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Attorneys for Plaintiff NOVALOGIC, INC.

FILED
 MAY -8 PM 3:47
 CENTRAL DISTRICT OF CALIFORNIA
 BY _____

12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA – CENTRAL DIVISION

14 NOVALOGIC, INC., a California
15 corporation,

16 Plaintiff,

17 v.

18 ACTIVISION BLIZZARD, a Delaware
 19 Corporation; ACTIVISION PUBLISHING,
 20 a Delaware Corporation; VOYETRA
 21 TURTLE BEACH, INC., a New York
 Corporation; PENGUIN GROUP (USA),
 22 INC., a Delaware Corporation;
 23 MICROSOFT CORPORATION, a
 Washington Corporation; and DOES 1
 24 through 10,

25 Defendants.

CASE NO. CV 12 - 04011 JFW (SHx)

COMPLAINT FOR DAMAGES

1. Trademark Infringement, 15 U.S.C. § 1114;
2. Unfair Competition/False Designation of Origin 15 U.S.C. § 1125(a);
3. Contributory Trademark Infringement and Unfair Competition/False Designation of Origin, 15 U.S.C. § 1114 & 1125(a);
4. Common Law Trademark Infringement;

DEMAND FOR JURY TRIAL

COMPLAINT

1 Plaintiff NovaLogic, Inc. (“NovaLogic”) complains of the defendants and alleges as
2 follows:

3 INTRODUCTION

4 1. This is an action to enforce Plaintiff NovaLogic’s intellectual property rights
5 by putting a stop to the Defendants’ knowing, willful and intentional scheme to trade on
6 NovaLogic’s trademarks and goodwill. NovaLogic publishes videogames and is an
7 innovator in the first person shooter game genre. NovaLogic obtained federal registrations
8 – which are now incontestable – for the logo and word mark long before Defendants’
9 tortuous conduct. Indeed, Vivendi Games, a company acquired by Defendant Activision,
10 previously licensed NovaLogic’s marks for its video game. Yet, despite Activision’s
11 irrefutable knowledge of NovaLogic’s superior trademark rights, Activision created knock-
12 off marks that are nearly identical NovaLogic’s design and word marks. Activision then
13 shamelessly inserted these infringing marks throughout its competing first person military
14 adventure video games.

15 2. As if this were not enough, Activision has in-turn licensed the infringing marks
16 to Defendants Voyetra Turtle Beach (“Turtle Beach”), Microsoft Inc. (“Microsoft”) and the
17 BradyGAMES division of Penguin Books (“BradyGAMES”) without NovaLogic’s
18 permission. As a result of Activision’s unauthorized licensing, Turtle Beach and Microsoft
19 have created special editions of their products where the overall look and feel is entirely
20 dominated by use of the infringing marks. In addition, BradyGAMES, a creator of
21 videogame strategy guides and books, has reproduced NovaLogic’s marks in its
22 publications relating to Defendants’ game.

23 3. For almost fifteen years, NovaLogic has invested significant resources building
24 the goodwill of its marks. Knowing that the public identifies these marks with NovaLogic’s
25 good reputation, Activision’s infringing marks represent a shameless effort to capture the
26 benefit of that investment. Defendants’ actions confuse and deceive consumers by
27 misrepresenting that NovaLogic is, in some way, affiliated with Defendants’ products. By
28 this strategy, Defendants seek to co-opt the reputation for quality that NovaLogic has spent

1 years building, while undermining NovaLogic’s legitimate place in the videogame market.

2
3 **JURISDICTION**

4 4. These causes of action arise under the provisions of the Lanham Act (15 U.S.C.
5 §§1051-1127), and the common law. This Court has subject matter jurisdiction over the
6 First, Second and Third Causes of Action pursuant to 28 U.S.C. §§1331 and 1338(a) and 15
7 U.S.C. §1125. This Court has subject matter jurisdiction over the Fourth and Fifth Causes
8 of Action under 28 U.S.C. §1367(a) because these are claims that are so related to claims
9 within the original jurisdiction of this Court under the trademark and unfair competition
10 laws of the United States that they form part of the same case or controversy.

11 5. Venue in this judicial district is proper under 28 U.S.C. §1391(b) and (c)
12 because the events giving rise to this action occurred in this district, namely the Defendants
13 have, among other acts, marketed and sold in this district products using a mark confusingly
14 similar to Plaintiff’s and because the Defendants’ actions have resulted in acts of trademark
15 infringement and unfair competition throughout the State of California.

16
17 **THE PARTIES**

18 6. Plaintiff NovaLogic is and at all times herein mentioned was a corporation
19 organized and existing under the laws of the State of California, with a principal place of
20 business in the city of Malibu, Los Angeles County, California.

21 7. Upon information and belief, defendant Activision Blizzard, Inc. is a
22 corporation organized and existing under the laws of the State of Delaware, with a principal
23 place of business in Santa Monica, Los Angeles County, California.

24 8. Upon information and belief, defendant Activision Publishing, Inc. is a
25 corporation organized and existing under the laws of the State of Delaware, with a principal
26 place of business in Santa Monica, Los Angeles County, California.

27 9. Upon information and belief, defendant Voyetra Turtle Beach, Inc. is a
28 corporation organized and existing under the laws of the State of Delaware, with a principal

1 place of business in Elmsford, Westchester County, New York.

2 10. Upon information and belief, defendant Penguin Group (USA), INC. is a
3 corporation organized and existing under the laws of the State of Delaware, with a principal
4 place of business in New York, New York County, New York.

5 11. Upon information and belief, defendant Microsoft Corporation, Inc. is a
6 corporation organized and existing under the laws of the State of Washington, with a
7 principal place of business in Seattle, King County, Washington.

8 12. NovaLogic is unaware of the true names and capacities of DOES 1 through 10,
9 inclusive, and therefore sues said defendants by such fictitious names. NovaLogic will ask
10 leave of Court to amend this Complaint to state the true names and capacities of the
11 defendants sued as DOES when the same are ascertained. NovaLogic is informed and
12 believes, and based thereon alleges that each of the fictitiously named defendants are
13 responsible in some manner for the occurrences herein alleged, and that NovaLogic's
14 damages, as herein alleged, were proximately caused by their conduct.

15 13. At all material times herein, each defendant was the agent, servant, and
16 employee of their co-defendants, and in doing things herein alleged were acting in the scope
17 of their authority as such agents, servants, and employees, and with the permission and
18 consent of their co-defendants.

19
20 **FACTUAL BACKGROUND**

21 14. NovaLogic is a developer and global publisher of computer games for the PC,
22 PlayStation® and PlayStation® 2 game consoles, and Xbox™ video game system.

23 15. NovaLogic is an innovator in the first person shooter game genre. For more
24 than twenty-five years, NovaLogic has established a reputation as a leading producer of
25 cutting edge video games. NovaLogic has worked with the United States Army and
26 Marines and firms including Sikorsky and Lockheed Martin to develop software for both
27 entertainment and military applications.

28 16. Since 1998, NovaLogic has had a registered design mark on the Logo (U.S.

1 Reg. No. 2,704,298) (the “Logo”). The Logo consists of a delta symbol with a vertical
2 lightening rod superimposed onto a dagger. The Logo is for use in connection with
3 computer and videogame software, CD-ROM’s and compact discs featuring computer
4 games, accessories for playing electronic and computer games, namely templates, computer
5 game joysticks and manuals.

6 17. NovaLogic also has a registered word mark on the text: DELTA FORCE (U.S.
7 Reg. 2,302,869) (the “DELTA FORCE® Mark”). The DELTA FORCE® Mark is for use in
8 connection with computer software featuring simulations created through graphics,
9 computer game software, pre-recorded CD-ROM compact discs featuring computer games,
10 hand held units for playing computer games, accessories for hand-held units for playing
11 electronic computer games, namely computer game joysticks, manuals and strategy guides.

12 18. Said registrations are in full force and effect, are owned by NovaLogic, and
13 have become incontestable under 15 U.S.C. § 1065.

14 19. In 1998, NovaLogic developed the game *Delta Force*, a military first person
15 shooter game. About 10 versions of *Delta Force* have been published since its original
16 release, grossing over \$150 million in worldwide sales. NovaLogic continues to develop
17 new versions of the *Delta Force* series.

18 20. *Delta Force* pioneered many of the innovations of the first person shooter
19 game genre including the use of the Logo throughout the game. As a result of NovaLogic’s
20 efforts, the Logo is now widely identified with the *Delta Force* series by gamers.

21 21. There is no unit of the U.S. Army called Delta Force. There is a branch of the
22 Army’s Special Operations known as 1st Special Forces Operational Detachment Delta (“1st
23 SF-FOD”). The U.S. Army officially denies that any unit called Delta Force exists and does
24 not claim ownership to either the Delta Force name or the Logo. Although there is much
25 lore surrounding special operation units, only because of the *Delta Force* series does the
26 general public identify the Logo with any actually existing military unit.

27 22. Activision is a videogame publisher that has published the *Call of Duty* series.
28 In or about November, 2011, Activision released *Call of Duty Modern Warfare 3* (“CoD

1 MW3”); Activision’s most recent first person shooter game and the latest version of the
2 *Call of Duty* series. CoD MW3 is available on Microsoft Xbox 360, Sony Playstation 3 and
3 on PC. CoD MW3 grossed \$1 billion in its first sixteen days of sales.

4 23. Activision has incorporated a design mark into CoD MW3 that is nearly
5 identical to the Logo (the “Infringing Mark”). The Infringing Mark is hardly different from
6 the Logo. The Infringing Mark’s lightening rod is horizontal rather than vertical and a
7 portion of the delta sign is set behind the dagger blade rather than being superimposed. The
8 words DELTA FORCE are used throughout CoD MW3.

9 24. In single player mode, 7 of 16 missions are designated Delta Force missions, in
10 which the only avatar available to players is “Frost”, a Delta Force operator. In addition,
11 players fight alongside a number of non-player controlled characters. Several of these
12 characters are members of Delta Force. The Infringing Mark appears in both static
13 screenshots (where the player has paused the game) and in dynamic screenshots as part of
14 the continuing game play.

15 25. In multiplayer mode, 7 of 16 mission maps have “Delta Force” as one of the
16 two factions that the player can select. The Delta Force option is presented to players
17 through a display of the Infringing Mark. If the player chooses to play the Delta Force side,
18 the Logo appears frequently throughout the mission. The Logo appears in both menus, out
19 of game screens whereby the player has paused the game, and in dynamic game play. If the
20 player chooses the alternate side, then all enemies will be designated “Delta Force” and the
21 use of the Infringing Mark still appears frequently throughout game-play. At the time of this
22 writing, Activision has released 6 additional multiplayer maps with infringing content.
23 Activision plans to release additional content through their “Elite Content” feature.
24 Presumably some of this content will further infringe on NovaLogic’s marks.

25 26. Activision’s use of the Infringing Mark and DELTA FORCE® Mark
26 throughout CoD 3 MW creates a likelihood of confusion with NovaLogic’s *Delta Force*
27 series.

28 27. Beyond Activision’s direct infringement of NovaLogic’s marks within COD

1 MW3, Activision also licensed the Infringing Mark to a number of third parties without
2 NovaLogic's consent, knowledge or authorization. In so doing, Activision contributed to
3 the infringing activities of each of the other Defendants.

4 28. In or around late 2011, Defendant Turtle Beach, licensed the Infringing Mark
5 from Activision. Turtle Beach, a manufacturer of audio equipment used in conjunction with
6 video games, released a broad series of limited edition headsets prominently displaying the
7 Infringing Mark on the outside of each headphone. Additionally, the Infringing Mark is
8 displayed in a photograph on the outside of the packaging. In cases where the outer
9 wrapping is removed for display purposes, the Infringing Mark is visible through the clear
10 plastic cover without having to open the package. Turtle Beach supported these products
11 with a significant advertising campaign featuring photographs of their headset line with
12 multiple prominent displays of the Infringing Mark.

13 29. In or around late 2011, Defendant Microsoft licensed the Infringing Mark from
14 Activision. Microsoft, the manufacturer of video game console XBOX 360, released a
15 limited edition console prominently displaying the Infringing Mark, which appears on the
16 outside packaging as well as on the console itself. Microsoft ran a specific advertising
17 campaign that prominently featured the limited edition XBOX360 with photographs that
18 favored the side of the XBOX depicting the Infringing Mark.

19 30. In or around late 2011, Defendant BradyGAMES licensed the Infringing Mark
20 from Activision. BradyGAMES, the publisher of video game strategy guides, published
21 BradyGames' *Call of Duty: Modern Warfare 3 Signature Series Strategy Guide* (the
22 "Guide"). Within the Guide, there are numerous in game screenshots of CoD MW3 in
23 which the Infringing Marks are reproduced.

24 31. On or around May 11, 2011, NovaLogic's intellectual property counsel sent a
25 cease and desist letter to Activision regarding Activision's infringement of NovaLogic's
26 marks in other *Call of Duty* games. (See Exhibit A) Activision did not respond to the letter,
27 nor did it cease its infringing activities.

28 32. On or around September 26, 2011, NovaLogic's intellectual property counsel

1 sent an email to Activision requesting a response to the May 11, 2011 letter. (*See* Exhibit
2 B). Activision did not respond to this email, nor did it cease its infringing activities.

3 33. In another letter dated December 15, 2011, NovaLogic's intellectual property
4 counsel sent another cease and desist letter to Activision. (*See* Exhibit C). This letter
5 specifically detailed Activision's infringing use of the Logo and DELTA FORCE® Mark.
6 The letter also noted that Activision sub-licensed the Logo to Turtle Beach and Microsoft
7 without NovaLogic's knowledge, consent or authorization.

8 34. In a letter dated January 6, 2012, counsel for Activision responded to the
9 NovaLogic's December 15, 2011 cease and desist letter indicating Defendants' refusal to
10 cease their infringing activities. (*See* Exhibit D).

11 35. Upon information and belief, Defendants' use of the Infringing Mark and
12 DELTA FORCE® Mark demonstrates a deliberate effort to market a competing product
13 bearing confusingly similar, if not identical, infringing trademarks. Consumers are
14 confronted with Activision's use of the Infringing Mark through numerous retailers, online
15 retailers and licensees.

16 36. NovaLogic and Activision are direct competitors. Activision's use of the
17 Infringing Mark and the DELTA FORCE® Mark can lead consumers to believe that
18 NovaLogic is the source of the product, misconceive an association between or sponsorship
19 of Defendants' products by NovaLogic, or at worst, that Activision is the successor in
20 interest to NovaLogic's registered marks.

21 37. NovaLogic is informed and believes and thereon alleges that Defendants'
22 advertising and representations have caused, and continue to cause, confusion within the
23 industry, and damage to NovaLogic, including economic and reputation damage.

24 38. As a result of Defendants' wrongful conduct, NovaLogic has lost millions of
25 dollars of business, possibly more. If Defendants' infringing practices are not discontinued
26 quickly, it is likely that the damage to NovaLogic will grow exponentially, causing more
27 confusion in the market place, and to the reputation for quality that NovaLogic has worked
28 so hard to establish.

1 **FIRST CAUSE OF ACTION**

2 Federal Trademark Infringement, 15 U.S.C. § 1114
3 (Against All Defendants)

4 39. NovaLogic refers to the allegations of Paragraphs 1 through 36 of this
5 Complaint and incorporates them as though fully set forth herein.

6 40. By the acts alleged herein, Defendants have engaged in trademark infringement
7 under the Lanham Act, 15 U.S.C § 1114.

8 41. NovaLogic's incontestable federal registrations of the Logo and DELTA
9 FORCE® Mark since 1998 and use in commerce are conclusive evidence of NovaLogic's
10 ownership of their marks and their validity.

11 42. Defendant's wrongful uses of NovaLogic's marks are likely to cause confusion
12 as to sponsorship or authorization by NovaLogic, or alternatively, destroy the source-
13 identifying function of the NovaLogic's marks.

14 43. As a proximate result of defendants' actions, NovaLogic has suffered and will
15 continue to suffer great damage to its business, goodwill, reputation, profits and strength of
16 its trademarks. The injury to NovaLogic is and continues to be ongoing and irreparable.

17 44. The foregoing acts of infringement have been and continue to be deliberate,
18 willful and wanton, making this case exceptional within the meaning of 15 U.S.C. § 1117.
19 An award of monetary damages alone cannot fully compensate NovaLogic for its injuries
20 and NovaLogic lacks an adequate remedy at law.

21 45. NovaLogic is entitled to all remedies available under the Lanham Act,
22 including, but not limited to, preliminary and permanent injunctions, compensatory
23 damages, treble damages, disgorgement of profits, costs and attorney's fees.

24 **SECOND CAUSE OF ACTION**

25 Unfair Competition/False Designation of Origin 15 U.S.C. § 1125(a)
26 (Against All Defendants)

27 46. NovaLogic refers to the allegations of Paragraphs 1 through 43 of this
28 Complaint and incorporates them as though fully set forth herein.

47. The aforesaid acts of Defendants are likely to cause confusion, mistake or

1 deception among purchasers and potential purchasers of products bearing the Infringing
2 Marks as to the source and/or origin of the goods sold by Defendants by reason of the fact
3 that purchasers are likely to believe that Defendants goods originate from, or are in some
4 way properly connected with, approved, sponsored or endorsed by NovaLogic under its
5 Logo or DELTAFORCE Marks.

6 48. The confusion, mistake or deception referred to herein arises out of the
7 aforesaid acts of Defendants which constitute false designation of origin and unfair
8 competition in violation of section 43(a) of the Trademark Act of 1946, as amended, 15
9 U.S.C. § 1125(a).

10 49. Upon information and belief the aforesaid acts were undertaken willfully and
11 with the intention of causing confusion, mistake or deception.

12 50. As a proximate result of the acts of Defendants, as alleged herein, NovaLogic
13 has suffered, is suffering and will continue to suffer irreparable damage and, unless said
14 Defendants are restrained from continuing these wrongful acts, the damage to NovaLogic
15 will increase.

16 51. NovaLogic has no adequate remedy at law.

17
THIRD CAUSE OF ACTION

18 Contributory Federal Trademark Infringement, 15 U.S.C. § 1114
19 Contributory Unfair Competition/False Designation of Origin 15 U.S.C. § 1125(a)
(Against Activision)

20 52. NovaLogic refers to the allegations of Paragraphs 1 through 49 of this
21 Complaint and incorporates them as though fully set forth herein.

22 53. On information and belief, by licensing NovaLogic's marks without
23 NovaLogic's knowledge, consent, or authorization. Activision knew or should have known
24 they contributed to the infringing actions and/or unfair competition/false designation of
25 origin of Turtle Beach, Microsoft and BradyGUIDE.

26 54. Activision's aforesaid acts constitute contributory trademark infringement in
27 violation of the Trademark Laws of the United States, 15 U.S.C. § 1114, and at common
28 law, and contributory false designation of origin and unfair competition in violation of

1 section 43(a) of the Trademark Act of 1946, as amended, 15 U.S.C. § 1125(a).

2 55. On information and belief, the foregoing acts of infringement have been and
3 continue to be deliberate, willful, and wanton, making this an exceptional case within the
4 meaning of 15 U.S.C. § 1117.

5 56. As a result of the aforesaid acts by Activision, NovaLogic has been severely
6 injured in its business and property. The injury to NovaLogic is and continues to be
7 immediate and irreparable. An award of monetary damages alone cannot fully compensate
8 NovaLogic for its injuries and NovaLogic lacks an adequate remedy at law.

9
10 **FOURTH CAUSE OF ACTION**
11 **Common Law Trademark Infringement**
(Against All Defendants)

12 57. NovaLogic realleges and incorporates herein by references paragraphs 1
13 through 54 as though fully set forth herein.

14 58. By reason of the Defendants' actions alleged herein, NovaLogic has suffered,
15 and will continue to suffer, irreparable injury to its rights and suffer substantial loss of
16 goodwill, reputation, and in the value of the Logo and DELTA FORCE® Mark, unless and
17 until the Defendants are enjoined from continuing their wrongful acts.

18 59. By reason of the Defendants' actions alleged herein, NovaLogic has been
19 damaged in an amount not presently ascertained, and such damage will continue and
20 increase unless and until the Defendants are enjoined from continuing their wrongful acts.

21 60. Defendants' conduct in this cause of action is willful, wanton, malicious,
22 oppressive, and in conscious disregard of NovaLogic's rights in its trademarks, justifying
23 the imposition of punitive and exemplary damages under California Civil Code §3294.

24 //

25 //

26 //

27 //

28 //

1 **PRAYER FOR RELIEF**

2 WHEREFORE NovaLogic prays for judgment against Defendants, and each of them,
3 as follows:

4 1. For an order finding that, by the acts complained of herein, Defendants have
5 engaged in trademark infringement and unfair competition/false designation of origin and
6 that such conduct has been willful;

7 2. For an order awarding general and/or specific damages, in an amount to be
8 fixed by the Court in accordance with proof, including punitive and exemplary damages as
9 appropriate, as well as all of Defendants’ profits or gains of any kind resulting from each
10 cause of action, and further for an order awarding treble damages, pursuant to 15 U.S.C. §
11 1117(b) or any other applicable statute, because the acts of infringement were willful and
12 wanton;

13 3. For an order finding that an award of pre and post judgment interest is
14 necessary to fully compensate NovaLogic for the damage it has sustained;

15 4. For injunctive relief, preliminary and permanent injunction enjoining and
16 restraining Defendants, and all persons or entities acting in concert with them, during the
17 pendency of this action and thereafter perpetually from using any NovaLogic marks,
18 including the Logo and the Delta Force® mark, or any other name, mark, designation or
19 depiction in a manner that is likely to cause confusion regarding whether Defendants are
20 affiliated or associated with or sponsored by NovaLogic;

21 5. For an order awarding to NovaLogic all of its costs, including its attorneys’
22 fees incurred in prosecuting this action;

23 6. Awarding NovaLogic recovery for any unjust enrichment of Defendants;

24 7. For an order awarding to NovaLogic such other and further relief as the
25 Court may deem just and proper.

26 //

27 //

28 //

1 Dated: May 8, 2012

Respectfully submitted:

2 **GIRARDI | KEESE**
3 **Milord & Associates**

4
5 By: 

6 Howard B. Miller

7 Graham B. LippSmith

8 Milord A. Keshishian

9 Attorneys for Plaintiff NovaLogic

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EXHIBIT A

FULWIDER • PATTON LLP
INTELLECTUAL PROPERTY LAW

Vern Schooley
James W. Paul
John S. Nagy
Craig B. Bailey
Stephen J. Strauss
Thomas H. Majcher
Thomas A. Runk
Michael S. Elkind
Gary M. Anderson
I. Morley Drucker
David G. Parkhurst
John K. Fitzgerald
Gunther O. Hanke
James Juo
Michael J. Moffatt
David J. Pitman
Scott R. Hansen
Katherine N. Addison
Jessica Brookhart-Knost

Senior Counsel
Richard A. Bardin

Of Counsel
Leonard D. Messinger
Katherine L. McDaniel

Robert W. Fulwider
(1903-1979)

Warren L. Patton
(1912-1985)

F.A. Utecht
(1923-2011)

(310) 242-2667
jfitzgerald@fulpat.com

May 11, 2011

VIA CERTIFIED MAIL

Certified Article Number

7196 9008 9040 0247 ~~5418~~
5407

SENDER'S RECORD

Mr. Chris Walther
Chief Legal Officer
Activision Blizzard, Inc.
3100 Ocean Park Boulevard
Santa Monica, CA 90405

Re: NovaLogic, Inc.

Dear Mr. Walther:

We represent NovaLogic, Inc. ("NovaLogic"), a leading developer, publisher and distributor of innovative first person and multiplayer computer games, in intellectual property matters.

It has come to our attention that Activision Publishing Inc., has and continues to offer for sale a product known as the "Call of Duty: Black Ops Escalation." As you well know, NovaLogic has been selling and/or distributing a game using its trademark ESCALATION since at least November, 2004. A copy of promotional material showing NovaLogic's use of that mark is enclosed.

The sale and distribution of "Call of Duty: Black Ops Escalation" will lead consumers to be confused with NovaLogic's popular and well known game and believe that your game is associated with, approved, or endorsed, by NovaLogic and, thus, constitutes trademark infringement and unfair competition.

As you know, the penalties for trademark infringement are severe, and in the cases of willful infringement, could subject the infringer, in addition to injunctive relief, to enhanced damages incurred by our client and payment of its attorneys fees, as well as requiring the destruction of infringing signage and related materials.

Moreover, the afore-described usage by your client is likely to dilute the value of the famous "ESCALATION" name and mark and constitutes trademark dilution in violation of federal and State laws.

Chris Walther
May 11, 2011
Page 2

In view of the circumstances, we must request your immediate and full cooperation, that, within the next thirty (30) calendar days, you cease and desist from any use of the term "Escalation", in whole, or as part of any business or company name, or in any other manner, and that you cease and desist from any use of any mark or term or words, confusingly similar to NovaLogic's "Escalation" title for any purpose whatsoever.

It is NovaLogic's policy to protect its intellectual property rights and to enforce those rights against infringers. The purpose of this letter is to formally notify you of NovaLogic's objection to the use of their trademark ESCALATION identified above, and to call upon you to immediately:

1. Cease all further sales and distribution of "Call of Duty: Black Ops Escalation" to customers in the United States;
2. Cease all further importation of the product into the United States;
3. Cease all further sales to distributors for importation or sale into the United States; and
4. Provide us with a full accounting of all such products which you have sold to any customer in the United States or to any distributor for importation or sale into the United States, including contact name, company name, mailing address, e-mail address, telephone number and facsimile number.

If you agree to the foregoing, NovaLogic would be willing to waive any right to bring an action against you relating to your sales of the cases to date.

We trust that you will recognize our client's clear legal rights with respect to its trademark rights in the mark ESCALATION, and hope that this matter can be quickly and amicably resolved.

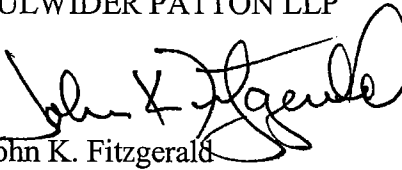
Please give this matter your prompt attention and let us know by no later than **May 18, 2011**, how you intend to proceed.

Chris Walther
May 11, 2011
Page 3

We look forward to your cooperation and response.

Sincerely,

FULWIDER PATTON LLP



John K. Fitzgerald

JKF:vmm

Enclosure

cc: Mr. John Garcia

455835.1

FULWIDER • PATTON
INTELLECTUAL PROPERTY LAW
LLP

EXHIBIT B

Monica Mandel

From: John Fitzgerald
Sent: Monday, September 26, 2011 3:41 PM
To: Tuck, Mary
Subject: RE: NovaLogic - Claim regarding Call of Duty Black Ops Escalation

Ms. Tuck,

To date, we have received no reply from Activision to our letter of May 11, 2011 other than your email below. We believe that you should have been able to complete your review by now, and would like to hear your response as soon as possible.

Regards,

John K. Fitzgerald
Partner
Fulwider Patton LLP
Howard Hughes Center
6060 Center Drive, Tenth Floor
Los Angeles, CA 90045
T: 310.242.2667
F: 310.824.9696

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From: Tuck, Mary [<mailto:Mary.Tuck@activision.com>]
Sent: Wednesday, May 18, 2011 10:15 AM
To: John Fitzgerald
Subject: NovaLogic - Claim regarding Call of Duty Black Ops Escalation

Mr. Fitzgerald, your letter of May 11, 2011 has been forwarded to me for review. We are reviewing the claims in your letter and will advise.

Mary A. Tuck
Senior Director, Litigation and IP
Activision Publishing, Inc.
3100 Ocean Park Blvd.
Santa Monica, CA 90405
Tel: 310-255-2746

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December 15, 2011

VIA FEDERAL EXPRESS:

Robert A. Kotick
Chief Executive Officer
Activision Blizzard, Inc.
3100 Ocean Park Blvd.
Santa Monica, California 90405

Eric Hirshberg
Chief Executive Officer
Activision Publishing, Inc.
3100 Ocean Park Blvd.
Santa Monica, California 90405

**CONFIDENTIAL COMMUNICATION
FOR SETTLEMENT PURPOSES ONLY**
**Fed. R. Evid. 408;
Cal. Evid. Code § 115**

- Re: (1) Activision's Willful Trademark Infringement of
ESCALATION
Our Docket No. NOVAL-86425
- (2) Notice of Infringement of NovaLogic, Inc.'s
DELTA & SWORD DESIGN
U.S. Reg. No. 2,704,298
CTM Reg. Nos. 005106216, 002835106
Our Docket No. NOVAL-87545
- (3) Notice of Infringement of NovaLogic, Inc.'s
DELTA FORCE
U.S. Reg. No. 2,302,869
CTM Reg. No. 0098912
Brazilian Reg. Nos. 821844040, 821044059
Our Docket No. NOVAL-XXXX



Dear Mr. Kotick and Mr. Hirshberg:

You are already aware from our letter of May 10, 2011, enclosed herewith, that our firm represents NovaLogic, Inc. ("NovaLogic") with regard to its intellectual property matters. As you can no doubt appreciate, our client is both puzzled and disappointed that Activision Blizzard, Inc. and its subsidiary, Activision Publishing, Inc., (both hereinafter referred to as "Activision") have not seen fit to substantively respond to our letter or cease its infringement of NovaLogic's senior and superior rights

Robert A. Kotick & Eric Hirshberg
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Page 2

in the ESCALATION mark for use in connection with video games. A copy of Activision's continued unauthorized use is enclosed herewith as Exhibit A.

Indeed, NovaLogic has been selling military and reconnaissance adventure video games under the ESCALATION mark since at least as early as November of 2004. NovaLogic's ESCALATION video games have flooded both the United States and international markets, garnering recognition for their high-quality design. Notwithstanding our client's rights in the ESCALATION mark, Activision – a direct competitor of NovaLogic – has deliberately chosen to adopt a confusingly similar ESCALATION mark for the Call of Duty: Black Ops Escalation content pack. Further, Activision has taken upon itself to mimic NovaLogic's design formative of the ESCALATION mark by utilizing a similar font in capitalized lettering and sandwiching the ESCALATION mark between a top and bottom border lining.

Clearly, Activision's actions have created the perfect environment for consumer confusion. Consumers exposed to Activision's unauthorized usage of NovaLogic's ESCALATION mark will surely mistakenly assume some sort of affiliation between your company and NovaLogic, or sponsorship by NovaLogic, and Activision's unauthorized usage in the marketplace will likely dilute NovaLogic's famous mark. Indeed, the aforementioned risk is absolutely unavoidable, since Novalogic has documented evidence of its consumers who mistakenly purchased Activision's infringing product and then contacted Novalogic with complaints or noting that they could not login to Novalogic's gaming services. Your company is reminded that courts have routinely recognized that **evidence of actual confusion is strong proof of a likelihood of confusion.** *Thane Intern., Inc. v. Trek Bicycle Corp.*, 305 F.3d 894, 902, 64 USPQ2d 1564 (9th Cir. 2002) (evidence of actual confusion is "persuasive proof that future confusion is likely"). As you can appreciate, our client is concerned that consumers will continue to experience confusion in the market place. Further, as additional cause for concern, any defects in the Activision games bearing the confusingly similar mark could be attributed to our client, thus tarnishing the exceptional reputation and goodwill of NovaLogic.

Keeping in mind that our client has extended Activision the courtesy of first offering a means for resolution of the instant matter through Activision's agreement to cease all use of the ESCALATION mark, our client can only assume through the silence on Activision's part that your company is fully content to willfully tread upon NovaLogic's superior rights in violation of federal and state trademark laws.

Indeed, not only has Activision undertaken its own mission to confuse honest consumers by adopting a confusingly similar ESCALATION mark in conjunction with *identical* goods of its competitor, or client has now learned that Activision – in outright defiance of NovaLogic's federally recognized trademark rights – has adopted a mark almost *identical* to NovaLogic's Delta Sword & Design mark, shown below, for use in

CONFIDENTIAL COMMUNICATION

Robert A. Kotick & Eric Hirshberg
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Page 3

connection with its Call of Duty video games and ancillary products therefor. Copies of Activisions' unauthorized usage is enclosed herewith as Exhibit B.



Further, Novalogic has deliberately engaged in usage of Novalogic's registered DELTA FORCE® mark in conjunction with the confusingly similar Delta Sword & Design mark in a rotating design at the beginning of the seven (7) of the total (16) single player missions, that play as DELTA FORCE or feature NovaLogic's marks:

- ACT I – Black Tuesday
- ACT II – Hunter Killer
- ACT II – Goalpost
- ACT II – Bag and Drag
- ACT II – Iron Lady
- ACT III – Scorched Earth
- ACT III – Down the Rabbit Hole

Enclosed herewith as Exhibit C is a CD featuring the confusingly similar rotating logo, which Activision has adopted without authorization from NovaLogic.

As Activision is undoubtedly aware, a major gaming product offered by NovaLogic is its DELTA FORCE® series of games sold under both the Delta Sword & Design and DELTA FORCE® marks where the player conducts missions swiftly and silently, in every possible terrain, whether in indoor or outdoor environments, under every imaginable condition and through unconventional means in either first (1st) or third (3rd) person perspective across miles and miles of vast outdoor environments. Our client, as a leader in the gaming industry, has garnered such high regard from its consumer military simulation market that it has been contracted by the U.S. military forces, such as the U.S. Army, to integrate NovaLogic's gaming technologies into military and civilian training communities. As such, NovaLogic has worked with several U.S. Army commands, notably as provider of training software for the Land Warrior soldier system. NovaLogic continues to partner with defense contractors such as Lockheed Martin, Boeing and Sikorsky. Accordingly, NovaLogic has developed

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substantial goodwill in its famous brand, including the above-captioned Sword Design mark.

NovaLogic is the registered owner of the Delta Sword & Design mark (Reg. No. 2,704,298), for use in connection with *Computer and video game software, CD-ROM's and compact discs featuring computer games; accessories for playing electronic computer games, namely templates, computer game joysticks and manuals therefor, sold as a unit* in Class 9 and *Entertainment Services, namely, providing on-line computer games* in Class 41. The Trademark Office has acknowledged the incontestability of this registration. NovaLogic is also the registered owner of the Delta Sword & Design mark in the European Union for use in connection with goods in Classes 9, 28, and 41. Copies of NovaLogic's U.S. and CTM registrations are enclosed for your review as Exhibit D.

NovaLogic is also the registered owner of the mark DELTA FORCE® (U.S. Reg. No. 2,302,869) for use in connection with *COMPUTER SOFTWARE FEATURING SIMULATIONS CREATED THROUGH GRAPHICS; COMPUTER GAME SOFTWARE; PRE-RECORDED CD-ROM COMPACT DISCS FEATURING COMPUTER GAMES; HAND-HELD UNITS FOR PLAYING COMPUTER GAMES, NOT BEING STAND-ALONG UNITS; ACCESSORIES FOR HAND-HELD UNITS FOR PLAYING ELECTRONIC COMPUTER GAMES, NAMELY, COMPUTER GAME JOYSTICKS AND MANUALS THEREFOR, SOLD AS A UNIT* in Class 9, *COMPUTER GAME INSTRUCTION MANUALS AND STRATEGY GUIDES* in Class 16, and *COMPUTER SERVICES, NAMELY, PROVIDING ON-LINE ENTERTAINMENT IN THE FIELD OF COMPUTER GAMES* in Class 41. The Trademark Office has acknowledged the incontestability of this registration. NovaLogic is also the registered owner of the Delta Sword & Design mark in the European Union for use in connection with goods in Classes 9, 28, and 41 (Reg. No. 0098912) and in Brazil (Reg. Nos. 821844040, 821044059). Copies of NovaLogic's U.S. and CTM registrations are enclosed for your review as Exhibit E.

Perhaps in light of Activision's willful refusal to cease use of NovaLogic's ESCALATION mark, our client was not surprised to learn that Activision has undertaken to adopt a mark almost identical to NovaLogic's registered Delta Sword & Design mark as well as NovaLogic's DELTA FORCE® mark for use in connection with video games, and has further proceeded to license our client's Delta Sword & Design mark to third parties, such as Voyetra Turtle Beach and possibly even Microsoft for use in connection with ancillary video game products, such as the XBox® and video game headsets. Notably, the differences between the two marks are so insignificant that Activision has merely mirrored the triangular lightning rod horizontally and set a portion of the triangle "behind" the knife blade. Inescapably, the changes are so minor that the marks are truly one and the same.

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Further, considering that Activision is a direct competitor of NovaLogic and that Activision has undertaken efforts to apply for federal protection of marks with the U.S. Patent & Trademark Office ("USPTO"), your company is aware of the Federal and Supplemental Registers, as well as the federal laws granting protecting to marks thereon. Accordingly, you company's conduct smacks of a bad faith attempt to trade on the goodwill developed by NovaLogic in its Delta Sword & Design® mark and DELTA FORCE® mark.

Our client cannot allow your company to continue this conduct. Clearly, consumers who are exposed to the virtually identical Delta Sword & Design mark and NovaLogic's DELTA FORCE® mark that Activision recently adopted without our client's authorization will result in a likelihood of confusion. Consumers are confronted with the Activision's pervasive use of the nearly identical mark through numerous retailers, online retailers, and licensees. Clearly, with such extensive exposure, consumers who see Activision's confusingly similar mark will mistakenly believe NovaLogic to be the source of the product, or misconceive an association between or sponsorship of Activision by NovaLogic. Worse yet, consumers might assume that Activision is a successor in interest to NovaLogic's registered mark.

You are reminded that under the trademark laws your company is charged with knowledge of trademark applications and registrations published and existing in the U.S. Patent and Trademark Office records. Since NovaLogic's trademark applications and subsequent registrations directed at Delta Sword & Design mark and DELTA FORCE® marks were both submitted and granted long ago, knowledge thereof is imputed to Activision. Under the circumstances, it would seem foolish to assume that Activision's selection and adoption of these marks was merely an oversight; rather, it was more likely done to intentionally capitalize on the goodwill of our client's name and registered marks. NovaLogic must, therefore, insist that you immediately discontinue any and all use of its marks, including the ESCALATION™ mark, the Delta Sword & Design® mark, and the DELTA FORCE® mark, as well as any marks confusingly similar thereto.

As Activision is surely aware, its impermissible usage of NovaLogic's registered marks in connection with competing goods subjects it to civil liability on multiple grounds, including liability for trademark infringement under 15 U.S.C. §1114, False Designation of Origin under 15 U.S.C. §1125(a), and common law trademark infringement and unfair competition to name but a few. Your company's unauthorized use of its infringing trademarks subjects the company to liability for monetary damages under 15 U.S.C. § 1117. Additionally, our client is entitled to injunctive relief ordering Activision's cessation of use, and the withdrawal and destruction of infringing products under 15 U.S.C. § 1116. If it is found that Activision had knowledge of NovaLogic's trademarks and willfully infringed, which appears to be a likely conclusion in the

Robert A. Kotick & Eric Hirshberg
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instant matter, Activision could also be liable for enhanced damages and payment of our client's attorney's fees.

Rather than immediately resort to litigation, our client has graciously decided to extend Activision the opportunity to swiftly set to rights its folly by means of a suitable resolution. To this end, NovaLogic has instructed us to contact you and demand that Activision immediately agree to the following:

- Activision immediately cease and desist from any manufacture, offer for sale, distribution and/or sale of the CALL OF DUTY computer gaming products bearing, or incorporating into the game itself, the almost identical copy of our client's above-captioned Delta Sword & Design Mark, the DELTA FORCE® mark and the confusingly similar ESCALATION mark;
- Activision immediately recall ALL of the infringing computer gaming products and promotions materials therefor bearing, or incorporating into the game itself, the nearly identical Delta Sword & Design Mark, the DELTA FORCE® mark and the confusingly similar ESCALATION mark in the possession of its DEALERS, DISTRIBUTORS AND SUB-DISTRIBUTORS;
- Activision immediately notify ALL licensees of the infringing computer gaming products and promotions materials therefor bearing, or incorporating into the game itself, the nearly identical Delta Sword & Design Mark, the DELTA FORCE® mark and the confusingly similar ESCALATION mark in their possession that it lacks proprietary rights in NovaLogic's marks and, as such, it had no authority to license such rights to the licensees. Rather, if any licensees wish to continue use of the marks, they must contact NovaLogic to discuss prospects for negotiating a license agreement;
- Activision provide a detailed accounting of ALL of the infringing computer gaming products sold to date in the U.S.A., including the number of games sold, the selling price, and to whom sold in the U.S.A., as well as all royalties derived from unauthorized licensing of NovaLogic's marks so that we can determine what damages are owed to NovaLogic;
- Activision immediately remove all of the marks infringing upon NovaLogic's registered Delta Sword & Design Mark, the DELTA FORCE® mark and the confusingly similar ESCALATION mark from Activision's goods in the marketplace, or if impracticable *destroy* any

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Page 7

and all of the infringing computer gaming products where the marks cannot be removed (including the removal of same *within* the computer gaming environment);

- Activision provide the name, address, telephone and facsimile numbers of its supplier(s), manufacturers, and licensees of the infringing computer gaming products, whether located in the United States or in a foreign country;
- Activision must fully comply with each of the foregoing provisions listed above by **January 13, 2012**;
- With respect to the accounting set forth above, Activision will comply by **January 27, 2012**, TOGETHER WITH ACTIVISION'S CERTIFIED CHECK FOR **20% OF THE GROSS REVENUE DERIVED BY ACTIVISION FROM ITS INFRINGING ACTIVITIES AS A SHOWING OF GOOD FAITH TOWARDS SETTLEMENT OF THIS MATTER SHORT OF LITIGATION**; and
- Activision will provide its written assurance that it will comply with all of the foregoing terms by **December 30, 2011**.

Despite our client's generosity of dispatching the instant letter to Activision in lieu of immediately resorting to litigation, you are cautioned not to ignore the requests set forth herein. While our client prefers to resolve this matter amicably, it is entirely capable of enforcing its valuable intellectual property rights, if necessary. In order to ensure our client is not prejudiced by untimely delays, we must demand your company's compliance as requested above no later than January 13, 2012, and the aforesaid accounting by January 27, 2012. If we have not heard from you or your attorneys by **December 30, 2011** or if the infringing products continue to be sold, we will assume you have chosen to ignore this letter and our client will act accordingly.

This letter is written without prejudice to our client's rights in law and equity, all

CONFIDENTIAL COMMUNICATION

Robert A. Kotick & Eric Hirshberg
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Page 8

of which are expressly reserved.

Sincerely,

FULWIDER PATTON LLP



Jessica Brookhart-Knost

JBK:cr

Encls.

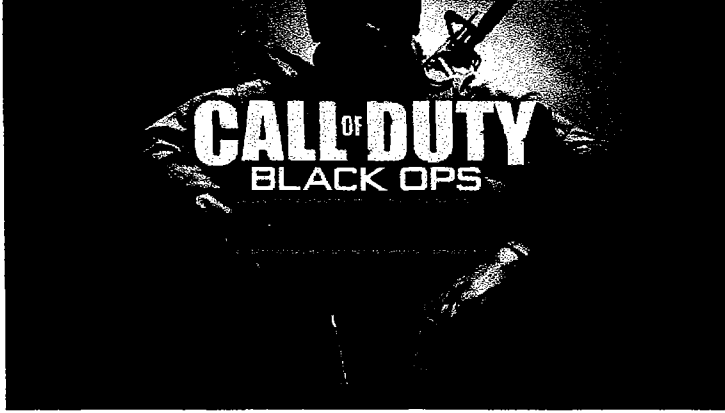
cc: Mary Tuck, Senior Director, Litiation & IP, Activision, Inc.
NovaLogic, Inc.
John K. Fitzgerald

566504.1

EXHIBIT A



Call of Duty®: Black Ops Escalation Content Pack

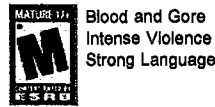


"Escalation", the second Call of Duty: Black Ops map pack, contains 5 all-new exceptionally varied maps; featuring 4 Multiplayer maps and an epic Black Ops Zombies experience with all-new playable characters.

Platform: PC Download **Genre:** Shooter
Release: 6/02/2011 **Developer:** Treyarch

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Online Interactions Not Rated by the ESRB



DESCRIPTION	SYSTEM REQ.
-------------	-------------

"Escalation", the second Call of Duty: Black Ops map pack, contains 5 all-new exceptionally varied maps; featuring 4 Multiplayer maps and an epic Black Ops Zombies experience with all-new playable characters.

In **Multiplayer**, battle it out in "Hotel", on the roof of a Cuban luxury hotel and casino against the vivid backdrop of old Havana; "Convoy" delivers intense, close-quarters combat at the scene of an ambushed US military convoy; "Zoo" takes you on a wild ride in an abandoned Soviet Russian Zoo, with danger at every turn; "Stockpile" pits players in a remote Russian farm town housing secret WMD facilities.

For **Zombies** fans, "Escalation" features a unique Zombies experience: "Call of the Dead". Play as the zombie-killing dream-team of Sarah Michelle Gellar, Robert Englund, Michael Rooker, and Danny Trejo against a new and unnerving zombie menace. Set in a mysterious ice-covered remote Siberian island and inspired by legendary writer and director George A. Romero, a group of four fearless explorers fight for their lives amidst an army of bloodthirsty Russian zombies.

Requires the full version of Call of Duty: Black Ops to play.



EXHIBIT B

OPTIONS

CHOOSE CLASS

CHANGE TEAM

OPTIONS

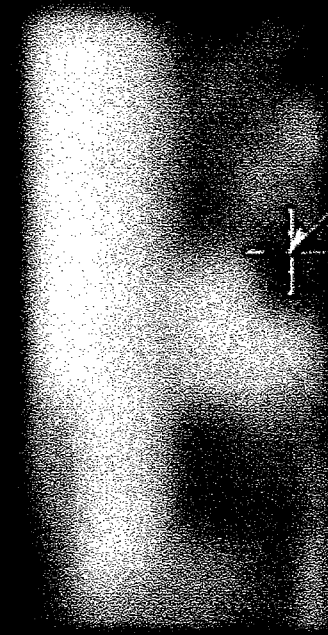
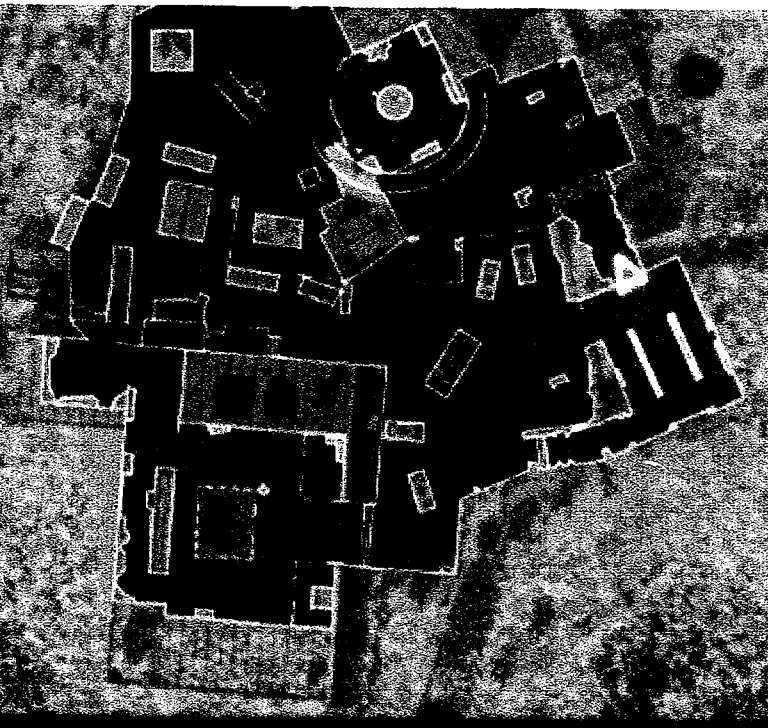
MUTE PLAYERS

LEAVE GAME

TEAM DEATHMATCH

Gain points by eliminating enemy players
team to 7500 wins.

DOMES



Friends | Back

CHOOSE CLASS

- GRENADIER
- FIRST RECON
- OVERWATCH
- SCOUT SNIPER
- RIOT CONTROL

OVERWATCH

WEAPON LEVEL 1

2

WEAPON LEVEL 1

Frag

Flash Grenade

Blind Eye Pro

+ Launchers lock-on quicker. Extra damage versus air support and se

Blast Shield Pro

- Resistance to flash and stun.

SitRep Pro

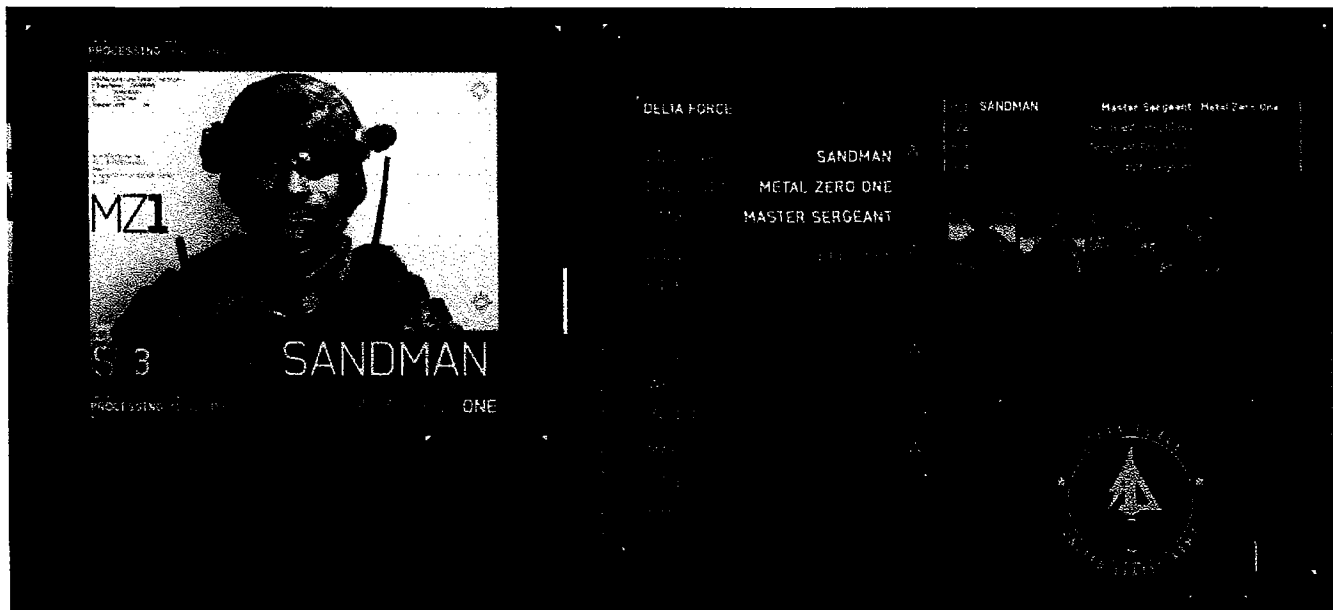
- Louder enemy footsteps

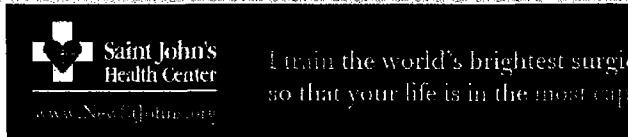
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Delta Force

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"We'll give you a medal, a body bag, or both."
— the Delta Force motto

The **1st Special Forces Operational Detachment-Delta**, also known as **Delta Force** or **Delta**, is the US Army's elite and secretive counter-terrorism and special operations unit. Delta Force appears in *Call of Duty: Modern Warfare 3*. In the game, the player assumes the role of Derek "Frost" Westbrook, a Delta operator, while fighting through the streets of New York^[1], France and Germany. They are also one of the multiplayer factions with Overlord being their announcer and are featured in the maps Dome, Downturn, Fallen, Hardhat, Interchange, Lockdown, and Outpost.

1st Special Forces Operational Detachment-Delta (Airborne)	
Appears in	Call of Duty: Modern Warfare 3
Country	United States
Type	Special Operations/Counter-Terrorism Unit
Active	21 November 1977 - present

[Contents](#) [\[show\]](#)

Notable Delta operators [Edit](#)

- Sgt. Derek "Frost" Westbrook
- Sandman *(K.I.A.)*
- Truck *(K.I.A.)*
- Grinch *(K.I.A.)*

Delta Teams [Edit](#)

- Team Metal
- Team Anvil
- Team Onyx

Other Delta Operators [Edit](#)

- Kojack
- Granite
- Worm
- Grizzly
- Taco
- Gator
- Nomad
- Thumper
- Jayhawk

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- Bearcat
- Bull
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- Hannibal
- Neon
- Patron
- Zero
- Preacher
- Prophet
- Yankee
- Neptune
- Pharaoh
- Langley
- Cherub
- Justice
- Angel
- Rooster
- Ozone
- Mamba
- Bubba
- Rocket
- Klepto
- Boomer
- Whiskey
- Chemist
- Druid
- Cypher
- Bishop
- Mccoy
- Ogre
- Doc
- Hazard

Equipment [↗Edit](#)

Handguns [↗Edit](#)

- Desert Eagle
- Five seven
- USP .45

Assault Rifles [↗Edit](#)

- M4A1
- ACR
- M16A4
- SCAR-L
- MK14

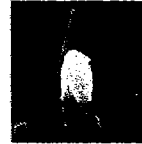
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- MP5
- MP7

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- AA-12

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- M203
- XM25
- M320 GLM
- SMAW

Grenades [Edit](#)

- Frag Grenade
- 9-Bang
- Flashbang
- Smoke Grenade
- Semtex

Trivia [Edit](#)

- Normally, Delta force operators wear Multicam under body armor combat shirts (UBACS), Multicam pants, "Ranger Green" plate carriers like the Army Rangers in MW2, FAST Ballistic Helmets, and Oakley Tactical gloves. While in Down the Rabbit Hole, all Delta Force operators are seen wearing what could either be the same winter uniforms as Task Force 141, or the uniform they wear on other missions with a PCU (protective combat uniform) cold weather jacket.
- Military author and retired Delta Force Major Dalton Fury was one of the consultants for *Modern Warfare 3*.
- The first person hand models for Delta Force wear Oakley gloves.^[*citation needed*]
- In multiplayer they always face the Spetsnaz.
- It was seen in several screenshots prior to *Modern Warfare 3*'s release that the Delta Force used the emblem of the U.S. Navy SEALs from *Modern Warfare 2* as a placeholder.
- Their multiplayer announcer is Overlord.
- The Delta Force teams that appear in *Modern Warfare 3* all appear to be named after earth substances, e.g. Granite and Onyx Team.
- All Delta operators have the blood type O positive (a Delta trademark) and M01 on their arms this could mean Metal 0-1 (Sandman) but is used by all of the operators in Delta Force and is probably just a production mistake.
- In Hunter Killer all of the Delta and SEALs wear the same uniform and are all African-American, with the exception of Sandman.



Sandman running through the



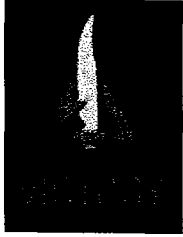
Delta Operators running through



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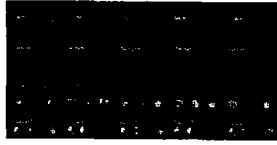
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- What is nikolai's first name
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- Who is more epic Delta force or Rangers
created by A Wikia contributor 19 minutes ago

streets of New York City.



Delta Force logo from Call of Duty ELITE [2]

the streets of New York City.



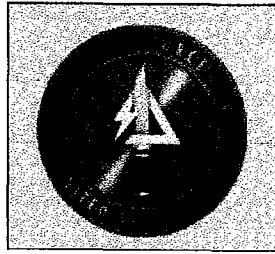
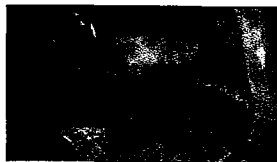
Delta Force Classes



Delta charging through the streets of New York



Another Delta operator



Delta Force Logo on Briefing Screen

References Edit

- ↑ <http://content.usatoday.com/communities/gamehunters/post/2011/05/call-of-duty-modern-warfare-3-the-first-entries-in-the-action-games-travelogue/1>
- ↑ http://www.youtube.com/watch?v=NzC3p5fy4hE&feature=channel_video_title

Factions of Call of Duty: Modern Warfare 3 [hide]	
Playable	SAS • Delta Force • Task Force 141 - Disavowed • FSO • United States Air Force
Friendly	MI5 • MI6 • Czech Resistance • French Military • Bundeswehr • GIGN • PMC • U.S. Navy SEALs • Loyalists • U.S. Army Rangers • U.S. Army • Metropolitan Police Service
Enemy	Russian Armed Forces/Russian Airborne Troops • Africa Militia • Inner Circle

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Spetsnaz



Task Force 141



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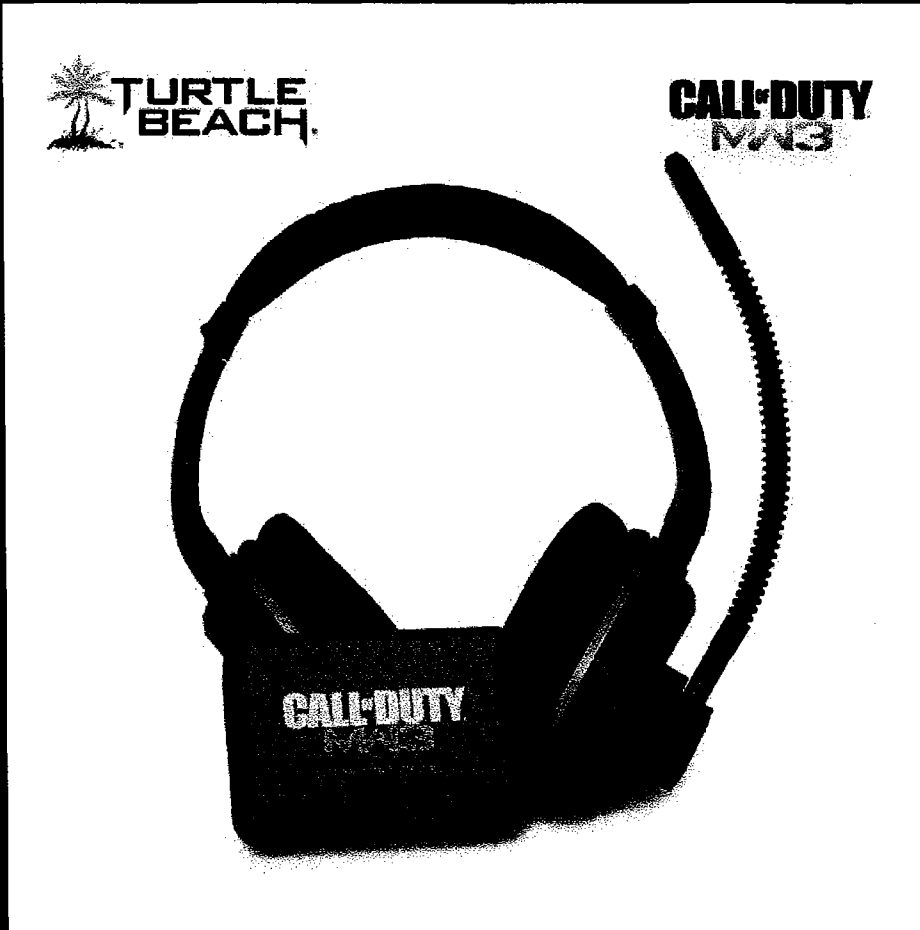
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[Update] Turtle Beach, Activision Join Forces For Line Of Modern Warfare Headsets

accessories

63

12/15/2011 11:38:19 AM



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[Update] We just got a correction from Turtle Beach regarding this morning's announcement. According to the company, the price of the Bravo headset is \$119.95, not the \$149.95 originally listed. In addition, the

Foxtrot headset is wired, not wireless.

Original Story: Call of Duty is kind of a big deal around these parts, so it should come as no surprise that peripheral manufacturers are happy to hop onto the bandwagon. A new partnership between headphone manufacturer Turtle Beach and Activision means that players will have several more audio options when the game comes out later this year.

"Call of Duty continues to define action while also becoming a cultural phenomenon as well as the industry standard," noted Michael Arzi, Vice President of Marketing and Business Development for Turtle Beach. "As the long-time leader and innovator in the gaming audio category, Turtle Beach is excited to introduce a collection of purpose-built Modern Warfare 3 headsets with features and benefits that will far surpass gamers' expectations for licensed headsets."

Turtle Beach says the line of headsets will ship this October, in advance of Modern Warfare 3's November 3 release. Depending on the model, players will have access to special features, such as audio presets and voice prompts. Here's a look at each of the four headsets, straight from the manufacturer:

- **Ear Force BRAVO (EFB)** – Call of Duty: Modern Warfare 3 Optimized Programmable Wireless Universal Gaming Headset (pictured above). Featuring the same custom Modern Warfare 3 presets as the EFD, the EFB provides players with the same optimized experience in a universal headset that's the perfect Call of Duty companion on Xbox 360, PS3 and PC. **MSRP \$119.95.**



- **Ear Force CHARLIE (EFC)** – Call of Duty: Modern Warfare 3 Optimized Multi-Speaker Surround

Modern Warfare 3 Achievements Leaked

[View article on page 131](#)

Report: Modern Warfare 3 Hardened Edition Contents Leaked

[View article on page 131](#)

[Update] First Modern Warfare 3 Trailers

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Modern Warfare 3 Avatar Sales To Benefit U.S. Military Veterans

[View article on page 131](#)

Jonah Hill And Jake Gyllenhaal Star In New MW3 Clip

[View article on page 131](#)

French Thieves Hijack Two Trucks Containing Copies Of Modern Warfare 3

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[Update] Report: More Call of Duty: Modern Warfare 3 Details Leak

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Infinity Ward Reworking Killstreaks For Modern Warfare 3

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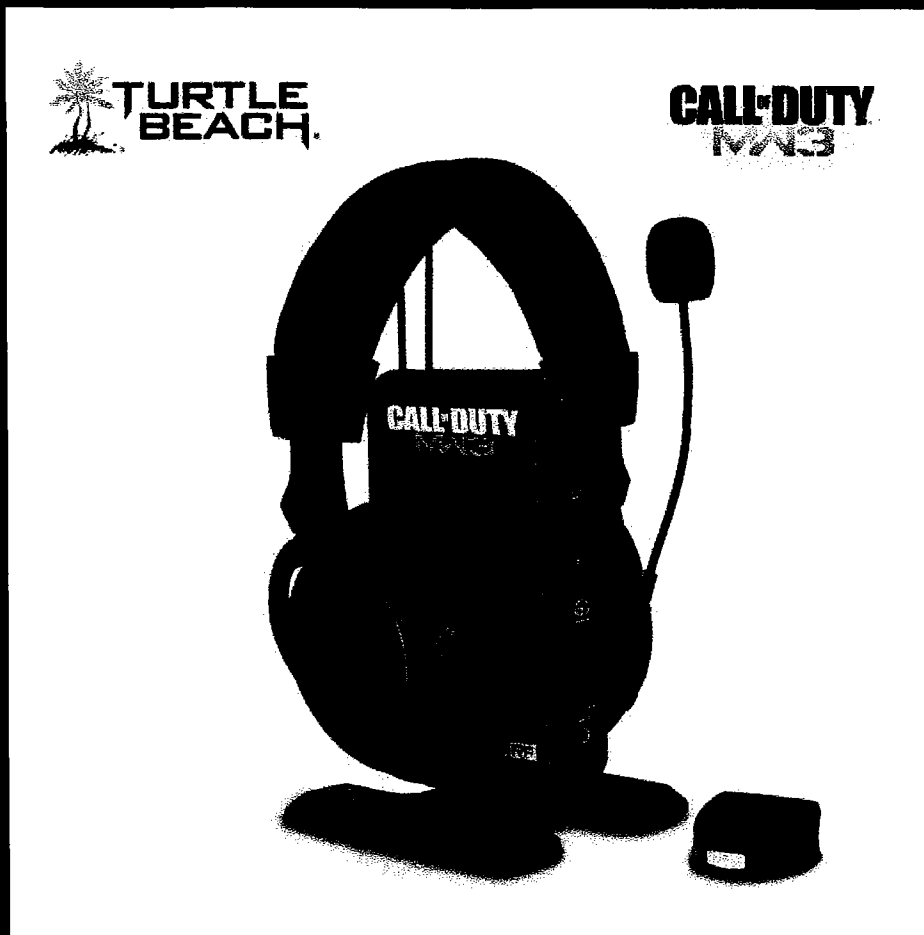
UPDATE: Have Modern Warfare 3 Multiplayer Details Leaked?

[View article on page 131](#)

Modern Warfare 3 Dedicated PC Servers Are Unranked

[View article on page 131](#)

Sound PC Gaming Headset. With eight amplified, acoustically angled speakers delivering discrete surround sound, this tournament-grade, Modern Warfare 3-optimized wired headset is the perfect choice for competitive PC gamers. MSRP: \$129.95.



• **Ear Force DELTA (EFD)** – Call of Duty: Modern Warfare 3-Optimized Programmable Wireless Dolby 7.1 Surround Sound Headset with Bluetooth Chat. The top-of-the-line EFD headset comes packaged in a specially-themed carrying case and is pre-loaded with unique custom Modern Warfare 3 presets and voice prompts. Ear Force Delta is the ultimate Xbox 360 and PS3 weapon for the most avid Modern Warfare 3 players. MSRP: \$299.95.



• **Ear Force FOXTROT (EFF)** – Call of Duty: Modern Warfare 3 Optimized Wired Universal Gaming Headset. For Modern Warfare 3 players seeking effortless cross-platform performance, the EFF provides gamers with high-fidelity amplified audio along with several key features to set it apart. **MSRP \$99.95.**

Filed under: [Call of Duty: Modern Warfare 3](#), [Headsets](#), [Turtle Beach](#)

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[Turtle Beach](#) [Call of Duty: Modern Warfare 3](#) [Headsets](#) [Turtle Beach](#)

!! I am definetly buying Ear Force FOXTROT (EFF) Whenever I play CoD I always communicate with my friends and use teamwork, these will definetly help. Now I can warn friends when there are footsteps and stuff. I wonder if these will be usefull in battlefield.

1/20/11 11:38 AM



[Turtle Beach](#) [Call of Duty: Modern Warfare 3](#) [Headsets](#) [Turtle Beach](#)

im soo buyin this



by **Ninja Rhino**

Thursday, July 19, 2011 at 08:14 AM

oh lord, I sure hope CoD isn't becoming the industry standard



by **God Of Irony**

Thursday, July 19, 2011 at 08:20 AM

I love turtle beach, I've had mine for about a year and a half, and its definately the best thing I've ever bought that wasn't a game.



by **System of a Down**

Thursday, July 19, 2011 at 08:23 AM

Cool I guess, I doubt these will be any better than previous models though. Just the same thing with MW3 stamped on the side, for a higher price.



by **xDPCx**

Thursday, July 19, 2011 at 08:24 AM

I would buy these, but primarily so i can hear the epicness of BF3's sound. And, so i could have my own audio UAV at all times on MW3



by **Thijs**

Thursday, July 19, 2011 at 08:26 AM

That looks so super sexy



by **Stonecutters908**

Thursday, July 19, 2011 at 08:28 AM

\$300 dollar headset? LOL. I could go out an buy another console for that.



by **LouBattle**

Thursday, July 19, 2011 at 08:33 AM

Cool idea, I'd be fine with the current versions though. Good for the fans who get a kick

out of this kind of stuff.



by dragonred385

Tuesday, July 19, 2011 at 08:40 AM

Gotta say, those headphone look clunky and ugly. Though you don't see it much when its on your head, so I guess it doesn't really matter.



by genericink

by genericink

Tuesday, July 19, 2011 at 08:56 AM

might pick one of these up for battlefield 3. /irony

EDIT: Scratch that ill just buy an old turtle beach headset. I cant justify the prices on most of these these.



by XxFox0rBlad3xX

Tuesday, July 19, 2011 at 08:57 AM

Way too much for a headset. No thanks.



by cyros2k



by cyros2k

Tuesday, July 19, 2011 at 09:01 AM

Hum, the EFD is just a branded XP500 right? The Delta Force emblem is cool and all but I'll just go with the plain pair and save a good 30\$

looks over other comments The gobsmacked users commenting on price apparently aren't audiophiles, or followers of current tech/gadgets.



by christian b in da house



by christian b in da house

Tuesday, July 19, 2011 at 09:06 AM

I think I'll get the foxtrot. I don't have a head set yet so I'll get this with MW3.



by VAMESREVENGE

Tuesday, July 19, 2011 at 09:09 AM

I want to get those Gucci car force bravo ones but its hard to justify that amount of

money. I just really want wireless headset that is compatible with both of my systems.

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 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000



by **Mister Doctor Professor Chancellor Admiral Chris**

Tuesday, July 19, 2011 at 09:17 AM

My headset that came with my 360 is still kicking so I probably won't pick this up. Its cool and will get tons of purchases but its not my thing.



by **GeneralChurch**

Tuesday, July 19, 2011 at 09:24 AM

ill stick with my Tritons thank you very much.



by **Colton**

Tuesday, July 19, 2011 at 09:25 AM

I just bought some earphones.



by **nickjohnson**

Tuesday, July 19, 2011 at 09:37 AM

i will buy one of those headphones before the end of the year.



by **Alex**

Tuesday, July 19, 2011 at 09:42 AM

I got to get one too

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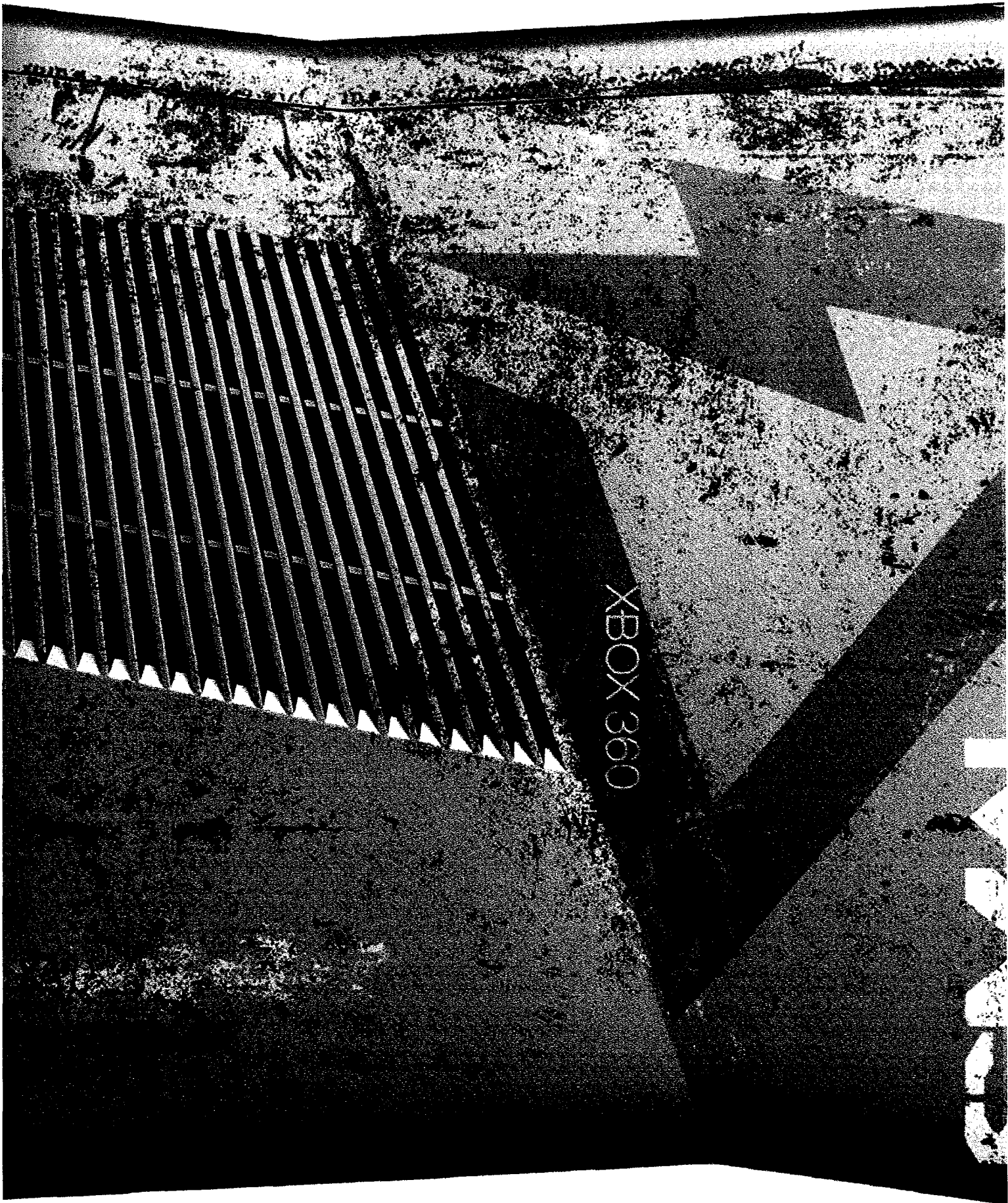
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CALL OF DUTY

MW3





XBOX 360



BMW

BOX 360



BOX 360

BMW

BMW



MM

BOX 360

MM

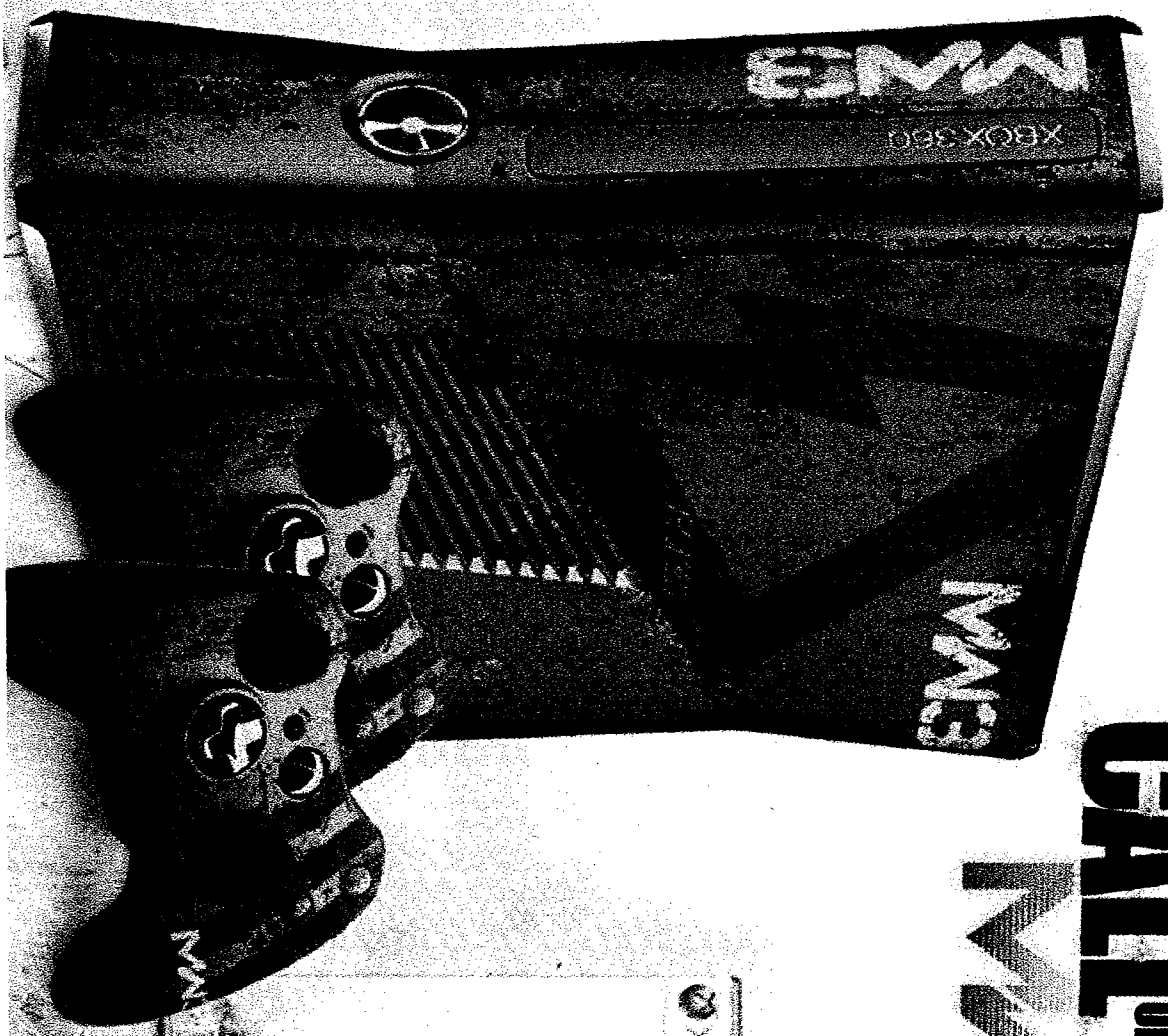
MM

XBOX 360
HARDWARE

XBOX 360

LIMITED EDITION
EDICIÓN LIMITADA

CALL OF DUTY WVW3



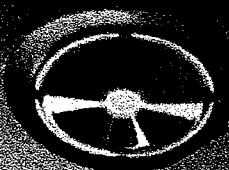
320GB

CALL OF DUTY
WVW3



WME

BOX 360



BOX 360

WME

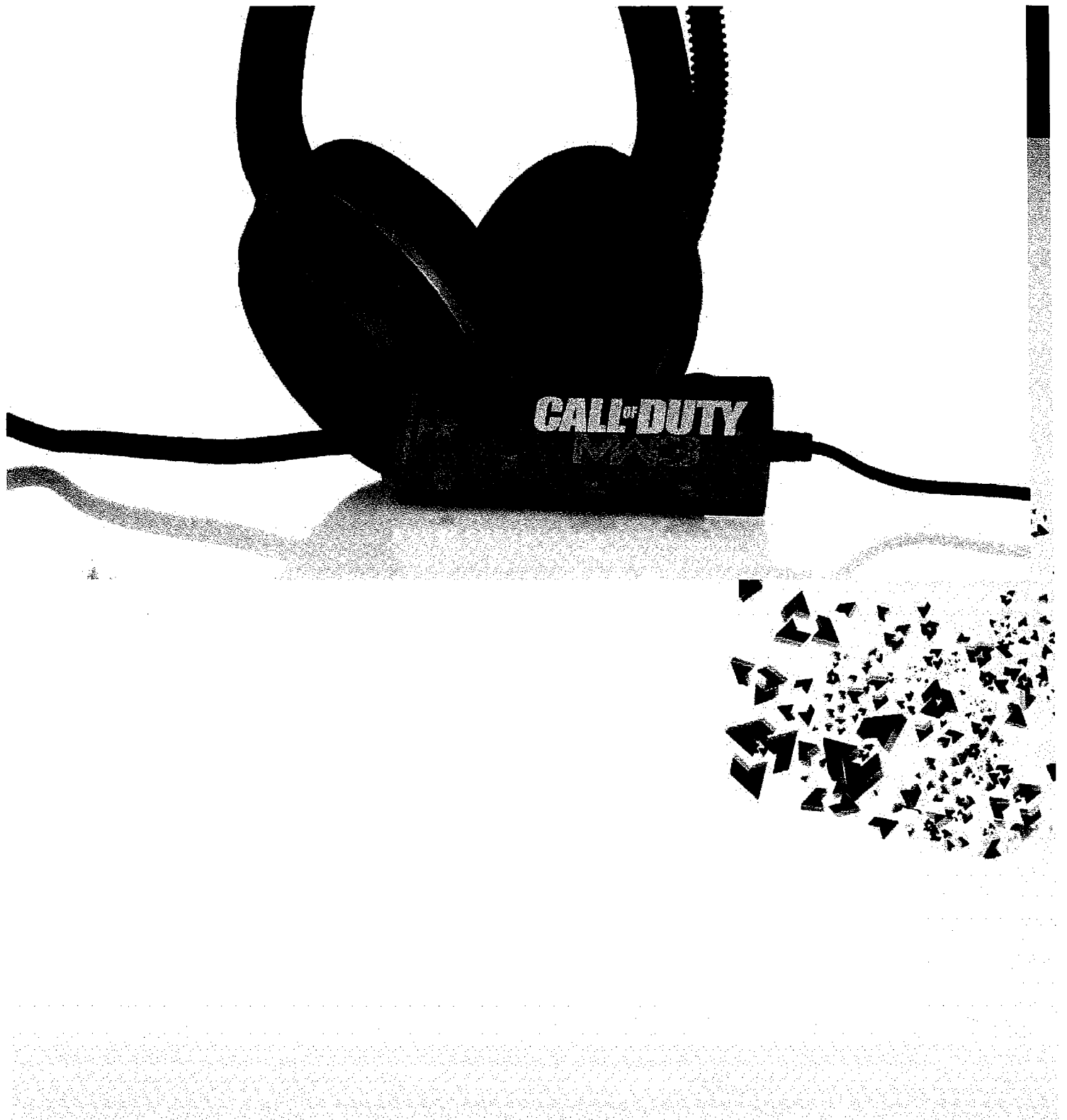


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Int. Cls.: 9 and 41

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101 and 107

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United States Patent and Trademark Office

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BRIAN PINO, EXAMINING ATTORNEY



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Guido Fael

Departamento de Apoyo a las Operaciones
Hauptabteilung Unterstützung des Kerngeschäfts
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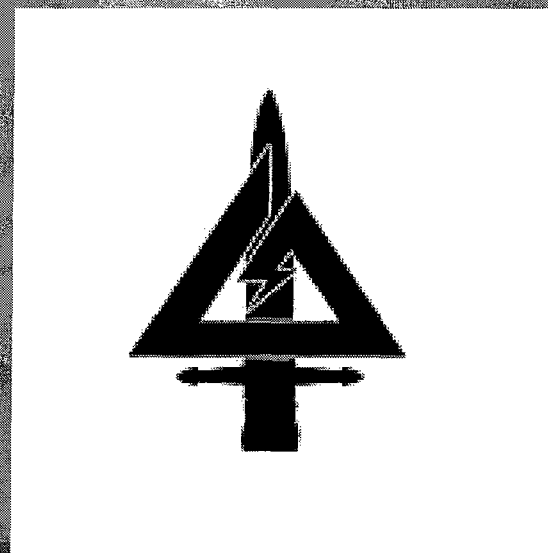
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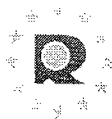
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Unidades portáteis para jogar jogos de computador electrónicos e software para trabalhar com as unidades portáteis atrás referidas, vendidos em conjunto.

SK - 28

Vreckové zariadenia na prehrávanie elektronických počítačových hier a počítačový softvér na prevádzku takýchto vreckových zariadení, všetky sú predávané v celku.

SI - 28

Ročne enote za igranje elektronskih računalniških iger in računalniška programska oprema za upravljanje takih ročnih enot, vse naprodaj skupaj kot enota.

FI - 28

Kädessä pidettävät yksiköt elektronisten tietokonepelien pelaamista varten sekä näiden yksiköiden käyttöön tarkoitettut tietokoneohjelmistot, kaikki yksikkönä myytynä.

SV - 28

Handhållen enhet för att spela elektroniska datorspel och programvara för drift av sådana handhållna enheter, alla säljs som en enhet.

300 US - 20/01/2006 - 78/796174

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Guido Fael

Departamento de Apoyo a las Operaciones
Hauptabteilung Unterstützung des Kerngeschäfts
Operations Support Department
Département «Soutien aux opérations»
Dipartimento Supporto alle operazioni





OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
 (TRADE MARKS AND DESIGNS)

Trade Marks and Register Department

Alicante, 03/05/2004

CLIFFORD CHANCE LLP
 10 Upper Bank Street
 London E14 5JJ
 REINO UNIDO

Certificate of Registration¹

Registration No.: 002835106
Your reference: LXP/TM37598/F0644/0088/VGM
Trade Mark:
Applicant: NovaLogic, Inc.
 26010 Mureau Road, Suite 200
 Calabasas, California 91302
 ESTADOS UNIDOS

Please find enclosed the certificate of registration for Community Trade Mark No. 002835106 which was published in the Community Trade Marks Bulletin no. 2004/018 on 03/05/2004 (see OHIM's website: <http://oami.europa.eu>).

This certificate contains information from the Community Trade Marks Register at the date of registration (see code 151 on the certificate). If you have filed a request for modification of data on or after that date, no new certificate will be issued. You will be notified separately of the change after which an extract from our database may be requested to reflect the administrative status of the mark.

For an explanation of the codes on the certificate please see consult the Vademecum on OHIM's website: <http://oami.europa.eu/en/office/diff/pdf/vademecum.pdf>.

If you do not agree with the content of this certificate please do not send back the original. You should instead send the Office a letter indicating your objections, which will be dealt with separately.

Catherine DOBSON

¹in accordance with Rule 24(1) of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (<http://oami/en/mark/aspects/reg/reg2868.htm>) ("Community Trade Mark Implementing Regulation" or "CTMIR") (<http://oami.europa.eu>)

Avenida de Europa, 4 • E - 03080 Alicante • Spain • Tel: +34 96 513 91 00 • Fax: +34 96 513 13 44

Internet: <http://oami.europa.eu>

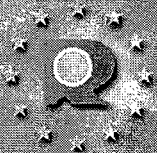
Identification Code: WTNJ62BZSY5AOPAIWIXQNB22T6Y

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 Certificado de registro de marca comunitaria / Eintragungsurkunde der Gemeinschaftsmarke / Registration certificate of community trade mark / Certificat
 d'enregistrement de marque communautaire / Certificato registrazione di marchio comunitario



Registered / Enregistré 11/03/2004

No 002835106

**OHIM – OFFICE FOR HARMONIZATION IN THE
 INTERNAL MARKET
 TRADE MARKS AND DESIGNS**

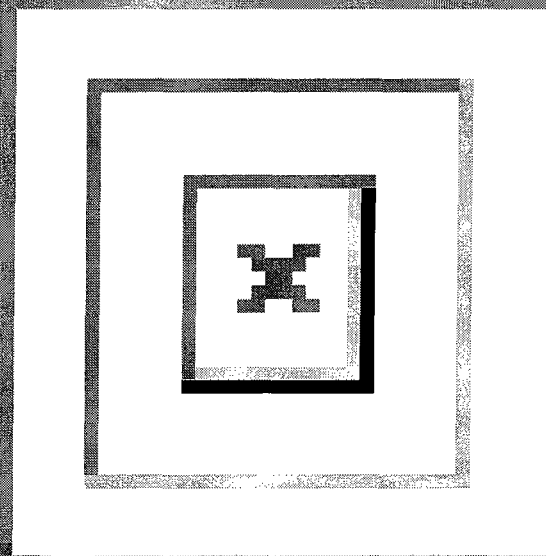
CERTIFICATE OF REGISTRATION

This Certificate of Registration is hereby issued for the
 Community Trade Mark identified below. The
 corresponding entries have been recorded in the
 Register of Community Trade Marks.

**OHMI – OFFICE DE L'HARMONISATION DANS LE
 MARCHÉ INTÉRIEUR
 MARQUES, DESSINS ET MODÈLES**

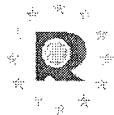
CERTIFICAT D'ENREGISTREMENT

Le présent Certificat d'Enregistrement est délivré pour
 la marque communautaire identifiée ci-joint. Les
 mentions et les renseignements qui s'y rapportent ont
 été inscrits au Registre des Marques Communautaires.



The President / Le Président

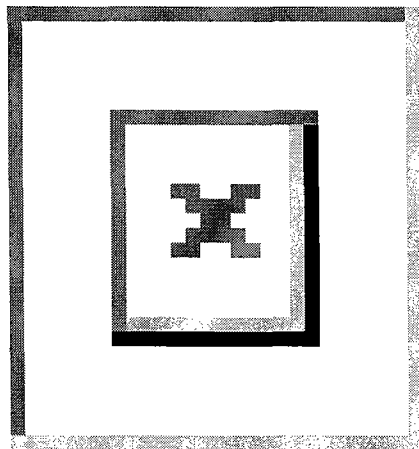
Wubbo de Boer



OHIM – OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
 TRADE MARKS AND DESIGNS

OHMI – OFFICE DE L'HARMONISATION DANS LE MARCHÉ INTÉRIEUR
 MARQUES, DESSINS ET MODÈLES

210 002835106
 220 20/08/2002
 400 04/08/2003
 151 11/03/2004
 450 03/05/2004
 186 20/08/2012
 546



531 1.15.3
 23.1.1
 26.3.1

731 NovalLogic, Inc.
 26010 Mureau Road, Suite 200
 Calabasas, California 91302
 US

740 CLIFFORD CHANCE LLP
 10 Upper Bank Street
 London E14 5JJ
 GB

270 EN FR

511 ES - 09
 Informática y software de videojuegos, CD ROM y discos compactos con juegos de ordenador; accesorios para la práctica de juegos de ordenador electrónicos, en concreto, plantillas, palancas de mando de juegos informáticos y manuales de los mismos, vendidos de forma unitaria.

ES - 28
 Unidad de mano para jugar con juegos de ordenador electrónicos y software para que funcionen estas unidades de mano.

ES - 41
 Servicios de entretenimiento, en concreto facilitación de juegos de ordenador en línea.

DA - 09
 Software til computer- og videospil, cd-rommer og cd'er med computerspil; tilbehør til elektroniske computerspil, nemlig skabeloner, joysticks til computerspil og manualer hertil, solgt som en enhed.

DA - 28
 Håndholdt enhed til elektroniske computerspil og computer software til betjening af disse håndholdte enheder.

DA - 41

Unterhaltungsvirksomhed, nemlig tilvejebringelse af on-line computerspil.

DE - 09

Computersoftware und Videospielsoftware, CD-ROMs und CDs mit Computerspielen; Zubehör zum Spielen elektronischer Computerspiele, nämlich Vorlagen, als Einheit verkaufte Joysticks für Computerspiele und Handbücher dafür.

DE - 28

Taschengeräte zum Spielen elektronischer Computerspiele und Computersoftware zum Betrieb solcher Taschengeräte.

DE - 41

Unterhaltungsdienstleistungen, nämlich Bereitstellung von Online-Computerspielen.

EL - 09

Λογισμικό για παιχνίδια ηλεκτρονικών υπολογιστών και βιντεοπαιχνίδια, συμπτυκτοι δίσκοι και συμπτυκτοι δίσκοι που περιέχουν παιχνίδια ηλεκτρονικών υπολογιστών-εξαρτήματα για παιχνίδια ηλεκτρονικών υπολογιστών, συγκεκριμένα πρότυπα, χειριστήρια τύπου μοχλού για παιχνίδια ηλεκτρονικών υπολογιστών και εγχειρίδια αυτών, πωλούμενα ως σύνολο.

EL - 28

Συσκευή χειρός για ηλεκτρονικά παιχνίδια και λογισμικό ηλεκτρονικών υπολογιστών για τον χειρισμό αυτών των συσκευών χειρός.

EL - 41

Υπηρεσίες ψυχαγωγίας, συγκεκριμένα παροχή παιχνιδιών ηλεκτρονικών υπολογιστών επί γραμμής.

EN - 09

Computer and video game software, CD ROM's and compact discs featuring computer games; accessories for playing electronic computer games, namely templates, computer game joysticks and manuals therefor, sold as a unit.

EN - 28

Hand-held unit for playing electronic computer games and computer software for operating such hand-held units.

EN - 41

Entertainment services, namely, providing online computer games.

FR - 09

Logiciels et logiciels de jeux vidéo, CD-ROM et disques compacts contenant des jeux informatiques; accessoires de jeux électroniques pour ordinateurs, à savoir modèles, manettes de jeux et manuels, vendus sous forme d'ensemble.

FR - 28

Dispositifs portatifs pour jeux électroniques pour ordinateurs et logiciels d'exploitation pour ces dispositifs portatifs.

FR - 41

Services de divertissement, à savoir jeux informatiques en ligne.

IT - 09

Software per computer e software per videogiochi, CD-ROM e compact disc contenenti giochi per computer; Accessori per giochi elettronici per computer, ovvero template (basi), joystick per giochi per computer e relativi manuali, venduti come un unico articolo.

IT - 28

Dispositivi tascabili per giochi elettronici per computer e software per il funzionamento di tali dispositivi tascabili.

IT - 41

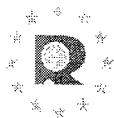
Divertimento, ovvero fornitura on-line d'un gioco per computer.

NL - 09

Computers en software met videospellen, cd-roms en compactdiscs met computerspellen; accessoires voor het spelen van elektronische computerspellen, te weten sjablonen, joy-

No 002835106

1 / 2



OHIM – OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
 TRADE MARKS AND DESIGNS

OHMI – OFFICE DE L'HARMONISATION DANS LE MARCHÉ INTÉRIEUR
 MARQUES, DESSINS ET MODÈLES

sticks voor computerspellen en handleidingen daarvoor, als een set verkocht.

NL - 28

In de hand te houden eenheden voor het spelen van elektronische computerspellen en software voor de bediening van dergelijke eenheden op handformaat.

NL - 41

Ontspanning, te weten het verstrekken van on-linecomputerspellen.

PT - 09

Informática e software para jogos de vídeo, CD-ROM e discos compactos contendo jogos de computador; acessórios para jogar jogos de computador electrónicos, nomeadamente modelos, joysticks para jogos de computador e manuais relativos aos mesmos, vendidos em conjunto.

PT - 28

Unidades portáteis para jogar jogos de computador electrónicos e software para operar as referidas unidades portáteis.

PT - 41

Serviços de divertimento, nomeadamente fornecimento de jogos de computador em linha.

FI - 09

Tietokone ja videopelihelmistot, CD-ROM-levyt ja tietokonepelejä sisältävät cd-levyt, varusteet elektronisten tietokonepeliin pelaamiseen, nimittäin mallineet, tietokonepeliin ohjainsauvat ja näiden käyttöoppaat, myydään yksikkönä.

FI - 28

Kädessä pidettävät laitteet elektronisten tietokonepeliin pelaamista varten sekä näiden laitteiden käyttöön tarkoitetut tietokoneohjelmistot.

FI - 41

Viihdepalvelut, nimittäin online-tietokonepeliin tarjoaminen.

SV - 09

Programvara till dator- och videospel, cd-romskivor och cd-skivor innehållande datospel; tillbehör för att spela elektroniska datospel, nämligen mallar, styrspakar till datospel och handböcker därtill, sålda som en enhet.

SV - 28

Handhållen enhet för att spela elektroniska datospel och programvara för drift av sådana handhållna enheter.

SV - 41

Underhållningstjänster, nämligen tillhandahållande av direktanslutna datospel.

300 US - 08/05/2002 - 76/405021

US - 08/05/2002 - 76/404735

No 002835106

2/2

EXHIBIT E

Int. Cls.: 9, 16, and 41

Prior U.S. Cls.: 2, 5, 21, 22, 23, 26, 29, 36, 37, 38,
50, 100, 101, and 107

Reg. No. 2,302,869

United States Patent and Trademark Office

Registered Dec. 21, 1999

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

DELTA FORCE

NOVALOGIC, INC. (CALIFORNIA CORPORATION)
26010 MUREAU ROAD, SUITE 200
CALABASAS, CA 91302

FOR: COMPUTER SOFTWARE FEATURING SIMULATIONS CREATED THROUGH GRAPHICS; COMPUTER GAME SOFTWARE; PRE-RECORDED CD-ROM COMPACT DISCS FEATURING COMPUTER GAMES; HAND-HELD UNITS FOR PLAYING COMPUTER GAMES, NOT BEING STAND-ALONG UNITS; ACCESSORIES FOR HAND-HELD UNITS FOR PLAYING ELECTRONIC COMPUTER GAMES, NAMELY, COMPUTER GAME JOYSTICKS AND MANUALS THEREFOR, SOLD AS A UNIT, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 5-21-1998; IN COMMERCE 10-27-1998.

FOR: COMPUTER GAME INSTRUCTION MANUALS AND STRATEGY GUIDES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 5-21-1998; IN COMMERCE 10-27-1998.

FOR: COMPUTER SERVICES, NAMELY, PROVIDING ON-LINE ENTERTAINMENT IN THE FIELD OF COMPUTER GAMES, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 5-21-1998; IN COMMERCE 10-27-1998.

SN 75-483,113, FILED 5-11-1998.

MELVIN AXILBUND, EXAMINING ATTORNEY



D113

OAMI OFICINA DE ARMONIZACIÓN DEL MERCADO INTERIOR (MARCAS, DIBUJOS Y MODELOS)
HABM HARMONISIERUNGSAMT FÜR DEN BINNENMARKT (MARKEN, MUSTER UND MODELLE)
OHIM OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (TRADE MARKS AND DESIGNS)
OHMI OFFICE DE L'HARMONISATION DANS LE MARCHÉ INTÉRIEUR (MARQUES, DESSINS ET MODÈLES)
UAMI UFFICIO PER L'ARMONIZZAZIONE NEL MERCATO INTERNO (MARCHI, DISEGNI E MODELLI)

**Copia Certificada ♦ Beglaubigte Abschrift ♦ Certified Copy
Copie Certifiée ♦ Copia Autenticata**

Código de identificación ♦ Identifizierungscode ♦ Identification code ♦
Code d'identification ♦ Codice di identificazione: **GPLZ2H3A72UHHZGADP6Z7A3NK4**

Por la presente se certifica que el documento que se adjunta es una copia conforme del certificado de registro para la marca comunitaria cuyo número y fecha de registro aparecen a continuación. El documento original puede ser consultado en el enlace de la OAMI <http://oami.europa.eu> introduciendo el código de identificación indicado más arriba.

*Hiermit wird bestätigt, daß die Abschrift, die diesem Beleg beigeheftet ist, eine genaue Abschrift der Eintragungsurkunde ist, die für die Gemeinschaftsmarke mit der nachstehenden Eintragsnummer und dem nachstehenden Eintragungstag ausgestellt wurde.
Das Originaldokument kann mittels Eingabe eines Identifizierungscode bei folgender Webadresse <http://oami.europa.eu> eingesehen werden.*

This is to certify that the attached document is an exact copy of the certificate of registration issued for the Community trade mark bearing the registration number and date indicated below. The original document can be consulted introducing the identification code indicated above at the following OHIM web page link <http://oami.europa.eu>.

*Par la présente, il est certifié que le document annexé est une copie conforme du certificat d'enregistrement délivré pour la marque communautaire portant le numéro et la date d'enregistrement qui figurent ci-après.
Le document original peut être consulté sur le site web de l'OHMI <http://oami.europa.eu> en introduisant le code d'identification indiqué ci-dessus.*

Con la presente si certifica che il documento allegato è una copia conforme del certificato di registrazione per il marchio comunitario contrassegnato dal numero e dalla data di registrazione riportati sotto.

Il Documento originale può essere consultato introducendo il codice di identificazione sopra indicato, nel indirizzo <http://oami.europa.eu> della pagina Web della UAMI.

Núm./Nr./No/n°/n.	Fecha/Datum/Date/Date/Data
000980912	08/07/2002

Alicante, 14/12/2011

Guido Fael

Departamento de Apoyo a las Operaciones
Hauptabteilung Unterstützung des Kerngeschäfts
Operations Support Department
Département «Soutien aux opérations»
Dipartimento Supporto alle operazioni





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 Certificado de registro de marca comunitaria / Eintragungsurkunde der Gemeinschaftsmarke / Registration
 certificate of community trade mark / Certificat d'enregistrement de marque communautaire / Certificato
 registrazione di marchio comunitario

OHIM - OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET	TRADE MARK AND DESIGN
OHMI - OFFICE DE L'HARMONISATION DANS LE MARCHÉ INTÉRIEUR	MARQUES DESIGN ET MODELES

**CERTIFICATE
OF REGISTRATION**

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**CERTIFICAT
D'ENREGISTREMENT**

Le présent certificat d'enregistrement est délivré pour la marque communautaire identifiée ci-dessous. Les mentions et les renseignements qui s'y rapportent ont été inscrits au registre des marques communautaires.

N° 000980912

DELTA FORCE

Registered/Enregistrée, 08/07/2002

The President/Le Président

Wubbo de Boer

Identification Code: GPLZ2H3A72UHHZGADP6Z7A3NK4



OHIM - OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET	TRADE MARKS AND DESIGNS
OHMI - OFFICE DE L'HARMONISATION DANS LE MARCHÉ INTÉRIEUR	MARQUES, DESIGNS ET MODÈLES

450 19/08/2002

210 000980912

220 09/11/1998

180 09/11/2008

442 08/11/1999

541

732
 NovaLogic, Inc.
 26010 Alhambra Road, Suite 200
 Calabasas, California 91302
 US

740
 CLIFFORD CHANCE
 200 Aldersgate Street
 London EC1A 4JJ
 GB

270 EN FR

511 ES - 9 - Software de juegos de ordenador; discos de juegos compactos; juegos de ordenador y accesorios para jugar con juegos de ordenador.
 ES - 16 - Manuales de instrucciones; manuales de instrucciones de juegos de ordenador; guías estratégicas.
 ES - 28 - Juegos informáticos portátiles y accesorios para jugar con los mismos.
 ES - 41 - Esparcimiento; esparcimiento en línea; diversiones en línea relativas a juegos de ordenador, simuladores de vuelo, simuladores de combate y de guerra; servicios de información relacionada con las actividades mencionadas.
 DA - 9 - Software til computerspil; spil på cd; computerspil og tilbehør til computerspil.
 DA - 16 - Instruktionsmanualer; betjeningsvejledninger til computerspil; strategihåndbøger.

DA - 28 - Lommecomputerspil og tilbehør til at spille disse spil.

DA - 41 - Underholdningsvirksomhed; udbydelse af onlineunderholdning; levering af onlineunderholdning vedrørende computerspil, flyvesimulatorer, kamp- og krigssimulatorer; information vedrørende ovennævnte.

DE - 9 - Software für Computerspiele; Spiele-CDs; Computerspiele und Zubehör zur Verwendung für Computerspiele.

DE - 16 - Bedienungsanleitungen; Bedienungshandbücher für Computerspiele; Strategie-Anleitungen.

DE - 28 - Taschencomputerspiele und Zubehör zum Spielen derselben.

DE - 41 - Unterhaltung; Online-Unterhaltung; Online-Unterhaltung in Bezug auf Computerspiele, Flugsimulatoren, Kampf- und Kriegsführungssimulatoren; Bereitstellung von Informationen in Bezug auf das vorstehend Genannte.

EL - 9 - Λογισμικό για παιχνίδια ηλεκτρονικών υπολογιστών· σύμπλοκοι δίσκοι με παιχνίδια παιχνίδια ηλεκτρονικών υπολογιστών και εξαρτήματα για παιχνίδια ηλεκτρονικών υπολογιστών.

EL - 16 - Εγχειρίδια οδηγιών χρήσης· εγχειρίδια οδηγιών χρήσης για παιχνίδια ηλεκτρονικών υπολογιστών· οδηγοί για παιχνίδια στρατηγικής.

EL - 28 - Παιχνίδια ηλεκτρονικών υπολογιστών χειρός και εξαρτήματα για αυτά.

EL - 41 - Ψυχαγωγία· παροχή ψυχαγωγίας επί γραμμής· παροχή ψυχαγωγίας επί γραμμής σχετικά με παιχνίδια ηλεκτρονικών υπολογιστών, με προσομοιωτές πτήσης, προσομοιωτές μάχης και πολέμου· παροχή πληροφοριών σχετικά με τα προαναφερθέντα.

EN - 9 - Computer games software; compact games discs; computer games and accessories for playing computer games.

EN - 16 - Instruction manuals; computer game instruction manuals; strategy guides.

N° 000980912

2/4

Identification Code: GPLZ2H3A72UHHZGADP6Z7A3NK4



OHIM - OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET

TRADE MARKS
AND
DESIGNS

OHMI - OFFICE DE L'HARMONISATION DANS LE MARCHÉ INTÉRIEUR

MARKES,
DESIGNS
ET MODÈLES

EN - 28 - Hand-held computer games and accessories for playing same.

EN - 41 - Entertainment; provision of online entertainment; provision of online entertainment relating to computer games, flight simulators, combat and warfare simulators; provision of information relating to the aforesaid services.

FR - 9 - Logiciels de jeux d'ordinateurs; disques compacts de jeux; jeux d'ordinateurs et accessoires pour jouer aux jeux d'ordinateurs.

FR - 16 - Manuels d'instruction; manuels d'instruction de jeux d'ordinateurs; guides de stratégie.

FR - 28 - Jeux d'ordinateurs portables et les accessoires pour y jouer.

FR - 41 - Divertissement; services de divertissement en ligne; services de divertissement en ligne concernant les jeux d'ordinateurs, simulateurs de vol, simulateurs de combat; services d'information dans les domaines précités.

IT - 9 - Software per giochi elettronici; giochi su compact disc; giochi e accessori per computer per utilizzare giochi per computer.

IT - 16 - Manuali di istruzioni; manuali di istruzioni per giochi per computer; manuali di strategia.

IT - 28 - Giochi elettronici tascabili e relativi accessori.

IT - 41 - Divertimento; divertimento on-line; divertimento on-line riguardante giochi per computer, simulatori di volo, simulatori di combattimento e d'azioni di guerra; fornitura di informazioni relative alle suddette attività.

NL - 9 - Software voor computerspellen; compactdiscs met spellen; computerspellen en accessoires voor het spelen van computerspellen.

NL - 16 - Instructiehandboeken; instructiehandboeken voor computerspellen; strategiehandboeken.

NL - 28 - Met de hand te bedienen computerspellen en accessoires voor het spelen van computerspellen.

NL - 41 - Ontspanning; het bieden van on-line amusement; het bieden van on-line amusement met betrekking tot computerspellen, vluchtsimulatoren, gevechts- en oorlogvoeringssimulatoren; het verstrekken van informatie met betrekking tot het voornoemde.

PT - 9 - Software para jogos de computador; jogos em discos compactos; jogos de computador e acessórios para jogar jogos de computador.

PT - 16 - Manuais de instruções; manuais de instruções para jogos de computador; guias de estratégia.

PT - 28 - Jogos de computador de mão e acessórios para jogar os mesmos.

PT - 41 - Divertimento; fornecimento de divertimentos em linha; fornecimento de divertimentos em linha relacionados com jogos de computador, simuladores de voo, simuladores de combates e guerra; fornecimento de informações relacionadas com os serviços referidos.

FI - 9 - Tietokonepeliohjelmistot; cd-levylle tallennetut pelit; tietokonepelit ja tietokonepeliin pelaamisessa tarvittavat varusteet.

FI - 16 - Ohjekirjat; tietokonepeliin ohjekirjat; strategiaoppaat.

FI - 28 - Kädessä pidettävät tietokonepelit ja niiden varusteet.

FI - 41 - Ajanviete; on line -viihteen tarjonta; tietokonepeleihin, lentosimulaattoreihin, taistelija sodankäyntisimulaattoreihin liittyvän on line -vihteen tarjoaminen; edellä mainittuun liittyvien tietojen tarjoaminen.

SV - 9 - Programvara till datorspel; cd-spel; datorspel och -tillbehör för spel av datorspel.

SV - 16 - Instruktionshandböcker; instruktionshandböcker för datorspel; strategihandböcker.

SV - 28 - Handdatorspel och tillbehör för spel av dessa.

N° 000980912

3/4



OAMI
HABM
OHIM
OHMI
UAMI

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registrazione di marchio comunitario

OHIM - OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET

TRADE MARKS
AND
DESIGNS

OHMI - OFFICE DE L'HARMONISATION DANS LE MARCHÉ INTÉRIEUR

MARQUES
DESIGNES
ET MODELES

SV - 41 - Underhållning; direktansluten
underhållning; direktansluten underhållning rörande
dataspel, flygsimulatorer, strids- och krigssimulatorer;
tillhandahållande av information med avseende på det
tidigare nämnda.

300 US 11/05/1998 75/483113

N° 000980912

4/4

EXHIBIT D



Karin G. Pagnanelli
A Professional Corporation
(310) 312-3746 Phone
(310) 312-3786 Fax
kgp@msk.com

January 6, 2012

VIA E-MAIL (jbknost@fulpat.com) AND U.S. MAIL

Jessica Brookhart-Knost
Fulwider Patton LLP
Howard Hughes Center
6060 Center Drive, Tenth Floor
Los Angeles, CA 90045

Re: **Trademark Infringement Allegations of Novalogic, Inc.**

Dear Jessica:

We are counsel for Activision Blizzard, Inc. ("Activision"). We are writing in response to your letter of December 15, 2011, addressed to Activision, and your letter of December 2, 2011, addressed to Voyetra Turtle Beach.

Activision, of course, takes very seriously any allegations of infringement, including that its videogames infringe a third party's trademark or other intellectual property rights. Activision also is sensitive to claims that its products are likely to confuse customers as to sponsorship or affiliation with a third party. That being said, we believe that the claims asserted in your letter are without merit, both as a factual and legal matter.

Novalogic's Purported ESCALATION Mark

There is no likelihood of confusion with respect to Novalogic's purported ESCALATION mark and Activision's use of the term "escalation" in connection with its *Call of Duty: Black Ops Escalation* map pack.

First, it is well established that in analyzing the likelihood of confusion, the marks must be considered "in their entirety and *as they appear in the marketplace.*" Nutri/System, Inc. v. Con-Stam Indus., Inc., 809 F.2d 601, 605-06 (9th Cir. 1987) (emphasis added). As illustrated in Exhibit A to your December 15, 2011 letter, the term "escalation" appears only in conjunction with Activision's trademark CALL OF DUTY BLACK OPS. As you are well aware, the CALL OF DUTY franchise has surpassed \$5 billion in retail sales and Activision has expended many millions of dollars advertising and marketing games and merchandise under the CALL OF DUTY trademark. The CALL OF DUTY mark is famous, and consumers associate games utilizing that mark with one source – Activision, not Novalogic. Because of the prominence of the famous CALL OF DUTY mark in "Call of Duty: Black Ops Escalation," the map pack is not

likely to mislead or confuse an “appreciable number of ordinarily prudent purchasers” as to its sponsorship, endorsement or affiliation with Novalogic’s game. Hormel Foods Corp. v. Jim Henson Prods., Inc., 73 F.3d 497, 502 (2d Cir. 1996).

Second, the Activision product at issue is a map pack used in connection with the game *Call of Duty: Black Ops*. Consumers purchasing the *Call of Duty: Black Ops Escalation* map pack necessarily must also purchase the original *Call of Duty: Black Ops* game. Accordingly, consumers associate the map pack with the game *Call of Duty: Black Ops* and with Activision – not with Novalogic or a Novalogic product.

Third, Novalogic has no secondary meaning in the term “escalation.” Novalogic’s game *Joint Operations: Escalation* was released over seven years ago as an expansion pack to *Joint Operations Typhoon Rising*. Novalogic itself does not appear to have ever bothered to obtain a trademark registration with respect to the mark “escalation.” This is not surprising, since the term exists in a very crowded field of videogames, books, movies and other such products. Just a few examples that can be easily located from a review of the PTO database and other publicly available sources are as follows:

- ESCALATION STUDIOS for computer game software, computer game programs, computer game cartridges, and CD-ROMs featuring videogames for entertainment uses with manuals sold as a unit (Reg. No. 3,880,109)
- A comic book series entitled “The Transformers: Escalation”
- An “Escalation Mode” in the XBOX videogame “Transformers: War For Cybertron”
- “Escalation Pack” available on XBOX for the “Tom Clancy’s EndWar” game

For this reason alone, there exists no likelihood of confusion. See Miss World (UK) Ltd. v. Mrs. America Pageants, Inc., 856 F.2d 1445, 1449 (9th Cir. 1988) (“In a crowded field of similar marks, each member of the crowd is relatively weak in its ability to prevent use by others in the crowd. . . . In such a crowd, customers will not likely be confused between any two of the crowd and may have learned to carefully pick out one from the other.”).

Notwithstanding the fact that there clearly is no likelihood of confusion by Activision’s use of the term “escalation,” to the extent Novalogic has, as it claims, “evidence” of consumers purchasing Activision’s product and then mistakenly contacting Novalogic to complain, Activision requests that Novalogic provide any such evidence, so that it can be reviewed by Activision. As you know, however, *de minimis* evidence of actual confusion does not demonstrate a likelihood of confusion. See e.g. Nutri/System, Inc., 809 F.2d at 606-07. In fact, the very case to which you cite states that “[t]his is not to say that evidence of actual confusion will always compel a jury to find likelihood of confusion. In some cases, a jury may properly find actual confusion evidence *de minimis* and thus ‘unpersuasive as to the ultimate issue’” Thane Int’l v. Trek Bicycle Corp., 305 F.3d 894, 902 (9th Cir. 2002).

Novalogic's Purported DELTA FORCE and Delta Sword & Design Marks

For many of the same and additional reasons, there is no likelihood of confusion with respect to Novalogic's alleged DELTA FORCE and Delta Sword & Design marks.

As an initial matter, we note that the phrase "Delta Force" and the logo comprising a delta symbol superimposed with a dagger are associated with the special operations force formed by the U.S. Army in November 1977. See e.g. http://en.wikipedia.org/wiki/Delta_Force. The existence of this special force and its logo has become increasingly well known, and the logo, in particular, has been exploited and used by others for years, if not decades, before Novalogic filed its trademark application. These facts certainly undermine Novalogic's claim that use of the term "Delta" and a logo comprising a triangle and dagger create a likelihood of confusion with Novalogic. Further, the fact that Novalogic itself may be misrepresenting as to source undermines any claim to incontestability. Please provide us with evidence as to Novalogic's alleged right to use its marks as a designation of source in view of their apparent origins.

With respect to in-game content, Activision's use of the term "Delta Force" and of the logo of which you complain is protected by the First Amendment. A Lanham Act claim can only succeed if "the public interest in avoiding consumer confusion *outweighs* the public interest in free expression." *Rogers v. Grimaldi*, 875 F.2d 994, 999 (2d Cir. 1989) (emphasis added). This requires a two-part analysis: The use of the mark must be relevant to the creative work; if relevant to the work, the use must not explicitly mislead consumers about the source or content of the work. Here, there is no question that Activision's use meets this test. See *E.S.S. Entm't v. Rock Star Videos*, 547 F.3d 1095, 1099 (9th Cir. 2008) (the in-game use of the name "Pig Pen" for a strip club, the corresponding logo, and the appearance of the building in the game, did not infringe the trademark of the real-world "Play Pen," the strip club's logo, or the trade dress of the building).

Beyond this, even if any of your allegations were subject to the Lanham Act, they would fail for numerous reasons.

First, the design logos are not "almost identical," and even if they were, the marks exist in a crowded field. A few examples that can be easily located from searches of the PTO records and searches on Google are below:

- SPEED SURPRISE, VIOLENCE OF ACTION logo (Reg. No. 4,027,050)
- JEDBURGH PARTUM FORMIDONIS INGERO NEX (Reg. No. 3,783,870)
- ELITE SPECIAL FORCES STANDARD ISSUE (Reg. No. 2,967,689)
- "Delta Force Emblem T-Shirt" (See http://www.printfection.com/shop/logo/T-Shirt/product.2745653/show_sideid.5277255.)

- “Military Law Enforcement Cap” bearing “Delta Force” emblem (See http://www.newegg.com/Product/Product.aspx?Item=9SIA027000A056&nm_mc=OTC-Froogle4&cm_mmc=OTC-Froogle4_-Hats_-GT_-9SIA027000A056.)

Because the marks exist in a crowded field, Novalogic’s “ability to prevent use by others in the crowd” is relatively weak. See Miss World (UK) Ltd., 856 F.2d at 1449.

Second, Novalogic’s alleged DELTA FORCE mark also is extremely weak and exists in an extremely crowded field. There are countless examples of the use of “Delta” and “Delta Force” on videogames, entertainment, toys and printed materials as indicated below:

- AIRFORCE DELTA for use with computer game programs (Reg. No. 2,477,271)
- DELTA CHROME for use with video game software (Reg. No. 3,249,948)
- DELTA FORCE for use with posters (Reg. No. 2,453,397)
- DELTA MORPH ATV for use with toys and playthings (Reg. No. 3,340,913)

Third, especially in light of the above, in analyzing the likelihood of confusion, the marks must again be considered “in their entirety and *as they appear in the marketplace.*” Nutri/System, Inc., 809 F.2d at 605-06 (emphasis added). In this case, the marks either appear within the *Call of Duty: Modern Warfare 3* (“Call of Duty MW3”) game itself, or on Call of Duty MW3 headsets. In both cases, the mark is used closely in conjunction with Activision’s CALL OF DUTY, MODERN WARFARE, and/or CALL OF DUTY MW3 marks. As such, it is not likely these products will mislead or confuse an “appreciable number of ordinarily prudent purchasers” as to Novalogic’s possible sponsorship, endorsement or affiliation. Hormel Foods, 73 F.3d at 502.

Fourth, and finally, with respect to Turtle Beach’s purported use of the term “Delta” in connection with certain headsets, the phrase “Delta Force” is not used. Rather, the phrase “Ear Force” is used with consecutive designations of the common call letters “Alpha,” “Bravo,” “Charlie,” “Delta” and “Foxtrot,” which designate different versions of the headset. The use of “Ear Force” in conjunction with the term “Delta” is not used as a source identifier. This use further eliminates any likelihood of consumer confusion of Novalogic’s DELTA FORCE mark.

Accordingly, although we have not attempted to address every allegation contained in your letters, in light of the prominent First Amendment considerations, the highly crowded fields, and the clear differences in the marks’ actual appearances in the marketplace, Activision strongly believes there is no basis for Novalogic’s allegations of trademark infringement. Activision has never used the marks in a manner intended to invoke or refer to Novalogic, and it will continue to refrain from any such use. While we believe the claims set forth in your letter are greatly exaggerated and without merit, we believe that continued discussions would be productive to see

if we can find a mutually agreeable resolution to these issues. In that regard, we should see if there is some time next week for us to discuss these issues in more detail.

Of course, nothing contained in this letter is intended to, nor shall it constitute, a waiver or relinquishment of any rights, claims, defenses, or causes of action possessed by Activision, all of which hereby are expressly reserved.

Sincerely,

A handwritten signature in cursive script that reads "Karin Pagnanelli".

Karin G. Pagnanelli
of
MITCHELL SILBERBERG & KNUPP LLP

KGP/kgp