

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
Plaintiff,  
v.  
IMERGENT, INC., a Delaware  
corporation; STORESONLINE,  
INC., a Delaware corporation,  
Defendants.

NO.  
CONSENT DECREE  
[CLERK'S ACTION REQUIRED]

**I. JUDGMENT SUMMARY**

1.1	Judgment Creditor:	State of Washington
1.2	Judgment Debtors:	IMERGENT, INC.; STORESONLINE, INC
1.3	Principal Judgment Amount:	
	a. Civil Penalties:	\$25,000.00
	b. Restitution	\$75,000.00
	c. Costs and Attorneys' Fees:	\$75,000.00
1.4	Total Judgment:	\$175,000.00
1.5	Attorney for Judgment Creditor:	Katherine M. Tassi, Assistant Attorney General
1.6	Attorney for Judgment Debtors:	Franklin L. Dennis Barokas Martin & Tomlinson

1 Plaintiff, State of Washington, having commenced this action on \_\_\_\_\_, \_\_\_\_\_,  
2 2009, pursuant to the Unfair Business Practices--Consumer Protection Act ("Consumer Protection  
3 Act"), 19.86 RCW; and

4 Defendants IMERGENT, INC.; STORESONLINE, INC. ("Defendants"), having been  
5 served with a Summons and Complaint previously filed in this matter or having waived service;  
6 and

7 Plaintiff appearing by and through its attorneys, Robert M. McKenna, Attorney General;  
8 and Katherine M. Tassi, Assistant Attorney General; and Defendants appearing by and through  
9 their attorneys, Franklin L. Dennis; and

10 Plaintiff and Defendants having agreed on a basis for the settlement of the matters  
11 alleged in the Complaint and to the entry of this Consent Decree against Defendants without the  
12 need for trial or adjudication of any issue of law or fact; and

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

16 Defendants recognize and state that this Consent Decree is entered into voluntarily and that  
17 no promises or threats have been made by the Attorney General's Office or any member, officer,  
18 agent, or representative thereof to induce them to enter into this Consent Decree, except as  
19 provided herein; and

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

21 Defendants further agree that it will not oppose the entry of this Consent Decree on the  
22 grounds the Consent Decree fails to comply with Rule 65(d) of the Rules of Civil Procedure and  
23 hereby waive any objections based thereon; and

1 Defendants further agree that this Court shall retain jurisdiction of this action for the  
2 purpose of implementing and enforcing the terms and conditions of the Consent Decree and for all  
3 other purposes.

4 The Court finding no just reason for delay;

5 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as  
6 follows:

## 7 II. GENERAL

8 2.1 Jurisdiction. This Court has jurisdiction over the subject matter of this action and  
9 of the parties. Plaintiff's Complaint in this matter states claims upon which relief may be granted  
10 under the provisions of the Consumer Protection Act, 19.86 RCW.

11 2.2 Defendants. For purposes of this Consent Decree, the term "Defendants" where  
12 not otherwise specified shall mean IMERGENT, INC.; STORESONLINE, INC.. Definitions.

13 a. For the purposes of this Consent Decree, the terms "clear and conspicuous" or  
14 "clearly and conspicuously," when referring to a statement, disclosure, or any other  
15 information, mean that such statement, disclosure, or other information by whatever medium  
16 communicated is readily understandable and presented in such size, color, contrast, location,  
17 and audibility compared to other information with which it is presented that is readily apparent  
18 to the person to whom it is disclosed. If such statement, disclosure, or other information is  
19 necessary as a modification, explanation, or clarification to other information with which it is  
20 presented, it must be presented in close proximity to the information it modifies in a manner  
21 which is readily noticeable and understandable. Further, a disclosure of information is not clear  
22 and conspicuous if, among other things, it is obscured by the background against which it  
23 appears or there are other distracting elements. Statements of limitation must be set out in close  
24 conjunction with the benefits described or with appropriate captions of such prominence that  
25 statements of limitation are not minimized, rendered obscure, presented in an ambiguous  
26

1 fashion, or intermingled with the context of the statement so as to be confusing or misleading.

2 Nothing contrary to, inconsistent with, or in mitigation of any disclosure shall be permitted.

3 b. For the purposes of enforcement of this Consent Decree, the term “sales  
4 presentation” shall be interpreted to mean any meeting, seminar, lecture, preliminary workshop,  
5 or all-day seminar or similar gathering in which Defendants present information about their  
6 products, sell their products, or provide information about Internet sales to the general public.,

7 c. For the purposes of enforcement of this Consent Decree, the term “individual  
8 consultation” shall mean any one-on-one sales pitch, presentation, and/or transaction made  
9 during a sales presentation between Defendants or their sales agents and a consumer (including  
10 any person attending the sales presentation with the consumer) with the purpose of selling the  
11 consumer Defendants’ products/services packages.

### 12 III. INJUNCTIONS AND MANDATORY AFFIRMATIVE RELIEF

13 3.1 Application of Injunctions and Mandatory Affirmative Relief. The injunctive and  
14 mandatory affirmative relief provisions of this Consent Decree shall apply to Defendants and  
15 Defendants’ successors, assigns, officers, agents, servants, employees, representatives, and all  
16 other persons or entities in active concert or participation with Defendants.

17 3.2 Notice. Within five (5) business days of entry of this Decree, Defendants shall  
18 inform and give actual notice to all successors, assigns, transferees, officers, agents, servants,  
19 employees, representatives, attorneys, and all other persons or entities in active concert or  
20 participation with Defendants in the Complaint, including but not limited to its marketing partners  
21 and third parties authorized to market, promote, advertise, offer for sale, and/or sell any of  
22 Defendants’ products or services of the terms and conditions of this Consent Decree.

23 3.3 Injunctions. Defendants and their successors, assigns, transferees, officers, agents,  
24 servants, employees, representatives, and all other persons or entities in active concert or  
25 participation with Defendants are hereby permanently enjoined and restrained from directly or  
26 indirectly engaging in the following acts or practices:

1           1.     In connection with the advertising, promotion, offer for sale, sale, or distribution  
2 of any of Defendants' products or services in or affecting commerce, representing, expressly or  
3 by implication:

4           a.     That Defendants' products or services are easy to use or designed to be  
5 used by novice business persons or computer users unless such representations are, in fact, true;

6           b.     That Defendants' products can be used successfully without the  
7 consumer owning or otherwise having unrestricted access to a computer and a high-speed  
8 Internet connection;

9           c.     That Defendants will provide all needed support to enable the consumer  
10 to successfully use Defendants' product or services, unless such is the case;

11          d.     That coaching or mentoring services are included in the price of the  
12 Defendants' products or services, unless such is the case;

13          e.     That Defendants' customers run successful Internet businesses, unless  
14 Defendants have knowledge and possession of factual and verified information supporting such  
15 a representation;

16          f.     That training or technical support will be provided with the sale of  
17 Defendants' products or services, unless such is the case;

18          g.     That the Defendants will not misrepresent the marketing experience of  
19 the people providing the sales representations, and will make clear that they are compensated by  
20 the Defendants;

21          h.     That consumers do not need to pay Defendants a fee for website hosting  
22 unless the consumer builds and activates, i.e., publishes a website, unless such is the case;

23          i.     That it is easy to find drop-shippers to supply products for consumers' e-  
24 commerce sites;

1           j.       That consumers who finance their purchase of Defendants' products or  
2 services will be able to recoup the cost of the products or services through use of Defendants'  
3 products or services; and

4           k.       That it is better for any reason to purchase a package of multiple websites  
5 rather than a single website or website license without explaining the business rationale for  
6 such.

7           2.       In connection with the advertising, promotion, offer for sale, sale, or distribution  
8 of any of Defendants' products or services in or affecting commerce:

9           a.       Using testimonials and/or awards from Defendants' family members,  
10 officers, employees or former employees, or agents or family members of the Defendants'  
11 officers, employees or agents, or employees or former employees, officers, or family members  
12 of any other business entity associated with Defendants' products and services without clearly  
13 and conspicuously disclosing in the testimonial or advertisement the family or business  
14 relationship;

15           b.       Using any testimonial from any person who has not submitted, along  
16 with a written or audio-recorded copy of their testimonial, a signed letter under penalty of  
17 perjury to be kept on file at Defendants' home office, which shall include: (1) the name,  
18 address, and telephone number of the person providing the testimonial; (2) a statement  
19 indicating that the information provided in the testimonial or to be provided live at a  
20 presentation: (1) is not misleading; (2) is accurate and is based on the actual experience of the  
21 person providing the testimonial; (3) does not misrepresent any facts relating to the use of the  
22 Defendants' products or services; and (4) does not misrepresent, directly or indirectly, the  
23 income made from using Defendants' products and services to sell the products being sold by  
24 the person providing the testimonial or making the statement.

25           c.       Using any testimonial that does not conform to the "Guides Concerning  
26 Use of Endorsements and Testimonials in Advertising," 16 C.F.R. Part 255 (2205);

1           d.     Using any testimonial that misrepresents the level of computer and  
2 Internet marketing experience that the person providing the testimonial had prior to becoming a  
3 StoresOnline customer;

4           e.     Providing a financial incentive, benefit, or anything of value to anyone,  
5 directly or indirectly, without clearly disclosing such payment in exchange for the testimonial  
6 that advertises or promotes any of Defendants' services or products without disclosing in that  
7 testimonial the benefit or incentive provided; however, nothing herein shall prohibit Defendants  
8 from reimbursing any expense associated with providing the testimonial, which expenses may  
9 include, but not be limited to, travel and lodging reimbursement, retreat expenses so long as  
10 such expenses do not exceed \$750.00;

11           f.     Causing or allowing speakers or sales agents to use any deceptive scheme  
12 or artifice or make any deceptive or misleading representation in the sale of Defendants'  
13 services or products, including, but not limited to, representing that a speaker or sales agent: (1)  
14 owns their own website when, in fact, the speaker or sales agent does not own a website or has  
15 created a website because Defendants require their employees or agents to have a website; (2)  
16 has used Defendants' software to develop their own website when, in fact, the speaker or sales  
17 agent has not personally developed and marketed a website using Defendants' software; or (3)  
18 has been profitable with a website when, in fact, the gross income from the website is not  
19 greater than the total of all of the costs and business expenses necessary to generate the alleged  
20 profit;

21           g.     Referring any personal information about any of Defendants' customers  
22 to any other business, entity, if the consumer has signed an "opt out" form, which form shall be  
23 provided to the consumer at the time of the sale; and

24           h.     Violating the Unfair Business Practices – Consumer Protection Act, RCW  
25 19.86, *et seq.*

1           3.4    Nothing herein shall be construed to prevent the Defendants from providing  
2 consumers with a list of drop shippers or from providing software integration for drop-shippers;

3           3.5    Mandatory Affirmative Relief.   Defendants and their successors, assigns,  
4 transferees, officers, agents, servants, employees, representatives, and all other persons or entities  
5 in active concert or participation with Defendants are hereby required to:

6           1.    Provide consumers at the time of the sale with a written purchase agreement to  
7 be signed by the consumer clearly and conspicuously listing the products and/or services  
8 purchased and the corresponding price for each product and/or service;

9           2.    Disclose clearly and conspicuously orally that coaching services are not included  
10 in Defendants' product/service packages, unless Defendants do offer coaching services;

11          3.    Disclose clearly and conspicuously prior to the consummation of a sale that  
12 consumers will or may incur costs over and above the costs of Defendants' products and  
13 services, for example, including, but not limited to, items such as equipment, web-hosting fees,  
14 Internet service provider fees, telephone fees, and the costs of the products to be sold;

15          4.    Contractually require any coaching service or other business selling support for  
16 Defendants' products and services to provide to the consumer prior to consummation of the  
17 sale: (a) the exact amount of time contracted for service and support; (b) the specific areas of  
18 service and support that are covered in the consumer's purchase; (c) the number of allowable  
19 visits; (d) the exact times of contact and availability; (e) the specific areas of technical  
20 expertise; and (f) a detailed description of the refund policy for the coaching service fees;

21          5.    Disclose to the Office of Attorney General by certified-mail-return-receipt-  
22 requested to the address shown below the times, dates, and locations of all of Defendants'  
23 planned sales presentations in Washington State at least seven (7) days in advance of the sales  
24 presentation, provided such disclosure shall remain confidential and shall not be disseminated  
25 without the written consent of the Defendants;



1 the amount of seventy-five thousand dollars (\$75,000.00) in an escrow fund account.  
2 Following the Attorney General's administration of the consumer restitution program pursuant  
3 to Paragraph 4.2 below, Defendants shall draw funds from the escrow account to provide  
4 refunds to consumers as directed by the Attorney General. Within ten (10) business days of the  
5 distribution of refund checks in accordance with Paragraph 4.2 below, Defendants shall provide  
6 the Attorney General with a list of the names and addresses of consumers who have been  
7 provided refund checks. Should the restitution amount be insufficient to cover the claims  
8 received, the claims shall be refunded on a pro rata basis to be determined by the Attorney  
9 General. Any amount in the escrow account that remains after the refunds have been  
10 distributed shall be forwarded in the form of a check paid to the order of the "Attorney  
11 General—State of Washington" to the Office of the Attorney General to be used for the same  
12 purposes described in Section VI below within ten (10) business days of mailing the refund  
13 checks to consumers. Payment shall be sent to the Office of the Attorney General, Attention:  
14 Cynthia Lockridge, Administrative Office Manager, 800 Fifth Avenue, Suite 2000, Seattle,  
15 Washington, 98104-3188.

16 4.2 Consumers may submit claims to the Office of the Attorney General for  
17 restitution for a period of forty five (45) days after the date of entry of this Consent Decree  
18 ("Claim Period"). After the end of the Claim Period, the Attorney General shall forward to  
19 Defendants a spreadsheet containing the names, addresses, and refund amounts for each  
20 Eligible Claim, as defined in paragraph 4.3, submitted during the Claim Period. The  
21 spreadsheet shall also note whether the consumer suffered a negative credit report. Within ten  
22 (10) days of receipt of the spreadsheet from the Attorney General, Defendants shall mail by  
23 U.S. mail refund checks drawn from the escrow account established pursuant to paragraph 4.1.,  
24 along with a cover letter approved by the Attorney General, but no other inserts or promotional  
25 materials, to all identified consumers.

1           4.3     To apply for restitution, the consumer must complete, sign, and submit a claim  
2 form designed by the Attorney General within the Claim Period. Consumers may obtain claim  
3 forms from the Attorney General's Office. In order to be eligible for restitution, the claim must  
4 meet the following requirements: (a) the claim must concern a product or service purchased  
5 between January 1, 2005, and the end of the Claim Period from Defendants and/or from any  
6 third party that Defendants referred to the consumer; (b) the claim must state the amount paid  
7 and/or the amount still owed by the consumer, either to Defendants, to a third party referred by  
8 Defendants, or to a third-party billing agent or collection agency; (c) the claimant must attest  
9 that he or she was never able to get an e-commerce site operational using Defendants' products  
10 or services and/or the services of third parties referred by Defendants to the claimant; and the  
11 claimant must agree that if he or she accepts any offered restitution, his or her contract will be  
12 rescinded and all services provided or offered by Defendants and/or the third party will no  
13 longer be available to the claimant ("Eligible Claims"). The claimant may also, optionally, state  
14 whether the claimant has suffered a negative credit report due to his or her transaction with  
15 Defendants and/or any third party referred by Defendants.

16           4.4     For all claimants listed on the spreadsheet provided to Defendants by the  
17 Attorney General's Office pursuant to paragraph 4.2 who have suffered a negative credit report  
18 as a result of being reported to a consumer reporting agency by Defendants or any third party  
19 referred by Defendants, or a collection agency, credit agency, or financing company providing  
20 funds or services to Defendants with regard to such claimants, Defendants shall, within ten (10)  
21 days of receiving the spreadsheet from the Attorney General pursuant to paragraph 4.2, send a  
22 letter to such consumer reporting agency stating that any and all negative credit history which,  
23 up to that date, has been reported against such consumer as a result of their transactions with  
24 Defendants should be removed from the consumer's credit report. Defendants shall  
25 confidentially copy the Attorney General on all such letters to consumer reporting agencies.  
26



**VII. ENFORCEMENT**

1  
2 7.1 Violation of any of the terms contained in this Consent Decree may subject  
3 Defendants to a civil penalty for a violation pursuant to RCW 19.86.140.

4 7.2 In any action to enforce the terms of this Decree, Plaintiff may seek additional  
5 remedies, including, but not limited to, restitution, injunctive relief, and reasonable attorneys' fees  
6 and costs in addition to any other remedies permitted by law.

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

11 7.4 Representatives of the Office of the Attorney General shall be permitted to access,  
12 inspect, and/or copy all business records or documents under control of Defendants in order to  
13 monitor compliance with this Consent Decree within fourteen (14) days of written request to  
14 Defendants, provided that the inspection and copying shall be done in such a way as to avoid  
15 disruption of Defendants' business activities. Failure to comply with this section will be  
16 considered a violation of the terms of this Consent Decree.

17 7.5 Representatives of the Office of the Attorney General may be permitted to question  
18 Defendants or any officer, director, agent, or employee of any business organization affiliated with  
19 Defendants in the form of a deposition, pursuant to the provisions and notice requirements of CR  
20 30, and to issue interrogatories and requests for production of documents, pursuant to the  
21 provisions and notice requirements of CR 33 and CR 34, in order to monitor compliance with this  
22 Consent Decree.

23 7.6 Nothing in this Consent Decree shall be construed as to limit or bar any other  
24 governmental entity or consumer from pursuing other available remedies against Defendants.

25 7.7 Under no circumstances shall this Consent Decree or the name of the State of  
26 Washington, the Office of the Attorney General, Consumer Protection Division, or any of their

1 employees or representatives be used by Defendants in connection with any selling, advertising, or  
2 promotion of products or services or as an endorsement or approval of Defendants' acts, practices,  
3 or conduct of business.

4 7.8 This Consent Decree resolves with prejudice all issues raised by the Attorney  
5 General under the Consumer Protection Act pertaining to the acts or omissions addressed in the  
6 Complaint filed in this matter that may have occurred before the date of the entry of this Consent  
7 Decree.

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

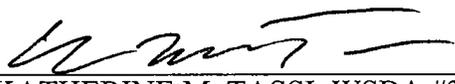
9 8.1 Upon entry of this Consent Decree, all claims in this matter not otherwise  
10 addressed by this Consent Decree are dismissed.

11 DONE IN OPEN COURT this \_\_\_\_ day \_\_\_\_\_, 2009.

12  
13  
14 JUDGE/COURT COMMISSIONER

15 Approved for entry and presented by:

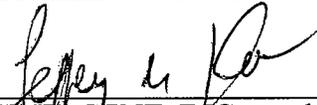
16 ROBERT M. MCKENNA  
17 Attorney General

18   
19 KATHERINE M. TASSI, WSBA #32908  
20 Assistant Attorneys General  
21 State of Washington  
22 Attorneys for Plaintiff

Approved for Entry, Notice of Presentation  
Waived:

23   
24 IMERGENT, INC., et al.

25 Defendant, by:  
26 Franklin L. Dennis # 924

27   
28 IMERGENT, INC., et al.

29 Defendant, by:  
30 Jeffrey G. Korn  
31 Chief Legal Officer, Corporate Secretary