

FILED
KING COUNTY, WASHINGTON

AUG 28 2017

SUPERIOR COURT CLERK

EXP07

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

iYOGI, INC., a New York corporation;
iYOGI TECHNICAL SERVICES
PRIVATE LTD.; and VISHAL DHAR,
individually and on behalf of his marital
community,

Defendants.

NO. 15-2-30407-1 SEA

~~[PROPOSED]~~ DEFAULT
JUDGMENT AGAINST
DEFENDANT IYOGI TECHNICAL
SERVICES PRIVATE LTD.

[CLERK'S ACTION REQUIRED]

I. JUDGMENT SUMMARY

- | | | |
|-----|---|---|
| 1.1 | Judgment Creditor: | State of Washington |
| 1.2 | Judgment Debtor: | iYogi Technical Services Private Ltd. |
| 1.3 | Principal Judgment amount: | |
| | A. Restitution: | \$4,000,000.00 |
| | B. Civil Penalty: | \$ 116,000.00 |
| | C. Damages: | \$2,000,000.00 |
| | D. Cost & Fees | \$ 49,766.20 |
| 1.4 | Unpaid principal Judgment
amount shall bear interest at: | 12 percent per annum |
| 1.5 | Attorney for Judgment Creditor: | Daniel Davies and Andrea Alegrett,
Assistant Attorneys General |
| 1.6 | Attorneys for Judgment Debtors: | No appearance entered |

1 **II. ORDER**

2 2.1 This matter came before the Court on Plaintiff State of Washington's Motion
3 for Entry of Default Judgment. The Court examined the following documents and other
4 evidence before entering the Default Judgment herein: Order of Default; Motion for Entry of
5 Default Judgment with accompanying Declaration of Daniel Davies and Exhibits thereto; and
6 the papers and pleadings on file in this case.

7 2.2 Having considered the pleading and the evidence listed above,

8 **IT IS HEREBY ORDERED** that Default Judgment against Defendant iYogi Technical
9 Services Private Ltd. ("iYogi India") is granted, and the following Order is entered:

10 **III. FINDINGS OF FACT**

11 3.1 iYogi India is an Indian private limited company with its principal place of
12 business in Gurgaon, India.

13 3.2 This Court has personal jurisdiction over iYogi India pursuant to
14 RCW 19.86.160, RCW 4.28.180 and RCW 4.28.185 because iYogi India has purposely acted
15 or consummated transactions in the state of Washington, including soliciting and receiving
16 funds from Washington consumers. The violations of the Consumer Protection Act (CPA),
17 RCW 19.86, alleged herein arise from or are connected with those transactions.

18 3.3 Venue in this Court is appropriate under RCW 4.12.020 because acts described
19 in the State's Complaint occurred in King County.

20 3.4 iYogi India deceived people into believing it was a part of major computer
21 software and hardware companies like Norton, Microsoft, or Apple. iYogi India
22 representatives then used iYogi proprietary software to remotely access consumers' computers
23 in order to identify complex looking files that they misrepresent to consumers as "infected
24 files" harming the computer. The representatives then convince consumers they need to
25 download iYogi India's diagnostic software onto their computers in order to fully identify their
26 problems. The software by design flashes a variety of warning signs causing a "Critical"

1 computer status regardless of the computer's health, and iYogi India's representative again
2 falsely claim that malware or computer viruses have infected the consumers' computer. After
3 making these claims, iYogi India proceeds to sell consumers technical support plans, claiming
4 the services are necessary to "fix" the consumers' non-existent problems. iYogi India also
5 misrepresents that consumers' computers lack any anti-virus programs, in order to induce them
6 to purchase iYogi India's own anti-virus software and misrepresented computer hardware
7 issues to induce customers to purchase hardware from iYogi India.

8 3.5 iYogi India's conduct affects the public interest and has the capacity to mislead
9 a substantial number of Washington consumers because its activities were advertised to
10 numerous consumers in Washington and constitute unfair or deceptive acts or practices in trade
11 or commerce in violation of RCW 19.86.020. iYogi India's conduct also affects the public
12 interest because it involved purchases made by at least 58 Washington consumers and the
13 collection of approximately \$4 million in revenues from Washington consumers since 2011
14 through its unfair and deceptive acts and practices.

15 IV. CONCLUSIONS OF LAW

16 4.1 The Court has jurisdiction over the subject matter of this action and iYogi India
17 and Plaintiff's Amended Complaint states claims upon which relief may be granted.

18 4.2 The Attorney General has jurisdiction to bring this action under
19 RCW 19.86.080.

20 4.3 iYogi India's conduct as described in Findings of Fact Nos. 3.1 through 3.5
21 constitutes violations of the Consumer Protection Act, RCW 19.86.020.

22 4.4 iYogi India's conduct as described in Findings of Fact Nos. 3.1 through 3.5
23 constitutes violations of the Computer Spyware Act, RCW 19.270.040.

24 4.5 Plaintiff is entitled to a Decree ordering iYogi India to pay the amounts
25 described herein.

1 be placed on the webpage in a position in Direct Proximity to the offer, term or limitation.
2 Further, a disclosure of information is not Clear and Conspicuous if, among other things, it is
3 obscured by the background against which it appears or there are other distracting elements, or
4 the net impression of the statement, disclosure, or other information is inconsistent with,
5 contrary to, or in mitigation of the disclosure itself. Statements of limitation shall be set out in
6 close conjunction with the benefits described or with appropriate captions of such prominence
7 that statements of limitation are not minimized, rendered obscure, presented in an ambiguous
8 fashion, or intermingled with the context of the statement so as to be confusing or misleading.
9 Nothing contrary to, inconsistent with, or in mitigation of any disclosure shall be permitted. In
10 all instances, the disclosure shall be presented prior to the consumer incurring any financial
11 obligation;

12 b. “Express Informed Consent” shall mean explicit, affirmative consent
13 indicated by a consumer after Clear and Conspicuous disclosure of all material terms of the
14 offer;

15 c. “Material fact(s),” “material condition(s),” “material term(s),” or any
16 similar phrase or combination of words or phrases is any fact, condition or term that, if known and
17 understood by the consumer, would have been important to a consumer making a purchasing
18 decision. A “material limitation” means a term or condition that necessarily affects a consumer’s
19 ability to obtain an offer as advertised.

20 5.3 iYogi India and its successors, assigns, transferees, officers, agents, servants,
21 employees, representatives, and all other persons or entities in active concert or participation
22 with iYogi India are hereby permanently enjoined and restrained in the state of Washington, or
23 from a location outside of the state of Washington directed to a Washington resident (including
24 internet sales where iYogi India’s advertising is available online in Washington, and mailing
25 and telephone calls into Washington), from the following acts or omissions in connection with
26

1 the marketing, promoting, advertising, sale, solicitation, offering for sale, or distribution of
2 goods or services:

3 a. Inducing computer owners and operators to install its proprietary
4 software onto their computers by deceptively representing that it is necessary to assess the
5 computer's health, or repair and protect the computer's security;

6 b. Deceptively representing that files on a consumer's computer are
7 potentially harming the computer, when the files are not infected or otherwise harmful to the
8 computer;

9 c. Using software that flashes warning signs, including "Critical" computer
10 status, regardless of the computer's health;

11 d. Falsely claiming that malware or computer viruses have infected a
12 consumer's computer;

13 e. Deceptively representing that consumers' computers lack any anti-virus
14 programs, when the computers have an anti-virus program installed;

15 f. Purchasing advertising on Internet search engines so that Defendants' or
16 their agents' websites are featured more prominently than the software and hardware companies
17 for which the consumer is actually searching;

18 g. Identifying items on a consumer's screen as malware, infected files,
19 potentially harmful files, other serious defects harming the computer, when items are routine
20 programs or files that pose no harm to the consumer's computer;

21 h. Encouraging consumers to download software on their computers that
22 displays warnings when a computer is free from defects, including "warnings" that are related
23 to routine computer functions rather than a defect;

24 i. Selling hardware and software products, including operating system
25 upgrades, which are available for free from the manufacturer, including products that are
26 covered by a manufacturer's warranty;

1 j. Deceptively representing to consumers that products are defective in
2 order to sell them new products;

3 k. Selling consumers additional service subscriptions to a consumer when
4 the consumer already has a subscription for the advertised service;

5 l. Engaging in unfair and deceptive sales tactics to induce consumers to
6 purchase products or services, including continuing to try and sell additional services after a
7 consumer has declined the services;

8 m. Engaging in unfair and deceptive sales tactics by making false and
9 misleading statements to consumers including but not limited to, the need for repair,
10 replacement and/or service and the quality of services consumers will receive;

11 n. Deceptively representing the nature of or identity of iYogi India;

12 o. Deceptively representing the identity, existence, nature or qualifications
13 of any persons affiliated with iYogi India.;

14 p. Failing to comply with 16 CFR Part 255, the FTC Guides Concerning
15 the Use of Endorsements and Testimonials in Advertising;

16 q. Failing to disclose any facts that would be material to a consumer's
17 decision to purchase iYogi India's products or services;

18 r. Failing to obtain a consumer's express informed consent to any recurrent
19 payment plan. For purposes of this provision, "express informed consent" shall mean a check
20 box whereby the consumer must affirmatively agree to be automatically billed for a product or
21 service on a recurring basis, which must be clearly and conspicuously disclosed;

22 s. Failing to disclose all material terms and conditions of any recurrent
23 payment plan in direct proximity to the check box whereby the consumer is asked to give
24 express informed consent to be automatically billed for a product or service on a recurring
25 basis.

1 5.4 Pursuant to RCW 19.86.140, iYogi India is ordered to pay Plaintiff, State of
2 Washington, a civil penalty of \$116,000, representing at least 58 violations of RCW 19.86.020.

3 5.5 Pursuant to RCW 19.270.060, iYogi India is order to pay Plaintiff damages in
4 the amount of \$2,000,000, representing at least 58 violations of RCW 19.270.040 while taking
5 into consideration RCW 19.270.060's \$2,000,000 limit on damages.

6 5.6 Pursuant to RCW 19.86.080, the aggrieved Washington consumers are entitled
7 to restitution in the amount of \$4,000,000.

8 5.7 Pursuant to RCW 19.86.080, iYogi India is ordered to pay Plaintiff \$49,766.20 for
9 its reasonable costs and attorneys' fees incurred in connection with bringing this action against
10 iYogi India.

11 5.8 All payments made to satisfy this Judgment shall be in the form of a valid check
12 paid to the order of the "Attorney General—State of Washington." Payment shall be sent to the
13 Office of the Attorney General, Attention: Nicole Jackson, Administrative Lead, 800 Fifth
14 Avenue, Suite 2000, Seattle, Washington, 98104-3188.

15 5.9 Nothing in this Judgment shall be construed as to limit or bar any other
16 governmental entity or any consumer in the pursuit of other remedies against Defendants.

17 5.10 Representatives of the Office of the Attorney General shall be permitted upon
18 reasonable notice to iYogi India, to access, inspect, and/or copy relevant and discoverable
19 business records or documents under control of iYogi India in order to monitor compliance
20 with this Judgment.

21 5.11 Pursuant to RCW 19.86.140, any violation of the terms of this Judgment shall
22 form the basis for further enforcement proceedings, including but not limited to contempt of Court
23 proceedings and civil penalties of up to \$25,000.00 for violations committed after the date of this
24 Judgment.

25 5.12 Violation of any of the injunctive terms of this Judgment shall constitute a
26 violation of RCW 19.86.020.

1 5.13 Jurisdiction is retained for the purpose of enabling Plaintiff to apply to the Court
2 for enforcement of compliance with the terms of this Judgment.

3 DATED this _____ day 8/28, 2017.

4
5
6 
7 _____
8 JUDGE/COURT COMMISSIONER
9

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11 Approved for Entry and Presented by:

12 ROBERT W. FERGUSON
13 Attorney General

14 

15 _____
16 DANIEL DAVIES, WSBA #41793
17 ANDREA ALEGRETT, WSBA #50236
18 Assistant Attorneys General
19 Attorneys for Plaintiff
20 State of Washington
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