

CONCLUSION

For the reasons discussed fully in this Opinion, the Court grants plaintiff's Motion for Summary Judgment with respect to Counts I, II, III, IV, V, and VI. The Court denies plaintiff's Motion for Summary Judgment as to Count VII and as to the issue of damages, but finds that plaintiff is entitled to injunctive relief.

An appropriate Order will issue.

Note

As this casebook was being prepared for publication, the House of Representatives had passed and the Senate was considering the "Unsolicited Electronic Mail Act." This act would require unsolicited commercial e-mail to have valid routing information and include a valid e-mail address to which the recipient could reply so as to be removed from the mailing list. It would create criminal penalties for continuing to send e-mail to recipients who asked to be removed from mailing lists. It would also provide Internet service providers the right to recover substantial statutory damages (without proof of actual damages) for the burden placed on their servers by unauthorized unsolicited e-mail.

HARTFORD HOUSE, LTD v. MICROSOFT CORP.

Superior Court of California County of Santa Clara, 1988.

CASE NO.: CV778550.

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

The application of plaintiff Hartford House, Ltd. d.b.a. Blue Mountain Arts ("Blue Mountain") for a Temporary Restraining Order and an Order to Show Cause came on for hearing on December 17 and 18, 1998. After consideration of all of the materials submitted by the parties in this action and the oral arguments of counsel, IT IS HEREBY ORDERED THAT Blue Mountain's application is GRANTED. Defendant Microsoft Corporation ("Microsoft") shall appear before this Court on Thursday January 21, 1999 at 2:00 p.m. to show cause, if any it has, as to why the injunctive relief requested ex parte as well as following provisions should not be incorporated into a Preliminary Injunction to last throughout this action:

1. Microsoft Corporation shall make available to Blue Mountain that minimum information necessary to enable Blue Mountain to design its electronic mail ("e-mail") notification messages and e-mail greeting cards so that they are received by the intended recipient in their standard e-mail in-box and are not relegated to the "Junk" mail folder when the junk mail filter contained in Outlook Express, available from the downloadable version of Internet Explorer 5.0, beta version 5 is enabled on the default setting or any less restrictive setting. For purposes of the Order, the "default setting" is currently the middle of the five settings available to the user of the junk mail filter. Any confidential information shared by Microsoft with Blue Mountain about the filter

shall be disclosed pursuant to a standard non-disclosure agreement entered into between Microsoft and Blue Mountain.

2. At least 15 days in advance of any changes, modifications or redesigns that Microsoft intends to make to the above-noted junk mail filter in any subsequent beta version or commercially available version, which would affect the delivery of Blue Mountain e-mail notification messages and e-mail greeting cards to the standard in-box when the filter is set to its default setting or any less restrictive setting, Microsoft shall inform Blue Mountain of such changes, and provide to Blue Mountain that minimum information necessary to enable Blue Mountain to design its electronic mail ("e-mail") notification messages and e-mail greeting cards so that they are received by the intended recipient in their standard e-mail in-box when the junk mail filter is enabled on the default setting or any less restrictive setting.

3. Microsoft shall post a clear and conspicuous warning which is displayed to every Internet user that chooses to download the current, and any future, beta or commercial release of Internet Explorer 5.0 containing a version of Outlook Express with a junk mail filter that states as follows:

"WARNING: Users are advised that Outlook Express comes equipped with a 'junk' e-mail filter which, when turned on, may relegate legitimate e-mails, such as electronic greeting cards from family or friends to the junk mail folder, and dispose of them according to the user's preferences."

Microsoft has further agreed to the date for the hearing on the Order to Show Cause, notwithstanding the provisions of C.C.P. Section 527(d). The parties shall agree upon mutually acceptable schedules for briefing and discovery to take place in advance of the hearing.

The Court finds that good cause exists for a TEMPORARY RESTRAINING ORDER to issue pending the resolution of the Order to Show Cause, pursuant to Code of Civil Procedure Sections 526(a)(1)-526(a)(5).

Accordingly, IT IS FURTHER ORDERED THAT:

1. By no later than December 22, 1998, Microsoft shall make available to Blue Mountain that minimum information necessary to enable Blue Mountain to design its electronic mail ("e-mail") notification messages and e-mail greeting cards so that they are received by the intended recipient in their standard e-mail in-box and are not relegated to the "Junk" mail folder when the junk mail filter contained in Outlook Express, available from the downloadable version of Internet Explorer 5.0, beta version 5 is enabled on the default setting or any less restrictive setting. For purposes of the Order, the "default setting" is currently the middle of the five settings available to the user of the junk mail filter. Any confidential information shared by Microsoft with Blue Mountain about the filter shall be disclosed pursuant to a standard non-disclosure agreement entered into between Microsoft and Blue Mountain.

2. At least 15 days in advance of any changes, modifications or redesigns that Microsoft intends to make to the above-noted junk mail filter in any subsequent beta version or commercially available version, which would affect the delivery of Blue Mountain e-mail notification messages and e-mail greeting cards to the standard in-box when the filter is set to its default setting or any less restrictive setting, Microsoft shall inform Blue Mountain of such changes, and provide to Blue Mountain that minimum information necessary to enable Blue Mountain to design its electronic mail ("e-mail") notification messages and e-mail greeting cards so that they are received by the intended recipient in their standard e-mail in-box when the junk mail filter is enabled on the default setting or any less restrictive setting.

3. By Wednesday, December 23, 1998 at 6:00 a.m. PST., Microsoft shall post a clear and conspicuous warning which is displayed to every Internet user that chooses to download the current, and any future, beta or commercial English-language release of Internet Explorer 5.0 containing a version of Outlook Express with a junk mail filter that states as follows: "WARNING: Users are advised that Outlook Express comes equipped with a 'junk' e-mail filter which, when turned on, may relegate legitimate e-mails, such as electronic greeting cards from family or friends to the junk mail folder, and dispose of them according to the user's preferences."

Microsoft has waived service of this Order and has already received notice of it. Blue Mountain shall nevertheless serve of a copy of this Order on Microsoft within three days of the date of entry of the Order.

IT IS FURTHER ORDERED THAT Blue Mountain shall post, by not later than 4 p.m. on December 22, 1998, a bond in the amount of \$5,000, which the Court finds is an appropriate undertaking.

Note

At the time this book was prepared for publication, the text of the above court order was available at: <<http://www.bluemountain.com/home/courtorder122198.html>>, and other court orders in the same case were also at the [bluemountain.com](http://www.bluemountain.com) website, where they could be located by using an Internet search engine to search for the word "Microsoft" at the host "bluemountain.com".