

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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U.S. DISTRICT COURT
INDIANAPOLIS DIVISION

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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

DILLINGER, L.L.C

Plaintiff,

vs.

ELECTRONIC ARTS, INC.,

Defendant.

Case No.

1 : 09 -cv- 1236 DFH-JMS

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiff, Dillinger, LLC (hereinafter, "Plaintiff"), by and through its attorneys, for its Complaint for Damages and Injunctive Relief against the Defendant, Electronic Arts, Inc. (hereinafter, "Defendant") based on the investigation of counsel and upon information and belief alleges as follows:

INTRODUCTION

1. This suit arises out of the unlawful use by Defendant of the name of the legendary gentleman-bandit, John H. Dillinger, in video games developed and produced by Defendant. In particular, Defendant produces a series of video games based upon characters and situations authored by Mario Puzo in his novel, The Godfather, Francis Ford Coppola's screen adaptation of the novel with the same name, and Mario Puzo's screenplay for the second film in the series, "The Godfather, Part II."

2. Defendant produced and released the first game of the series, "The Godfather™" or "The Godfather™: The Game" for Sony® PlayStation® 2 (hereinafter, "PS2"), Microsoft® Xbox® (hereinafter, "XBOX"), and the personal computer (hereinafter, "PC"). "The Godfather™: The Game" for Microsoft® Xbox 360® (hereinafter, "X360") and an altered

version of the game, "The Godfather™: Mob Wars" was released for Sony® PlayStation® Portable (hereinafter, "PSP"). EA also released two augmented versions of the game, "The Godfather™: Blackhand Edition" for Nintendo® Wii® (hereinafter, "WII") and "The Godfather™: The Don's Edition" for Sony® PlayStation® 3 (hereinafter, "PS3").

3. Defendant also produced and released the second game of the series, "The Godfather® II" for X360, PS3, and PC.

4. All games based upon the first "The Godfather™" game incorporating "The Dillinger Level Three Tommy Gun."

5. All "The Godfather® II" games incorporating "The Modern Dillinger Level Four Tommy Gun."

THE PARTIES

6. Plaintiff is a limited liability corporation, organized under the laws of Indiana, with its principal place of business in Mooresville, Indiana. Plaintiff owns the publicity right and various trademarks for the name and nicknames of the late depression-era bandit, John Dillinger.

7. Upon information and belief, Defendant is a multi-billion dollar corporation organized under the laws of Delaware, with its principal place of business in Redwood City, California. Defendant, the self-proclaimed "world's leading interactive entertainment software company," develops and produces computer and video games for multiple gaming platforms.

JURISDICTION AND VENUE

8. This is an action for right of publicity violation, conversion, unjust enrichment, federal, state, and common law trademark infringement, unfair competition, false designation of origin, contributory trademark infringement, and civil action under the Indiana Crime Victims Act.

9. This Court has personal jurisdiction over Plaintiff's state claims cited herein pursuant to Indiana Trial Rule 4.4(A), as well as concurrent jurisdiction over Plaintiff's federal claims pursuant to the Lanham Trademark Act, § 39, 15 U.S.C.A. § 1121. The Court has personal jurisdiction over Defendant because Defendant conducts substantial business in this district.

10. Venue is proper in this district pursuant to Indiana Trial Rule 75(A). Furthermore, Defendant, as a corporation, is "deemed to reside in any judicial district in which [it is] subject to person jurisdiction," and because Defendant transacts substantial business within this District, venue is proper under 28 U.S.C.A. § 1391.

ALLEGATIONS COMMON TO ALL COUNTS

11. Upon information and belief, John Dillinger, the famous and legendary gentleman bandit, died on July 22, 1934.

12. Pursuant to Indiana Code § 32-36-1, et. Seq. (the "Indiana Right of Publicity Statute"), The Dillinger personality survived John Dillinger's death and includes, without limitation, John Dillinger's name, voice, signature, photograph, image, likeness, distinctive appearance, gestures and/or mannerisms (hereinafter the "Dillinger Personality"). As a consequence of his fame and prominence and as a consequence of Plaintiff's widely recognized persona, the Dillinger name, image and likeness has substantial commercial value.

13. The Dillinger Personality is a property right recognized and protected by the State of Indiana, pursuant to Ind. Code § 32-36-1-7.

14. Plaintiff is the majority interest owner in the Dillinger Personality, pursuant to Ind. Code § 32-36-1-16(6) and Ind. Code § 32-36-1-18, thereby giving it authority to exercise and enforce the rights and remedies afforded by the Indiana Right of Publicity Statute.

15. Plaintiff is also the owner of U.S. Trademark Registration Nos. 2809305 and 2944205 for the mark JOHN DILLINGER (the "Dillinger Trademarks").

16. Upon information and belief, Defendant develops and publishes software for computers, handheld gaming devices, and home video game consoles.

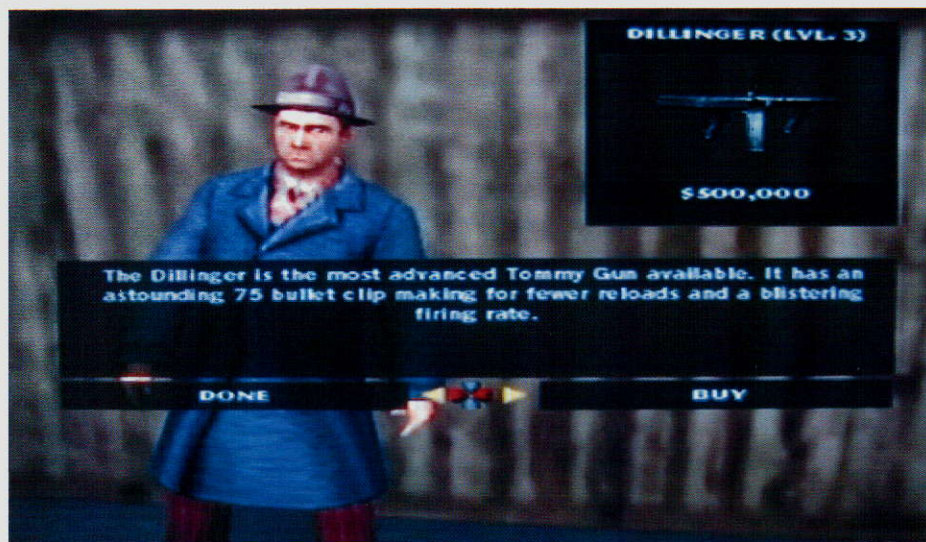
17. Defendant produces a series of video games based upon characters and situations authored by Mario Puzo in his novel, The Godfather, Francis Ford Coppola's screen adaptation of the novel with the same name, and Mario Puzo's screenplay for the second film in the series, "The Godfather®, Part II."

18. Defendant produced two different game storylines for its "The Godfather®" games. The first, which takes place in New York City in 1945, the second, which takes place in Havana, Cuba, Miami, Florida, and New York City in the late 1950s and early 1960s. The games following the first storyline include "The Godfather™" or "The Godfather™: The Game" (XBOX, X360, PS2, PC), "The Godfather™: Blackhand Wars (WII), "The Godfather™: Mob Wars (PSP), and "The Godfather™: Don's Edition" (PS3) (images of each are attached hereto as **Exhibit A**). "The Godfather® II" (X360, PS3, PC) games each follow the second storyline (attached hereto as **Exhibit B**).

19. The games set in 1945 (the games following the first storyline) require the gamer to purchase several guns on the black market in order to control the mafia territories in an effort to become Don of New York City. As the gamer progresses through the story and acquires more territorial control, greater fire power is needed, thus requiring the gamer to upgrade to various firearms offered for sale. One such firearm upgrade, and arguably the most powerful weapon on the streets, is the "Dillinger Level Three Tommy Gun."



20. The "Dillinger Level Three Tommy Gun," a fully-automatic weapon, succeeds in having greater firepower in the game due to its larger seventy-five round clip allowing for fewer reloads and a more rapid rate of fire. The result is a swift and gruesome killing machine.

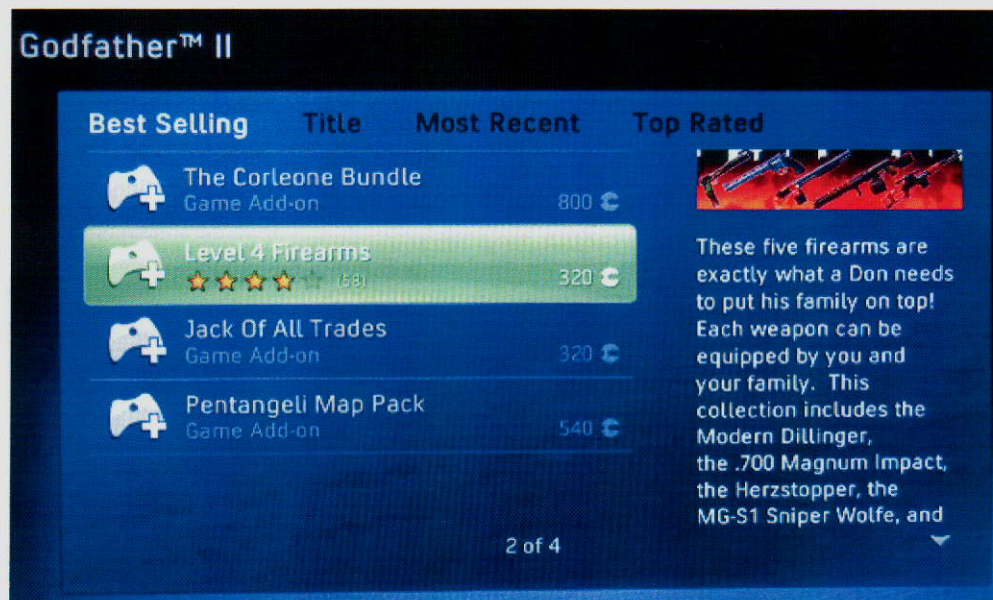




21. The “Godfather® II” games (those following the second storyline), again require the gamer to upgrade weapons to protect and build the mob family’s area of control. The game requires defense against rival international and domestic mobs en route to becoming the most powerful mob family in America and Cuba. As in the first storyline, to accomplish dominion, a gamer must purchase upgraded weapons on the black market in the game, providing greater fire power for increasingly hostile threats. To capitalize on the demand from its gamers for more gruesome and more powerful weapons, Defendant elected to incorporate downloadable content (hereinafter, “DLC”) to supply the greatest level of firepower in the “Godfather® II” games.

22. With an active internet connection and a subscription to either online gaming marketplace (Microsoft® Xbox® LIVE or Sony® PlayStation® Network), gamers can purchase, for an additional fee above that already paid for the game, DLC to augment, and in the case of “Godfather® II”, truly complete the gamer’s domination of the North American organized crime rings. Defendant offers for sale via both online gaming marketplaces the “Level Four Premium

Weapons Bundle” (\$4.00) and “The Corleone Bundle” (\$10.00), both of which include the most powerful weapons in the game. The bundles are purchased through the gamer’s account, downloaded, and then installed on the gamer’s system hard drive. The game is then updated, and the premium guns are available for use inside the game. One such premium weapon is “The Modern Dillinger Level Four Tommy Gun.”



23. The “Modern Dillinger,” like the weapon in the first storyline, is a fully-automatic weapon, and succeeds in having greater firepower in the game due to its larger seventy-five round clip allowing for fewer reloads and a more rapid rate of fire.



The Modern Dillinger aka Level 4 TommyGun (Photo: Business Wire)

24. Defendant has not obtained the consent or authorization of Plaintiff or any other authorized representative to utilize the Dillinger Personality or Dillinger Trademarks for commercial purposes.

25. Defendant does not have, nor has ever had, permission from Plaintiff or any other authorized representative to use any aspect of the Dillinger Personality or Dillinger Trademarks for any purpose including a commercial purpose.

26. Defendant has been put on notice of Plaintiff's rights associated with the Dillinger Personality and Dillinger Trademarks and Plaintiff's objection to the Defendant's unauthorized use of same.

27. Upon information and belief, Defendant continues to knowingly and willfully violate Plaintiff's Dillinger Personality and Dillinger Trademarks.

COUNT I
VIOLATION OF INDIANA PUBLICITY STATUTE
AND GROUNDS FOR PERMANENT INJUNCTION

28. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 26, as if set forth in full herein.

29. The Defendant's use of the Dillinger Personality violates the Indiana Right of Publicity Statute, Ind. Code §§ 32-36-1 et seq., in that the Defendant has used the Dillinger Personality on or in connection with a product, service, commercial activity, and/or for advertising or soliciting purchases of products, services, or for promoting commercial activities.

30. Defendant does not have authority or consent to use the Dillinger Personality in connection with its products, services, commercial activities and/or advertising of same.

31. Defendant's infringing and unauthorized use of the Dillinger Personality is knowing, willful, and/or intentional and has caused damage and will continue to cause damage to Plaintiff.

COUNT II
UNJUST ENRICHMENT

32. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 34, as if set forth in full herein.

33. Defendant has profited from its unauthorized sale of products using the Dillinger Personality and advertising of same.

34. Defendant has been and continues to be unjustly enriched through its unauthorized use of the Dillinger Personality.

35. Defendant's profits are based in whole or in part on the unauthorized use of the Dillinger Personality in violation of Indiana's Right of Publicity Statute.

36. Such enrichment has been to the detriment of Plaintiff.

COUNT III
FEDERAL, STATE AND COMMON LAW
TRADEMARK INFRINGEMENT

37. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through 39 of this Complaint.

38. The federal cause of action set forth herein arises under the Lanham Act 15 U.S.C.A § 1114(a).

39. The state cause of action set forth herein arises under the Indiana Trademark Act, Ind. Code § 24-2-1 et seq.

40. Plaintiff's JOHN DILLINGER® trademark is distinctive and has been used in commerce to license and reference the name, image, and likeness of the legendary gentleman-bandit, John Dillinger, since December 10, 2001.

41. It is also the owner of certain common law trademarks in the mark JOHN DILLINGER.

42. Defendant, by terming a gun "Dillinger" within its Godfather® series of games, is likely to cause confusion, mistake, or deception in the minds of consumers as to Plaintiff's approval of the usage.

43. Defendant's continued use of the JOHN DILLINGER® trademark causes the Plaintiff irreparable harm.

44. Defendant has derived and will continue to receive from the above alleged acts of infringement, profits and revenues in an amount that is not presently known to Plaintiffs. Additionally, such acts of infringement were made with knowledge of their capacity to deceive consumers and were thus committed intentionally and willfully. By reason of the above acts of infringement, Plaintiffs have been and will continue to be damaged in an amount to be determined only at trial.

45. The activities of Defendant as alleged in this Complaint have caused and will continue to cause irreparable harm to Plaintiffs for which Plaintiffs have no adequate remedy at law. Accordingly, Plaintiffs are entitled to injunctive relief.

COUNT IV
UNFAIR COMPETITION

46. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 48, as if set forth in full herein.

47. The above-described unlawful and unauthorized acts of Defendant constitute a violation of the intellectual property rights of Plaintiff at common law and further constitute unfair competition.

COUNT V
FALSE DESIGNATION OF ORIGIN

48. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 50, as if set forth in full herein.

49. The Defendant's use of the JOHN DILLINGER trademark is in violation of 15 U.S.C.A § 1125 in that Defendant used the trademark in commerce and such use is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiff.

50. Plaintiff is entitled to an injunction against Defendant for its commercial use of the JOHN DILLINGER trademark in commerce and because such use is willful, Plaintiff is also entitled to other relief as provided by 28 U.S.C.A §§ 1125 and 1117 including Defendant's profits, damages and costs.

COUNT VI
CIVIL ACTION UNDER THE INDIANA CRIME VICTIMS ACT

51. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through 60 of this Complaint.

52. Pursuant to the Indiana Crime Victims Act, Indiana Code § 34-24-3-1, a person that suffers pecuniary loss as a result of a violation of Ind. Code. § 35-43 et seq. may bring a civil action against the person who caused the loss for treble damages, costs of the action and reasonable attorneys' fees.

53. Defendant has violated Ind. Code § 35-43 in the following particulars:

- a. For "Criminal Mischief" as expressed in Ind. Code § 35-43-4-2;
- b. For "Conversion" as expressed in Ind. Code § 35-43-4-3;
- c. For "Deception" as expressed in Ind. Code § 35-43-5-3(a)(6) and (9).

54. As a result of these violations, Plaintiff has suffered actual damages in excess of the minimum jurisdictional requirements of this Court.

55. Accordingly, Plaintiff is entitled to an award of those actual damages as well as statutory treble damages, costs, and attorneys' fees.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues raised in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, respectfully requests the following relief:

- A. Those damages as permitted by law, including treble or punitive damages;
- B. A permanent injunction enjoining and restraining the Defendant from: (1) conducting further sale of goods or services which bear or are related to any aspect of the Dillinger Personality and/or Dillinger Trademarks; (2) conducting further sales or solicitation of services utilizing the Dillinger Personality; and (3) conducting advertising, which bears any aspect of the Dillinger Personality and/or Dillinger Trademarks and/or Dillinger Trademarks;
- C. An order that all unsold inventory, bearing any aspect of the Dillinger Personality or Dillinger Trademarks be turned over to Plaintiff for destruction or other reasonable disposal, at Defendant's cost;
- D. An order that the Defendant bear the cost of any rehabilitative advertising necessary to correct the damages done to the Dillinger Personality and/or Dillinger Trademarks;
- E. Plaintiff's reasonable attorneys fees, costs and expenses related to this action; and

F. All other relief just and proper in the premises.

Respectfully submitted,



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