

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF WEST VIRGINIA

3 MARTINSBURG

4 **BLINGVILLE, LLC, a West Virginia**
5 **Limited Liability Company,**
6 **Plaintiff,**

7 v.

8 **ZYNGA INC., a Delaware corporation; and**
9 **ZYNGA GAME NETWORK INC., a**
10 **Delaware corporation,**
11 **Defendants .**

CASE NO. 3:11CV4

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13 **ZYNGA INC., a Delaware corporation,**
14 **Counterclaimant,**

15 v.

16 **BLINGVILLE, LLC, a West Virginia**
17 **Limited Liability Company,**
18 **Counterdefendant**

19 **ZYNGA INC.'S ANSWER TO COMPLAINT**
20 **FOR DECLARATORY JUDGMENT and COUNTERCLAIM**

21 *COMES NOW Defendant, Zynga Inc.* and in response to the Complaint for Declaratory
22 Judgment filed herein against it, respectfully submits its answer as follows:

23 **ZYNGA'S INTRODUCTORY ALLEGATIONS**

24 1. Underlying this lawsuit is the effort by Plaintiff Blingville, LLC ("Blingville, LLC") and the
25 individuals behind it to capitalize on the fame and goodwill associated with Defendant Zynga Inc.'s
26 ("Zynga") family of popular social "'VILLE" games on Facebook. Notably, Blingville, LLC did not
27 exist at the time this dispute with Zynga arose. It was specifically created for the purpose of filing
28 this lawsuit. The person directly behind the Blingville "game" is an active player of Zynga's
successful 'VILLE family of games, which includes CityVille™, FarmVille®, FishVille®,
{T0436265.1}

CASE NO.: 3:11CV4
ZYNGA INC.'S ANSWER TO COMPLAINT FOR
DECLARATORY JUDGMENT; AND COUNTERCLAIM

1 FrontierVille™, PetVille™ and YoVille®. With over 100 million people playing Zynga’s ‘VILLE
2 family of games each month, the people behind Blingville, LLC saw an opportunity to try and
3 exploit the success and popularity of Zynga’s ‘VILLE family of games by confusing potential
4 players.

5 2. Plaintiff announced (but did not launch) a new Facebook ‘VILLE game called
6 BlingVille, no doubt hoping to either reap returns from unwitting consumers who would mistakenly
7 believe it was created by Zynga, or to exact a payment directly from Zynga. After receiving a letter
8 from Zynga objecting to their chosen “game” title, they rushed to the United States Patent and
9 Trademark Office to file a Federal trademark application for the mark “Blingville” on behalf of a
10 Pennsylvania entity (Overtime Apps, LLC) that did not yet exist, claiming that this non-existent
11 entity had already used the mark for months or years. Thereafter, they created yet another entity –
12 Blingville, LLC – in West Virginia, transferred the trademark application to it, and filed this action.
13 Now, months later, Plaintiff still has not launched their claimed game.

14 3. Zynga Inc., (“Zynga”) is a Delaware corporation that creates and publishes online
15 social networking games, including without limitation the famous “‘VILLE” family of games that
16 includes CityVille™, FarmVille®, FishVille®, FrontierVille™, PetVille™ and YoVille®, as well as
17 other ‘VILLE games in various stages of development (collectively the “‘VILLE Family of Marks”
18 or the “‘VILLE Family of Games”). The distinctive ‘VILLE Family of Games are played by over
19 One Hundred Million monthly users on Facebook.com (“Facebook”) alone, as well as on other
20 websites. Zynga has promoted the ‘VILLE Family of Games to millions of potential consumers
21 through advertisements and promotions that identify the games as members of Zynga’s ‘VILLE
22 Family of Games. As a result, Facebook users and other users of online social networking games
23 immediately associate the distinctive ‘VILLE Family of Marks with Zynga and its famous ‘VILLE
24 Family of Games.

1 4. Zynga is informed and believes and on that basis alleges that Blingville, LLC is one
2 of a network of interrelated West Virginia and Pennsylvania limited liability companies (the
3 “Litigation Entities”) that have been created for the express purpose of filing this lawsuit against
4 Zynga.

5 5. Zynga is informed and believes and on that basis alleges that long before Blingville,
6 LLC or any of the other Litigation Entities was created, one or more of the people behind Blingville,
7 LLC began playing Zynga’s famous ‘VILLE Family of Games on Facebook. Zynga is further
8 informed and believes that one or more of these people became aware of the tremendous popularity
9 and substantial goodwill associated with Zynga’s famous ‘VILLE Family of Games, and sought to
10 capitalize on that goodwill by announcing their future intention to create a competing ‘VILLE game
11 on Facebook called “BlingVille,” and by creating a web page at <blingville.com> and a Facebook
12 page both soliciting Facebook and other Internet users to provide them with the users’ email
13 addresses for future “updates” (the “Placeholder Pages”). Zynga is informed and believes that no
14 social networking or other computer game called “BlingVille” has existed at any time in the past,
15 and that no such game has been launched as of today.

16 6. When Zynga became aware of the Placeholder Pages, it tried without success to
17 identify and contact the person or people who had created the Placeholder Pages. On November 2,
18 2010, Zynga sent a letter to the anonymous registrant of the <blingville.com> domain name, using
19 the anonymized email address “hfwbftbcdq@whoisprivacy.com” that appeared in the Internet Whois
20 database for that domain name. In the letter, Zynga advised the anonymous domain name registrant
21 of its rights in the ‘VILLE Family of Marks, and emphasized that a competing ‘VILLE game
22 launched on Facebook, the same website from which users play Zynga’s Ville Family of Games,
23 would be likely to cause confusion among Facebook users. Specifically, Zynga expressed concern
24 that consumers would mistakenly believe that a “BlingVille” game on Facebook was associated with
25 FarmVille®, FishVille®, FrontierVille™, PetVille™ and YoVille®, or otherwise approved or
26 sponsored by Zynga. The anonymous registrant did not acknowledge receipt of the letter or respond
27 to Zynga in any way. Zynga sent a follow-up letter on December 6, 2010, and again received no
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1 response. Zynga sent a third letter to “hfwbfbcdq@whoisprivacy.com” on January 4, 2011 that also
2 noted Zynga’s rights in CityVille™, the newest member of the ‘VILLE Family of Games. The
3 anonymous recipient(s) of these letters never responded to Zynga or even acknowledged receiving
4 the letters.

5 7. Zynga is informed and believes and on that basis alleges that the people behind
6 Blingville, LLC made a deliberate tactical decision to ignore Zynga’s good faith correspondence and
7 to file a declaratory judgment lawsuit against Zynga, rather than address Zynga’s legitimate concerns
8 about consumer confusion. To that end, Zynga is informed and believes that while Zynga was trying
9 in vain to communicate with these people, they were busy undertaking several tactical pre-litigation
10 maneuvers including: 1) filing a materially false trademark application with the United States Patent
11 and Trademark Office for the mark BLINGVILLE on or about November 5, 2010, on behalf of a
12 Pennsylvania Litigation Entity called “Overtime Apps, LLC” that did not even exist on the day the
13 application was filed; 2) creating a network of Litigation Entities in Pennsylvania and West Virginia;
14 3) executing one or more assignments that purported to transfer the fraudulent BLINGVILLE
15 trademark application and other unspecified “rights” through the various Litigation Entities to
16 Blingville, LLC for the express purpose of setting up Blingville, LLC to file a lawsuit against Zynga
17 (without ever launching a “BlingVille” game); and 4) submitting an Application For Trade Name on
18 behalf of Blingville, LLC to the Office of the West Virginia Secretary of State on or about December
19 17, 2010 that misstated the membership of Blingville, LLC.

20 8. Zynga is informed and believes and on that basis alleges that the people behind
21 Blingville, LLC have filed this lawsuit primarily for purposes of publicity, even going so far as to set
22 up a “BlingVille vs. Zynga” website at the Internet address
23 <myemail.constantcontact.com/Blingville-vs--Zynga.html?soid=1102137116063&aid=jI9tJfUfee4>.
24 A true and correct image of the graphic that appeared on the website on March 7, 2011 is reproduced
25 below.

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Blingville vs. Zynga
We appreciate your support!

9. Tellingly, as of the date the Complaint was filed, no publicly available “BlingVille” game existed on Facebook or anywhere else, and the Placeholder Page at <blingville.com> still represented that the supposed game was “coming soon.”

ZYNGA’S RESPONSES TO THE ALLEGATIONS IN THE COMPLAINT

INTRODUCTION

10. Zynga refers to and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Answering Paragraph 1 of the Complaint, Zynga avers that the allegations contained in Paragraph 1 are conclusions of law or fact to which no responsive pleading is required. To the extent a further response to Paragraph 1 is required, Zynga denies each and every allegation contained in Paragraph 1.

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PARTIES

11. Zynga refers to and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Answering Paragraph 2 of the Complaint, Zynga is informed and believes that Blingville, LLC, its organizer and sole member “Jackpot Apps, LLC”, and “Jackpot Apps” organizer and member “Awesome Gaming Apps, LLC”, were all created on or about December 1, 2010, all with a primary business address of 36 Bakerton Road, Harpers Ferry, WV 25425. Except as expressly averred herein, Zynga denies each and every allegation contained in Paragraph 2.

12. Answering Paragraph 3 of the Complaint, Zynga refers to and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Except as expressly averred herein, Zynga denies each and every allegation contained in Paragraph 3 of the Complaint.

13. Zynga refers to and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Answering Paragraph 4 of the Complaint, Zynga avers that “Zynga Game Network Inc.” was Zynga’s corporate name until November 17, 2010, when its name was formally changed to “Zynga Inc.” Except as expressly averred herein, Zynga denies each every allegation contained in Paragraph 4 of the Complaint.

14. Zynga refers to and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Answering Paragraph 5 of the Complaint, Zynga avers that “Zynga Game Network Inc.” was Zynga’s corporate name until November 17, 2010, when its name was formally changed to “Zynga Inc.” Zynga avers that Paragraph 5 contains no additional charging allegations to which any response is necessary. To the extent a further response to Paragraph 5 is necessary, Zynga denies each and every allegation contained in Paragraph 5 of the Complaint except as expressly averred herein.

JURISDICTION AND VENUE

15. Zynga refers to and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Answering the mis-numbered second “Paragraph 5” of the Complaint (actually Paragraph 6), Zynga avers that the causes of action alleged in this case are based on federal statutes. Zynga avers that the remaining allegations contained in the second “Paragraph 5”

1 are legal conclusions to which no responsive pleading is required. To the extent a further response
2 to the second "Paragraph 5" is required, Zynga denies each and every one of the allegations
3 contained in the second "Paragraph 5" of the Complaint except as expressly averred herein.

4 16. Zynga refers to and incorporates Paragraphs 1 through 9 of this Answer as though
5 fully set forth herein. Answering "Paragraph 6" of the Complaint (actually Paragraph 7), Zynga
6 avers that the allegations in "Paragraph 6" are conclusions of law or fact to which no responsive
7 pleading is required. To the extent a further response to "Paragraph 6" is required, Zynga denies
8 each and every one of the allegations contained in "Paragraph 6" of the Complaint.

9 17. Zynga refers to and incorporates Paragraphs 1 through 9 of this Answer as though
10 fully set forth herein. Answering "Paragraph 7" of the Complaint (actually Paragraph 8), Zynga
11 avers that the purported allegations in "Paragraph 7" are conclusions of law or fact to which no
12 responsive pleading is required. To the extent a response to "Paragraph 7" is required, Zynga
13 denies each and every one of the allegations contained in "Paragraph 7" of the Complaint.

14 18. Zynga refers to and incorporates Paragraphs 1 through 9 of this Answer as though
15 fully set forth herein. Answering "Paragraph 8" of the Complaint (actually Paragraph 9), Zynga
16 avers that the purported allegations in "Paragraph 8" are conclusions of law or fact to which no
17 responsive pleading is required. To the extent a response to "Paragraph 8" is required, Zynga
18 denies each and every one of the allegations contained in "Paragraph 8" of the Complaint.

19 19. Answering "Paragraph 9" of the Complaint (actually Paragraph 10), Zynga refers to
20 and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Except as
21 expressly averred herein, Zynga denies each and every one of the allegations contained in
22 "Paragraph 9" of the Complaint.

23 **FACTUAL BACKGROUND**

24 20. Answering "Paragraph 10" of the Complaint (actually Paragraph 11), Zynga refers to
25 and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Except as
26 expressly averred herein, Zynga denies each and every one of the allegations contained in
27 "Paragraph 10" of the Complaint.

1 21. Answering “Paragraph 11” of the Complaint (actually Paragraph 12), Zynga refers to
2 and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Except as
3 expressly averred herein, Zynga denies each and every one of the allegations contained in
4 “Paragraph 11” of the Complaint.

5 22. Answering “Paragraph 12” of the Complaint (actually Paragraph 13), Zynga refers to
6 and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Except as
7 expressly averred herein, Zynga denies each and every one of the allegations contained in
8 “Paragraph 12” of the Complaint.

9 23. Answering “Paragraph 13” of the Complaint (actually Paragraph 14), Zynga refers to
10 and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Except as
11 expressly averred herein, Zynga denies each and every one of the allegations contained in
12 “Paragraph 13” of the Complaint.

13 24. Answering “Paragraph 14” of the Complaint (actually Paragraph 15), Zynga refers to
14 and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Except as
15 expressly averred herein, Zynga denies each and every one of the allegations contained in
16 “Paragraph 14” of the Complaint.

17 25. Answering “Paragraph 15” of the Complaint (actually Paragraph 16), Zynga refers to
18 and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Except as
19 expressly averred herein, Zynga denies each and every one of the allegations contained in
20 “Paragraph 15” of the Complaint.

21 26. Answering “Paragraph 16” of the Complaint (actually Paragraph 17), Zynga refers to
22 and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Except as
23 expressly averred herein, Zynga denies each and every one of the allegations contained in
24 “Paragraph 16” of the Complaint.

25 27. Answering “Paragraph 17” of the Complaint (actually Paragraph 18), Zynga refers to
26 and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Except as
27 expressly averred herein, Zynga denies each and every one of the allegations contained in
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1 “Paragraph 17” of the Complaint.

2 28. Answering “Paragraph 18” of the Complaint (actually Paragraph 19), Zynga refers to
3 and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Except as
4 expressly averred herein, Zynga denies each and every one of the allegations contained in
5 “Paragraph 18” of the Complaint.

6 29. Answering “Paragraph 19” of the Complaint (actually Paragraph 20), Zynga refers to
7 and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Except as
8 expressly averred herein, Zynga denies each and every one of the allegations contained in
9 “Paragraph 19” of the Complaint.

10 **TRADEMARK INFRINGEMENT**

11 30. Answering “Paragraph 20” of the Complaint (actually Paragraph 21), Zynga refers to
12 and incorporates Paragraphs 1 through 29 of this Answer as though fully set forth herein.

13 31. Answering “Paragraph 21” of the Complaint (actually Paragraph 22), Zynga refers to
14 and incorporates Paragraphs 1 through 9 of this Answer as though fully set forth herein. Except as
15 expressly averred herein, Zynga denies each and every one of the allegations contained in
16 “Paragraph 21” of the Complaint.

17 32. Zynga refers to and incorporates Paragraphs 1 through 9 of this Answer as though
18 fully set forth herein. Answering “Paragraph 22” of the Complaint (actually Paragraph 23), Zynga
19 avers that the allegations in “Paragraph 22” are conclusions of law or fact to which no responsive
20 pleading is required. To the extent a response to “Paragraph 22” is required, Zynga denies each and
21 every one of the allegations contained in “Paragraph 22” of the Complaint.

22 33. Zynga refers to and incorporates Paragraphs 1 through 9 of this Answer as though
23 fully set forth herein. Answering “Paragraph 23” of the Complaint (actually Paragraph 24), Zynga
24 avers that the allegations in “Paragraph 23” are conclusions of law or fact to which no responsive
25 pleading is required. To the extent a response to “Paragraph 23” is required, Zynga denies each and
26 every one of the allegations contained in “Paragraph 23” of the Complaint.

27 34. Zynga refers to and incorporates Paragraphs 1 through 9 of this Answer as though
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1 fully set forth herein. Answering “Paragraph 24” of the Complaint (actually Paragraph 25), Zynga
2 avers that the allegations in “Paragraph 24” are conclusions of law or fact to which no responsive
3 pleading is required. To the extent a response to “Paragraph 24” is required, Zynga denies each and
4 every one of the allegations contained in “Paragraph 24” of the Complaint.

5 **ZYNGA’S AFFIRMATIVE DEFENSES**

6 Zynga hereby asserts the following Affirmative Defenses:

7 **First Affirmative Defense – Failure to State a Claim**

8 The Complaint and each and every cause of action asserted therein fails to state a claim upon
9 which relief can be granted.

10 **Second Affirmative Defense – No Actual Controversy**

11 The claims against Zynga, and each of them, are barred because there is no actual
12 controversy between the parties.

13 **Third Affirmative Defense – No Standing**

14 The claims against Zynga, and each of them, are barred because the plaintiff lacks standing
15 to maintain this action.

16 **Fourth Affirmative Defense – Improper Venue**

17 Assuming without conceding that an actual controversy exists between the parties, this Court
18 is not a proper venue in which to adjudicate that controversy.

19 **Fifth Affirmative Defense – Unclean Hands**

20 The claims against Zynga, and each of them, are barred by the doctrine of unclean hands.

21 **Sixth Affirmative Defense – Estoppel**

22 The claims against Zynga, and each of them, are barred by the doctrine of estoppel.

23 **Seventh Affirmative Defense – Lack of Sufficient Particularity to Identify All Defenses**

24 The Complaint does not describe the facts or claims being alleged with sufficient
25 particularity to permit Zynga to ascertain what other defenses may exist. Zynga will rely on any and
26 all further defenses that become available during discovery in this action. Zynga specifically
27 reserves the right to amend this Answer for purposes of asserting such additional affirmative
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1 defenses, or to assert such additional affirmative defenses as permitted by law.

2 **ZYNGA'S COUNTERCLAIMS**

3 Pursuant to Rule 13 of the Federal Rules of Civil Procedure, Defendant and Counterclaimant
4 Zynga, for its counterclaims against the Plaintiff and Counterdefendant Blingville, LLC, alleges as
5 follows:

6 **PARTIES**

7 1. Defendant and Counterclaimant Zynga is a Delaware corporation with its principal
8 place of business at 365 Vermont Street, San Francisco, CA 94402.

9 2. Zynga is informed and believes that Blingville, LLC was created on or about
10 December 1, 2010, with a primary business address of 36 Bakerton Road, Harpers Ferry, WV 25425.

11 **JURISDICTION AND VENUE**

12 3. This Court has jurisdiction of this counterclaim pursuant to 15 U.S.C. §§ 1121, 1125,
13 28 U.S.C. §§ 1331 and 1338 and Federal Rule of Civil Procedure 13.

14 4. This Court has personal jurisdiction over Counterdefendant Blingville, LLC which
15 has its primary business location in this District, and because Blingville, LLC has consented to
16 personal jurisdiction in this District by initiating the instant lawsuit in this District.

17 5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) because
18 Counterdefendant Blingville, LLC maintains its primary business location in this District.

19 **GENERAL ALLEGATIONS**

20 6. Zynga is the world's premier creator of online social networking games. Among
21 Zynga's most successful ventures are the famous "VILLE" games, which include CityVille™,
22 FarmVille®, FishVille®, FrontierVille™, PetVille™ and YoVille®, as well as other 'VILLE games
23 in various stages of development (collectively the "VILLE Family of Marks" or the "VILLE
24 Family of Games"). More than one hundred million people play Zynga's famous 'VILLE Family of
25 Games every month on Facebook and other social networking websites.

26 7. Zynga's 'VILLE Family of Games is the leader in the social networking market. For
27 example, on or about March 1, 2011, the social gaming site <insidesocialgames.com> reported that
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1 Zynga's CityVille™ was the most-played game on Facebook with more than 94,000,000 monthly
2 active users. Zynga's FarmVille® was in second place with more than 50,000,000 monthly active
3 users; Zynga's FrontierVille™ was in fourth place with more than 19,000,000 monthly active users;
4 Zynga's PetVille™ was in nineteenth place with more than 6,000,000 monthly active users; and
5 Zynga's YoVille® was in twenty-first place with more than 6,000,000 monthly active users.

6 8. Zynga has consistently promoted the 'VILLE Family of Games together as a family
7 of games identified by the distinctive 'VILLE suffix. Among other things, Zynga has advertised the
8 'VILLE Family of Games on Facebook using such slogans as "Zynga – home of the Ville", "What's
9 your Ville?" and "Join the Ville Family".

10 9. Zynga has promoted the 'VILLE Family of Games to millions of potential consumers
11 through advertisements and promotions. As a result, Facebook users and other users of online social
12 networking games immediately associate the distinctive 'VILLE Family of Marks with Zynga and
13 its famous 'VILLE games.

14 10. Zynga is informed and believes and on that basis alleges that long before Blingville,
15 LLC was created, one or more of the people behind Blingville, LLC began playing Zynga's famous
16 'VILLE Family of Games on Facebook and became aware of the tremendous popularity and
17 substantial goodwill associated with Zynga's famous 'VILLE Family of Games.

18 11. Zynga is informed and believes and on that basis alleges that these people sought to
19 capitalize on Zynga's goodwill in the 'VILLE Family of Marks by announcing their future intention
20 to create a competing 'VILLE game on Facebook called "BlingVille," and by creating a web page at
21 <blingville.com> and a Facebook page both soliciting Facebook and other Internet users to provide
22 them with the users' email addresses for future "updates" (the "Placeholder Pages").

23 12. Zynga is informed and believes based on the allegations in Blingville, LLC's
24 complaint in this matter, and on that basis alleges, that Blingville, LLC has accepted, by one or more
25 valid and existing assignments, the obligations and liabilities of its predecessors, including without
26 limitation all state and federal trademark liabilities arising from the use in commerce of the mark
27 BLINGVILLE.

1 18. As a result of Zynga's substantial marketing and promotional efforts and the
2 tremendous success of Zynga's 'VILLE Family of Games generally, and FishVille® specifically,
3 users of social networking games immediately associate the distinctive FishVille® mark with Zynga.

4 19. Zynga owns the United States Federal Trademark Registration No. 3773188 for the
5 trademark and service mark YoVille® in International Classes 9 and 41, a true and correct copy of
6 which is attached hereto as **Exhibit C**. The YoVille® mark is one of Zynga's 'VILLE Family of
7 Marks, which Zynga uses in connection with its famous social networking games on Facebook and
8 other social networking sites.

9 20. As a result of Zynga's substantial marketing and promotional efforts and the
10 tremendous success of Zynga's 'VILLE Family of Games generally, and YoVille® specifically,
11 users of social networking games immediately associate the distinctive YoVille® mark with Zynga.

12 21. In addition to the individual FarmVille®, FishVille® and YoVille® marks, the
13 'VILLE suffix has acquired distinctiveness within the market for social networking games as an
14 indicator of source. Users of social networking games immediately associate the 'VILLE suffix with
15 Zynga and its reputation for creating dynamic and high quality social networking games.

16 22. Counterdefendant Blingville, LLC's use in commerce of the name "BlingVille" in
17 connection with a social networking game that competes with Zynga's 'VILLE Family of Marks,
18 including FarmVille®, FishVille® and YoVille®, constitutes trademark infringement pursuant to 15
19 U.S.C. § 1114(1). Blingville, LLC's use of "BlingVille" is likely to cause confusion among
20 Facebook users and other users of social networking games, who are likely to believe erroneously
21 that "BlingVille" originates from the same source as FarmVille®, FishVille® and YoVille® or is
22 otherwise associated with or authorized or approved by Zynga.

23 23. Blingville, LLC has knowingly and willfully infringed Zynga's trademark rights by
24 deliberately exploiting the substantial goodwill associated with Zynga's 'VILLE Family of Marks
25 generally, and with the registered marks FarmVille®, FishVille® and YoVille® specifically. Zynga
26 is informed and believes that the people behind Blingville, LLC selected the name "BlingVille" with
27 the express intent to cause confusion and to deceive Facebook users into believing that "BlingVille"
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1 is one of Zynga's 'VILLE Family of Games.

2 24. Zynga has no adequate remedy at law. Blingville, LLC's conduct as alleged in its
3 complaint has caused and if not enjoined will continue to cause irreparable harm to Zynga's rights in
4 its 'VILLE Family of Marks, and to its business reputation and goodwill, as well as damages in an
5 amount which cannot be accurately computed at this time but will be proven at trial.

6 **Second Cause of Action**

7 **(Federal Trademark Infringement and Unfair Competition – 15 U.S.C. § 1125(a))**

8 25. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
9 paragraphs in this Counterclaim as though fully set forth in this cause of action.

10 26. Zynga owns Federal Trademark Application Serial No. 85187572 for trademark and
11 service mark CityVille™ in International Classes 9 and 41, a true and correct copy of which is
12 attached hereto as **Exhibit D**. The CityVille™ mark is one of Zynga's 'VILLE Family of Marks,
13 which Zynga uses in connection with its famous social networking games on Facebook and other
14 social networking sites.

15 27. As a result of Zynga's substantial marketing and promotional efforts and the
16 tremendous success of Zynga's 'VILLE Family of Games generally, and CityVille™ specifically,
17 users of social networking games immediately associate the distinctive CityVille™ mark with
18 Zynga.

19 28. Zynga owns Federal Trademark Application Serial No. 77894903 for trademark and
20 service mark FrontierVille™ in International Classes 9 and 41, a true and correct copy of which is
21 attached hereto as **Exhibit E**. The FrontierVille™ mark is one of Zynga's 'VILLE Family of Marks,
22 which Zynga uses in connection with its famous social networking games on Facebook and other
23 social networking sites.

24 29. As a result of Zynga's substantial marketing and promotional efforts and the
25 tremendous success of Zynga's 'VILLE Family of Games generally, and FrontierVille™
26 specifically, users of social networking games immediately associate the distinctive FrontierVille™
27 mark with Zynga.

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1 30. Zynga owns Federal Trademark Application Serial No. 77979543 for trademark and
2 service mark PetVille™ in International Classes 9 and 41, a true and correct copy of which is
3 attached hereto as **Exhibit F**. The PetVille™ mark is one of Zynga’s ‘VILLE Family of Marks,
4 which Zynga uses in connection with its famous social networking games on Facebook and other
5 social networking sites.

6 31. As a result of Zynga’s substantial marketing and promotional efforts and the
7 tremendous success of Zynga’s ‘VILLE Family of Games generally, and PetVille™ specifically,
8 users of social networking games immediately associate the distinctive PetVille™ mark with Zynga.

9 32. In addition to the individual CityVille™, FrontierVille™ and PetVille™ marks, the
10 ‘VILLE suffix has acquired distinctiveness within the market for social networking games as an
11 indicator of source. Users of social networking games immediately associate the ‘VILLE suffix with
12 Zynga and its reputation for creating dynamic and high quality social networking games.

13 33. Counterdefendant Blingville, LLC’s use in commerce of the name “BlingVille” in
14 connection with a social networking game that competes with Zynga’s ‘VILLE Family of Marks,
15 including CityVille™, FrontierVille™ and PetVille™, constitutes trademark infringement and unfair
16 competition pursuant to 15 U.S.C. § 1125(a). Blingville, LLC’s use of “BlingVille” is likely to
17 cause confusion among Facebook users and other users of social networking games, who are likely
18 to believe erroneously that “BlingVille” originates from the same source as CityVille™,
19 FrontierVille™ and PetVille™ or is otherwise associated with or authorized or approved by Zynga.

20 34. Blingville, LLC has knowingly and willfully infringed Zynga’s trademark rights by
21 deliberately exploiting the substantial goodwill associated with Zynga’s ‘VILLE Family of Marks
22 generally, and with the marks CityVille™, FrontierVille™ and PetVille™ specifically. Zynga is
23 informed and believes that the people behind Blingville, LLC selected the name “BlingVille” with
24 the express intent to cause confusion and to deceive Facebook users into believing that “BlingVille”
25 is one of Zynga’s ‘VILLE Family of Games.

26 35. Zynga has no adequate remedy at law. Blingville, LLC’s conduct as alleged in its
27 complaint has caused and if not enjoined will continue to cause irreparable harm to Zynga’s rights in
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1 its 'VILLE Family of Marks, and to its business reputation and goodwill, as well as damages in an
2 amount which cannot be accurately computed at this time but will be proven at trial.

3 **Third Cause of Action**

4 **(Federal False Designation of Origin – 15 U.S.C. § 1125(a))**

5 36. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
6 paragraphs in this Counterclaim as though fully set forth in this cause of action.

7 37. Zynga owns the trademark rights in the distinctive 'VILLE Family of Marks for use
8 in connection with social networking games, including CityVille™, FarmVille®, FishVille®,
9 FrontierVille™, PetVille™ and YoVille®, which are played on Facebook, as well as other social
10 networking sites.

11 38. As a result of Zynga's substantial marketing and promotional efforts, as well as the
12 tremendous success of Zynga's 'VILLE Family of Games, the 'VILLE suffix has acquired
13 distinctiveness within the market for social networking games as an indicator of source. Users of
14 social networking games immediately associate the 'VILLE suffix with Zynga and its reputation for
15 creating dynamic and high quality social networking games.

16 39. Facebook users who come across the "BlingVille" game are likely to believe,
17 erroneously, that "BlingVille" is another new addition to Zynga's 'VILLE Family of Games on
18 Facebook.

19 40. Counterdefendant Blingville, LLC's use in commerce of the mark "BlingVille" for a
20 social networking game that competes with Zynga's famous 'VILLE Family of Games on Facebook
21 constitutes a false designation of origin pursuant to 15 U.S.C. § 1125(a) that is likely to cause
22 confusion, or to cause mistake or to deceive users of social networking games into believing that
23 "BlingVille" is produced, approved, authorized, or otherwise associated with Zynga, when in fact it
24 is not.

25 41. Blingville, LLC has knowingly and willfully infringed Zynga's trademark rights by
26 deliberately exploiting the substantial goodwill associated with Zynga's 'VILLE Family of Marks.
27 Zynga is informed and believes that the people behind Blingville, LLC selected the name
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1 “BlingVille” with the express intent to cause confusion and to deceive Facebook users into believing
2 that “BlingVille” is one of Zynga’s ‘VILLE Family of Games.

3 42. Zynga has no adequate remedy at law. Blingville, LLC’s conduct as alleged in its
4 complaint has caused and if not enjoined will continue to cause irreparable harm to Zynga’s rights in
5 its ‘VILLE Family of Marks, and to its business reputation and goodwill, as well as damages in an
6 amount which cannot be accurately computed at this time but will be proven at trial.

7 **Fourth Cause of Action**

8 **(Federal Dilution – 15 U.S.C. § 1125(c))**

9 43. Zynga repeats, realleges and incorporates each and every allegation of the foregoing
10 paragraphs in this Counterclaim as though fully set forth in this cause of action.

11 44. Zynga owns the trademark rights in the distinctive ‘VILLE Family of Marks for use
12 in connection with social networking games, including CityVille™, FarmVille®, FishVille®,
13 FrontierVille™, PetVille™ and YoVille®, which are played on Facebook, as well as other social
14 networking sites.

15 45. Zynga’s ‘VILLE Family of Marks is famous in that it is widely recognized by the
16 general consuming public of the United States as a designation of Zynga’s goods and services.
17 Zynga’s ‘VILLE Family of Marks became famous throughout the United States prior to any use in
18 commerce of the name “BlingVille” by Blingville, LLC or any of its predecessors.

19 46. Blingville, LLC’s use of the name “BlingVille” in connection with a social
20 networking game is likely to impair the distinctiveness of Zynga’s famous ‘VILLE Family of Marks
21 by causing an association in the minds of consumers arising from the similarity between the name
22 “BlingVille” and Zynga’s famous ‘VILLE Family of Marks.

23 47. Blingville, LLC’s use of the name “BlingVille” in connection with a social
24 networking game is likely to harm the reputation of Zynga’s famous ‘VILLE Family of Marks.

25 48. Blingville, LLC has knowingly and willfully sought to dilute Zynga’s famous
26 ‘VILLE Family of Marks. Zynga is informed and believes that the people behind Blingville, LLC
27 selected the name “BlingVille” with the express intent to associate “BlingVille” with Zynga’s
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1 famous 'VILLE Family of Marks in the minds of consumers.

2 49. Zynga has no adequate remedy at law. Blingville, LLC's conduct as alleged in its
3 complaint has caused and if not enjoined will continue to cause irreparable harm to Zynga's rights in
4 its 'VILLE Family of Marks, and to its business reputation and goodwill, as well as damages in an
5 amount which cannot be accurately computed at this time but will be proven at trial.

6 **PRAYER FOR RELIEF**

7 Wherefore, Zynga prays for judgment as follows:

8 (a) That the Court deny Blingville, LLC's request for declaratory relief and enter judgment
9 in Zynga's favor;

10 (b) That the Court enter a finding that use by Blingville, LLC of the name "BlingVille" in
11 connection with a social networking game infringes Zynga's trademark rights;

12 (c) That the Court permanently enjoin Blingville, LLC, as well as its members, organizers,
13 predecessors, successors, agents, employees, representatives and all persons corporations
14 or other entities acting in concert or participation with Blingville, LLC from:

- 15 i. Using the name "BlingVille" in connection with any social networking game;
- 16 ii. Infringing any of Zynga's intellectual property rights in any manner, including but
17 not limited to the 'VILLE Family of Marks;
- 18 iii. Engaging in any conduct that tends falsely to represent that, or is likely to
19 confuse, mislead or deceive members of the public to believe that the actions of
20 Blingville, LLC or any of its members, organizers, predecessors, successors,
21 agents, employees, representatives and all persons corporations or other entities
22 acting in concert or participation with Blingville, LLC are sponsored, approved,
23 or licensed by Zynga, or are in any way connected or affiliated with Zynga;
- 24 iv. Affixing, applying, annexing, or using in connection with the manufacture,
25 distribution, advertising, sale, and/or offering for sale or other use of any goods or
26 services, a false description or representation, including words or other symbols,
27 tending to falsely describe or represent such goods as being those of Zynga;
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- v. Otherwise competing unfairly with Zynga in any manner; and
- vi. Effecting assignments or transfers, forming new entities or associations or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in subparagraphs (i)-(v) above.

(d) That the Court award Zynga three times the amount of any and all profits realized by Blingville, LLC from the use of the "BlingVille" name in accordance with 15 U.S.C. § 1117(a);

(e) That the Court award Zynga its reasonable attorneys' fees and costs of suit pursuant to 15 U.S.C. § 1117(a);

(f) That the Court retain jurisdiction of this action for the purpose of enabling Zynga to apply to the Court at any time for such further orders and interpretation or execution of any order entered in this action, for the modification of any such order, for the enforcement or compliance therewith and for the punishment of any violations thereof; and

(g) For such other and further relief as the Court may deem just and equitable.

Dated: March 8, 2011

ZYNGA INC.

By Counsel

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Defendant Zynga hereby demands a jury trial on all issues so triable.

ZYNGA INC.

By Counsel

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