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CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
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06-CV-00095-CMP

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WIZARDS OF THE COAST, INC., a  
Washington corporation,  
  
Plaintiff,  
  
v.  
  
DARON RUTTER, an individual, and  
JOHN DOES 1-10,  
  
Defendants.

Civil Action No. **CV6 0095 RSM**

COMPLAINT FOR  
MISAPPROPRIATION OF TRADE  
SECRETS, COPYRIGHT  
INFRINGEMENT, CONTRIBUTORY  
INFRINGEMENT, BREACH OF  
CONTRACT, AND UNJUST  
ENRICHMENT

Plaintiff Wizards of the Coast, Inc. ("Wizards") hereby alleges as follows:

**I. NATURE OF THE CASE**

1. This action results from Defendants' blatant misappropriation and use of some of Wizards' most valuable assets -- its confidential and trade secret information regarding future releases of its trading card game Magic: The Gathering® ("Magic").

2. Defendant Daron Rutter ("Rutter") has repeatedly and unlawfully obtained and disclosed confidential and trade secret information regarding Magic on the website located at <http://www.mtgsalvation.com> ("MTG Salvation"). Indeed, the MTG Salvation website has a section dedicated to "Spoilers & Rumors"—priding itself on acquiring and divulging secrets of future Magic products while they are still in development.

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COMPLAINT - 1  
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ORIGINAL

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1           3.       The disclosure of confidential and trade secret information about future  
2 Magic products is damaging to the game and to the brand. It undermines both the  
3 development process and the brand message to consumers and fans of the game. Wizards  
4 brings this suit to address its losses and prevent the willful infringement of its valuable  
5 intellectual property rights. Defendants' willful and malicious misappropriation has  
6 caused and will continue to cause irreparable and continuing harm to Wizards.

## 7                                       **II. JURISDICTION AND VENUE**

8           4.       This is an action for trade secret misappropriation under the Uniform Trade  
9 Secrets Act (R.C.W. 19.108 *et seq.*), copyright infringement and contributory  
10 infringement under the Copyright Act (17 U.S.C. § 501 *et. seq.*), breach of contract, and  
11 unjust enrichment.

12           5.       This Court has original jurisdiction over this action under 28 U.S.C.  
13 §§ 1331 and 1338 and has personal jurisdiction over Defendants Rutter and John Does 1-  
14 10 because the defendants conduct business and/or have substantial contacts within this  
15 judicial district.

16           6.       Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

## 17                                       **III. THE PARTIES**

18           7.       Wizards is a Washington corporation, maintaining its principal place of  
19 business at 1600 Lind Ave. S.W., Renton, WA 98055. Wizards is a worldwide leader in  
20 the trading card and role-playing game categories, and a leading developer and publisher  
21 of game-based entertainment products. Wizards is perhaps best known for its premier  
22 trading card game, Magic.

23           8.       Defendant Rutter is an individual residing in Vancouver, British Columbia,  
24 Canada. Rutter resells Magic cards at the website located at <http://www.rancoredelf.com>.  
25 Rutter is also an administrator and/or operator of the MTG Salvation website, among  
26

1 other websites. MTG Salvation is neither sponsored nor endorsed by Wizards, but offers  
2 a variety of articles about Magic and includes online message boards that are posted to  
3 and read by Magic players worldwide.

4 9. Wizards is unaware of the true names and capacities of defendants sued  
5 herein as DOES 1 - 10, inclusive, and therefore sues these defendants by such fictitious  
6 names. Wizards will amend this complaint to allege their true names and capacities when  
7 ascertained. The Doe defendants are the individuals whom Wizards believes provided  
8 certain confidential information and trade secrets to Rutter, contributed to the  
9 infringement of Wizards' copyrights, and breached contracts that they may have had with  
10 Wizards. Wizards is informed and believes and therefore alleges that each of the  
11 fictitiously named defendants is responsible in some manner for certain occurrences  
12 herein alleged, and that Wizards' injuries as herein alleged were proximately caused by  
13 such defendants. These fictitiously named defendants, along with Rutter, are herein  
14 referred to collectively as "Defendants."

#### 15 IV. STATEMENT OF FACTS

16 10. In 1993, Wizards created a new game category - trading card games - with  
17 the release of Magic, a trading card game that allows players to do battle in an imaginary  
18 realm using elaborately illustrated playing cards. Wizards holds an exclusive patent on  
19 trading card games and their method of play. Today, more than 6 million players  
20 worldwide enjoy the challenge, strategy and dynamic play of Magic.

21 11. Trading card games typically are played by two or more players, each of  
22 whom has his or her unique library of cards from which s/he creates a deck of cards to  
23 play the game. In addition to original illustrations, cards contain written instructions  
24 directing how they can be played. Cards have different values that impact their usefulness  
25 in game play. While some cards are rare, others are common or uncommon. Players can  
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1 purchase starter game sets, theme decks and booster packs to construct their libraries of  
2 cards.

3 12. Wizards is the sole and exclusive owner of copyrights in its Magic trading  
4 card game expansion sets. For example, Wizards holds valid Copyright Registrations in  
5 the Magic expansion card sets titled Saviors of Kamigawa (Copyright Reg. VA-1-326-  
6 611), Betrayers of Kamigawa (VA-1-296-726), and Ravnica: City of Guilds (VA-1-330-  
7 944). Each Magic expansion set is derivative of prior Magic expansion sets.

8 13. Wizards releases new Magic expansion sets approximately four times per  
9 year. Each expansion set is developed by employees of Wizards' research and  
10 development department approximately twelve to eighteen months in advance of the  
11 planned release date. Because Magic involves a high-level of strategic thinking and each  
12 new card added to the game impacts game play, the properties of each card in expansion  
13 sets are reviewed and studied in great detail, and are play-tested extensively, in secret, by  
14 both Wizards' employees and select groups of third-party play testers.

15 14. Wizards takes many steps to protect its confidential information and trade  
16 secrets. Among other efforts, Wizards has nondisclosure agreements with all employees  
17 and third parties who are given access to Wizards' confidential information and trade  
18 secrets. In addition, Wizards limits the number of employees with access to sensitive and  
19 confidential information, requires all employees to wear identification badges that permit  
20 access to Wizards' offices, and password protects its computers.

21 15. In 2005, Wizards began work on a new Magic expansion set codenamed  
22 "SNAP." "SNAP" is planned for release in the fall of 2006. As with all expansion set  
23 development, Wizards identified and engaged external play testers to test and provide  
24 feedback to Wizards on the game play of SNAP.

1           16.     In the summer of 2005, Wizards entered into nondisclosure agreements  
2 with each SNAP play tester and then provided each play tester with confidential and trade  
3 secret game materials that enabled them to play SNAP with each other. SNAP play  
4 testers were directed to keep all game materials confidential, to only play with other  
5 official play testers, and to limit communications about SNAP to other official play testers  
6 and certain Wizards employees. The confidential game materials provided to play testers  
7 are different than those used internally by Wizards, such that the play testers' game  
8 materials are readily identifiable as having been provided to, and used by, them.

9           17.     On or about December 4, 2005, Rutter posted scanned images of three  
10 confidential and trade secret Magic play test cards from the SNAP expansion set on the  
11 MTG Salvation website. Wizards did not provide Rutter with such cards or images.  
12 Rutter accurately identified these cards as being SNAP play test cards.

13           18.     The play test cards shown in Rutter's postings to MTG Salvation appear  
14 identical to confidential and trade secret game materials provided to SNAP play testers by  
15 Wizards that are covered under their nondisclosure agreements. Indeed, the card images  
16 could have only been obtained through improper means on the part of Rutter and/or  
17 others. Wizards believes, and on that basis alleges, that the Doe defendants provided  
18 those confidential and trade secret play test cards to Rutter.

19           19.     The posting of the play test card images on a public message board that is  
20 widely read by Wizards' customers and fans significantly damages Wizards. By  
21 disclosing features of a Magic expansion set several months before its planned release, the  
22 value of the new cards and expansion set to which they belong is diminished. Because  
23 play test cards are subject to revisions following the receipt of play testers' feedback, it is  
24 essential that they remain confidential. Play test cards that prove unsuccessful in testing  
25 may threaten the commercial success of the new set if customers learn about those cards  
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1 or the feedback associated with those cards. In addition, the disclosure of play test cards  
2 is damaging to the sales of Magic cards currently on sale because Wizards conducts  
3 carefully-timed marketing campaigns to support the release of each expansion set. Leaks  
4 in advance of release prematurely redirect customer attention away from the current  
5 expansion set on the market, and deprive Wizards of valuable marketing opportunities  
6 related to the launch of an expansion set.

7         20. Rutter's misappropriation and unlawful use of confidential and trade secret  
8 information is extensive. For example, on or about November 15, 2005, Rutter posted to  
9 MTG Salvation the planned trade name for the SNAP expansion set. Wizards did not  
10 provide Rutter with this information. Indeed, this information could have only been  
11 obtained through improper means on the part of Rutter and/or others. The posting of the  
12 upcoming expansion set name of Magic cards on a public message board that is well read  
13 by the Magic community damages Wizards by disclosing confidential and trade secret  
14 information about upcoming cards and the possible direction of the game.

15         21. On or about December 22, 2005 and January 6, 2006, Rutter posted on  
16 MTG Salvation numerous confidential and trade secret details of Magic cards to be  
17 released in late January 2006 as part of the Magic expansion set titled Guildpact. Wizards  
18 did not provide Rutter with this information and did not consent or provide permission to  
19 Rutter to disclose that information. The posting of information about these unreleased  
20 cards from Magic's Guildpact expansion set on a public message board that is well read  
21 by the Magic community damages Wizards by disclosing confidential and trade secret  
22 information about upcoming cards and the possible direction of the game.

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**COUNT I**  
**MISAPPROPRIATION OF TRADE SECRETS UNDER R.C.W. 19.108**

22. Wizards realleges and incorporates paragraphs 1-21 of this Complaint as if fully set forth herein.

23. The name of an unreleased Magic expansion set, images of Magic play test cards, and card information regarding the unreleased Guildpact expansion set are trade secrets of Wizards because that information derives economic value from not being known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use.

24. Wizards takes many steps to maintain the secrecy of its trade secrets, including the names of upcoming expansion card sets, play test cards, and card information regarding the unreleased expansion sets. Among other efforts, Wizards has nondisclosure agreements with those who have access to their trade secrets, requiring those employees and play test groups to maintain the secrecy and confidentiality of those trade secrets.

25. Rutter posted the name of an upcoming expansion set of cards, play test cards, and information from the unreleased Guildpact expansion card set on the MTG Salvation website without Wizards' consent. Rutter knew or had reason to know that this information was acquired from a person who had a duty to Wizards to maintain the secrecy of that information.

26. Rutter acquired Wizards' trade secrets knowing, or having reason to know, that the trade secrets were acquired by improper means and/or that disclosure of these trade secrets was without the express or implied consent of Wizards.

27. The Doe defendants disclosed Wizards' trade secrets to Rutter without the express or implied consent of Wizards, knowing, at the time they disclosed the trade

1 secrets, that they owed a duty to Wizards to maintain the secrecy and/or limit the use of  
2 those trade secrets.

3 28. Defendants' willful and malicious misappropriation has caused and will  
4 continue to cause damage to Wizards in an amount to be proven at trial. Wizards is also  
5 entitled to injunctive relief under the Act.

6 **COUNT II**  
7 **COPYRIGHT INFRINGEMENT**

8 29. Wizards realleges and incorporates paragraphs 1-28 of this Complaint as if  
9 fully set forth herein.

10 30. Wizards holds registered copyrights for its Magic card sets.

11 31. The Magic play test cards and information contained in the cards of the  
12 unreleased Guildpact expansion set that were displayed on the MTG Salvation website are  
13 derivative works of Wizards' copyrighted material.

14 32. Rutter has reproduced, distributed, and/or displayed Wizards' Magic play  
15 test cards and information contained in the unreleased Guildpact expansion card set.  
16 Rutter does not hold a license to make any use of Wizards' copyrighted material contained  
17 in the play test cards or unreleased expansion sets, and therefore Rutter's actions  
18 constitute copyright infringement in violation of the Copyright Act of 1976, 17 U.S.C.  
19 §106.

20 33. The Doe defendants have reproduced, distributed, and/or displayed  
21 Wizards' Magic play test cards and information contained in the unreleased Guildpact  
22 expansion card set. The Doe defendants do not hold a license to make any use of  
23 Wizards' copyrighted material, including the play test cards or unreleased expansion sets,  
24 other than the use described in the nondisclosure agreement that they have with Wizards.  
25 The Doe defendants do not have the right to reproduce, distribute or display the play test  
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1 cards or any other of Wizards' copyrighted material. The Doe defendants' actions  
2 constitute copyright infringement in violation of the Copyright Act of 1976, 17 U.S.C.  
3 §106.

4 34. Defendants' infringing activity has caused and will continue to cause  
5 damage to Wizards in an amount to be proven at trial. Wizards is also entitled to  
6 injunctive relief under the Copyright Act.

7 **COUNT III**  
8 **CONTRIBUTORY INFRINGEMENT**

9 35. Wizards realleges and incorporates paragraphs 1-34 of this Complaint as if  
10 fully set forth herein.

11 36. Wizards holds registered copyrights for its Magic card sets.

12 37. The Magic play test cards and the information contained in cards of the  
13 unreleased Guildpact expansion set, which were reproduced, distributed, and/or displayed  
14 by Defendants, are derivative works of Wizards' copyrighted material.

15 38. Defendants, with knowledge of infringement, induced, caused or materially  
16 contributed to the infringement of another.

17 39. Defendants' infringing activity has caused and will continue to cause  
18 damage to Wizards in an amount to be proven at trial. Wizards is also entitled to  
19 injunctive relief under the Copyright Act.

20 **COUNT IV**  
21 **BREACH OF CONTRACT**

22 40. Wizards realleges and incorporates paragraphs 1-39 of this Complaint as if  
23 fully set forth herein.

24 41. The Doe defendants have nondisclosure agreements with Wizards. The  
25 defendants have breached those agreements by disclosing confidential information in  
26 violation of the terms of those agreements.

1 42. As a result of the Doe defendants' breach, Wizards has been damaged in an  
2 amount to be proven at trial.

3 **COUNT V**  
4 **UNJUST ENRICHMENT**

5 43. Wizards realleges and incorporates paragraphs 1-42 of this Complaint as if  
6 fully set forth herein.

7 44. As a result of Defendants' aforementioned acts, Defendants have been  
8 unjustly enriched.

9 45. Defendants should be required to disgorge their unjust enrichment.

10 WHEREFORE, Wizards respectfully prays that this Court:

11 1. Issue a permanent injunction, enjoining and prohibiting Defendants, their  
12 agents, servants, employees, officers, attorneys, successors and assigns from reproducing,  
13 distributing, and/or displaying Wizards trade secrets or confidential and proprietary  
14 information;

15 2. Require Defendants to account to Wizards for all profits and damages  
16 resulting from the activities complained of in this Complaint;

17 3. Order an award of attorneys' fees and costs to Wizards as provided by  
18 § 505 of the Copyright Act, or as otherwise provided by the law;

19 4. Order an award of attorneys' fees and costs to Wizards as provided by the  
20 Uniform Trade Secrets Act, R.C.W. 19.108.040;

21 5. Order an award of compensatory damages in an amount to be proved at  
22 trial, or in the alternative, for an award of statutory damages; and

23 6. Order such other and further relief as this Court deems appropriate.  
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1 DATED this 19<sup>th</sup> day of January, 2006.

2 PRESTON GATES & ELLIS LLP

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