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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ZANGO, INC.,

Plaintiff,

v.

KASPERSKY LAB, INC.

Defendant.

No. **07-2-16532-1 SEA**  
COMPLAINT

**I. IDENTITY OF PARTIES**

1. Plaintiff Zango, Inc. ("Zango") is a corporation organized under the laws of the state of Washington. Zango is based in Bellevue, Washington.

2. Defendant Kaspersky Lab, Inc. ("Kaspersky") is a privately owned company based in Moscow, Russia. Kaspersky maintains an office in Woburn, Massachusetts.

**II. STATEMENT OF JURISDICTION AND VENUE**

3. This Court has jurisdiction pursuant to RCW 4.28.185.

4. Venue is proper in this Court pursuant to RCW 4.12.020.

**III. FACTUAL BACKGROUND**

5. Zango is an online media company providing consumers free access to a large catalog of online videos, games, music, tools and utilities. Zango's products are offered to

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1 customers free of charge and are sponsored by advertising that customers agree to view as a  
2 condition of using the products. Zango also offers a premium version of its software that  
3 gives consumers access to Zango's content catalog without having to agree to see advertising.

4 6. Zango's proprietary software displays advertisements (to all non-premium  
5 users) while Zango customers are browsing or searching the Internet online. Zango software  
6 is designed to locate products and services that are of interest to Zango customers. It does this  
7 by recognizing keywords from customers' Internet browser and displaying relevant  
8 advertisers' websites for matching products and services. Zango's software never collects the  
9 personal identifying information of its users.

10 7. Zango takes extensive precautions to ensure that every Zango customer  
11 affirmatively and knowingly consents to download, installation and continued usage of Zango  
12 software. Before installing Zango programs, customers are provided with plain language  
13 disclosures describing Zango's software and how it works, as well as a complete End User  
14 License Agreement and a link to Zango's Privacy Policy. Every customer who downloads  
15 Zango software programs receives a post-installation confirmation message, complete with a  
16 link for more information, including uninstall instructions. Within 72 hours of downloading  
17 Zango software, customers receive a reminder that they have installed Zango programs, which  
18 includes information about how the software works along with uninstall information. Ninety  
19 days after install, and every 90 days after that, Zango sends customers an additional reminder  
20 that they have installed Zango software, including information as to how the programs work  
21 and uninstall instructions. In addition, upon download, Zango programs provide a system tray  
22 icon from which the customer can access program information, customer support and  
23 uninstall instructions. Customers can access further information about Zango programs  
24 through the "Start / All Program" menu, including direct links to customer support and  
25 uninstall instructions. Advertisements delivered by Zango software are labeled as coming

1 from Zango programs and provide a link to further program information and uninstall  
2 instructions. And, uninstallation of Zango programs can always be done through the  
3 Add/Remove Programs function.

4 8. On information and belief, defendant Kaspersky is in the business of  
5 developing and marketing various computer protection and security software programs,  
6 including anti-virus protection. Kaspersky markets and distributes computer protection and  
7 security software programs under its own name, and also sells such programs to distributors  
8 and other original equipment manufacturers ("OEMs").

9 **Damage to Zango website**

10 9. On March 8, 2007, Zango's testing lab discovered that Kaspersky's consumer  
11 program "Kaspersky Internet Security" ("KIS") was damaging a Zango website named  
12 seekmo.com by removing Zango weblinks from computers running the KIS program. Further  
13 tests revealed that KIS was damaging and removing promotional links hosted by Zango  
14 publishers as well. Zango contacted Kaspersky on March 9, 2007, regarding the damage  
15 being done by KIS. On March 12, 2007, Kaspersky admitted that KIS was damaging Zango's  
16 website and requested time to fix the issue. Testing performed by Zango's lab on March 14,  
17 2007 showed that KIS was no longer damaging Zango's webpage.

18 10. On March 21, 2007, Zango's lab discovered that similar damage (i.e., missing  
19 web links) was being caused by companies that, upon information and belief, were OEM  
20 customers of Kaspersky's anti-virus engine product ("KAV"). Zango notified one of these  
21 OEM customers immediately. On March 22, 2007, Zango notified a second OEM using KAV  
22 that it was damaging Zango's website. On March 28, 2007, the second OEM resolved the  
23 issue, and stated in communications with Zango that Zango was using "Best Practices," and  
24 that Zango's products are "not malicious." The first OEM requested additional time to  
25

1 address Zango's concerns, and subsequently communicated to Zango that it would contact  
2 Kaspersky to resolve the issue.

3 11. On May 21, 2007 Zango testing revealed that some Kaspersky OEM customers  
4 are still damaging Zango websites and removing download links, without providing any  
5 customer notice or warning. This was determined despite assurances Kaspersky made to  
6 Zango six weeks earlier that the damage to Zango's websites would be remedied.

7 **Interference with Zango programs**

8 12. On May 8, 2007, Zango informed Kaspersky via email that Zango testing had  
9 identified additional "major issues" regarding the manner in which KIS treated Zango's  
10 software applications. Testing revealed that, once KIS was running on a user's computer, a  
11 user was allegedly given a choice to "Allow" Zango's programs to run. However, the  
12 "Allow" choice offered by KIS proved illusory, as KIS continually caused warnings to appear  
13 on the user's screen no matter how many times the Zango customer clicked "Allow." Testing  
14 revealed that KIS did not treat the software of a known Zango competitor in the same manner.

15 13. On May 21, 2007, Zango testing of KIS version 6.0.2.621 revealed an even  
16 more serious attack on Zango. Once this version of KIS is installed, it blocks any installation  
17 of Zango software, and blocks users from accessing Zango content. In addition, KIS still  
18 causes a user to click "Allow" every time Zango attempts to deliver an ad; this is true even if  
19 the user clicks "Always Allow."

20 14. In the course of blocking installation of Zango's software, KIS identifies  
21 Zango products as "malicious" and as an "infection." On information and belief, Kaspersky  
22 knows full well that this is a false and misleading description, as Kaspersky researchers have  
23 reviewed the Zango software and determined that it is not malicious

24 15. Additional testing performed on May 21, 2007, revealed that KIS damages  
25 Zango's products in such a way that the computer user is unable to uninstall Zango. The

1 inability to uninstall the Zango software through normal Add/Remove procedures is a direct  
2 violation of Zango's terms of service.

3 16. Kaspersky's actions have resulted (and will continue to result) in significant  
4 damage to Zango's reputation, customer base and business model. That damage includes:  
5 damaging Zango's website so as to prevent future customers from downloading Zango  
6 products; blocking installation of Zango products by future customers; interfering with  
7 Zango's ability to recoup, through both paid and ad-supported software versions, the cost of  
8 acquiring and licensing for distribution the extensive content in Zango's content catalog  
9 (estimated value: several million dollars); chilling Zango's ability to partner with new content  
10 providers and distribution channels, thereby hindering Zango's expansion plans and devaluing  
11 its investment in offices, operations, infrastructure, and employees in Washington state, North  
12 America, and other parts of the world; and in other ways not yet realized or fully understood.

#### 13 **IV. CLAIMS FOR RELIEF**

##### 14 **First Cause of Action:** 15 **Injunctive Relief**

16 17. Zango incorporates and realleges the allegations contained in Paragraphs 1  
17 through 16 above.

18 18. Zango has a clear legal or equitable right and a well-grounded fear of  
19 immediate invasion of that right. Kaspersky's conduct has caused injury and will continue to  
20 cause injury to Zango, and the relative equities of the parties favor granting injunctive relief.

##### 21 **Second Cause of Action:** 22 **Tortious Interference with Contractual Rights or Business Expectancy**

23 19. Zango incorporates and realleges the allegations contained in Paragraphs 1  
24 through 18 above.

25 20. Kaspersky has purposefully and knowingly interfered with Zango's business  
relationships, both existing and contemplated.

1           21. As a result of Kaspersky's conduct, Zango has been harmed. Zango is  
2 therefore entitled to injunctive relief and to all damages proven at trial.

3                                   **Third Cause of Action:**  
4                                   **Violation of Washington Consumer Protection Act**

5           22. Zango incorporates and realleges the allegations contained in Paragraphs 1  
6 through 21 above.

7           23. Kaspersky, through its conduct, has acted unfairly and deceptively in violation  
8 of RCW 19.86.010 et seq.

9           24. Kaspersky's conduct occurred in trade and commerce and caused Zango  
10 substantial damage.

11           25. The public interest has been affected by Kaspersky's conduct.

12           26. Zango is entitled to treble damages and to injunctive relief, and to recovery of  
13 its attorney fees and costs in bringing this lawsuit.

14                                   **Fourth Cause of Action:**  
15                                   **Trade Libel**

16           27. Zango incorporates and realleges the allegations contained in Paragraphs 1  
17 through 26 above.

18           28. Kaspersky, through its conduct, has made false and disparaging statements  
19 about Zango's products.

20           29. Kaspersky publishes its false and disparaging statements to users of Kaspersky  
21 programs.

22           30. As a result of Kaspersky's conduct, Zango has been harmed, including  
23 suffering injury to its reputation and ongoing financial injury. Zango is therefore entitled to  
24 injunctive relief and to all damages proven at trial.  
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**Fifth Cause of Action:**  
**Unjust Enrichment**

31. Zango incorporates and realleges the allegations contained in Paragraphs 1 through 30 above.

32. Kaspersky, through its conduct, has benefited from its disparagement, blocking of and interference with Zango's products.

33. It would be inequitable for Kaspersky to retain the benefit of its wrongful actions. Kaspersky should be required to account for, and disgorge, all revenues it received as a result of its wrongful actions toward Zango.

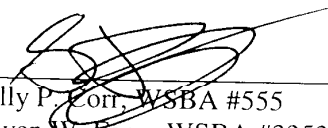
**V. RELIEF REQUESTED**

WHEREFORE, plaintiff prays for relief as follows:

- A. For all damages as may be proven at trial (and which are estimated to be no less than \$47 million dollars);
- B. For treble damages pursuant to RCW 19.86.090;
- C. For injunctive relief;
- D. For attorneys' fees and costs; and
- E. For such other relief as the Court may deem just and equitable.

1 DATED this 22nd day of May, 2007.  
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