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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FILED (9) 15/10  
AUG 24 2010  
E-filing

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 DIGITAL CHOCOLATE, INC., a Delaware  
corporation,

14 Plaintiff,

15 v.

16 ZYNGA GAME NETWORK INC., a  
17 Delaware corporation,

18 Defendant.

EV 10 3758  
Case No.

COMPLAINT SEEKING DAMAGES  
AND INJUNCTIVE RELIEF FOR:

1. FEDERAL TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION, 15 U.S.C. § 1125;
2. FEDERAL FALSE DESIGNATION OF ORIGIN, 15 U.S.C. § 1125;
3. VIOLATION OF THE ANTI-CYBERSQUATTING CONSUMER PROTECTION ACT, 15 U.S.C. § 1125(D);
4. COMMON LAW TRADEMARK INFRINGEMENT;
5. COMMON LAW UNFAIR COMPETITION; AND
6. STATE UNFAIR COMPETITION, CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*

JURY TRIAL DEMANDED

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**NATURE OF THE ACTION**

1. Plaintiff Digital Chocolate, Inc. ("Digital Chocolate") is a leading developer and publisher of innovative games played by individuals in more than 53 countries on mobile devices, online social networks, and other platforms. Since 2004, Digital Chocolate has offered for sale a popular action game under the mark MAFIA WARS. Notwithstanding Digital Chocolate's well-known and longstanding use of the MAFIA WARS mark, in September 2008 Defendant Zynga Game Network Inc. ("Defendant" or "Zynga") introduced a competing game under the mark MAFIA WARS.

2. Digital Chocolate has repeatedly objected to Zynga's ongoing use of the MAFIA WARS mark, but despite Digital Chocolate's notices and demands, Zynga has persisted in offering its game under the MAFIA WARS mark. Although in May 2009 Zynga expressly assured Digital Chocolate, in writing, that "Zynga does not claim trademark rights in MAFIA WARS," just two months later Zynga filed an application with the United States Patent and Trademark Office ("USPTO") seeking to register MAFIA WARS as its trademark. Despite being on notice of Digital Chocolate's senior rights and infringement claim, Zynga repeatedly misrepresented to the USPTO that no other entity owned or claimed rights in the MAFIA WARS mark.

3. Through duplicity and bad faith, Zynga has effectively hijacked the MAFIA WARS mark from Digital Chocolate and is aggressively marketing its games under the MAFIA WARS mark to Digital Chocolate's substantial detriment. To protect its intellectual property rights and prevent Zynga from benefitting from its wrongful conduct, Digital Chocolate has initiated this action.

**THE PARTIES**

4. Plaintiff Digital Chocolate, Inc. ("Digital Chocolate") is a Delaware corporation having its principal place of business at 1855 South Grant Street, San Mateo, California 94402-7017.

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1           11.     In 2004, Digital Chocolate adopted and began using the mark MAFIA WARS in  
2 the United States and throughout the world in connection with a new game developed by its  
3 wholly owned subsidiary, Digital Chocolate, Ltd. MAFIA WARS is a story-driven action game  
4 in which the player takes on the character of an aspiring member of a fictional crime syndicate.  
5 The game requires players to complete gangster-related tasks and assignments (known as  
6 “missions”) in order to advance their standing within the criminal organization. Digital  
7 Chocolate’s MAFIA WARS game quickly became popular and developed a reputation for  
8 offering a rich game playing environment, compelling storyline, and rewarding challenges.  
9 Digital Chocolate’s MAFIA WARS game also has been highly rated and favorably reviewed in  
10 the industry press. (*See, e.g.*, June 27, 2005 review by IGN Entertainment, a true and correct  
11 copy of which is attached as Exhibit A and incorporated by reference as though set forth herein.)

12           12.     Given the early success of its initial MAFIA WARS game, Digital Chocolate  
13 subsequently released a number of sequels under the MAFIA WARS brand. These include  
14 MAFIA WARS “Scarlotti’s War,” launched in July 2005; MAFIA WARS “Yakuza Wars,”  
15 launched in January 2007; and MAFIA WARS NEW YORK, launched in April 2009. The  
16 sequels are also story-driven action games where the player takes on the role of a figure in a  
17 fictional organized crime syndicate. The games have enjoyed success comparable to that of the  
18 original, and have been widely downloaded throughout the United States and the world.

19           13.     Indeed, nearly two million consumers worldwide have downloaded Digital  
20 Chocolate’s MAFIA WARS games, including hundreds of thousands of users in the United  
21 States.

22           14.     As a result of the consumer appeal and popularity of its MAFIA WARS game  
23 series, Digital Chocolate’s MAFIA WARS mark has come to embody the reputation and goodwill  
24 Digital Chocolate has earned in the marketplace for producing high quality products. The  
25 MAFIA WARS mark is therefore a valuable asset of Digital Chocolate.

#### 26                           **ZYNGA GAME NETWORK’S INFRINGING MAFIA WARS MARK**

27           15.     Digital Chocolate is informed and believes, and based thereon alleges that  
28 Defendant is a developer and distributor of games available through various computer, online,

1 and mobile phone platforms. Defendant was founded in 2007 and has subsequently produced  
2 several game products. In or about September 2008, well after Digital Chocolate introduced three  
3 game titles in its MAFIA WARS series, Defendant introduced and began selling a game under the  
4 mark MAFIA WARS and subsequently expanded its use of the MAFIA WARS mark to related  
5 products and services. As it has grown in dominance in the game industry, Zynga has garnered a  
6 reputation for its predatory business and suspect marketing tactics. (See, e.g., *Zynga's Secret To*  
7 *Success: Steal Great Ideas!*, [http://www.businessinsider.com/how-zynga-is-just-like-microsoft-](http://www.businessinsider.com/how-zynga-is-just-like-microsoft-2010-1)  
8 [http://www.sfgate.com/cgi-](http://www.sfgate.com/cgi-bin/blogs/cityinsider/detail?entry_id=70526&tsp=1)  
9 [bin/blogs/cityinsider/detail?entry\\_id=70526&tsp=1](http://www.sfgate.com/cgi-bin/blogs/cityinsider/detail?entry_id=70526&tsp=1), true and correct copies of which are attached  
10 as Exhibit B and incorporated by reference as though set forth herein.)

11       **16.** Defendant's MAFIA WARS game is similar to Digital Chocolate's MAFIA  
12 WARS game in that players must complete various tasks and activities in order to advance their  
13 status (or level) within a fictional crime organization. Subsequent versions of Defendant's game  
14 have taken place in a number of virtual "locales" including Bangkok, where users can join the  
15 Yakuza crime syndicate (similar to Digital Chocolate's MAFIA WARS "Yakuza Wars" game),  
16 and New York (similar to Digital Chocolate's MAFIA WARS NEW YORK game).

17       **17.** Since introducing its game in 2008, Defendant has utilized its substantial financial  
18 resources to market its MAFIA WARS games broadly and also has introduced and marketed  
19 associated virtual goods and other related products and services via a variety of platforms,  
20 including social game networks, mobile phone platforms, and the Internet. Defendant's  
21 marketing has expanded well beyond these platforms however, and in June 2010 Defendant  
22 launched a multi-million dollar marketing campaign with 7-Eleven, whereby its MAFIA WARS  
23 games were promoted throughout over 7,000 convenience stores nationwide. Customers were  
24 invited to redeem codes found on MAFIA WARS branded products available at those stores for  
25 limited edition MAFIA WARS virtual goods and merchandise. True and correct copies of online  
26 articles describing the breadth of Defendant's advertising and promotion campaign are attached  
27 as Exhibit C and incorporated by reference as though set forth herein.

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1           **18.**     As a result of its aggressive marketing, Defendant has enjoyed substantial success  
2 in the marketplace for its MAFIA WARS products and services, claiming over 1.1 million daily  
3 active users of its MAFIA WARS game as of February 2009, over 4 million daily active users as  
4 of July 2009, and more than 7 million daily active users as of December 2009.

5           **19.**     Digital Chocolate is informed and believes, and based thereon alleges that  
6 Defendant has earned substantial revenue from sales of its MAFIA WARS games and related  
7 virtual goods and associated merchandise. Accordingly, Defendant has profited unjustly through  
8 its misappropriation of Digital Chocolate's MAFIA WARS mark.

9                           **ZYNGA'S BAD FAITH USE OF THE MAFIA WARS MARK**

10           **20.**     On January 21, 2009, Digital Chocolate gave Defendant written notice of its senior  
11 rights in the MAFIA WARS mark, which include Digital Chocolate's registration for the MAFIA  
12 WARS mark in the European Community, and demanded that Defendant immediately cease and  
13 desist its use of the MAFIA WARS mark. A true and correct copy of this correspondence is  
14 attached hereto as Exhibit D and incorporated by reference as though set forth herein.

15           **21.**     On or about May 5, 2009, counsel for Defendant responded to Digital Chocolate's  
16 January 21 letter and stated:

17                   Zynga does not claim Mafia Wars as a trademark. Zynga uses the term "Mafia  
18 Wars" to describe the genre of Zynga's game MAFIA WARS from ZYNGA or  
19 ZYNGA MAFIA WARS. Zynga disclaims any trademark rights in the term  
"Mafia Wars" in connection with its game.

20                   Despite Zynga's position that its use of Mafia Wars does not infringe your client's  
21 trademark, Zynga would be willing to forego claiming trademark rights in the  
term MAFIA WARS in the EC and will undertake not to use the term on  
materials that are targeted at and distributed in the EC.

22           A true and correct copy of this correspondence is attached hereto as Exhibit E and incorporated  
23 by reference as though set forth herein.

24           **22.**     In direct contradiction to the representations made in its May 2009 letter to Digital  
25 Chocolate, Defendant continued to make its MAFIA WARS game available in multiple European  
26 jurisdictions through Apple's iTunes online stores and the Facebook social networking service.  
27 Moreover, despite being on notice of Digital Chocolate's senior trademark registration for the  
28 MAFIA WARS trademark in the EU, Defendant filed a trademark application for MAFIA WARS

1 in the United Kingdom, a member country of the European Community.

2       23. On June 11, 2009, Defendant initiated an action in this District for trademark  
3 infringement and false advertising against Playdom, Inc. based on Defendant's purported rights in  
4 the MAFIA WARS mark. Defendant's allegations in that proceeding included the following  
5 misleading and false claims:

6           Mafia Wars is one of Zynga's most popular games, with over 2.5 million daily  
7 users. Zynga has invested significant resources in developing and promoting  
8 Mafia Wars, and users have come to associate the game, the name, and the  
9 trademark "Mafia Wars" with a high standard of quality and innovation. *Zynga is  
10 the senior user of the "Mafia Wars" mark.* (Emphasis added.)

11 A true and correct copy of the Complaint in that proceeding is attached hereto as Exhibit F and  
12 incorporated by reference as though set forth herein.

13       24. On or about July 1, 2009, Zynga filed a U.S. trademark application to register a  
14 stylized version of the MAFIA WARS trademark for "downloadable computer game software for  
15 use on wireless devices and computers" in Class 9, and "entertainment services, namely,  
16 providing on-line computer games" in Class 41. A true and correct copy of the USPTO record  
17 reflecting the status of this application is attached as Exhibit G and incorporated by reference as  
18 though set forth herein.

19       25. In filing the foregoing trademark application, Defendant repeatedly attested to the  
20 following under penalty of perjury:

21           The undersigned, being hereby warned that willful false statements and the like so  
22 made are punishable by fine or imprisonment, or both . . . declares that he/she is  
23 properly authorized to execute this application on behalf of the applicant; he/she  
24 believes the applicant to be the owner of the trademark/service mark sought to be  
25 registered . . . ; to the best of his/her knowledge and belief *no other person, firm,  
26 corporation or association has the right to use the mark in commerce, either in  
27 the identical form thereof or in such near resemblance thereto as to be likely . . .  
28 to cause confusion, or to cause mistake, or to deceive . . .* (Emphasis added.)

29 A true and correct copy of the application containing this declaration is attached hereto as Exhibit  
30 H and incorporated by reference as though set forth herein. The declaration in this application  
31 was executed by the same attorney who only two months earlier wrote (in the May 5, 2009 letter  
32 to Digital Chocolate) that Zynga "does not claim Mafia Wars as a trademark" and "disclaims any  
33 trademark rights in the term 'Mafia Wars' in connection with its game." (See Exhibit E.) By the

1 time it filed its U.S. MAFIA WARS application, Defendant was on notice of Digital Chocolate's  
2 senior rights in the MAFIA WARS mark, rendering its affirmations to the USPTO fraudulent.  
3 Defendant made this same affirmation to the USPTO on two subsequent occasions, true and  
4 correct copies of which are attached as Exhibits I and J and incorporated by reference as though  
5 set forth herein.

6       **26.** On or about January 4, 2010, Defendant applied to expand protection of its  
7 MAFIA WARS trademark to Australia, China, Japan, and South Korea, under the Madrid  
8 Protocol, on the basis of its fraudulent U.S. trademark application. A true and correct copy of the  
9 WIPO record reflecting the current status of Defendant's Madrid Protocol filing is attached as  
10 Exhibit K and incorporated by reference as though set forth herein. Defendant also filed separate  
11 applications in the United Kingdom, Canada, and New Zealand, claiming the asserted priority  
12 date of its U.S. trademark application. True and correct copies of the online database records  
13 reflecting the current status of these filings are attached hereto as Exhibits L, M, and N,  
14 respectively, and incorporated by reference as though set forth herein.

15       **27.** On or about March 26, 2010, Defendant filed a second application in the United  
16 States to register its MAFIA WARS mark in connection with additional goods, including "art  
17 paper, decals, gift bags, greeting cards, memo pads, stationery, stickers, toilet paper, wrapping  
18 paper, and writing paper" in Class 16; "beer mugs, beverage glassware, beverage stirrers, bottle  
19 openers, bowls, coffee cups, tea cups and mugs, containers for ice, dishes, flower pots, napkin  
20 holders, pans, salt shakers, and tooth brushers" in Class 21; and "clothing, namely t-shirts,  
21 sweatshirts, hooded pullovers, tank tops, footwear, socks, jackets, button down shirts, polo shirts,  
22 dresses, skirts, jeans, shorts, sweatpants, neckties, aprons, belts, gloves, jerseys, baseball caps and  
23 hats, and headwear" in Class 25. A true and correct copy of the USPTO record reflecting this  
24 application is attached hereto as Exhibit O and incorporated by reference as though set forth  
25 herein. Defendant again affirmed under oath in its application that "no other person, firm,  
26 corporation or association has the right to use the mark in commerce, either in the identical form  
27 thereof or in such near resemblance thereto as to be likely . . . to cause confusion, or to cause  
28 mistake, or to deceive." A true and correct copy of Defendant's affirmation to that effect is



1 attached hereto as Exhibit P and incorporated by reference as though set forth herein.

2       **28.** Defendant's knowing submission of false and misleading statements to the  
3 USPTO in the prosecution of its applications renders the applications void on the grounds of  
4 fraud. Registration of Defendant's pending MAFIA WARS trademark applications should be  
5 refused accordingly.

6       **29.** In light of Defendant's continued use and exploitation of the MAFIA WARS  
7 mark, representatives of Digital Chocolate sent repeated communications to Defendant in the  
8 months following Defendant's May 5, 2009 letter in a further effort to obtain Defendant's  
9 agreement to cease use of the mark. Defendant, however, refused to cease use of the mark and  
10 failed to provide any justification for its continued use and promotion of the MAFIA WARS  
11 mark, expansion of its MAFIA WAR game offerings, and aggressive claim of rights in the mark.

12       **30.** On or about March 11, 2010, Defendant initiated another trademark infringement  
13 action in this District, again based on its purported rights in the MAFIA WARS mark. Despite its  
14 communications with Digital Chocolate regarding Digital Chocolate's prior use of the MAFIA  
15 WARS mark for its games, Zynga submitted the following false and misleading allegations in that  
16 proceeding:

17       Zynga *coined* the service mark MAFIA WARS and has made use of the service  
18 mark MAFIA WARS in commerce since September 2008. Zynga *coined* the  
19 trademark MAFIA WARS and has made use of the trademark MAFIA WARS in  
20 commerce since April 2009.

21       \* \* \*

22       The mark MAFIA WARS is inherently distinctive, and furthermore, by virtue of  
23 the extensive online sales and advertising under the mark MAFIA WARS, the  
24 MAFIA WARS mark has become well-known within social gaming circles as a  
25 source identifier for [Zynga's] game. (Emphasis added.)

26 A true and correct copy of this Complaint is attached hereto as Exhibit Q and incorporated by  
27 reference as though set forth herein.

28       **31.** Defendant's adoption of Digital Chocolate's mark has caused actual consumer  
confusion in the marketplace. Indeed, Digital Chocolate has received inquiries from consumers  
who are confused as to the source of the parties' respective games.

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1           **32.** In a good faith effort to resolve this matter, Digital Chocolate has attempted to  
2 engage Defendant multiple times. In response, Defendant has made false promises of cooperation  
3 and offered lip service that it respected Digital Chocolate's rights in the MAFIA WARS mark.  
4 Zynga's bad faith is demonstrated by actions that belie its pretense of good faith; among other  
5 acts, Zynga filed an application for MAFIA WARS in the U.K. and in several other countries  
6 around the world (while engaged in discussions with Digital Chocolate); Zynga continued to  
7 zealously market and expand use of the MAFIA WARS mark in connection with its games and  
8 related products; and Zynga falsely claimed to the public, the USPTO, and the courts that it  
9 "coined" the MAFIA WARS mark and owns superior rights in the mark. Zynga's wrongful  
10 misappropriation of Digital Chocolate's MAFIA WARS mark has damaged Digital Chocolate's  
11 rights, goodwill, and revenue associated with its MAFIA WARS games.

12  
**FIRST CAUSE OF ACTION**

13           **FEDERAL TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION, 15 U.S.C. § 1125**

14           **33.** Digital Chocolate incorporates by reference paragraphs 1 through 32, inclusive, as  
15 if fully set forth herein.

16           **34.** Digital Chocolate began offering games and related services under the MAFIA  
17 WARS mark in the United States in 2004 and has used the MAFIA WARS mark continuously in  
18 United States commerce since that time.

19           **35.** Digital Chocolate's MAFIA WARS goods and services are made available in the  
20 United States on its website at <http://digitalchocolate.com> and through mobile network operators.

21           **36.** Digital Chocolate has invested substantial time, effort, and financial resources in  
22 the development, promotion, and sale of its MAFIA WARS games in interstate commerce in the  
23 United States. The MAFIA WARS mark has become, through widespread and favorable public  
24 acceptance and recognition, an asset of substantial value as a symbol of Digital Chocolate, its  
25 quality products and services, and its goodwill.

26           **37.** Notwithstanding Digital Chocolate's rights in the MAFIA WARS mark, beginning  
27 in or about September 2008 Defendant adopted and began to use the identical MAFIA WARS  
28 mark in interstate commerce in connection with the sale and offering for sale of its games and

1 ancillary products and services.

2       **38.** Digital Chocolate is informed and believes, and based thereon alleges that  
3 Defendant adopted the MAFIA WARS mark with knowledge of Digital Chocolate's MAFIA  
4 WARS mark and, without Digital Chocolate's consent and in contravention of Digital  
5 Chocolate's rights, has continued to use that mark in connection with the sale, offering for sale,  
6 distribution, and promotion of its goods and services.

7       **39.** Defendant's MAFIA WARS mark is identical to Digital Chocolate's MAFIA  
8 WARS mark in appearance, sound, and meaning; is being used in connection with the same type  
9 of goods and services as those offered by Digital Chocolate; is being offered through the same  
10 channels of trade, i.e., mobile telephone platforms and the Internet; and targets the same  
11 consumer market.

12       **40.** The instantaneous nature of Internet navigation, the speed at which people  
13 navigate and are presented with advertisements, images and/or data on the Internet, and the speed  
14 at which consumers perform transactions on the Internet, all tend to increase the risk of confusion  
15 or mistake about the source of a product or service.

16       **41.** Defendant has misrepresented the nature of its rights in the MAFIA WARS mark  
17 to the USPTO in its efforts to secure registration of the mark, such that its pending applications  
18 should be declared void *ab initio* for fraud.

19       **42.** Defendant's continued use of the MAFIA WARS mark has injured and will  
20 continue to injure Digital Chocolate by causing a likelihood that the public will continue to be  
21 confused into believing that the goods or services provided by Defendant are endorsed or  
22 sponsored by Digital Chocolate and constitutes trademark infringement and unfair competition in  
23 violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

24       **43.** Digital Chocolate has no control over the nature and quality of the goods and  
25 services offered by Defendant under the MAFIA WARS mark, and Digital Chocolate's reputation  
26 and goodwill will be damaged and the value of its common law MAFIA WARS mark jeopardized  
27 by Defendant's continued use of the MAFIA WARS name and mark.

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1           **44.**     Because of the actual confusion and the likelihood of continued confusion between  
2 the parties' marks, defects, objections, or faults found with Defendant's products and services  
3 offered under the MAFIA WARS mark could negatively reflect upon and injure the reputation  
4 that Digital Chocolate has established for the services it offers in connection with its MAFIA  
5 WARS mark.

6           **45.**     In the alternative, the confusion created by Defendant's adoption of the MAFIA  
7 WARS mark and aggressive promotion of its MAFIA WARS products and services has  
8 overwhelmed the market presence of Digital Chocolate's MAFIA WARS game, resulting in  
9 reverse confusion. Defendant's acts as alleged herein could cause consumers to believe that  
10 Digital Chocolate is the unauthorized infringer of Zynga's purported MAFIA WARS mark,  
11 resulting in injury to Digital Chocolate's reputation and goodwill in its business and MAFIA  
12 WARS mark.

13           **46.**     Defendant's acts as alleged above, if not enjoined, will continue. Digital  
14 Chocolate has no adequate remedy at law in that the amount of its damages is difficult to  
15 ascertain with specificity.

16           **47.**     As a result of Defendant's infringement of Digital Chocolate's marks, Digital  
17 Chocolate has incurred damages in an amount to be proven at trial consisting of, among other  
18 things, diminution in the value of and goodwill associated with the marks.

19           **48.**     Defendant's unauthorized use of the MAFIA WARS mark in interstate commerce  
20 as described herein constitutes trademark infringement and unfair competition under 15 U.S.C. §  
21 1125(a), as it is likely to cause consumer confusion, mistake, or deception.

22   **SECOND CAUSE OF ACTION**

23   **FEDERAL FALSE DESIGNATION OF ORIGIN, 15 U.S.C. § 1125**

24           **49.**     Digital Chocolate incorporates by reference paragraphs 1 through 48, inclusive, as  
25 if fully set forth herein.

26           **50.**     In connection with Defendant's goods and services, Defendant has used in  
27 commerce and without Digital Chocolate's authorization or consent the MAFIA WARS mark for  
28 game products and services, which is identical to Digital Chocolate's MAFIA WARS mark for

1 game products and services in appearance, sound, meaning, and commercial impression.

2 51. Such acts have caused confusion, and are likely to continue to cause confusion and  
3 deception among the purchasing public and/or are likely to lead the consuming public to believe  
4 that Digital Chocolate has authorized, approved or somehow sponsored Defendant's MAFIA  
5 WARS products and services.

6 52. Defendant's unauthorized sale and marketing of its products and services in  
7 interstate commerce using the MAFIA WARS mark constitutes a use of a false designation of  
8 origin or false representation that wrongfully and falsely designates Defendant's products as  
9 originating from or connected with Digital Chocolate, and constitutes the use of false descriptions  
10 or representations in interstate commerce in violation of 15 U.S.C. § 1125(a).

11 53. Defendant's false designation of origin and false description through its use of the  
12 MAFIA WARS mark has caused, and if not enjoined will continue to cause, irreparable and  
13 continuing harm to Digital Chocolate's marks, business, reputation, and goodwill, for which  
14 Digital Chocolate has no adequate remedy at law.

15 54. As a direct and proximate result of Defendant's wrongful use of the MAFIA  
16 WARS mark, Digital Chocolate has been and will continue to be damaged by, without limitation,  
17 the diminution in the value of its trademarks, reputation, business, and goodwill in an amount to  
18 be proven at trial.

19 55. Digital Chocolate is informed and believes, and based thereon alleges that  
20 Defendant adopted the MAFIA WARS mark with knowledge of Digital Chocolate's MAFIA  
21 WARS mark, and with the intent to create a likelihood of confusion with regard to and/or trade  
22 off of Digital Chocolate's MAFIA WARS mark.

23 **THIRD CAUSE OF ACTION**

24 **VIOLATION OF ANTI-CYBERSQUATTING CONSUMER PROTECTION ACT, 15 U.S.C. § 1125(D)**

25 56. Digital Chocolate incorporates by reference paragraphs 1 through 55, inclusive, as  
26 if fully set forth herein.

27 57. Digital Chocolate is informed and believes, and based thereon alleges that  
28 Defendant acquired the MAFIAWARS.COM domain name in July 2009, and that Defendant

1 subsequently made use of the MAFIAWARS.COM domain name. True and correct copies of the  
2 domain name registration records for MAFIAWARS.COM reflecting the acquisition are attached  
3 hereto as Exhibit R and incorporated herein by reference. True and correct print-screens of the  
4 website affiliated with the MAFIAWARS.COM domain name as of August 5, 2010, reflecting  
5 Defendant's use of the domain name, are attached hereto as Exhibit S and incorporated herein by  
6 reference.

7 58. Digital Chocolate began using the distinctive MAFIA WARS mark almost five  
8 years prior to Defendant's acquisition of the MAFIAWARS.COM domain name. By the time  
9 Defendant acquired the MAFIAWARS.COM domain name, the MAFIA WARS mark was widely  
10 recognized as an indicator of source for Digital Chocolate's games.

11 59. Defendant's MAFIAWARS.COM domain name is identical to Digital Chocolate's  
12 MAFIA WARS trademark.

13 60. Digital Chocolate is informed and believes and thereon alleges that Defendant  
14 acquired and has used the MAFIAWARS.COM domain name with a bad faith intent to profit  
15 from Digital Chocolate's MAFIA WARS mark.

16 61. Defendant's actions have caused, and continue to cause, great and irreparable  
17 injury to Digital Chocolate. Unless these acts are restrained by this Court, they will continue, and  
18 Digital Chocolate will continue to suffer such injury.

19 62. Digital Chocolate is entitled to cancellation of Defendant's MAFIAWARS.COM  
20 domain name registration and transfer of the domain name to Digital Chocolate, along with  
21 monetary compensation and statutory penalties pursuant to the Anti-Cybersquatting Consumer  
22 Protection Act, 15 U.S.C. § 1125(d).

23 **FOURTH CAUSE OF ACTION**

24 **COMMON LAW TRADEMARK INFRINGEMENT**

25 63. Digital Chocolate incorporates by reference paragraphs 1 through 62, inclusive, as  
26 if fully set forth herein.

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1           **64.** Defendant's acts alleged herein and specifically, without limitation, Defendant's  
2 use of the MAFIA WARS mark, infringe Digital Chocolate's exclusive trademark rights in the  
3 MAFIA WARS mark, in violation of the common law.

4           **65.** Defendant's acts as alleged above, if not enjoined, will continue. Digital  
5 Chocolate has no adequate remedy at law in that the amount of its damages is difficult to  
6 ascertain with specificity.

7           **66.** As a result of Defendant's acts as alleged above, Digital Chocolate has incurred  
8 damages in an amount to be proven at trial consisting of, among other things, diminution in the  
9 value of the goodwill associated with Digital Chocolate's marks.

10                                    **FIFTH CAUSE OF ACTION**

11                                    **COMMON LAW UNFAIR COMPETITION**

12           **67.** Digital Chocolate incorporates by reference paragraphs 1 through 66, inclusive, as  
13 if fully set forth herein.

14           **68.** Digital Chocolate is informed and believes, and based thereon alleges that  
15 Defendant has engaged in and continues to engage in unfair competition by using the MAFIA  
16 WARS mark with the intention of interfering with and trading on the business reputation and  
17 goodwill engendered by Digital Chocolate in the MAFIA WARS mark through Digital  
18 Chocolate's hard work and diligent effort.

19           **69.** Defendant's acts have caused Digital Chocolate competitive injury, as described  
20 herein, and specifically have caused Digital Chocolate to incur damages in an amount to be  
21 proven at trial consisting of, among other things, diminution in the value of and goodwill  
22 associated with Digital Chocolate's marks.

23           **70.** Defendant's acts as alleged above, and specifically, without limitation,  
24 Defendant's use of the MAFIA WARS mark, if not enjoined, will continue. Digital Chocolate  
25 has no adequate remedy at law in that the amount of its damages is difficult to ascertain with  
26 specificity.

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**SIXTH CAUSE OF ACTION**

**STATE UNFAIR COMPETITION, CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.***

71. Digital Chocolate incorporates by reference paragraphs 1 through 70, inclusive, as if fully set forth herein.

72. By the acts described herein, Zynga has engaged in unlawful and unfair business practices that have injured and will continue to injure Digital Chocolate in its business and property, in violation of California Business and Professions Code §§ 17200 *et seq.*

73. Defendant's acts alleged herein have caused monetary damages to Digital Chocolate in an amount to be proven at trial, and have caused, and will continue to cause, irreparable injury to Digital Chocolate and its business, reputation, and trademarks, unless and until Defendant is permanently enjoined.

74. As a direct and proximate result of Defendant's conduct alleged herein, Defendant has been unjustly enriched and should be ordered to disgorge any and all profits earned as a result of such unlawful conduct.

**PRAYER FOR RELIEF**

**WHEREFORE**, Digital Chocolate prays:

A. That this Court grant permanent injunctive relief enjoining Defendant and all others acting in concert with and having knowledge thereof from using the MAFIA WARS mark, and any similar trade name or mark or variant thereof, as a trade name, trademark, service mark, domain name, or for any other purpose;

B. That this Court declare the pending MAFIA WARS USPTO trademark applications void *ab initio*;

C. That this Court order Defendant to account to Digital Chocolate and disgorge any and all revenues and profits that Defendant has derived from its wrongful actions;

D. That this Court hold Defendant liable for all compensatory and/or statutory damages suffered by Digital Chocolate resulting from the acts alleged.

E. That this Court award Digital Chocolate treble damages, reasonable attorney's fees and expenses, and costs;



1 F. That the Court order the Registrar of the MAFIAWARS.COM domain name and  
2 any other domain names containing the MAFIA WARS mark and registered to Defendant to  
3 cancel the registrations and transfer them to Digital Chocolate;

4 G. That the Court order Defendant to deliver up all containers, labels, signs, prints,  
5 packages, wrappers, receptacles, advertising, promotional materials, and the like in its possession,  
6 custody, or control break the MAFIA WARS mark.

7 H. That the Court order Defendant to engage in corrective advertising in an amount  
8 double that which Zynga has spent promoting its products and services under the MAFIA WARS  
9 mark.

10 I. That the Court order Defendant to file with the Court and serve on Digital  
11 Chocolate, within thirty (30) days after entry of the requested injunction, a report in writing under  
12 oath setting forth in detail the manner and form in which Defendant has complied with the  
13 injunction.

14 J. That this Court grant such other and further relief as it should deem just and  
15 proper.

16 Dated: August 24, 2010

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**DEMAND FOR JURY TRIAL**

Plaintiff Digital Chocolate, Inc. hereby demands a trial by jury on all issues for which a trial by jury may be had.

Dated: August 24, 2010

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