier, when spam only  
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<sup>1</sup> CAN-SPAM is an acronym for “Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003”.

1 accounted for 8 percent of all email. Congress has concluded that the rate at which spam  
2 is increasing is "reaching critically high levels." In fact, in 2003, an estimated 2 trillion  
3 spam messages were expected to be sent over the Internet.

4 16. The economic impact of spam is enormous. Congress noted that a 2001  
5 European Union study found that "spam costs Internet subscribers worldwide \$9.4 billion  
6 each year." Congress also noted that the estimated costs "to United States businesses  
7 from spam in lost productivity, network system upgrades, unrecoverable data, and  
8 increased personnel costs, combined, will top \$10 billion in 2003." Of that amount,  
9 approximately \$4 billion will be associated with lost employee productivity.

10 17. In addition to plaguing recipients and ISPs by its sheer volume, spam is  
11 also notoriously deceptive in form and content. In April 2003, the Federal Trade  
12 Commission found that 66 percent of all spam contains "some kind of false, fraudulent, or  
13 misleading information, either in the email's routing information, its subject line, or the  
14 body of its message." In fact, the FTC found that "one-third of all spam contains a  
15 fraudulent return email address that is included in the routing information (known as the  
16 'header') of the email message." Congress found that falsified headers "not only trick  
17 ISP's increasingly sophisticated filters," but also "lure consumers into mistakenly opening  
18 messages from what appears to be people they know."

19 18. Congress also found that not only do spammers use false sender  
20 information, but they also use false or misleading subject lines. According to Congress,  
21 the FTC found that 42 percent of spam contains misleading subject lines that "trick the  
22 recipient into thinking that the email sender has a personal or business relationship with  
23 the recipient." Congress provided examples of this type of false or misleading subject  
24 line: "Hi, it's me" and "Your order has been filled."

25 19. As Congress recognized, the growth in unsolicited commercial electronic  
mail imposes significant monetary costs on providers of Internet access services that carry

1 and receive such mail, as there is a finite volume of mail that such providers can handle  
2 without further investment in infrastructure. The sheer volume of spam is threatening to  
3 overwhelm not only the average consumer's in-box, but also the network systems of  
4 Internet access service providers.

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

10 21. Although it costs very little for a spammer to transmit innumerable email  
11 messages, handling the enormous volume of email initiated by spammers places a  
12 tremendous burden on Microsoft. Spam demands storage space and processing capacity  
13 of Microsoft's computers and computer systems, making those resources unavailable to  
14 serve the legitimate needs of Microsoft's customers. The diversion of these resources  
15 from processing authorized email impairs the normal operation of the computers and  
16 computer systems. Therefore, the value of that equipment is diminished by spamming.

17 22. In an attempt to protect itself and its customers from spam, Microsoft has  
18 expended significant resources to developing technologies and practices to prevent its  
19 subscribers from sending or receiving spam. Spammers, however, continue to adopt  
20 practices and technological devices to evade Microsoft's technologies and to frustrate  
21 Microsoft's efforts.

22 23. Microsoft has invested substantial time and money in efforts to disassociate  
23 itself from spam and the spammers who promote and profit from spam, as well as in  
24 seeking to protect its registered users worldwide from receiving spam.

25 24. Microsoft has a clearly articulated policy prohibiting the use of its services  
for junk email, spamming, or any unsolicited messages (commercial or otherwise).

1 Microsoft's policies also prohibit automated queries of any sort, harvesting or collection  
2 of email addresses, and any use of the services that is not personal and non-commercial.  
3 These policies are included in the Terms of Use for MSN and MSN Hotmail, which can  
4 be accessed via a clearly marked link on www.msn.com, as well as on the home pages for  
5 each of the services.

6 **V. DEFENDANTS' UNLAWFUL CONDUCT**

7 25. Microsoft is informed and believes, and on that basis alleges, that the  
8 Defendants have been—and are currently involved in—widespread spamming by sending  
9 misleading, deceptive and unsolicited commercial email to MSN Hotmail account holders.

10 26. Many of defendants' email messages purport to originate from the domain  
11 hotmail.com, when, in fact, they originated from defendants' domains. Defendants use of  
12 Microsoft's hotmail.com domain name, in that manner, was materially false or  
13 misleading. Defendants did not have permission to use Microsoft's hotmail.com domain  
14 in that manner.

15 27. Many of defendants' e-mails messages use the domain names of third  
16 parties, including well-known Internet Service Providers such as Yahoo! and Earthlink.  
17 Microsoft is informed and believes, and on that basis alleges, that defendants did not have  
18 permission to use those domain names in that manner. Defendants use of those domain  
19 names in that manner was materially false or materially misleading.

20 28. Microsoft is informed and believes, and on that basis alleges, that the  
21 Defendants own or operate a number of Internet domains, through which they gather  
22 solicitation information for re-sale to third parties which a variety of services. These  
23 domain names include, but are not limited to: <shopping888.com>, <128jyw.com>, and  
24 <smart-buy-2004.com>.

25 29. Microsoft is informed and believes, and on the basis alleges, that its MSN  
Hotmail service has received millions of unsolicited commercial email messages from the

1 Defendants advertising their domains, and offering services related to debt consolidation,  
2 mortgage information, insurance quotes, home employment opportunities, legal services,  
3 free vacations, and others.

4 30. Many of defendants' email messages contain false or misleading "From"  
5 headers. By placing false names in place of the name of the true sender, defendants  
6 obscured the point of origin and transmission path of the email.

7 31. Many of defendants' e-mail messages obscure their points of origin or  
8 transmission paths by using falsified Internet Protocol addresses or domain names in the  
9 headers or transmission paths of the e-mail messages.

10 32. Many of defendants' messages were relayed or retransmitted through  
11 unsecure computers, such as "open proxies" or "hijacked computers" to disguise their  
12 points of origin or transmission paths and to deceive or mislead the recipients and the  
13 Internet access services that processed them.

14 33. Many of the Defendants' commercial emails provide no valid physical  
15 address and no electronic link through which the email recipient could "opt out" of  
16 receiving future unsolicited emails.

17 34. Many of those email messages contain false and misleading subject lines,  
18 for example: "Fw: Re-Finance Information" "Re: warlike" "Someone is looking for you  
19 budmefuxpyojq" "from Agent Rolland Helton" and "Is This Your Order?"

20 35. Further, many of the Defendants' commercial emails use <g.msn.com> and  
21 <shopping.msn.com> to redirect message recipients to their own beneficiary domains.  
22 Use of these MSN domain names is likely to mislead the recipient into believing that these  
23 messages are associated with MSN and Microsoft. The Defendants did not have  
24 permission to use the <msn.com> domain in this manner.

25 36. Microsoft has been adversely affected by the the Defendants' actions. As a  
result of their activities, Microsoft's computer equipment and servers were required to

1 process millions of improper spam emails, as well as "bounce back" emails which had  
2 been sent by the Defendants to non-existent, out-dated, or incorrect email addresses. This  
3 significant number of emails has taken up substantial amounts of Microsoft's finite  
4 computer space, threatens to delay and otherwise adversely affect MSN Hotmail  
5 subscribers in sending and receiving legitimate email, and has resulted in and continues to  
6 result in significant costs to Microsoft. Further, the Defendants' unauthorized use of the  
7 MSN name in falsified "from" addresses and in redirecting recipients to the Defendants'  
8 beneficiary domains has harmed Microsoft's business reputation.

9  
10 **COUNT I**  
**(Violation of the Washington Commercial Electronic Mail Act (RCW Ch. 19.190)**  
**and the Washington Consumer Protection Act (RCW Ch. 19.86))**

11 37. Microsoft realleges and incorporates by this reference each and every  
12 allegation set forth in paragraphs 1 through 36 above.

13 38. The Defendants initiated the transmission, conspired with one another to  
14 initiate the transmission or assisted in the transmission of commercial email messages to  
15 an email address they knew, or had reason to know, is held by a Washington resident.  
16 Those commercial email messages:

- 17 a) used another third party's internet domain names without  
18 permission;
- 19 b) misrepresented or obscured information identifying the true point of  
20 origin or the transmission path of a commercial electronic email message; or
- 21 c) contained false or misleading information in the subject line.

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

24 40. The Defendants' actions violated RCW 19.190.020, and entitle Microsoft  
25 to actual damages or statutory damages of \$1,000 per email, whichever is greater.



1 circumstances, about a material fact regarding the contents or subject matter of the  
2 messages;

3 b) failed to contain a functioning return email address or other  
4 Internet-based mechanism, clearly and conspicuously displayed, that a recipient  
5 could use to submit a reply email message or other form of Internet-based  
6 communication requesting not to receive future commercial email messages from  
7 that sender at the email address where the message was received; and

8 c) failed to include a clear and conspicuous identification that the  
9 message was an advertisement or solicitation, failed to provide a clear and  
10 conspicuous notice of the opportunity to decline to receive further commercial  
11 electronic mail messages from the sender; or failed to provide a valid physical  
12 postal address of the sender.

13 49. The Defendants' actions were willful and knowing.

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

16 51. The Defendants' actions violated 15 U.S.C. § 7704(a)(2), (a)(3) and (a)(5),  
17 which entitles Microsoft to injunctive relief, statutory damages, and aggravated damages  
18 because of the Defendants' willful and knowing violation of the CAN-SPAM Act.

19  
20 **COUNT IV**  
**(Trespass to Chattels)**

21 52. Microsoft realleges and incorporates by this reference each and every  
22 allegation set forth in paragraphs 1 through 51 above.

23 53. The computers, computer networks, and computer services that constitute  
24 Microsoft's MSN Hotmail email system are the personal property of Microsoft.





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2. That the Court award Microsoft actual damages, liquidated damages and statutory damages, in amount to be proven at trial;

3. That the Court award Microsoft its attorneys' fees and costs incurred herein; and

4. That the Court grant Microsoft such other or additional relief as is just and proper.

DATED this 19th day of April, 2005.

PRESTON GATES & ELLIS LLP

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