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E-filing

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

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

PVT
CASE NO. 10 1022

17
18 Plaintiff,

COMPLAINT FOR:

19 v.

(1) VIOLATION OF 15 U.S.C. § 1125(a); (2) VIOLATION OF 18 U.S.C. § 1030; (3) VIOLATION OF CAL. BUS. & PROF. CODE § 17200; (4) VIOLATION OF CALIFORNIA PENAL CODE § 502; (5) STATE COMMON LAW TRADEMARK INFRINGEMENT; (6) COMMON LAW PASSING OFF AND UNFAIR COMPETITION; (7) BREACH OF CONTRACT; (8) INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS; (9) TRESPASS TO CHATTELS

20 JASON WILLIAMS, an individual, LUNA
21 MARTINI, an individual, and JOHN DOES 1-5
D/B/A MW GROUP

22 Defendants.
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DEMAND FOR JURY TRIAL

CASE NO. _____ COMPLAINT

1 Plaintiff Zynga Game Network Inc. ("Zynga") brings this Complaint against defendants
2 Jason Williams, Luna Martini and John Does 1-5, d/b/a "MW Group" (collectively "Defendants")
3 for injunctive relief and damages 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. §§ 1125(a);
6 violation of the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030; violation of the
7 California statutory law of unfair competition, Cal. Bus. & Prof. Code § 17200; violation of
8 California Penal Code § 502; California common law trademark infringement, passing off and unfair
9 competition; breach of contract; intentional interference with contractual relations; and for trespass
10 to chattels.

11 **The Parties**

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

14 3. On information and belief, Defendant Jason Williams is an individual currently
15 residing in San Francisco, California.

16 4. On information and belief, Defendant Luna Martini is an individual currently residing
17 in San Francisco, California.

18 5. Zynga is currently unaware of the identities of Defendants John Does 1-5
19 ("Defendants"), and therefore sues such defendants by such fictitious acronyms. Zynga is informed
20 and believes that discovery will reveal the true identities of the Defendants. Zynga will amend this
21 Complaint to identify Defendants by name after their identities are discovered.

22 6. On information and belief, the actions alleged herein to have been undertaken by
23 Defendants were undertaken by each Defendant individually, were actions that each Defendant
24 caused to occur, were actions that each Defendant authorized, controlled, directed, or had the ability
25 to authorize, control or direct, and/or were actions in which each Defendant assisted, participated or
26 otherwise encouraged, and are actions for which each Defendant is liable. Each Defendant aided
27 and abetted the actions of the Defendants set forth below, in that each Defendant had knowledge of
28 those actions, provided assistance and benefitted from those actions, in whole or in part. Each of the

1 Defendants was the agent of each of the remaining Defendants, and in doing the things hereinafter
2 alleged, was acting within the course and scope of such agency and with the permission and consent
3 of each and every one of the other Defendants.

4 **Jurisdiction and Venue**

5 7. This action arises under the trademark laws of the United States, 15 U.S.C. § 1051, *et*
6 *seq.*, particularly under 15 U.S.C. §§ 1125(a), as well as the Computer Fraud and Abuse Act, 18
7 U.S.C. § 1030; state unfair competition law; California Penal Code § 502; the common law of
8 trademark infringement, passing off and unfair competition; breach of contract; the common law of
9 intentional interference with contractual relations, and the common law of trespass to chattels. This
10 Court has jurisdiction of the federal claims under 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. §§
11 1116, 1121, and 1125. This Court has supplemental jurisdiction of the state unfair competition
12 claims under 28 U.S.C. § 1338(b), those claims being joined with a substantial and related claim
13 under the Trademark Laws of the United States, and supplemental jurisdiction of all of the state law
14 claims under 28 U.S.C. § 1367(a), those claims being so related to the federal claims that they form
15 part of the same case or controversy and derive from a common nucleus of operative fact.

16 8. Venue is proper in this district under 28 U.S.C. §§ 1391(b), and because Defendants
17 have consented to venue in this district.

18 **Intradistrict Assignment**

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

24 **Factual Allegations**

25 10. Zynga is the largest social gaming company, providing, *inter alia*, online poker
26 games, word games, board games, role playing games and party games including Zynga Poker,
27 Mafia Wars, YoVille, Vampires, Street Racing, Scramble and Word Twist. Zynga's games are
28

1 available on Facebook, MySpace, Bebo, Hi5, Friendster, Tagged, Yahoo!, the iPhone and iPod
2 Touch, among others.

3 11. Zynga's games have been a runaway success. In July, 2008, Zynga had over 1.3
4 million daily active users and 20 million registered users. As of January 1, 2009, Zynga had over 75
5 million registered users. As of May 2009, Zynga had more than 9.5 million daily users. Today,
6 Zynga has over 100 million unique users playing its games every month.

7 12. One of Zynga's most popular properties is Mafia Wars (the "Game"), a computer
8 game for use on wireless devices and computers that allows users to start a Mafia family with their
9 friends and compete to become the most powerful family.

10 13. Zynga coined the service mark MAFIAWARS and has made use of the service mark
11 MAFIA WARS in commerce since September 2008. Zynga coined the trademark MAFIAWARS
12 and has made use of the trademark MAFIA WARS in commerce since April 2009. The MAFIA
13 WARS trademark and service mark are referred herein collectively as the "mark".

14 14. Zynga's success and the success of the MAFIA WARS mark have been widely
15 reported in the press, on the Internet and in blogs. As of February, 2009, the Game had over 1.1
16 million daily active users. As of July, 2009, the Game had more than 4 million daily active users.
17 As of December, 2009, the Game had over 7 million daily active users.

18 15. The mark MAFIA WARS is inherently distinctive, and furthermore, by virtue of the
19 extensive online sales and advertising under the mark MAFIA WARS, the MAFIA WARS mark has
20 become well-known within social gaming circles as a source identifier for the Game.

21 16. Zynga currently owns United States Federal Trademark Application Serial No.
22 77772110 for the mark MAFIA WARS in International Class 009 for downloadable computer game
23 software for use on wireless devices and computers, and International Class 041 for entertainment
24 services, namely, providing on-line computer games.

25 17. Zynga makes the Game available through social networking websites and
26 applications (collectively "Providers"), including but not limited to those identified in Paragraph 10
27 above.

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1 18. Zynga owns or leases the computer servers that players must access in order to play
2 the Game. Zynga grants players who participate in the Game a revocable license to access its
3 servers for the purpose of playing the Game.

4 19. Zynga's Terms of Service govern users' play of the Game, and players who use the
5 Game must consent to the Terms of Service.

6 20. Players who use the Game in a manner not expressly authorized by Zynga, including
7 without limitation in violation of the Terms of Service, are not authorized to participate in the Game,
8 or to access Zynga's servers.

9 21. When users sign up with Zynga to play the Game, they receive a certain amount of
10 "Virtual Currency" that they use to compete in the Mafia Wars game with other players using the
11 Providers' sites and/or applications. Players can increase their total amount of "Virtual Currency"
12 through their play, and can also purchase "Virtual Currency" from Zynga.

13 22. Players use "Virtual Currency" to purchase various virtual, in-Game digital items
14 ("Virtual Goods").

15 23. Zynga grants players a limited, revocable license to use the "Virtual Currency" or
16 "Virtual Goods" while playing the Game, but retains sole and exclusive ownership of the "Virtual
17 Currency" or "Virtual Goods" and the source code that allows the "Virtual Currency" or "Virtual
18 Goods" to be used in the Game.

19 24. Zynga has not authorized any third party to sell the "Virtual Currency" or "Virtual
20 Goods" required to play the Game.

21 25. Among other things, the Terms of Service that govern users' play of the Game
22 prohibit users from selling "Virtual Currency" or "Virtual Goods" for real-world money or otherwise
23 exchanging "Virtual Currency" or "Virtual Goods" for anything of value outside the Game.

24 26. Without Zynga's authorization or approval, Defendants have created and currently
25 operate websites at the Internet domain names MWBLACKMARKET.COM,
26 MAFIAWARSDIRECT.COM and MWFEXPRESS.COM (the "Websites" or the "Domain
27 Names"), possibly among others.
28

1 authorization, at prices that are substantially lower than the prices paid by users who obtain their
2 "Virtual Goods" from Zynga, and by distributing "Virtual Goods" to users in a manner prohibited by
3 the Terms of Service.

4 78. Defendants' actions as alleged herein have caused actual disruption or breach of
5 Zynga's contractual relationships with individual users.

6 79. Defendants' conduct as alleged herein has caused and will continue to cause Zynga
7 irreparable harm for which there is no adequate remedy at law, and is also causing damage to Zynga
8 in an amount which cannot be accurately computed at this time but will be proven at trial.

9 80. This Court has jurisdiction over the subject matter of this claim pursuant to the
10 provisions of 28 U.S.C. § 1367.

11 **NINTH CAUSE OF ACTION**

12 **(Trespass to Chattels)**

13 81. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
14 paragraphs, as though fully set forth in this cause of action.

15 82. Zynga has a possessory interest in the servers that Defendants have used to access the
16 Game and in the virtual "Virtual Goods" Defendants sell.

17 83. Defendants have intentionally and without authorization interfered with Zynga's
18 possessory interest in the servers and the "Virtual Goods" by using the servers to conduct their
19 unauthorized and unlawful activities as alleged herein.

20 84. Defendants' conduct as alleged herein has caused and will continue to cause Zynga
21 irreparable harm for which there is no adequate remedy at law, and is also causing damage to Zynga
22 in an amount which cannot be accurately computed at this time but will be proven at trial.

23 85. Defendants' actions were undertaken intentionally to obtain an unfair advantage over
24 Zynga and in conscious disregard of Zynga's rights, and were malicious, oppressive and/or
25 fraudulent. Zynga requests punitive or exemplary damages pursuant to California Civil Code §
26 3294(a) in an amount sufficient to punish and deter Defendants and to make an example of
27 Defendants.
28

1 services they advertise or offer for sale are directly or indirectly sponsored or approved by, or
2 affiliated with Zynga;

3 F. Order the transfer of the Domain Names, and any other Internet domain names
4 Defendants are using in connection with the sale, offering for sale, advertisement, or exchange of
5 "Virtual Goods" for use in the Game, to Zynga;

6 G. Enter a finding that Defendants' actions were willful, deliberate, and malicious;

7 H. Enter a finding that Defendants' actions were malicious, oppressive and/or
8 fraudulent;

9 I. Award Zynga damages in an amount to be proven at trial that will be trebled pursuant
10 to the applicable statute, as well as pre-judgment and post-judgment interest;

11 J. Enter an order, pursuant to 15 U.S.C. § 1118 and other applicable law, directing
12 Defendants to deliver for destruction all products in their possession or under their control that
13 infringe Zynga's intellectual property rights;

14 K. Award Zynga punitive damages in an amount sufficient to punish and deter
15 Defendants;

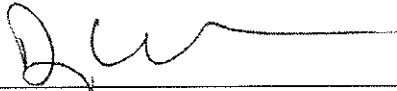
16 L. Enter an award of attorneys' fees and costs; and

17 M. Award any such other and further relief as this Court deems just and proper.

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

19
20 Dated: March 10, 2010

By: _____


Dennis L. Wilson
Keats McFarland & Wilson LLP
Attorneys for Plaintiff
ZYNGA GAME NETWORK, INC.

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CASE NO. _____ COMPLAINT

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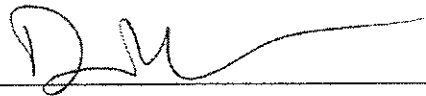
DEMAND FOR JURY TRIAL

Plaintiff Zynga Game Network Inc. hereby demands a trial by jury on all issues for which a jury trial may be had.

Dated: March 10, 2010

Respectfully submitted,

KEATS MCFARLAND & WILSON LLP

By: 

Dennis L. Wilson
Attorney for Plaintiff
ZYNGA GAME NETWORK INC.