

IN THE UNITED STATES DISTRICT COURT
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EASTERN DISTRICT
OF MISSOURI

COPY

DAVIDSON & ASSOCIATES, INC., D.B.A.
BLIZZARD ENTERTAINMENT, and
VIVENDI UNIVERSAL GAMES, INC.,

Plaintiffs,

v.

INTERNET GATEWAY, INC., TIM JUNG,
an individual, ROSS COMBS, an individual,
and JOHN DOES 1-50,

Defendants.

Case No. 4:02CV498 CAS

**FIRST AMENDED COMPLAINT FOR FEDERAL COPYRIGHT
INFRINGEMENT; FEDERAL TRADEMARK INFRINGEMENT, DILUTION
AND FALSE DESIGNATION OF ORIGIN; COMMON LAW TRADEMARK
INFRINGEMENT AND UNFAIR COMPETITION; AND BREACH OF END USER
LICENSE AGREEMENTS; AND DEMAND FOR JURY TRIAL**

Plaintiffs Davidson & Associates, Inc., d.b.a. Blizzard Entertainment, and Vivendi Universal Games, Inc., (collectively "Blizzard"), hereby allege as follows against Defendants Internet Gateway, Inc., Tim Jung, Ross Combs, and John Does 1-50 based upon actual knowledge with respect to Plaintiffs and Plaintiffs' acts, and on upon information and belief as to all other matters.

NATURE OF THE CASE

1. This is an action for direct and indirect infringement of a registered copyright in violation of the Copyright Act, as amended, 17 U.S.C. § 501; for infringement of a registered trademark in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1); for false designation of origin in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A); for trademark dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. §

NTD



1125(c); for common law trademark infringement and unfair competition; and for breach of contract under the laws of Missouri and other states.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1332, and 1338. The parties are citizens of diverse states, and the matter in controversy, exclusive of interest and costs, exceeds in value the sum specified by 28 U.S.C. § 1332.

3. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391.

THE PARTIES

4. Plaintiff Davidson & Associates is a corporation organized and existing under the laws of the state of California, with a principal place of business at 6080 Center Drive, Los Angeles, California 90045. A division of Davidson & Associates does business as Blizzard Entertainment, which has a principal place of business at , Irvine, CA 92612. Plaintiff Vivendi Universal Games, Inc., is the parent corporation of Davidson & Associates. Vivendi Universal Games, Inc., is a Delaware corporation having a principal place of business at 6080 Center Drive, Los Angeles, California 90045.

5. On information and belief, Defendant Internet Gateway, Inc. is an Internet Service Provider (ISP) operating and doing business in St. Charles, Missouri. According to the Missouri Secretary of State's Office, Internet Gateway, Inc. (Charter No. 00419806) has been administratively dissolved for failure to file an annual report. Nonetheless, on information and belief, Defendant Internet Gateway, Inc., continues to operate as a business within this judicial district, by, among other activities, advertising its services as an ISP in the greater St. Louis area, and hosting the website www.bnetd.org, which features the BNETD server program. BNETD is a

server program that enables remote multiplayer Internet play of Blizzard games, without requiring players to provide a CD Key to verify that they are using an authorized copy of the Blizzard game.

6. On information and belief, Tim Jung is an individual residing at 611 Oregon Trail Drive, St. Charles, Missouri 63304. Mr. Jung is the president of Internet Gateway, Inc., as well as a co-developer of the BNETD program, the owner of the BNETD domain, and the system administrator of the www.bnetd.org website.

7. On information and belief, Defendant Ross Combs is an individual residing at 9801 Stonelake Blvd., Apartment 1733, Austin, Texas 78759. Mr. Combs is a co-developer of the BNETD program.

8. On information and belief, John Does 1-50 are unnamed co-developers, distributors, hosts, programmers, or other persons or entities involved in the creation, use, and dissemination of the BNETD program.

BLIZZARD'S COMPUTER GAMES AND BATTLE.NET WEBSITE

9. Blizzard Entertainment is one of the preeminent entertainment software companies in the world. Blizzard is known for its high-quality computer games, such as DIABLO, DIABLO II, STARCRAFT, WARCRAFT, and WARCRAFT II: BATTLE.NET EDITION, as well as its online gaming service, BATTLE.NET (www.battle.net), which allows remote multiplayer play of these games via the Internet. Blizzard's games are tremendously popular, having generated sales well in excess of 190 million dollars since 1997 in the U.S. alone. Gamers from around the world now use Blizzard's Battle.net service, with active users numbering over 10 million.

10. Blizzard's computer games are PC-type games sold for use on personal computers. The games may be played in a single player or multiplayer mode, across local or remote networks, provided that each end user has a legal copy of the game installed on his or her computer. To install

