1 2 3 4 5 6 7 8 9	865 S. FIGUEROA ST. SUITE 2400 LOS ANGELES, CALIFORNIA 90017-2566 TELEPHONE (213) 633-6800 FAX (213) 633-6899 BONNIE E. MACNAUGHTON (State Bar No. 107402) bonniemacnaughton@dwt.com ANNA R. BUONO (State Bar No. 232753) annabuono@dwt.com Attorneys for Plaintiff MICROSOFT CORPORATION UNITED STATES DISTRICT COURT		
12	MICROSOFT CORPORATION,	Case No.	
13	Plaintiff,	COMPLAINT	
14	vs.	(1) TRADEMARK INFRINGEMENT	
15 16 17 18 19 20 21 22 23 24 25 26 27	CUSTOMER FOCUS SERVICES, LLC, a California limited liability company, d/b/a OMNITECH SUPPORT, FIXNOW TECH, and TECHSUPPORT PRO; MARC HABERMAN, an individual; RACHEL EILAT HABERMAN, an individual; C-CUBED SOLUTIONS PRIVATE LIMITED, a private business company formed under the laws of India; ANYTIME TECHIES, LLC, a Florida limited liability company, d/b/a V TECH SUPPORTS, MY TECH SUPPORTS and WINDOWS SET GET SOLUTION, and DOES 1-10, inclusive, Defendants.	(15 U.S.C. § 1114) (2) FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION (15 U.S.C. § 1125(a)) (3) FALSE ADVERTISING (15 U.S.C. § 1125(a)) (4) TRADEMARK DILUTION (15 U.S.C. § 1125(c)) (5) COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION (6) CAL. BUSINESS & PROFESSIONS CODE § 17500 (7) CAL. BUSINESS & PROFESSIONS CODE § 17200 (8) CYBERSQUATTING (15 U.S.C. 1125(d)) DEMAND FOR JURY TRIAL	
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Plaintiff Microsoft Corporation ("Microsoft") files this Complaint against Defendants Customer Focus Services, LLC ("CFS") d/b/a OmniTech Support, Fixnow Tech and Techsupport Pro; C-Cubed Solutions Private Limited ("C-Cubed"); Marc Haberman; Rachel Eilat Haberman; and Anytime Techies, LLC d/b/a V Tech Supports, alleging as follows:

I. INTRODUCTION

This is an action for (i) infringement of trademarks in violation of 1. Section 32(1) of the Lanham Act, 15 U.S.C. § 1114; (ii) false designation of origin and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (iii) false advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (iv) trademark dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c); (v) unfair competition and trademark infringement in violation of the common law of the State of California; (vi) false advertising in violation of California Business & Professions Code § 17500; (vii) unfair competition in violation of California Business & Professions Code § 17200; and (viii) cybersquatting in violation of Section 43(d) of the Lanham Act, 15 U.S.C. 1125(d). As described more fully below, Defendants have, without authorization, used and misused the Microsoft name and Microsoft's registered trademarks and service marks in commerce in connection with the provision of phony technical support services. Defendants have utilized the Microsoft trademarks and service marks to enhance their credentials and confuse customers about their affiliation with Microsoft. Defendants then use their enhanced credibility to convince consumers that their personal computers are infected with malware in order to sell them unnecessary technical support and security services to clean their computers. In some instances, Defendants actually create security issues for consumers by gaining access to their computers and stealing information stored on them.

- 2. Microsoft is the owner of various trademarks under the Microsoft, Windows, and Microsoft Office names and related logos ("Microsoft Marks" or "Marks") and has used the Marks for several decades in connection with its software products and services. Microsoft has spent substantial time, effort, and money advertising and promoting its Marks throughout the United States and the world. The Microsoft Marks, which are inherently distinctive, have consequently acquired significant goodwill and fame. Microsoft has also made significant investments through its Digital Crimes Unit and Cybercrime Center in protecting consumers from cybercrime including online fraud and security threats. The investigation described herein was initiated to protect consumers from technical support scams and the financial harm and security risks that they present.
- 3. In an attempt to profit from Microsoft's substantial investment in its Marks, Defendants sell and offer to sell their phony technical support services through means that utilize spurious marks that are either identical to or substantially indistinguishable from the Microsoft Marks. Consumers naturally expect that technical support offered and sold using the Microsoft name and Marks are, in fact, provided by Microsoft, or at least licensed or sponsored by Microsoft. However, Microsoft has investigated several examples of purported technical support services provided by Defendants and confirmed that not only were these services not licensed or sponsored by Microsoft, but also that they were not even providing any services at all. Instead, Defendants fraudulently charge consumers for unnecessary services while gaining access to computers beyond the scope of any consumer authorization, then installing password reader programs and other malware rather than protecting the computers from such technical problems. Consumers are therefore likely to be (and have been) confused and/or disappointed by obtaining fraudulent services which they are persuaded they require.

- 4. Microsoft investigators have witnessed the Defendants use these practices, including Defendants' fraudulent sale of unnecessary technical support, installation of malware on the investigators' clean personal computer, and an attempt to steal an investigator's passwords. On information and belief, Defendants' practices cost consumers across the United States and elsewhere significant financial losses and erode their confidence and trust in their technology.
- 5. As a result of Defendants' actions, Microsoft is suffering a loss of the enormous goodwill it has created in the Microsoft Marks and its customers are being deflected from acquiring the genuine technology services that they may need. This action seeks permanent injunctive relief and damages for Defendants' infringement of Microsoft's intellectual property rights.

II. PARTIES

- 6. Microsoft is a Washington corporation with its principal place of business in Redmond, Washington. Microsoft develops, markets, distributes, and licenses computer software, among other products and services, and it provides technical support for that software.
- 7. Defendant CFS is a California limited liability company with its principal place of business in Los Angeles, California. On information and belief, CFS and its principals operate a technical support business that fraudulently sells phony computer repair services to computer users. CFS operates its business through multiple Internet websites, including but not limited to omnitechsupport.com, fixnow.us, and techsupportpro.com.
- 8. Defendant C-Cubed is a private company associated under the laws of India. Its directors include Marc Haberman, Rachel Eilat Haberman, and Jay Wurzberger. C-Cubed is a subsidiary of CFS. It operates the mail server by which CFS' fraudulent technical support businesses communicate with customers.

- 9. Defendants Marc Haberman and Rachel Eilat Haberman are residents of Los Angeles, California. On information and belief, Marc Haberman is the CEO of CFS and he owns, operates, supervises, and/or controls its conduct and business. On information and belief, Marc Haberman either (a) personally participated in and/or (b) had the right and ability to supervise, direct, and control the wrongful conduct alleged in this Complaint, and derived a direct financial benefit from that wrongful conduct. Marc Haberman registered the domain name for fixnow.us. Rachel Eilat Haberman is a resident of Los Angeles, California. On information and belief, she is the wife of Marc Haberman and a director of C-Cubed.
- 10. Defendant Anytime Techies is a Florida limited liability company with its primary place of business in Brandon, Florida. On information and belief, Anytime Techies owns and operates numerous websites that fraudulently sell technical support services to computer users in the United States, including in California. Those websites include, but are not limited to, vtechsupports.com, mytechsupports.com, anytimetechies.com, and windowssetgetsolution.org. According to information published at vtechsupports.com, Anytime Techies' services are "affiliated" with Defendant CFS. The website vtechsupports.com stated that the website operated out of Sunnyvale, California.
- 11. At all relevant times herein, Does 1-10 inclusive, were individuals, partnerships, joint ventures, corporations, limited liability companies or other forms of legal entities, the identities of which are unknown at the present but who are liable to Microsoft for committing the acts and/or omissions alleged herein. Microsoft is informed and believes, and thereon alleges, that each of the fictitiously named defendants is responsible to Microsoft for the injuries and damages herein alleged.
- 12. Microsoft is informed and believes that at all times mentioned herein Defendants, and each of them, were agents, partners, employees, representatives, subsidiaries, parents or affiliates of one another, and in doing the things alleged in

this Complaint were acting within the course and scope of such position, and were acting with the knowledge, permission, approval and consent of each other.

13. Microsoft is informed and believes that, as alleged herein, Defendants also acted in their individual capacities on their own behalf and not merely in their official capacities as agents for one another.

III. JURISDICTION AND VENUE

- 14. The Court has subject matter jurisdiction over Microsoft's claims for trademark infringement, false association, false advertising, and cybersquatting pursuant to 15 U.S.C. § 1121 and § 1125 and 28 U.S.C. § 1331 and § 1338(a). The Court has jurisdiction over all state law claims under 28 U.S.C. § 1367. The Court also has subject matter jurisdiction under 28 U.S.C. § 1332 because this action is between citizens of different states and the matter in controversy exceeds \$75,000 exclusive of interest and costs.
- 15. The Court has personal jurisdiction over Defendants because they either (a) reside in California, (b) operate their fraudulent technical support businesses in California, or (c) purposefully direct their unlawful activities at California and Microsoft's claims arise from those activities. Defendant CFS is a California limited liability company headquartered in Los Angeles, California. Defendants Marc Haberman resides in Los Angeles. Anytime Techies does business as V Tech Supports and My Tech Supports, whose websites list the same address in Sunnyvale, California, as their contact address.
- 16. Venue is proper because Defendants are subject to personal jurisdiction in the Central District of California.

IV. FACTS COMMON TO ALL CLAIMS

A. Overview of Technical Support Scams

17. On information and belief, every year, approximately 3.3 million American consumers become victims to technical support scams. Between May

2014 and November 2014 alone, Microsoft received more than 65,000 customer complaints related to technical support scams.

- 18. In these scams, companies representing themselves to be technical service providers (hereinafter "the fake technicians") deceive consumers into believing their personal computers and software are infected with dangerous viruses and sell unneeded services to purportedly clean the systems and software. Typically, victims of this scam permit the fake technicians access to their computers and the fake technicians fraudulently identify various computers files as malware when the files are, in fact, benign. In addition, the fake technicians sometimes even load malware on victims' computers and steal personal information and computer files while pretending to fix non-existent computer viruses.
- 19. Microsoft is committed to protecting its customers from cyber threats and online fraud through, among other things, the work done by its Digital Crimes Unit and Cybercrime Center. As a part of its consumer protection efforts, Microsoft commissioned a study to discover the extent and scope of technical support scams. This survey revealed that technical support scams are extremely widespread and that over one-third of Americans fall for the scams once contacted. This significant conversion rate is a testament to the great lengths to which the companies offering fraudulent services go to appear legitimate and to confuse consumers about purported problems with their software and PCs.
- 20. On information and belief, Americans suffer approximately \$1.5 billion in financial losses due to these scams each year. In California alone, approximately 390,000 residents become victims each year, suffering approximately \$179 million in losses.
- 21. One primary reason that the perpetrators of technical support scams enjoy such success is that they create an impression that they represent or have an association with Microsoft, one of the world's most well-known technology

companies, and the developer of the popular and widely-used software programs Windows and Office.

- 22. The techniques used by these companies include, but are not limited to a) making false representations that they are "from Microsoft" or "Windows tech support;" b) using Microsoft trademarks on their websites; and/or c) using Microsoft's trade name in their advertising. These efforts have a two-fold purpose creating credibility for the fraudulent services being offered and diverting consumers from identifying and contacting a legitimate technical service provider for their service needs.
- 23. The fake technicians' false representations that their victims' computers have been infected with viruses create false impressions about the quality and security of Microsoft's computer software in order to convince consumers that they require support services.

B. Microsoft's Intellectual Property

- 24. Microsoft develops, advertises, markets, distributes, and licenses a number of computer software programs and computer services.
- 25. Microsoft has duly and properly registered a number of trademarks and service marks in the United States Patent and Trademark Office on the Principal Register, including without limitation:
 - (a) "MICROSOFT," Trademark Registration No. 1,200,236 for, *inter alia*, computer programs and computer programming services, also registered under Registration Nos.: 1,673,353; 1,684,033; 2,285,870; 2,163,597; 1,689,468; 1,966,382; 2,637,360; 2,198,155; 2,843,964; 2,198,153; 2,198,156; 2,198,154; 2,337,072; 2,250,973; and 2,872,708.
 - (b) "WINDOWS," Trademark Registration No. 1,872,264 for, *inter alia*, computer programs and manuals sold as a unit, also registered under

- Registration Nos. 1,989,386; 2,559,402; 2,212,784; 2,463,510; 2,463,526; 2,463,509; 2,565,965; and 4,407,849.
- (c) "MICROSOFT OFFICE," Trademark Registration No. 3,625,391, for, *inter alia*, computer software.
- (d) "FLAG DESIGN TWO (B/W)," Trademark Registration No. 2,738,877, for, *inter alia*, computer software; No. 2,730,599, for, *inter alia*, educational services; and No. 2,778,616, for, *inter alia*, providing information in the computers field.
- (e) "FLAG DESIGN TWO (COLOR)," Trademark Registration No. 2,744,843 for, *inter alia*, computer software; No. 2,698,734, for, *inter alia*, providing software user training; and No. 2,778,617, for, *inter alia*, providing information in the computers field.
- (f) "FLAG DESIGN (2012)," Trademark Registration No. 4,400,958, for, *inter alia*, computer software; and No. 4,448,380 for, *inter alia*, numerous goods and services in the field of computers.
- (g) "OFFICE SQUARE DESIGN (B/W)," Trademark Registration No. 3,160,976, for, *inter alia*, computer software.
- (h) "OUTLOOK," Trademark Registration No. 2,188,125, for, *inter alia*, computer programs; No. 4,255,129 for, *inter alia*, providing technical information in the field of computer software and cloud computing; and No. 4,423,056 for, *inter alia*, advertising and marketing services.
- (i) "OUTLOOK LAUNCH ICON (2010)," Trademark Registration No. 3,905,560, for, *inter alia*, computer programs.
- (j) "OUTLOOK LAUNCH ICON (2012)," Trademark Registration No. 4,355,446, for, *inter alia*, computer programs for providing enhanced electronic mail and scheduling capabilities.

- (k) "SKYPE AND BUBBLE DESIGN," Trademark Registration No. 3,263,303, for, *inter alia*, computer software.
- (1) "WINDOWS XP," Trademark Registration No. 2,640,357, for, *inter alia*, computer software; and No. 2,640,353, for, *inter alia*, computer services, namely providing technical information.

C. The Defendants' Websites and Advertising Practices

- 26. Defendant CFS, owned and controlled by its CEO, Defendant Marc Haberman, has developed a web of related entities that perpetrate technical support scams on Microsoft software and device users. Although the websites differ, the agents for each site claim to represent "OmniTech Support."
- 27. Fixnow.us is one of these websites. Defendant Marc Haberman registered the domain name fixnow.us on October 28, 2009, from email address marc@customerfocusservices.com.
- 28. In online advertising for fixnow.us, it advertises itself as "Microsoft Tech Support" and provides a contact phone number. The advertisement also displays a web address for the website (also known as a Uniform Resource Locator (URL)) as "microsoft-support.fixnow.us."
- 29. The advertisement alone serves to confuse the user: the advertisement states "Microsoft Tech Support," the first word of the URL in the advertisement is "Microsoft," and then a phone number allows the user to call directly, without even going to Fixnow's web page. The URL "microsoft-support.fixnow.us" is not currently a functional web page. The link in the advertisement redirects consumers to a web page located at www.fixnow.us.
- 30. CFS and Haberman also operate omnitechsupport.com. On numerous pages on the OmniTech Support web site, CFS and Haberman have used Microsoft trademarks, including "FLAG DESIGN TWO (COLOR)," and "FLAG DESIGN (2012)."

- 31. CFS and Haberman also operate as techsupportpro.com, which purports to offer technical support for Microsoft products.
- 32. CFS has registered and operates several other websites that, despite different domain names, display as Techsupportpro. One such web site is howtowindows.com, which was registered by a CFS e-mail address. In addition to containing "Windows" in its domain name, the front page of howtowindows.com displays the registered Microsoft trademarks for "OFFICE SQUARE DESIGN (B/W)," "OUTLOOK LAUNCH ICON (2010)," and "FLAG DESIGN TWO (COLOR)."
- 33. Similarly, cannotstartoutlook.com also displays as Techsupportpro. In addition to containing "Outlook" in its domain name, cannotstartoutlook.com displays the Microsoft trademarks Microsoft for "OFFICE SQUARE DESIGN (B/W)," and "OUTLOOK LAUNCH ICON (2010)."
- 34. Similar uses of the Microsoft Marks occur at outlookrepairhelp.com, outlooksetting.com, windowsupdatehelp.com, windowsoutlookhelp.com, and windowsupdatesupport.com. Each of those sites is registered by Defendant CFS and displays as Techsupportpro.
- 35. Before December 2, 2014, the web site vtechsupports.com also claimed to offer Microsoft technical support. Its "About Us" page claimed: "With the use of proprietary tools and a dedicated team of IT specialists, Valiant Infosys, along with its affiliated company Customer Focus Services has reached out to thousands of customers since its founding 2010."
- 36. Each web page at vtechsupports.com listed two phone numbers. One, labeled a "Support Line," was listed as 1-888-327-0465, which connected directly to Defendant Anytime Techies. Another, listed as a "contact" number, was 1-888-920-7066. On information and belief, the latter phone number was also connected to Defendant Anytime Techies, through the website mytechsupports.com.

- 37. On or about June 13, 2014, an investigator, working for Microsoft, called 1-888-920-7066. The agent that answered the call stated that he worked for "Microsoft Tech Support."
- 38. Anytimetechies.com purports to offer technical support for Windows. On several pages it displays a logo that is identical or substantially similar to the Microsoft registered trademark for "FLAG DESIGN TWO (B/W)."

D. Defendants' Illegal Business Practices

- 39. On information and belief, Defendants intentionally and systematically mislead consumers into believing their Microsoft software is infected with dangerous viruses.
- 40. Microsoft has done multiple test calls and online chat sessions with representatives of fixnow.us and vtechsupports.com. In each case, Microsoft used a computer that its experts confirmed did not contain malware, viruses, or any other harmful computer files or programs.
- 41. In one visit to fixnow.us, a chat invitation popped up on the screen moments after the web page loaded. Microsoft's investigator clicked on a button stating, "Chat Now." The investigator was ultimately led to a window titled "OmniTech Support log in." He connected with a technician who identified himself as Terry.
- 42. Terry asked to remotely access the investigator's computer. The investigator followed Terry's instructions and Terry took full control of the investigator's computer. Terry then ran a program named "Advanced System Optimizer by Systweak Software." When this program concluded, the technician claimed to have found 75 issues of concern, which the technician claimed were caused by "polymorphic viruses." The alleged issues involved benign junk files and folders, none of which contained viruses or malware.

- 43. Nonetheless, the technician stated that the "Windows file system modules being corrupted *due to the presence of polymorphic infections and other harmful viruses in the computer.*" (emphasis added). The technician continued, stating that these problems "built up over a period of time *due to a lack of security*," and that the "issues need to be addressed immediately *as the infections and errors tend to migrate to other Windows system file modules leading to other computer complications and even leading to potential loss of data including emails personal files, financial data etc.." (emphasis added).*
- 44. After the technician claimed that the Windows software, because of a lack of security, was compromised, he then asked to fix those errors for \$249.99. When the Microsoft investigator replied that the cost seemed high, the technician responded that "the issue present in your system is also very critical because of presence of polymorphic infection which has a tendency of damaging the core system files. So in case of a delay the chance of a system crash is very high." (emphasis added).
- 45. The investigator agreed to pay the \$249.99. The investigator entered his billing information in a screen the technician pulled up. The entire payment process occurred on the website www.omnitechsupport.com. The technician, though, did not stop there. He then asked for an additional \$610 to "fine tune" the computer, which the technician claimed was necessary because "these infections and errors have also damages some other system filed due to which your system in [sic] INFECTED." The technician repeatedly declared the investigator's software "infected" as the technician attempted to extract the extra payment.
- 46. The technician then asked the investigator to log into his e-mail account, where OmniTech had sent two e-mails: a receipt and the OmniTech Terms and Conditions. The technician then asked the investigator to sign an online document.
 - 47. The online document stated, among other things:

Direct All Inquiries to:

Customer Support

1-800-966-9940

Email: billing@omnitech.com

MAKE ALL CHECKS PAYABLE TO:

Attn: Accounts receivable

unit 504

6430 sunset Blvd., LA CA 90028

- 48. The address in the online document is the registered address for Customer Focus Services, LLC with the California Secretary of State.
- 49. Once the investigator signed the online document, Terry connected the investigator with another technician, who identified herself as Kristin. The investigator's screen revealed that Kristin now had remote access of the computer.
- 50. Kristin then ran a series of free Internet applications. The first was a "FixIt" application *offered by Microsoft*, at support.microsoft.com. This application changes Windows settings; it is not a virus or malware application. Kristin also ran a free application named CCleaner.
- 51. Next, Kristin downloaded a program titled "Internet Explorer Passwords Viewer" from www.nirsoft.net. In order to download and run the program, Kristin disabled Microsoft Security Essentials, security software already on the investigator's computer that would have otherwise blocked the program. Kristin used the program to attempt to view passwords for two of the investigator's e-mail accounts. Kristin then reset all of the computer's settings to cover her tracks.
- 52. Kristin ran two more free Internet applications before transferring the investigator to another technician, Stewart. Stewart ran an application named System Protector that contains the name "OmniTech Support," and adjacent to the logo the

statement "developed by Microsoft Partner." Before disconnecting the call, Stewart claimed that he optimized the investigator's computer and installed cloud software.

- 53. Microsoft's investigator later performed a forensic analysis of the computer, which revealed that OmniTech installed a password viewer during the tech support connection.
- 54. In another visit to fixnow.us, a different investigator had a chat session with a technician. This technician also used a remote access application to take control of the investigator's computer. This technician also stated that the Windows software was "being corrupted due to the presence of polymorphic infections and other harmful viruses in the computer."
- 55. The technician used identical language from the other investigator's chat session, claiming that the "issues need to immediately as the infections and errors tend to migrate to other Windows system file modules leading to other computer complications and even leading to potential loss of data including emails personal files, financial data etc." (emphasis added).
- 56. The technician also claimed that "the loss of thousands of dollars which these viruses/hacking can lead to" justified the expense of the program. He stated there were "several crucial issues and infections present in your system which needs to be removed immediately or else it will lead to similar issues in case of delay." In this case, the investigator disconnected before making payment.
- 57. A Microsoft investigator made another call to the phone number listed at fixnow.us on December 5, 2014. The agent identified as working for OmniTech Support. Once again, the technician falsely claimed that viruses and other malware corrupted the computer and attempted to sell the investigator the service for \$249.99.
- 58. Microsoft has received a number of complaints from customers regarding OmniTech Support, including complaints that OmniTech has lied about the presence of viruses compromising Microsoft software in order to sell its service.

- 59. Several Microsoft customers have complained that OmniTech's advertising led them to believe they were contacting Microsoft Tech Support.
- 60. One consumer complained that OmniTech "removed, disabled and did so many things to my computer I could not keep up," and that the "computer has been malfunctioning ever since."
- 61. Another consumer, who called to set up Microsoft products on a new computer, was told that the computer "had two viruses and over 90 other malfunctions," in addition to other problems "that needed repairs before he could install Outlook."
- 62. Another Microsoft customer reported that OmniTech Support told her that OmniTech "works hand in hand with Microsoft." The customer reported that OmniTech "disabled" the computer's "mainframe and security programs," which she had to hire a technician to repair. She concluded: "This has cost me a great deal in terms of time and money."
- 63. Microsoft investigators also contacted V Tech Supports, operated by Defendant Anytime Techies. The investigator called the "Contact" number at vtechsupports.com. The investigator asked if they were "Microsoft Tech Support." The agent said yes, and had the investigator connect via a web browser connection. The agent directed the investigator to a website to take part in a chat session.
- 64. In the chat session, the technician used remote access to take control of the investigator's system. The technician first ran a Windows program titled MSINFO32, which displays a comprehensive view of the information of a Windows machine. The technician then ran a Windows program titled "Event Viewer," which the technician claimed showed serious errors.
- 65. The technician claimed that "[t]here seem to be serious of issues in your PC we need to get rid of this issue if this remains it might for your PC to crash or some data loss happens."

- 66. Even though the investigator informed the technician that his computer already had Microsoft Security Essentials, the technician claimed that another service was necessary—for either \$119.99 for a one-time charge or \$199.99 for an "annual package."
- 67. The technician then opened the website anytimetechies.com and pulled up a page for the investigator to enter his payment information.
- 68. After the investigator made payment, the technician first deleted several temporary files. The technician used Windows System File Checker, which reported there were no integrity violations. The technician ran a free Malwarebytes application, which revealed no problems found. The technician then restarted the computer and stated: "Now the computer is clean and safe."
- 69. After payment had been made and the purported service was completed, the technician clarified to the investigator that the technician did not work for Microsoft, but rather claimed to be a Microsoft Certified Engineer working for Anytime Techies.
- 70. In another call with a phone number that was listed on V Tech Supports' website, the technician answered by saying, "Tech support." The investigator asked, "Are you Microsoft?" The technician replied that he was. The technician established a remote desktop connection.
- 71. The technician showed the investigator registry errors on the computer. Even though these were benign errors that regularly occur, the technician stated that there was "file corruption" on his computer. The investigator did not purchase the service.
- 72. Microsoft has identified a number of consumer complaints in which agents answered calls to phone numbers used by V Tech Supports and Anytime Techies have claimed to act as Microsoft in their dealings with customers.

V. CAUSES OF ACTION

FIRST CLAIM

Trademark Infringement – 15 U.S.C. § 1114 (Against All Defendants)

- 73. Microsoft specifically realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 72 of this Complaint as though fully set forth herein.
- 74. Defendants' activities constitute infringement of Microsoft's federally registered trademarks and service marks with the registration numbers listed above.
- 75. Defendants' unauthorized use of the Microsoft Marks, including the names Microsoft and Windows and the designs identified above, to sell services unaffiliated and unassociated with Microsoft is likely to cause confusion, mistake, and/or deception as the origin or source of the goods and services associated with the Microsoft Marks, to cause initial interest confusion and also to mislead consumers into believing such goods and services originate from, are affiliated with, and/or are sponsored, authorized, approved, or sanctioned by Microsoft.
- 76. Defendant CFS' unauthorized use of the Microsoft Marks on several of its websites, as alleged above, constitutes infringement of those Marks.
- 77. Defendant CFS' unauthorized use of "Microsoft" in its advertisements constitutes infringement of Microsoft's federally registered trademark Microsoft®.
- 78. Defendant Anytime Techies' practice of telling customers it represents Microsoft, even though it is unaffiliated and unassociated with Microsoft, to sell goods or services constitutes infringement of Microsoft's federally registered trademarks.
- 79. At a minimum, Defendants acted with willful blindness to, or in reckless disregard of, the Microsoft Marks.
- 80. As a result of Defendants' wrongful conduct, Microsoft is entitled to recover its actual damages, Defendants' profits attributable to the infringement, and

treble damages and attorney fees pursuant to 15 U.S.C. § 1117 (a) and (b). Alternatively, Microsoft is entitled to statutory damages under 15 U.S.C. § 1117(c).

81. Microsoft is further entitled to injunctive relief. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) Microsoft's trademarks and service mark are unique and valuable property that have no readily determinable market value; (b) Defendants' infringement constitutes harm to Microsoft's reputation and goodwill such that Microsoft could not be made whole by any monetary award; (c) if Defendants' wrongful conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin, or authenticity of the infringing materials; and (d) Defendants' wrongful conduct, and the resulting harm to Microsoft, is continuing.

SECOND CLAIM

False Designation of Origin and Unfair Competition – 15 U.S.C. § 1125 et seq. (Against All Defendants)

- 82. Microsoft specifically realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 81 of this Complaint as though fully set forth herein.
- 83. Microsoft advertises, markets, distributes, and licenses its software and services under the Microsoft Marks, and uses these trademarks and service marks to distinguish Microsoft's software and related components and services from the products or services of others in the same field or related fields.
- 84. Because of Microsoft's long, continuous, and exclusive use of the Microsoft marks, they have come to mean, and are understood by customers, end users and the public to signify products and services of Microsoft.
- 85. Microsoft has also designed distinctive and aesthetically pleasing displays, logos, icons, and graphic images (collectively, "Microsoft visual designs") for its software programs and related components.

- 86. On information and belief, Defendants' wrongful conduct includes the use of Microsoft's Marks, name, and/or imitation visual designs (specifically displays, logos, icons, and/or graphic designs virtually indistinguishable from Microsoft virtual designs) in connection with their goods and services.
- 87. On information and belief, Defendants engaged in such wrongful conduct with the purpose of misleading or confusing customers and the public as to the origin, authenticity, or association of the goods and services advertised, marketed, installed, provided, offered, or distributed in connection with Microsoft's Marks, name, and imitation visual designs, and of trading on Microsoft's goodwill and business reputation. Defendants' conduct constitutes (a) false designation of origin, (b) false or misleading description, (c) false association, and (d) false or misleading representation that the imitation visual images originate from or are authorized by Microsoft, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
- 88. Defendants' wrongful conduct is likely to continue unless restrained and enjoined.
- 89. As a result of Defendants' wrongful conduct, Microsoft is entitled to recover its actual damages, Defendants' profits, and treble damages and attorney fees pursuant to 15 U.S.C. § 1117.
- 90. Further, Microsoft is entitled to injunctive relief. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) Microsoft's Marks, name, and visual designs are unique and valuable property which have no readily-determinable market value; (b) Defendants' advertising, marketing, installation, or distribution of imitation visual designs constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award; and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

THIRD CLAIM

False Advertising – 15 U.S.C. § 1125 *et seq.* (Against All Defendants)

- 91. Microsoft specifically realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 90 of this Complaint as though fully set forth herein.
- 92. The Defendants have a general sales practice in which they state that a customer's Microsoft software has viruses, malware, or file corruption, and that benign errors will cause system failure or data loss.
 - 93. The Defendants make these statements in interstate commerce.
- 94. Defendants' statements are false or misleading statements of fact that disparage the quality and security of Microsoft's software.
- 95. Defendants' statements either have deceived or have the capacity to deceive a substantial segment of potential consumers.
- 96. Defendants' statements are material in that they are likely to influence the consumer's purchasing decision. The Defendants deprive Microsoft customers of the most important information when deciding whether to purchase technical repair services for their software: whether they need those services at all.
- 97. These statements disparage the quality of security of Microsoft's software, and Microsoft has been and will be damaged by Defendants' wrongful conduct.
- 98. As a result of Defendants' wrongful conduct, Microsoft is entitled to recover its actual damages, Defendants' profits, and treble damages and attorney fees pursuant to 15 U.S.C. § 1117.
- 99. Further, Microsoft is entitled to injunctive relief. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) Defendants' advertising constitutes harm to Microsoft such that Microsoft

could not be made whole by any monetary award; and (b) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

FOURTH CLAIM

Federal trademark dilution – 15 U.S.C. § 1125(c) (Against All Defendants)

- 100. Microsoft specifically realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 99 of this Complaint as though fully set forth herein.
- 101. Since 1975, Microsoft has exclusively and continuously promoted and used the Microsoft® trademark. As one of the world's most well-known technology companies, the mark has become a famous and well-known symbol of Microsoft—well before any of the Defendants began using the mark in association with their goods or services unaffiliated with Microsoft through the Defendants' illegal use and infringement of the mark.
- 102. Since 1985, Microsoft has exclusively and continuously promoted and used the Windows® trademark. As one of the most popular operating systems used by billions of consumers around the world, the Windows mark has become a famous and well-known symbol of Microsoft—well before any of the Defendants began using the mark in association with their goods or services unaffiliated with Microsoft through the Defendants' illegal use and infringement of the mark.
- 103. Since 1988, Microsoft has exclusively and continuously promoted and used the Microsoft Office® trademark. More than a billion people worldwide use Microsoft Office for its variety of desktop applications and services. The mark has become a famous and well-known symbol of Microsoft—well before any of the Defendants began using the mark in association with their goods or services unaffiliated with Microsoft through the Defendants' illegal use and infringement of the mark.

- 104. The actions of the Defendants including, but not limited to, their unauthorized use of the described famous marks in commerce to advertise, market, and sell fraudulent technical support services throughout the United States, including California, are likely to cause dilution of those marks by blurring and tarnishment in violation of 15 U.S.C. §1125(c).
- 105. As a result of Defendants' wrongful conduct, Microsoft is entitled to recover its actual damages, Defendants' profits, and treble damages and attorney fees pursuant to 15 U.S.C. § 1117.
- 106. Further, Microsoft is entitled to injunctive relief. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) Microsoft's Marks, name, and visual designs are unique and valuable property which have no readily-determinable market value; (b) Defendants' advertising, marketing, installation, or distribution of imitation visual designs constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award; and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

FIFTH CLAIM

Common Law Trademark Infringement and Unfair Competition (Against All Defendants)

- 107. Microsoft specifically realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 106 of this Complaint as though fully set forth herein.
- 108. As the exclusive owner and user of the trademarks described above, Microsoft possesses valuable common law rights to the mark and the goodwill associated with it.
- 109. The Defendants' unauthorized use of the Microsoft Marks constitutes trademark infringement and unfair competition in violation of the common law of California.

- 110. The Defendants' acts of trademark infringement and unfair competition have caused and will continue to cause Microsoft monetary damage, loss, and injury in an amount not yet ascertained.
- 111. The Defendants' acts of trademark infringement and unfair competition have been and will continue to be willful.
- 112. Further, Microsoft is entitled to injunctive relief. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) Microsoft's Marks, name, and visual designs are unique and valuable property which have no readily-determinable market value; (b) Defendants' advertising, marketing, installation, or distribution of imitation visual designs constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award; and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

SIXTH CLAIM

False Advertising – Cal. Bus & Prof. Code § 17500 (Against All Defendants)

- 113. Microsoft specifically realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 112 of this Complaint as though fully set forth herein.
- 114. The Defendants have a general sales practice in which they state to Microsoft customers that their software has viruses, malware, or corrupted files that will cause system failure or data loss.
- 115. Defendants' statements are false or misleading statements of fact that disparage the quality and security of Microsoft's software.
- 116. The Defendants made these statements in connection with the sale of their technical support services which purport to repair the customer's computer.

- 117. The Defendants' disparagement of the quality and security of Microsoft's software has caused, and will continue to cause, damages to be proved at trial.
- 118. Further, Microsoft is entitled to injunctive relief. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) Defendants' advertising constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award; and (b) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.
- 119. Microsoft is also entitled to attorney fees under California Civil Procedure Code § 1021.5. This action will provide a significant benefit to the public, the financial burden of private enforcement makes an award appropriate, and it is in the interest of justice to award such fees.

SEVENTH CLAIM

Unfair and Deceptive Practices – Cal. Bus & Prof. Code § 17200 et seq. (Against All Defendants)

- 120. Microsoft specifically realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 119 of this Complaint as though fully set forth herein.
- 121. Defendants' acts as described above constitute unlawful, unfair, and fraudulent or deceptive business practices in violation of California Business & Professions Code § 17200.
- 122. The Defendants' false representations regarding viruses, malware, and other computer problem mislead consumers about the quality and security of Microsoft software and to purchase unnecessary technical support services. The Defendants' wrongful acts also caused confusion, mistake, and deception as to the affiliation, connection, or association of Defendants with Microsoft.
- 123. The harm that Defendants' acts caused to their victims, including Microsoft and Microsoft's customers, far outweighs the benefits of their practices.

There are no countervailing benefits to consumers or to competition, and neither Microsoft nor consumers could reasonably avoid the harm the Defendants have caused.

- 124. The Defendants' practices also violate federal and state law, including but not limited to the Lanham Act, the common law of California, and California's False Advertising Law, Cal. Bus. & Prof. Code § 17500.
- 125. As a direct and proximate result of the Defendant's conduct, Plaintiff is entitled to all of the applicable remedies set forth in California Business & Professions Code § 17203.
- 126. Plaintiff has no adequate remedy at law and as such, is entitled to an injunction restraining Defendant and its agents, employees, officers, alter egos, and all persons acting in concert with them, from engaging in any such further business practices in violation of California Business & Professions Code § 17200.
- 127. Microsoft is also entitled to attorney fees under California Civil Procedure Code § 1021.5. This action will provide a significant benefit to the public, the financial burden of private enforcement makes an award appropriate, and it is in the interest of justice to award such fees.

EIGHTH CLAIM

Cybersquatting – 15 U.S.C. 1125(d) (Against CFS and Marc Haberman)

- 128. Microsoft specifically realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 127 of this Complaint as though fully set forth herein.
- 129. Defendants CFS and Marc Haberman have registered several domain names that include Microsoft trademarks, including but not limited to: windows-7.co, windows7-problem.com, windows7blog.co, outlookerror.co, outlookproblems.co, outlooksupport.co.

- 130. By registering these domain names, Defendants CFS and Marc Haberman have a bad faith intent to profit from the use of Microsoft's Marks.
- 131. Microsoft's Marks were famous at the time Defendants CFS and Marc Haberman registered the domain names, which are confusingly similar to and/or dilutive of the Microsoft Marks.
- 132. Defendant CFS and Marc Haberman's bad faith is apparent from a variety of factors, including their registration of multiple domain names which they know are confusingly similar to and/or dilutive of Microsoft's distinctive marks, and the lack of an accessible website at each domain name.
- 133. Microsoft is entitled to actual damages under 15 U.S.C. § 1117(a), or in the alternative, statutory damages under 15 U.S.C. § 1125(d)(1).
- 134. Further, Microsoft is entitled to injunctive relief. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) Microsoft's Marks, name, and visual designs are unique and valuable property which have no readily-determinable market value; (b) Defendants' advertising, marketing, installation, or distribution of imitation visual designs constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award; and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

VI. PRAYER FOR RELIEF

WHEREFORE, Microsoft respectfully asks this Court to enter judgment against Defendants and against each of their directors, principals, officers, agents, representatives, employees, attorneys, subsidiaries, parents, affiliates, successors and assigns, and all persons in active concert or participation with them, granting the following relief:

A. The entry of judgment in Microsoft's favor on all claims.

- B. A permanent injunction restraining and enjoining Defendants, their directors, principals, officers, agents, representatives, employees, attorneys, subsidiaries, parents, affiliates, successors and assigns, and all others in active concert or participation with it, from:
 - (i) Any infringing use of Microsoft's registered trademarks, including the trademarks identified above, in connection with the marketing, promotion, advertising, or sale of any goods or service;
 - (ii) Directly or indirectly engaging in false advertising or promotions regarding the quality or security of Microsoft software;
 - (iii) Making or inducing others to make any false, misleading or deceptive statement of fact, or representation of fact in connection with the promotion, advertisement, or sale of goods or services related to Microsoft software;
 - (iv) Using any false designation of origin or false or misleading description or false or misleading representation that can or is likely to lead the trade or public or individuals erroneously to believe that any software, component, and/or other item has been manufactured, assembled, produced, distributed, offered for distribution, circulation, sold, offered for sale, imported, advertised, promoted, displayed, licensed, sponsored, approved, or authorized by or for Microsoft, when such is not true in fact; and
 - (v) Assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities listed above.
- C. An award of damages including all general, special, actual, and statutory damages which Microsoft has sustained, or will sustain, as a consequence of

1	DEMAND FOR JURY TRIAL		
2	Plaintiff Microsoft Corporation hereby demands a jury trial upon the claims		
3	asserted here.		
4			
5	DATED: December 18, 2014	DAVIS WRIGHT TREMAINE LLP	
6		BONNIE E. MACNAUGHTON ANNA R. BUONO	
7			
8		By:	
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