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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
Plaintiff,

v.

JAMES REED MCCREARY IV,
individually and as part of his marital
community; BRANCH SOFTWARE,
INC., a Texas corporation also doing
business as REGISTRY CLEANER
XP; and ALPHA RED, INC. a Texas
Corporation,
Defendants.

NO. **08-2-33486-4SEA**

COMPLAINT FOR INJUNCTIVE
AND ADDITIONAL RELIEF UNDER
THE COMPUTER SPYWARE ACT,
RCW 19.270, AND THE UNFAIR
BUSINESS PRACTICES--
CONSUMER PROTECTION ACT,
RCW 19.86

COMES NOW PLAINTIFF, State of Washington, by and through its attorneys Robert
M. McKenna, Attorney General and Paula Selis, Assistant Attorney General, and brings this
action against Defendants named herein, alleging as follows on information and belief:

I. JURISDICTION AND VENUE

1.1 This Complaint is filed and these proceedings are instituted under the
provisions of Chapter 19.270 RCW, the Computer Spyware Act; and Chapter 19.86 RCW, the
Unfair Business Practices – Consumer Protection Act. Plaintiff seeks a permanent injunction
and other equitable relief, including damages, restitution, civil penalties, and attorneys’ costs and
fees, based on violations of the Computer Spyware Act and the Unfair Business Practices –
Consumer Protection Act.

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1 **III. NATURE OF TRADE OR COMMERCE**

2 3.1 At all times material to this action, McCreary, Branch Software, and Alpha
3 Red (together, "Defendants") have advertised, marketed, and offered for sale software
4 products purportedly capable of fixing existing registry errors and preventing Windows
5 Messenger Service pop-ups, also known as Net Send messages or Messenger Spam, from
6 appearing on the consumer's computer screen. The current name of the software product that
7 Defendants are advertising and selling is Registry Cleaner XP. Defendants have marketed
8 and/or sold this product to consumers all over the world via the Internet. Defendants transmit
9 advertisements to a range of Internet Protocol (I.P.) addresses. Computers at those I.P.
10 addresses that have Windows Messenger Service enabled will receive Defendants' pop-up
11 advertisements. Windows Messenger Service is designed to provide computer network
12 administrators with the ability to provide instant information to network computers, such as
13 the need to log off the network due to a system malfunction. Because of its intended purpose,
14 Messenger Service pop-up windows appear on a consumer's computer screen so long as the
15 consumer is logged onto the network, i.e., connected to the Internet, no matter what
16 application (e.g., word processing, spreadsheet, financial management) the consumer is using.

17 3.2 Defendants have co-opted this network administration utility by transmitting
18 advertisements to consumers through Windows Messenger Service. By utilizing Messenger
19 Service-type pop-ups, Defendants cause a large, grey-colored "window," or "dialogue box,"
20 to appear near the middle of the consumer's computer screen. The "window" has a banner at
21 the top that reads: "Messenger Service," alerts the user to the presence of a "critical error" on
22 his or her computer, and reports that the computer's registry is "damaged and corrupted." See
23 Figure 1.

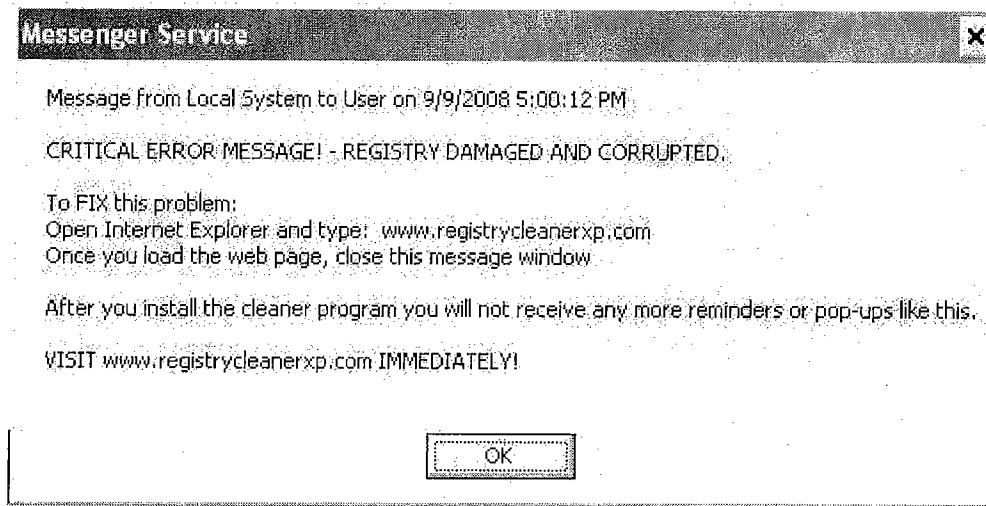


Figure 1

3.3 Each of the Net Send messages directs the user to the Registry Cleaner XP Website located at www.registrycleanerxp.com. When a consumer goes to this site, he or she is offered a free scan to determine the presence of registry errors. The consumer must download the free scan software in order to find “invalid entries and provide a list of the errors found.” www.registrycleanerxp.com. September 8, 2008. After the scan, the consumer is offered the full commercial product for sale at \$39.95 in order to “repair” his or her computer of the errors discovered by the scan. Defendants are in competition with others engaged in the sale and marketing of these products in and from Washington.

IV. FIRST CAUSE OF ACTION –MISREPRESENTATION OF THE NECESSITY OF SOFTWARE FOR REPAIR PURPOSES IN VIOLATION OF THE COMPUTER SPYWARE ACT AND THE CONSUMER PROTECTION ACT

4.1 Plaintiff realleges paragraphs 1.1 through 3.3 above and incorporates them as though fully set forth herein.

4.2 Defendants’ Net send messages represent that they are from the “Local System” and to the “User.” They are captioned “Critical Error Message!” The messages warn the user

1 that the computer registry is “damaged and corrupted” and advise the user to download their
2 registry repair “immediately!” to fix the errors. In fact, there are generally no “critical” errors
3 in the consumer’s registry, if there are any “errors” at all. Additionally, the consumer’s
4 computer registry is generally not “damaged” or “corrupted” as represented in Defendants’
5 messages. Contrary to the representation implied by Defendants’ message, the user’s computer
6 has not *already* been tested or examined to determine the presence of errors, damage or
7 corruption.
8

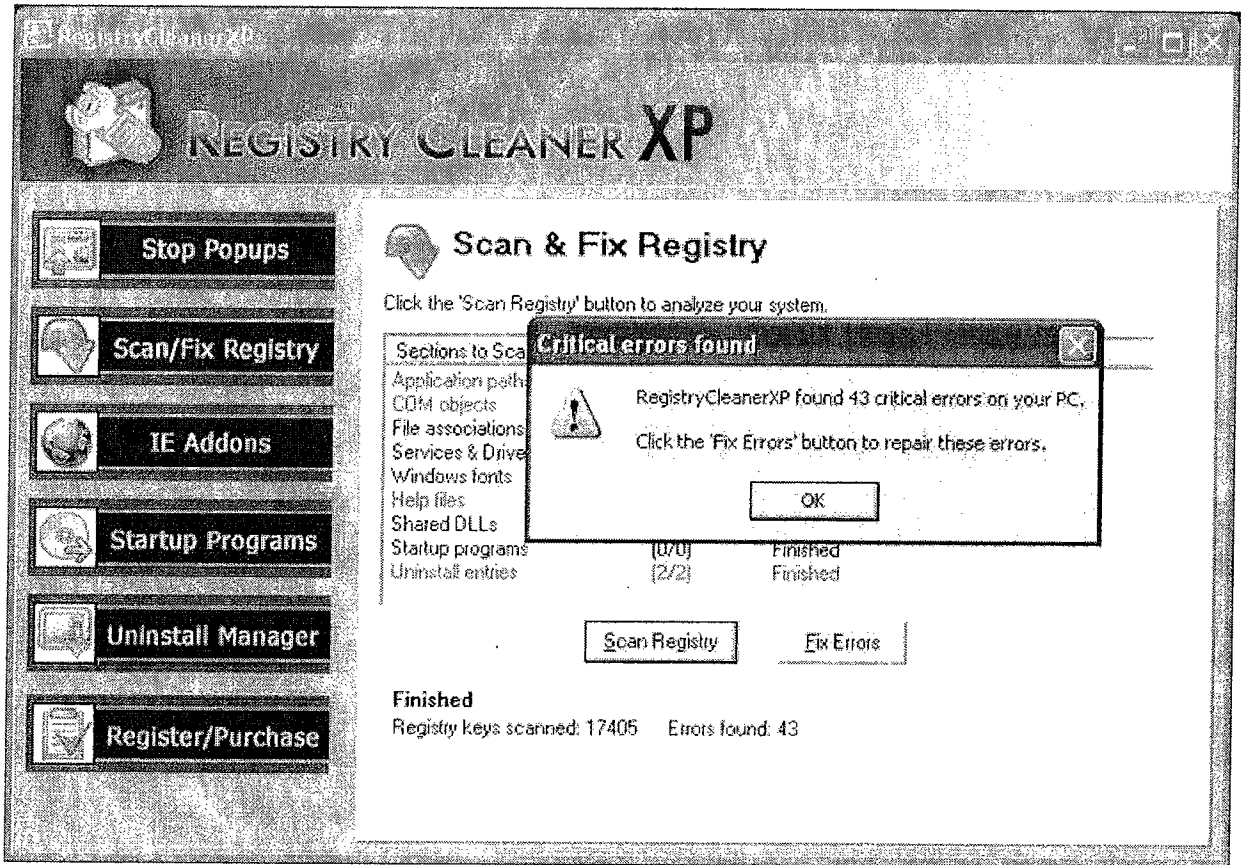
9 4.3 Through alarmist language seemingly delivered by a trusted source, Defendants
10 misrepresent the extent to which installing the software is necessary for repair of the computer
11 for proper operation. The conduct of Defendants described in paragraphs 4.1 and 4.2 violates
12 the Computer Spyware Act, RCW 19.270.040(1), which makes it unlawful for a person who is
13 not an owner or operator of a user’s computer to induce an owner or operator to install a
14 computer software component onto the computer by deceptively misrepresenting the extent to
15 which installing the software is necessary for repair of the computer for proper operation.
16

17 4.4 The conduct of Defendants described in paragraphs 4.1 and 4.2 constitutes
18 misrepresentations and unfair and deceptive acts or practices in trade or commerce and unfair
19 methods of competition in violation of the Consumer Protection Act, RCW 19.86.020.
20

21 **V. SECOND CAUSE OF ACTION – MISREPRESENTATION OF “CRITICAL**
22 **ERRORS” THROUGH “FREE SCAN” IN VIOLATION OF THE CONSUMER**
PROTECTION ACT

23 5.1 Plaintiff realleges paragraphs 1.1 through 4.4 above and incorporates them as
24 though fully set forth herein.
25
26

1 5.2 As part of Defendants' marketing of these products, they offer computers users
2 a free scan to test for "damaged and "corrupted" registry errors. The scan results always
3 identify "critical errors" in the computer registry and purport to list them. See Figure 2.
4



18 Figure 2

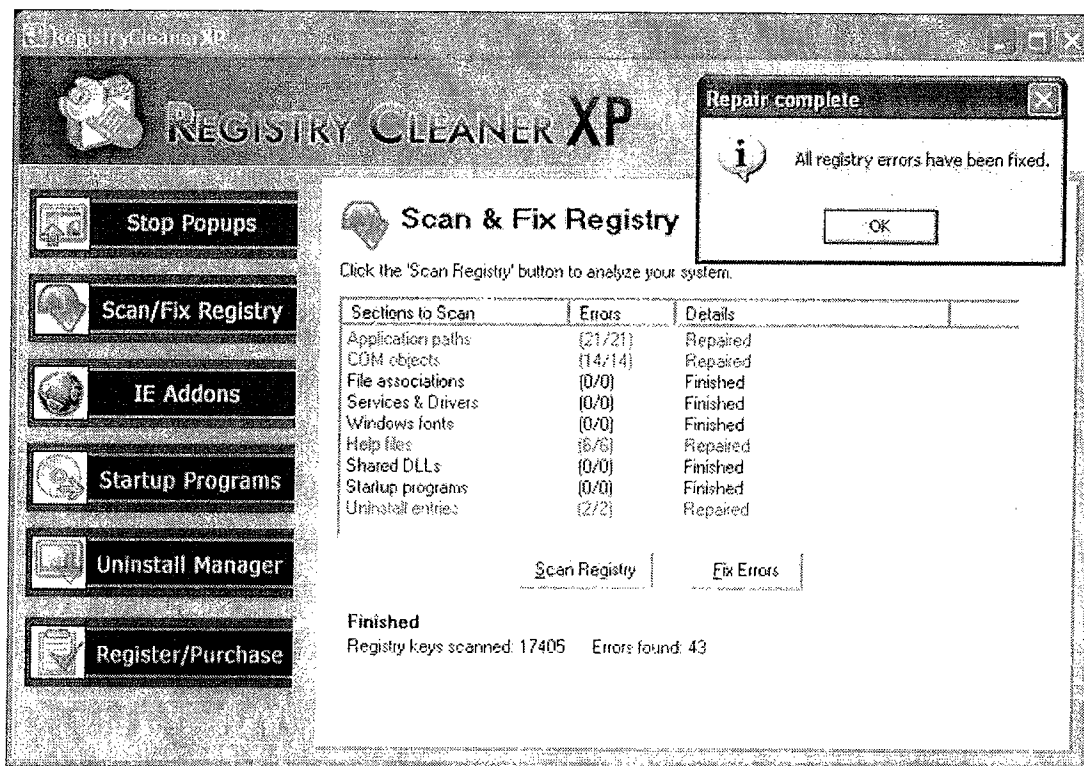
19
20
21 5.3 In many instances, the so-called errors are not, in fact, "critical." In fact, the "errors"
22 do not exist. Defendants have detected "critical errors" on error-free computers. This
23 misrepresentation of "critical errors" on users' computers induces the consumers to purchase
24 Defendants' product, which must be used in order to "repair" the "errors."
25
26

1 5.4 The conduct described in paragraphs 5.1 through 5.3 constitutes
2 misrepresentations and unfair and deceptive acts or practices in trade or commerce and unfair
3 methods of competition in violation of the Consumer Protection Act, RCW 19.86.020.
4

5 **VI. THIRD CAUSE OF ACTION – MISREPRESENTATION THAT PRODUCT**
6 **HAS DELETED CRITICAL REGISTRY ERRORS**

7 6.1 Plaintiff realleges paragraphs 1.1 through 5.4 above and incorporates them as
8 though fully set forth herein.

9 6.2 If the user purchases Defendants' Registry Cleaner XP program and utilizes the
10 function to clean the computer's registry of its "critical errors" identified by the free scan,
11 Defendants then misrepresent that "All registry errors have been fixed," even on computers
12 that were error-free before the so-called fixing was performed. See Figure 3.
13



24
25
26 Figure 3

1 6.3 The conduct described in paragraphs 6.1 and 6.2 constitutes misrepresentations and
2 unfair and deceptive acts or practices in trade or commerce and unfair methods of competition in
3 violation of the Consumer Protection Act, RCW 19.86.020.
4

5 **VII. FOURTH CAUSE OF ACTION – MISREPRESENTATION OF**
6 **ADVERTISEMENT AS INTERNAL OPERATING SYSTEM ERROR ALERT**
7 **IN VIOLATION OF THE COMPUTER SPYWARE ACT AND THE**
8 **CONSUMER PROTECTION ACT**

9 7.1 Plaintiff realleges paragraphs 1.1 through 6.3 above and incorporates them as
10 though fully set forth herein.

11 7.2 Defendants' Net send messages represent that they are from the "Local System"
12 and to the "User." See Figure 1. The messages appear on computers running Windows
13 operating systems with the Windows Messenger Service turned on. The messages that pop up
14 appear as if they are internal operating system messages. They appear to originate from a
15 trusted source whose message conveys that in order to fix a "critical error" on the user's
16 computer, Defendants' Registry Cleaner XP program must be downloaded. However, the
17 messages, as used by Defendants, are in fact advertisements for commercial products, not
18 "critical error" messages from the user's operating system.

19 7.3 The conduct described in paragraphs 7.1 and 7.2 violates RCW 19.270.040(2)
20 which makes it unlawful to induce an owner or operator to install a computer software
21 component onto the computer by displaying a pop-up, web page, or other message that
22 deceptively misrepresents the source of the message.
23

24 7.4 The conduct described in paragraphs 7.1 and 7.2 constitutes misrepresentations
25 and unfair and deceptive acts or practices in trade or commerce and unfair methods of
26 competition in violation of the Consumer Protection Act, RCW 19.86.020.

1 **VIII. FIFTH CAUSE OF ACTION—HARASSMENT AND HIGH PRESSURE SALES**
2 **THROUGH INCESSANT MESSAGES IN VIOLATION OF THE CONSUMER**
3 **PROTECTION ACT**

4 8.1 Plaintiff realleges paragraphs 1.1 through 7.5 above and incorporates them as
5 though fully set forth herein.

6 8.2 Defendants transmit their Net send messages to I.P. addresses that are assigned
7 to consumers' computers. Many of these I.P. addresses are "static," insofar as the consumers'
8 computers maintain the specific address for protracted periods of time. A consumer's
9 computer may have a specific I.P. address for months, particularly in instances where the
10 computer has a broadband connection to the Internet.

11 8.3 Defendants have bombarded consumers' I.P. addresses with multiple Net send
12 messages over concentrated periods of time. The messages appear on a consumer's computer
13 screen as long as the consumer is logged onto the network, i.e., connected to the Internet, no
14 matter what application (e.g., word processing, spreadsheet, financial management) the
15 consumer is using. In some instances, the messages are incessant. For example, one I.P.
16 address received 214 Net send messages in a 24-hour period of time. Some of the messages
17 were sent as frequently as one minute apart. Because they appear cumulatively on the
18 consumer's screen, unless each one is closed individually, they pile up as a series of
19 overlapping windows. Most consumers do not know how to stop the incessant messages, and
20 for the period of time in which the messages are being sent, are limited in their ability to
21 effectively use their computers. Even when the consumer closes the Net send "window,"
22 another will appear shortly to take its place. Unless the consumer agrees to the free scan and
23 purchases Registry Cleaner XP, the incessant messages will continue until Defendants decide
24 to stop transmitting them.

25 8.4. The conduct described in paragraphs 8.1 and 8.3 constitutes harassment and
26 high pressure sales which are unfair and deceptive acts or practices in trade or commerce, and
unfair methods of competition in violation of the Consumer Protection Act, RCW 19.86.020.

1 **IX. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, State of Washington, prays for relief as follows:

3 9.1 That the Court adjudge and decree that Defendants have engaged in the
4 conduct complained of herein.

5 9.2 That the Court adjudge and decree that the conduct complained of in
6 paragraphs 4.1 through 4.4 and paragraphs 7.1 through 7.3 constitutes violations of the
7 Computer Spyware Act, RCW 19.270, *et seq.*

8 9.3 That the Court adjudge and decree that the conduct complained of in paragraphs
9 4.1 through 8.4 constitutes unfair or deceptive acts and practices and unfair methods of
10 competition in violation of the Consumer Protection Act, Chapter 19.86 RCW.

11 9.4 That the Court issue a permanent injunction enjoining and restraining
12 Defendants, and their representatives, successors and assigns, officers, agents, servants,
13 employees and all other persons acting or claiming to act for, or on behalf of, or in active
14 concert or participation with Defendants, from continuing or engaging in unlawful conduct
15 complained of herein.

16 9.5 That the Court assess a civil penalty, pursuant to RCW 19.86.140, of up to
17 \$2,000 per violation against the Defendants for each violation of RCW 19.86.020 caused by
18 the conduct complained of herein.

19 9.6 That the Court make such orders pursuant to RCW 19.86.020 as it deems
20 appropriate to provide for restitution to consumers for money or property acquired by
21 Defendants as a result of the conduct complained of herein.

22 9.7 That the Court make such orders pursuant to RCW 19.270.060 as it deems
23 appropriate to provide recovery for damages for each violation of RCW 19.270.

24 9.8 That the Court make such orders pursuant to RCW 19.86.020 and RCW
25 19.270.060 to provide that Plaintiff, State of Washington, have and recover from Defendants
26 the costs of this action, including reasonable attorneys' fees.

1 9.9 That the Court order such other relief as it may deem just and proper to fully
2 and effectively dissipate the effects of the conduct complained of herein, or which may
3 otherwise seem proper to the Court.

4 DATED this 16th day of September, 2008.

5
6 ROBERT M. MCKENNA
 Attorney General

7 

8 _____
9 PAULA SELIS, WSBA #12823
10 Senior Counsel
 Attorneys for Plaintiff
 State of Washington