

# EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION**

ANASCAPE, LTD.,

Plaintiff,

v.

MICROSOFT CORP., and NINTENDO OF  
AMERICA, INC.

Defendants.

No. 9:06-cv-158-RC

Judge Ron Clark

**DECLARATION OF KELLY TYLER**

I, Kelly Tyler, declare and state under the penalty of perjury as follows:

1. My name is Kelly Tyler. I am over the age of twenty-one (21) years, have never been convicted of a felony, and am fully competent to make this declaration. I have personal knowledge of matters set forth herein and know them to be true and correct.

2. In about 1990, I founded Mad Catz, a third-party video game accessory manufacturer. At that time, I was the only employee. I served as president of Mad Catz. In 1999, when the company had around 70 employees, I sold Mad Catz to Games Trader, a Canadian company. At that time, Mad Catz was the number two video game accessory company in the world.

3. Through my experience at Mad Catz, I gained a deep understanding of the game controller industry. From my time at Mad Catz, I gained contacts with Asian suppliers and manufacturers, and gained contacts that would help establish significant retail distribution. I also gained the know how and experience to create what I believe would be another successful third party video game accessory company.

4. From my experience at Mad Catz, I know that, for any given console, the console company generally enjoys the dominant position for controller accessories. Here, because the controllers at issue are compatible with the Nintendo GameCube and the Nintendo Wii consoles,

Nintendo enjoys the dominant position in the game controller market for the GameCube controller and the Wii Classic controller.

5. Were Nintendo to stop producing these controllers, I see a realistic opportunity for Anascape to launch a game controller manufacturing business. The company with the heretofore dominant position would be sidelined, creating market demand for competing products.

6. Although I have not performed a detailed analysis, based on my experience in the industry, if Nintendo were enjoined from importing its infringing products, I believe that Anascape could start manufacturing game controllers that would begin to meet the newly-created market demand in somewhere around six months. There are, of course, contingencies that could prevent actual delivery on that time schedule, but, based on my experience, six months is a reasonable estimate.

7. If Anascape were to establish itself as a third-party game controller company for Nintendo products, that established market position would lower costs of entry for other portions of the video game accessory market, including manufacturing controllers for use with other console systems, and manufacturing other video game accessories. I have experience in the manufacture and sale of many video game accessories, and I believe that Anascape could establish itself as a viable third-party video game accessory company.


8. In negotiating the Sony license, we negotiated for certain contractual terms, including (1) a cross-license of Sony technology; (2) an acknowledgement by Sony that the patents were valid; and (3) a choice of venue and choice of law clause. Each of these negotiated terms has value to Anascape. First, a cross-license broadens our ability to make third-party controller products without the threat of litigation. Second, an acknowledgement by Sony that the patents are valid may, at some point, carry some value in the marketplace, especially with other third-party controller manufacturers. Third, the choice of venue and choice of law clause, which chose California, ensured that Anascape would not be sued in a state that had no relationship to any owner or employee of Anascape.

9. Brad Armstrong and I, through our associated entities, own the vast majority of Anascape. Much of the revenue from the Sony license agreement passed through Anascape, and inured to my benefit, and the benefit of Brad Armstrong. In the same vein, had Nintendo paid a reasonable royalty throughout the period of infringement, much of the revenue would have passed through Anascape, and inured to my benefit, and the benefit of Brad Armstrong.

10. Even without a Nintendo royalty, between July 2006 and July 2008, I devoted a portion of my finances to investing, due in part to the funds gained from the sale of Mad Catz, and through the royalty fee paid by Sony. During that time period, I made a number of investments, including investing real estate and precious metals.

11. Had I received proceeds from a Nintendo reasonable royalty, based on my investment portfolio at that time, I would not have invested such proceeds in treasury bills, or a similar security with a similar rate of return. I would have invested such proceeds in various positions that could result in a higher rate of return, as I did not need to invest in low-risk securities.

12. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on July 2, 2008, in Provo, Utah.

  
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Kelly Tyler