

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LAW OFFICES OF
VENABLE, CAMPILLO, LOGAN & MEANEY, P.C.
1938 EAST OSBORN ROAD
PHOENIX, ARIZONA 85016
TELEPHONE (602) 631-9100
FACSIMILE (602) 631 9796
E-MAIL DOCKETING@VCLMLAW.COM

Lance C. Venable (AZ Bar No 017074)
Joseph R. Meaney (AZ Bar No. 017371)
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

CEILING FAN SOFTWARE, LLC; an
Ohio Limited Liability Company; **BRIAN
BECKER** an individual; and **STANTON
FRASER** an individual

Plaintiffs,

vs.

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

Defendants.

Case No.:

COMPLAINT

(JURY TRIAL REQUESTED)

Plaintiffs Ceiling Fan Software, LLC, Brian Becker, and Stanton Fraser (collectively "Ceiling") seek a Declaratory Judgment that Ceiling is not infringing any rights, copyright or otherwise, owned by Defendants Blizzard Entertainment, Inc. and Vivendi Games, Inc. (collectively, "Blizzard"). In support of this action, Ceiling alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff Ceiling Fan Software, LLC is an Ohio Limited Liability Company with its principal place of business in Cincinnati, Ohio.
2. Plaintiff Brian Becker ("Becker") is an individual residing in Cincinnati, Ohio and is the Chief Technology Officer of Ceiling Fan Software.
3. Plaintiff Stanton Fraser ("Fraser") is an individual residing in Cypress, Texas

1 and is the Chief Operating Officer of Ceiling Fan Software.

2 4. Upon information and belief, Defendant Blizzard Entertainment, Inc.
3 (“Blizzard”) is a Delaware corporation having its principal place of business in Irvine,
4 California.

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

7 6. Personal jurisdiction over the Defendants is proper in this District based on
8 contacts and the business it advertises for and conducts within with this state.

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

13 8. Venue is proper in this district under to 28 U.S.C. § 1391.

14 **SUBJECT MATTER OF CONTROVERSY AND ACTS COMPLAINED OF**
15

16 9. Ceiling develops and sells software programs including one under the name
17 Pocket Gnome throughout the country including to customers in this District.

18 10. Ceiling developed the Pocket Gnome software and other related software as an
19 add-on program that interacts with Blizzard’s World of Warcraft (“WoW”) computer
20 game and enables its users to automate features and steps in WoW.

21 11. On or about November 16, 2011, counsel representing Blizzard contacted
22 Becker leaving a voicemail for him and requesting that he return the call regarding the
23 sale of Ceiling’s software program.

24 12. When Becker returned the call, Blizzard’s counsel threatened him by saying if
25 he does not stop selling his software, that Blizzard would take legal action against him
26 and his company for violating certain federal and state laws that prohibit the sales of
27 software like Pocket Gnome.

28 13. Becker then responded to Blizzard’s counsel and requested that he provide a

1 list of the specific laws that he was allegedly violating and infringing upon Blizzard's
2 rights.

3 14. Blizzard's counsel responded in an email by stating that his acts violated the
4 federal copyright laws, the Digital Millennium Copyright Act, and that his acts
5 tortiously interfered with Blizzard's contractual relationships with its customers. The
6 email further stated that Blizzard had addressed the issues that the Ninth Circuit Court
7 of Appeals raised in its recent decision for *MDY Industries v. Blizzard Entertainment*,
8 629 F.3d 928 (9th Cir. 2010), issued in December 2010 based on a case originating
9 from this district in 2006.

10 15. Blizzard's threats and actions have placed Ceiling in reasonable apprehension
11 of being sued by Blizzard, and have created an actual controversy within the scope of
12 28 U.S.C. § 2201.

13 16. Upon information and belief, Ceiling has not violated any rights owned by
14 Blizzard and is not otherwise liable to Blizzard for any actions arising out of the sale
15 of its software.

16 17. Unless Blizzard is permanently enjoined from doing so, it will continue to
17 assert its perceived rights against Ceiling, its officers, and its customers.

18 18. Unless Blizzard is enjoined from doing so, Ceiling will continue to be greatly
19 and irreparably injured and has no adequate remedy at law.

20 19. Blizzard's charge of copyright infringement, DMCA violations, and
21 interference with contracts constitutes a grave and wrongful interference with the
22 Ceiling's business in this District.

23
24 **PRAYER FOR RELIEF**

25 WHEREFORE, Ceiling prays for judgment as follows:

- 26 1. For a judgment and declaration that the sale of Ceiling's software does not
27 infringe any rights owned by Blizzard;
28 2. For a decree enjoining and restraining Blizzard from all further charges of

1 infringement and violations of rights, including:

- 2 a. threatening Ceiling's existing or prospective customers, suppliers,
3 dealers or any users of its software with statements or
4 representations that they are performing acts or engaged in activity
5 that violate Blizzard's rights; and
6 b. initiating or maintaining infringement litigation, or threatening
7 litigation, against Ceiling's existing or prospective customers,
8 suppliers, dealers or any users of its software that asserts or charges
9 infringement or other violation of Blizzard's rights;

- 10 3. For damages in the amount proven at trial;
11 4. For Ceiling's attorneys' fees;
12 5. For Ceiling's costs of suit incurred herein; and
13 6. For other relief as the Court believes is just and proper.

14
15 **JURY DEMAND**

16 Ceiling demands a jury trial on all triable issues.

17
18 Dated this 30th day of November 2011

19
20 **Venable, Campillo, Logan & Meaney, P.C.**

21
22 By /s/Lance C. Venable
23 Lance C. Venable SBN 017074
24 Joseph R. Meaney SBN 017371
25 1938 East Osborn Road
26 Phoenix, Arizona 85016
27 Tel: 602-631-9100
28 Fax: 602-631-9796
E-Mail docketing@vclmlaw.com
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28