

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

PLAINTIFF MICROSOFT
CORPORATION'S MOTION FOR
ORDER OF DEFAULT AGAINST
DEFENDANT JDO MEDIA, INC.

NOTE ON MOTION CALENDAR:
DECEMBER 21, 2004

Plaintiff Microsoft Corporation ("Microsoft") respectfully moves for an order of default against defendant JDO Media, Inc. (hereinafter "JDO").

STATEMENT OF FACTS

This is an action for trespass to chattels, conversion, and for violations of the Federal CAN-SPAM Act (15 U.S.C. §7701 *et seq.*), the Washington Commercial Electronic Mail Act (RCW Ch. 19.190), the Washington Consumer Protection Act (RCW Ch. 19.86), the Federal Computer Fraud and Abuse Act (18 U.S.C. §1030(a)(4),(5), (g)), and the Lanham Act (15 U.S.C. §1125(a)). Defendants, including JDO, have engaged in widespread spamming by transmitting, procuring the transmission, and/or assisting the transmission of misleading, deceptive, and unsolicited commercial e-mail messages. *See* Second Amended Complaint ¶¶ 26-34.

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1 Defendant JDO was originally served with a Summons and Complaint on March 10,
2 2004. *See* Declaration of Robert J. Dzielak (“Dzielak Decl.”) ¶ 2 (p. 1). JDO, through
3 counsel, filed a notice of appearance. *Id.* JDO’s counsel subsequently moved for leave to
4 withdraw. *Id.* On December 20, 2004, the Court granted JDO’s counsel leave to withdraw.
5 *See* Order Granting Motion for Leave to Withdraw. The Court’s order provides that the
6 withdrawal is effective “immediately.” *Id.* Microsoft has not been notified, either formally or
7 informally, that JDO has secured new counsel. *See* Dzielak Decl. ¶ 3 (p. 1).

8 Jurisdiction and venue are proper in this Court because a substantial part of the events
9 or omissions giving rise to the claims set forth in Microsoft’s complaint occurred in King
10 County, the cause of action arose in King County, and work was performed in King County.
11 Dzielak Decl. at ¶ 4 (p. 1); Complaint ¶ 4-6.

12 STATEMENT OF ISSUE

13 Whether an order of default should be entered against Defendant JDO.

14 EVIDENCE RELIED UPON

15 This motion is based on the Declaration of Robert J. Dzielak, and the pleadings and
16 papers previously filed.

17 AUTHORITY AND ARGUMENT

18 As a corporation, JDO cannot carry on this litigation *pro se*. *Church of the New*
19 *Testament v. United States*, 783 F.2d 771 (9th Cir. 1986). Pursuant to the local rules for the
20 United States District Court for the Western District of Washington, “if the attorney for a
21 corporate party is permitted to withdraw and no new attorney has appeared by the date the
22 withdrawal is effective, the court may... enter a default against the corporation as to any
23 claims of other parties.” GR 2(f)4). JDO’s counsel’s withdrawal was effective on December
24 20, 2004. *See* Order Granting Motion for Leave to Withdraw. Because no new attorney has
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1 appeared for JDO and the withdrawal was effective December 20, 2004, Microsoft requests
2 that the Court enter an order of default against JDO.

3 PROPOSED ORDER

4 A proposed form of order is attached.

5 DATED this 21st day of December, 2004.

6 PRESTON GATES & ELLIS LLP

7
8 By /s/ Robert J. Dzielak

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