



4. Defendant, PopCap Games, Inc., a foreign corporation organized and existing under the laws of the State of Washington, whose principal office is located at 2401 Fourth Avenue Suite 810, Seattle, Washington 98121, may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701 as its agent for service because PopCap Games, Inc. has engaged in business in Texas but has not designated or maintained a resident agent for service of process in Texas.

5. Defendant, PopCap Games International, Ltd., a foreign corporation organized and existing under the laws of Ireland, whose principal office is located at 70 Sir John Rogerson's Quay, Dublin 2, Ireland, may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701 as its agent for service because PopCap Games, Inc. has engaged in business in Texas but has not designated or maintained a resident agent for service of process in Texas.

6. Defendant, Strategic Marketing Partners, Inc. is a Texas corporation whose principal office is located at 5781 Lois Lane, Plano, Texas 75024, may be served with process by serving its registered agent Jonathan Pace at 5646 Milton Street, Suite 940, Dallas, Texas, 75206.

### **III. JURISDICTION AND VENUE**

7. This suit is brought under the laws of the State of Texas to recover damages from Defendants that Plaintiffs have sustained as a result of Defendants' conduct. This Court has jurisdiction over this action because Plaintiff seeks damages in an amount within the jurisdictional limits of the Court and because Defendants are either Texas residents or do business in the State of Texas.

8. This Court has venue over this action pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(2) because Strategic Marketing Partners is a resident of Dallas County.

#### IV. BACKGROUND FACTS

9. MumboJumbo, LLC is in the business of publishing computer and video games.

10. Texas United Distribution, LLC is in the business of selling the entertainment software that is published by MumboJumbo, LLC. Plaintiffs have established very valuable long term business relationships with certain large retailers.

11. PopCap Games, Inc. is the owner or has licensed the rights to a number of entertainment software games operable on the Windows and Macintosh operating systems.

12. Effective March 1, 2002, MacPlay, LLC., a Delaware limited liability company (“MacPlay”) affiliated with the Plaintiffs, entered into a MacOS Multiple Game License Agreement with Sexy Action Cool, Inc. dba PopCap Games (the “2002 Agreement”). In the 2002 Agreement, PopCap Games granted MacPlay the exclusive and worldwide license and right to reproduce, manufacture, market, advertise, promote and distribute copies of entertainment software games developed by PopCap Games.

13. Then, effective July 1, 2005, Plaintiff Mumbo Jumbo LLC and PopCap Games, Inc. entered into the 2005 Amended and Restated Retail License Agreement (the “2005 Agreement”).

14. In the 2005 Agreement PopCap Games, Inc., granted MumboJumbo, LLC the exclusive license and right to reproduce, manufacture, market, advertise, promote and distribute retail copies of certain computer and video games. The 2005 Agreement also granted MumboJumbo, LLC the exclusive license and right to reproduce, manufacture, market, advertise, promote and distribute retail copies of certain computer and video games in certain international distribution channels. Essentially, the license agreement provided that MumboJumbo, LLC

would produce, distribute and sell various entertainment software games and pay PopCap Games a royalty for each sale.

15. On or before June 30, 2006 PopCap sent notice of termination of the 2005 Agreement to the Plaintiff. Pursuant to such notice, the Plaintiff and PopCap terminated the 2005 Agreement and entered into a new agreement, the Game Retail Distribution Agreement (“2006 Agreement”), for the retail distribution of PopCap entertainment software games.

16. The provisions of the 2006 Agreement provided that the business relationship between PopCap and MumboJumbo, LLC would proceed in two phases, with the ultimate intention that PopCap would begin to directly market, distribute and sell the entertainment software games to which PopCap owns the licenses.

17. Phase I began on July 1, 2006 and ended on March 31, 2007. Phase II began on April 1, 2007 and, under the terms of the 2006 Agreement, was not scheduled to end until March 31, 2008.

18. During Phase II, Defendants directly corresponded with several retailers with whom the Plaintiffs do substantial business in the computer and video games industry. Some of the business with these retailers included the marketing and distribution of PopCap games.

19. In their direct communications with the retailers, Defendants made false statements concerning the relationship between PopCap and MumboJumbo, LLC. These false statements caused Plaintiffs to have a diminished relationship with several retailers which resulted in the loss of placement of other products, unrelated to PopCap, marketed and distributed by Plaintiffs.

20. As a result of Defendants' actions, Plaintiffs now sue the Defendants for the past and future damages resulting from their false statements and seeks declaratory relief to prevent further damages.

21. Furthermore, disputes have arisen over payment, offset and other obligations and rights under the 2006 Agreement.

## V. CAUSES OF ACTION

### A. DECLARATORY JUDGMENT ACTION

22. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 21 as though fully set forth herein.

23. Pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, Plaintiffs seek a declaration of the duties, obligations, and amounts due and owing under the 2006 Agreement.

24. Plaintiffs seek a declaration from this Court and are entitled to proceed under the Declaratory Judgment Act to obtain the relief requested.

### B. INTERFERENCE WITH EXISTING AND PROSPECTIVE CONTRACTUAL RELATIONS

25. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 21 as though fully set forth herein.

26. Plaintiffs will show that they had valid contracts and valuable long term relationships with various retailers of computer and video games and that Defendants have, without right or justification, intentionally interfered with Plaintiff's existing contractual and business relationships with these third parties, causing the loss and/or degradation of many of these relationships.

27. Further, Defendants' actions have resulted in a denial of the prospective business advantage that Plaintiffs would have otherwise had in the computer and video games market area. In addition, the Plaintiffs have been denied the reasonable probability that they would have established contractual relationships with other retailers in the performance of distribution and sale of computer and video games in the absence of Defendants' interference. The Plaintiffs either have valid business relationships or contracts with the aforementioned third parties or had an expectation of establishing such relationships as these parties have actually contemplated entering into contractual relationships with the Plaintiffs.

28. Further, Defendants has exhibited an intention to continue this interference with Plaintiff's distribution and sale of computer and video games by continuing to make false statements regarding the Plaintiffs to third parties.

29. The statements made by Defendants as described herein were undertaken with malice and with the intention of preventing the contractual relationships between the Plaintiffs and various retailers from occurring. These actions were undertaken for the purpose of harming Plaintiffs and inhibiting competition. Defendants do not possess a privilege, legal justification or excuse which would have condoned such actions. Defendants intentionally and unjustifiably induced the breach of these contracts by taking these actions, thereby causing these breaches. Plaintiffs' business and these contracts would not have been lost and Plaintiffs would have obtained substantially greater business, in the absence of Defendant's interference.

30. Plaintiffs will show that Defendants acted with malicious intent because they knowingly made false statements regarding the Plaintiffs. The Defendants also made such false statements with knowledge of the falsity of such statements or with reckless disregard as to the truth of falsity of such statements. Defendants' conduct was independently tortious or unlawful.

31. Defendants' actions protected no legitimate business interest of Defendants and were without privilege, legal justification or excuse.

32. As a proximate result of Defendants' actions, Plaintiffs have suffered and will continue to suffer actual damages including lost profits. Further, the acts, statements, determinations and recommendations made and acts reported by Defendants as more fully set forth above, were made with malice. Accordingly, Plaintiffs are entitled to recover punitive damages, in an amount to be determined by a jury. As such, Plaintiffs now seek actual and exemplary damages from Defendants in excess of the minimum jurisdictional limits of this Court.

**C. BUSINESS DISPARAGEMENT**

33. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 21 as though fully set forth herein.

34. Defendants published, in writing and by oral statements, statements of fact that were disparaging and false, as described herein. Such statements were false, were published with malice and without privilege, legal justification or excuse. Prior to Defendants' defamatory statements, the Plaintiffs enjoyed a good reputation in the business community and the defamatory statements made by Defendants to others have caused the Plaintiffs a loss of reputation in the conduct of its business. Plaintiffs have suffered direct injuries as a result of the statements about it.

35. The conduct of Defendants has caused the Plaintiff to suffer special damages in excess of the Court's minimum jurisdictional limits for which they seek to recover against the Defendants, jointly and severally.

WHEREFORE, Plaintiffs request:

- (1) A declaration of the rights, obligations and amounts owed under the 2006 Agreement;
- (2) Actual, incidental, consequential (including lost profits) and punitive damages as proven at trial;
- (3) Costs of Court;
- (4) Attorneys' fees through trial and all appeals;
- (5) Prejudgment and post judgment interest at the highest lawful rates; and
- (6) All other relief to which Plaintiffs may otherwise be entitled.

Respectfully submitted,

KANE, RUSSELL, COLEMAN & LOGAN, P.C.

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