

HOTMAIL CORPORATION, Plaintiff,

v.

VAN MONEY PIE INC.; ALS Enterprises, Inc.; LCGM, Inc.; Christopher Moss d/b/a the Genesis Network, Inc.; Claremont Holdings Ltd.; Consumer Connections; Palmer & Associates; and Financial Research Group; and Darlene Snow d/b/a Visionary Web Creations and/or d/b/a Maximum Impact Marketing, Defendants.

No. C-98 JW PVT ENE, C 98-20064 JW.

United States District Court, N.D. California.

April 16, 1998.

Nicole A. Wong, Hosie, Wes, Sacks & Brelsford, LLP, Menlo Park, CA, for Plaintiff.

William R. Mitchell, Tustin, CA, LCGM, Madison Heights, MI, Palmer & Associates, San Diego, CA, Financial Research Group, El Cajon, CA, James Polyzois, Detroit, MI, Darlene Snow, Mission Viejo, CA, for Defendants.

ORDER GRANTING PRELIMINARY INJUNCTION

WARE, J.

THIS MATTER was submitted on the papers by the Court on the Motion of plaintiff Hotmail Corporation ("Hotmail") for Preliminary Injunction to enjoin defendants ALS Enterprises, Inc. ("ALS"); LCGM, Inc. ("LCGM"); Christopher Moss d/b/a Genesis Network ("Moss"); Palmer & Associates ("Palmer"); Financial Research Group ("Financial") and Darlene Snow d/b/a Visionary Web Creations and/or d/b/a Maximum Impact Marketing ("Snow") from infringing Hotmail's HOTMAIL trade name and service mark, diluting this mark, engaging in acts of unfair competition, violating the Computer Fraud and Abuse Act, breaching a contract, and violating California law. 15 U.S.C. §§ 1125(a) & (c); 18 U.S.C. § 1030; Cal. Bus. & Prof.Code §§ 14330, 17200; Cal. Civ.Code §§ 1709-10; and 3420-22. Having reviewed the entire court record pertaining to this Motion, and having considered the evidence and argument of counsel in support of Hotmail's Motion, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff Hotmail is a Silicon Valley company that provides free electronic mail ("e-mail") on the World Wide Web. Hotmail's online services allow its over ten million registered subscribers to exchange e-mail messages over the Internet with any other e-mail user who has an Internet e-mail address throughout the world. Every e-mail sent by a Hotmail subscriber automatically displays a header depicting Hotmail's domain name "hotmail.com" and a footer depicting Hotmail's "signature" at the bottom of the e-mail which reads "Get Your Private, Free Email at <http://www.hotmail.com>." Every e-mail

received by a Hotmail subscriber also automatically displays a header depicting Hotmail's domain name. Thus, plaintiff's HOTMAIL mark--contained within its domain name and signature--appears on millions of e-mails transmitted worldwide daily.

2. In or about 1996, Hotmail developed the mark HOTMAIL and obtained the Internet domain name "hotmail.com" which incorporates its mark. Hotmail is the sole and exclusive holder of that domain name.
3. In or about 1996, Hotmail began using its HOTMAIL mark in various forms and styles, continuously in commerce in association with its online services as a means of identifying and distinguishing Hotmail's online services from those of others. Thus Hotmail's mark has appeared in the headers and footers of e-mail sent from and received by Hotmail subscribers, on Hotmail's homepage and on nearly every page of its Website, on letterhead and envelopes, on business cards, in promotional materials and in press releases.
4. Hotmail has spent approximately \$10 million marketing, promoting, and distributing its services in association with its HOTMAIL mark. Hotmail does not authorize any other e-mail service provider to use its HOTMAIL mark, or Hotmail's domain name or signature.
5. "Spam" is unsolicited commercial bulk e-mail akin to "junk mail" sent through the postal mail. The transmission of spam is a practice widely condemned in the Internet Community and is of significant concern to Hotmail.
6. Hotmail has invested substantial time and money in efforts to disassociate itself from spam and to protect e-mail users worldwide from receiving spam associated in any way with Hotmail.
7. To become a Hotmail subscriber, one must agree to abide by a Service Agreement ("Terms of Service") which specifically prohibits subscribers from using Hotmail's services to send unsolicited commercial bulk e-mail or "spam," or to send obscene or pornographic messages. Hotmail can terminate the account of any Hotmail subscriber who violates the Terms of Service.
8. In or about the Fall of 1997, Hotmail learned that defendants were sending "spam" e-mails to thousands of Internet e-mail users, which were intentionally falsified in that they contained return addresses bearing Hotmail account return addresses including Hotmail's domain name and thus its mark, when in fact such messages did not originate from Hotmail or a Hotmail account. Such spam messages advertised pornography, bulk e-mailing software, and "get-rich- quick" schemes, among other things.
9. In addition, Hotmail learned that defendants had created a number of Hotmail accounts for the specific purpose of facilitating their spamming operations. Such accounts were used to collect responses to defendants' e-mails and "bounced back" messages in what amounted to a "drop box" whose contents were never opened, read or responded to. It

was these Hotmail accounts that were used as return addresses by defendants in lieu of defendants' actual return addresses when defendants sent their spam e-mail.

10. As a result of the falsified return addresses described above, Hotmail was inundated with hundreds of thousands of misdirected responses to defendants' spam, including complaints from Hotmail subscribers regarding the spam and "bounced back" e-mails which had been sent by defendants to nonexistent or incorrect e-mail addresses. This overwhelming number of e-mails took up a substantial amount of Hotmail's finite computer space, threatened to delay and otherwise adversely affect Hotmail's subscribers in sending and receiving e-mail, resulted in significant costs to Hotmail in terms of increased personnel necessary to sort and respond to the misdirected complaints, and damaged Hotmail's reputation and goodwill.

11. In particular, Hotmail discovered a spam e-mail message advertising pornographic material that was sent by ALS. While this spam originated from ALS and was transmitted through an E-mail Provider other than Hotmail, ALS falsely designated a real Hotmail e-mail address as the point of origin. The e-mail address chosen for this purpose was "geri748@hotmail.com."

12. Hotmail also discovered a number of spam e-mail messages advertising pornographic material that were sent by LCGM. While these spam e-mails originated from LCGM and were transmitted through an E-mail Provider other than Hotmail, LCGM falsely designated a number of real Hotmail e-mail addresses as the points of origin. The e-mail addresses chosen for this purpose were "becky167@hotmail.com;" "deena54@hotmail.com;" "marisa104@hotmail.com;" "shelly345@hotmail.com;" "sonnie67@hotmail.com;" "ashley_113@hotmail.com;" "grace44@hotmail.com;" "jess_59@hotmail.com;" "kristina17@hotmail.com;" "nellie24@hotmail.com;" and, "tyrona56@hotmail.com."

13. Hotmail also discovered a spam e-mail message advertising pornographic material that was sent by Moss. While this spam originated from Moss and was transmitted through an E-mail Provider other than Hotmail, Moss falsely designated a real Hotmail e-mail address as the point of origin. The e-mail address chosen for this purpose was "rebecca_h19@hotmail.com."

14. Hotmail also discovered a spam e-mail message advertising a cable descrambler kit that was sent by Palmer. While this spam originated from Palmer and was transmitted through an E-mail Provider other than Hotmail, Palmer falsely designated two real Hotmail e-mail addresses as the points of origin. The e-mail addresses chosen for this purpose were "kelCA@hotmail.com" and "angiCA@hotmail.com."

15. Hotmail also discovered a spam e-mail message advertising a service that matches people seeking cash grants that was sent by Financial. While this spam originated from Financial and was transmitted through an E-mail Provider other than Hotmail, Financial falsely designated a real Hotmail e-mail address as the point of origin. The e-mail address chosen for this purpose was "order_desk66@hotmail.com."

16. Hotmail also discovered a number of spam e-mail messages advertising pornography that were sent by Snow. While this spam originated from Snow and was transmitted through an E-mail Provider other than Hotmail, Snow falsely designated several real Hotmail e-mail address as the point of origin. The e-mail addresses chosen for this purpose were "bettyharris123@hotmail.com;" "annharris123@hotmail.com;" "cindyharris123@hotmail.com;" "wilmasimpson @hotmail.com;" "rw3570@hotmail.com;" "rw3560@hotmail.com;" and, "jw2244 @hotmail.com."

CONCLUSIONS OF LAW

Jurisdiction and Venue

17. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367. This Court has personal jurisdiction over the defendants ALS, LCGM, Moss, Palmer, Financial, and Snow, who have engaged in business activities in or directed in California.

18. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial portion of the events giving rise to the claims pled herein occurred in this judicial district and defendants do business in this judicial district.

Standard For Granting Preliminary Injunction

19. The standard for preliminary injunction relief in trademark infringement cases and related actions is well-settled. Hotmail must show either: (a) a likelihood of success on the merits and the possibility of irreparable injury; or (b) the existence of serious questions going to the merits and the balance of hardships tips in Hotmail's favor. *Apple Computer, Inc. v. Formula Int'l, Inc.*, 725 F.2d 521, 523 (9th Cir.1984).

Plaintiff's Legal Claims

20. Hotmail seeks preliminary injunctive relief in this Motion for false designations of origin, federal and state dilution, violation of the Computer Fraud and Abuse Act, state and common law unfair competition, breach of contract, fraud and misrepresentation, and trespass to chattel, pursuant to 15 U.S.C. §§ 1116, 1125(a) & (c); 18 U.S.C. § 1030; Cal. Bus. & Prof.Code §§ 14330, 17203; and Cal Civ.Code §§ 1709-10.

Plaintiff's Likelihood Of Success On Its Claims

False Designation Of Origin And Unfair Competition

21. The core element of a cause of action for false designation of origin under 15 U.S.C. § 1125(a) as well as other unfair competition is "likelihood of confusion, i.e., whether the similarity of the marks is likely to confuse customers about the source of the products." *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1290 (9th Cir.1992); *Academy*

of Motion Picture Arts & Sciences v. Creative House Promotions, Inc., 944 F.2d 1446, 1454 (9th Cir.1991).

22. Courts will consider the following factors, among others, as relevant to a determination of the likelihood of confusion for claims under 15 U.S.C. § 1125(a) and related other unfair competition claims: (a) strength or weakness of plaintiff's mark; (b) the degree of similarity with defendant's mark; (c) class of goods; (d) marketing channels used; (e) evidence of actual confusion; and (f) intent of the defendant. *Americana Trading Inc. v. Russ Berrie & Co.*, 966 F.2d 1284, 1287 (9th Cir.1992). However, there is not a mandated test for likelihood of confusion applied by the courts in this Circuit, and the appropriate time for full consideration of all relevant factors is when the merits of the case are tried. *Apple Computer*, 725 F.2d at 526.

23. The majority of these factors supports a finding that Hotmail is likely to succeed on the merits of its claims that defendants' use of the HOTMAIL mark is likely to cause consumer confusion or mistake as to the origin, sponsorship, or approval of defendants' spam e-mails and spam e-mail business, and that there are at least serious questions going to the merits of plaintiff's claims.

24. Plaintiff's mark is strong. The "strength" of a mark depends in part on whether it is arbitrary or fanciful, suggestive, merely descriptive, or generic. *Chronicle Pub. Co. v. Chronicle Publications, Inc.*, 733 F.Supp. 1371, 1375 (N.D.Cal.1989). In addition, a company's "extensive advertising, length of time in business, public recognition, and uniqueness" all strengthen its trademarks. *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d 1175, 1179 (9th Cir.1988). While the second part of the mark--"mail"--may be suggestive by conveying some aspect of the e-mail process, the mark as a whole is arbitrary and fanciful because it neither describes nor suggests that Hotmail is a provider of electronic mail as a Web-based service on the Internet. Moreover, plaintiff has spent substantial sums of money to advertise and market its services in association with the mark and has extensively featured the mark in its promotions.

25. Defendants' "mark" is not only confusingly similar to plaintiff's mark, it is identical to it. A comparison of defendants' and plaintiff's uses shows such striking similarity that a jury could not help but find that defendants' use is confusing. Indeed, there has been actual confusion among consumers regarding the marks. This factor alone may be determinative. See *E. Remy Martin & Co., S.A. v. Shaw-Ross International Imports, Inc.*, 756 F.2d 1525, 1529, 1530 (11th Cir.1985) (it is "well-settled" that "evidence of actual confusion is not necessary to a finding of likelihood of confusion, although it is the best such evidence;" indeed, "a sufficiently strong showing of likelihood of confusion may be itself constitute a showing of substantial likelihood of prevailing on the merits and/or a substantial threat of irreparable harm"); *World Carpets, Inc. v. Dick Littrell's New World Carpets*, 438 F.2d 482, 489 (5th Cir.1971) ("[t]here can be no more positive or substantial proof of likelihood of confusion than proof of actual confusion").

26. The class of goods and services distributed by defendants--e-mails-- which bear a mark identical to plaintiff's, are the same as the class of goods and services distributed by plaintiff--e-mails.

27. The marketing channels through which the parties sell their goods and services are the same--via e-mail over the Internet. Their consumer audience is likewise the same. Moreover, because e-mail is specifically designed for the rapid exchange of information, consumers are unlikely to exercise a great deal of care in distinguishing between marks on e-mails they receive.

28. Defendants' intent further supports possible confusion. *Levi Strauss & Co. v. Blue Bell*, 632 F.2d 817, 822 (9th Cir.1981); *Pacific Telesis Group v. International Telesis Communications*, 994 F.2d 1364, 1369 (9th Cir.1993). Here, the evidence supports an inference that defendants intended to emulate plaintiff's trademark, given their knowing falsification of e-mail return addresses, their fraudulent creation of Hotmail mailboxes, as well as their attempts to circumvent plaintiff's efforts to prevent its subscribers from receiving spam.

Dilution

29. The core elements of a cause of action under the federal dilution statute are plaintiff's ownership of a famous mark and dilution of the distinctive quality of plaintiff's mark, regardless of whether consumers are confused about the parties' goods. 15 U.S.C. § 1125(c)(1). Under the California dilution statute as well, actual injury or likelihood of confusion need not be shown; plaintiff need only show its business reputation is likely to be injured or the distinctive value of its mark is likely to be diluted. *Cal. Bus. & Prof.Code* § 14330; *Academy*, 944 F.2d at 1457.

30. In determining whether a mark is distinctive and famous so as to support a claim for federal dilution, the Court has considered the following factors; (a) the degree of inherent or acquired distinctiveness of the mark; (b) the duration and extent of use of the mark in connection with the goods or services with which the mark is used; (c) the duration and extent of advertising and publicity of the mark; (d) the geographical extent of the trading area in which the mark is used; (e) the channels of trade for the goods or services with which the mark is used; (f) the degree of recognition of the mark in the trading areas and channels of trade used by the mark's owner and the person against whom the injunction is sought; and (g) the nature and extent of use of the same or similar marks by third parties. 15 U.S.C. § 1125(c)(1).

31. Under California's anti-dilution statute, the plaintiff need only show the "[l]ikelihood of injury to business reputation or of dilution of the distinctive quality of a mark." *Cal. Bus. & Prof.Code* § 14330.

32. Here, the evidence supports a finding that plaintiff will likely prevail on its federal and state dilution claims and that there are at least serious questions going to the merits of these claims. First, there is sufficient evidence to lead to a finding that plaintiff's

trademark is "famous" within the meaning of 15 U.S.C. § 1125(c)(1) and also that it is entitled to state dilution protection. Plaintiff's mark is distinctive, has been advertised and used extensively both nationally and internationally in connection with plaintiff's services, and has established considerable consumer recognition. Moreover, the use of identical marks by defendants who are sending e-mails to thousands of e-mail users across the country and the world through identical trade channels threatens to dilute the distinctiveness of plaintiff's trademark and threatens to harm plaintiff's business reputation.

Violation Of Computer Fraud And Abuse Act

33. The Computer Fraud and Abuse Act prohibits any person from knowingly causing the transmission of information which intentionally causes damage, without authorization, to a protected computer. 18 U.S.C. § 1030.

34. The evidence supports a finding that plaintiff will likely prevail on its Computer Fraud and Abuse Act claim and that there are at least serious questions going to the merits of this claim in that plaintiff has presented evidence of the following: that defendants knowingly falsified return e-mail addresses so that they included, in place of the actual sender's return address, a number of Hotmail addresses; that such addresses were tied to Hotmail accounts set up by defendants with the intention of collecting never-to-be-read consumer complaints and "bounced back" e-mails; that defendants knowingly caused this false information to be transmitted to thousands of e-mail recipients; that defendants took this action knowing such recipients would use the "reply to" feature to transmit numerous responses to the fraudulently created Hotmail accounts, knowing thousands of messages would be "bounced back" to Hotmail instead of to defendants, and knowing that numerous recipients of defendants' spam would e-mail complaints to Hotmail; that defendants took such actions knowing the risks caused thereby to Hotmail's computer system and online services, which include risks that Hotmail would be forced to withhold or delay the use of computer services to its legitimate subscribers; that defendants' actions caused damage to Hotmail; and that such actions were done by defendants without Hotmail's authorization.

Breach Of Contract

35. The evidence supports a finding that plaintiff will likely prevail on its breach of contract claim and that there are at least serious questions going to the merits of this claim in that plaintiff has presented evidence of the following: that defendants obtained a number of Hotmail mailboxes and access to Hotmail's services; that in so doing defendants agreed to abide by Hotmail's Terms of Service which prohibit using a Hotmail account for purposes of sending spam and/or pornography; that defendants breached their contract with Hotmail by using Hotmail's services to facilitate sending spam and/or pornography; that Hotmail complied with the conditions of the contract except those from which its performance was excused; and that if defendants are not enjoined they will continue to create such accounts in violation of the Terms of Service.

Fraud And Misrepresentation

36. The cause of action for fraud includes willfully deceiving another with intent to induce him to alter his position to his injury or risk by asserting, as a fact, that which is not true, by one who has no reasonable ground for believing it to be true; or by suppressing a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or by making a promise without any intention of performing it. Civ.Code §§ 1709-10.

37. The evidence supports a finding that plaintiff will likely prevail on its fraud and misrepresentation claim and that there are at least serious questions going to the merits of this claim in that plaintiff has presented evidence of the following: that defendants fraudulently obtained a number of Hotmail accounts, promising to abide by the Terms of Service without any intention of doing so and suppressing the fact that such accounts were created for the purpose of facilitating a spamming operation, and that defendants' fraud and misrepresentation caused Hotmail to allow defendants to create and use Hotmail's accounts to Hotmail's injury. In addition, the evidence supports a finding that defendants' falsification of e-mails to make it appear that such messages and the responses thereto were authorized to be transmitted via Hotmail's computers and stored on Hotmail's computer system--when defendants knew that sending such spam was unauthorized by Hotmail--constitutes fraud and misrepresentation, and that Hotmail relied on such misrepresentations to allow the e-mails to be transmitted over Hotmail's services and to take up storage space on Hotmail's computers, to Hotmail's injury.

Trespass To Chattel

38. "Trespass to chattel ... lies where an intentional interference with the possession of personal property has proximately caused injury." *Thrifty-Tel, Inc. v. Bezenek*, 46 Cal.App.4th 1559, 1566, 54 Cal.Rptr.2d 468 (1996).

39. The evidence supports a finding that plaintiff will likely prevail on its trespass to chattel claim and that there are serious questions going to the merits of this claim in that plaintiff has presented evidence of the following: that the computers, computer networks and computer services that comprise Hotmail's e-mail system are the personal property of Hotmail; that defendants obtained consent to create Hotmail accounts within the limitations set forth in the Terms of Service: no spamming and no pornography; that defendants intentionally trespassed on Hotmail's property by knowingly and without authorization creating Hotmail accounts that were used for purposes exceeding the limits of the Terms of Service; that defendants trespassed on Hotmail's computer space by causing tens of thousands of misdirected e-mail messages to be transmitted to Hotmail without Hotmail's authorization, thereby filling up Hotmail's computer storage space and threatening to damage Hotmail's ability to service its legitimate customers; and that defendants' acts of trespass have damaged Hotmail in terms of added costs for personnel to sort through and respond to the misdirected e-mails, and in terms of harm to Hotmail's business reputation and goodwill.

Irreparable Harm To Plaintiff

40. In cases where trademark infringement is shown, irreparable harm is presumed. Apple Computer, 725 F.2d at 525; Charles Schwab & Co. v. Hibernia Bank, 665 F.Supp. 800, 812 (N.D.Cal.1987).

41. Plaintiff has suffered and, if defendants are not enjoined, will continue to suffer irreparable harm from the distribution, promotion and use of e-mails bearing plaintiff's mark--particularly spam e-mails, some of which advertise pornography--because of the loss of goodwill and reputation arising from customer confusion about the source of defendants' spam e-mails and/or plaintiff's affiliation or sponsorship of them. This kind of harm is not easily quantified and not adequately compensated with money damages. Plaintiff thus has no adequate remedy at law.

Balance Of Hardships

42. The Court finds that the irreparable harm to plaintiff should injunctive relief not be granted outweighs any injury to defendants resulting from a temporary injunction. Plaintiff has introduced evidence that it has been involved in extensive distribution and promotion of its online services in association with its mark for years and has expended vast amounts of time and money developing and promoting its mark. Plaintiff also is a service mark owner entitled to avoid having its reputation and goodwill placed in jeopardy. In contrast, if enjoined, defendants would not suffer harm in that they would be free to continue advertising by means of e-mail so long as they did not use Hotmail's mark or services to facilitate such advertising. Thus, the balance of hardships strongly tips in favor of plaintiff.

Conclusion

43. The Court therefore concludes that plaintiff is entitled to a preliminary injunction on the grounds that plaintiff is likely to succeed on the merits, that there is a possibility of irreparable injury, that there are serious questions going to the merits, and that the balance of hardships tips sharply in plaintiff's favor. It is therefore,

ORDERED AND ADJUDGED:

That defendants ALS, LCGM, Moss, Palmer, Financial, and Snow, their officers, agents, co-conspirators, servants, affiliates, employees, parent and subsidiary corporations, attorneys and representatives, and all those in privity or acting in concert with defendants are temporarily and preliminarily enjoined and restrained during the pendency of this action from directly or indirectly:

1. Using any images, designs, logos or marks which copy, imitate or simulate Hotmail's HOTMAIL mark, and/or Hotmail's "hotmail.com" domain name for any purpose, including but not limited to any advertisement, promotion, sale or use of any products or services;

2. Performing any action or using any images, designs, logos or marks that are likely to cause confusion, to cause mistake, to deceive, or to otherwise mislead the trade or public into believing that Hotmail and defendants, or any of them, are in any way connected, or that Hotmail sponsors defendants; or that defendants, or any of them, are in any manner affiliated or associated with or under the supervision or control of Hotmail, or that defendants and Hotmail or Hotmail's services are associated in any way.

3. Using any images, designs, logos or marks or engaging in any other conduct that creates a likelihood of injury to the business reputation of Hotmail or a likelihood of misappropriation and/or dilution of Hotmail's distinctive mark and the goodwill associated therewith;

4. Using any trade practices whatsoever, including those complained of herein, which tend to unfairly compete with or injure Hotmail, its business and/or the goodwill appertaining thereto;

5. Sending or transmitting, or directing, aiding, or conspiring with others to send or transmit, electronic mail or messages bearing any false, fraudulent, anonymous, inactive, deceptive, or invalid return information, or containing the domain "hotmail.com," or otherwise using any other artifice, scheme or method of transmission that would prevent the automatic return of undeliverable electronic mail to its original and true point of origin or that would cause the e-mail return address to be that of anyone other than the actual sender;

6. Using, or directing, aiding, or conspiring with others to use, Hotmail's computers or computer networks in any manner in connection with the transmission or transfer of any form of electronic information across the Internet, including, but not limited to, creating any Hotmail e-mail account, or becoming a Hotmail subscriber, for purposes other than those permitted by Hotmail's Terms of Services, including but not limited to, for purposes of participating in any way in sending spam e-mail or operating a spamming business, or sending or advertising or promoting pornography and/or sending e-mails for any commercial purpose.

7. Opening, creating, obtaining and/or using, or directing, aiding, or conspiring with others to open, create, obtain and/or use, any Hotmail account or mailbox;

8. Acquiring or compiling Hotmail member addresses for use in the transmission of unsolicited promotional messages to those Hotmail members; and,

9. Sending or transmitting, or directing, aiding, or conspiring with others to send or transmit, any unsolicited electronic mail message, or any electronic communication of any kind, to or through Hotmail or its members without prior written authorization.

IT IS FURTHER ORDERED AND ADJUDGED:

That plaintiff shall provide a bond in the amount of only \$100.

