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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STORM PRODUCTIONS LLC, on behalf of
itself and all others similarly situated,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

No.

COMPLAINT—CLASS ACTION

JURY DEMAND

CLASS ACTION COMPLAINT

Plaintiff Storm Productions LLC brings this class action complaint, on behalf of itself and all others similarly situated, against Defendant Microsoft Corporation for surreptitiously stealing their rightfully earned affiliate marketing commissions through the Microsoft Shopping browser extension. Plaintiff makes these allegations based on personal knowledge as to itself and on information and belief as to all other matters.

INTRODUCTION

1. Microsoft Shopping is a free browser extension with millions of users that claims to help online shoppers search for discounts, find better prices, and earn cash-back rewards.

1 12. Affiliate marketing is one of the fastest-growing industries. It has grown 83% since
2 2017.¹ According to one estimate, affiliate-marketing spending exceeded \$9.5 billion in 2023 and
3 will reach nearly \$16 billion by 2028.²

4 13. Here is how affiliate marketing works: a content creator advertises a merchant’s
5 product or service to their audience and shares a unique affiliate link that directs consumers to the
6 merchant’s website. When a consumer clicks on the link, a cookie—a small text file that ties the
7 consumer’s activity to the content creator—is placed on their browser. Merchants then use this
8 cookie to confirm the content creator referred the consumer and attribute the resulting sale, and
9 the resulting commission, to the creator. The cookie remains active for a set period (for example,
10 14 or 30 days), ensuring the content creator receives credit for a sale if the consumer completes a
11 purchase within that time frame.

12 **II. Microsoft Shopping: A Free Browser Extension That Comes at a Cost**

13 14. Microsoft launched its Microsoft Shopping browser extension in 2020. Microsoft
14 markets the extension as a free tool that helps consumers find “coupons, discounts, and cashback
15 offers on just about anything” while online shopping.³ It also promises that Microsoft Shopping
16 will “search[] the web to find the best prices online” and “keep[] track of an item’s price after
17 you’ve made the purchase.”⁴

20 ¹ Charlotte Muzzi, *Affiliate Marketing Statistics You Can’t Ignore in 2024*, Shopify (July 31,
2024), <https://www.shopify.com/blog/affiliate-marketing-compliance>.

21 ² *Affiliate Marketing 101: What It Is and How to Get Started*, BigCommerce (Dec. 20, 2024),
<https://www.bigcommerce.com/articles/ecommerce/affiliate-marketing/>.

22 ³ *Shop Smarter with Microsoft Edge*, Microsoft Edge Shopping, <https://www.microsoft.com/en-us/edge/shopping?form=MG0AU0&cs=4112006293> (last visited Jan. 30, 2025).

23 ⁴ *Id.*

1 15. Unlike typical browser extensions that consumers must actively seek out and
2 install, Microsoft Shopping comes pre-installed on Microsoft Edge—the default web browser on
3 all Windows computers and the third most popular browser in the United States.

4 16. Since its launch in 2020, Microsoft has expanded Microsoft Shopping’s reach by
5 making the extension available on other popular web browsers like Google Chrome, the world’s
6 most widely used browser. Microsoft has also integrated Microsoft Shopping directly into its Bing
7 search engine, allowing the tool to reach consumers who use web browsers that do not support the
8 extension, like Mozilla Firefox and Safari. As a result, millions of individuals use Microsoft
9 Shopping.

10 17. But Microsoft Shopping does far more than just help consumers save money.
11 Behind the scenes, the browser extension acts to steal affiliate commissions from content creators
12 by swapping their affiliate cookies for Microsoft’s own without their knowledge. In so doing,
13 Microsoft turns the extension’s millions of users into unwitting participants in a large-scale scheme
14 against content creators.

15 18. Recall that when a consumer clicks on a content creator’s affiliate link, that link
16 sends them to a merchant’s website. And once there, a tracking cookie is placed on the user’s
17 browser that identifies the content creator as the source of the referral. The consumer then adds a
18 product to their cart. As they proceed through the checkout process, a Microsoft Shopping pop-up
19 might appear that says the browser extension found coupons, and it entices the user to click “Try
20 all coupons” to test and apply them. When the user clicks this button, Microsoft Shopping quietly
21 removes the content creator’s affiliate cookie and replaces it with Microsoft’s cookie—whether or
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1 not any coupons actually work—thereby diverting the content creator’s affiliate commission for
2 the resulting sale to Microsoft.

3 19. As another example, even when Microsoft Shopping finds no coupons, a pop-up
4 might appear that says the consumer can “[g]et up to 12% cash back” and prompts the user to click
5 “OK.” When the consumer clicks that button, Microsoft Shopping likewise replaces the content
6 creator’s affiliate cookie with Microsoft’s cookie, causing Microsoft to receive the content
7 creator’s affiliate commission.

8 20. This covert practice of systematically overriding affiliate cookies enables Microsoft
9 to divert affiliate commissions from the content creators who rightfully earned them to itself by
10 exploiting the “last-click attribution” industry standard. Under this attribution model, the affiliate
11 who last referred a consumer to the website before the consumer completes a purchase receives
12 full credit for the sale.

13 21. Microsoft’s scheme to steal content creators’ affiliate commissions is deceptive,
14 unfair, and unlawful. And as a direct result of Microsoft’s wrongful actions, Plaintiff and class
15 members regularly lose commissions they rightfully earn.

16 **III. Plaintiff’s Experience**

17 22. Since 2008, Plaintiff has operated a popular shopping blog called Madison Avenue
18 Spy that showcases the best deals in the fashion world via affiliate links. The blog has nearly
19 22,000 subscribers and generates significant traffic. Plaintiff also runs an Instagram account by the
20 same name and a Substack called MadSpy, where it also regularly posts fashion affiliate links. The
21 Instagram account has approximately 110,000 followers, and the Substack has over 12,000
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1 subscribers. In addition to these platforms, Madison Avenue Spy has an online presence on
2 Pinterest, TikTok, X (formerly Twitter), Facebook, and Telegram.

3 23. Plaintiff invests substantial time and effort into cultivating its follower-base,
4 searching for the best fashion deals from online merchants, and promoting those deals online.

5 24. Plaintiff regularly partners with merchants, either directly or through third-party
6 affiliate networks, to advertise their products through affiliate links. Plaintiff directly influences
7 millions of dollars in retail purchases every year.

8 25. For years, Plaintiff has earned substantial commissions on sales generated via
9 affiliate links.

10 26. Plaintiff would have earned more in commissions but for Microsoft's scheme to
11 poach commissions via its Microsoft Shopping browser extension. Through this extension,
12 Microsoft stole credit for sales that Plaintiff generated with its affiliate links.

13 **CLASS ACTION ALLEGATIONS**

14 27. Under Federal Rules of Civil Procedure 23(a), (b)(1), (b)(3), and/or (c)(4), Plaintiff
15 asserts claims on behalf of itself and the following proposed class and subclass:

16 **Nationwide class:** All persons (corporate or individual) in the United States
17 who have participated in an affiliate marketing program with a United States
18 online merchant and had their commissions diverted to Microsoft via the
19 Microsoft Shopping browser extension.

20 **New York subclass:** All persons (corporate or individual) residing in New
21 York who have participated in an affiliate marketing program with a United
22 States online merchant and had their commissions diverted to Microsoft via
23 the Microsoft Shopping browser extension.

1 28. The class excludes Microsoft and its officers, directors, management, employees,
2 subsidiaries, and affiliates; the judicial officers presiding over this action, their immediate family
3 members, and judicial staff; and governmental entities.

4 29. This action satisfies all the relevant Rule 23 requirements

5 30. The classes are so numerous that joinder of all members is impracticable. There are
6 at least tens of thousands of class members geographically dispersed throughout the United States.
7 The precise number of class members and their identities are unavailable to Plaintiff at this time
8 but may be determined through discovery, including of Microsoft's records.

9 31. Plaintiff's claims are typical of other class members' claims because, like every
10 class member, Plaintiff has participated in an affiliate marketing program with at least one United
11 States online merchant and, upon information and belief, has had its commissions diverted by
12 Microsoft via the Microsoft Shopping browser extension. The factual and legal bases of
13 Microsoft's liability are the same and resulted in injury to Plaintiff and all class members.

14 32. Common questions of law and fact exist as to all class members, and those
15 questions predominate over questions affecting only individual class members. Common legal and
16 factual questions include but are not limited to: (1) whether Microsoft designed its Microsoft
17 Shopping browser extension to divert commissions earned by content creators to Microsoft;
18 (2) whether the Microsoft Shopping browser extension in fact diverted commissions earned by
19 content creators to Microsoft; (3) whether Microsoft was unjustly enriched to the detriment of
20 Plaintiff and class members in the form of commission payments; (4) as to the New York subclass,
21 whether Microsoft's acts and practices violated the New York Deceptive Practices Act, N.Y. Gen.
22 Bus. Law § 349; (5) whether Microsoft's acts and practices harmed Plaintiff and class members;

1 (6) whether Plaintiff and class members are entitled to damages and other monetary relief, and if
2 so, the appropriate measure of such relief; and (7) the nature and scope of appropriate injunctive
3 relief.

4 33. Plaintiff is an adequate representative of class members because its interests do not
5 conflict with their interests, it has retained competent counsel experienced in prosecuting class
6 actions, and it intends to prosecute this action vigorously. The interests of class members will be
7 fairly and adequately protected by Plaintiff and its counsel.

8 34. The class mechanism is superior to other available means for the fair and efficient
9 adjudication of class members' claims. Individual class members may lack the resources to
10 undergo the burden and expense of individual prosecution of the complex and extensive litigation
11 necessary to establish Microsoft's liability. Individual litigation would increase the delay and
12 expense to all parties and multiply the burden on the judicial system by the complex legal and
13 factual issues of this case. Individual litigation would also present a potential for inconsistent or
14 contradictory judgments. By contrast, the class action device presents far fewer management
15 difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive
16 supervision by a single court on the issue Microsoft's liability. Class treatment of the liability
17 issues will ensure that all claims and claimants are before this Court for consistent adjudication.

18 35. Additionally, Microsoft has acted or refused to act on grounds that apply generally
19 and uniformly to Plaintiff and class members, such that classwide final injunctive relief and
20 corresponding declaratory relief is appropriate.

1 **CAUSES OF ACTION**

2 **COUNT I**

3 **Unjust Enrichment**

On behalf of Plaintiff and the class

4 36. Plaintiff repeats and realleges all preceding paragraphs.

5 37. Plaintiff and class members have an interest, both equitable and legal, in the affiliate
6 commissions to which they were wrongfully deprived. These commissions were rightfully earned
7 by Plaintiff and class members, not Microsoft.

8 38. Through its unjust and improper use of the Microsoft Shopping browser extension,
9 Microsoft received benefits in the form of commissions for sales that were generated by Plaintiff
10 and class members.

11 39. Microsoft understood that it so benefitted, and it also understood and appreciated
12 that its Microsoft Shopping browser extension would cause the harm described in this complaint.

13 40. But for Microsoft's unjust and improper use of its Microsoft Shopping browser
14 extension, Microsoft would not have received commissions on sales generated by Plaintiff and
15 class members.

16 41. Microsoft has been unjustly enriched at the expense of Plaintiff and class members
17 by the payment of diverted affiliate commissions, and Microsoft has unjustly retained the benefits
18 of its unlawful and wrongful conduct.

19 42. In light of Microsoft's conduct, it would be inequitable and unjust for Microsoft to
20 retain these benefits. Microsoft should be required in equity to make restitution of these payments
21 to the content creators from whom they were diverted.

1 **COUNT II**
2 **Interference with Prospective Economic Advantage or Expectancy**
3 *On behalf of Plaintiff and the class*

4 43. Plaintiff repeats and realleges paragraphs 1 through 35.

5 44. Plaintiff and class members had and have ongoing economic partnerships or
6 business expectancies with merchants whereby they refer their audiences to merchants' websites
7 through affiliate links. In return, the merchants, directly or through affiliate networks, pay them
8 commissions on sales they generate.

9 45. Microsoft is aware or should have been aware of these partnerships and
10 expectancies.

11 46. Microsoft intentionally and unlawfully interferes with and disrupts these
12 partnerships and expectancies through its Microsoft Shopping browser extension. As alleged
13 above, this extension replaces Plaintiff's and class members' affiliate cookies with Microsoft's
14 cookies, improperly diverting their commissions to Microsoft.

15 47. Microsoft is liable to Plaintiff and class members for damages in an amount to be
16 determined at trial

17 **COUNT III**
18 **Interference with Contractual or Business Relations**
19 *On behalf of Plaintiff and the class*

20 48. Plaintiff repeats and realleges paragraphs 1 through 35.

21 49. Plaintiff and class members had and have existing contractual or business
22 relationships with at least one online merchant, under which Plaintiff and class members drive
23 sales by promoting the merchant's products and services through affiliate links in exchange for
24 commissions on the sales they generate.

1 57. Microsoft intentionally and substantially interfered with Plaintiff's and class
2 members' personal property by using its Microsoft Shopping browser extension to divert
3 commissions to itself that rightfully belong to Plaintiff and class members.

4 58. Microsoft took possession of these commissions without authorization or
5 justification and exercised ownership over them, depriving Plaintiff and class members of their
6 rightful property. This unauthorized control over the commissions constitutes conversion.

7 59. Plaintiff and class members neither assented to nor ratified Microsoft's interference
8 with their commissions.

9 60. Plaintiff's and class members' rightful commissions poached by Microsoft are
10 specific sums capable of identification.

11 61. Microsoft's actions have caused Plaintiff and class members significant economic
12 harm by depriving them of their rightful commissions.

13 62. Microsoft is liable to Plaintiff and class members for damages and costs permitted
14 by law.

15 **COUNT V**
16 **Violation of the New York Deceptive Practices Act, N.Y. Gen. Bus. Law § 349**
17 *On behalf of Plaintiff and the class*

18 63. Plaintiff repeats and realleges paragraphs 1 through 35.

19 64. Under the New York Deceptive Practices Act, it is unlawful for any person or entity
20 to use deceptive acts or practices in the conduct of any business, trade, or commerce, or in the
21 furnishing of any service in the state of New York.

22 65. Plaintiff and the members of the New York subclass are considered "persons" for
23 the purpose of the Act.

1 66. Microsoft's acts, omissions, practices, and nondisclosures as alleged in this
2 complaint constitute unlawful deceptive acts or practices within the meaning of the Act.

3 67. Microsoft engaged in consumer-oriented conduct by directing their deceptive acts
4 and practices to the consuming public and the marketplace, thereby impacting the consumer
5 decision-making process.

6 68. Microsoft's acts or practices were deceptive and misleading in a material way.
7 Microsoft's actions are likely to mislead a reasonable consumer acting under reasonable
8 circumstances.

9 69. Plaintiff and members of the New York subclass suffered an injury as a result of
10 Microsoft's deception. Microsoft covertly replaces their affiliate cookies with its own to divert
11 their commissions to itself, with no corresponding benefit to Plaintiff or the subclass members.
12 And because the Microsoft Shopping extension acted in a covert manner, Plaintiff and subclass
13 members could not have avoided the harm.

14 70. As a direct and proximate result of Microsoft's wrongful conduct, Plaintiff and
15 subclass members have suffered damages, including lost affiliate commissions.

16 71. Microsoft is liable to Plaintiff and the New York subclass members for damages,
17 costs, and injunctive relief as permitted by law.

18 **REQUEST FOR RELIEF**

19 Plaintiff, on behalf of itself and all others similarly situated, respectfully requests that the
20 Court:

21 A. Certify this case as a class action, designate Plaintiff as class representative, and
22 appoint its attorneys as class counsel;

1 B. Enter judgment in favor of Plaintiff and class members;

2 C. Award injunctive and declaratory relief as is necessary to protect the interests of
3 Plaintiff and class members, including to prevent Microsoft from diverting their rightfully earned
4 commissions to itself;

5 D. Award damages, including actual, general, special, incidental, statutory, treble,
6 punitive or exemplary, liquidated, and consequential damages, in an amount to be determined at
7 trial;

8 E. Award disgorgement of all ill-gotten profits and restitution of all revenues obtained
9 from Plaintiff and class members as a result of Microsoft's unlawful conduct;

10 F. Award reasonable attorney fees and costs;

11 G. Award pre- and post-judgment interest as allowed by law;

12 H. Grant any further relief that the Court deems necessary and proper.

13 **DEMAND FOR JURY TRIAL**

14 Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a jury trial on all issues
15 so triable.

16 Dated: January 31, 2025

Respectfully submitted,

17 **TOUSLEY BRAIN STEPHENS PLLC**

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