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KING COUNTY
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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

180SOLUTIONS, INC.,

Plaintiff,

v.

ZONE LABS, L.L.C.,

Defendant.

NO. 05-2-36579-0 SEA

COMPLAINT
DOUGLASS A. NORTH

For its Complaint against defendant Zone Labs, L.L.C., plaintiff 180solutions, Inc. alleges as follows:

I. PARTIES

1.1 Plaintiff **180solutions, Inc.** ("180") is a corporation organized under the laws of the state of Washington. 180 is licensed to do business in the state of Washington and has, at all times relevant to this action, done business in King County, Washington. 180 has paid all applicable fees and licenses and satisfied all other prerequisites to bringing this action.

1.2 Defendant **Zone Labs, L.L.C.** ("ZoneLabs") is a limited liability company with its principal place of business in San Francisco, California. ZoneLabs is owned or substantially owned by Check Point Software Technologies Ltd.

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ORIGINAL

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Seattle, WA 98104-7044 o Tel: 206-839-4800

1 **II. JURISDICTION AND VENUE**

2 2.1 This Court has jurisdiction under RCW 4.28.185 because ZoneLabs transacted
3 business within the state and/or committed the tortious and other acts complained of in this
4 Complaint within the state.

5 2.2 Venue is proper in this Court pursuant to RCW 4.12.020.

6 **III. FACTUAL AVERMENTS**

7 180's Business

8 3.1 180 is a publisher of software and other content that individuals can access over
9 the Internet. 180's products are offered to users free of charge and are sponsored by
10 advertising that users agree to view as a condition of using the products. 180's products
11 provide the user with access to a wide range of electronic content (such as games, music, video,
12 a CD-burning application, an instant messaging application, television and movie listings, etc.),
13 all of which is provided to users free of charge because of advertising revenue. Much like other
14 innovative Internet content companies such as Google and Microsoft, 180 has helped develop
15 an advertising-based business model that allows it to generate revenue from original content,
16 while continuing to allow that content to be made freely available to users.

17 3.2 180's system of supporting free content and software with advertising is
18 intended to mirror the advertising system that has been successful in the broadcast television
19 market. Similar to network television, 180 provides its users with unlimited free access to its
20 entertainment content (games and software applications) in exchange for the user's agreement
21 to view a limited number of advertisements per day from 180's sponsors. While fewer ads are
22 displayed to users than those shown while watching network television, 180's ads are presented
23 to the user at the moment he or she is searching for a related product or service online. In this
24 way, 180's advertisements are more relevant to users and, therefore, more valuable to
25 advertisers.

26 3.3 180's advertisements are generated on the user's computer by one of two
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1 software applications that users install as an agreed condition of receiving sponsored software
2 or content: Zango Search Assistant ("Zango") and 180search Assistant ("180sA"). A few times
3 per day, these applications will direct the subscriber to a sponsor's website based on the
4 website the user is viewing or in response to a search that the user makes. For example, if a
5 user searches using the word "books," the applications might direct the user to the webpage of
6 a book merchant.

7 180's Efforts To Protect User Privacy

8 3.4 180 has invested considerable money, time and effort in designing Zango and
9 180sA to allow advertisements to be targeted to the user, without invading or compromising the
10 user's privacy.

11 3.5 Zango and 180sA operate by displaying targeted ads based on keywords utilized
12 by the user. The list of keywords that are linked to the triggering of an ad are downloaded onto
13 the user's machine with the application, and the user has opted on an informed basis to receive
14 the application. The application then "monitors" the user's activities only to the extent that it
15 looks for the use of one of the keywords contained in the respective application's inventory of
16 keywords. If the user makes use of a keyword in the inventory, then, and only then, does the
17 application communicate with 180's servers. It does so for the limited purpose of retrieving the
18 appropriate ad for display on the user's machine.

19 3.6 The transmission and request for the ad package is entirely anonymous. Each
20 180 user is assigned an anonymous User Identification Number ("UIN"). When the request for
21 an ad is received, the transmission can only be identified by the UIN. 180 does not retain
22 information linking the UIN to a user or his or her personally identifiable information. In short,
23 180 does not have the means to identify which UIN belongs to which user. Thus, 180 only
24 collects and uses browsing habits to the extent it aggregates the number of hits on a given
25 keyword from its anonymous users.

1
2 ZoneLabs' "ZoneAlarm" Software

3 3.7 On information and belief, defendant ZoneLabs is in the business of developing
4 and marketing various computer protection and security software programs. One such program
5 is the ZoneAlarm Anti-Spyware application, which is proclaimed by ZoneLabs to be "Essential
6 Protection from Spyware and Hackers." The ZoneAlarm Anti-Spyware application purports to
7 provide "multi-layered security to prevent spyware from infecting your computer and to detect
8 and remove spyware that's already present on your system."

9 3.8 On information and belief, ZoneLabs has sold thousands of licenses to operate
10 its ZoneAlarm Anti-Spyware application at an average price per unit of \$20-30 (US).

11 3.9 On information and belief, ZoneLabs has caused, through false and misleading
12 statements about 180's products, thousands of 180's customers to remove or otherwise
13 uninstall Zango and/or 180sA. 180 has been damaged by the wrongful removal of its
14 applications caused by ZoneLabs' tortious conduct.

15 3.10 Additionally, ZoneLabs is aware that its false and misleading statements about
16 180's products that are contained in the ZoneAlarm product have caused certain content
17 vendors to refuse to contract with 180, harming 180's business and subscribers.

18 ZoneAlarm Creates The Misimpression That 180's Products Are Spyware

19 3.11 ZoneAlarm is advertised by ZoneLabs as an anti-spyware application.

20 3.12 ZoneLabs has a financial incentive to ensure that ZoneAlarm identifies products
21 as spyware applications on its user's machines. The ZoneAlarm product is not perceived to
22 have value to consumers unless it does its purported job – *i.e.*, identify alleged spyware. It is,
23 therefore, in ZoneLabs' interest to design the ZoneAlarm product to frighten consumers into
24 believing that spyware resides on their computers, even if it does not.

25 3.13 ZoneAlarm identifies both Zango and 180sA as a potential "threat to [the user's]
26 security and/or privacy," and it classifies both products as high risk. The "high risk"

1 classification is false and at odds with the industry norm and leading scanning applications,
2 such as Symantec, which recognize that 180's products do not pose a privacy risk to users.

3 3.14 The term "spyware" carries a common meaning in the industry that includes as
4 its key element a compromise of the user's privacy. Specifically, spyware is typically
5 understood to involve collecting, without consent, a user's personally identifiable information
6 and Internet browsing habits. As is detailed above, 180's products are consent-based
7 applications that are carefully designed to protect the user's privacy – even to the extent that
8 180 cannot link the UIN to a specific user.

9 3.15 ZoneAlarm's improper designation of Zango and 180sA as spyware is harmful
10 to 180's business and has caused and continues to cause significant damages to 180.

11 ZoneAlarm's Classifications Are Based On Inaccurate Assumptions

12 3.16 ZoneAlarm makes the following false statement about Zango and 180sA:
13 "DANGEROUS BEHAVIOR [Zango or 180sA] is trying to monitor your mouse movements
14 and keyboard strokes." On information and belief, the basis for ZoneAlarm's inaccurate
15 statement is the detection of 180's products' use of a particular programming function (the
16 Windows API Hook, or SetWindowsHookExe) in connection with their operation. Because the
17 Windows API Hook function can be used in connection with the monitoring of mouse
18 movements and keyboard strokes, ZoneAlarm mistakenly assumes that that is the reason for its
19 employ by 180's products, despite ZoncLabs having been advised by 180 to the contrary.
20 ZoneAlarm's baseless assumption is incorrect and damaging to 180, as it casts 180 and its
21 products in a false light.

22 3.17 Based on these false conclusions about 180's products, ZoneAlarm assigns a
23 high risk status and states as follows about Zango and 180sA: "It is recommended that you
24 delete this application immediately because it constitutes a privacy risk, and has no known
25 usefulness." On information and belief, thousands of users have quarantined, deleted or
26

1 otherwise disabled Zango and/or 180sA based on ZoneAlarm's false representations about the
2 products.

3 ZoneLabs' False and Defamatory Publications

4 3.18 ZoneLabs' promotion and sale of ZoneAlarm, and the false and misleading
5 statements attendant with that promotion and sale, have damaged 180 and continue to harm
6 180's reputation and goodwill. As a result of ZoneLabs' false and defamatory publications
7 concerning 180, 180 incurred injuries to its reputation and credit and was (and is being)
8 deprived of revenue and profits which it otherwise would have made in an amount to be proven
9 at trial.

10 **IV. CAUSES OF ACTION**

11 Trade Libel

12 4.1 180 incorporates herein and realleges the allegations set forth in Sections
13 I through III above.

14 4.2 Through the conduct described above, ZoneLabs has made false and disparaging
15 statements about 180's products.

16 4.3 ZoneLabs publishes its false and disparaging statements about 180's products to
17 all computer users that install and use ZoneAlarm.

18 4.4 By publishing and distributing these false and disparaging statements about
19 180's products, ZoneLabs has caused substantial harm to 180, including injury to 180's
20 reputation and direct and ongoing financial injury. As such, 180 seeks an injunction against
21 ZoneLabs to prohibit this harmful conduct, and is entitled to an award of compensatory
22 damages against ZoneLabs in an amount to be ascertained at trial.

23 Tortious Interference With Business Expectancies

24 5.1 180 incorporates herein and realleges the allegations set forth in Sections
25 I through III above.

1 5.2 At all times relevant herein, 180 had a valid business expectancy in the revenues
2 from advertising generated by Zango and 180sA users.

3 5.3 In addition, ZoneLabs was aware that 180 was in discussion with content-
4 providers and that certain transactions were delayed, postponed and/or precluded due
5 specifically to ZoneLabs' improper classification and representations about 180's products.
6 180 had (and has) a valid business expectancy in the transactions with the certain content-
7 providers.

8 5.4 ZoneLabs was aware of 180's business expectancies.

9 5.5 ZoneLabs, by its conduct alleged herein, intentionally interfered with 180's
10 business expectancies, inducing and causing termination of such expectancies by falsely
11 characterizing 180's products for the commercial benefit of ZoneLabs.

12 5.6 ZoneLabs' interference with 180's business expectancies was for an improper
13 purpose, *i.e.*, to unlawfully benefit and increase ZoneAlarm's share of the computer protection
14 and security software program market by falsely characterizing 180's products and profiting
15 from the unfounded fear created by the false characterizations.

16 5.7 ZoneLabs' unlawful interference proximately resulted in damage to 180, in an
17 amount to be proven at trial.

18 RCW 19.86.020: Unfair and Deceptive Trade Practices

19 6.1 180 incorporates herein and realleges the allegations set forth in Sections
20 I through III above.

21 6.2 ZoneLabs engaged in unfair and deceptive acts and practices as described above,
22 by mischaracterizing 180's products, and by fabricating, without foundation and without the
23 benefit of even minimal diligence (or perhaps in spite of said diligence), a "threat" to the user's
24 privacy. ZoneLabs' acts were intended to, and actually did, deceive a substantial portion of the
25 public.

1 6.3 ZoneLabs' unfair and deceptive acts and practices occurred in trade and
2 commerce through the advertisement and sale of ZoneAlarm across the nation and through the
3 assistance of distributors.

4 6.4 The public interest has been affected by ZoneLabs' intentional and deliberate
5 acts, as described above.

6 6.5 ZoneLabs' unfair and deceptive acts and practices have proximately resulted in
7 injury to 180's business in the form of reduced revenue, harm to business reputation, and loss
8 of goodwill.

9 Unjust Enrichment

10 7.1 180 incorporates herein and realleges the allegations set forth in Sections
11 I through III above.

12 7.2 ZoneLabs, in its false and misleading statements about 180's products, benefited
13 therefrom.

14 7.3 It would be inequitable for ZoneLabs to retain the benefit of the unfounded fear
15 it created through its unjustified maligning of 180's products. ZoneLabs should be required to
16 pay restitution to 180 in the amount of ZoneLabs' ill-gotten gains resulting from its
17 misconduct.

18 7.4 ZoneLabs should be required to account for, and disgorge, all revenues it
19 received from sales of ZoneAlarm generated by the unfounded fear created by ZoneLabs
20 among consumers stemming from the false statements concerning the functionality of 180's
21 products, and ZoneLabs' baseless creation of the specter of a "threat" to the user's privacy.

22 **V. RELIEF REQUESTED**

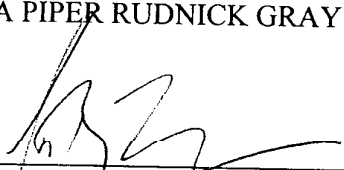
23 Having set forth its Complaint against defendant ZoneLabs, plaintiff 180 respectfully
24 requests that the Court grant 180 the following relief:

25 A. An award of monetary damages in such amount to be proven at trial including
26 interest as is permitted by law.

- 1 B. An accounting and disgorgement of revenues that were diverted to ZoneLabs by
2 means of its capitalization on the fear it created concerning 180's products.
- 3 C. Additional damages, including three times actual damages, as permitted by law.
- 4 D. For an injunction against ZoneLabs, enjoining it from:
- 5 a) categorizing 180's products as spyware or otherwise associating 180's
6 products with spyware;
- 7 b) making false or inaccurate statements about 180's products; and
- 8 c) characterizing 180's products as posing a "threat" to the user's privacy.
- 9 E. An award of 180's costs and reasonable attorneys' fees as permitted by law.
- 10 F. Leave to amend this Complaint based on facts discovered, pled, or offered.
- 11 G. Such other relief as the Court deems just and equitable.
- 12

13 Dated this 3rd day of November, 2005.

14 DLA PIPER RUDNICK GRAY CARY US LLP

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16 _____
17 Stellman Kechnel, WSBA No. 9309
18 *Anthony Todaro, WSBA No. 30391
19 Attorneys for Plaintiff 180solutions, Inc.

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