

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

JDO MEDIA, INC., et al.,

Defendants.

No. C04-0515P

DECLARATION OF ROBERT
DZIELAK IN SUPPORT OF
PLAINTIFF MICROSOFT
CORPORATION'S MOTION TO
COMPEL DOCUMENTS FROM JDO
MEDIA, INC.

1. I am one of the attorneys for plaintiff Microsoft Corporation in this action. I have knowledge of the facts set forth in this declaration, and I am competent to testify.

2. In response to JDO Media, Inc.'s ("JDO") Motion to Dismiss for lack of personal jurisdiction, Microsoft and JDO agreed to postpone briefing and the hearing on that motion while the parties conducted jurisdictional discovery. Microsoft propounded written discovery to JDO on April 26, 2004, and subsequently took the depositions of John McLeod (JDO's President) and five members / contractors of the 1upautomated program who reside in Washington State.

3. During McLeod's deposition, Microsoft learned that certain information and documents exist that were not provided in response to Microsoft's discovery requests.

Accordingly, on August 4, 2004, Microsoft wrote to JDO requesting certain information.

DECLARATION OF ROBERT DZIELAK IN
SUPPORT OF PLAINTIFF MICROSOFT'S
MOTION TO COMPEL - 1
CASE NO. C04-0515P

1 Attached hereto at pages 4-5 is a true and correct copy of the August 4, 2004 letter. Microsoft
2 did not receive a response from JDO and, therefore, wrote to JDO again on August 30, 2004,
3 requesting that JDO provide the information outlined in Microsoft's August 4, 2004 letter.

4 Attached hereto at pages 6-7 is a true and correct copy of the August 30, 2004 letter. JDO,
5 again, did not provide the requested information. Microsoft then wrote to JDO on September
6 16, 2004, reiterating its request for the information outlined in its August 4, 2004 letter.

7 Attached hereto at page 8 is a true and correct copy of the September 16, 2004 letter. JDO
8 still did not provide the requested information. Finally, on October 18, 2004, Microsoft again
9 wrote to JDO requesting the information outlined in its August 4, 2004 letter. Attached hereto
10 at page 9 is a true and correct copy of the October 18, 2004 letter. JDO continued to fail to
11 provide the requested information.

12 4. Since August 4, 2004, JDO's counsel repeatedly assured Microsoft that he was
13 setting up a meeting with his client to obtain the information requested by Microsoft. A few
14 of these meetings had to be postponed due to hurricanes in Florida. Despite these assurances,
15 JDO never produced the information outlined in Microsoft's August 4, 2004 letter. At no
16 time did JDO ever object to producing the requested information.

17 5. Because of JDO's failure to produce the information requested in Microsoft's
18 August 4, 2004 letter, Microsoft has been unable to complete jurisdictional discovery.

1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct:

3 EXECUTED this 29th day of November, 2004 at Seattle, Washington.

4
5 /s/ Robert J. Dzielak

6 Robert J. Dzielak
7 Preston Gates Ellis LLP
8 925 Fourth Avenue, Suite 2900
9 Seattle, WA 98104
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DECLARATION OF ROBERT DZIELAK IN
SUPPORT OF PLAINTIFF MICROSOFT'S
MOTION TO COMPEL - 3
CASE NO. C04-0515P

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Robert J. Dzielak
Attorney at Law
robertd@prestongates.com

August 4, 2004

VIA FACSIMILE: ORIGINAL TO BE MAILED

Wrede Kirkpatrick
Fowler White Boggs Banker
501 East Kennedy Blvd.
Suite 1700
Tampa, FL 33602

Re: *Microsoft Corporation v. JDO Media, Inc., et al.*

Dear Wrede:

Based on information learned in the 30(b)(6) deposition of JDO Media, Microsoft requests that JDO Media produce the information and documents listed below. This information is encompassed in Microsoft's discovery requests and is relevant on the issue of personal jurisdiction. Microsoft requests that this information be produced no later than August 13, 2004, so that the parties can stay on track with completing jurisdictional discovery by August 30, 2004.

- A detailed ledger of all bills of the 1upautomated program paid by JDO Media.
- Log-in files for the back office of the 1upautomated.com website.
- Detailed Chex Card account ledgers for both John McLeod and David Penn.
- Contact information for Jim Vigilante and Carol Douthitt
- A copy of the contract between JDO Media and Wealth Showcase and/or Nick Skolsky.
- A list of all of the leads purchased by JDO and/or the 1upautomated system from Wealth Showcase and/or Nick Skolsky.
- The contact information for Royal Responder and/or Todd Smith.
- A copy of any contracts that JDO Media had with Royal Responder and/or Todd Smith.
- Records of any payments to Andrew Jaffe for email lists purchased by JDO Media and used in the 1upautomated program.

As I mentioned during the deposition, Microsoft would like to image JDO's servers. The information residing on servers used by JDO for the 1upautomated program are relevant not only to the substantive issues in this lawsuit, but also contain information relevant to personal jurisdiction, including the information listed above. The cost to JDO for this work will be

August 4, 2004
Page 2

minimal, if any. Please let me know when it would be convenient for your client to allow Microsoft to image those servers.

Very truly yours,

PRESTON GATES & ELLIS LLP

By 

Robert J. Dzielak

RJD:rjd

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Robert J. Dzielak
Attorney at Law
robertd@prestongates.com

August 30, 2004

VIA FACSIMILE: ORIGINAL TO BE MAILED

Wrede Kirkpatrick
Fowler White Boggs Banker
501 East Kennedy Blvd.
Suite 1700
Tampa, FL 33602

Re: *Microsoft Corporation v. JDO Media, Inc., et al.*

Dear Wrede:

I sent you a letter on August 4, 2004, requesting that JDO Media produce certain documents. We have not yet received any of the requested documents. As I indicated in my August 4, 2004 letter, these documents are encompassed in Microsoft's discovery requests to JDO and are relevant to the issue of personal jurisdiction. If JDO does not produce the requested documents by Friday, September 3, 2004, Microsoft will have no choice but to file a motion to compel and request that the Court postpone JDO's motion to dismiss until those documents are produced in full.

Microsoft also reiterates its request to image the servers used by JDO in the lupautomated program. If JDO will not agree to allow Microsoft to image the servers used in the lupautomated program, Microsoft will seek leave of Court.

We have now completed three of the five depositions scheduled of JDO members. Mr. Held's deposition is scheduled for Tuesday, September 7, 2004 at 10:30 a.m. As you know, we had to continue the deposition of Mr. Heye. Based on my availability, I propose completing that deposition on September 9, 15, 16, or 17. I have requested that Mr. Heye let me know which date works best for him. Once I have that information, I will let you know. If you are not available on any of those dates, please let me know as soon as possible.

Once JDO has produced the requested documents and we have scheduled Mr. Heye's deposition I will propose a briefing schedule on JDO's motion to dismiss.

August 4, 2004

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The following are the documents requested in my August 4, 2004 letter.

- A detailed ledger of all bills of the 1upautomated program paid by JDO Media.
- Log-in files for the back office of the 1upautomated.com website.
- Detailed Chex Card account ledgers for both John McLeod and David Penn.
- Contact information for Jim Vigilante and Carol Douthitt
- A copy of the contract between JDO Media and Wealth Showcase and/or Nick Skolsky.
- A list of all of the leads purchased by JDO and/or the 1upautomated system from Wealth Showcase and/or Nick Skolsky.
- The contact information for Royal Responder and/or Todd Smith.
- A copy of any contracts that JDO Media had with Royal Responder and/or Todd Smith.
- Records of any payments to Andrew Jaffe for email lists purchased by JDO Media and used in the 1upautomated program.

Very truly yours,

PRESTON GATES & ELLIS LLP



By
Robert J. Dzielak

RJD:rjd

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Robert J. Dzielak
Attorney at Law
robertd@prestongates.com

September 16, 2004

VIA FACSIMILE: ORIGINAL TO BE MAILED

Wrede Kirkpatrick
Fowler White Boggs Banker
501 East Kennedy Blvd.
Suite 1700
Tampa, FL 33602

Re: *Microsoft Corporation v. JDO Media, Inc., et al.*

Dear Wrede:

I have sent you two letters (August 4 and August 30) requesting that JDO Media produce certain documents. When we last spoke, you indicated that you were going to have a "face-to-face" meeting with your client during the week of September 6, regarding production of those documents. As of the date of this letter, I still have not received the documents requested in my letters of August 4 and 30. Production of these documents is long overdue and my next course of action will be to file a motion to compel. Please let me know when I can expect to receive those documents.

Very truly yours,

PRESTON GATES & ELLIS LLP



By
Robert J. Dzielak

RJD:rjd

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October 18, 2004

VIA FACSIMILE: ORIGINAL TO BE MAILED

G. Wrede Kirkpatrick
Fowler White Boggs Banker
501 E. Kennedy Blvd., Suite 1700
Tampa, FL 33602

Re: *Microsoft Corporation v. JDO Media, Inc., et al.*

Dear Wrede:

This is my fourth letter inquiring when JDO Media will be producing certain documents relevant to the issue of personal jurisdiction (the previous three letters were sent on August 4, August 30, and September 16). I still do not have a sense of when JDO Media will be producing the documents that were outlined in my August 4, 2004 letter. As you know, the parties' Updated Joint Status Report indicates that JDO Media and Microsoft will be completing jurisdictional discovery by October 22, 2004. Please let me know when I can expect to receive the documents outlined in my August 4, 2004 letter. Once we have a complete set of those documents, I would like to discuss with you a briefing schedule for JDO Media's motion to dismiss.

Please note, I will be out of the office during the week of October 25, 2004.

Very truly yours,

PRESTON GATES & ELLIS LLP



By
Robert J. Dzielak

RJD:rjd

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