

RCW 19.330.060 Who may bring an action—Injunction—Damages—Dismissal—Court authority. (1) No earlier than ninety days after the provision of notice in accordance with RCW 19.330.050, the attorney general, or any person described in subsection (5) of this section, may bring an action against any person that is subject to RCW 19.330.020:

(a) To enjoin violation of RCW 19.330.020, including by enjoining the person from selling or offering to sell in this state articles or products that are subject to RCW 19.330.020, except as provided in subsection (6) of this section. However, such an injunction does not encompass articles or products to be provided to a third party that establishes that such a third party has satisfied one or more of the affirmative defenses set forth in RCW 19.330.080(1) with respect to the manufacturer alleged to have violated RCW 19.330.020;

(b) Only after a determination by the court that the person has violated RCW 19.330.020, to recover the greater of:

(i) Actual direct damages, which may be imposed only against the person who violated RCW 19.330.020; or

(ii) Statutory damages of no more than the retail price of the stolen or misappropriated information technology, which may be imposed only against the person who violated RCW 19.330.020; or

(c) In the event the person alleged to have violated RCW 19.330.020 has been subject to a final judgment or has entered into a final settlement, or any products manufactured by such a person and alleged to violate RCW 19.330.020 have been the subject of an injunction or attachment order, in any federal or state court in this state or any other state, arising out of the same theft or misappropriation of information technology, the court shall dismiss the action with prejudice. If such a person is a defendant in an ongoing action, or any products manufactured by such a person and alleged to violate RCW 19.330.020 are the subject of an ongoing injunction or attachment order, in any federal or state court in this state or any other state, arising out of the same theft or misappropriation of information technology, the court shall stay the action against such a person pending resolution of the other action. In the event the other action results in a final judgment or final settlement, the court shall dismiss the action with prejudice against the person. Dismissals under this subsection are res judicata to actions filed against the person alleged to have violated RCW 19.330.020 arising out of the same theft or misappropriation of information technology.

(2) After determination by the court that a person has violated RCW 19.330.020 and entry of a judgment against the person for violating RCW 19.330.020, the attorney general, or a person described in subsection (5) of this section, may add to the action a claim for actual direct damages against a third party who sells or offers to sell in this state products made by that person in violation of RCW 19.330.020, subject to the provisions of RCW 19.330.080. However, damages may be imposed against a third party only if:

(a) The third party's agent for service of process was properly served with a copy of a written notice sent to the person alleged to have violated RCW 19.330.020 that satisfies the requirements of RCW 19.330.050 at least ninety days prior to the entry of the judgment;

(b) The person who violated RCW 19.330.020 did not make an appearance or does not have sufficient attachable assets to satisfy a judgment against the person;

(c) Such a person either manufactured the final product or produced a component equal to thirty percent or more of the value of the final product;

(d) Such a person has a direct contractual relationship with the third party respecting the manufacture of the final product or component; and

(e) The third party has not been subject to a final judgment or entered into a final settlement in any federal or state court in this state or any other state arising out of the same theft or misappropriation of information technology. However, in the event the third party is a party to an ongoing suit for damages, or has entered an appearance as an interested third party in proceedings in rem, in any federal or state court in this state or any other state arising out of the same theft or misappropriation of information technology, the court shall stay the action against the third party pending resolution of the other action. In the event the other action results in a final judgment, the court shall dismiss the action with prejudice against the third party and dismiss any in rem action as to any articles or products manufactured for such a third party or that have been or are to be supplied to such a third party. Dismissals under this subsection are res judicata to actions filed against the person alleged to have violated RCW 19.330.020 arising out of the same theft or misappropriation of information technology.

(3) An award of damages against such a third party pursuant to subsection (2) of this section must be the lesser of the retail price of the stolen or misappropriated information technology at issue or two hundred fifty thousand dollars, less any amounts recovered from the person adjudicated to have violated RCW 19.330.020, and subsection (4)(a) of this section does not apply to such an award or recovery against the third party.

(4) In an action under this chapter, a court may:

(a) Against the person adjudicated to have violated RCW 19.330.020, increase the damages up to three times the damages authorized by subsection (1)(b) of this section where the court finds that the person's use of the stolen or misappropriated information technology was willful;

(b) With respect to an award under subsection (1) of this section only, award costs and reasonable attorneys' fees to: (i) A prevailing plaintiff in actions brought by an injured person under RCW 19.330.020; or (ii) a prevailing defendant in actions brought by an allegedly injured person; and

(c) With respect to an action under subsection (2) of this section brought by a private plaintiff only, award costs and reasonable attorneys' fees to a third party for all litigation expenses (including, without limitation, discovery expenses) incurred by that party if it prevails on the requirement set forth in subsection (2)(c) of this section or who qualifies for an affirmative defense under RCW 19.330.080. However, in a case in which the third party received a copy of the notification described in subsection (2)(a) of this section at least ninety days before the filing of the action under subsection (2) of this section, with respect to a third party's reliance on the affirmative defenses set forth in RCW 19.330.080(1)(c) and (d), the court may award costs and reasonable attorneys' fees only if all of the conduct on which the affirmative defense is based was undertaken by the third party, and the third party notified the plaintiff of the conduct, prior to the end of the ninety-day period.

(5) A person is deemed to have been injured by the sale or offer for sale of a directly competing article or product subject to RCW 19.330.020 if the person establishes by a preponderance of the evidence that:

(a) The person manufactures articles or products that are sold or offered for sale in this state in direct competition with articles or products that are subject to RCW 19.330.020;

(b) The person's articles or products were not manufactured using stolen or misappropriated information technology of the owner of the information technology;

(c) The person suffered economic harm, which may be shown by evidence that the retail price of the stolen or misappropriated information technology was twenty thousand dollars or more; and

(d) If the person is proceeding in rem or seeks injunctive relief, that the person suffered material competitive injury as a result of the violation of RCW 19.330.020.

(6) (a) If the court determines that a person found to have violated RCW 19.330.020 lacks sufficient attachable assets in this state to satisfy a judgment rendered against it, the court may enjoin the sale or offering for sale in this state of any articles or products subject to RCW 19.330.020, except as provided in RCW 19.330.040.

(b) To the extent that an article or product subject to RCW 19.330.020 is an essential component of a third party's article or product, the court shall deny injunctive relief as to such an essential component, provided that the third party has undertaken good faith efforts within the third party's rights under its applicable contract with the manufacturer to direct the manufacturer of the essential component to cease the theft or misappropriation of information technology in violation of RCW 19.330.020, which may be satisfied, without limitation, by the third party issuing a written directive to the manufacturer demanding that it cease the theft or misappropriation and demanding that the manufacturer provide the third party with copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue.

(7) The court shall determine whether a cure period longer than the period reflected in RCW 19.330.050 would be reasonable given the nature of the use of the information technology that is the subject of the action and the time reasonably necessary either to bring such use into compliance with applicable law or to replace the information technology with information technology that would not violate RCW 19.330.020. If the court deems that a longer cure period would be reasonable, then the action shall be stayed until the end of that longer cure period. If by the end of that longer cure period, the defendant has established that its use of the information technology in question did not violate RCW 19.330.020, or the defendant ceased use of the stolen or misappropriated information technology, then the action must be dismissed. [2011 c 98 s 6.]