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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

MDY INDUSTRIES, LLC,
Plaintiff and Counterdefendant,

vs.
**BLIZZARD ENTERTAINMENT, INC.,
and VIVENDI GAMES, INC.,**

Defendants and Counterclaim
Plaintiffs.

Case No.: CV06-02555-PHX-DGC

**PLAINTIFF MDY INDUSTRIES,
LLC AND THIRD PARTY
DEFENDANT MICHAEL
DONNELLY'S ANSWER TO
DEFENDANTS' COUNTERCLAIM
AND THIRD PARTY COMPLAINT**

The Honorable David G. Campbell

**BLIZZARD ENTERTAINMENT, INC.,
and VIVENDI GAMES, INC.,**

Third-Party Plaintiffs,

vs.
MICHAEL DONNELLY, an individual

Third-Party Defendant

(Jury Trial Demanded)

Plaintiff/Counterdefendant MDY Industries, LLC ("MDY") and Third-Party Defendant Michael Donnelly ("Donnelly") (collectively "MDY Parties") hereby answer the Defendants' Counterclaim against MDY and Third-Party Complaint against Donnelly. For the purpose of this pleading, if a statement is made on behalf of either MDY or Donnelly, only the party identified shall be considered the affirming

1 party. When a statement is made on behalf of the MDY Parties, it shall be considered
2 an affirmation on behalf of both MDY and Donnelly.

3
4 **ANSWER**

5 **NATURE OF THE ACTION**

6
7 1. The MDY Parties hereby DENY the allegations set forth in Paragraph 1
8 of Blizzard Entertainment, Inc. and Vivendi Games, Inc.'s (collectively, "Blizzard
9 Parties") Counterclaims and Third-Party Complaint.

10 **JURISDICTION AND VENUE**

11
12 2. The MDY Parties hereby ADMIT the allegations set forth in Paragraph
13 2 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

14
15 3. The MDY Parties hereby ADMIT the allegations set forth in Paragraph
16 3 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

17 **THE PARTIES**

18
19 4. The MDY Parties are without sufficient knowledge as to the truth of the
20 facts alleged in Paragraph 4 of the Blizzard Parties' Counterclaims and Third-Party
21 Complaint, and therefore DENY the allegations set forth therein.

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23 5. Donnelly hereby ADMITS the allegations set forth in Paragraph 5 of the
24 Blizzard Parties' Counterclaims and Third-Party Complaint.

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26 6. Donnelly hereby ADMITS the allegation in Paragraph 6 of the Blizzard
27 Parties' Counterclaims and Third-Party Complaint that Donnelly is the only member
28 of MDY Industries, LLC, and that MDY Industries, LLC is an Arizona Limited
Liability Company organized in December 2004, and registered at 2311 E. Shea Blvd,

1 Phoenix, Arizona 85016. However, Donnelly DENIES the remaining allegations set
2 forth in Paragraph 6.

3
4 **BACKGROUND FACTS**

5 7. The MDY Parties are without sufficient knowledge as to the truth of the
6 facts alleged in Paragraph 7 of the Blizzard Parties' Counterclaims and Third-Party
7 Complaint, and therefore DENY the allegations set forth therein.
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9 8. The MDY Parties are without sufficient knowledge as to the truth of the
10 facts alleged in Paragraph 8 of the Blizzard Parties' Counterclaims and Third-Party
11 Complaint, and therefore DENY the allegations set forth therein.
12

13 9. The MDY Parties are without sufficient knowledge as to the truth of the
14 facts alleged in Paragraph 9 of the Blizzard Parties' Counterclaims and Third-Party
15 Complaint, and therefore DENY the allegations set forth therein.
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17 10. The MDY Parties are without sufficient knowledge as to the truth of the
18 facts alleged in Paragraph 10 of the Blizzard Parties' Counterclaims and Third-Party
19 Complaint, and therefore DENY the allegations set forth therein.
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21 11. The MDY Parties are without sufficient knowledge as to the truth of the
22 facts alleged in Paragraph 11 of the Blizzard Parties' Counterclaims and Third-Party
23 Complaint, and therefore DENY the allegations set forth therein.
24

25 12. The MDY Parties are without sufficient knowledge as to the truth of the
26 facts alleged in Paragraph 12 of the Blizzard Parties' Counterclaims and Third-Party
27 Complaint, and therefore DENY the allegations set forth therein.
28

13. The MDY Parties are without sufficient knowledge as to the truth of the
facts alleged in Paragraph 13 of the Blizzard Parties' Counterclaims and Third-Party

1 Complaint, and therefore DENY the allegations set forth therein.

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3 14. The MDY Parties are without sufficient knowledge as to the truth of the
4 facts alleged in Paragraph 14 of the Blizzard Parties' Counterclaims and Third-Party
5 Complaint, and therefore DENY the allegations set forth therein.

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7 15. The MDY Parties are without sufficient knowledge as to the truth of the
8 facts alleged in Paragraph 15 of the Blizzard Parties' Counterclaims and Third-Party
9 Complaint, and therefore DENY the allegations set forth therein.

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11 16. The MDY Parties are without sufficient knowledge as to the truth of the
12 facts alleged in Paragraph 16 of the Blizzard Parties' Counterclaims and Third-Party
13 Complaint, and therefore DENY the allegations set forth therein.

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15 17. The MDY Parties are without sufficient knowledge as to the truth of the
16 facts alleged in Paragraph 17 of the Blizzard Parties' Counterclaims and Third-Party
17 Complaint, and therefore DENY the allegations set forth therein.

18 **THE WOW END USER LICENSE AGREEMENT AND TERMS OF USE**

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20 18. The MDY Parties are without sufficient knowledge as to the truth of the
21 facts alleged in Paragraph 18 of the Blizzard Parties' Counterclaims and Third-Party
22 Complaint, and therefore DENY the allegations set forth therein.

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24 19. The MDY Parties are without sufficient knowledge as to the truth of the
25 facts alleged in Paragraph 19 of the Blizzard Parties' Counterclaims and Third-Party
26 Complaint, and therefore DENY the allegations set forth therein.

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28 20. The MDY Parties are without sufficient knowledge as to the truth of the
facts alleged in Paragraph 20 of the Blizzard Parties' Counterclaims and Third-Party
Complaint, and therefore DENY the allegations set forth therein.

1 21. The MDY Parties are without sufficient knowledge as to the truth of the
2 facts alleged in Paragraph 21 of the Blizzard Parties' Counterclaims and Third-Party
3 Complaint, and therefore DENY the allegations set forth therein.

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5 22. The MDY Parties are without sufficient knowledge as to the truth of the
6 facts alleged in Paragraph 22 of the Blizzard Parties' Counterclaims and Third-Party
7 Complaint, and therefore DENY the allegations set forth therein.

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9 23. The MDY Parties are without sufficient knowledge as to the truth of the
10 facts alleged in Paragraph 23 of the Blizzard Parties' Counterclaims and Third-Party
11 Complaint, and therefore DENY the allegations set forth therein.

12 24. The MDY Parties are without sufficient knowledge as to the truth of the
13 facts alleged in Paragraph 24 of the Blizzard Parties' Counterclaims and Third-Party
14 Complaint, and therefore DENY the allegations set forth therein.

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16 25. The MDY Parties are without sufficient knowledge as to the truth of the
17 facts alleged in Paragraph 25 of the Blizzard Parties' Counterclaims and Third-Party
18 Complaint, and therefore DENY the allegations set forth therein.

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20 26. The MDY Parties are without sufficient knowledge as to the truth of the
21 facts alleged in Paragraph 26 of the Blizzard Parties' Counterclaims and Third-Party
22 Complaint, and therefore DENY the allegations set forth therein.

23 27. The MDY Parties are without sufficient knowledge as to the truth of the
24 facts alleged in Paragraph 27 of the Blizzard Parties' Counterclaims and Third-Party
25 Complaint, and therefore DENY the allegations set forth therein.

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27 28. The MDY Parties are without sufficient knowledge as to the truth of the
28 facts alleged in Paragraph 28 of the Blizzard Parties' Counterclaims and Third-Party
Complaint, and therefore DENY the allegations set forth therein.

1 29. The MDY Parties are without sufficient knowledge as to the truth of the
2 facts alleged in Paragraph 29 of the Blizzard Parties' Counterclaims and Third-Party
3 Complaint, and therefore DENY the allegations set forth therein.

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5 30. The MDY Parties are without sufficient knowledge as to the truth of the
6 facts alleged in Paragraph 30 of the Blizzard Parties' Counterclaims and Third-Party
7 Complaint, and therefore DENY the allegations set forth therein.

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9 31. The MDY Parties are without sufficient knowledge as to the truth of the
10 facts alleged in Paragraph 31 of the Blizzard Parties' Counterclaims and Third-Party
11 Complaint, and therefore DENY the allegations set forth therein.

12 **BLIZZARD'S TECHNICAL SECURITY MEASURES**

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14 32. The MDY Parties are without sufficient knowledge as to the truth of the
15 facts alleged in Paragraph 32 of the Blizzard Parties' Counterclaims and Third-Party
16 Complaint, and therefore DENY the allegations set forth therein.

17 33. The MDY Parties are without sufficient knowledge as to the truth of the
18 facts alleged in Paragraph 33 of the Blizzard Parties' Counterclaims and Third-Party
19 Complaint, and therefore DENY the allegations set forth therein.

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21 34. The MDY Parties are without sufficient knowledge as to the truth of the
22 facts alleged in Paragraph 34 of the Blizzard Parties' Counterclaims and Third-Party
23 Complaint, and therefore DENY the allegations set forth therein.

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25 35. The MDY Parties are without sufficient knowledge as to the truth of the
26 facts alleged in Paragraph 35 of the Blizzard Parties' Counterclaims and Third-Party
27 Complaint, and therefore DENY the allegations set forth therein.

28 36. The MDY Parties are without sufficient knowledge as to the truth of the

1 facts alleged in Paragraph 36 of the Blizzard Parties' Counterclaims and Third-Party
2 Complaint, and therefore DENY the allegations set forth therein.

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4 37. The MDY Parties are without sufficient knowledge as to the truth of the
5 facts alleged in Paragraph 37 of the Blizzard Parties' Counterclaims and Third-Party
6 Complaint, and therefore DENY the allegations set forth therein.

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8 38. The MDY Parties are without sufficient knowledge as to the truth of the
9 facts alleged in Paragraph 38 of the Blizzard Parties' Counterclaims and Third-Party
10 Complaint, and therefore DENY the allegations set forth therein.

11 **MDY'S UNLAWFUL ACTIVITIES**

12
13 39. The MDY Parties hereby ADMIT the allegations set forth in Paragraph
14 39 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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16 40. The MDY Parties hereby ADMIT the allegations set forth in Paragraph
17 40 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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19 41. Donnelly hereby ADMITS the allegations set forth in Paragraph 41 of
20 the Blizzard Parties' Counterclaims and Third-Party Complaint.

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22 42. Donnelly hereby DENIES the allegations set forth in Paragraph 42 of
23 the Blizzard Parties' Counterclaims and Third-Party Complaint.

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25 43. Donnelly hereby DENIES the allegations set forth in Paragraph 43 of
26 the Blizzard Parties' Counterclaims and Third-Party Complaint.

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28 44. Donnelly hereby DENIES the allegations set forth in Paragraph 44 of
the Blizzard Parties' Counterclaims and Third-Party Complaint.

45. The MDY Parties hereby ADMIT the allegations set forth in Paragraph

1 45 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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3 46. The MDY Parties hereby DENY the allegations set forth in Paragraph
4 46 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

5 47. The MDY Parties hereby ADMIT the allegations set forth in Paragraph
6 47 to the extent that it has sold "over 25,000" product keys for WoWGliders, however
7 The MDY Parties DENY the remaining portion of the allegations stated therein of the
8 Blizzard Parties' Counterclaims and Third-Party Complaint.

9
10 48. The MDY Parties hereby DENY the allegations set forth in Paragraph
11 48 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

12 49. The MDY Parties hereby DENY the allegations set forth in Paragraph
13 49 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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15 50. The MDY Parties hereby ADMIT the allegations set forth in Paragraph
16 50 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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18 51. The MDY Parties hereby DENY the allegations set forth in Paragraph
19 51 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

20 52. The MDY Parties hereby DENY the allegations set forth in Paragraph
21 52 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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23 53. The MDY Parties hereby DENY the allegations set forth in Paragraph
24 53 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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26 54. The MDY Parties hereby DENY the allegations set forth in Paragraph
27 54 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

28 55. The MDY Parties are without sufficient knowledge as to the truth of the

1 facts alleged in Paragraph 55 of the Blizzard Parties' Counterclaims and Third-Party
2 Complaint, and therefore DENY the allegations set forth therein.

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4 56. The MDY Parties hereby DENIES the allegations set forth in Paragraph
5 56 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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7 57. The MDY Parties hereby DENIES the allegations set forth in Paragraph
8 57 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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10 58. The MDY Parties hereby ADMIT the allegations set forth in Paragraph
11 58 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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13 59. The MDY Parties hereby ADMIT the allegations set forth in Paragraph
14 59 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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16 60. MDY hereby ADMITS the allegations set forth in Paragraph 60 of the
17 Blizzard Parties' Counterclaims and Third-Party Complaint.

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19 61. The MDY Parties hereby DENY the allegations set forth in Paragraph
20 61 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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22 62. The MDY Parties hereby DENY the allegations set forth in Paragraph
23 62 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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25 63. The MDY Parties hereby DENY the allegations set forth in Paragraph
26 63 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

27 **COUNT I**

28 **TORTIOUS INTERFERENCE WITH CONTRACT**

64. The MDY Parties acknowledge that the Blizzard Parties re-allege the
allegations set forth in Paragraphs 1-63 of the Blizzard Parties' Counterclaims and
Third-Party Complaint.

1 65. The MDY Parties hereby DENY the allegations set forth in Paragraph
2 65 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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4 66. The MDY Parties hereby DENY the allegations set forth in Paragraph
5 66 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

6 67. The MDY Parties hereby DENY the allegations set forth in Paragraph
7 67 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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9 68. The MDY Parties hereby DENY the allegations set forth in Paragraph
10 68 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

11 69. The MDY Parties hereby DENY the allegations set forth in Paragraph
12 69 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

13
14 70. Donnelly hereby DENIES the allegations set forth in Paragraph 70 of
15 the Blizzard Parties' Counterclaims and Third-Party Complaint.

16
17 71. The MDY Parties hereby DENY the allegations set forth in Paragraph
18 71 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

19 72. The MDY Parties hereby ADMIT the allegations set forth in Paragraph
20 72 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

21
22 73. The MDY Parties hereby DENY the allegations set forth in Paragraph
23 73 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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25 74. The MDY Parties hereby DENY the allegations set forth in Paragraph
26 74 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

27 75. The MDY Parties hereby DENY the allegations set forth in Paragraph
28 75 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

1 76. The MDY Parties hereby DENY the allegations set forth in Paragraph
2 76 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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4 77. The MDY Parties hereby DENY the allegations set forth in Paragraph
5 77 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

6 78. The MDY Parties hereby DENY the allegations set forth in Paragraph
7 71 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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9 **COUNT II**
10 **CONTRIBUTORY COPYRIGHT INFRINGEMENT**
11 **UNDER THE COPYRIGHT ACT, 17 U.S.C. § 501**

12 79. The MDY Parties acknowledge that the Blizzard Parties re-allege their
13 allegations set forth in Paragraphs 1-78 of the Blizzard Parties' Counterclaims and
14 Third-Party Complaint.

15 80. The MDY Parties hereby DENY the allegations set forth in Paragraph
16 80 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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18 81. The MDY Parties hereby DENY the allegations set forth in Paragraph
19 81 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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21 82. The MDY Parties hereby DENY the allegations set forth in Paragraph
22 82 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

23 83. The MDY Parties hereby DENY the allegations set forth in Paragraph
24 83 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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26 84. The MDY Parties hereby DENY the allegations set forth in Paragraph
27 84 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

28 85. The MDY Parties hereby DENY the allegations set forth in Paragraph

1 85 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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3 86. The MDY Parties hereby DENY the allegations set forth in Paragraph
4 86 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

5 87. The MDY Parties hereby DENY the allegations set forth in Paragraph
6 87 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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8 88. The MDY Parties hereby DENY the allegations set forth in Paragraph
9 88 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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11 89. The MDY Parties hereby DENY the allegations set forth in Paragraph
12 89 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

13 **COUNT III**
14 **VICARIOUS COPYRIGHT INFRINGEMENT**
15 **UNDER THE COPYRIGHT ACT, 17 U.S.C. § 501**

16 90. The MDY Parties acknowledge that the Blizzard Parties re-allege their
17 allegations set forth in Paragraphs 1-89 of the Blizzard Parties' Counterclaims and
18 Third-Party Complaint.

19
20 91. The MDY Parties hereby DENY the allegations set forth in Paragraph
21 91 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

22 92. The MDY Parties hereby DENY the allegations set forth in Paragraph
23 92 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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25 93. The MDY Parties hereby ADMIT the allegations set forth in Paragraph
26 93 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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28 94. The MDY Parties hereby ADMIT the allegations set forth in Paragraph
94 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

1 103 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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3 104. The MDY Parties hereby DENY the allegations set forth in Paragraph
4 104 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

5 105. The MDY Parties hereby DENY the allegations set forth in Paragraph
6 105 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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8 106. The MDY Parties hereby DENY the allegations set forth in Paragraph
9 106 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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11 107. The MDY Parties hereby DENY the allegations set forth in Paragraph
12 107 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

13 108. The MDY Parties hereby DENY the allegations set forth in Paragraph
14 108 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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16 **COUNT V**
17 **TRADEMARK INFRINGEMENT**
18 **LANHAM ACT, 15 U.S.C. § 1125(A)**

19 109. The MDY Parties acknowledge that the Blizzard Parties re-allege their
20 allegations set forth in Paragraphs 1-108 of the Blizzard Parties' Counterclaims and
21 Third-Party Complaint.

22 110. The MDY Parties hereby DENY the allegations set forth in Paragraph
23 110 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

24
25 111. The MDY Parties hereby DENY the allegations set forth in Paragraph
26 111 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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28 112. The MDY Parties hereby DENY the allegations set forth in Paragraph
112 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

1 113. The MDY Parties hereby DENY the allegations set forth in Paragraph
2 113 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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4 114. The MDY Parties hereby DENY the allegations set forth in Paragraph
5 114 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

6 115. The MDY Parties hereby DENY the allegations set forth in Paragraph
7 115 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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9 116. The MDY Parties hereby DENY the allegations set forth in Paragraph
10 116 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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12 117. The MDY Parties hereby DENY the allegations set forth in Paragraph
13 117 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

14 **COUNT VI**
15 **UNFAIR COMPETITION**

16 118. The MDY Parties acknowledge that the Blizzard Parties re-allege their
17 allegations set forth in Paragraphs 1-117 of the Blizzard Parties' Counterclaims and
18 Third-Party Complaint.

19
20 119. The MDY Parties hereby DENY the allegations set forth in Paragraph
21 119 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

22 120. The MDY Parties hereby DENY the allegations set forth in Paragraph
23 120 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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25 121. The MDY Parties hereby DENY the allegations set forth in Paragraph
26 121 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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28 122. The MDY Parties hereby DENY the allegations set forth in Paragraph
122 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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COUNT VII
UNJUST ENRICHMENT

123. The MDY Parties acknowledge that the Blizzard Parties re-allege their allegations set forth in Paragraphs 1-122 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

124. The MDY Parties hereby DENY the allegations set forth in Paragraph 124 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

125. The MDY Parties hereby DENY the allegations set forth in Paragraph 125 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

126. The MDY Parties hereby DENY the allegations set forth in Paragraph 126 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

127. The MDY Parties hereby DENY the allegations set forth in Paragraph 127 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

128. The MDY Parties hereby DENY the allegations set forth in Paragraph 128 of the Blizzard Parties' Counterclaims and Third-Party Complaint.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. Defendants' Counterclaims are barred by waiver.

SECOND AFFIRMATIVE DEFENSE

2. Defendants' Counterclaims are barred by laches and estoppel.

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THIRD AFFIRMATIVE DEFENSE

3. Defendants' Counterclaims are barred by acquiescence.

FOURTH AFFIRMATIVE DEFENSE

4. Defendants' Counterclaims are barred by the unclean hands doctrine.

FIFTH AFFIRMATIVE DEFENSE

5. Defendants' Counterclaims fail to state a claim upon which relief can be granted.

SIXTH AFFIRMATIVE DEFENSE

6. Defendants' Counterclaims are barred by the pertinent statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

7. Defendants' have not suffered any damages as a result of the acts alleged to have been committed by the MDY Parties.

EIGHTH AFFIRMATIVE DEFENSE

8. Defendants' Counterclaims are barred because the Defendants failed to mitigate any damages that they allegedly suffered.

NINTH AFFIRMATIVE DEFENSE

9. Defendants' Counterclaim for tortious interference with contractual relations is improper under the law in that there is no special relationship between the parties.

TENTH AFFIRMATIVE DEFENSE

10. Defendants' Counterclaim for tortious interference with contractual relations is improper under the law in that the MDY Parties did not act improperly with regard to motive or means.

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ELEVENTH AFFIRMATIVE DEFENSE

11. Defendants’ Counterclaim for tortious interference with contractual relations is improper under the law in that the defendants suffered no damages or loss of goodwill resulting from any alleged acts by the MDY Parties.

TWELFTH AFFIRMATIVE DEFENSE

12. Defendants’ Counterclaim for tortious interference with contractual relations is improper under the law in that the Blizzard Parties’ EULA and TOS agreements are not valid or enforceable.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Defendants’ Counterclaim for contributory and vicarious copyright infringement is improper under the law in that any use of the Blizzard Parties’ computer code by third parties constitutes fair use of said code

FOURTEENTH AFFIRMATIVE DEFENSE

14. Defendants’ Counterclaim for contributory and vicarious copyright infringement is improper under the law in that the Blizzard Parties’ EULA and TOS agreements unlawfully preclude third parties from utilizing lawful third party software.

FIFTEENTH AFFIRMATIVE DEFENSE

15. Defendants’ Counterclaim for violation of the Digital Millennium Copyright Act is improper under the law in that MDY’s WoWGlider program does not circumvent any security measure for the purpose of making an unauthorized copy of any copyright protected information owned by the Blizzard Parties.

SIXTEENTH AFFIRMATIVE DEFENSE

16. Defendants’ Counterclaim for trademark infringement is improper under the law in that the word “WoW” is a descriptive acronym not capable of acting as a

1 trademark as it is incapable of distinguishing the Blizzard Parties' products from other
2 parties.

3
4 **SEVENTEENTH AFFIRMATIVE DEFENSE**

5 17. Defendants' Counterclaim for trademark infringement is improper under the
6 law in that the Blizzard parties do not use the word 'WoW' as a trademark and
7 therefore have no rights in the word.

8 **EIGHTEENTH AFFIRMATIVE DEFENSE**

9 18. Defendants' Counterclaim for unfair competition is improper under the law in
10 that MDY has competed fairly in the marketplace through independent development
11 of a software program that has caused the Blizzard Parties no damage.

12 **NINETEENTH AFFIRMATIVE DEFENSE**

13 19. Defendants' Counterclaim for unjust enrichment is improper under the law in
14 that the MDY has earned an income solely based upon a lawful business venture and
15 not as a result of any unlawful act toward the Blizzard Parties.

16 **TWENTIETH AFFIRMATIVE DEFENSE**

17 20. Defendants' Counterclaims against Donnelly are improper in that Donnelly has
18 performed none of the alleged acts above and that Donnelly is not an alter ego of
19 MDY. To the extent that any act alleged above occurred, MDY was acting only in its
20 corporate capacity and not individually through Donnelly.
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23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays as follows:

- 25
26 1. For a judgment denying all claims against the MDY parties as alleged above
27 by the Blizzard Parties and finding in favor of the MDY Parties;
28 2. For a judgment and declaration that MDY' WOWGLIDER does not infringe
any rights owned by Defendants;

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3. For a decree enjoining and restraining Defendants from all further charges of infringement and violations of rights, including:
- a. threatening the MDY Parties or the MDY Parties' existing or prospective customers, suppliers, dealers or any users of WOWGLIDER with statements or representations that they are performing acts or engaged in activity that violates rights owned by Defendants; and/or
 - b. initiating and/or maintaining infringement litigation, or threatening litigation, against MDY's existing or prospective customers, suppliers, dealers or any users of WOWGLIDER that asserts or charges infringement or other violation of rights owned by Defendants;
4. For damages in the amount proven at trial;
5. For Plaintiff's attorneys' fees;
6. For Plaintiff's costs of suit incurred herein; and
7. For such other and further relief as the Court deems just and proper.

Dated this 15th day of March, 2007

Venable, Campillo, Logan & Meaney, P.C.

Bv /s/Lance C. Venable
Lance C. Venable SBN 017074
Joseph R. Meaney SBN 017371
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E-Mail docketing@vclmlaw.com
Attorneys for Plaintiff MDY
Industries. LLC

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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I hereby certify that on March 15, 2007, I served the attached document by ELECTRONIC MAIL on the following, who are not registered participants of the CM/ECF System:

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