

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Cyberheat, Inc., an Arizona
corporation,

Defendant.

No. CIV 05-457-TUC-DCB

Declaration of David Vetter

I, David Vetter, hereby declare as follows:

1. I am employed by Microsoft Corporation ("Microsoft") as a Program Manager for MSN Hotmail. My duties include, among other things, creating or assisting in the development of technological methods to recognize and block unsolicited commercial e-mail (known as "spam"), training customer service representatives about spam and how to lessen its effect, tracking high-volume and offensive spammers, and investigating and responding to certain spam-related complaints.
2. I have knowledge of the facts set forth in this declaration, and if asked to testify, I could and would testify competently to these facts.
3. Microsoft owns and operates interactive computer services that enable its customers, among other things, to access the Internet and to exchange e-mail. One of those services is "MSN Hotmail." MSN Hotmail provides free and subscription based e-mail services on the Internet through a web-based service. MSN Hotmail accounts all have a unique e-mail address ending in one of several Internet domain names registered to Microsoft, such as @hotmail.com, @hotmail.uk, @hotmail.fr, and @msn.com. MSN Hotmail has millions of registered accounts.
4. MSN Hotmail can be classified as an "information service, system, or access software provider." MSN Hotmail provides software and hardware that allows multiple users to access its servers and to access the Internet through those servers.
5. Microsoft's servers and related computer systems are designed and created solely for the benefit of, and the non-commercial personal use of, its customers. They have finite capacity, and Microsoft has been required to expend substantial sums for new equipment and employee time to

handle the mass mailings by spammers. Although it costs very little for a spammer to transmit bulk e-mail messages, handling the enormous volume of e-mail initiated by spammers places a substantial burden on Microsoft. Spam demands storage space and processing capacity of Microsoft's servers and related computer systems, making those resources unavailable to serve the legitimate needs of Microsoft's customers. The diversion of these resources from processing authorized e-mail impairs their normal operation.

6. As part of Microsoft's ongoing efforts to combat spam, Microsoft has created and registered to itself a substantial number of MSN Hotmail e-mail accounts (the "Hotmail trap accounts"). E-mail messages sent to the Hotmail trap accounts are forwarded to a secure database and are assigned an individual identification number. Microsoft examines the e-mail received by the Hotmail trap accounts as one of the methods it uses to determine whether incoming mail complies with the Terms of Use and Anti-Spam Policy for its MSN and MSN Hotmail services.

7. Microsoft has never provided any consent to anyone to send e-mail messages to the Hotmail trap account addresses. The account addresses have not been provided to any person or entity for any marketing purpose whatsoever. The identity of the Hotmail trap accounts is confidential, and the account names must remain confidential, so that spammers cannot avoid detection by removing the accounts' e-mail addresses from their lists.

8. In approximately November 2004, January and March 2005, and April 2006, Microsoft (through its legal counsel) provided to the U.S. Federal Trade Commission copies of certain emails received by the Hotmail trap accounts. As to those records, I hereby certify:

(A) Such record was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

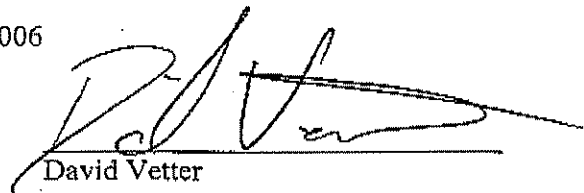
(B) Such record was kept in the course of a regularly conducted business activity;

(C) The business activity made such a record as a regular practice; and

(D) Such record is a duplicate of the original.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED ON: July 27, 2006


David Vetter