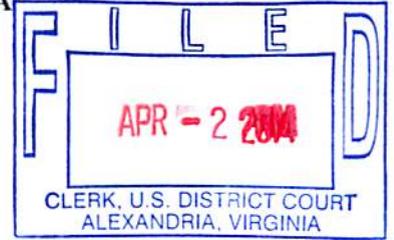


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division



MICROSOFT CORPORATION, a  
Washington corporation,

Plaintiff,

v.

MARAT MAZYNSKIJ, an individual, and  
DMITRY CHUPAKHIN (AKA "SERGEY  
SKOROVOD"), an individual,

Defendants.

Civil Action No: 1:13cv139 (LMB/TCB)

**INJUNCTION ORDER**

THIS MATTER came before the Court on Microsoft Corp.'s ("Microsoft") Motion for Default Judgment and Permanent Injunction against Defendant Dmitry Chupakhin ("Dmitry Chupakhin").

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court has considered Microsoft's motion, the brief and evidence submitted in support of the motion and the other pleadings, papers and evidence filed in this action. Based on the foregoing, the Court finds:

1. Defendant Dmitry Chupakhin was properly served with Microsoft's summons and Amended Complaint in this action. Dmitry Chupakhin was properly served and adequate notice was provided through means authorized by law, satisfying Due Process, satisfying Fed. R. Civ. P. 4(f)(2)(C)(i), 4(f)(2)(A) and 4(f)(3), and reasonably calculated to notify Dmitry Chupakhin of the Amended Complaint and this action. The Amended Complaint and summons were served upon Dmitry Chupakhin and notice provided by (1) personally delivering copies to Dmitry Chupakhin by registered delivery requiring Dmitry Chupakhin's signature, via international courier, (2) by

delivering copies by registered delivery requiring Dmitry Chupakhin's signature, via the Russian Post and (3) by transmitting copies by email to Dmitry Chupakhin's email addresses and to all email addresses used to register the Bamital botnet Internet domains and subdomains set forth in Appendix A and (4) by publishing copies on a publicly accessible Internet website.

2. Defendant Dmitry Chupakhin failed to appear, plead, or otherwise defend against Microsoft's action.

3. The time for answering Microsoft's Amended Complaint was 21 days from service of the summons and the Amended Complaint, and more than 21 days have elapsed since Defendant Dmitry Chupakhin was served.

4. This Court has jurisdiction over the subject matter of this case.

5. This Court has jurisdiction over Microsoft and Dmitry Chupakhin and venue in this action is proper.

6. Microsoft is entitled to entry of judgment and a permanent injunction against Defendant Dmitry Chupakhin.

7. Defendant Dmitry Chupakhin is neither incompetent nor an infant.

8. Microsoft claims against Defendant Dmitry Chupakhin for relief pursuant to: (1) the Computer Fraud and Abuse Act (18 U.S.C. § 1030); (2) the Electronic Communications Privacy Act (18 U.S.C. § 2701); (3) the Lanham Act (15 U.S.C. §§ 1114(a)(1), 1125(a), (c)); and (4) the common law of trespass, unjust enrichment and conversion.

9. Microsoft owns the registered trademarks "Bing," "Internet Explorer," "Microsoft," and "Windows" used in connection with its services, software and products.

10. Defendant Dmitry Chupakhin has engaged in and is likely to engage in acts or practices that violate the Computer Fraud and Abuse Act (18 U.S.C. § 1030); the Electronic Communications Privacy Act (18 U.S.C. § 2701); the Lanham Act provisions concerning trademark

infringement, false designation of origin, and trademark dilution (15 U.S.C. §§ 1114, 1125(a), 1125(c)), and the common law of trespass, unjust enrichment and conversion.

11. Unless Defendant Dmitry Chupakhin is permanently restrained and enjoined by Order of this Court, immediate and irreparable harm will result from the Defendant's ongoing violations. The evidence set forth in the Amended Complaint, Microsoft's application for temporary restraining order and preliminary injunction, and the accompanying declarations and exhibits, demonstrates that Microsoft is likely to prevail on its claim that Defendant has engaged in violations of the foregoing law by: (1) intentionally accessing and sending malicious code to Microsoft's and its customers' protected computers and Windows operating systems, without authorization and exceeding authorization, in order to infect those computers and make them part of the botnet; (2) sending malicious code to configure, deploy and operate a botnet; (3) taking control of internet search engine results, including results provided by Microsoft's Bing search engine, and redirecting clicks on those results to locations different from those intended by Microsoft and its customers, without their authorization or consent; (4) taking control of Microsoft's Internet Explorer browser and generating clicks through that browser without the authorization or consent of Microsoft or its customers; (5) creating unauthorized versions and instances of Microsoft's Internet Explorer browser, thereby creating unauthorized copies of Microsoft's Internet Explorer trademark and falsely indicating that such versions and instances of Internet Explorer are associated with or approved by Microsoft, the purpose of which is to deceive customers; (6) creating unauthorized versions and instances of Microsoft's Bing Search engine web page and functionality, thereby creating unauthorized copies of Microsoft's Bing trademark and falsely indicating that such versions and instances of the Bing search engine are associated with or approved by Microsoft, the purpose of which is to deceive customers; (7) creating and redirecting Microsoft's customers to websites containing unauthorized copies of Microsoft's trademarks, without the authorization or consent of

Microsoft or its customers, and falsely indicating that such websites are associated with or approved by Microsoft, the purpose of which is to deceive customers; (8) collecting personal information without authorization and content, including personal search engine queries and terms; and (9) delivering malicious code.

12. Defendant Dmitry Chupakhin will continue to engage in such unlawful actions if not permanently enjoined from doing so by Order of this Court. If such conduct continues, irreparable harm will occur to Microsoft, its customers, and the public.

13. The hardship to Microsoft, its customers, and the public resulting if permanent injunctive relief were not entered far outweighs any burden to Defendant Dmitry Chupakhin from entry of a permanent injunction. Defendant Dmitry Chupakhin has illegally infected end-user computers to enlist them into the Bamital botnet, a network of infected end-user computers operated over the Internet and used for illegal purposes. Microsoft, its customers, and the public are harmed by this activity through (1) the control of their Windows operating system, Internet Explorer software and Bing search engine functionality, without their consent, (2) the intrusion into protected computers and (3) deceptive use of Microsoft's trademarks. Therefore, the balance of hardships tips in favor of granting a permanent injunction.

14. The permanent injunction will benefit the public. Maintaining the relief put in place under the temporary restraining order and preliminary injunction will prevent the reconstitution of the command and control infrastructure of the Bamital botnet, will permit efforts to clean the Bamital malware from end-user computers and will sharply curtail the unlawful control and use of end-user computers. Therefore, a permanent injunction will have a favorable impact on the public interest.

15. Defendant Dmitry Chupakhin has engaged in and is likely to engage in illegal activity using the domains and subdomains identified in Appendix A to host the command and

control software and the malicious botnet code and content.

16. To keep Defendant Dmitry Chupakhin from resuming actions injurious to Microsoft and the public, Defendant must be enjoined from using the domains and subdomains identified in Appendix A and prohibited from accessing computer resources related to such domains and subdomains, and ownership and control of the domains and subdomains identified in Appendix A should be permanently transferred to Microsoft.

**IT IS THEREFORE ORDERED** as follows:

- A. Microsoft's Motion for Default Judgment and Permanent Injunction is GRANTED.
- B. Defendant Dmitry Chupakhin is in default.
- C. Microsoft is awarded judgment against Defendant Dmitry Chupakhin.
- D. Defendant Dmitry Chupakhin, his representatives and persons who are in active concert or participation with him are permanently restrained and enjoined from: Intentionally accessing and sending malicious software to Microsoft's Windows operating system and the protected computers, operating systems and Internet Explorer and Bing software and search functionality, of Microsoft's customers, without authorization, in order to infect those computers and software and make them part of the botnet; sending malicious software to configure, deploy and operate a botnet; creating or using software or the Bamital botnet or carrying out any other activities that falsely indicate association with or approval of Microsoft; infringing Microsoft's Microsoft, Windows, Internet Explorer or Bing trademarks; stealing information, computing resources or property from Microsoft or Microsoft's customers, or undertaking any similar activity that inflicts harm on Microsoft, its customers or the public.
- E. Defendant Dmitry Chupakhin, his representatives and persons who are in active concert or participation with him are permanently restrained and enjoined from configuring, deploying, operating or otherwise participating in or facilitating the Bamital botnet described in the Amended Complaint, including but not limited to the command and control software hosted at and operating through the domains, subdomains and IP addresses set forth in the Amended Complaint

and through any other component or element of the botnet in any location.

F. Defendant Dmitry Chupakhin, his representatives and persons who are in active concert or participation with him are permanently restrained and enjoined from using the trademarks “Microsoft,” “Windows,” “Internet Explorer,” and “Bing,” and/or other trademarks; trade names; service marks; or Internet Domain addresses or names; or acting in any other manner which suggests in any way that Defendant’s products or services come from or are somehow sponsored by or affiliated with Microsoft, and from otherwise unfairly competing with Microsoft, misappropriating that which rightfully belongs to Microsoft or Microsoft’s customers, or passing off goods or services as Microsoft’s.

G. Defendant Dmitry Chupakhin, his representatives and persons who are in active concert or participation with him are permanently restrained and enjoined from infringing Microsoft’s registered trademarks, Registration Nos. 2872708, 2463526, 2277112 and 388354.

H. Defendant Dmitry Chupakhin, his representatives and persons who are in active concert or participation with him are permanently restrained and enjoined from using in connection with Defendant’s activities any false or deceptive designation, representation or description of Defendant’s or of his representatives’ activities, whether by symbols, words, designs or statements, which would damage or injure Microsoft or give Defendant an unfair competitive advantage or result in deception of consumers.

I. Defendant Dmitry Chupakhin shall forfeit control of the domains and subdomains identified in Appendix A to this order to Microsoft.

J. Pursuant to the All Writs Act (28 U.S.C. § 1651), the domain registries and domain registrars of the Bamital botnet domains and third-party subdomain providers responsible for the subdomains identified in Appendix A to this Order (collectively the “Domain And Subdomain Providers”) shall implement the provisions of this order in the following fashion:

1. Transfer the domains and subdomains to the control of Microsoft, such that Microsoft is the registrant with control over hosting and administration of the domains and subdomains. Domains should be transferred to Microsoft’s account at the sponsoring registrar MarkMonitor or such other registrar and account details specified by Microsoft. Subdomains should

be transferred to subdomain accounts under control of Microsoft, at the relevant subdomain provider.

2. The WHOIS or equivalent subdomain registrant, administrative, billing and technical contact and identifying information should be the following, or other information as may be specified by Microsoft:

Domain Administrator  
Microsoft Corporation  
One Microsoft Way  
Redmond, WA 98052  
United States  
Phone: +1.4258828080  
Facsimile: +1.4259367329  
domains@microsoft.com

3. The domains and subdomains shall be made active and shall resolve in the manner set forth in this order, or as otherwise be specified by Microsoft, upon its taking control of the domains and subdomains.

4. The domains and subdomains shall be assigned the authoritative name servers ns3.microsoftinternetsafety.net and ns4.microsoftinternetsafety.net and, as may be necessary, the IP address associated with name server ns3.microsoftinternetsafety.net to 157.56.78.93 and the IP address associated with name server ns4.microsoftinternetsafety.net to 157.56.78.73 or such other name servers or IP addresses specified by Microsoft, and the Domain And Subdomain Providers shall take other reasonable steps to work with Microsoft to ensure that the domains and subdomains are put within Microsoft's control, and to ensure that Defendant cannot use them to control the botnet.

5. The domains and subdomains shall remain active and continue to resolve in the manner set forth in this Order.

6. The Domain And Subdomain Providers shall prevent transfer or modification of the domains and subdomains by Defendant and shall prevent transfer or control of the domains and subdomains to the account of any party other than Microsoft.

7. The Domain And Subdomain Providers shall take all steps required to

propagate to the foregoing changes through the DNS, including domain registrars and/or subdomain services.

8. Non-U.S. Domain And Subdomain Providers are respectfully requested, but are not ordered, to comply with the foregoing steps, in order to protect the integrity and security of the Internet, to protect end-user victims of the Bamital botnet in all countries, to advance the public interest and to protect Microsoft and its customers from the Bamital botnet.

9. Third-party The Internet Corporation for Assigned Names and Numbers ("ICANN"), 12025 Waterfront Dr., Suite 300, Los Angeles, California, 90094, is respectfully requested, but is not ordered, to use its best efforts to assist and facilitate the transfer of U.S.-based domains set forth in Appendix A, to Microsoft.

**IT IS SO ORDERED**

Entered this 2<sup>nd</sup> day of April, 2014.

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Leonie M. Brinkema  
United States District Judge