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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO, CA
[Handwritten signatures and stamps]

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E-filing

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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

BZ

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14 *[Handwritten mark]*
15 ZYNGA GAME NETWORK, INC.

CV 09

2744

16 Plaintiff,

17 v.

18 JOHN DOES 1-50,

19 Defendants.

COMPLAINT FOR:

- (1) VIOLATION OF 15 U.S.C. § 1125(a);
- (2) VIOLATION OF 15 U.S.C. § 1125(d);
- (3) VIOLATION OF CAL. BUS. & PROF. CODE § 17200;
- (4) STATE COMMON LAW TRADEMARK INFRINGEMENT
- (5) COMMON LAW PASSING OFF AND UNFAIR COMPETITION;
- (6) BREACH OF CONTRACT; AND
- (7) INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

DEMAND FOR JURY TRIAL

1 Plaintiff Zynga Game Network, Inc. (“Zynga”) brings this action against DOES
2 1-50 for injunctive relief and damages under the laws of the United States and the
3 State of California.

4 **Nature of the Action**

5 1. This is an action for violation of the federal Lanham Act, 15 U.S.C. §§
6 1125(a), and 1125(d); violation of the California statutory law of unfair competition,
7 Cal. Bus. & Prof. Code § 17200; California common law trademark infringement,
8 passing off and unfair competition; breach of contract; and for intentional interference
9 with contractual relations.

10 **The Parties**

11 2. Plaintiff Zynga is a corporation organized and existing under the laws of
12 the State of Delaware and has its principal place of business in San Francisco,
13 California.

14 3. Zynga is currently unaware of the identities of Defendants John Does 1-
15 50 (“Defendants”), and therefore sues such defendants by such fictitious acronyms.
16 Zynga is informed and believes that discovery will reveal the true identities of the
17 Defendants. Zynga will amend this Complaint to identify Defendants by name after
18 their identities are discovered. On information and belief, the actions alleged herein to
19 have been undertaken by Defendants were undertaken by each Defendant
20 individually, were actions that each Defendant caused to occur, were actions that each
21 Defendant authorized, controlled, directed, or had the ability to authorize, control or
22 direct, and/or were actions in which each Defendant assisted, participated or otherwise
23 encouraged, and are actions for which each Defendant is liable. Each Defendant aided
24 and abetted the actions of the Defendants set forth below, in that each Defendant had
25 knowledge of those actions, provided assistance and benefitted from those actions, in
26 whole or in part. Each of the Defendants was the agent of each of the remaining
27 Defendants, and in doing the things hereinafter alleged, was acting within the course
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1 and scope of such agency and with the permission and consent of each and every one
2 of the other Defendants.

3 Jurisdiction and Venue

4 4. This action arises under the trademark laws of the United States, 15
5 U.S.C. § 1051, *et seq.*, particularly under 15 U.S.C. §§ 1125(a) and 1125(d); state
6 unfair competition law; and the common law of trademark infringement, passing off
7 and unfair competition; breach of contract; and the common law of intentional
8 interference with contractual relations. This Court has jurisdiction of the federal
9 claims under 28 U.S.C. §§ 1331 and 1338, 15 U.S.C. §§ 1116, 1121, and 1125. This
10 Court has supplemental jurisdiction of the state unfair competition claims under 28
11 U.S.C. § 1338(b), those claims being joined with a substantial and related claim under
12 the Trademark Laws of the United States, and supplemental jurisdiction of all of the
13 state law claims under 28 U.S.C. § 1367(a), those claims being so related to the
14 federal claims that they form part of the same case or controversy and derive from a
15 common nucleus of operative fact.

16 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b).

17 Factual Allegations

18 6. Zynga is the largest social gaming company, providing, *inter alia*, online
19 poker games, word games, board games, role playing games and party games
20 including Texas Hold'Em Poker, Mafia Wars, YoVille, Vampires, Street Racing,
21 Scramble and Word Twist. Zynga's games are available on Facebook, MySpace,
22 Bebo, Hi5, Friendster, Tagged, Yahoo!, the iPhone and iPod Touch, among others.

23 7. Zynga coined the trademark and service mark (collectively "mark")
24 ZYNGA and has made use of the mark ZYNGA in commerce since June 2007.

25 8. Zynga's games have been a runaway success. In July, 2008, Zynga had
26 over 1.3 million daily active users and 20 million registered users. As of January 1,
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1 2009, Zynga had over 75 million registered users. As of May, 2009, Zynga had more
2 than 9.5 million daily users.

3 9. Zynga's success and the success of the ZYNGA mark have been widely
4 reported in the press, on the Internet and in blogs.

5 10. The mark ZYNGA is inherently distinctive, and furthermore, by virtue of
6 the extensive online sales and advertising under the mark ZYNGA, the ZYNGA mark
7 has become well-known within social gaming circles as a source identifier for Zynga's
8 games.

9 11. Zynga currently owns United States Federal Trademark Application
10 Serial No. 77684104 for the mark ZYNGA in International Class 009 for
11 downloadable software for games and entertainment on wireless devices and
12 computers, and International Class 041 for entertainment services, namely providing
13 on-line computer games. The application has not been withdrawn or opposed.

14 12. One of Zynga's most popular properties is Zynga's Texas Hold'em Poker
15 (the "Game"), a computerized version of the world-famous poker game.

16 13. Zynga makes the Game available through social networking websites and
17 applications (collectively "Providers"), including but not limited to those identified in
18 Paragraph 6 above.

19 14. Zynga's Terms of Service govern users' play of the Game.

20 15. When users sign up with Zynga to play the Game, they receive a certain
21 number of virtual "chips" that they use to compete in games with other players using
22 the Providers' sites and/or applications. Players can increase their total number of
23 "chips" through their play, and can also purchase "chips" from Zynga.

24 16. Zynga has not authorized any third party to sell the "chips" required to
25 play the Game.

26 17. The Terms of Service that govern users' play of the Game provide that
27 the "chips" used in the Game "are not redeemable for any sum of 'real world' money
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1 or monetary value.” The Terms of Service also prohibit sale of “chips” “for ‘real
2 world’ money” and prohibit the use of the Game for unacceptable purposes, including
3 activity in “conflict with the spirit or intent of” the Game.

4 18. Without Zynga’s authorization or approval, Defendants have established
5 and currently operate numerous websites (the “Infringing Websites”) through which
6 they sell or purport to sell “Zynga” chips for use in the Game.

7 19. Defendants operate the Infringing Websites from numerous Internet
8 domain names (the “Domain Names”), many of which include the ZYNGA mark (the
9 “Zynga Domain Names”). The Domain Names include, but are not necessarily
10 limited to: 123chips.net; allchipsnow.com; alloverchips.com; bebochips.com;
11 bestbuychips.com; buddychips.com; buychipsnow.com; buyfbchips.com;
12 buymyspacechips.com; buytaggedchips.com; buytaggedpokerchips.com;
13 cheapchipsonline.com; chipempire.net; chips2play.com; chips2uonline.com;
14 chips4facebook.com; chips4iphone.com; chips4play.com; chipsmagic.net;
15 chipsprovider.com; chipsmania.net; chipsnow.net; easybuychips.com;
16 facebookchips.com; facebookpokerchips.com; facebookpokerstore.com;
17 fbchipsfast.com; fbchips4sale.net; fbpokerchipz.com; fbpokerchipz.net;
18 getchips4play.com; getchipsonline.com; idreamchips.com; iwantchips.com; lucky-
19 chips.com; muiechips.com; myluckychips.com; myplaypoints.com;
20 platinumchips.com; sgclub.com; shop4chips.com; shop4chips.net; starchips.net;
21 wwchips.com; yahoochips.com; zyangapokerstore.com; zyangatexaschips.com;
22 zyangachips.org; zyangapokerchips.info; zyangapokerchips.org.

23 20. Defendants have registered the Domain Names using the Domains By
24 Proxy privacy protection service, preventing Zynga from accessing the name and
25 contact information Defendants used to register the Domain Names.

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1 21. Through the Infringing Websites, Defendants “sell” “chips” that users,
2 playing the Game through the Providers’ websites and/or applications, can use to
3 compete with other players who obtained their “chips” directly from Zynga.

4 22. Defendants “sell” these “chips” using the ZYNGA mark, and at prices
5 that are substantially lower than the prices paid by users who obtain their “chips” from
6 Zynga.

7 23. Defendants have used the Game itself as part of their scheme,
8 transferring the “chips” they sell during game play in contravention of the Game’s
9 terms of service and/or security measures.

10 24. Zynga has never authorized Defendants to use the mark ZYNGA or to
11 sell “chips” for use in the Game, nor has Zynga authorized Defendants to use the
12 Game to transfer “chips” that they have “sold” to players through their Infringing
13 Websites.

14 **FIRST CAUSE OF ACTION**

15 **(False Designation of Origin Regarding the Mark ZYNGA)**

16 **(15 U.S.C. § 1125(a))**

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

19 26. Defendants’ use of the mark ZYNGA constitutes use of a false
20 designation of origin or false and misleading representation in interstate commerce
21 that wrongfully and falsely designates, describes and represents that Defendants’
22 products are connected, affiliated or associated with Zynga, and is likely to cause
23 confusion as to Defendants’ affiliation, connection or association with Zynga, or as to
24 the origin, sponsorship, or approval of Defendants’ products or activities by Zynga.

25 27. Defendants’ conduct as alleged herein has caused and will continue to
26 cause Zynga irreparable harm for which there is no adequate remedy at law, and is
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1 also causing damage to Zynga in an amount which cannot be accurately computed at
2 this time but will be proven at trial.

3 **SECOND CAUSE OF ACTION**

4 **(Federal Cybersquatting Regarding the Mark ZYNGA)**

5 **(15 U.S.C. § 1125(d))**

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

8 29. Defendants have registered and used the Zynga Domain Names willfully
9 and with a bad faith intent to profit from the mark ZYNGA.

10 30. The mark ZYNGA was distinctive at the time of registration of the Zynga
11 Domain Names and remains distinctive today.

12 31. The Zynga Domain Names were confusingly similar to the mark
13 ZYNGA at the time Defendants registered it, and remain so today.

14 32. Defendants' conduct as alleged herein has caused and will continue to
15 cause Zynga irreparable harm for which there is no adequate remedy at law, and is
16 also causing damage to Zynga in an amount which cannot be accurately computed at
17 this time but will be proven at trial, or at Zynga's election, an award statutory
18 damages in an amount to be determined by the Court.

19 **THIRD CAUSE OF ACTION**

20 **(California Statutory Unfair Competition)**

21 **(California Business and Professions Code § 17200, *et seq.*)**

22 33. Zynga repeats, realleges and incorporates each and every allegation of the
23 foregoing paragraphs, as though fully set forth in this cause of action.

24 34. Defendants compete directly with Zynga by selling the "chips" that are
25 required to play the Game.

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1 35. Defendants are making unauthorized commercial use of the mark
2 ZYNGA in a deliberate, willful, intentional and wrongful attempt to trade on Zynga's
3 goodwill, reputation and financial investments in the mark ZYNGA.

4 36. By reason of their conduct as alleged herein, Defendants have engaged in
5 unlawful, unfair and/or fraudulent ongoing business practices.

6 37. As a direct result of their unfair competition with regard to the mark
7 ZYNGA, Defendants have unlawfully acquired, and continue to acquire on an
8 ongoing basis, an unfair competitive advantage and have engaged, and continue to
9 engage in, wrongful business conduct to their monetary advantage and to the
10 detriment of Zynga.

11 38. Defendants' illegal and unfair business practices are continuing, and
12 injunctive relief pursuant to California Business and Professions Code § 17203 is
13 necessary to prevent and restrain further violations by Defendants.

14 39. This Court has jurisdiction over the subject matter of this claim pursuant
15 to the provisions of 28 U.S.C. § 1338(b), this being a claim of unfair competition
16 joined with a substantial and related claim under the Trademark Laws of the United
17 States, and under 28 U.S.C. § 1367.

18 **FOURTH CAUSE OF ACTION**

19 **(Common Law Trademark Infringement of the Mark ZYNGA)**

20 40. Zynga repeats, realleges and incorporates each and every allegation of the
21 foregoing paragraphs, as though fully set forth in this cause of action.

22 41. Defendants' unauthorized use of the mark ZYNGA constitutes trademark
23 infringement and is likely to cause confusion, deception and mistake among the
24 consuming public and trade as to the source of, and authorization for the products
25 and/or services sold by Defendants in violation of the common law of the State of
26 California.

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1 42. As well as harming the public, Defendants' conduct as alleged herein has
2 caused and will continue to cause Zynga irreparable harm for which there is no
3 adequate remedy at law, and is also causing damage to Zynga in an amount which
4 cannot be accurately computed at this time but will be proven at trial.

5 43. This Court has jurisdiction over the subject matter of this claim pursuant
6 to the provisions of 28 U.S.C. § 1338(b), this being a claim of infringement joined
7 with a substantial and related claim under the Trademark Laws of the United States,
8 and under 28 U.S.C. § 1367.

9 **FIFTH CAUSE OF ACTION**

10 **(California Common Law Passing Off and Unfair Competition)**

11 44. Zynga repeats, realleges and incorporates each and every allegation of the
12 foregoing paragraphs, as though fully set forth in this cause of action.

13 45. By virtue of their conduct as alleged herein, Defendants have engaged
14 and are engaging in unfair competition and passing off under the common law of the
15 State of California.

16 46. As well as harming the public, Defendants' conduct as alleged herein has
17 caused and will continue to cause Zynga irreparable harm for which there is no
18 adequate remedy at law, and is also causing damage to Zynga in an amount which
19 cannot be accurately computed at this time but will be proven at trial.

20 47. Defendants' actions were undertaken intentionally to obtain an unfair
21 advantage over Zynga and in conscious disregard of Zynga's rights, and were
22 malicious, oppressive and/or fraudulent. Zynga requests punitive or exemplary
23 damages pursuant to California Civil Code § 3294(a) in an amount sufficient to punish
24 and deter Defendants and to make an example of them.

25 48. This Court has jurisdiction over the subject matter of this claim pursuant
26 to the provisions of 28 U.S.C. § 1338(b), this being a claim of unfair competition
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1 joined with a substantial and related claim under the Trademark Laws of the United
2 States, and under 28 U.S.C. § 1367.

3 **SIXTH CAUSE OF ACTION**

4 **(Breach of Contract)**

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

7 50. By participating in the Game, Defendants have agreed to be bound by the
8 Terms of Service governing use of the Game as alleged above.

9 51. Zynga has performed all conditions, covenants and promises required to
10 be performed on its part in accordance with the Terms of Service except as excused by
11 Defendant's failure to perform all conditions, covenants and promises required to be
12 performed on its part.

13 52. By selling "chips" for use in the Game through the Infringing Websites,
14 and by using the Game itself to transfer the "chips" they sell, Defendants have
15 breached the Terms of Service, which specifically prohibit Game users from
16 exchanging "chips" "for 'real world' money or otherwise exchange items for value
17 outside of the Game."

18 53. Defendants' conduct as alleged herein has caused and will continue to
19 cause Zynga irreparable harm for which there is no adequate remedy at law, and is
20 also causing damage to Zynga in an amount which cannot be accurately computed at
21 this time but will be proven at trial.

22 54. This Court has jurisdiction over the subject matter of this claim pursuant
23 to the provisions of 28 U.S.C. § 1367.

24 **SEVENTH CAUSE OF ACTION**

25 **(Intentional Interference with Contractual Relations)**

26 55. Zynga repeats, realleges and incorporates each and every allegation of the
27 foregoing paragraphs, as though fully set forth in this cause of action.

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1 56. Zynga has existing valid contracts with users of the Game.

2 57. Zynga is informed and believes, and on that basis alleges, that
3 Defendants have knowledge of those contracts, and that Defendants have acted
4 intentionally to induce a breach or disruption of those contractual relationships by
5 selling “chips” for the Game without authorization, at prices that are substantially
6 lower than the prices paid by users who obtain their “chips” from Zynga, and by
7 distributing “chips” to users in a manner prohibited by the Terms of Service.

8 58. Defendants’ actions as alleged herein have caused actual disruption or
9 breach of Zynga’s contractual relationships with individual users.

10 59. Defendants’ conduct as alleged herein has caused and will continue to
11 cause Zynga irreparable harm for which there is no adequate remedy at law, and is
12 also causing damage to Zynga in an amount which cannot be accurately computed at
13 this time but will be proven at trial.

14 60. This Court has jurisdiction over the subject matter of this claim pursuant
15 to the provisions of 28 U.S.C. § 1367.

16 **REQUEST FOR RELIEF**

17 Zynga requests that this Court:

18 A. Enter a permanent injunction enjoining Defendants, their officers,
19 directors, agents, employees, representatives and all persons acting in concert or
20 participation with them from using the mark ZYNGA, alone or in combination with
21 any other words or phrases, in a manner that is likely to cause confusion with respect
22 to the mark ZYNGA or with respect to Zynga’s approval or authorization of
23 Defendants’ actions, including but not limited to enjoining Defendants from
24 registering any Internet domain names containing the term ZYNGA, or any variations
25 or misspellings of the term ZYNGA, alone or in combination with any other terms;

26 B. Enter a permanent injunction enjoining Defendants, their officers,
27 directors, agents, employees, representatives and all persons acting in concert or
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1 participation with them from accessing, playing, or otherwise participating in the
2 game;

3 C. Enter a permanent injunction requiring Defendants, their officers,
4 directors, agents, employees, representatives and all persons acting in concert or
5 participation with them to immediately cease any conduct suggesting or tending to
6 suggest that any products or services they advertise or offer for sale are directly or
7 indirectly sponsored or approved by, or affiliated with Zynga;

8 D. Order the transfer of the Domain Names to Zynga;

9 E. Enter a finding that Defendants' actions were willful, deliberate, and
10 malicious;

11 F. As to the First Cause of Action, award damages in an amount to be
12 proven at trial that will be trebled pursuant to 15 U.S.C. § 1117(a);

13 G. As to the First Cause of Action, enter an order, pursuant to 15 U.S.C. §
14 1118 and other applicable law, directing Defendants to deliver for destruction all
15 products in their possession or under its control that infringe Zynga's intellectual
16 property rights;

17 H. As to the Second Cause of Action, award damages in an amount to be
18 proven at trial, or at Zynga's election, statutory damages in the amount of \$100,000
19 for each and every one of the Zynga Domain Names;

20 I. As to the Fourth, Fifth, Sixth and Seventh Causes of Action, award
21 damages in an amount to be proven at trial;


22 J. As to the Fifth Cause of Action, award punitive damages in an amount
23 sufficient to punish and deter Defendants;

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- K. Enter an award of attorney's fees and costs; and
- L. Award any such other and further relief as this Court deems just and proper.

PLAINTIFF ZYNGA HEREBY DEMANDS A TRIAL BY JURY.

Dated: June 19, 2009

By: 

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ZYNGA GAME NETWORK, INC.