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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

SOFTWAREONLINE.COM, INC., a
Washington Corporation; and DAVID
W. PLUMMER, Chief Technology
Office of SoftwareOnline, Inc.,
individually and as part of his marital
community,

Defendants.

06 - 2 - 12343 - 3 SEA

COMPLAINT FOR INJUNCTIVE
AND ADDITIONAL RELIEF UNDER
THE UNFAIR BUSINESS
PRACTICES--CONSUMER
PROTECTION ACT

COMES NOW, Plaintiff, State of Washington ("the State" or "Plaintiff"), by and through its attorneys Rob McKenna, Attorney General; and Katherine M. Tassi, Assistant Attorney General, and brings this action against Defendant named herein. The State alleges the following on information and belief:

I. INTRODUCTION

1.1 Plaintiff, State of Washington, brings this action pursuant to RCW 19.86, the Unfair Business Practices-Consumer Protection Act ("Consumer Protection Act"). Plaintiff seeks a permanent injunction, restitution, and other equitable relief, including civil penalties, and attorneys' costs and fees, based on violations of the Consumer Protection Act.

II. JURISDICTION AND VENUE

COPY

1 **5.1** Since at least 2005, SoftwareOnline and David W. Plummer (together,
2 “Defendants”) have marketed, advertised, and sold various software products to the public over
3 the Internet and through commercial electronic mail solicitations (“email”), including a product
4 called InternetShield, an Internet security and privacy program that Defendants represent will
5 detect a computer’s vulnerabilities to harmful “exposed web sites” and will provide the
6 computer user protection against security and privacy attacks; and a product called Registry
7 Cleaner, software that Defendants represent will clean a computer’s registry in order to protect
8 the computer from crashes, slow performance, and other problems.

9 **5.2** Defendants advertise and promote their products by first offering the user a
10 “free scan” of the user’s computer, and then offering to fix a small number of the problems
11 identified by the scan. Defendants then strongly recommend to the user that the user purchase
12 the “full program” in order to be protected from the remaining problems on the user’s
13 computer.

14 **5.3** Defendants are in competition with others in the State of Washington engaged
15 in similar business.

16 **VI. VIOLATIONS OF THE CONSUMER PROTECTION ACT**

17 **A. First Cause of Action: Misrepresenting the Extent to Which Software Is**
18 **Necessary for Security and Privacy Reasons**

19 **6.1** Plaintiff realleges paragraphs 1.1 through 5.3 and incorporates them herein as if set
20 forth in full.

21 **6.2** In promoting their software products Registry Cleaner and InternetShield,
22 Defendants offer a “free scan” of the user’s computer, and then offer to fix a small number of
23 the problems identified by the scan. If the user opts not to have the alleged problems fixed, or
24 if the user has the alleged problems fixed but then declines to purchase the product,
25
26

1 Defendants' software generates multiple advertisements or dialogue boxes, and/or launches
2 new browser windows in order to continue to induce the user to purchase the full program.
3 The advertisements and dialogue boxes repeatedly warn the user of the threat or risk remaining
4 on the user's computer, no matter what the scan "results" of the user's computer reveal, and
5 urge the user to purchase the full program. In some instances, if the user does not purchase the
6 full program of the product, Defendants' advertisements and scan interface, both warning the
7 user of the remaining problems on the computer, automatically appear on the user's screen
8 each time the user re-starts the computer until the user uninstalls the "free scan" software or
9 purchases the product. The totality of the user's experience after running Defendants' Registry
10 Cleaner and InternetShield free scan – from the scan results to the subsequent series of
11 warning-type advertisements – creates the misleading impression that the user's computer is at
12 serious risk of harm.
13

14
15 **6.3** Defendants' InternetShield free scan, in particular, finds every computer at risk
16 for security and privacy violations as long as the computer does not have the same 2000-plus
17 Web sites that Defendants have identified as harmful entered into the computer's "restricted
18 zone." Furthermore, the scan shows a user's computer as vulnerable to over 2000 dangerous
19 Web sites, even when all of those exact sites are blocked by means of the user's Hosts file. In
20 this way, the scan function is unreliable in assessing the computer's vulnerability and misleads
21 the user into believing that the user's computer is at risk when it is not.
22

23 **6.4** The misrepresentation of the risk of harm to the user's computer to induce the user
24 to purchase a product constitutes unfair and deceptive acts or practices in trade or commerce and
25 unfair methods of competition in violation of the Consumer Protection Act, RCW 19.86.020.
26

1 **B. Second Cause of Action: Misrepresenting Functions on Advertisements**

2 6.5 Plaintiff realleges paragraphs 1.1 through 6.4 and incorporates them herein as if set
3 forth in full.

4 6.6 Defendants advertise Registry Cleaner and InternetShield in various ways,
5 including, but not limited to, through pop-ups, pop-unders, dialogue boxes, and "chat"
6 dialogue boxes, some of which are generated by the free scan software. Defendants
7 misrepresent through standard "buttons" on its advertisements and program interfaces that if a
8 user clicks on those buttons, the advertisements will close or that processes in progress will
9 cease. In fact, in many instances, the "buttons" on Defendants' advertisements and interfaces
10 do the opposite of what the "button" should do or fail to do what the "button" should do. For
11 example, if a user clicks on "x" to close an advertisement, rather than the advertisement
12 closing, another advertisement pops up over the original advertisement. If a user clicks on
13 "close" to close an interface, rather than the interface closing, an advertisement pops up.
14 Defendants' misrepresentation of buttons that do not perform their normally expected
15 functions misleads consumers and forces users to continue to view Defendants' advertisements
16 when the user is trying to close out of the advertisement.
17

18 6.7 The misrepresentation constitutes unfair and deceptive acts or practices in trade or
19 commerce and unfair methods of competition in violation of the Consumer Protection Act, RCW
20 19.86.020.
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22 **C. Third Cause of Action: Misrepresenting the Functionality of Uninstall Option**

23 6.8 Plaintiff realleges paragraphs 1.1 through 6.7 and incorporates them herein as if set
24 forth in full.
25

1 **6.9** Defendants offer an uninstall option for its free scan software; however, the
2 uninstall option does not reliably uninstall the software. Furthermore, when the user is
3 informed that the software has been uninstalled, some of Defendants' software files, in fact,
4 remain on the user's computer without the user's knowledge or consent.
5

6 **6.10** The misrepresentation constitutes unfair and deceptive acts or practices in trade or
7 commerce and unfair methods of competition in violation of the Consumer Protection Act, RCW
8 19.86.020.

9 **D. Fourth Cause of Action: Misleading Negative-Option Billing**

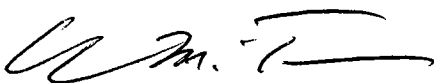
10 **6.11** Plaintiff realleges paragraphs 1.1 through 6.10 and incorporates them herein as if
11 set forth in full.

12 **6.12** On the check-out page for its software products, Defendants offer for sale
13 numerous additional services and products, including extended download plans, download
14 updates, and other software products. Additional products and services have boxes next to
15 them to be checked by the consumer if the consumer wants to purchase the product or service;
16 however, Defendants check by default the nonrefundable services. Defendants also check by
17 default a service that has to be affirmatively cancelled by the consumer or else the consumer's
18 credit card is authorized to be charged at the end of one year. In order for the consumer not to
19 be charged for the purchase of the additional nonrefundable products and services, or not to
20 have a credit card subject to being billed automatically after the "free" period had expired, the
21 consumer has to manually un-check all of the boxes. In numerous instances, consumers
22 receive, and are billed for, products and services that they did not affirmatively request.
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1 e. Award Plaintiff the costs of bringing this action, pursuant to RCW
2 19.86.090, as well as such other and additional relief as the Court may determine to be just
3 and proper.
4

5 DATED this 11th day of April, 2006.
6

7 Presented by:
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