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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**HRL**

**CV 09 3965**

ELECTRONIC ARTS INC.,

Case No.

Plaintiff,

**COMPLAINT FOR DECLARATORY  
RELIEF**

v.

DILLINGER, LLC,

**[DEMAND FOR JURY TRIAL]**

Defendants.

Courthouse News Service

1 Plaintiff Electronic Arts Inc. ("EA"), through its attorneys, brings this action and alleges  
2 against Defendant Dillinger, LLC ("Dillinger") as follows:

3 **NATURE OF THE ACTION AND RELIEF SOUGHT**

4 1. EA brings this action for declaratory judgment and attorneys' fees to protect its  
5 right to develop, publish, and sell computer and video games. EA's games are works of artistic  
6 expression, entitled to full protection under the First Amendment and state constitutions. By this  
7 action, EA seeks a judicial determination that its computer and video games The Godfather and  
8 The Godfather 2 ("the works") do not infringe any right of publicity or trademark held by  
9 Dillinger, LLC.

10 2. EA is one of the world's leading developers and publishers of computer and video  
11 games. Many of EA's games allow players to assume roles in realistic environments, such as the  
12 organized crime underworld depicted in The Godfather and The Godfather 2. True to this  
13 realism, the works include images of weapons resembling those used by organized crime figures  
14 and law enforcement during the period depicted. One of the numerous weapons available in The  
15 Godfather is identified as the "Dillinger Tommy Gun." One of the numerous weapons available  
16 in The Godfather 2 is identified as the "Modern Dillinger."

17 3. Dillinger, LLC claims to hold the right of publicity of the late bandit John Herbert  
18 Dillinger and trademarks for his name. Dillinger, LLC has asserted that EA's identification and  
19 depiction of these two weapons violate its purported right to publicity and infringe its purported  
20 trademark.

21 4. EA's works do not violate any right to publicity or infringe any trademark. The  
22 works also are protected by the First Amendment, state constitutions, and the doctrine of  
23 nominative fair use, among other defenses.

24 5. The parties have been unable to resolve their present dispute.

25 6. Accordingly, EA seeks a declaration that The Godfather and The Godfather 2—  
26 including weapons identified and depicted in the works—do not violate Dillinger, LLC's  
27 purported right to publicity or infringe its purported trademarks.

28

**JURISDICTION AND VENUE**

1  
2 7. EA brings this action pursuant to the Declaratory Judgment Act, 28 U.S.C.  
3 § 2201. It presents a federal question arising under the Lanham Act, 15 U.S.C. § 1051 et seq..  
4 The Court has jurisdiction over this federal cause of action under 28 U.S.C. § 1331 (federal  
5 question) and 28 U.S.C. § 1338(a) (trademarks). EA’s state law publicity cause of action arises  
6 from the same case or controversy as its Lanham Act cause of action. The Court has  
7 supplemental jurisdiction over the publicity cause of action under 28 U.S.C. § 1367(a)  
8 (supplemental jurisdiction). Alternatively, under 28 U.S.C. § 1332, the Court possesses  
9 jurisdiction over both causes of action due to the presence of complete diversity of citizenship  
10 between the parties and a sufficient amount in controversy.

11 8. Dillinger, LLC is subject to personal jurisdiction by virtue of its transacting,  
12 doing, and soliciting business in this judicial district. Specifically, upon information and belief,  
13 Dillinger has authorized the use of its purported intellectual property in products sold to residents  
14 of this judicial district. Additionally, upon information and belief, Dillinger owns and/or  
15 operates a website accessible to residents of this judicial district offering information on the  
16 licensing of its purported intellectual property.

17 9. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1391(c) because  
18 substantial activity giving rise to the claims herein occurred in this judicial district.

19 **INTRA-DISTRICT ASSIGNMENT**

20 10. Pursuant to Local Rule 3-2(c), this intellectual property case shall be assigned on  
21 a District-wide basis.

22 **THE PARTIES**

23 11. Plaintiff EA is a corporation organized under the laws of Delaware, with its  
24 principal place of business in Redwood City, California. EA develops and publishes computer  
25 and video games.

26 12. Upon information and belief, Dillinger, LLC is a limited-liability corporation  
27 organized under the laws of Indiana, with its principal place of business in Mooresville, Indiana.  
28 Dillinger, LLC claims that it owns the publicity right and trademarks for the name of late bandit

1 John Dillinger.

2 **FACTUAL ALLEGATIONS**

3 **EA's Works**

4 13. EA is a leading developer and publisher of video and computer games. Among  
5 EA's works are The Godfather, attached hereto as Exhibit A, and The Godfather 2, attached  
6 hereto as Exhibit B. These works are based on Francis Ford Coppola's film adaptations of The  
7 Godfather novel, written by Mario Puzo, and The Godfather 2 script, co-written by Puzo. The  
8 Godfather game was first commercially released on March 21, 2006. The Godfather 2 game was  
9 first commercially released on April 7, 2009.

10 14. The Godfather, the first game in the Godfather franchise, simulates the mafia  
11 world in New York during the mid-1900s. The player traverses this virtual world by selecting a  
12 single in-game character to guide through a variety of missions. This character, a member of the  
13 Corleone family, is the work's focal point. Using authentic weapons and vehicles from the mid-  
14 1900s, players intimidate, bribe, and fight their way to the top of the mafia world. The objective  
15 of the game is to successfully complete all of the missions that involve the plot laid out in the  
16 original Godfather film.

17 15. The Godfather 2, the second iteration in the Godfather franchise, continues The  
18 Godfather's plot, whereby the in-game character seeks to control the street life of New York  
19 City. The work also provides the ability to expand the mafia business into Florida and Cuba.  
20 Players may select a single in-game character or play in "The Don View," which allows players  
21 to view the entire world and direct members of their family. The objective of the game is to  
22 accomplish all missions and seize control of the various territories using traditional mafia tactics.

23 16. As a review of the works demonstrates, The Godfather and The Godfather 2  
24 merge advanced computer and software engineering with artistic expression. EA builds these  
25 works of fictional entertainment by combining narratives, music, visual art, and graphic design.  
26 The virtual world of the works is comprised of hundreds of originally designed locations,  
27 characters, and tools—including cars, clothing, and over 15 different weapons. Players may  
28 purchase additional game elements, including weapons, in separately downloadable "packs" and

1 “bundles.” The game elements are all loosely based on real-life counterparts in order to evoke,  
2 and enhance the authenticity of, the era and the mafia lifestyle the works portray. The works’  
3 virtual worlds are dynamic and reactive, with simulated choices varying based upon players’  
4 strategic decisions. Players manipulate their character through game controllers, allowing a fully  
5 interactive, real-time experience as they progress through plot-based challenges based upon The  
6 Godfather and The Godfather 2 book and movies.

### 7 The Controversy Between the Parties

8 17. Dillinger, LLC claims that it owns the publicity right for and trademark interest in  
9 the name of late bandit John Dillinger. Dillinger, LLC claims that EA has infringed its rights by  
10 including (1) a weapon called the “Dillinger Tommy Gun” in The Godfather and (2) a weapon  
11 called the “Modern Dillinger” in a separately downloadable “weapons bundle” for The  
12 Godfather 2.

13 18. John Dillinger, born in 1903, was an American bank robber and bandit active  
14 during the early 1930s. Dillinger was arrested in 1934 for the murder of an East Chicago police  
15 officer. While awaiting trial in Indiana, Dillinger escaped prison and fled to Chicago. The FBI  
16 shot and killed Dillinger outside a Chicago theater on July 22, 1934 as he attempted to evade  
17 agents.

18 19. On July 22, 2009, Dillinger, LLC, through its litigation counsel, contacted EA to  
19 accuse it of violating Dillinger’s right of publicity and infringing upon its trademarks. Dillinger  
20 threatened EA with litigation unless it agreed to pay Dillinger millions of dollars for the game  
21 elements purportedly covered by its publicity right and trademarks.

22 20. The parties have been unable to resolve their dispute regarding whether EA’s  
23 inclusion of the “Dillinger Tommy Gun” and “Modern Dillinger” in its works violates Dillinger,  
24 LLC’s purported rights.

### 25 FIRST CAUSE OF ACTION

#### 26 **Declaratory Judgment of No Violation of Right to Publicity**

27 21. EA incorporates by reference the allegations in paragraphs 1 through 20 as if fully  
28 set forth herein.



1 identification and depiction of certain weapons in The Godfather and The Godfather 2 infringe  
2 any trademark of Dillinger, LLC. The controversy is of sufficient immediacy and reality to  
3 warrant declaratory relief. Following Dillinger's recent conduct, EA is faced with the choice of  
4 either abandoning its rights to develop, publish, and sell the works at issue or risk liability for  
5 damages.

6 29. The controversy between EA and Dillinger thus demands specific relief through a  
7 decree that EA may identify and depict the "Dillinger Tommy Gun" and "Modern Dillinger"  
8 weapons in its works without legal liability. The nature and extent of the adverse legal interests  
9 between EA and Dillinger are apparent, and the controversy is definite and concrete.

10 30. EA contends that The Godfather, The Godfather 2, and associated marketing  
11 materials do not explicitly mislead customers as to the source or origin of EA's works. The  
12 works are also not likely to cause any confusion, mistake, or deception among consumers,  
13 including as to the source and origin of the work or as to any affiliation, connection, association,  
14 sponsorship, or approval with or by Dillinger, LLC.

15 31. Among other defenses, EA's identification and depiction of the "Dillinger  
16 Tommy Gun" in The Godfather and "Modern Dillinger" in The Godfather 2 are protected by the  
17 First Amendment, state constitutions, and the doctrine of nominative fair use.

18 32. EA seeks a declaration that The Godfather and The Godfather 2 do not infringe on  
19 any of Dillinger's trademarks so that there will be no controversy clouding EA's right to  
20 continue developing, publishing, and selling the works.

### 21 **PRAYER FOR RELIEF**

22 WHEREFORE, EA respectfully requests this Court to enter judgment:

23 1. Declaring that the identification and depiction of the "Dillinger Tommy Gun" and  
24 "Modern Dillinger" weapons in The Godfather and The Godfather 2 do not violate Dillinger,  
25 LLC's right of publicity;

26 2. Declaring that the identification and depiction of the "Dillinger Tommy Gun" and  
27 "Modern Dillinger" weapons in The Godfather and The Godfather 2 do not infringe any of  
28 Dillinger, LLC's trademarks;

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3. Enjoining Dillinger, LLC, its agents, attorneys, and assigns from asserting trademark claims against EA or any other person in connection with the EA works;

4. Declaring that this case is exceptional and awarding EA its reasonable attorneys' fees and costs; and

5. Awarding any other relief the Court deems just and proper.

**JURY DEMAND**

EA hereby demands a trial by jury as to all issues triable before a jury.

Dated: August 26, 2009

KEKER & VAN NEST LLP

By: R. James Slaughter / RAS

R. JAMES SLAUGHTER  
Attorneys for Plaintiff  
ELECTRONIC ARTS INC.

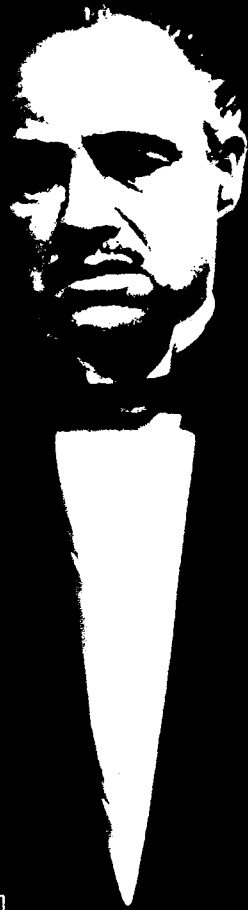
# EXHIBIT A



XBOX 360

XBOX  
LIVE

NTSC



The  
Godfather™  
THE GAME

MATURE 17+



CONTENT RATED BY  
ESRB

Game Experience May  
Change During Online Play



# EXHIBIT B



XBOX 360

LIVE

NTSC

# The Godfather II



Online Interactions  
Not Rated by  
the ESRB

