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Attorneys for Defendants and Cross-Claimants
Vivendi Games, Inc.
and Blizzard Entertainment, Inc.

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

14 MDY INDUSTRIES, LLC,)
15)
16 Plaintiff and Counter-Claim)
17 Defendant)
18 vs.)
19 BLIZZARD ENTERTAINMENT, INC.,)
20 and VIVENDI GAMES, INC.)
21 Defendants and)
22 Counter-Claim Plaintiffs.)

Case No.: 2-06-cv-02555-PHX-DGC

**DEFENDANTS' ANSWER TO
FIRST AMENDED COMPLAINT,
COUNTERCLAIMS AND THIRD-
PARTY COMPLAINT**

The Honorable David G. Campbell

22 BLIZZARD ENTERTAINMENT, INC.,)
23 and VIVENDI GAMES, INC.)
24 Third-Party Plaintiffs,)
25 vs.)
26 MICHAEL DONNELLY,)
27)
28 Third-Party Defendant.)

1 Defendants Blizzard Entertainment, Inc. and Vivendi Games, Inc. (collectively
2 “Defendants” or “Blizzard”), by and through their attorneys Sonnenschein Nath & Rosenthal
3 LLP, hereby answer the First Amended Complaint of plaintiff MDY Industries, LLC, and for
4 their Counterclaims against MDY Industries, LLC and Third-Party Complaint against Michael
5 Donnelly (“Donnelly”), allege as follows:

6
7 **ANSWER**

8 **PARTIES AND JURISDICTION**

9
10 1. Defendants are without sufficient knowledge or information to form a belief as to
11 the truth of the allegations contained in paragraph 1 and, on that basis, deny them. Defendants
12 also affirmatively allege, upon information and belief, that Michael Donnelly is the alter ego of
13 MDY Industries, LLC.

14 2. Defendants admit the allegations in paragraph 2.

15 3. Defendants admit the allegations in paragraph 3.

16 4. Paragraph 4 asserts legal conclusions to which no answers are required.

17 5. Paragraph 5 asserts legal conclusions to which no answers are required. To the
18 extent that answers are required, Defendants deny the allegations contained in paragraph 5.

19 6. Paragraph 6 asserts legal conclusions to which no answers are required. To the
20 extent that answers are required, Defendants are without sufficient knowledge or information to
21 form a belief as to the truth of the allegations contained in paragraph 6 and, on that basis, deny
22 them.
23

24 **SUBJECT MATTER OF CONTROVERSY AND ACTS COMPLAINED OF**

25 7. Defendants are without sufficient knowledge or information to form a belief as to
26 the truth of the allegations contained in paragraph 7 and, on that basis, deny them. Defendants
27 also affirmatively allege, on information and belief, that other persons are involved in the sale of
28 WoWGliders, including Michael Donnelly.

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Attorneys for Defendants Blizzard Entertainment,
Inc. and Vivendi Games, Inc.

1 **COUNTERCLAIMS AND THIRD-PARTY CLAIMS AGAINST MDY INDUSTRIES**
2 **LLC AND MICHAEL DONNELLY**

3 For its counterclaim against plaintiff MDY Industries LLC and complaint against
4 Michael Donnelly, (hereafter collectively referred to as “MDY”), defendants and counter-
5 claimants Blizzard and Vivendi Games (collectively “Blizzard”) allege as follows:

6 **NATURE OF THE ACTION**

7 1. Blizzard seeks injunctive relief, money damages and related relief against MDY.
8 Donnelly is an individual responsible for the development and sale of “WoWGlider,” a software
9 program that enables users to circumvent Blizzard’s security measures and infringe Blizzard’s
10 intellectual property rights in its World of Warcraft® (“WoW”) software. WoWGlider’s
11 unauthorized code then enables its users to cheat fellow players by completing in-game tasks and
12 building characters with little or no human participation, thereby giving WoWGlider users
13 significant unfair and contractually prohibited advantages over legitimate players. Via the website
14 wowglider.com, MDY actively markets and promotes WoWGlider with knowledge that they are
15 encouraging and enabling WoWGlider users to breach their contracts with Blizzard. MDY’s
16 actions have unjustly profited Michael Donnelly while negatively impacting the experience of
17 millions of legitimate WoW gamers and causing significant damage to Blizzard. The acts of
18 MDY, described in more detail below, constitute tortious interference with the contracts between
19 Blizzard and WoW users; contributory and vicarious infringement of registered copyrights in
20 violation of the Copyright Act, as amended, 17 U.S.C. § 501; trafficking in technology designed
21 for the purpose of circumventing copyright protection systems in violation of the Digital
22 Millennium Copyright Act, as amended, 17 U.S.C. § 1201(a)(2) and (b)(1); trademark
23 infringement in violation of Section 43(a) of the Lanham Act; and unfair competition and unjust
24 enrichment under the laws of the State of Arizona.

25 **JURISDICTION AND VENUE**

26 2. This Court has original jurisdiction to adjudicate the copyright, DMCA, and
27 trademark claims in this action pursuant to 28 U.S.C. §§ 1331 and 1338. This Court has
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1 supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1367
2 because they form part of the same case or controversy.

3 3. Venue in this jurisdiction is proper pursuant to 28 U.S.C. §§ 1391 and 1400
4 because this is a judicial district in which a substantial part of the events giving rise to the claims
5 occurred, and in which Donnelly and MDY Industries LLC reside.

6 **THE PARTIES**

7
8 4. Plaintiff Blizzard Entertainment, Inc. is a Delaware corporation organized and
9 existing under the laws of the State of California, with a principal place of business at P.O. Box
10 18979, Irvine, California 92623. Plaintiff Vivendi Games, Inc. is the parent corporation of
11 Blizzard Entertainment, Inc. Vivendi Games, Inc. is a Delaware corporation having a principal
12 place of business at 6060 Center Drive, Los Angeles, California 90045.

13
14 5. On information and belief, Defendant Donnelly is an Arizona resident residing at
15 4808 N. 24th Street, Apt. 1008, Phoenix, Arizona 85016.

16 6. On information and belief, Donnelly is the only Member of MDY Industries LLC,
17 an Arizona limited liability company organized in December 2004, and registered at 2311 E. Shea
18 Boulevard, Phoenix, Arizona 85016. On information and belief, Michael Donnelly is the alter ego
19 of MDY Industries, LLC.

20 **BACKGROUND FACTS**

21 **Blizzard's World of Warcraft® Online Computer Game**

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23
24 7. Blizzard is a premier publisher of entertainment software. Blizzard is best known
25 for its high-quality computer games, including the DIABLO, STARCRAFT and WARCRAFT
26 gaming franchises. Since establishing the Blizzard label in 1994, Blizzard has quickly become
27 one of the world's most respected and popular makers of computer games, with sales in excess of
28 \$800 million since 1998. Many of Blizzard's games feature online game play over the Internet via

1 an online gaming service provided by Blizzard. Over 11 million individuals actively play
2 Blizzard's games online.

3 8. In November 2004, Blizzard released World of Warcraft®, the company's most
4 ambitious and advanced online computer game to date. WoW is a Massively Multiplayer Online
5 Roleplaying Game ("MMORPG"), a genre of computer game in which large numbers of players
6 interact with each other simultaneously in a virtual persistent online world. WoW allows players
7 to experience the WARCRAFT universe in great detail, customizing their own experiences by
8 participating in a variety of different activities alone or with others.

9 9. Blizzard developed the WoW gaming environment through tremendous effort and
10 at tremendous expense to the company, employing numerous game designers, artists, producers
11 and programmers to conceive of and create a gaming experience that has thus far appealed to more
12 than eight million players.

13 10. The software code responsible for the extensive and richly detailed creative
14 elements forming the online world of the WoW gaming environment are copyrighted works
15 owned by Blizzard. Blizzard has received copyright registrations in both the server and game
16 client software code. See Copyright Registration Numbers TXu 1-166-151, TX 5-984-004, and
17 PA-1-247-131, attached hereto as Exhibit A.

18 11. From its release of WoW in November 2004, Blizzard has made extensive use of
19 the "World of Warcraft®" and "WoW" marks as trademarks in commerce. Blizzard has secured
20 federal trademark registrations for the World of Warcraft® mark at Registration Numbers
21 2877945 and 2972619, and has made extensive common law use of the WoW mark.

22 12. Blizzard has used the "WoW" and "World of Warcraft®" marks in marketing the
23 game on Blizzard's own promotional website, worldofwarcraft.com, in game packaging, and in
24 advertising. As a result, the "World of Warcraft®" and WoW marks have become distinctly
25 associated with Blizzard and the World of Warcraft® game.
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1 13. World of Warcraft® allows players from around the globe to assume the roles of
2 different characters within the game as they explore, adventure and quest across WoW’s vast
3 online world.

4 14. A central objective for players of WoW is to advance their characters through the
5 various levels recognized in the game, thereby accessing new content in the WoW gaming
6 environment as levels increase.

7 15. Leveling characters in WoW requires an investment of time and effort playing the
8 game.

9 16. World of Warcraft®, like other MMORPG games, derives revenue based on a
10 subscription fee model. In order to experience the WoW gaming environment, consumers must
11 obtain a legitimate version of the WoW game client, and then make periodic payments for a
12 subscription permitting them to continue accessing the authorized WoW servers and playing in the
13 authorized WoW gaming environment.
14

15 17. Unfortunately, the gaming experience of legitimate players of WoW is under near
16 constant attack by cheaters, scammers, and other wrongdoers seeking to exploit WoW for their
17 own illegitimate ends. For this reason, Blizzard seeks to protect the sanctity of the WoW gaming
18 experience through both contractual obligations and technical measures.

19 **The WoW End User License Agreement and Terms of Use**

20 18. Prior to playing WoW, users must install the game client on a personal computer.
21 During that installation process, the game client displays a contract to the user called the World of
22 Warcraft® End User License Agreement (the “EULA”). See EULA, attached as Exhibit B.
23

24 19. In order to install the game client, and again before playing the game for the first
25 time and before each update, the user must manifest assent to the EULA by scrolling through the
26 agreement to the end and clicking on a button labeled “Accept.” The user also may decline to
27 enter into this contract by clicking on a button labeled “Decline,” at which point the game client
28 will terminate, denying access to the user.

1 20. Any use of the WoW game client that is not in accordance with the EULA is
2 expressly prohibited. Among other provisions, the EULA provides that users may not:

3 facilitate, create or maintain any unauthorized connection to the Game
4 or the Service.... All connections to the Game and/or the Service,
5 whether created by the Game Client or by other tools and utilities, may
6 only be made through methods and means expressly approved by
7 Blizzard. Under no circumstances may you connect, or create tools that
8 allow you or others to connect, to the Game's proprietary interface
9 other than those expressly provided by Blizzard for public use.”

10 21. Blizzard only authorizes users to copy WoW into their computer's random access
11 memory in conformity with its license agreement.

12 22. The EULA provides commercially reasonable contractual protection of Blizzard's
13 rights in and to the game client and server elements of WoW.

14 23. Additionally, in order to participate in game play on Blizzard's WoW servers, users
15 must create a user account with Blizzard.

16 24. During that account creation process, and before the first game access and any
17 update, Blizzard displays a contract to the user called the World of Warcraft® Terms of Use (the
18 “TOU”). See TOU, attached as Exhibit C.

19 25. In order to create a WoW account, the user must manifest assent to the TOU by
20 clicking on a button labeled “Accept.” The user also may decline to enter into this contract by
21 clicking on a button labeled “Decline,” at which point the account creation process will terminate,
22 denying access to the user.

23 26. Any use of the WoW game client or access to the WoW gaming environment that
24 is not in accordance with the TOU is expressly prohibited.

25 27. Among other provisions, the TOU states that users will not “modify or cause to be
26 modified any files that are a part of the Program or the Service.” TOU 4(B)(i).

27 28. The TOU provides that users “will not ... use cheats, bots, ‘mods’, and/or hacks, or
28 any other third-party software designed to modify the World of Warcraft® experience....” TOU ¶
4(B)(ii).

1 49. MDY's sale of WoWGlider has caused Blizzard great harm in the direct loss of
2 revenue from terminated users, the loss of subscription revenue from WoWGlider users availing
3 themselves of the cheat, and from the severe damage to the goodwill of the non-cheating
4 population of WoW users.

5 50. MDY maintains complete control of all purchased WoWGlider programs by
6 requiring that they connect to a server administered by MDY before running. Thus, MDY has the
7 ability to disable any copy or all copies of WoWGlider at any time.

8 51. MDY intentionally designed WoWGlider to avoid detection by Warden and
9 thereby circumvent WoW's access controls.

10 52. In response to Blizzard's efforts to augment Warden's ability to prevent
11 WoWGlider users from accessing WoW, MDY has continually modified and updated WoWGlider
12 in order to preserve and enhance its ability to circumvent Warden.

13 53. Once downloaded and enabled, WoWGlider launches WoW in WoWGlider's own
14 separate, protected process for the purpose of making WoWGlider invisible to Warden, rather than
15 using the authorized WoW launcher functionality.

16 54. In the process of launching WoW, WoWGlider avoids Warden's technological
17 protective measures and enables the user to access WoW while running it in WoWGlider.

18 55. The copy of WoW in random access memory that is made when WoWGlider
19 launches WoW as a subservient process is not authorized by Blizzard.

20 56. But for the code in WoWGlider designed to avoid and bypass Warden, Warden
21 would prevent users from accessing and making copies of WoW in random access memory.

22 57. When running in conjunction with WoW, WoWGlider allows users to automate
23 gameplay such that they can manipulate the WoW gaming environment for their character in
24 violation of the EULA and the TOU, and artificially increase their economic standing and rank
25 within the game, without so much as being present at the computer.

1 118. Blizzard realleges each and every allegation set forth in Paragraphs 1 through 117,
2 inclusive, and incorporates them by reference herein.

3 119. MDY's actions as described herein comprise business conduct that is contrary to
4 honest practice in commercial matters.

5 120. As a result of MDY's actions, Blizzard has been damaged in an amount to be
6 proven at trial.

7 121. MDY's actions were committed willfully and knowingly.

8 122. MDY's actions constitute unfair competition under Arizona law, and entitle
9 Blizzard to injunctive relief, compensatory and punitive damages, and other available relief.
10

11 **COUNT VII**

12 **Unjust Enrichment**

13 123. Blizzard realleges each and every allegation set forth in Paragraphs 1 through 122,
14 inclusive, and incorporates them by reference herein.

15 124. On information and belief, MDY reaped and continues to reap substantial profits
16 from the sale and distribution of WoWGliders.

17 125. Use of WoWGliders impoverishes Blizzard by altering the game balance in World
18 of Warcraft®, damaging Blizzard's reputation with players dissatisfied with the pervasiveness of
19 cheaters and the effect of cheating on the game, and depriving Blizzard of monthly membership
20 revenue by enabling users to progress in the game more quickly than legitimate players.
21

22 126. MDY developed, sold, and used the WoWGliders software with full awareness that
23 such activities violate the Blizzard EULA and TOU, and that use by purchasers of the software
24 would also violate the Blizzard EULA and TOU.
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26 127. Blizzard has no adequate legal remedy under which to recover for MDY's
27 widespread distribution and sale of WoWGliders.
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H. Awarding Blizzard its costs and attorneys' fees in this action pursuant to 17 U.S.C. §§ 505 and 1203 and other applicable laws.

I. Awarding such other and further relief as this Court may deem just and appropriate.

Dated: February 16, 2007

Respectfully submitted,

/s Scott Stein
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Attorneys for Defendants and Cross-Claimants
Blizzard Entertainment, Inc. and Vivendi Games, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on February 16, 2007, I electronically transmitted the attached document
3 to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of
4 Electronic Filing to the following CM/ECF registrants:

5 Lance C. Venable
6 Joseph R. Meaney
7 Venable, Campillo, Logan & Meaney, P.C.
8 1938 East Osborn Road
9 Phoenix, AZ 85016

10 /s Scott Stein
11 Scott Stein

12 Attorney for Defendants and Cross-Claimants
13 Blizzard Entertainment, Inc. and
14 Vivendi Games, Inc.