

**MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
ST. LOUIS CITY**

BING! INFORMATION DESIGN, LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Serve: CSC – Lawyers Incorporating Service
Company
221 Bolivar Street
Jefferson City, MO 65101

Defendant.

Case No. *0922-AC18341*

Division *27*

JURY TRIAL DEMANDED

PETITION

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COMES NOW Plaintiff, Bing! Information Design, LLC, by and through its undersigned counsel, and for its claims and causes of action against Defendant Microsoft Corporation, alleges:

1. Plaintiff Bing! Information Design, LLC ("Plaintiff") is a Washington limited liability corporation.
2. Defendant Microsoft Corporation ("Defendant") is now and was at all times mentioned herein a duly organized and existing corporation, incorporated in the state of Washington, with offices and agents for the transaction of its usual and customary business in the State of Missouri. Defendant also maintains a registered agent in the State of Missouri for the service of process.
3. This is an action for trademark infringement and unfair competition under state law and for likelihood of injury to business reputation, dilution, and unfair trade practices under state law as well as other torts. Plaintiff specifically states that this petition pleads no federal

cause of action under the Lanham Act, 15 U.S.C. §1125 *et seq.* or any other Federal Act.

4. Plaintiff engaged in Internet related services, including the creation of interactive and computer-related illustrations, designs, interactive graphics, animations, and technical diagrams, and related services. Plaintiff has used the mark “Bing!” since at least 2000 and has applied for registration of its mark in Missouri. Plaintiff utilizes the Internet, search engines, and its webpage as a primary source of advertising and promotion.

5. Microsoft Corporation first launched its Internet business, including a visual/graphics search component, named “bing” in 2009. Microsoft Corporation has spent substantial sums advertising the name of the search engine, “bing,” and promoting the “bing” name and mark, thus, creating confusion and/or reverse confusion and damage to Plaintiff who had previously been utilizing its trademark “Bing!”.

Venue

6. Venue is proper in the Circuit Court of St. Louis City pursuant to MO. REV. STAT. § 508.010 because the cause of action Plaintiff was first injured in the City of St. Louis. Plaintiff further states upon information and belief that Defendant has offices or agents for the transaction of their usual and customary business within the City of St. Louis.

COUNT I

Common Law Trademark Infringement and Unfair Competition (Injury to business reputation and dilution under state law)

COMES NOW Plaintiff Bing! Information Design, LLC and for its first count against Defendant Microsoft Corporation, states as follows:

7. Plaintiff re-alleges and incorporates by reference all allegations set forth in paragraphs 1 through 6 as if fully set out herein.

8. This cause of action is for common law trademark infringement, unfair

competition and injury to business reputation and dilution under Missouri state law.

9. Plaintiff is the owner of the trademark Bing! for use in connection with its Internet-based business, including its graphics and design business and related services.

10. Bing! Information Design, LLC began using its trademark on or before 2000.

11. Since at least 2000, Plaintiff has used the “Bing!” mark in connection with its business and has continued to use the mark without interruption up to the present time. Bing! Information Design, LLC has used the “Bing!” mark in Missouri, including the City of St. Louis, Florida, Washington, as well as other states throughout the United States and internationally.

12. As a result of Plaintiff’s advertising and promotion of the “Bing!” mark, including its website and Internet usage, Plaintiff has acquired a valuable reputation and goodwill in its business and related services.

13. As a result of the sales, advertising, and promotion of its services under the “Bing!” mark, Plaintiff has established significant good will associated with the “Bing!” mark. The “Bing!” mark is inherently distinctive and also has acquired secondary meaning.

14. Plaintiff has expended substantial sums in advertising and promoting its business under the “Bing!” mark. The advertising and promotion of the “Bing!” mark has including print advertisement, one-on-one business meetings, Internet promotion and advertisements, and other ways customary to the business. The “Bing!” mark has been prominently displayed in advertising and promotion.

15. Well after Plaintiff established its rights in the “Bing!” mark, Defendant began using and intends to continue to use the mark of “bing” in connection with its Internet business, which includes image searches, refined graphics location, facilitating e-commerce through consumer use, access, and purchase of graphics and images, and assisting consumers in decision-

making.

16. Defendant's use of the "bing" mark has caused confusion, is likely to cause confusion, including reverse confusion, mistake, or deception as to the affiliation, connection, or association of Defendant with "Bing!", or as to the origin, sponsorship, or approval of Defendant's goods and/or services by "Bing!". Defendant's acts will cause substantial harm to the good will, business reputation, and profits of Plaintiff unless the relief sought herein is granted. These acts constitute trademark infringement and unfair competition.

17. Defendant's acts are in violation of the common law of the various states in which Defendant and Plaintiff do business, including the State of Missouri.

18. Plaintiff has no adequate remedy at law inasmuch as money damages alone would not indemnify Plaintiff for the permanent loss of its proprietary rights, established good will, and business reputation. Unless this Court acts to enjoin Defendant, the acts of Defendant herein complained of will cause irreparable damages to Plaintiff's enterprises, property rights, good will, and business reputation.

19. Defendant should be required to pay to Plaintiff its damages, including damages for corrective advertising to remedy and prevent confusion and reverse confusion, all profits derived from or damages suffered by Plaintiff as a result of Defendant's wrongful use and display of the "bing" name.

COUNT II

(Action for Injunctive Relief Pursuant to MO. REV. STAT. § 417.061)

COMES NOW Plaintiff Bing! Information Design, LLC and for its second count against Defendant Microsoft Corporation, states as follows:

20. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 through 19 as if fully set out herein.

21. Plaintiff is the owner of the “Bing!” mark, and has applied to register the mark under MO. REV. STAT. §§ 417.005 and 417.016.

22. As set forth above, there is a likelihood of injury to the business reputation or dilution of the distinctive quality of the “Bing!” mark, registered under MO. REV. STAT. §§ 417.005 and 417.016, as well as the “Bing!” mark which is valid at common law such that Plaintiff is entitled to an injunction on the use of the “bing” name under MO. REV. STAT. §§ 417.061.1 and 417.061.2.

23. Defendant should be required to pay to Plaintiff its damages, including damages for corrective advertising to remedy and prevent confusion and reverse confusion, all profits derived from or damages suffered by Plaintiff as a result of Defendant’s wrongful use and display of the “bing” name.

COUNT III
(Violations of MO. REV. STAT. § 417.056)

COMES NOW Plaintiff Bing! Information Design, LLC and for its third count against Defendant Microsoft Corporation, states as follows:

24. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 through 23 as if fully set out herein.

25. Plaintiff is the owner of the “Bing!” mark, and has applied to register the mark under MO. REV. STAT. §§ 417.005 and 417.016.

26. Defendant uses the “bing” name in connection with the sale, offering for sale, or advertising of its services on or in connection therewith, which is likely to cause confusion or mistake or to deceive as to the source of the origin of such services.

27. Defendant, therefore, is liable to Plaintiff for damages, including corrective advertising to remedy and prevent confusion and reverse confusion, lost profits because

Defendant committed its acts with knowledge that use of the name “bing” would cause confusion, mistake, or deception.

COUNT IV
(Tortious Interference with Business Expectancy)

COMES NOW Plaintiff Bing! Information Design, LLC and for its fourth count against Defendant Microsoft Corporation, states as follows:

28. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 through 27 as if fully set out herein.

29. Plaintiff has a valid business expectancy in its trademark “Bing!” and the use of the “Bing!” and the use of the “Bing!” mark in connection with advertising and promoting its business.

30. Defendant had knowledge of the mark and Plaintiff’s expectancy in the use of the mark.

31. Defendant intentionally interfered with Plaintiff’s business expectancy by purposely promoting the name “bing” in such a way as to cause confusion and dilution of the value of Plaintiff’s trademark.

32. Defendant’s intentional interference with Plaintiff’s business expectancy was without justification or excuse in that they were driven by the improper motive to harm Plaintiff and to dilute and damage Plaintiff’s trademark to the detriment of Plaintiff.

33. As a result of Defendant’s conduct, Plaintiff has been damaged.

34. Defendant should be required to pay to Plaintiff its damages, including damages for corrective advertising and reverse confusion, all profits derived from or damages suffered by Plaintiff as a result of Defendant’s wrongful use and display of the “bing” name.

35. Defendant’s conduct was outrageous due to its evil motive or reckless

interference with the rights of Plaintiff, thereby justifying an award of punitive damages in an amount to punish Defendant and to deter others from like conduct.

COUNT V
(Punitive Damages)

COMES NOW Plaintiff Bing! Information Design, LLC and for its fifth count against Defendant Microsoft Corporation, states as follows:

36. Plaintiff re-alleges and incorporates by reference all allegations set forth in paragraphs 1 through 35 as if fully set out herein.

37. Defendant, prior to using, promoting, and advertising its name “bing,” knew of Plaintiff’s use of its trademark “Bing!”

38. Defendant knew that its promotion of the name “bing” would cause confusion, dilution, and harm to Plaintiff’s business and trademark.

39. Defendant’s use of the name “bing” and its intent to harm Plaintiff was due to its evil motive or reckless indifference to the rights of Plaintiff and is sufficient to award punitive damages in an amount sufficient to punish Defendant and deter Defendant and others from like conduct.

WHEREFORE, Plaintiff Bing! Information Design, LLC demands judgment against Defendant Microsoft Corporation as follows:

A. That Defendant, its officers, agents, sales representatives, servants, employees, associates, successors and assigns, and all persons acting under its control, by, through, under, or in active concert or in participation with them, be preliminary and permanently enjoined from:

- 1) Using any mark that is likely to cause confusion with the “Bing!” mark;
- 2) Using any mark or doing any act or thing likely to induce the belief on the

part of the public or Plaintiff's customers or potential customers that Defendant's goods or services are in any way connected with Bing! Information Design, LLC; and

- 3) Printing, publishing, promoting, lending, or distributing any advertisement, whether written, audio, or visually portrayed which use or refer to the "Bing!" mark, or any confusingly similar mark (including "bing").
- B. That Defendant deliver up for the destruction all advertising, literature, and other forms of promotional material bearing the word "bing" including, but not limited to, removing all such words from Defendant's websites;
- C. That Defendant be required to pay Plaintiff such damage as Plaintiff has sustained as a result of Defendant's infringement of the "Bing!" mark, including payment for corrective advertising to remedy and prevent confusion and reverse confusion, and that Defendant's account for and pay over to Plaintiff all gains, profits, and advantages derived by Defendant from such infringement;
- D. That Defendant makes a full report to this Court of its compliance of the foregoing within thirty (30) days of judgment;
- E. For a fair and just amount of actual damages;
- F. For punitive damages; and
- G. For such other and further relief which may be deemed just and proper.

THE SIMON LAW FIRM, P.C.

By: _____


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