

1 NEIL D. GREENSTEIN (SBN 123980)
2 TECHMARK
3 1917 Palomar Oaks Way, Suite 300
4 Carlsbad, CA 92008
5 Phone: (408) 280-2228
6 Fax: (408) 280-2250
7 Email: ndg@techmark.com

8 GREGORY A. BECK (*Pro Hac Vice* Pending)
9 PAUL ALAN LEVY LEVY (*Pro Hac Vice* To Be Filed)
10 PUBLIC CITIZEN LITIGATION GROUP
11 1600 20th St., NW
12 Washington, DC 20009
13 Phone: (202) 588-1000
14 Fax: (202) 588-7795
15 Email: gbeck@citizen.org
16 Email: plevy@citizen.org

17 Attorneys for plaintiff

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**
20 **WESTERN DIVISION**

21 BRIAN M. KOPP,
22 Plaintiff,

23 v.

24 VIVENDI UNIVERSAL GAMES,
25 INC., BLIZZARD
26 ENTERTAINMENT, INC., and
27 ENTERTAINMENT SOFTWARE
28 ASSOCIATION

Case No.:

**COMPLAINT FOR
MISREPRESENTATION UNDER
THE DIGITAL MILLENNIUM
COPYRIGHT ACT,
INTERFERENCE WITH
CONTRACT, INTERFERENCE
WITH PROSPECTIVE ECONOMIC
RELATIONS, UNFAIR,
DECEPTIVE, AND FRAUDULENT
BUSINESS PRACTICES, AND
DECLARATORY AND
INJUNCTIVE RELIEF.**

DEMAND FOR JURY TRIAL

1 rights. Defendant's misrepresentations caused plaintiff to be unable to sell
2 his guide on eBay and has thus resulted in lost profits. Plaintiff seeks
3 damages and declaratory and injunctive relief to prevent defendant from
4 engaging in further interference with his sale of the guide.
5

6 PARTIES

7 3. Plaintiff is an individual domiciled in Bronson, Florida.

8 4. Vivendi is a developer and publisher of video game software.

9
10 It is a corporation incorporated in Delaware with its principal place of
11 business in Los Angeles, California.
12

13 5. Blizzard is a developer and publisher of video game software.

14 It is a corporation incorporated in Delaware with its principal place of
15 business in Irvine, California, and is a wholly owned subsidiary of Vivendi.
16

17 6. The ESA is a trade group representing video game publishers.

18 It is a corporation incorporated in Delaware with its principal place of
19 business in Washington, D.C.
20

21 FACTS

22 The World of Warcraft Game

23 7. Blizzard is the developer and publisher of a video game called
24 "World of Warcraft." World of Warcraft is what is frequently referred to as
25 a "massively multiplayer online role-playing game," in which players from
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1 around the world play together in a huge virtual environment. World of
2 Warcraft is currently the most popular online game in North America, with
3 more than 1.5 million subscribers.
4

5 8. Players in World of Warcraft create characters such as warriors,
6 wizards, and rogues. The characters can be either human or members of
7 various fantasy races such as dwarves, night elves, and gnomes. Players
8 earn gold and "experience points" for their characters by killing monsters
9 and completing "quests."
10

11
12 9. Experience points are the measure of a player's success in
13 World of Warcraft. After accumulating a certain amount of experience
14 points, a character advances in level. All characters in the game are ranked
15 at a level between one and sixty. As players earn higher levels, their
16 characters are able to acquire new skills and magic powers. Achieving a
17 high level is the ultimate goal of the game, and high-level characters are
18 granted special status and privileges. Players usually must devote literally
19 hundreds of hours to playing the game to achieve a character of level sixty.
20 A secondary goal of the game is to accumulate gold, which players can use
21 to purchase weapons, armor, and other useful items for their characters.
22

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24
25 10. To play World of Warcraft, a player must first purchase a copy
26 of the software published by Blizzard. The player must then register with
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28

1 the World of Warcraft online service and pay Blizzard a monthly
2 subscription fee.

3
4 11. Blizzard has a registered copyright, including Registration No.
5 PA-1-247-131, in the World of Warcraft game and a registered trademark,
6 including Registration Nos. 2,877,945 and 2,972,619, in the phrase "World
7 of Warcraft."
8

9 The eBay Auction Site

10 12. eBay is a virtual Internet marketplace on which members can
11 sell goods and services in an auction-style or fixed-price format. It is by far
12 the largest site of its kind on the Internet, with more than one hundred
13 million registered users. Each product for sale on eBay has its own web
14 page, called a "listing" or "auction," which describes the product and allows
15 potential purchasers to bid on or purchase the product.
16
17

18 13. As an Internet Service Provider ("ISP"), eBay is protected from
19 liability by the Digital Millennium Copyright Act ("DMCA") for listings
20 that contain copyrighted text or pictures or that advertise unauthorized
21 copies of copyrighted material. *Hendrickson v. eBay, Inc.*, 165 F. Supp. 2d
22 1082, 1088 (C.D. Cal. 2001). The DMCA provides ISPs safe harbor from
23 liability for "infringement of copyright by reason of the storage at the
24 direction of a user of material that resides on a system or network controlled
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1 or operated by [the ISP].” 17 U.S.C. § 512(c)(1). To qualify for protection
2 from liability under this provision, an ISP must act expeditiously to remove
3 material that is claimed to be infringing upon receiving a “notice of claimed
4 infringement” from the copyright owner. *Id.* § 512(c)(1)(C). The
5 requirements of a notice of claimed infringement are spelled out in 17
6 U.S.C. § 512(c)(3).
7

8
9 14. The DMCA also provides a mechanism for a subscriber to an
10 ISP who is targeted by a notice of claimed infringement to contest the notice
11 with the ISP. Under 17 U.S.C. § 512(g), a subscriber to an ISP can submit a
12 “counter notice” to the ISP stating “under penalty of perjury that the
13 subscriber has a good faith belief that the material was removed . . . as a
14 result of mistake or misidentification of the material.” *Id.* § 512(g)(3). An
15 ISP continues to enjoy safe harbor from liability if, upon receiving a counter
16 notice from a subscriber, it notifies the person who filed the notice of
17 claimed infringement that it will reinstate the removed material in ten to
18 fourteen business days unless it receives notice that there is a pending legal
19 action to restrain the subscriber from continuing to post the allegedly
20 infringing material. *Id.* § 512(g)(2).
21

22
23
24 15. To meet the safe harbor requirements in the DMCA, eBay
25 implemented a program called the “Verified Rights Owner”—or “VeRO”—
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1 program. *See Hendrickson*, 165 F. Supp. 2d at 1085 (citing eBay statement
2 that VeRO procedures “are intended to substantially comply with the
3 requirements of the [DMCA]”). Owners of intellectual property who
4 register for the VeRO program can submit a notice of claimed infringement
5 to eBay stating that a particular auction violates their intellectual property
6 rights. In filling out the notice of claimed infringement, the VeRO member
7 must sign a statement, under penalty of perjury, that it has a good-faith belief
8 that the identified auction violates its intellectual property rights or the
9 intellectual property rights of someone it represents.
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13 16. When a VeRO member submits a notice of claimed
14 infringement regarding a particular auction listing, eBay automatically
15 terminates that listing. eBay does not independently review the validity of
16 the notice of claimed infringement and trusts the VeRO member’s honesty
17 that a particular auction is infringing.
18
19

20 17. When a certain number of an eBay seller’s auctions are
21 terminated because of notices of claimed infringement from a VeRO
22 member, eBay will suspend that seller’s account. The number of
23 terminations required before the seller’s account is suspended varies from
24 seller to seller.
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1 played the game frequently and, over the next few months, reached level
2 sixty with one of his characters (a night elf rogue).

3
4 22. Based on his experience playing the game and information he
5 obtained from other players over the Internet, plaintiff created an electronic
6 guidebook titled "The Ultimate World of Warcraft Leveling & Gold Guide."
7
8 The book contained tips on how to play the game, how to accomplish quests,
9 and how to acquire gold and experience points.

10
11 23. The book did not contain any of defendants' copyrighted text or
12 storyline. It did contain a small number of "screen shots"—pictures of the
13 screen captured while playing the game—that plaintiff downloaded from a
14 web site unaffiliated with defendants. The book was the independent
15 creation of plaintiff and was entitled to the protection of the First
16 Amendment. It did not infringe any of defendants' copyrights, and the
17 limited use of screen shots constituted fair use.
18

19
20 24. Plaintiff included a disclaimer on the first page of the book
21 stating that "[t]his guide is not a copy of the official guide," and that the
22 book is "an unauthorized source" of information about the game. Plaintiff
23 also noted in the disclaimer that World of Warcraft is "owned and operated
24 by Blizzard" and that he had "composed this guide independently and it is
25 not endorsed or authorized by Blizzard." The disclaimer further stated that
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1 “[t]his product was created solely to inform/educate players of the online
2 game World Of Warcraft [about how] to become a better player.”
3

4 25. There was never any likelihood of confusion about whether
5 plaintiff’s book was sponsored by or affiliated with defendants. The book
6 did not infringe, dilute, or tarnish defendants’ trademarks or any other rights.
7

8 26. On August 18, 2005, plaintiff began offering his book for sale
9 on eBay using the account name “wowseller88.” Plaintiff created a listing
10 for the book that did not include any of defendants’ copyrighted text or
11 graphics. The listing included a copy of the disclaimer from the book and
12 clearly stated that plaintiff was not affiliated with Blizzard. Nothing in the
13 eBay listing infringed any of defendants’ copyrights.
14
15

16 27. Everything in plaintiff’s eBay listings was truthful. There was
17 never any likelihood of confusion about whether the listing was sponsored
18 by or affiliated with defendants. Plaintiff’s eBay listing did not infringe,
19 dilute, or tarnish defendants’ trademarks or any other rights.
20

21 28. Plaintiff used multiple copies of the same listing to sell his book
22 on eBay. After selling a book, plaintiff created a new auction listing so that
23 he always had several books available for purchase at any time. Plaintiff
24 sold several hundred copies of his book on eBay over the next several
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1 months, sometimes in the form of an auction and sometimes for a fixed
2 price. Most copies of the book sold for about fifteen dollars.
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5 Conduct of the Defendants

6 29. In September 2005, defendants filed several notices of claimed
7 infringement with eBay, swearing under penalty of perjury that they had a
8 good faith belief that plaintiff's auctions of his book violated defendants'
9 intellectual property rights.
10

11 30. After receiving the notices of claimed infringement from
12 defendants, eBay sent plaintiff several emails notifying him that his auctions
13 had been terminated "because the intellectual property rights owner notified
14 us, under penalty of perjury, that your listing or the item itself infringes their
15 copyright, trademark, or other rights." eBay notified bidders on the auction
16 that the auction had been terminated and that their bids were canceled.
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19 31. In its notification to plaintiff, eBay identified the intellectual
20 property rights owner responsible for the termination of the auctions as the
21 ESA and provided the email address "esa@theesa.com" (an email address
22 belonging to the ESA) as contact information. However, the ESA was
23 actually working in combination with and with the authorization of the other
24 defendants, Blizzard and Vivendi.
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1 32. Plaintiff sent numerous emails to the ESA at the specified email
2 address, explaining that his book did not infringe anybody's intellectual
3 property rights, asking why his auctions were terminated, and requesting that
4 the ESA revoke its notice of claimed infringement. The ESA did not
5 respond to plaintiff's emails.
6

7
8 33. In late September 2005, plaintiff filed five counter notices with
9 eBay under the DMCA, contesting the removal of his auctions. Pursuant to
10 the DMCA, 17 U.S.C. § 512(g), eBay then told defendants they had fourteen
11 days to notify eBay that they had initiated a legal action against plaintiff or
12 the auctions would be reinstated.
13

14 34. When defendants did not respond within the required period,
15 eBay reinstated the five auctions on October 6, 2005. Plaintiff continued
16 selling his book on eBay.
17

18 35. The next day, on October 7, defendants filed a new notice of
19 claimed infringement against another of plaintiff's book auctions. eBay
20 automatically terminates an auction when a VeRO member submits a notice
21 of claimed infringement, even if the targeted listing is identical to another
22 auction that has already been reinstated pursuant to a counter notice.
23
24 Accordingly, eBay terminated the targeted auction.
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1 36. On October 11, defendants submitted five more notices of
2 claimed infringement against plaintiff, and eBay notified plaintiff that five
3 more of his book auctions had been terminated as a result.
4

5 37. In one of the October 11 notifications, eBay notified plaintiff
6 that the VeRO member responsible for terminating his auction was the ESA,
7 but provided a contact email address of “vuglegal@vugames.com” (an email
8 address belonging to Vivendi’s legal department).
9

10 38. On October 13, defendants submitted six more notices of
11 claimed infringement against plaintiff, causing eBay to terminate six more of
12 plaintiff’s book auctions.
13

14 39. Plaintiff continued to attempt to contact the ESA at the supplied
15 email address but received no response.
16

17 40. On November 2, defendants submitted three more notices of
18 claimed infringement to eBay and eBay notified plaintiff that three more of
19 his book auctions were therefore terminated. In one of the notifications,
20 eBay identified the VeRO member that had requested termination as the
21 ESA, but again supplied as contact information the email address
22 vulegal@vugames.com.
23

24 41. On the same day, plaintiff emailed the Vivendi legal department
25 at the vulegal@vugames.com address, writing:
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1 i have filed a counter suite [counter notice] with ebay back in
2 the end of september, as of october 5th ESA has agreed not to
3 vero my listings as I have proved this is my product and not
4 infringing rights. i never get a reply from the esa@theesa.com
5 email you used to use, if this is a bot [automated web robot]
6 that does this you have to make it stop removing my listings.
7
8 thank you[.]
9

10
11 42. Plaintiff received an automated email reply from Rod Rigole.
12 Rigole is Vice President of Legal Affairs at Vivendi and in that capacity also
13 serves as legal counsel for Blizzard. The email stated that Rigole was out of
14 the office until November 9, but gave an emergency cellular phone contact
15 number. Plaintiff called Rigole's cell phone number and left a voice mail
16 message explaining that he had filed a counter notice, that his book did not
17 infringe defendants' intellectual property, and that he wanted defendants to
18 stop terminating his auctions.
19
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22 43. On November 3, Rigole responded to plaintiff's email, telling
23 him he would be out of the office until November 9 and to contact him again
24 at that time.
25

26 44. Meanwhile, defendants continued to submit notices of claimed
27 infringement against plaintiff. Between November 4th and 7th, defendants
28

1 submitted ten more notices of claimed infringement and eBay terminated all
2 ten of the targeted auctions. On November 6, because of Vivendi's repeated
3 notices of claimed infringement, plaintiff's eBay account was suspended,
4 and all his auctions were terminated. As a result, plaintiff was unable to sell
5 any more products on eBay.
6

7
8 45. Defendants ordered each of these ten auctions removed while
9 Rigole was still on vacation, even though defendants were on notice that the
10 book did not infringe their intellectual property rights and had not yet
11 requested to see a copy of plaintiff's book.
12

13 46. Once again, in two of the notices from eBay informing plaintiff
14 that his auctions had been terminated, the VeRO member reporting the
15 allegedly infringing auction was identified as the ESA, but the contact
16 information was listed as the email address vulegal@vugames.com.
17

18
19 47. On November 6, Plaintiff again emailed the Vivendi legal
20 department at the vulegal@vugames.com address, writing:

21 what is this all about again first it was ESA then i got the last
22 vero from ESA with this email. how is this infringing your
23 rights when its a guide i've compiled? do people there blindly
24 vero or do they use a bot of some kind. if this reaches the same
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1 person who is out of office till nov 9th please tell me what the
2 deal is[.]
3

4 Plaintiff provided a link to a website where his book was accessible.

5 48. Also on November 6, plaintiff sent an email directly to Rigole's
6 email address. Plaintiff repeated the statement he had made in his email to
7 the legal department and again provided the link to read his book. Plaintiff
8 stated that he had unsuccessfully tried to call Rigole's cell phone, and wrote
9 "I am trying to show you so you can tell ebay this is not infringing because I
10 have been suspended and this is my selling account on ebay and this costs
11 me a great deal of money not being able to sell." He further wrote that "to
12 reinstate these you simply have to send an email to vero@ebay.com I
13 would greatly appreciate if you looked into this and could stop the removal
14 of the listings by whoever is doing this. I do not sell any form of items from
15 the game world of warcraft simply informational guides."
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20 49. On November 8, Rigole replied to plaintiff via email, writing:
21 "I would not consider this an emergency. I will be back in the office on
22 Wednesday and would be more than happy to discuss after I review the
23 materials you sent."
24

25 50. On November 9, Rigole emailed plaintiff:
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1 Please send me a copy of your "guide" so that I can better
2 address your inquiry. Note, however, that you are not allowed
3 to sell unauthorized [World of Warcraft] guides that attempt to
4 trade off the substantial good will that Blizzard Entertainment
5 has built up in World of Warcraft.
6
7

8 51. On November 9, 2005, plaintiff emailed Rigole, attaching for
9 the second time a link to a web page where Rigole could view the book. In
10 the email, plaintiff told Rigole that he had previously filed a counter notice
11 against the ESA that went uncontested. He attached a copy of the previous
12 counter notice and requested that Rigole contact eBay to have his account
13 reinstated. Plaintiff also informed Rigole that eBay was his means of
14 income and that without his account he was unable to sell other products on
15 eBay.
16
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19 52. On November 10, 2005, Rigole replied via email, telling
20 plaintiff that he had reviewed the book, but had not been able to view any of
21 its images. Rigole wrote that "the problem is that you are using Blizzard's
22 intellectual property for commercial purposes in your sale of an
23 unauthorized 'World of Warcraft leveling guide' and are attempting to trade
24 off the substantial good will that Blizzard has built up in the World of
25 Warcraft brand."
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1 53. Plaintiff and Rigole exchanged a series of further emails.
2
3 Plaintiff argued that his book did not infringe any of Blizzard's intellectual
4 property rights. Rigole acknowledged that plaintiff's reinstatement on eBay
5 "requires confirmation from the rights holder, which is Blizzard," but stated
6 that "such confirmation will not be forthcoming." Rigole told plaintiff that
7 "[i]f you continue selling this guide in the same manner, it will be removed
8 and further action will be taken against you." Rigole advised plaintiff to
9 consult an attorney and wrote: "Please note that you have been put on
10 notice. Blizzard reserves its right to pursue legal remedies if you[r] conduct
11 continues."
12

13
14 54. Rigole refused to clarify how plaintiff's book infringed
15 defendants' intellectual property, writing in an email only that "[i]t has to do
16 with established legal principles involving intellectual property, including
17 trademark and/or copyright." Rigole advised plaintiff to consult a reference
18 book for more information or to "search[] the Internet for the following
19 terms 'intellectual property', 'trademarks', and 'copyrights.'"
20
21

22 55. On November 14, plaintiff again emailed Rigole requesting that
23 Rigole consent to have eBay reinstate his account. Rigole responded the
24 same day: "As I said, your 'guide' violates Blizzard Entertainment's
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1 intellectual property. Therefore, I cannot provide the consent you have
2 requested.”

3
4 56. Plaintiff then submitted a request for reinstatement with eBay,
5 declaring under penalty of perjury that he would not knowingly offer any
6 items or post any listings on eBay that are illegal or that infringe the rights of
7 any third parties. As a result, eBay reinstated plaintiff’s account on
8 November 15. To avoid having his account again wrongfully suspended by
9 defendants, plaintiff stopped selling any more of his books using his
10 wowseller88 account. Plaintiff instead created a separate eBay account
11 called hotguides88 and resumed selling his books using that account.
12
13

14 57. On November 18, defendants submitted three more notices of
15 claimed infringement with eBay and, as a result, eBay terminated three of
16 plaintiff’s auctions associated with the hotguides88 account.
17

18 58. On that same day, plaintiff again contacted Rigole by email
19 requesting that defendants allow him to re-list his auctions. Rigole
20 responded via email that the auction had been terminated because it
21 “involve[d] the infringement of Blizzard Entertainment’s intellectual
22 property, specifically the World of Warcraft / WoW trademarks and
23 copyrights.” He further wrote: “Please consider this a warning. If you
24 continue with the aforementioned activities, we will have no other
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1 alternative but to review all legal remedies available to us including taking
2 formal legal action to protect our rights.”
3

4 59. On November 28, Vivendi filed another notice of claimed
5 infringement against plaintiff's wowseller88 account on one of the auctions
6 that plaintiff had already voluntarily removed. VeRO members on eBay
7 have the ability to view and file notices of claimed infringement against
8 auction listings even after they have been voluntarily removed by the seller.
9 As a result, plaintiff's wowseller88 account was suspended for a second
10 time.
11

12
13 60. On December 16, 2005, defendants submitted five more notices
14 of claimed infringement with eBay for auctions connected with plaintiff's
15 hotguides88 account. As a result, eBay indefinitely suspended plaintiff's
16 hotguides88 account the same day. eBay notified plaintiff that the auctions
17 were terminated "because Blizzard Entertainment reported it to us for
18 violating their intellectual property rights." The only contact information
19 given was the email address nharms@blizzard.com, an email address
20 belonging to Blizzard.
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22

23
24 61. On December 29, plaintiff emailed the nharms@blizzard email
25 address requesting to know why his auctions were terminated. On January
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1 4, 2006, plaintiff received an emailed response from Rigole, who said the
2 inquiry had been forwarded to his attention. Rigole wrote:

3
4 You are not allowed to sell an unauthorized “guide” that
5 attempts to trade off the substantial good will and recognition
6 that Blizzard has built up in connection with its World of
7 Warcraft product. In addition, the EULA prohibits using the
8 World of Warcraft software for “commercial purposes”.

9
10 Your disclaimer that the guides are for “educational purposes
11 only” is ineffective.

12
13 Please consider this a warning. If you continue with the
14 aforementioned activities, we will have not [sic] other
15 alternative but to review all legal remedies available to us
16 including taking formal legal action to protect our rights.
17

18
19 62. All of plaintiff’s auctions terminated by eBay were the result of
20 notices of claimed infringement filed against plaintiff by the ESA, Vivendi,
21 and Blizzard, working separately or in cooperation.

22
23 63. Vivendi and the ESA filed these notices of claimed
24 infringement even though plaintiff had filed a counter notice under the
25 DMCA and were on notice that the book did not infringe any of their
26

1 intellectual property rights. Defendants had not yet requested to see a copy
2 of plaintiff's book at the time they ordered most of the auctions terminated.

3
4 64. eBay has informed plaintiff that it will reinstate his account
5 only when it receives consent from defendants.

6
7 65. As a result of defendants' misrepresentations, Plaintiff has lost
8 sales and is unable to continue to sell his book on eBay.

9 **FIRST CLAIM FOR RELIEF**
10 **MISREPRESENTATION OF COPYRIGHT INFRINGEMENT**
11 **UNDER THE DMCA, 17 U.S.C. § 512(f)**

12 66. By submitting notices of claimed infringement to eBay
13 regarding plaintiff's book, defendants knowingly and materially
14 misrepresented that plaintiff's sale of his book infringed defendants'
15 copyright.
16

17 67. Defendants' conduct resulted in lost profits for plaintiff.

18 **SECOND CLAIM FOR RELIEF**
19 **TORTIOUS INTERFERENCE WITH CONTRACT**

20
21 68. Plaintiff had a valid contract with eBay to sell products on its
22 auction site.

23 69. Plaintiff also had valid contracts with eBay shoppers who had
24 placed bids on or agreed to purchase his book.
25

26 70. Defendants knew about plaintiff's contracts with eBay and
27 eBay shoppers.
28

1 71. Defendants intentionally filed false notices of claimed
2 infringement to disrupt plaintiff's contracts. In the alternative, defendants
3 negligently filed the false notices of claimed infringement.
4

5 72. Defendants' conduct caused eBay and to terminate its contract
6 with plaintiff by suspending his account.
7

8 73. Defendants' conduct also caused eBay shoppers who had
9 placed bids or agreed to buy his book to terminate their contracts with
10 plaintiff.
11

12 74. Defendants' conduct resulted in lost profits for plaintiff.
13

14 **THIRD CLAIM FOR RELIEF**
15 **TORTIOUS INTERFERENCE WITH**
16 **PROSPECTIVE ECONOMIC ADVANTAGE**

17 75. Plaintiff had an economic relationship with eBay, with the
18 probability of future economic benefit to plaintiff.
19

20 76. Plaintiff also had economic relationships with potential
21 purchasers who had bid on his book auctions or would bid on future book
22 auctions.
23

24 77. Defendants knew about plaintiff's economic relationship with
25 eBay and potential purchasers of his book.
26

27 78. Defendants intentionally filed false notices of claimed
28 infringement to disrupt plaintiff's future economic benefit by causing him

1 lost sales. In the alternative, defendants negligently filed the false notices of
2 claimed infringement against plaintiff.

3
4 79. Defendants' conduct was independently wrongful in that it
5 constituted misrepresentation and improper business practices.

6
7 80. Defendants' conduct caused plaintiff to lose future economic
8 benefits by causing lost sales.

9
10 **FOURTH CLAIM FOR RELIEF**
11 **UNFAIR, DECEPTIVE, AND FRAUDULENT**
12 **BUSINESS PRACTICES**

13 81. Defendants' conduct constitutes unfair, deceptive, and
14 fraudulent business practices under the California Unfair Competition Law,
15 Cal. Bus. & Prof. Code § 17200, the Florida Deceptive and Unfair Trade
16 Practices Act, Fla. Stat. §§ 501.201-.213, and the D.C. Consumer Protection
17 Procedures Act, D.C. Stat. § 28-3904.

18 82. Defendants' conduct resulted in lost profits for plaintiff.

19
20 **FIFTH CLAIM FOR RELIEF**
21 **DECLARATORY AND INJUNCTIVE RELIEF**

22 83. Defendants contend that plaintiff's book infringes their
23 copyright, trademark, and other unidentified intellectual property rights.

24 84. Plaintiff contends that his book does not infringe any of
25 defendants' copyright, trademark, or other rights, constitutes fair use, and is
26 protected by the First Amendment.
27
28

1 85. Defendants have threatened to take legal action against plaintiff
2 if he continues selling his book.

3
4 86. Plaintiff continues to sell his book on his personal website at
5 <http://www.ultimatewowguide.i8.com> under threat of legal action by
6 defendants and plans to continue doing so for the indefinite future.

7
8 87. Defendants have repeatedly terminated plaintiff's eBay auctions
9 and have threatened to continue doing so.

10 88. As a result of defendants' termination of his auctions, eBay
11 suspended Plaintiff's account and has informed plaintiff that it will not
12 reinstate it until eBay receives authorization from defendants.

13
14 89. Defendants have refused to authorize eBay to reinstate
15 Plaintiff's account, and will not do so absent an order of this Court to the
16 contrary.

17
18 90. Plaintiff desires to sell his book on eBay but, as a result of
19 defendants' actions, is unable to do so. As a result, plaintiff continues to
20 lose profits.

21
22 91. There is a real and actual controversy between Plaintiff and
23 defendants regarding whether the continued sale of his book is lawful or
24 whether it infringes defendants' rights.

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4. Such other relief as the Court finds appropriate.

Dated: March 23, 2006

Respectfully submitted,

NEIL D. GREENSTEIN
TECHMARK

GREGORY A. BECK
PAUL ALAN LEVY
PUBLIC CITIZEN LITIGATION GROUP

By: 
Neil D. Greenstein
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL


Plaintiff, Brian M. Kopp, hereby requests a trial by jury on all issues triable of right by a jury.

Dated: March 23, 2006

Respectfully submitted,

NEIL D. GREENSTEIN
TECHMARK

GREGORY A. BECK
PAUL ALAN LEVY
PUBLIC CITIZEN LITIGATION GROUP

By: 
Neil D. Greenstein
Attorneys for Plaintiff