

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

THE LEARNING COMPANY, a division of  
HOUGHTON MIFFLIN HARCOURT  
PUBLISHING COMPANY, and HMH  
CONSUMER COMPANY LTD.

Plaintiffs,

v.

ZYNGA INC.

Defendant.

Civil Action No. 11-10894

**ORIGINAL COMPLAINT**

1. This case seeks to prevent Zynga Inc. (“Defendant” or “Zynga”) from intentionally infringing the federally-registered, famous and incontestable trademark THE OREGON TRAIL (the “Mark”) for video games. The Learning Company and its predecessors and licensees (collectively, “The Learning Company”) have exclusively used THE OREGON TRAIL since at least 1974, and have a historic user-base of approximately 65 million people. The video game is among the most widely played and highly regarded video games of all time, and Defendant intends to launch an identically themed video game using the same name in order to trade off The Learning Company’s fame and goodwill:

**The Learning Company**



**Zynga**



2. Zynga's deliberate theft of the goodwill associated with the iconic THE OREGON TRAIL Mark will cause Plaintiffs significant harm and should be stopped.

3. Originally created by educators in 1971, The Learning Company's THE OREGON TRAIL branded video game has been a staple in homes and classrooms for more than three decades. Designed to sharpen decision making skills and a sense of responsibility, THE OREGON TRAIL has been used by over 60% of 3<sup>rd</sup>-5<sup>th</sup> grade teachers and 40% of 6<sup>th</sup>-8<sup>th</sup> grade teachers nationwide to teach students about the perils of the frontier period in American history. Today, the game is available on CD-ROM for use on personal computers, as a downloadable application on mobile devices such as iPhones and iPads, and for play on the Facebook social networking website.

4. Over the years, The Learning Company has invested millions of dollars and thousands of employee hours developing and promoting THE OREGON TRAIL brand. As a result, it has developed enormous goodwill in the Mark.

5. There can be no doubt that Zynga's adoption of an identical and confusingly similar mark is willful and intended to free-ride on the established goodwill of THE OREGON TRAIL Mark. Not only is The Learning Company's game famous, The Learning Company approached Zynga in 2010 to inquire whether it would be interesting in assisting The Learning Company in developing a version of the game for play on Facebook. Zynga requested more information about The Learning Company's THE OREGON TRAIL brand and The Learning Company sent Zynga detailed information on the brand, history, sales, and development plans. After preliminary discussions, the parties decided not to work together.

6. Thereafter, The Learning Company worked with another game developer, Blue Fang, LLC, to produce a Facebook version of THE OREGON TRAIL game, which launched in

February 2011. The Facebook version became an immediate success, acquiring more than 850,000 users in the first 40 days and about 1.2 million downloads since its launch.

7. According to its websites and press releases, Zynga intends to launch an identically themed video game played on the same gaming platform using the same name, “Oregon Trail,” on May 30, 2011.

8. Zynga’s deliberate use of The Learning Company’s trademark is consistent with its reputation as a willful infringer of others’ intellectual property rights. *See, e.g., “Zynga’s Secret to Success: Steal Great Ideas!”* Business Insider, available at <http://www.businessinsider.com/how-zynga-is-just-like-microsoft-2010-1#comments>, visited May 10, 2011. Indeed, Zynga’s CEO, Mark Pincus, has admitted in the past that Zynga has engaged in “every horrible thing in the book” to generate revenue. *See* <http://www.youtube.com/watch?v=S7YaVVpK1G4>.

9. Zynga’s use of “OREGON TRAIL” is likely to cause confusion among consumers, to dilute and tarnish the distinctive quality of THE OREGON TRAIL Mark, and to cause irreparable harm to The Learning Company’s valuable goodwill. Zynga’s conduct constitutes federal trademark infringement (15 U.S.C. §§ 1114 and 1125(a)), state law dilution under the laws of Delaware, Georgia, Louisiana, Maine, Massachusetts, Missouri, New Hampshire, New York, Rhode Island, and Texas, and unfair competition under Mass. Gen. L. ch. 93A.

### **PARTIES**

10. The Learning Company is an unincorporated division of Houghton Mifflin Harcourt Publishing Company.

11. Houghton Mifflin Harcourt Publishing Company (“Houghton Mifflin Harcourt”) is a Massachusetts corporation with its principal place of business at 222 Berkeley Street, Boston, Massachusetts 02116.

12. HMH Consumer Company Ltd. (“HMHCC”) is an Ireland company with its principal place of business at 70 Sir John Rogerson’s Quay, Dublin, Ireland 2. HMH Consumer Company Ltd. is an affiliate of Houghton Mifflin Harcourt Publishing Company.

13. Upon information and belief, defendant Zynga Inc. is a Delaware corporation with its principal place of business at 444 De Haro Street, Suite 132, San Francisco, California 94107.

### **JURISDICTION AND VENUE**

14. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a) and (b), and supplemental jurisdiction under 28 U.S.C. § 1367.

15. Upon information and belief, venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c) because this is the judicial district where (i) a substantial part of the events or omissions giving rise to the claim occurred; and (ii) where Defendants are subject to personal jurisdiction.

### **FACTS**

#### **The Learning Company and its OREGON TRAIL Brand Game**

16. The Learning Company is a recognized leader in educational software and adventure games that engage children of all ages as well as adults. It has an unparalleled reputation among parents, teachers, and children for providing high-quality original educational games. The Learning Company has many properties available on different media, but its most well known are THE OREGON TRAIL and WHERE IN THE WORLD IS CARMEN SAN DIEGO branded products.

17. THE OREGON TRAIL brand video game is an iconic educational video game. Players engage in decision-making, problem-solving, and role-playing as pioneers heading west during America's frontier period. Players perform tasks such as setting up a wagon, provisioning, hunting, fording rivers, and helping others. Along the way, the characters encounter wild animals, thieves and bandits, bad weather, and disease.

18. The game was originally designed by Don Rawitsch in 1971 at Carlton College. Mr. Rawitsch had the idea to create a computer program for a history class he was teaching. In 1974, Mr. Rawitsch joined the Minnesota Educational Computing Consortium, or MECC, a state-funded organization that developed educational software for the classroom. The MECC encouraged the use of the game in Minnesota classrooms and the game became an instant hit: children enjoyed the game play and parents and teachers liked its educational attributes.

19. In 1978, the game was released on the Apple II with improved, but still very basic graphics and game play:



20. In 1985, the game was released on the Apple IIe and in 1992 on Microsoft Windows (PC) platforms. Eventually, additional versions were issued with improved graphics and even more engaging game play, *e.g.*, The Oregon Trail II (1996), The Oregon Trail III (1997), The Oregon Trail IV (2001), and The Oregon Trail V (2004).

21. Through a series of mergers and name changes in the 1990s, MECC became The Learning Company in 1996. The Learning Company was ultimately acquired by Riverdeep Group plc, a company which also acquired Houghton Mifflin Company and later adopted the name Houghton Mifflin Harcourt Publishing Company. The Learning Company now operates as an unincorporated division of Houghton Mifflin Harcourt.

22. Millions of units of THE OREGON TRAIL brand games have been sold representing hundreds of millions of dollars in revenue.

23. Throughout the 1980s, 1990s, and 2000s the various THE OREGON TRAIL branded games were played by tens of millions of school children and adults in classrooms and on home computers across the country. THE OREGON TRAIL branded video games have a lifetime estimated user-base of over 65 million.

24. The game has garnered countless accolades and awards. For example, in 2004 a market research study by Education Market Research ranked the game the #1 Best supplemental product for social studies in Grades K-12.

25. The game has been used by over 60% of 3<sup>rd</sup> – 5<sup>th</sup> grade teachers and 40% of 6<sup>th</sup> – 8<sup>th</sup> grade teachers nationwide. In 2006, an online survey of the National Panel of Parents of School Age Children indicated a 40-45% awareness of the brand.

26. Numerous commentators and magazines, including MacLife and GameSpot, have ranked THE OREGON TRAIL game as among the greatest games of all time. MacLife wrote:

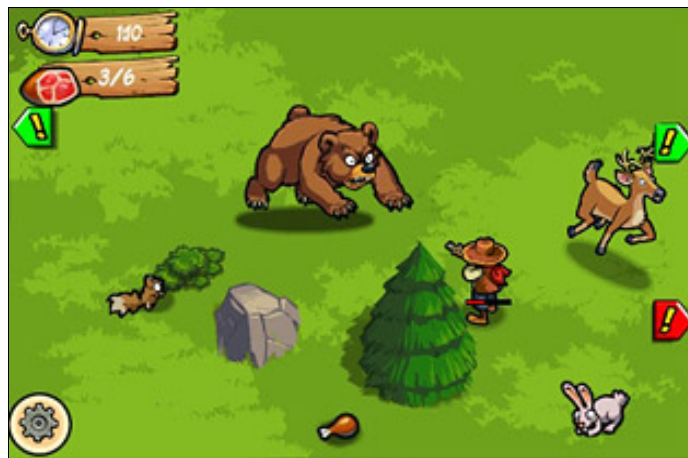
This edutainment staple originated on DOS, but many gamers remember its ubiquitous 1985 Apple II version, often found in schools. We remember the hunting. This prospecting simulation recreates the one-way trip West, full of river crossings, toil, and disease. Your job is to see your virtual wagoners safely across the continent; there's always a semi-random danger waiting over the next hill. Save money on expensive food rations, and just load up on ammunition. That's living off the land. Oregon Trail has been updated every few years, staying fairly current for today's kids.

See [http://www.maclife.com/article/the\\_top\\_10\\_apple\\_games\\_of\\_all\\_time?page=0,1](http://www.maclife.com/article/the_top_10_apple_games_of_all_time?page=0,1).

27. As a result of the game's popularity, and its longstanding role in grade school classrooms, THE OREGON TRAIL and various unique aspects of its game play have become well-known cultural references. For example, dysentery is a common cause of death in the game, which has caused fans to parody the disease on t-shirts, and in videos and songs.

28. In 2008 The Learning Company joined with video game developer Gameloft to developed THE OREGON TRAIL game for mobile platforms such as iPhones and other mobile phones and handheld game devices like the Nintendo DSi. The mobile application launched in October 2008. As of April 2011, almost 3,000,000 copies of the mobile application had been downloaded, ranking it 1<sup>st</sup> among educational games, 4<sup>th</sup> among strategy games, and 43<sup>rd</sup> among all games on the Apple iTunes App Store.

29. In connection with its 2008 mobile version of the game, The Learning Company adopted a modern and distinctive cartoon-like look for the game play and characters:



30. In the Spring of 2010 The Learning Company approached Zynga to inquire about collaborating on the development of THE OREGON TRAIL game for the Facebook platform. At Zynga's request, The Learning Company provided detailed information describing THE



OREGON TRAIL brand history, sales, and development plans. The parties ultimately decided not to collaborate with each other.

31. Shortly thereafter, The Learning Company joined with video game developer Blue Fang, LLC to develop a Facebook version of THE OREGON TRAIL game using the same distinctive look for the game play and characters as used in the mobile application version:



32. The Facebook version launched in February 2011 and within the first 40 days it had more than 850,000 users.

33. Since the February 2011 launch of THE OREGON TRAIL Facebook game, 1.2 million users have downloaded the game.

34. Like many games on Facebook, THE OREGON TRAIL Facebook game is free to play, but users can choose to pay small amounts to overcome game obstacles, outfit their character with additional useful equipment, or otherwise advance the game play.

35. The launch of The Learning Company's THE OREGON TRAIL game on Facebook drew significant media attention, with outlets such as The Washington Post, CNN, Yahoo! News, Rolling Stone Magazine and countless others running stories noting the launch.

36. Over the years, The Learning Company has spent millions of dollars and thousands of employee hours to build and protect THE OREGON TRAIL Mark. As a result of these efforts, the Mark has acquired enormous goodwill.

37. HMHCC owns a valid federal registration for THE OREGON TRAIL Mark, U.S. Regis. No. 1,771,617, for “computer game programs and instruction manuals therefore sold as a unit.” That registration has since become incontestable, and, as a result, the registration is conclusive evidence of (i) the validity of the Mark, (ii) ownership of the Mark, and (iii) the exclusive right to use the Mark in commerce.

38. Houghton Mifflin Harcourt, of which The Learning Company is an operating division, licenses the Mark from its corporate affiliate, HMHCC.

39. Plaintiffs and their licensees have exclusively used the Mark in commerce for video games since at least 1974. All use has inured to Plaintiffs’ benefit and goodwill.

### **Zynga and its Business**

40. Zynga is a video game developer that primarily makes games for play on the Facebook social network. It was founded in 2007 by its CEO, Mark Pincus. Zynga’s games include Mafia Wars, FarmVille, PetVille, and FrontierVille. Zynga claims to have more than 250 million monthly active users and more than 50 million daily active users of its games on Facebook.

41. Upon information and belief, Zynga has 1,300 employees and raised more than \$200 million in private funding to support its business. It is estimated that in 2011, Zynga expects revenue to reach \$1.8 billion, from which it will make \$630 million in profits. Like other Facebook game providers, Zynga earns money by allowing participants to make small real world payments for game world goods that advance the game or allow the players to overcome obstacles.

42. Zynga has a reputation in the gaming industry as a developer that disregards others' intellectual property rights. For example, the Business Insider wrote: "One way Zynga creates huge hits is by identifying popular games from other studios, creating a near replica, and then beating the original with a bigger marketing budget. As with Microsoft, this strategy has made Zynga unpopular. The company has already paid one seven-figure settlement, and is mired in a slew of ongoing lawsuits." See "Zynga's Secret to Success: Steal Great Ideas!," Business Insider, available at <http://www.businessinsider.com/how-zynga-is-just-like-microsoft-2010-1#comments>, visited May 10, 2011.

43. Another article, in the SF Weekly, describes Zynga's practices in a similar way:

In light of Zynga's phenomenal rise, one former senior employee recalls arriving at the company eager to discover what new business practices were driving its success in a market where other popular Web 2.0 ventures struggled to make money. What was Zynga's secret? Not long after starting work, he got an answer. It came directly from Zynga founder and CEO Mark Pincus at a meeting. And it wasn't what he expected.

"I don't [expletive] want innovation," the ex-employee recalls Pincus saying. "You're not smarter than your competitor. Just copy what they do and do it until you get their numbers."

The former employee, who requested anonymity in order to speak candidly about his experience at Zynga, said this wasn't just bluster. Indeed, interviews conducted by SF Weekly with several former Zynga workers indicate that the practice of stealing other companies' game ideas — and then using Zynga's market clout to crowd out the games' originators — was business as usual.

The article succinctly characterizes the Zynga business model in the headline: "*FarmVillains: Steal someone else's game. Change its name. Make millions. Repeat.*" See <http://www.sfweekly.com/2010-09-08/news/farmvillains/>, visited May 10, 2011.

### **Zynga's Knowledge of THE OREGON TRAIL Brand**

44. Zynga is aware of The Learning Company's use of THE OREGON TRAIL Mark for video games not only because THE OREGON TRAIL is famous, but because Zynga used the brand to hype its own products in the past, and because it directly solicited and received information about THE OREGON TRAIL brand from The Learning Company.

45. Upon information and belief, Zynga launched a game called FrontierVille in 2010. In connection with the launch Brian Reynolds, Zynga's Head Game Designer, participated in interviews to tout the new game. During these interviews he referred to the FrontierVille game as "Oregon Trail meets 'Little House on the Prairie' meets [Zynga's] FarmVille." *See, e.g.,* <http://blog.games.com/2010/06/09/oh-pioneer-frontiervilles-brian-reynolds-takes-on-the-wild-wes/>, visited May 10, 2011. The reference to OREGON TRAIL is to The Learning Company's THE OREGON TRAIL brand video game.

46. As set forth above, The Learning Company also held brief discussions with Zynga while it was looking for a developer for a Facebook version of THE OREGON TRAIL game. In the course of those discussions The Learning Company provided Zynga with details concerning the brand. In email correspondence Zynga's Director of Brand Advertising repeatedly acknowledged THE OREGON TRAIL as The Learning Company's "brand."

47. Putting aside Zynga's actual knowledge, Zynga is deemed to be on at least constructive notice of The Learning Company's (and its affiliates') rights by virtue of HMMCC's incontestable federal registration for THE OREGON TRAIL Mark, U.S. Regis. No. 1,771,617.

### **Zynga's Adoption of the Identical Name for the Identical Goods**

48. Recently, The Learning Company learned that Zynga intends to launch a Facebook game using the name "OREGON TRAIL" in connection with its existing FrontierVille game. Specifically, Zynga posted a "trailer" on YouTube advertising the game with the name

“OREGON TRAIL” and several gaming websites have commented on the launch and the name “OREGON TRAIL.” *See, e.g.,*

[http://www.youtube.com/watch?v=7myy\\_CZV8&feature=related](http://www.youtube.com/watch?v=7myy_CZV8&feature=related), visited May 10, 2011;

<http://blog.games.com/tag/oregon%20trail/>, visited May 13, 2011,

<http://gamersunite.coolchaser.com/topics/62611-frontierville-oregon-trail-set-to-release-may-30>,

visited May 13, 2011. Upon information and belief, the Zynga OREGON TRAIL game will be accessible to users in Massachusetts and elsewhere.

49. In addition to having the identical name, according to current marketing, the Zynga game will use a highly similar theme and game play. Both games follow the adventures of a pioneer family as they load their wagons and travel west to Oregon. Like with The Learning Company game, participants in the Zynga game perform tasks such as setting up a wagon, provisioning, hunting, fording rivers, and helping others. Along the way, the characters also encounter wild animals, thieves and bandits, bad weather, and disease. As in THE OREGON TRAIL game, Zynga’s participants commonly fall victim to dysentery, which is euphemistically called “the Rocky Mountain Scoots” in Zynga’s advertising.

50. The likelihood of confusion created by Zynga’s use of an identical trademark is increased by the fact that Zynga also uses a confusingly similar modern and distinctive cartoon-like look for the game play:



51. In addition to the same gaming platform, theme, and look and feel, Zynga uses the same channels of advertising to target the same users as The Learning Company, namely the Internet, and users of [www.facebook.com](http://www.facebook.com).

52. In light of the foregoing, upon information and belief, Zynga's adoption of the identical name "OREGON TRAIL" is willful and intentional.

53. Zynga's use of a mark that is identical to The Learning Company's THE OREGON TRAIL Mark, on or in connection with the same goods, is likely to cause confusion, mistake, and deception among The Learning Company's customers and potential customers and the general public, and to cause individuals and businesses to erroneously believe that The Learning Company has an affiliation, connection, or association with Zynga, or that The Learning Company has sponsored or approved the use of its Mark by Zynga, all to the irreparable harm and detriment of The Learning Company and the substantial goodwill it has developed in THE OREGON TRAIL Mark.

54. The confusion caused by Zynga's conduct is likely to take several forms, including initial interest, direct, reverse, and post-sale confusion among customers and potential customers (each of which is likely and will cause irreparable harm).

55. Zynga's use of the name "OREGON TRAIL" will dilute the distinctive quality of THE OREGON TRAIL Mark insofar as The Learning Company's prior use was long-standing and exclusive. Also, Zynga's reputation as a corporate bad actor that has admittedly engaged in "every horrible thing in the book" will tarnish the reputation and goodwill associated with THE OREGON TRAIL Mark.

56. HMHCC has never granted Zynga a license to use THE OREGON TRAIL Mark.

57. As a result of the foregoing, Zynga's use of "OREGON TRAIL," and any other confusingly similar mark, should be preliminarily and permanently enjoined and plaintiffs should be entitled to monetary damages, treble damages, and attorneys' fees and costs.

**COUNT I**  
**(Trademark Infringement—15 U.S.C. § 1114)**

58. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 57 above as if fully set forth herein.



59. As described above, Plaintiff HMHCC is the owner of an incontestable federal trademark registration for THE OREGON TRAIL Mark, U.S. Regis. No. 1,771,617. HMHCC licenses the Mark to Houghton Mifflin Harcourt, of which The Learning Company is an unincorporated division.

60. Plaintiffs' ownership and use in commerce of THE OREGON TRAIL Mark predates Zynga's use. Plaintiffs' federal registration of THE OREGON TRAIL Mark also predates Zynga's use of the Mark.

61. Upon information and belief, given the fame of THE OREGON TRAIL brand game and The Learning Company's communications with Zynga, Zynga's conduct is willful and intentional and intended to free-ride off of the goodwill associated with THE OREGON TRAIL Mark. Zynga is and was at all relevant times at least constructively aware of Plaintiffs' prior use, ownership, and registration of THE OREGON TRAIL Mark, and Zynga's conduct with respect to that Mark is therefore also willful and intentional.

62. Zynga uses Plaintiffs' Mark in interstate commerce in connection with the advertising of its video game and, upon information and belief, will use the Mark in interstate commerce in connection with the distribution and additional marketing of its video game after May 30, 2011.

63. Zynga's use in commerce of "OREGON TRAIL," as described above, constitutes trademark infringement in violation of 15 U.S.C. § 1114 in that it is without plaintiffs' consent and is likely to cause confusion, mistake, and/or deception with respect to plaintiffs' registered trademark, all to the irreparable injury of plaintiffs and the goodwill they have developed in THE OREGON TRAIL Mark.

64. As a direct and proximate result of Zynga's violations of 15 U.S.C. § 1114, plaintiffs have been and will continue to be damaged.



65. Upon information and belief, Zynga will realize substantial revenues, profits, and other benefits rightfully belonging to The Learning Company as a result of its wrongful conduct.

66. Zynga's conduct is causing and will continue to cause Plaintiffs to suffer irreparable harm and, unless Zynga is restrained, Plaintiffs will continue to be so damaged, because it has no adequate remedy at law.

**COUNT II**  
**(False Designation of Origin—15 U.S.C. § 1125(a))**

67. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 66 above as if fully set forth herein.

68. As described above, Plaintiff The Learning Company has used THE OREGON TRAIL Mark exclusively for more than thirty years. It currently licenses HMHCC's federal trademark rights.

69. THE OREGON TRAIL Mark is distinctive and has acquired secondary meaning among consumers, who exclusively associate THE OREGON TRAIL Mark with plaintiffs.

70. Plaintiffs' ownership and use in commerce of THE OREGON TRAIL Mark Marks predates the use by Zynga of the confusingly similar term "OREGON TRAIL."

71. Upon information and belief, given the fame of THE OREGON TRAIL brand game and The Learning Company's communications with Zynga, Zynga's conduct is willful and intentional and intended to free-ride off of the goodwill associated with THE OREGON TRAIL Mark.

72. Zynga uses THE Mark in interstate commerce in connection with the advertising of its video game and, upon information and belief, will use the Mark in interstate commerce in connection with the distribution and additional marketing of its video game after May 30, 2011.

73. Zynga's use in commerce of the Mark, as described above, constitutes false designation of origin in violation of 15 U.S.C. § 1125(a)(1)(A) in that it is likely to cause confusion, to cause mistake, or to deceive as to the affiliation, connection, or association of Zynga with plaintiffs and/or as to the origin, sponsorship, or approval by plaintiffs of Zynga's goods, services, or commercial activity, and will irreparably harm plaintiffs and the goodwill they have developed in THE OREGON TRAIL Mark.

74. Upon information and belief, Zynga will realize substantial revenues, profits, and other benefits rightfully belonging to The Learning Company as a result of its wrongful conduct.

75. Zynga's conduct is causing and will continue to cause The Learning Company to suffer irreparable harm and, unless Zynga is restrained, The Learning Company will continue to be so damaged, because it has no adequate remedy at law.

### **COUNT III**

**(State Statutory Trademark Dilution under Mass. Gen. Laws ch. 110H, § 13; Del. Code Ann. tit. 6, § 3313; La. Rev. Stat. Ann. § 51:223.1; Me. Rev. Stat. Ann. tit. 10, § 1530; Mo. Ann. Stat. § 417.061 ; N.H. Rev. Stat. Ann. § 350-A:12 ; N.Y. Gen. Bus. Law § 360-1; R.I. Gen. Laws § 6-2-12; Ga. Code Ann. § 10-1-451(b); and Tex. Bus. & Com. Code Ann. § 16.29)**

76. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 75 above as if fully set forth herein.

77. THE OREGON TRAIL Mark is distinctive and has acquired secondary meaning among consumers, who exclusively associate THE OREGON TRAIL Mark with Plaintiffs.

78. Plaintiffs' ownership and use in commerce of THE OREGON TRAIL Mark predates the use by Zynga of the confusingly similar term "OREGON TRAIL."

79. Upon information and belief, given the fame of The Learning Company's THE OREGON TRAIL brand game and its communications with Zynga, Zynga's conduct is willful

and intentional and intended to free-ride off of the goodwill associated with THE OREGON TRAIL Mark.

80. Zynga's confusingly similar use in commerce of "OREGON TRAIL," as described above, constitutes common law and statutory dilution in that it is without plaintiffs' consent and creates and will continue to create a likelihood of injury to plaintiffs' business reputation and/or a likelihood of dilution of the distinctive quality of THE OREGON TRAIL Mark in violation of Mass. Gen. Laws ch. 110H § 13; Del. Code Ann. tit. 6, § 3313; La. Rev. Stat. Ann. § 51:223.1; Me. Rev. Stat. Ann. tit. 10, § 1530; Mo. Ann. Stat. § 417.061 ; N.H. Rev. Stat. Ann. § 350-A:12 ; N.Y. Gen. Bus. Law § 360-1; R.I. Gen. Laws § 6-2-12; Ga. Code Ann. § 10-1-451(b); and Tex. Bus. & Com. Code Ann. § 16.29).

81. As a direct and proximate result of Zynga's dilution of THE OREGON TRAIL Mark, The Learning Company has been damaged and will continue to be damaged.

82. Zynga's conduct is causing and will continue to cause The Learning Company to suffer irreparable harm and, unless Zynga is restrained, The Learning Company will continue to be so damaged, because it has no adequate remedy at law.

**COUNT IV**  
**(Unfair Competition—Mass. Gen. Laws ch. 93A)**

83. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 82 above as if fully set forth herein.

84. The Learning Company and Zynga are persons engaged in the conduct of trade or commerce within the meaning of Mass. Gen. Laws ch. 93A, § 11.

85. Zynga's acts, conduct, and practices described above occurred and are occurring primarily and substantially within the Commonwealth of Massachusetts.

86. Zynga's acts, conduct, and practices described above, including without limitation the confusingly similar use of "OREGON TRAIL" in connection with the promotion, sale, or distribution of services in Massachusetts, constitute unfair methods of competition and/or unfair or deceptive acts or practices, which are unlawful under Mass. Gen. Laws ch. 93A.

87. As a direct and proximate result of Zynga's violations of Mass. Gen. Laws ch. 93A, The Learning Company has been damaged and will continue to be damaged.

### **PRAYERS FOR RELIEF**

WHEREFORE, plaintiffs respectfully requests the following relief:

- A. That this Court preliminarily and permanently enjoin Zynga, its employees, agents, servants, and all in privity with it, from using any marks confusingly similar to THE OREGON TRAIL Mark, including, but not limited to "OREGON TRAIL," or any derivatives thereof or any designs similar thereto, in commerce;
- B. That this Court award plaintiffs profits and compensatory damages in an amount to be determined at trial;
- C. That this Court award plaintiffs treble damages;
- D. That this Court award plaintiffs their attorneys' fees and costs; and
- E. That this Court award plaintiffs such other and further relief that this Court deems just and proper.

### **JURY DEMAND**

Plaintiffs demand a trial by jury of all claims so triable.

Respectfully submitted,

THE LEARNING COMPANY, a division of  
HOUGHTON MIFFLIN HARCOURT  
PUBLISHING COMPANY, and HMH  
CONSUMER COMPANY LTD.

By their attorneys,

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