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KING COUNTY
SUPERIOR COURT

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

NO. 08-2-10100-2 SEA

Plaintiff,

CONSENT DECREE

v.

RON COOKE, individually and as part
of his marital community;

MESSENGER SOLUTIONS, LLC, an
Arizona limited liability company,

Defendants.

I. DECREE SUMMARY

- 1.1 Decree Creditor: State of Washington
- 1.2 Decree Debtors: RON COOKE,
an Arizona limited liability company.
- 1.3 Principal Decree Amount:
 - a. Costs and Fees: \$5,000.00
 - b. Restitution: \$202.00
 - c. Civil Penalties: \$100,000.00, provided that \$100,000.00 shall be waived upon compliance with the terms of this Consent Decree pursuant to Paragraph 5.1 below

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1 Defendants further agree that they will not oppose the entry of this Consent Decree on the
2 grounds the Consent Decree fails to comply with Rule 65(d) of the Federal Rules of Civil
3 Procedure, and hereby waive any objections based thereon; and

4 Defendants waive any right they may have to appeal from this Consent Decree; and

5 Plaintiff and Defendants having agreed that this Consent Decree does not constitute
6 evidence or an admission regarding the existence or non-existence of any issue, fact, or violation
7 of any law alleged by Plaintiff; and

8 Defendants further agree that this Court shall retain jurisdiction of this action for the
9 purpose of implementing and enforcing the terms and conditions of the Consent Decree and for
10 all other purposes; and

11 The Court having determined there is no just reason for delay in the entry of this
12 Decree against Defendants, and being fully advised; and

13 The Court finding no just reason for delay;

14 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as
15 follows:

16 II. GENERAL

17 2.1 The Court has jurisdiction of the subject matter of this action and of the parties
18 hereto pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367, and Plaintiff's Complaint states
19 claims upon which relief may be granted under the provisions of Chapter 19.270 RCW, the
20 Computer Spyware Act and Chapter 19.86 RCW, the Unfair Business Practices-Consumer
21 Protection Act. Venue in this district is proper under 28 U.S.C. § 1391. A substantial portion of
22 the acts complained of herein have occurred in King County and elsewhere in the Western
23 District of Washington.

24 2.2 Unless otherwise specified, the term "Defendants" as used in this document
25 shall mean Ron Cooke and Messenger Solutions, LLC.

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4. Transmitting, or causing to be transmitted, to a user's computer, by any means, any software, including, but not limited to, toolbars or free scan or free trial software, without first (1) disclosing clearly and conspicuously all the material features of the software (where "material feature" means any feature that would affect a user's decision whether to download or install the software) and (2) obtaining the user's affirmative consent to the download and installation.

5. Misrepresenting the risks that any products or services are designed to address, or the benefits or cost of any products or services.

6. Misrepresenting the utility, substance, or effect of any scan of the consumer's computer.

7. Misrepresenting the risk level to any alleged "error" or problem discovered by a scan of a user's computer.

8. Advertising and/or selling any software product without conducting reasonable testing to determine that the product will function as represented in any advertising or marketing.

9. Failing to maintain documentation substantiating any and all claims made in advertisement regarding the utility, substance, performance, or effect of any software, whether offered at no charge or for a price.

10. Failing to review and approve all advertisements for all products owned or promoted by Defendants prior to permitting the advertisement to be used.

11. Failing to ensure that all advertisements reviewed and approved by Defendants for use in marketing comply with the injunctive provisions of this Decree.

1 12. Failing to maintain as business records copies of all advertisements
2 used by Defendants and any of their affiliates for all products owned or
3 promoted by Defendants.

4 13. Transmitting or causing to be transmitting any software onto a user's
5 computer if the user has declined the option to download such software.

6 14. Failing to provide an easy-to-use, clear and conspicuous, and
7 functioning mechanism for users to uninstall any software transmitted or
8 caused to be transmitted by Defendants, including, but not limited to, free
9 versions of software programs and software that is bundled with other
10 software.

11 15. Transmitting or causing to be transmitted any software onto a user's
12 computer without that user's knowledge and permission that causes the user's
13 computer to transmit any advertisements, messages, or software to another
14 user's computer.

15 16. Transmitting or causing to be transmitted any software onto a user's
16 computer that communicates any information about the user or his or her
17 computer or Internet connection to Defendants without providing prior
18 disclosure to the user of the information being transmitted back to Defendants
19 and obtaining affirmative consent from the user prior to the transmission of the
20 software.

21 IV. RESTITUTION

22 4.1 Pursuant to RCW 19.86.080, Defendants shall provide a payment of \$202.00 as
23 restitution to Washington consumers.

24 4.2 Defendants shall provide the Attorney General with the names, addresses,
25 telephone numbers, and email addresses (i.e., all contact information available to Defendants)
26 of the Washington purchasers of his products, along with written, easy-to-understand

1 | instructions on how to uninstall Messenger Blocker/Stopper within ten (10) days of entry of
2 | this Decree.

3 | **V. CIVIL PENALTIES**

4 | 5.1 Pursuant to RCW 19.86.140, Plaintiff shall have and recover, and Defendants shall
5 | be liable for and shall pay, civil penalties of \$100,000.00. However, the full amount of the
6 | penalties is suspended conditioned upon Defendants' full compliance with the terms of this
7 | Consent Decree.

8 | **VI. ATTORNEYS' COSTS AND FEES**

9 | 6.1 Pursuant to RCW 19.86.080, Plaintiff shall recover and Defendants shall pay the
10 | costs and reasonable attorneys' fees incurred by the Plaintiff in pursuing this matter in the amount
11 | of \$5,000.00, payable upon entry of this Consent Decree.

12 | 6.2 In any successful action to enforce any part of this Consent Decree, Defendants
13 | will pay the Attorney General its attorneys' fees and costs, including reasonable attorneys' fees as
14 | provided by RCW 19.86.080.

15 | 6.3 Payment owing under this provision shall be in the form of a valid check paid to
16 | the order of the "Attorney General—State of Washington" and shall be due and owing
17 | immediately upon entry of the Consent Decree. Payment shall be sent to the Office of the
18 | Attorney General, Attention: Cynthia Lockridge, Administrative Office Manager, 800 Fifth
19 | Avenue, Suite 2000, Seattle, Washington, 98104-3188.

20 | **VII. ENFORCEMENT**

21 | 7.1 Violation of any of the injunctions contained in this Consent Decree, as
22 | determined by the Court, shall subject Defendants to a civil penalty of up to \$25,000.00 per
23 | violation pursuant to RCW 19.86.140, provided that the suspended civil penalties described in
24 | Paragraph 5.1 shall be instated upon the proof of a first violation, and that any subsequent
25 | violations shall be subject to additional civil penalties of up to \$25,000.00 per violation.

1 7.2 Violation of any of the terms of this Consent Decree, as determined by the Court,
2 shall constitute a violation of the Consumer Protection Act, RCW 19.86.020, for which Plaintiff
3 may seek additional relief, including restitution, attorney fees and costs, and injunctive relief.

4 7.3 This Consent Decree is entered pursuant to RCW 19.86.080. Jurisdiction is
5 retained for the purpose of enabling any party to this Consent Decree with or without the prior
6 consent of the other party to apply to the Court at any time for enforcement of compliance with
7 this Consent Decree, to punish violations thereof, or to modify or clarify this Consent Decree.

8 7.4 Representatives of the Office of the Attorney General shall be permitted to access,
9 inspect and/or copy all business records or documents under control of Defendants in order to
10 monitor compliance with this Consent Decree within 14 days of written request to Defendants,
11 provided that the inspection and copying shall be done in such a way as to avoid disruption of
12 Defendants' business activities. Failure to comply with this section will subject Defendants to a
13 minimum civil penalty of \$2,000 per day for each day beyond 14 days after the written request
14 that the Attorney General is prevented by Defendants from accessing all records as provided by
15 this Paragraph.

16 7.5 Representatives of the Office of the Attorney General may be permitted to
17 question Defendants, or any officer, director, agent, employee or independent contractor of any
18 corporation affiliated with Defendants, in deposition, pursuant to the provisions and notice
19 requirements of FRCP 30, in order to monitor compliance with this Consent Decree. This
20 provision shall not be interpreted to mean that Defendants are required to produce third parties
21 over whom they have no control for deposition purposes.

22 7.6 For a period of two (2) years following entry of this Decree, Defendants shall
23 provide to the Attorney General copies of all advertisements used by Defendants to market any
24 products online and shall identify the method(s) used by Defendants to conduct advertising online
25 within ten (10) days of initiating such advertising. If requested, Defendants shall provide the
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1 Attorney General with a copy of any software program(s) Defendants are marketing and/or selling
2 online.

3 7.7 Nothing in this Consent Decree shall be construed as to limit or bar any other
4 governmental entity or consumer from pursuing other available remedies against Defendants.

5 7.8 Under no circumstances shall this Consent Decree or the name of the State of
6 Washington, the Office of the Attorney General, Consumer Protection Division, or any of their
7 employees or representatives be used by any Defendants named in the Complaint in connection
8 with any selling, advertising, or promotion of products or services, or as an endorsement or
9 approval of Defendants' acts, practices or conduct of business.

10 **VIII. DISMISSAL AND WAIVER OF CLAIMS**

11 8.1 Upon entry of this Consent Decree, all claims in this matter, not otherwise
12 addressed by this Consent Decree are dismissed.

MAY 19 2008

13 DONE IN OPEN COURT this _____ day _____, 2008.

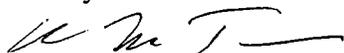
14 **D. Bruce Gardiner**

15 JUDGE/COURT COMMISSIONER

16 Approved for Entry and Presented by:

17 Approved for Entry, Notice of Presentation
Waived:

18 ROBERT M. MCKENNA
19 Attorney General



20 KATHERINE M. TASSI, WSBA #32908
21 Assistant Attorney General
22 Attorneys for Plaintiff
23 State of Washington



24 RANDY GAINER, Esq. WSBA #11823
25 Davis Wright Tremaine LLP
26 Attorney for Defendants RON COOKE and
MESSENGER SOLUTIONS, LLC