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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

MDY INDUSTRIES, LLC,

Plaintiff,

vs.

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

Defendants.

Case No.: CV06-02555-PHX-VAM

FIRST AMENDED COMPLAINT

**The Honorable Virginia A. Mathis
(JURY TRIAL REQUESTED)**

Plaintiff MDY Industries, LLC (“MDY or “Plaintiff”) seeks a Declaratory Judgment that it is not infringing any rights, copyright or otherwise, owned by Defendants Blizzard Entertainment, Inc. and Vivendi Games, Inc. (collectively, “Defendants”). In support of this action, Plaintiff alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff MDY is an Arizona Limited Liability Company with its principal place of business in Phoenix, Arizona.
2. Upon information and belief, Defendant Blizzard Entertainment, Inc. (“Blizzard”) is a Delaware corporation having its principal place of business in Irvine, California.

1 3. Upon information and belief, Defendant Vivendi Games, Inc. (“Vivendi”) is a
2 Delaware Corporation having a principal place of business in Irvine, California.

3 4. Personal jurisdiction over Defendants is proper in this District based on
4 contacts with this state, and based on the litigation threats described below.

5 5. This Complaint for Declaratory Judgment under 28 U.S.C. §§ 2201 and 2202,
6 is properly filed in respect to an actual controversy of which this Court has
7 jurisdiction under the Copyright Laws of the United States (17 U.S.C. § 101 et. seq.)
8 and 28 U.S.C. § 1338.

9 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

10 **SUBJECT MATTER OF CONTROVERSY AND ACTS COMPLAINED OF**
11

12 7. Plaintiff MDY sells a product under the name WOWGLIDER.

13 8. On October 25, 2006 at 8:30 in the morning, three people showed up
14 unannounced at the residence of Michael M. Donnelly. Mr. Donnelly is a member of
15 MDY. Two of the people represented to Mr. Donnelly that one of them was a high
16 ranking officer of Vivendi and that the other was a lawyer for Vivendi and Blizzard,
17 Shane M. McGee (the two are collectively referred to herein as “Defendants’
18 Representatives”).

19 9. Defendants’ representatives accused MDY of violating Defendants’ rights
20 associated with a video game sold commercially under the name “World of
21 Warcraft.”

22 10. Among other things, Defendants’ Representatives accused MDY of infringing
23 copyrights owned by Defendants, violating the DMCA, as well as interfering with
24 contractual relationships Defendants have with World of Warcraft customers.

25 11. Defendants’ Representatives expressly threatened that Defendants would file a
26 complaint against MDY within days if MDY did not capitulate to their demands.

27 12. It is believed that Defendants’ Representatives had in their hands a draft copy
28 of a complaint.

1 13. Defendants' threats and actions have placed Plaintiff in reasonable
2 apprehension of being sued by Defendants, and have created an actual controversy
3 within the scope of 28 U.S.C. § 2201.

4 14. Upon information and belief, MDY has not violated any rights owned by
5 Defendants and is not otherwise liable to Defendants for any actions arising out of the
6 sale of WOWGLIDER.

7 15. Unless Defendants are permanently enjoined from doing so, Defendants will
8 continue to assert their perceived rights against Plaintiff as well as Plaintiff's
9 customers.

10 16. Unless Defendants are enjoined from doing so, Plaintiff will continue to be
11 greatly and irreparably injured and has no adequate remedy at law.

12 17. Defendants' charge of copyright infringement, DMCA violations, and
13 interference with contracts constitutes a grave and wrongful interference with the
14 business of Plaintiff in this District.

15
16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for judgment as follows:

- 18 1. For a judgment and declaration that MDY's WOWGLIDER does not infringe
19 any rights owned by Defendants;
- 20 2. For a decree enjoining and restraining Defendants from all further charges of
21 infringement and violations of rights, including:
- 22 a. threatening Plaintiff' existing or prospective customers, suppliers,
23 dealers or any users of WOWGLIDER with statements or
24 representations that they are performing acts or engaged in activity
25 that violates rights owned by Defendants; and/or
- 26 b. initiating and/or maintaining infringement litigation, or threatening
27 litigation, against Plaintiff's existing or prospective customers,
28 suppliers, dealers or any users of WOWGLIDER that asserts or

- 1 charges infringement or other violation of rights owned by
2 Defendants;
- 3 3. For damages in the amount proven at trial;
4 4. For Plaintiff's attorneys' fees;
5 5. For Plaintiff's costs of suit incurred herein; and
6 6. For such other and further relief as the Court deems just and proper.

7
8 **JURY DEMAND**

9 Plaintiff hereby demands a jury trial on all issues so triable.

10 Dated this 1st day of December, 2006

11
12 **Venable, Campillo, Logan & Meaney, P.C.**

13
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