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 9 ZYNGA GAME NETWORK INC.

10
 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION
 14

15 ZYNGA GAME NETWORK INC.,
 16 a Delaware Corporation,

CASE NO.

17
 18 Plaintiff,

COMPLAINT FOR:

19 v.

- (1) VIOLATION OF 15 U.S.C. § 1114(1);
- (2) VIOLATION OF 15 U.S.C. § 1125(a);
- (3) VIOLATION OF 15 U.S.C. § 1125(d);
- (4) VIOLATION OF CAL. BUS. & PROF. CODE § 17200;
- (5) STATE COMMON LAW TRADEMARK INFRINGEMENT; AND
- (6) COMMON LAW PASSING OFF AND UNFAIR COMPETITION

20 JUST ADD CHIPS LLC, a Pennsylvania
 Limited Liability Company, and GEORGE
 21 HARITOS, an individual,

22 Defendants.
 23
 24

DEMAND FOR JURY TRIAL

1 Plaintiff Zynga Game Network, Inc. (“Zynga”) brings this Complaint against defendants Just
2 Add Chips LLC and George Haritos (collectively “Defendants”) for injunctive relief and damages
3 under the laws of the United States and the State of California.

4 **Nature of the Action**

5 1. This is an action for violation of the federal Lanham Act, 15 U.S.C. §§ 1114(1),
6 1125(a) and 1125(d); violation of the California statutory law of unfair competition, Cal. Bus. &
7 Prof. Code § 17200; and California common law trademark infringement, passing off and unfair
8 competition.

9 **The Parties**

10 2. Plaintiff Zynga is a corporation organized and existing under the laws of the State of
11 Delaware and has its principal place of business in San Francisco, California.

12 3. Zynga is informed and believes and on this basis alleges that defendant Just Add
13 Chips LLC is a limited liability company organized and existing under the laws of the State of
14 Pennsylvania and has its principal place of business in Pittsburgh, Pennsylvania.

15 4. Zynga is informed and believes and on this basis alleges that defendant George
16 Haritos is an individual currently residing in Pittsburgh, Pennsylvania.

17 5. Zynga is informed and believes and on this basis alleges that the actions alleged
18 herein to have been undertaken by Defendants were undertaken by each Defendant individually,
19 were actions that each Defendant caused to occur, were actions that each Defendant authorized,
20 controlled, directed, or had the ability to authorize, control or direct, and/or were actions in which
21 each Defendant assisted, participated or otherwise encouraged, and are actions for which each
22 Defendant is liable. Each Defendant aided and abetted the actions of the Defendants set forth below,
23 in that each Defendant had knowledge of those actions, provided assistance and benefitted from
24 those actions, in whole or in part. Each of the Defendants was the agent of each of the other
25 Defendant, and in doing the things hereinafter alleged, was acting within the course and scope of
26 such agency and with the permission and consent of the other Defendant.

27 **Jurisdiction and Venue**

28 6. This action arises under the trademark laws of the United States, 15 U.S.C. § 1051, *et*

1 *seq.*, particularly under 15 U.S.C. §§ 1114(1), 1125(a) and 1125(d), as well as state unfair
2 competition law and the common law of trademark infringement, passing off and unfair competition.
3 This Court has jurisdiction of the federal claims under 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C.
4 §§ 1116, 1121, and 1125. This Court has supplemental jurisdiction of the state unfair competition
5 claims under 28 U.S.C. § 1338(b), those claims being joined with a substantial and related claim
6 under the Trademark Laws of the United States, and supplemental jurisdiction of all of the state law
7 claims under 28 U.S.C. § 1367(a), those claims being so related to the federal claims that they form
8 part of the same case or controversy and derive from a common nucleus of operative fact.

9 7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2).

10 **Intradistrict Assignment**

11 8. This being an Intellectual Property Action, the Court's Assignment Plan provides for
12 assignment of this Action on a district-wide basis. To the extent this Action may be deemed to have
13 arisen in a particular county within this District, that county is San Francisco County on the grounds
14 that a substantial part of the events or omissions which give rise to Zynga's claims occurred in San
15 Francisco County, where Zynga is located.

16 **Factual Allegations**

17 9. Zynga is the largest social gaming company, providing, *inter alia*, online card games,
18 word games, board games, role playing games and party games including Zynga Poker, Mafia Wars,
19 YoVille, Vampires, Street Racing, Scramble and Word Twist. Zynga's games are available on
20 Facebook, MySpace, Bebo, Hi5, Friendster, Tagged, Yahoo!, the iPhone and iPod Touch, among
21 others.

22 10. Zynga coined the trademark and service mark (collectively "mark") ZYNGA and has
23 made use of the mark ZYNGA in commerce since June 2007.

24 11. Zynga's games have been a runaway success. In July, 2008, Zynga had over 1.3
25 million daily active users and 20 million registered users. As of January 1, 2009, Zynga had over 75
26 million registered users. As of May, 2009, Zynga had more than 9.5 million daily users.

27 12. Zynga's success and the success of the ZYNGA mark have been widely reported in
28 the press, on the Internet and in blogs.

1 13. The mark ZYNGA is inherently distinctive, and furthermore, by virtue of the
2 extensive online sales and advertising under the mark ZYNGA, the ZYNGA mark has become well-
3 known within social gaming circles as a source identifier for Zynga’s games.

4 14. Zynga owns United States Federal Trademark Registration No. 3,685,749 for the
5 mark ZYNGA in International Class 009 for downloadable computer game software for use on
6 wireless devices and computers, and International Class 041 for entertainment services, namely
7 providing on-line computer games. A true and correct copy of federal Trademark Registration
8 Certificate 3,685,749 is attached hereto as Exhibit 1.

9 15. One of Zynga’s most popular games is Zynga Poker, a computerized version of the
10 world-famous Texas Hold’Em poker game.

11 16. Without Zynga’s authorization or approval, Defendants have registered the Internet
12 domain name <zyngapoker.com> (the “Infringing Domain Name”). Users who type
13 “zyngapoker.com” into their Internet web browsers expecting to find Zynga’s popular Zynga Poker
14 game, are instead taken to a website that Defendants have created and maintain (the “Website”).

15 17. The Website contains paid advertising for Full Tilt Poker
16 (<<http://www.fulltiltpoker.com>>), a site not operated by Zynga. Every time an Internet user on
17 Defendants’ Website clicks on one of these advertisements, Defendants make a profit.

18 18. Other content on the Website also encourages users to visit, sign up with, and play
19 Full Tilt Poker.

20 19. Zynga is informed and believes, and on this basis alleges, that Internet users have
21 been confused into believing that Zynga has authorized, approved, sponsored, or is otherwise
22 affiliated with Defendants’ Website and the Full Tilt Poker service they advertise.

23 20. Zynga is informed and believes, and on this basis alleges, that Internet users
24 searching for Zynga’s poker application have been diverted to Full Tilt Poker as a result of
25 Defendants’ registration and use of the Infringing Domain Name.

26 21. On October 30, 2009, Zynga filed an administrative complaint against Defendants in
27 the World Intellectual Property Organization Arbitration and Mediation Center, pursuant to the
28 Uniform Domain Name Dispute Resolution Process (the “UDRP Complaint”). The UDRP

1 Complaint asserted that Defendants have registered and used the Infringing Domain Name in a bad
2 faith effort to profit from the ZYNGA mark.

3 22. Based on the arguments of both parties, the administrative panel adjudicating the
4 UDRP Complaint found that Defendants registered the Infringing Domain Name in bad faith, and
5 that they have no legitimate rights to the Infringing Domain Name. Accordingly, the panel ordered
6 the Infringing Domain Name transferred to Zynga.

7 **FIRST CAUSE OF ACTION**

8 **(Trademark Infringement)**

9 **(15 U.S.C. § 1114(1))**

10 23. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
11 paragraphs, as though fully set forth in this cause of action.

12 24. Defendants have used and continue to use in commerce a reproduction, copy, or
13 colorable imitation of the registered ZYNGA mark in connection with the sale, offering for sale,
14 distribution, or advertising of goods or services on or in connection with which such use is likely to
15 cause confusion, or to cause mistake, or to deceive.

16 25. Defendants have and continue to reproduce, copy, or colorably imitate the registered
17 ZYNGA mark and apply such reproduction, copy, or colorable imitation to labels, signs, prints,
18 packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in
19 connection with the sale, offering for sale, distribution, or advertising of goods or services on or in
20 connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

21 26. Defendants' conduct as alleged herein has been undertaken willfully and maliciously,
22 and with full knowledge and in conscious disregard of Zynga's rights. Defendants' conduct has
23 caused and will continue to cause Zynga irreparable harm for which there is no adequate remedy at
24 law, and is also causing damage to Zynga in an amount which cannot be accurately computed at this
25 time but will be proven at trial.

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1 **SECOND CAUSE OF ACTION**

2 **(False Designation of Origin Regarding the Mark ZYNGA)**

3 **(15 U.S.C. § 1125(a))**

4 27. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
5 paragraphs, as though fully set forth in this cause of action.

6 28. Defendants' use of the mark ZYNGA constitutes use of a false designation of origin
7 or false and misleading representation in interstate commerce that wrongfully and falsely designates,
8 describes and represents that Defendants' products and services are connected, affiliated or
9 associated with, or authorized by Zynga, and is likely to cause confusion as to Defendants'
10 affiliation, connection or association with Zynga, or as to the origin, sponsorship, approval or
11 authorization of Defendants' products or services by Zynga in violation of 15 U.S.C. §1125(a).

12 29. Defendants' conduct as alleged herein has been undertaken willfully and maliciously,
13 and with full knowledge and in conscious disregard of Zynga's rights. Defendants' conduct has
14 caused and will continue to cause Zynga irreparable harm for which there is no adequate remedy at
15 law, and is also causing damage to Zynga in an amount which cannot be accurately computed at this
16 time but will be proven at trial.

17 **THIRD CAUSE OF ACTION**

18 **(Federal Cybersquatting Regarding the Mark ZYNGA)**

19 **(15 U.S.C. § 1125(d))**

20 30. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
21 paragraphs, as though fully set forth in this cause of action.

22 31. Defendants have registered and used the Internet domain name <zyngapoker.com>
23 with a bad faith intent to profit from the mark ZYNGA.

24 32. The mark ZYNGA was distinctive at the time of registration the <zyngapoker.com>
25 domain name and remains distinctive today.

26 33. The <zyngapoker.com> domain name was confusingly similar to the mark ZYNGA
27 at the time Defendants registered it, and it remains so today.

28 34. Defendants' conduct as alleged herein has been undertaken willfully and maliciously

1 and with full knowledge and in conscious disregard of Zynga's rights. Defendants' bad faith
2 registration of the <zyngapoker.com> domain name has caused Zynga irreparable harm for which
3 there is no adequate remedy at law, and has also caused damage to Zynga in an amount which
4 cannot be accurately computed at this time but will be proven at trial, or at Zynga's election, entitles
5 Zynga to an award of statutory damages in an amount to be determined by the Court.

6 **FOURTH CAUSE OF ACTION**

7 **(California Statutory Unfair Competition)**

8 **(California Business and Professions Code § 17200, *et seq.*)**

9 35. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
10 paragraphs, as though fully set forth in this cause of action.

11 36. Defendants compete directly with Zynga by deliberately attracting Internet users
12 searching for Zynga's Zynga Poker application.

13 37. Defendants are making unauthorized commercial use of the mark ZYNGA in a
14 deliberate, willful, intentional and wrongful attempt to trade on Zynga's goodwill, reputation and
15 financial investments in the mark ZYNGA.

16 38. By reason of Defendants' conduct as alleged herein, Defendants have engaged in
17 unlawful, unfair and/or fraudulent ongoing business practices in violation of California Business &
18 Professions Code § 17200.

19 39. As a direct result of Defendants' unfair competition with regard to the mark ZYNGA,
20 Defendants have unlawfully acquired, and continue to acquire on an ongoing basis, an unfair
21 competitive advantage and have engaged in, and continue to engage in, wrongful business conduct to
22 Defendants' monetary advantage and to the detriment of Zynga.

23 40. Defendants' conduct as alleged herein has been undertaken willfully and maliciously,
24 and with full knowledge and in conscious disregard of Zynga's rights.

25 41. Defendants' illegal and unfair business practices are continuing, and injunctive relief
26 pursuant to California Business and Professions Code § 17203 is necessary to prevent and restrain
27 further violations by Defendants.

28

1 42. This Court has jurisdiction over the subject matter of this claim pursuant to the
2 provisions of 28 U.S.C. § 1338(b), this being a claim of unfair competition joined with a substantial
3 and related claim under the Trademark Laws of the United States, and under 28 U.S.C. § 1367.

4 **FIFTH CAUSE OF ACTION**

5 **(Common Law Trademark Infringement of the Mark ZYNGA)**

6 43. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
7 paragraphs, as though fully set forth in this cause of action.

8 44. Defendants' unauthorized use of the mark ZYNGA constitutes trademark
9 infringement and is likely to cause confusion, deception and mistake among the consuming public
10 and trade as to the source of, and authorization for the products and/or services sold and/or
11 advertised by Defendants in violation of the common law of the State of California.

12 45. Defendants' conduct as alleged herein has been undertaken willfully and maliciously,
13 and with full knowledge and in conscious disregard of Zynga's rights.

14 46. As well as harming the public, Defendants' conduct as alleged herein has caused and
15 will continue to cause Zynga irreparable harm for which there is no adequate remedy at law, and is
16 also causing damage to Zynga in an amount which cannot be accurately computed at this time but
17 will be proven at trial.

18 47. This Court has jurisdiction over the subject matter of this claim pursuant to the
19 provisions of 28 U.S.C. § 1338(b), this being a claim of infringement joined with a substantial and
20 related claim under the Trademark Laws of the United States, and under 28 U.S.C. § 1367.

21 **SIXTH CAUSE OF ACTION**

22 **(California Common Law Passing Off and Unfair Competition)**

23 48. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
24 paragraphs, as though fully set forth in this cause of action.

25 49. By virtue of their conduct as alleged herein, Defendants have engaged and are
26 engaging in unfair competition and passing off under the common law of the State of California.

27 50. As well as harming the public, Defendants' conduct as alleged herein has caused and
28 will continue to cause Zynga irreparable harm for which there is no adequate remedy at law, and is

1 also causing damage to Zynga in an amount which cannot be accurately computed at this time but
2 will be proven at trial.

3 51. Defendants' actions were undertaken intentionally to obtain an unfair advantage over
4 Zynga and in conscious disregard of Zynga's rights, and were malicious, oppressive and/or
5 fraudulent. Zynga requests punitive or exemplary damages pursuant to California Civil Code §
6 3294(a) in an amount sufficient to punish and deter Defendants and to make an example of them.

7 52. This Court has jurisdiction over the subject matter of this claim pursuant to the
8 provisions of 28 U.S.C. § 1338(b), this being a claim of unfair competition joined with a substantial
9 and related claim under the Trademark Laws of the United States, and under 28 U.S.C. § 1367.

10 **REQUEST FOR RELIEF**

11 Zynga requests that this Court:

12 A. Enter a permanent injunction enjoining Defendants and their owners, directors,
13 agents, employees, representatives and all persons or entities acting in concert or participation with
14 Defendants from infringing any of Zynga's trademarks, including without limitation using the mark
15 ZYNGA and/or confusingly similar misspellings or variations thereof, alone or in combination with
16 any other words or phrases, in a manner that is likely to cause confusion with respect to the mark
17 ZYNGA or with respect to Zynga's approval or authorization of Defendants' actions, including but
18 not limited to enjoining Defendants from registering any Internet domain names containing the term
19 ZYNGA and/or of confusingly similar misspellings or variations thereof, alone or in combination
20 with any other terms;


21 B. Enter a permanent injunction requiring Defendants and their owners, directors,
22 agents, employees, representatives and all persons or entities acting in concert or participation with
23 Defendants to immediately cease any conduct suggesting or tending to suggest that any products or
24 services they advertise or offer for sale are directly or indirectly sponsored or approved by, or
25 affiliated with Zynga;

26 C. Order the transfer to Zynga of the Infringing Domain Name and any other Internet
27 domain names Defendants have registered that are identical or confusingly similar to the ZYNGA
28 mark;

- 1 D. Enter a finding that Defendants' actions were oppressive, fraudulent or malicious;
- 2 E. Award Zynga damages in an amount to be proven at trial that will be trebled pursuant
- 3 to the applicable statute, as well as pre-judgment and post-judgment interest;
- 4 F. Award Zynga statutory damages in the amount of \$100,000 as well as pre-judgment
- 5 and post-judgment interest for each and every Internet domain name Defendants have registered that
- 6 is identical or confusingly similar to the ZYNGA mark;
- 7 G. Enter an order, pursuant to 15 U.S.C. § 1118 and other applicable law, directing
- 8 Defendants to deliver for destruction all products in their possession or under their control that
- 9 infringe Zynga's intellectual property rights;
- 10 H. Award Zynga punitive damages in an amount sufficient to punish and deter
- 11 Defendants;
- 12 I. Enter an award of attorneys' fees and costs; and
- 13 J. Award any such other and further relief as this Court deems just and proper.

14 **PLAINTIFF ZYNGA HEREBY DEMANDS A TRIAL BY JURY.**

15
16
17 Dated: January 8, 2010

17 By: 
18 _____
19 Christopher T. Varas
20 Keats McFarland & Wilson LLP
21 Attorneys for Plaintiff
22 ZYNGA GAME NETWORK INC.

Zynga Game Network Inc. v. Just Add Chips LLC, et al.

**U.S. District Court, Northern District of California
(San Francisco Division)**

Case No. _____

COMPLAINT

EXHIBIT 1

United States of America

United States Patent and Trademark Office



Reg. No. 3,685,749 ZYNGA GAME NETWORK INC. (DELAWARE CORPORATION)
Registered Sep. 22, 2009 365 VERMONT STREET
SAN FRANCISCO, CA 94103

Int. Cls.: 9 and 41 FOR: DOWNLOADABLE COMPUTER GAME SOFTWARE FOR USE ON WIRELESS DEVICES AND COMPUTERS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

TRADEMARK SERVICE MARK FIRST USE 6-0-2007; IN COMMERCE 6-0-2007.
PRINCIPAL REGISTER FOR: ENTERTAINMENT SERVICES, NAMELY, PROVIDING ON-LINE COMPUTER GAMES, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 6-0-2007; IN COMMERCE 6-0-2007.

THE MARK CONSISTS OF A DOG NEXT TO ZYNGA.

SER. NO. 77-684,104, FILED 3-5-2009.

KIM SAITO, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT 1
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