

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INTELLECTUAL PROPERTY LIST (ChD)



Claim No II - 2020-[]

BETWEEN:

MICROSOFT CORPORATION

(a company incorporated under the laws of the State of Washington, USA)

Claimant

- and -

(1) BAREWIRE LTD

(2) NEIL MICHAEL PURNELL

(3) TONI DONNA WHITTINGHAM

Defendants

PARTICULARS OF CLAIM

The parties

- 1 The Claimant is a company incorporated under the laws of the State of Washington, USA, with company number 600413485 on 22 September 1993 and has its registered office at 1 Microsoft Way, Redmond, 98052-8300, WA, USA. At all material times, the Claimant's business has included the development, marketing, distribution, and licensing of computer software, online services hosted in its cloud, and the supply of computer technical services and consultancy services.
- 2 The First Defendant ("**Barewire**") is a company incorporated under the laws of England and Wales with company number 07610584 on 20 April 2011. Since 7 September 2018 its registered office has been at 5 Bentsbrook Park, Dorking, Surrey, RH5 4JL. From April 2012 until 6 September 2018, its registered office was Garden Cottage, Dorking, Surrey, RH5 4RL (the "**Garden Cottage Address**").
- 3 The Second and Third Defendants are and have at all material times since 20 April 2011 been directors of Barewire. According to Companies House documents (**Annex 1**):



- 3.1 The Second and Third Defendants reside at the same residential address as Barewire's registered office, and previously at the Garden Cottage Address.
- 3.2 Upon its incorporation, Barewire was owned in equal shares by the Second and Third Defendants, and since 30 December 2013 the Third Defendant has held 100% of its issued share capital.

The Claimant's registered trade marks

- 4 Microsoft is the registered proprietor of the following United Kingdom and European Union Trade Marks (together, the **"Trade Marks"**):
- 4.1 UK registered trade mark number 1,471,271 for "MICROSOFT" registered with effect from 20 July 1991 for services including *"computer services; ... computer consultancy and technical support; all relating to the design and use of computer programmes, computers, computer hardware and computer systems"* in class 42 (**"UK271"**).
- 4.2 EU trade mark number 330,910 for "MICROSOFT" registered with effect from 22 July 1996 for services including *"education and training services, all relating to computers and computer programs"* in class 41 and *"computer services; ... computer consultancy and technical support, all relating to the design and use of computer programs, computers, computer hardware and computer systems"* in class 42 (**"EU910"**).
- 5 Copies of extracts for the Trade Marks from the UK and EU Register of Trade Marks together with their full specifications are at **Annex 2**.
- 6 Each of the Trade Marks is and has at all material times been valid and in force. From 1 January 2021, EU910 will be protected in the UK as a comparable UK trade mark and references to EU910 herein should be treated as references to that comparable mark.

The Claimant's goodwill

- 7 Microsoft develops, publishes and distributes a world famous suite of software and services for personal computers including the Windows operating system, Microsoft Office, Office 365, and OneDrive. Microsoft has invested substantial resources in



producing, marketing and promoting its software and services in the UK and EU under and by reference to the Trade Marks, and signs including MICROSOFT OFFICE, MICROSOFT WINDOWS, and the individual product names and logos listed in **Annex 3** (together, the “**Microsoft Signs**”).

8 Microsoft has made extensive use of the Trade Marks in the UK and EU (whereby they have acquired an enhanced distinctive character), and has generated a substantial goodwill and reputation in the UK in the Microsoft Signs. In particular, and at all material times:

8.1 The sign MICROSOFT has been used by Microsoft and its wholly-owned subsidiaries in the UK since around 24 March 1982, in relation to, *inter alia*, the supply of computer technical support services, and related services.

8.2 Microsoft has spent substantial time and resources in advertising and promoting the Microsoft Signs and Trade Marks throughout the UK and EU. Microsoft will rely on evidence of its sales and marketing expenditure, which exceeded \$12 billion globally in the year ending 30 June 2009, and between \$13 and \$18 billion in each such year between 2010 and 2019. .

8.3 Microsoft’s global annual turnover (substantially all of which has been under and by reference to the Trade Marks and/or other Microsoft Signs) exceeded \$58.44 billion in 2009, \$62.48 billion in 2010, \$69.94 billion in 2011, \$73.72 billion in 2012, \$77.85 billion in 2013, \$86.83 billion in 2014, \$93.58 billion in 2015, \$85.32 billion in 2016, \$89.95 billion in 2017, \$110.36 billion in 2018 and \$125.84 billion in 2019. Microsoft will rely on evidence that a significant proportion of the said turnover was based on trade conducted in, and/or with customers located in, the UK and in the EU.

8.4 Microsoft is a household name in the UK and the Trade Marks have consistently ranked among the most recognised and trusted brands. At all material times, millions of people in the UK used Microsoft products branded under and by reference to the Trade Marks and one or more of the Microsoft Signs. As at 30 June 2011, more than 400 million Windows 7 licences and 100 million Office 2010 licences had been purchased by businesses and consumers worldwide.



- 8.5 Microsoft (or its wholly-owned subsidiary) has, at all material times employed approximately 3,000 people in the UK, at least 93% of whom have worked on the sale and distribution of Microsoft products.
- 8.6 In the UK, Microsoft currently has in excess of 24,810 corporate partners who employ over 500,000 individuals within the Microsoft partner ecosystem.
- 8.7 Microsoft's software and services have been among the most highly recognised, sought after, and deployed IT solutions in the UK and EU. The Microsoft Signs have thereby attained notoriety and recognition within their channels of trade and have become, and are, highly distinctive.
- 9 By reason of the substantial user of the Microsoft Signs in the UK in connection with, *inter alia*, computer consultancy and technical support services relating to computer software, Microsoft has built up a substantial goodwill and reputation among the relevant public in the UK under and by reference to the Microsoft Signs, whereby those Signs have been recognised as denoting services originating from Microsoft and none other. In the premises:
- 9.1 When members of the UK public encounter the Microsoft Signs or any similar sign in connection with the said services, they are likely to believe that those services emanate from, or are authorised by or otherwise connected with, Microsoft or a business connected in trade with Microsoft.
- 9.2 When an individual or business represents itself as a supplier of professional technical support for a Microsoft software product or service, the relevant public is likely to believe that such a person or business is authorised, recognised, licensed, and/or endorsed by Microsoft to provide such services, or otherwise connected in trade with Microsoft.

Acts complained of

- 10 From a date presently unknown to Microsoft but believed to be before the issue of the claim form herein, the Defendants have purported to offer online technical support for Microsoft software and services as follows:



- 10.1 By means of two websites branded “Barewire” accessible at <http://barewire.us/> and <http://barewire.co.uk/>, and a blog accessible at <http://barewire.blogspot.com/> (the “**Barewire Websites**”);
- 10.2 Using a pool of virtual USA “toll free” telephone numbers including “1-855-639-755”, and from UK telephone and mobile numbers including “0845 544 1945” and “07 919 481 354” (the “**Phone Numbers**”); and
- 10.3 By means of online banner and text advertising, pop-up messages, social media postings and sponsored links, which directed consumers to visit the Barewire Websites or call the Phone Numbers.
- 11 The Barewire business appears to consist (and has at all times since its inception consisted) of a common internet scam known as a “technical support scam”, which involves the provision of sham technical support services by using the Microsoft Signs to misrepresent *inter alia* that Barewire’s staff and agents are Microsoft employees, or otherwise connected to or affiliated with Microsoft.
- 12 The domain names for the Barewire Websites were registered and have insofar as relevant been configured as follows:
- 12.1 In the case of “barewire.us”, that domain name was registered by the Second Defendant on or around 2 July 2012 (as shown in WHOIS records at **Annex 4**).
- 12.2 In the case of “barewire.co.uk”, the Second Defendant has been listed as the registrant thereof since at least 12 December 2014, and it is to be inferred that he registered or caused its registration on or around 16 March 2011. Because this preceded the incorporation of the First Defendant, it is to be inferred that this was done by the Second Defendant acting in his personal capacity.
- 12.3 The WHOIS information for both domain names identifies (and has at all material times identified) the Second Defendant, gives his Garden Cottage Address, and lists him as the technical and administrative contact for both Barewire Websites.
- 12.4 According to cached Domain Name System (“**DNS**”) server records dated 21 October 2015, the root DNS zone for “barewire.us” was configured to include an “SOA” record “RNAME=rajat.matta.czonesolutions.org”. This could only have been done by the authorised administrator of “barewire.us”. The “SOA” record,

known as the “Start of Authority” record, shows the administrative information of the DNS zone, including the legal entity responsible for maintaining it.



- 13 It is to be inferred from the said facts and matters that, at all material times, the Barewire Websites and all the content published on them has been under the control of the Second Defendant.
- 14 After being alerted to the deceptive practices complained of herein, Microsoft commenced an internal investigation within its Digital Crimes Unit in an effort to protect consumers from further harm. On 3 October 2018, a criminal complaint was filed on behalf of Microsoft Corporation (India) Pvt Ltd (“**Microsoft India**”) against 26 accused including Rajat Matta. Among the allegations made in the complaint were that Mr Matta owned and operated a call centre, Czone Solutions Inc (“**Czone Solutions**”), which falsely held itself out as a “Microsoft Service Support Center” and engaged employees who impersonated to customers that they were speaking to Microsoft and were receiving support from “a Microsoft Technical Support Technician” and/or a “Microsoft Certified IT Professional”. Charges were filed on 14 June 2019 and remain pending.
- 15 Since a date which is presently unknown to Microsoft but believed to be around November 2018, the “barewire.us” website has no longer been visible to the public. From its timing, it is to be inferred that this Barewire Website was disabled by the Second Defendant when he learnt of the action taken by Microsoft India.
- 16 In a document disclosed by Mr Matta in the Indian proceedings (**Annex 5**), it is stated that “*Czone solutions is Barewire’s outsourced partner providing the following services: Sales ... Customer technical support ... Customer services*” (page 1 of Annex 5). The document is signed by “Neil Purnell – Director, Barewire Ltd” on Barewire letterhead listing the Garden Cottage Address and the email “customersupport@barewire.us”. Further, invoices dated 21 September, 1 October and 7 October 2018 were issued by Czone Solutions to Barewire, addressed to the Second Defendant at the Garden Cottage Address (pages 2 to 4 of Annex 5). The invoices are stated to be for “Offshore Services” and their footer lists one of the Barewire Phone Numbers (“1-855-639-7555”). It is thereby to be inferred that further similar invoices were issued to the Second Defendant and/or Barewire for earlier periods.
- 17 In the premises, from the said facts and matters it is to be inferred that:



- 17.1 Barewire and/or the Second Defendant have at all material times engaged Czone Solutions and Mr Matta to assist in the operation of the Barewire business by providing sales, technical support, and other customer services including the making and answering of telephone calls at the Phone Numbers and/or any of them from Barewire customers, as an authorised agent of Barewire, in the course of which the representations complained of herein were made.
- 17.2 Mr Matta, Czone Solutions and/or its contractors and employees were induced and procured by Barewire and/or the Second Defendant to provide such services, and to do the acts complained of below in the course of supplying the said services.
- 17.3 Further or alternatively, Barewire and/or the Second Defendant formed an agreement or understanding with Mr Matta and Czone Solutions that they would provide the said services and do the acts complained of, or otherwise authorised them to do so or, upon learning of such acts, ratified them.
- 18 Pending disclosure and evidence, the best particulars of Barewire's wrongdoing which Microsoft is able to give are as follows, on information and belief:
- 18.1 Barewire and/or its authorised agents have caused advertisements or pop-ups to be published, directing the victim to access the Barewire Websites and/or to call the Phone Numbers. Upon doing so, the victim is told by Barewire's representative that their computer contains a virus or other error requiring urgent technical attention.
- 18.2 In fact, no such problem exists and the statements made to the victim (including in said advertisements or pop-ups) are fake and designed to give the false impression that their computer is unresponsive or vulnerable to a security flaw or other error.
- 18.3 Consumers are thereby deceived into believing that their personal computers and software are infected with malware, viruses or other technical errors when no such problems exist. They are then sold unnecessary IT support services, purportedly to fix the "infected" computer. For this purpose, victims are induced by Barewire's agent to permit remote access to their computers by means of remote administration tools. In some cases, victims had reported that Barewire's agent also installs malware or other malicious software onto the victim's

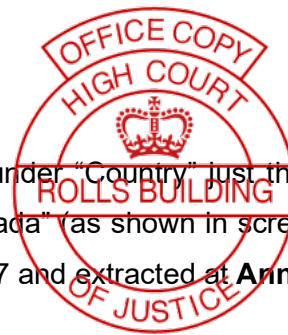


computer, such as software that produces pop-up messages which block access to the victim's browser and directs the victim to call a phone number for Barewire. It is to be inferred that such malware or other malicious software is intended to be used to exfiltrate personal data and/or cause problems that can then be used as a pretext for rendering and charging for further unnecessary support.

- 18.4 After agreeing to make an electronic payment to Barewire (typically by credit card or bank/wire transfer), in some cases consumers may be shown an "Authorization Agreement" issued by the First Defendant on letterhead naming the Garden Cottage Address, the Phone Numbers and the email "customersupport@barewire.us" and purportedly (and ineffectually) disclaiming any association with Microsoft (**Annex 6**).
- 18.5 Instrumental to the success of Barewire's technical support scam is the deceptive impression created by Barewire or its authorised agents in banner advertising and orally, the effect of which is to lead consumers into believing that their sham technical support services are provided, authorised or licensed by, or connected in the course of trade with, Microsoft.
- 18.6 The deceptive effect of Barewire's misrepresentations is heightened through Barewire's use of the Microsoft Signs on the Barewire Websites and orally in telephone calls.
- 18.7 Indicative of the scale of the problem is that, from 1 May 2014 to 31 October 2020 (inclusive), Microsoft received a total of 631,677 customer complaints related to technical support scams, including from victims of Barewire's deceptive practices. In addition, in September 2018 Microsoft's Global Tech Support Scam Research (an extract from which is at **Annex 7**) found that over 60% of consumers encounter a tech support scam and that the most common type of tech support scams were pop-up ads/windows (49%), tricking consumers into downloading software (44%) or directing them to a specific website (34%).
- 19 Pending disclosure, Microsoft relies upon archived captures of the "barewire.us" website taken by the Wayback Machine shown at **Annex 8** and a screen capture of posts made in 2015 on the barewire.blogspot.com webpage shown at **Annex 9**, from which it is to be inferred that those Barewire Websites have published the following statements aimed at *inter alia* the UK public:



- 19.1 *"Support for Microsoft Windows Live Mail: Get Instant Help & Support for Windows Live Mail Our Microsoft Certified Technicians will quickly diagnose and resolve all your Windows Live Mail Issues"* (page 15 of Annex 8);
- 19.2 *"Support for Windows Vista: barewire Tech Support can install, activate and update Windows Vista operating system on your computer with the help of Certified Technicians"* (page 5 of Annex 8);
- 19.3 *"Support for Windows 7: ... barewire Tech Support Certified Technicians can assist you to equip your computers, laptops or netbooks with Windows 7 operating system"* (page 7 of Annex 8);
- 19.4 The further or other webpages shown in Annex 8 and containing the Trade Marks and/or other Microsoft Signs; and
- 19.5 *"A specific team of Microsoft Certified Specialists will create sure that your issue is completely settled and all the needed measures will be taken..."* (page 3 of Annex 9).
- 20 The Barewire Websites are operated and managed by Barewire (and, it is to be inferred, the Second Defendant) from within the UK. Further or alternatively, those Websites are targeted *inter alia* at UK consumers. Pending disclosure, Microsoft relies on the following particulars of targeting:
- 20.1 The domain name "barewire.co.uk" is a ".co.uk" domain name and lists local UK addresses and telephone numbers.
- 20.2 The content of each Barewire Website has at all material times been displayed in English and all pricing has been offered in currencies including Pounds Sterling. For example, the "Incident Plans" sub-page of "barewire.us" includes technical support packages priced in Pounds Sterling (page 23 of Annex 8).
- 20.3 The home and "Contact Us" pages of "barewire.us" list the company registration details of the First Defendant, the Garden Cottage Address in the UK and (on the latter page) an English mobile telephone number (without area code), which it is to be inferred was operated by the Second Defendant (pages 27 and 31 of Annex 8).



- 20.4 The registration form on “barewire.us” lists under “Country” just three options: “United Kingdom”, “United States”, and “Canada” (as shown in screen captures of a YouTube video posted on 7 January 2017 and extracted at **Annex 10**).
- 20.5 The nature of the services advertised and/or supplied via the Barewire Websites are such that they may be delivered remotely, by telephone and/or remote desktop connection, to consumers located anywhere in the world.
- 21 Pending disclosure, Microsoft avers on information and belief that Barewire, the Second Defendant and/or their authorised agents (including Czone Solutions and Mr Matta) have systematically and intentionally deceived consumers into believing their Microsoft software is infected with malware or viruses and supplied sham technical support services to substantial numbers of consumers. In particular:
- 21.1 Members of the public have contacted Microsoft on hundreds of occasions making allegations that Barewire has engaged in deceptive business practices in connection with the supply of sham technical support services and has made or caused to be made each of the misrepresentations alleged herein. A table summarising the complaints is at **Annex 11** from which it is apparent that:
- (a) Substantially all of the complaints refer to Barewire by name, with many victims specifically naming the Garden Cottage Address as the address of Barewire;
 - (b) Substantially all of the complaints refer to one or more of the Phone Numbers listed on the Barewire Websites, and concern a call made to one of them;
 - (c) Victims (many of whom were over the age of 65) were referred to Barewire by means of pop-up messages (which it is to be inferred were targeted online advertisements placed by or on behalf of Barewire) or phone calls;
 - (d) In most cases, the victim reported being told by the sham technical support agent that they were “from Microsoft” and/or were a “partner” of Microsoft;
 - (e) In substantially all cases, the sham technical support agent proceeded to access the victim’s computer remotely; and
 - (f) The majority of victims were then asked to make payments by credit card, wire transfer or bank account deposit, to Barewire (identified as “Barewire

Ltd”, “www.barewire.us” and in some cases “Czone Solutions”) of amounts ranging from USD \$199 to USD \$2000.



21.2 The Defendants have caused actual deception on a very substantial scale, including among victims who purchased sham technical support services under the false belief that they were dealing with Microsoft or its certified representatives. Pending disclosure, Microsoft refers to the following examples of deception:

- (a) Victim #2 in Annex 11: *“someone who claimed to be Microsoft answered ...”*;
- (b) Victim #11 in Annex 11: *“I received a pop up that appeared legitimate from Microsoft telling me that a pornographic site had hacked my computer ..., to call an 800 number to contact Microsoft immediately, which I did ...”*;
- (c) Victim #15 in Annex 11: *“They made claims to fix my computer claiming they were Microsoft support ... but became suspicious when he wouldn't let me do anything or move the mouse ... and that's when I saw it was barewire LTD ...”*;
- (d) Victim #19 in Annex 11: *“they claimed to be microsoft [sic] ... They said microsoft would protect my machine for 8 yrs ...”*;
- (e) Victim #22 in Annex 11: *“I was in facebook scrolling, a pop up came up stating I needed to call a number that Microsoft has been alerted that I received a virus. ... they said they were with your company and continued to change things around in my computer and install their virus protection which is the barewire, I paid them \$200.00 ...”*;
- (f) Victim #26 in Annex 11: *“This company claimed to be Microsoft. ...”*;
- (g) Victim #27 in Annex 11: *“When I kept pressing Mark about being part of Microsoft, he had me talk to Naved, a supervisor ...”*;
- (h) Victim #39 in Annex 11: *“called the 800 number to ask about it they assured me they were legitimate and not a scam and worked with Microsoft”*;
- (i) Victim #40 in Annex 11: *“I had a pop up black out my screen. A phone number was attached and a message to call Microsoft immediately. I called the number and they answered as Microsoft ...”*;



- (j) Victim #51 in Annex 11: *"said they worked for Microsoft"*;
- (k) Victim #73 in Annex 11: *"I called Microsoft support and was referred to this company. My computer was blocked - they said they would remove the virus and add security"*;
- (l) Victim #75 in Annex 11: *"They lead me to believe that were associated with Microsoft and my personal info had been compromised"*; and
- (m) Victim #77 in Annex 11: *"I received a pop up on my computer & it completely stopped working. It told me to call the Microsoft # that came up. When I did talk to them they said they were a certified Microsoft company"*.

21.3 On 11 June 2017, a Barewire victim made a posting to the Microsoft Answers Community Forum in which he explained how representatives of Barewire misrepresented themselves as the "Microsoft Windows Help Desk" and *"claimed to be an employee of Microsoft"* (**Annex 12**). In response to the posting, a user who identified themselves as "Barewire Support" stated that they had completed a refund of \$349.99 but went on to dispute the allegations on the patently false basis that *"[he] spoke to a scammer who claimed to be from Microsoft"* and *"used our name"*.

21.4 Numerous other postings on the Microsoft Answers Community Forum provide examples of further victims who were deceived into believing that Barewire and/or its authorised agents were Microsoft or genuine providers of technical support services that were licensed or authorised by Microsoft to do so. Among the examples of deception at **Annex 13** are the following:

- (a) On 25 January 2016, a victim stated: *"I woke up with a Blue screen along with a phone number to call microsoft. The # is 1-800-870-4502. and it is called Bare Wire. Is this a part of your company or affiliated with your company? They claim they do work for you."* On 26 January 2016, the same victim added that he had paid \$99.00. In a response dated 9 July 2017, a user identifying themselves as "Barewire Support" and "Team Barewire" admitted that a payment had been made and offered to provide further technical support (pages 2 to 4 of Annex 13);
- (b) On 31 March 2016, another victim stated: *"Barewire, ltd ... I had a pop up saying I had a serious virus. It contained a phone number. It totally locked*



up my computer. I called the number and got Kay Matthews who claimed she was an employee of Microsoft. She told me her employee number was micro0905. They wanted me to pay \$299 to fix my problems" (page 11 of Annex 13);

- (c) On 15 August 2017, another victim stated: "*Barewire, Ltd ... I am fairly certain I got scammed by this company. I had a pop up on my screen warning me of virus contamination. I allowed the tech on the other end of the "Certified Microsoft Technician" phone number to access my computer from remote to fix all my problems*" (page 14 of Annex 13); and
- (d) On 25 September 2017, a consumer asked: "*Last Thursday a message popped up on one of my bosses computer. It stated that is computer had been hacked and that he should call a number "1-855-*****" to get Microsoft tech support. He called the number and spoke with a man named "Kevin" ... After he gave Kevin his CC info, his bank, Chase called and asked about this transaction as it had been flagged as fraud. My boss authorized it and Kevin continued "to fix his computer". ... Does anyone know if this was a scam? ... I looked up their IP address and it states they are in India, yet he told my boss he was in the UK*" (page 18 of Annex 13).

21.5 Numerous scam reports have been made by Barewire's victims to consumer protection websites including "ScamGuard", "ScamPulse" and "Scamity.com", many of which refer to the Garden Cottage Address, the Barewire Websites and Phone Numbers. Among the instances of deception extracted in **Annex 14** are the following:

- (a) "**Stealing my money:** *I was called on a Saturday by Microsoft claiming I had viruses on my computer and needed it fixed right away. The tech will do this with a lifetime protection warranty for 249.99. This would be purchased by me and the warranty would be through Barewire in the UK*" (page 1 of Annex 14);
- (b) "**Hacked my computer, locked it up, tried to sell me protection:** *... I called the number on my screen and got a "technician" supposedly named "Robin Martin" with a subcontinental accent who claimed to be from Microsoft ... Get these jokers to stop representing themselves as part of Microsoft and report them to the authorities as hackers*" (page 2 of Annex 14);



(c) "**Microsoft scam:** pop up on my computer from "Microsoft" that my computer had been hacked & to call their # w/in 24 hrs" (pages 4 to 5 of Annex 14); and

(d) A 71 year old victim professing limited IT knowledge states that he lost \$730 to Barewire after receiving an alert "*reportedly from Microsoft*" on 4 April 2016 (page 8 of Annex 14).

21.6 Further, the Phone Numbers have been the subject of scam reports specifically identifying Barewire and naming the Second Defendant, from which it is to be inferred that the Phone Numbers and each of them are habitually used by Barewire and its agents to perpetrate their technical support scam. Pending disclosure, and by way of example, Microsoft relies upon the reports at **Annex 15**.

22 Pending disclosure, Microsoft is not aware of all the Defendants' wrongful acts, but it intends to seek relief at trial in respect of all such acts as may come to light, including acts of threatened and/or imminent infringement on a *quia timet* basis. Further and in particular:

22.1 The Second Defendant's wrongful activities began in around March 2011, while Barewire's wrongful activities commenced upon its incorporation in April 2011. Paragraph 12.2 above is repeated. Microsoft's claims for relief are limited to wrongful acts occurring within six years of the claim form in this action. However, Microsoft will rely upon evidence of earlier activity in support of its allegations that the Defendants are responsible and/or jointly liable for such wrongful acts.

22.2 It is to be inferred that Barewire and/or its agents have engaged in wrongdoing on other occasions of which Microsoft is not presently aware, as only a small proportion of victims tend to make a complaint out of embarrassment or lack of awareness that they are victims of a scam.

22.3 It is to be inferred that substantially all of the technical support services provided by Barewire and its agents to members of the public have proceeded on the basis of the same or equivalent misrepresentations as those alleged herein.

Passing off



23 The Defendants' acts complained of in paragraphs 10 to 22 above have, and/or will be likely to, lead a substantial proportion of the relevant public in the UK to be deceived into believing one of more of the following misrepresentations, namely:

23.1 That the Defendants (and/or their partners, agents and representatives including Czone Solutions) are Microsoft, or a licensee, service provider, partner or affiliate of Microsoft;

23.2 That the sham technical support agent is a Microsoft employee, or is "from Microsoft" or part of the "Microsoft support team";

23.3 That "Barewire" is antivirus or other genuine software which has been licensed or authorised by Microsoft for use in the provision of technical support or with its software, products and services; and/or

23.4 That Barewire, its agents and/or representatives are otherwise related to or connected in trade with Microsoft.

24 Each such misrepresentation is untrue.

25 In the circumstances, it is to be inferred that the said misrepresentations were intended and calculated to injure Microsoft's business and/or goodwill and were intended to cause deception. Pending disclosure and evidence, Microsoft relies upon the following particulars:

25.1 The misrepresentations were false and were made in circumstances where the Defendants (and/or the said third parties acting on their behalf) can have held no reasonable grounds for believing them to be true, including because they knew that (i) Barewire was not, and was not affiliated with, Microsoft, and (ii) Barewire did not hold a certification to provide technical support from Microsoft.

25.2 Each of the Defendants (and/or their partners, agents and representatives, including Czone Solutions, whose knowledge is to be imputed to the Defendants and/or any of them), knew or must have known of the falsity of each of the said misrepresentations at the time of making them.



- 25.3 The nature of the said misrepresentations, and the circumstances in which they were made, were such that they were contrary to the standards of honest business people and the Defendants knew or must have appreciated this. Further, the Defendants can have held no reasonable grounds for believing them to be true.
- 25.4 In all the circumstances, and given the scale and nature of the deception caused by the said misrepresentations, and the fact that the Defendants and their agents cannot possibly have held any reasonable belief that they were authorised to represent themselves in the manner that they did, it is to be inferred that the false statements made by the Defendants and/or their agents to technical support customers were calculated to cause deception.
- 25.5 In the premises, the misrepresentations set out at paragraph 23 above were made without any or any genuine belief in their veracity, and were intended to deceive.
- 26 Further, in reliance on the said misrepresentations, a substantial proportion of the relevant public have been deceived and/or are likely to be deceived into acquiring sham technical support services provided by the Defendants and their agents (including Czone Solutions), while believing one or more of the misrepresentations, when in fact the Defendants are unconnected to Microsoft and in most instances appear to provide no genuine services at all. Instead, the deceived consumers (many of whom are vulnerable and unfamiliar with technology) have been charged substantial sums for unnecessary or damaging services, in the course of which Barewire's sham support agents had in some cases installed malware and other malicious software onto the customer's computer, such as the software relating to pop-ups as described at paragraph 18.3 above.
- 27 By reason of the misrepresentations set out above, damage has been caused or is likely to be caused to Microsoft's goodwill in the Microsoft Signs.
- 28 None of the acts described in paragraphs 10 to 27 above has been consented to by Microsoft.
- 29 In the premises, the Defendants and each of them have passed off their business and services as and for those of Microsoft.

Trade mark infringement: UK and EU Trade Marks



30 Before the issue of the claim form, the Defendants and each of them have infringed the Trade Marks by using in the course of trade in the UK or EU, and without the consent of Microsoft:

30.1 Signs which are identical to the Trade Marks in relation to services which are identical to those for which the Trade Marks are registered, contrary to s 10(1) of the *Trade Marks Act 1994* (“**TMA**”) or Article 9(2)(a) of Regulation (EU) 2017/1001 (“**EUTMR**”) (as the case may be);

30.2 Signs where, because of their identity with, or similarity to, the Trade Marks and the identity or similarity of the services covered by the Trade Marks and those offered under and by reference to the said signs, there exists a likelihood of confusion (including a likelihood of association with the Trade Marks) on the part of the public, contrary to s 10(2) TMA or Article 9(2)(b) EUTMR (as the case may be); and/or

30.3 Signs which are identical with, or similar to, the Trade Marks in relation to services which are identical with, similar to or not similar to those for which the Trade Marks are registered, where the latter have a reputation in the UK or EU (as the case may be) and where use of the said signs without due cause takes unfair advantage of, and/or is detrimental to, the distinctive character or the repute of the Trade Marks, contrary to s 10(3) TMA or Article 9(2)(c) EUTMR (as the case may be).

31 Pending disclosure and/or evidence, Microsoft relies on the following particulars of infringement under ss 10(1) and 10(2) TMA, and Articles 9(2)(a) and 9(2)(b) EUTMR:

31.1 In the course of doing the acts complained of at paragraphs 10 to 22 above, the Defendants and each of them have used such of the Microsoft Signs as are referred to in paragraph 19 above, including the sign MICROSOFT, which sign is identical the Trade Marks and has been used in relation to goods which are identical (alternatively similar) to those for which the Trade Marks are registered.

31.2 Such use is use as a trade mark in the course of trade within the meaning of s 10(4) TMA and Article 9(3) EUTMR, and is liable adversely to affect the



functions of the Trade Marks, including their origin, marketing, and/or advertising functions.

- 31.3 Such use has taken place within the UK and EU (or in a territory within the EU at the time the act occurred). Paragraphs 2 and 20 above are repeated.
- 31.4 By reason of the Defendants' use of such signs, there exists a likelihood of confusion (including association) on the part of the public. Paragraphs 18 to 21 above are repeated. It is thereby to be inferred that a substantial number of consumers have acquired services from Barewire under one or more of the mistaken beliefs set out in paragraph 23 above, including that such services were being provided by or on behalf of Microsoft or an authorised affiliate thereof.
- 32 In all the circumstances, such use of the signs by the Defendants was not in accordance with honest practices in industrial or commercial matters and did not discharge the Defendants' duty to act fairly in relation to the legitimate interests of Microsoft as the trade mark proprietor. Paragraph 25 above is repeated.
- 33 Microsoft relies upon the following facts and matters in support of its infringement claims under s 10(3) TMA and Article 9(2)(c) EUTMR:
- 33.1 The Trade Marks have acquired a substantial reputation in the UK and EU (as the case may be). Paragraphs 7 to 9 above are repeated.
- 33.2 The average consumer is likely to form a link between the Defendants' use of the Microsoft Signs and the Trade Marks, including by calling them to mind or by giving cause to wonder whether they are related or connected in trade.
- 33.3 The Defendants' use of the Microsoft Signs takes unfair advantage of the Trade Marks by riding on the coat-tails of the Marks in order to benefit from their power of attraction, reputation and quality, in an attempt to transfer an aura of credibility to the Defendants' illegitimate business and services.
- 33.4 Further or alternatively, such use lessens the capability of the Trade Marks to distinguish Microsoft's goods and services from those of others in the mind of the average consumer, and to identify genuine sources of Microsoft technical support.



33.5 The Defendants' use of the Microsoft Signs is without due cause

33.6 The Defendants' use of the Microsoft Signs has created at least a serious likelihood of a change in the economic behaviour of the average consumer.

34 In the premises, the Defendants and/or each of them have infringed the Trade Marks pursuant to Articles 9(2)(a) and/or 9(2)(b) and/or 9(2)(c) EUTMR and ss 10(1) and/or 10(2) and/or 10(3) TMA.

Trade mark infringement: foreign trade marks

35 Further or alternatively, although Microsoft's understanding and primary case is that each of the acts complained of was committed from a place within the UK, if and insofar as the Defendants will say that their or their agents' unauthorised use of the Microsoft Signs took place outside the UK or EU, that would simply have the consequence that the relevant acts constituted infringements of Microsoft's equivalent foreign registered trade marks. If and to the extent that this is the Defendants' position, then Microsoft will say that to such extent the Defendants have infringed Microsoft's equivalent foreign trade mark rights.

36 In relation to any infringements of Microsoft's equivalent foreign registered trade marks that have taken place, Microsoft will aver that the English courts have subject matter jurisdiction to decide infringement claims over those marks and that England is the appropriate forum in which to do so.

37 Pending disclosure, the full extent to which foreign infringements may have occurred is not within Microsoft's knowledge, but the reports and complaints referred to in paragraphs 18 to 22 above suggest that substantial numbers of US consumers have also been deceived into dealing with Barewire and its representatives. Microsoft reserves the right to prove and rely upon foreign law as necessary in Reply.

The Defendants' liability as principals

38 Pending disclosure and evidence, it is to be inferred from the facts and matters set out in paragraphs 16 and 17 above, and in all the circumstances, that Czone Solutions and/or Mr Matta and/or their contractors and employees were authorised agents of Barewire and/or the Second and Third Defendants.



- 39 Details of the scope and terms of such agency are not presently within Microsoft's knowledge but it is believed to include at least the solicitation, advertisement, offer and supply of technical support services to third party customers around the world.
- 40 When the misrepresentations and uses of the Trade Marks complained of herein were made by Czone Solutions, Mr Matta and/or their contractors and employees, such activities took place within the scope of the said agency.
- 41 In the premises, Barewire and/or the Second and Third Defendants are liable as principals for all such wrongful activity as may be committed by Czone Solutions, Mr Matta and/or their contractors and employees.

The Defendants' joint liability

- 42 Further or alternatively, Barewire and/or the Second and/or Third Defendants are joint tortfeasors with each other, and with their agents, contractors, partners and/or employees (including Czone Solutions) and/or any of them in relation to all of the acts complained of herein. Pending disclosure, Microsoft relies on the following particulars of joint tortfeasorship:
- 42.1 The Second and/or Third Defendants have formed a common design with Barewire and/or Czone Solutions to manage and operate a business whose purpose and/or core activity is to carry on a technical support scam under and by reference to the Microsoft Signs, and have acted in furtherance of that agreement. Paragraphs 12 to 17 above are repeated.
- 42.2 Further or alternatively, Barewire has formed a common design with Czone Solution in those terms and have acted in furtherance of that agreement. Paragraphs 12 to 17 above are repeated.
- 42.3 Barewire and/or the Second and Third Defendants have contracted with victims of the technical support scam (whether directly or via agents and representatives of Czone Solutions) and have received and processed payments from those victims, out of which they have been paid or retained a commission from Czone Solutions and/or other third parties not presently known to Microsoft.
- 42.4 Further or alternatively, the Second and/or Third Defendants are liable as joint tortfeasors with Barewire and/or Czone Solutions by reason of having



intentionally procured, induced and/or authorised the commission of the acts complained of herein.

42.5 Further or alternatively, Barewire has intentionally procured, induced and/or authorised Czone Solutions to commit the acts complained of herein.

42.6 The Second Defendant appears to be the person responsible for creating, maintaining and/or operating the Barewire Websites, the Phone Numbers and the deceptive online advertising placed by or on behalf of Barewire. The Second Defendant is personally named on the Barewire Websites, in domain names and contact information, and in multiple scam reports filed by deceived consumers. Paragraph 21 above is repeated.

42.7 The Second Defendant is believed on present information to be responsible for engaging Czone Solutions, to have personally negotiated and entered into the relevant agreements, to have given Czone Solutions access to Barewire's transaction processing systems, and to have conducted communications with Czone Solutions and its representatives including Mr Matta.

42.8 It is to be inferred from the existence of the invoices referred to at paragraph 16 above and the fact that payments were made by consumers to Barewire (or under its direction or control) that, at all material times, Barewire and/or the Second and Third Defendants have received some or all of the proceeds of sales made by Czone Solutions and/or by Barewire. Pending disclosure of the Defendants' bank records, transaction and credit histories, and assets, it is to be inferred that the Second and Third Defendants have enjoyed the proceeds of Barewire and Czone Solutions' activities as their own.

42.9 Insofar as any of the misrepresentations complained of have been made by representatives of Czone Solutions for and on behalf of Barewire, such representatives are to be treated as agents of Barewire acting within the scope of their agency, and their knowledge, intention and liability are to be imputed to Barewire and/or to the Second and Third Defendants as principal.

42.10 The Second and/or Third Defendants have involved themselves in the acts complained of herein to such an extent that they have made those acts their own.



- 43 In the premises, Second and Third Defendants are joint tortfeasors and are jointly and severally liable for all acts of trade mark infringement and passing off alleged herein.

Pre-action conduct

- 44 On 23 June 2020, solicitors acting for Microsoft sent a letter of claim to the Defendants and sought undertakings including to cease further wrongdoing and pay damages. By letter dated 29 June 2020 and signed on behalf of "Barewire Ltd", the Defendants denied the allegations and claimed to have been the victim of "*3rd parties which we believe were our competitors misrepresenting themselves as Barewire Ltd in an attempt to extract further payment and discredit us*". In the premises, that explanation is false.
- 45 On 30 July 2020, a telephone call took place between the Second Defendant (calling from the number "07 919 481 354", as listed in paragraph 10.2 above) and Microsoft's solicitors (a file note of which is at **Annex 16**), in which the Second Defendant denied any wrongdoing, but admitted that:
- 45.1 Barewire provided "remote technical support" and "got all our customers through online advertising";
- 45.2 Barewire "used only offshore service providers" and "end user support was carried out by offshore partners"; and
- 45.3 Barewire took payment on "our own online portal operated through our own gateway provider", but there were "a hell of a lot of chargebacks" from dissatisfied customers and it was "a high risk business".
- 46 On 20 November 2020, solicitors acting for Microsoft sent a further letter of claim to each of the Defendants, which was responded to by solicitors acting for the Defendants on 4 December 2020. That letter of response included the following admissions:
- 46.1 That the Second Defendant and Mr Matta had "entered into an agreement" in or around September 2012 under which Czone Solutions would solicit customers and provide IT support services to those customers and customers would contract with Barewire;



46.2 That Barewire served as a front for potential customers who were “more comfortable contracting with a company based in the United Kingdom than in India”, and was responsible for dealing with charge-back claims;

46.3 That Barewire was paid a commission for its role in the scheme, which operated until 2018.

47 Copies of relevant pre-action correspondence are at **Annex 17**.

Remedies

48 By reason of the matters set out above, Microsoft has suffered and/or is likely to suffer loss and damage, including lost profit, and damage to goodwill and reputation. Microsoft is not yet able to quantify the extent of such loss but on present information believes it to be substantial.

49 Microsoft is not presently able to give particulars of all the Defendants’ wrongful acts but will seek relief at trial in respect of all such acts that come to light.

50 Microsoft is entitled to and claims damages, alternatively an account of profits (at its election), for all acts of trade mark infringement and passing off committed by the Defendants or any of them. Further or alternatively, Microsoft is entitled to and claims damages pursuant to reg 3 of the *Intellectual Property (Enforcement etc) Regulations 2006* (SI 2006/1028) and/or Article 13(1) of Directive 2004/48/EC. The Defendants’ acts complained of were committed flagrantly and/or with contumelious disregard for Microsoft’s rights and in circumstances where they knew or had reason to believe that such acts were infringements.

51 The Defendants and each of them threaten and intend to continue the acts complained of. If that occurs, Microsoft will suffer further loss and damage. Microsoft seeks final injunctions to prohibit further infringements of the Trade Marks or acts of passing off.

52 Microsoft seeks declaratory relief that the Defendants have infringed the Trade Marks as alleged and/or have committed passing off.

53 Microsoft seeks appropriate measures for the dissemination and publication of any judgment in which any Defendant is held liable, at the Defendants’ expense, pursuant to paragraph 26.2 of Practice Direction 63 and/or Article 15 of Directive 2004/48/EC.

- 54 Microsoft is entitled to and claims interest, pursuant to section 35A of the *Senior Courts Act 1981* or the Court's equitable jurisdiction, on all sums found due to it for such a period and at such a rate as the Court thinks fit.



AND THE CLAIMANT CLAIMS:

- (1) An injunction to restrain the Defendants (whether acting by themselves, through employees or agents, by procuring, authorising, assisting or encouraging others to act, or by acting in any other way) from:
 - (a) Supplying or offering to supply any technical support services under or by reference to any of the Microsoft Signs or any deceptively similar sign in the UK or EU;
 - (b) Engaging in acts of passing off;
 - (c) Infringing the Trade Marks or either of them in the UK or EU; or
 - (d) From any place in the UK or EU, aiming, targeting or directing any such services to consumers in the US using the Microsoft Signs or any deceptively similar sign.
- (2) An inquiry as to damages or account of profits (at the Claimant's election) for all acts of trade mark infringement and passing off committed by the Defendants.
- (3) An order for payment to the Claimant of all sums certified in answer to the said inquiry, or all sums found due upon taking the said account, together with interest to be assessed under Section 35A of the *Senior Courts Act 1981* or at such rates as the Court may deem equitable.
- (4) Delivery up or, at the Claimant's election, destruction on oath of all articles and data in any Defendant's control whose possession or use would contravene the said injunctions.
- (5) Disclosure of the identities of all third parties whom any of the Defendants have engaged as agents or representatives in any part of the world to supply technical support services.
- (6) Dissemination of any judgment in which any Defendant is held liable.
- (7) Interest as claimed.



- (8) Declarations of infringement.
- (9) Costs.
- (10) Further or other relief.

JAANI RIORDAN

DATED 11 December 2020

STATEMENT OF TRUTH

The Claimant believes that the facts stated in these Particulars of Claim are true. The Claimant understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I am authorised by the Claimant to sign this statement.

Full name: Clive Gringras

Signed:

Position or office held: Partner at CMS
Cameron McKenna Nabarro Olswang LLP

Address for receiving documents:

CMS Cameron McKenna Nabarro Olswang LLP, Cannon Place, 78 Cannon Street,
London EC4N 6AF (Ref: CLGP/FIDA/O10816.07457)

Served on [] December 2020 by CMS Cameron McKenna Nabarro Olswang LLP, Cannon Place, 78 Cannon Street, London EC4N 6AF, solicitors for the Claimant.



IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)

Claim No IL-2020-[]

BETWEEN:

MICROSOFT CORPORATION

Claimant

- and -

(1) BAREWIRE LTD

(2) NEIL MICHAEL PURNELL

(3) TONI DONNA WHITTINGHAM

Defendants

PARTICULARS OF CLAIM

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