

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

BETHESDA SOFTWARES LLC,
1370 Piccard Drive
Rockville, MD 20850

Plaintiff,

v.

BEHAVIOUR INTERACTIVE, INC.
416 Maisonneuve Ouest, bureau 600
Montreal, Quebec
Canada H3A 1L2

and

WARNER BROS. ENTERTAINMENT,
INC.,
4000 Warner Blvd.
Burbank, CA 91522

Defendants.

CASE NO.

**COMPLAINT FOR BREACH OF
CONTRACT, INDUCEMENT TO BREACH
OF CONTRACT, COPYRIGHT
INFRINGEMENT, MISAPPROPRIATION
OF TRADE SECRETS, AND UNFAIR
COMPETITION**

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Bethesda Softworks LLC (“Bethesda”), by its undersigned attorneys, alleges as follows, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to all other matters.

NATURE OF THE ACTION

1. This is a civil action for breach of contract, copyright infringement, unfair competition, and misappropriation of trade secrets. Bethesda brings this action against Behaviour Interactive, Inc. (“Behaviour”) for breach of its contract regarding the development and ownership of FALLOUT SHELTER, a widely acclaimed mobile game owned and published by Bethesda. Bethesda also brings this action against Warner Bros. Entertainment (“Warner Bros.”) for inducement to breach that contract. Bethesda further brings this action against Behaviour and Warner Bros. (together, “Defendants”) for their willful and intentional infringement of Bethesda’s copyrights, misappropriation of Bethesda’s trade secrets, and deceptive business practices and unfair competition through their development, marketing, and promotion of the Westworld mobile game.

2. FALLOUT SHELTER, set in the post-apocalyptic universe of Bethesda’s successful FALLOUT franchise, places users in the role of the “overseer”—a designer and manager of an underground vault of people trying to escape the nuclear wasteland above ground. The overseer must balance resources, fend off attacks from raiders and radioactive insects and monsters, and keep the dwellers of the vault happy so that the human race can survive. Bethesda conceived of and designed the environment and gameplay features for FALLOUT SHELTER to fit within the aesthetic and storyline of the FALLOUT universe.

3. To realize its design, Bethesda contracted with Behaviour under a work-for-hire agreement to develop FALLOUT SHELTER to Bethesda’s specifications solely for use by

Bethesda, and no one else, including Behaviour or any third party. Under the agreement, all Behaviour work product of any kind, including code, designs, artwork, layouts, and other assets and materials for FALLOUT SHELTER were authored and owned by Bethesda *ab initio* as works made for hire.

4. In October 2016, Warner Bros. began broadcasting the television show Westworld on its HBO platform. Westworld is a work of science fiction in which wealthy patrons visit a technologically advanced Wild-West-themed amusement park populated by androids who allow the human guests to indulge in various, often violent, fantasies.

5. Warner Bros., sharing a similar consumer demographic, and recognizing Bethesda's significant success in bringing its FALLOUT SHELTER game to a broad audience on mobile devices, engaged and collaborated with Behaviour to develop a mobile app for its own science-fiction property, Westworld.

6. To bring the Westworld mobile game to market, Behaviour and Warner Bros. utilized Bethesda's intellectual property without authorization to develop a mobile game with the same or substantially similar gameplay experience as that provided by the copyrighted FALLOUT SHELTER mobile game. In so doing, Behaviour breached its contract with Bethesda and utilized its restricted access to Bethesda's intellectual property, including Bethesda's copyrighted code, trade secrets, and other rights, to compress its development timeline, reduce costs, and quickly bring the Westworld mobile game to market, and offer players the widely popular gameplay experience found in FALLOUT SHELTER. The unlawful use of FALLOUT SHELTER's design, gameplay, and copyrighted computer or source code allowed Behaviour and Warner Bros. to develop a mobile game with features and gameplay highly similar to those in FALLOUT SHELTER.

7. The Westworld game is a blatant rip-off of FALLOUT SHELTER. Working with the same copyrighted computer code used by FALLOUT SHELTER, Westworld has the same or highly similar game design, art style, animations, features and other gameplay elements as FALLOUT SHELTER, all of which are owned by Bethesda.

8. Behaviour's breach of its contract with Bethesda is evidenced by the gameplay of Westworld, which uses the same copyrighted computer code created for Bethesda's FALLOUT SHELTER game. Behaviour's use of the computer code owned by Bethesda to develop Westworld even included the very same 'bugs' or defects present in the FALLOUT SHELTER code. For example, the demonstration version of the Westworld game includes a visible software 'bug' or code defect present in an early version of FALLOUT SHELTER code delivered by Behaviour to Bethesda during game development. This software 'bug' appears when a player starts up the demonstration version of the Westworld game. Specifically, the view is out-of-focus and the scene that appears is far to the right and below the targeted landscape image. It is as if a camera capturing the scene had been inadvertently pointed to the lower right foreground and then slowly refocuses on the central image. The identical problem appeared in initial versions of FALLOUT SHELTER but was addressed before FALLOUT SHELTER was released to the public. While this error was ultimately fixed in subsequent builds of FALLOUT SHELTER, the appearance of the bug in the Westworld game demo makes clear that the FALLOUT SHELTER source code was used by Behaviour in developing the Westworld game.

9. Behaviour and Warner Bros.' misuse of Bethesda's intellectual property, including Bethesda's copyrighted code, allowed and continues to allow the Defendants to benefit from the unique and popular gameplay experience created by Bethesda at its expense in FALLOUT SHELTER. By utilizing Bethesda's copyright and other intellectual property rights,

Behaviour and Warner Bros. seek to attract consumers with the expectation of a FALLOUT SHELTER-type gameplay experience. This wanton misappropriation of Bethesda's intellectual property in violation of Behaviour's agreement with Bethesda harms Bethesda by, among other things, denying it the exclusive commercial benefits of the copyrighted code which Bethesda paid for and which drives the gameplay experience provided in FALLOUT SHELTER.

Bethesda seeks to enjoin such activities and recover statutory damages, actual damages, Behaviour's and Warner Bros.' profits, restitution, and attorneys' fees and costs.

THE PARTIES

10. Plaintiff Bethesda Softworks LLC is a Delaware limited liability company with its principal place of business at 1370 Piccard Drive, Rockville, Maryland 20850.

11. Defendant Behaviour Interactive Inc. is a Canadian corporation with its principal place of business at 416 Maisonneuve Ouest, bureau 600, Montreal, Quebec, Canada H3A 1L2.

12. Defendant Warner Bros. Entertainment Inc. is a California company with its principal place of business at 4000 Warner Blvd., Burbank, CA 91522.

JURISDICTION AND VENUE

13. This action arises under the federal Copyright Act, 17 U.S.C. §§ 101, *et seq.*; the Defend Trade Secrets Act, 18 U.S.C. §§ 1836, *et seq.*; the Maryland Uniform Trade Secrets Act, Md. Code Ann., §§11-1201, *et seq.*; and common law. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a) and (b) and 15 U.S.C. § 1121. This Court also has diversity jurisdiction under 28 U.S.C. § 1332 because Bethesda resides in Maryland, Behaviour resides in Canada, Warner Bros. resides in California, and the amount in controversy exceeds \$75,000. This Court has supplemental jurisdiction over Bethesda's state-law claims pursuant to 28 U.S.C. § 1367 because those claims are substantially related to Bethesda's copyright and Defend Trade Secret Act claims.

14. This Court has personal jurisdiction over Behaviour and Warner Bros., and venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), because Bethesda has been harmed in this District, and because Behaviour and Warner Bros. operate in this district and violated Bethesda's rights in this District. Both Behaviour and Warner Bros. make and distribute games in the United States and this District through the Apple App Store and the Google Play Store. Further, Behaviour entered into a contract governed by the laws of this District and agreed to be bound by the laws and exclusive jurisdiction of this District for any dispute arising from the contract.

15. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b).

BETHESDA'S FALLOUT SHELTER GAME

16. The FALLOUT franchise of video games draws gamers into alternate history, diverging from existing reality shortly following WWII. The various FALLOUT video games largely take place in the years following the destruction of the earth as people begin to emerge from their underground vaults into the nuclear wasteland.

17. Bethesda, a publisher that develops, publishes, and distributes interactive video games, owns all intellectual property rights in and to the FALLOUT franchise, including all computer code. Bethesda released its first FALLOUT game, FALLOUT 3, in 2008. FALLOUT 3 launched to critical acclaim, earning Game-of-the-Year honors, and achieving great commercial success. (Ex. A.)

18. Bethesda followed the success of FALLOUT 3 with FALLOUT: NEW VEGAS in 2010. FALLOUT: NEW VEGAS includes similar open-world gameplay in the post-apocalyptic wasteland of Nevada, California, and Arizona.

19. In November 2015, Bethesda released FALLOUT 4, an open-world role playing game similar to the previous installments, set in the nuclear wasteland 10 years before the events

in FALLOUT 3. FALLOUT 4 was honored as Game-of-the-Year and was one of the best-selling games of 2015. (Ex. B.)

20. In 2013, Bethesda decided to expand and enrich the FALLOUT player experience and reach a wider audience by developing a version of the game compatible with the Apple iOS and Google Android operating systems under the name FALLOUT SHELTER. This version of a simulation-style game was intended to extend the franchise into mobile gaming. Within a day of its release in June 2015, FALLOUT SHELTER became the most-downloaded free mobile app in the United States and became the third-highest grossing game on the iOS app store. (Ex. C.) FALLOUT SHELTER has been downloaded by over 120 million players. (Ex. D.)

**BEHAVIOUR'S CONTRACT WITH BETHESDA
AND BETHESDA'S RIGHTS IN FALLOUT SHELTER**

21. On January 22, 2014, Bethesda engaged Behaviour to assist developing the FALLOUT SHELTER game under the code name "Underground." The terms and conditions of this engagement are set forth in the parties' Software Development and Services Agreement (the "Agreement"). Under the Agreement, Bethesda provided the conception, design, and overall direction of the game's mechanics and resulting look and feel, and Behaviour provided the implementation. The Agreement expressly states that all work product and any other materials created by Behaviour related to the game, including its source code, content, assets, and associated intellectual property rights, were created as works made for hire for Bethesda and that to the extent any materials were not works made for hire, such materials were assigned to Bethesda. Accordingly, any and all rights Behaviour may have had in any materials related to the game vested, *ab initio*, in Bethesda upon fixation.

22. The Agreement between Bethesda and Behaviour includes express provisions related to the development and ownership of FALLOUT SHELTER, establishing Bethesda as the sole owner of all rights. For example, Behaviour agreed:

- That Bethesda owns all intellectual property and rights related to the development of FALLOUT SHELTER, including “all associated versions and derivatives” and “all artwork, game designs, game play features, programming, trademarks, trade names, copyrights, know-how, patents, trade secrets and other Intellectual Property Rights.” (§ 2.4.1.)
- That any rights resulting from the development of FALLOUT SHELTER not automatically vesting with Bethesda under the contract are irrevocably and unconditionally assigned to Bethesda. As part of this Assignment, Behaviour “appoint[ed] Bethesda as attorney-in-fact for Behaviour with the right...to execute such instruments in the name of Behaviour on Bethesda’s behalf” on a work made for hire basis. (§ 2.4.2.)
- That its employees and contractors must execute non-disclosure and confidentiality agreements to ensure “strict protection of all proprietary information provided by Bethesda, and waiving any and all rights, including ‘moral’ rights, such employees and contractors may have to the Work Product and any other material generated under this Agreement.” (§ 4.1.)
- That Behaviour was obligated to “comply with all directives and suggestions from Bethesda concerning game development.” (§ 5.)

- That Behavior would not “use, sell, transfer, publish, disclose, or otherwise make available to third parties any portion of” Bethesda’s confidential information. (§ 7.),
- That any disclosure of Bethesda confidential information by Behaviour would “cause irreparable harm” and that the offended party would be entitled to injunctive or other equitable relief. (§ 9.3.)
- That if Behaviour breaches the Agreement, it is “liable and shall pay the other party, in addition to any money damages award, the reasonable legal fees incurred by said party.” (*Id.*)

23. Under the Agreement, Bethesda also had the following rights and Behaviour the following obligations:

- Bethesda had on-demand access to work-in-progress code and assets, as well as “24/7/365 access to Behaviour’s code and asset depot.” (§ 3.4.1.)
- Behaviour was required to provide milestone builds and all archived versions of the builds following approval of the platform owner (e.g., Apple or Google). (§ 3.4.2.)
- Behaviour was obligated to submit all materials to Bethesda for testing and quality assurance. (§ 3.5.)
- Bethesda retained and exercised complete “creative, technical and promotion control over all phases of development and distribution” including “all text, graphics, artwork, voices, designs, gameplay, music, screens and characters.” (§ 5.)

- Bethesda retained and exercised complete control “over all phases of the promotion, marketing, public relations and dissemination of information.”

(Id.)

- Bethesda retained and exercised the right to visit Behaviour’s facilities to monitor progress of the development. (§ 6.)

24. Bethesda has complied with all of its obligations as set forth in the Agreement.

As shown below, Behaviour has not.

25. FALLOUT SHELTER is an original work of creative expression that provides audio-visual entertainment to users and includes numerous creative elements subject to copyright protection as copyrightable subject matter. This originality and creativity were recognized by the U.S. Copyright Office, which issued U.S. copyright registration TX0008074781 for FALLOUT SHELTER to Bethesda. This registration covers all copyrightable aspects of the game, including the source code, game assets, and user interface.

26. Based on the contractual relationship between Behaviour and Bethesda, Behaviour had access to all source code, game assets, and other intellectual property related to the development of FALLOUT SHELTER that was owned by Bethesda.

**THE WESTWORLD MOBILE GAME
AND DEFENDANTS’ WRONGFUL ACTS**

27. In March 2018, Warner Bros. announced its intent to release a Westworld mobile game and demonstrated the game at the popular Game Developer Conference (“GDC”) in San Francisco, California and at SXSW in Austin, Texas. The website for the game, www.westworldmobile.com, states that the Westworld mobile game is “developed by Behaviour Interactive.” (Ex. E.)

28. As detailed in multiple third-party articles about the Westworld game as demonstrated, it bears a striking resemblance to FALLOUT SHELTER, e.g.:

- After playing the game at GDC, a Forbes reporter wrote, “It’s an obvious Fallout Shelter evolution, centered around a similar base-building mechanic.” (Ex. F.) (Emphasis added).
- Another analyst commented, “Westworld mobile is definitely taking a page out of the Fallout book with its cheerful Pipboy-influenced characters and it fits rather well with the game’s premise” and “The game itself plays like Fallout Shelter mixed with a Theme Park sim.” (Ex. G.) (Emphasis added). The same article calls out the Westworld mobile game’s use of “Fallout Shelter-style rooms.” (*Id.*)
- Commenting on the Warner Bros. demo of the game at SXSW, VentureBeat noted “the side-view user-interface looks a lot like Fallout Shelter.” (Ex. H.) (Emphasis added).
- In an article titled “Warner Bros. partners with Fallout Shelter dev Behaviour Interactive on Westworld mobile game,” Pocket Gamer stated “The Westworld mobile game appears [] much in the same vein as Fallout Shelter.” (Ex. I.)
- The same article notes “Given that Fallout Shelter accrued over 100 million downloads in two years of release, it’s not difficult to see why publishers are still working with Behaviour on making similar games for different brands.” (*Id.*)
- According to Den of Geek, “the Westworld mobile game is more or less a Westworld version of Fallout Shelter.” (Ex. J.) (Emphasis added).
- CinemaBlend added “the gameplay of Westworld doesn’t look too dissimilar to Fallout Shelter.” (Ex. K.)

- In an article titled “Westworld’s Video Game Looks a Lot Like Fallout Shelter,” the author captioned the Westworld mobile game trailer “So, yeah, Fallout Shelter.” (Ex. L.) (Emphasis added).
- GameCrate, in its description of a video of the Westworld mobile game, states, “Looks a lot like Fallout Shelter, don’t you think?” (Ex. M.)
- In an article titled, “Westworld Mobile Game Is In The Works From The Makers Of Fallout Shelter,” a Westworld fan website identifies Warner Bros. and Behaviour as the game developers. (Ex. N.) The article continues, “Warner Bros. has tapped the makers of Fallout Shelter, Behaviour Interactive, to design a game based on HBO’s hit show.” (*Id.*)

29. The press comments above (and many others), establish the obvious: the Westworld mobile game has substantially similar (if not virtually identical) gameplay elements, designs, concepts, style, and other assets of FALLOUT SHELTER. Those gameplay features in the Westworld mobile game are made possible by Behaviour’s unlawful use of the computer code developed for FALLOUT SHELTER and owned by Bethesda.

30. By recreating FALLOUT SHELTER with Westworld’s “western” theme, Behaviour and Warner Bros. benefit from the success, good will, and consumer base created by FALLOUT SHELTER. The Westworld mobile game seeks to attract players by its misappropriation of intellectual property of Bethesda.

31. Warner Bros. intended for the games to be similar to be able to court the same consumers. In an interview with ShackNews, Warner Bros.’ Jason Everett, the executive producer of the Westworld mobile game, expressly acknowledged the similarity between the game experience of the Westworld mobile game and FALLOUT SHELTER:

Interviewer: You guys are using a team in Montreal, which also worked on Fallout Shelter. So there's a lot of similarities, which is a good thing. That's a great game.

Jason Everett: *Fallout Shelter is a terrific simulation.* The team in Montreal is amazing. And, together, we're bringing a simulation that I think will be really satisfying for *players that love those kinds of game experiences...*

(https://www.youtube.com/watch?v=sR_89sHs7RQ at 1:03.) (Emphasis added).

32. Warner Bros. engaged Behaviour to develop the Westworld mobile game because it knew or reasonably should have known that Behaviour had been engaged by Bethesda to develop the popular FALLOUT SHELTER game and utilized many of the same Behaviour employees involved in the development of the FALLOUT SHELTER game. Warner Bros. expected and relied on Behaviour's ability to reuse and/or leverage Bethesda's computer code, game designs, and other intellectual property as the foundation for the Westworld game. This unauthorized copying and sharing enabled Behaviour to shorten its development cycle, reduce costs, and decrease the game's time to market and to command a built-in consumer base by making the Westworld mobile game's gameplay experience and look-and-feel the same as or substantially similar to FALLOUT SHELTER.

33. As a direct result of Behaviour and Warner Bros.' misuse of Bethesda's intellectual property, the Westworld mobile game features gameplay elements and mechanics that are the same or substantially similar to FALLOUT SHELTER. As demonstrated by the various news and press articles cited above and the sample screen captures detailed below, Behaviour and Warner Bros. included essentially all of the protected characteristics of FALLOUT SHELTER in the Westworld mobile game, including the look and feel of the game

as well as game design and gameplay mechanics. Behaviour and Warner Bros. copied FALLOUT SHELTER's features and then made cosmetic modifications for Westworld's "western" theme. This infringement and misappropriation were accomplished by accessing and using the source code and other assets owned by Bethesda. As detailed in Paragraph 8, such infringing copying of Bethesda's copyrighted code is evidenced by the presence of a unique bug or code defect which appears in the Westworld game demo and also in the code base of a build of FALLOUT SHELTER delivered by Behaviour to Bethesda during game development of FALLOUT SHELTER. If Behaviour had not used the computer code and other intellectual property of Bethesda, Behaviour would not have developed the Westworld mobile game it unlawfully produced and is distributing.

34. FALLOUT SHELTER includes a unique gameplay environment that depicts a multiroom underground vault. The game displays each room using three walls, a ceiling, and a floor. FALLOUT SHELTER hides the fourth wall, creating a cross-sectional view that allows the player to see and interact with what is happening in each room. The Westworld mobile game, utilizes the same computer code and intellectual property used to make FALLOUT SHELTER and owned by Bethesda, to create the same gameplay environment, underground multiroom layout, and cross-sectional room views.

FALLOUT SHELTER: Gameplay Layout



Westworld: Gameplay Layout



35. FALLOUT SHELTER renders each of the rooms using three-dimensional objects having depth and perspective with a common vanishing point centered on the screen. The Westworld mobile game uses the same depth, perspective and vanishing point when displaying its rooms.

FALLOUT SHELTER: Room close-up



Westworld: Room close-up



36. As the user moves or pans the screen to view different areas of FALLOUT SHELTER's vault, the vanishing point remains centered on the screen, causing the perspective of the rooms to change dynamically and creating a unique look and feel as the room perspectives

changes. Because the Westworld mobile game uses the same source code as FALLOUT SHELTER, it too includes this same visual effect when moving around the game environment.

FALLOUT SHELTER: Panning - moving rooms from right to left.



Westworld: Panning - moving rooms from right to left.



37. In addition to the screenshots above, Bethesda's E3 2015 press conference footage ("FALLOUT SHELTER E3 video"), which can be viewed at <https://www.youtube.com/watch?v=WsB9eYF8tHg> (beginning around 1:16) and the Westworld mobile game's press video, available at <https://app.box.com/v/Westworld-GameAnnouncePK-0311/file/282276355728> (beginning around 0:08 and 0:47) provide an even more compelling example of both games sharing the same look and feel when moving around the game environment. These similarities are due to Behaviour and Warner Bros.' unlawful reuse and copying of Bethesda's source code.

38. In addition to the horizontal and vertical movement around the environment, FALLOUT SHELTER uses unique mechanics and transitions when zooming into and out of a particular room. FALLOUT SHELTER allows the user to double tap on a room to initiate a zoom into that room. The camera appears to fly toward the room until the room fills the full screen. Double tapping again reverses the motion to

provide an overall view. The Westworld mobile game, based on Bethesda's source code, uses the same mechanics and animations and, like FALLOUT SHELTER, instructs the users about the double tap gesture in the same way.

FALLOUT SHELTER: Zoom tutorial



Westworld: Zoom tutorial



39. When a user double taps on a room in the Westworld mobile game, the animation is the same as that in FALLOUT SHELTER when a user double taps a room. First the room is highlighted, and then the camera flies toward the room until the room fills the entire screen. The Westworld mobile game uses the same gesture to enter or zoom in on a room because the Westworld mobile game copied Bethesda's source code and game design from FALLOUT SHELTER.

FALLOUT SHELTER: Zoom after double tap sequence



Westworld: Zoom after double tap sequence

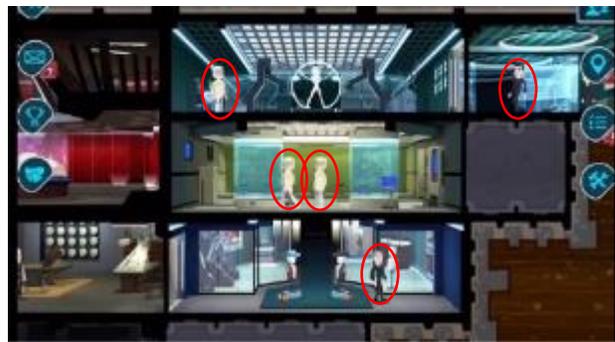


40. FALLOUT SHELTER also displays the location of each dweller in the rooms of the main gameplay view so that the player can easily see the distribution of the dwellers throughout the game environment. The Westworld mobile game duplicates this same feature using Bethesda's source code.

FALLOUT SHELTER: Character locations



Westworld: Character locations



41. FALLOUT SHELTER allows users to purchase or build additional rooms. The same program exists in the Westworld mobile game. And the mechanics of selecting and building a new room are the same in both games, again because of Behaviour and Warner Bros.' copying of Bethesda's code. First the user taps on a build icon. FALLOUT SHELTER

represents this process with a hammer icon located in the lower right portion of the screen. Westworld uses a similar hammer icon, adding a wrench, in a similar location.

FALLOUT SHELTER: Build icon



Westworld: Build icon



42. The Westworld mobile game, like FALLOUT SHELTER, depicts the different room options on virtual cards. Each card includes the price and special attributes of the room at the bottom, includes a graphic depiction of the room, and shows the room name on the top. Additionally, the Westworld mobile game copied the FALLOUT SHELTER lock system and icon for rooms that cannot yet be built because the user has not reached a prerequisite requirement.

FALLOUT SHELTER: Room selection



Westworld: Room selection



43. Next, in both games, the user must choose where to place the new room. When placing the room, the Westworld mobile game mimics the green boxes showing areas where the room can be placed in FALLOUT SHELTER. The use of Bethesda's source code to implement this feature results in the similarity of the placement system.

FALLOUT SHELTER: Room placement



Westworld: Room placement



44. In addition to its unique overall game environment, FALLOUT SHELTER includes a distinct representation of the dwellers in the vault. The Westworld mobile app makes almost no effort to distinguish its own character representations from those in FALLOUT SHELTER, again indicating source code copying. Behaviour and Warner Bros. copied almost every aspect of the character look and movement that makes the FALLOUT SHELTER characters unique.

45. The Westworld mobile game, like FALLOUT SHELTER, uses cartoonish 2D characters in a 3D environment. As shown in the screenshots below, in both cases, the game creates a contrast effect by placing flat-shaded, 2D characters in a smooth-shaded, 3D environment using Bethesda's source code. In both games, the emotional state of the characters is shown with a percentage and a smiley face.

FALLOUT SHELTER: Character shading



Westworld: Character shading



46. Both FALLOUT SHELTER’s dwellers and the Westworld characters always appear facing left or right, emphasizing the lack of depth in the expression of the characters. As seen in the above screenshots, the Westworld mobile game also uses the same technique as FALLOUT SHELTER of mixing depth with flat characters by placing the characters on different depth planes, further giving the impression that the 2D characters exist in a 3D environment. Behaviour and Warner Bros., using Bethesda’s code to create this look-and-feel, copied the visual interaction between the characters and the environment from FALLOUT SHELTER to create the same visual effect.

47. FALLOUT SHELTER was programmed to feature distinctive motion and animation styles to create the overall artistic expression of the characters and their movement. Behaviour and Warner Bros. reused these movements and animation styles, powered by Bethesda’s code, throughout the Westworld mobile game.

48. The characters in FALLOUT SHELTER always walk or run in a left or right direction (see e.g., FALLOUT SHELTER E3 video at 2:15, screen shots below). This right or left walk or run animation cycle continues even as the characters move forward and backward in the environment. The player sees a character running or walking left or right, and, at the same time, moving further or closer to the camera. The Westworld mobile game uses the same animation system (see e.g., Westworld press video at 0:31, screen shots below) showing characters walking or running left or right while moving both left or right and forward or backward. Behaviour unlawfully used Bethesda's code for execution of that gameplay.

FALLOUT SHELTER: Character movement sequence



Westworld: Character movement sequence



The Westworld mobile game also uses FALLOUT SHELTER's context-specific animations, like those of FALLOUT SHELTER, to depict different behavior depending on the room or setting. Some of these animations are almost identical to FALLOUT SHELTER. For example, the Westworld mobile game copies FALLOUT SHELTER's bar room complete with characters sitting at tables drinking oversized mugs of beer. Behaviour and Warner Bros. unlawfully misappropriated Bethesda's intellectual property for its execution of this game feature.

FALLOUT SHELTER: Patrons drinking



Westworld: Patrons drinking



49. Behaviour and Warner Bros. copied the subtle sway, bounces, and minute movements in idle characters that give them and the scene a constant sense of motion and a distinctive feel as a result of unlawfully copying Bethesda's code.

50. With the common elements discussed above, there is more than a substantial similarity between FALLOUT SHELTER and the Westworld mobile game. Behaviour and Warner Bros. repurposed Bethesda's intellectual property, including source code, to make the Westworld mobile game.

BETHESDA'S FALLOUT SHELTER TRADE SECRETS

51. Under the Agreement between Bethesda and Behaviour, Behaviour had access to Bethesda's confidential and trade secret information related to the source code, artwork, game designs, game features, development information, concept documents, planning documents, deliverables, and other documents and know-how related to the development of FALLOUT SHELTER (the "FALLOUT SHELTER Trade Secrets").

52. The Agreement between Bethesda and Behaviour includes provisions specifically designed to protect the FALLOUT SHELTER Trade Secrets. Accordingly, Bethesda took appropriate precautions to maintain the secrecy of its confidential information and trade secrets and keep them generally unknown to the public.

53. Bethesda derives economic value from FALLOUT SHELTER Trade Secrets. Bethesda has the legal right to maintain the confidentiality of its trade secrets and prevent competitors from developing similar games by misappropriating Bethesda's intellectual property, including the computer code, artwork, game design, and other assets used in the execution of its game development.

54. Warner Bros. and Behaviour leveraged Behaviour's access to and knowledge of FALLOUT SHELTER Trade Secrets to develop the Westworld mobile game, using Bethesda's intellectual property, without Bethesda's consent.

INJURY TO BETHESDA AND THE PUBLIC

55. The Westworld game infringes Bethesda's creative work of authorship and goodwill. Consequently, Defendants have benefitted unfairly from the reproduction, distribution, public performance, and creation of unauthorized derivative works in violation of Bethesda's rights.

56. Warner Bros. contributed to and is vicariously liable for Behaviour's poaching of Bethesda's creative work of authorship and goodwill. Consequently, Warner Bros. has benefitted and will continue to benefit unfairly from its secondary infringement of Bethesda's copyrights.

57. Behaviour and Warner Bros. have misappropriated the FALLOUT SHELTER Trade Secrets. Consequently, Defendants have benefitted and will continue to benefit unfairly from the acquisition, disclosure, and use of Bethesda's trade secrets in the development, production, and distribution of the Westworld mobile game.

58. Behaviour has materially breached its Agreement with Bethesda. Defendants have benefitted and will continue to benefit unfairly from the breach of the Agreement, including its non-disclosure, assignment, and confidentiality provisions.

59. Warner Bros. induced Behaviour to breach the Agreement. Consequently, Defendants have benefited and will continue to benefit unfairly from Behaviour's breach of the Agreement.

60. Behaviour and Warner Bros.' acts, described above, have at all times been knowing and willful.

61. Behaviour and Warner Bros.' acts, described above, have caused irreparable and actual harm and are likely to cause irreparable and actual harm to Bethesda.

62. Behaviour's breach has caused irreparable harm under the express terms of the Agreement.

63. Behaviour and Warner Bros.' acts, described above, have irreparably injured, and, if permitted to persist, will continue to injure irreparably Bethesda.

CLAIMS FOR RELIEF

COUNT I AGAINST BEHAVIOUR BREACH OF CONTRACT

64. Bethesda repeats and realleges each and every allegation set forth in the preceding paragraphs of this Complaint.

65. Behaviour breached material terms of the Agreement, including non-disclosure, assignment, and confidentiality provisions, in its development of the Westworld mobile game.

COUNT II AGAINST WARNER BROS. INDUCEMENT TO BREACH OF CONTRACT

66. Bethesda repeats and realleges each and every allegation set forth in the preceding paragraphs of this Complaint.

67. Bethesda and Behaviour entered into the Agreement, which included material non-disclosure, assignment, and confidentiality provisions.

68. Warner Bros. was not a party to the Agreement.

69. Warner Bros. had actual and/or constructive knowledge of the Agreement between Bethesda and Behaviour and had actual and/or constructive knowledge that all intellectual property resulting from the Agreement was owned by Bethesda.

70. Warner Bros. induced Behavior to use Bethesda's intellectual property in violation of the material provisions of the Agreement to develop the Westworld mobile game.

71. Behaviour breached material provisions of the Agreement in response to Warner Bros. inducement.

**COUNT III AGAINST BEHAVIOUR AND WARNER BROS.
DIRECT COPYRIGHT INFRINGEMENT
17 U.S.C. §§ 101 ET SEQ.**

72. Bethesda repeats and realleges each and every allegation set forth in the preceding paragraphs of this Complaint.

73. Bethesda owns a valid and subsisting copyright registration for FALLOUT SHELTER.

74. Bethesda has not authorized Behaviour or Warner Bros. to use, reproduce, display, distribute, or create derivative works from its source-code, game mechanics, game assets, or copyright-protected materials in any way.

75. Behaviour and Warner Bros. have directly infringed the Bethesda's copyrights by reproducing, distributing, displaying, and creating unauthorized derivative works from FALLOUT SHELTER with actual notice of Bethesda's rights.

76. Behaviour and Warner Bros. directly benefitted financially from their infringement of Bethesda's registered copyrights, as described above.

**COUNT IV AGAINST WARNER BROS.
CONTRIBUTORY COPYRIGHT INFRINGEMENT
17 U.S.C. §§ 101 ET SEQ.**

77. Bethesda repeats and realleges each and every allegation set forth in the preceding paragraphs of this Complaint.

78. Behaviour and Warner Bros. have directly infringed the Bethesda's copyrights by reproducing, distributing, displaying, and creating unauthorized derivative works from FALLOUT SHELTER with actual notice of Bethesda's rights.

79. Warner Bros. induced, caused, and/or contributed to the infringement of Bethesda's copyrights by materially contributing to Behaviour's direct infringement despite its actual notice of Bethesda's rights.

80. Behaviour induced, caused, and/or contributed to the infringement of Bethesda's copyrights by materially contributing to Behaviour's Warner Bros.' infringement despite its actual notice of Bethesda's rights.

81. Behaviour and Warner Bros.' infringement was at all times willful and intentional.

82. Behaviour and Warner Bros. directly benefited financially from their infringement of Bethesda's rights, as described above.

**COUNT V AGAINST WARNER BROS.
VICARIOUS COPYRIGHT INFRINGEMENT
17 U.S.C. §§ 101 ET SEQ.**

83. Bethesda repeats and realleges each and every allegation set forth in the preceding paragraphs of this Complaint.

84. Behaviour has directly infringed the Bethesda's copyrights by reproducing, distributing, displaying, and creating unauthorized derivative works from FALLOUT SHELTER with actual notice of Bethesda's registered copyrights.

85. Warner Bros. has the right and ability to control Behaviour's infringing activities.

86. Warner Bros. has a direct financial interest in Behaviour's infringing activities through the resulting reduced costs and expedited development of the Westworld mobile game.

87. Warner Bros. directly and materially benefited financially from its vicarious infringement of Bethesda's rights.

**COUNT VI AGAINST BEHAVIOUR AND WARNER BROS.
MISAPPROPRIATION OF TRADE SECRETS UNDER
18 U.S.C. §§ 1836 ET SEQ.**

88. Bethesda repeats and realleges each and every allegation set forth in the preceding paragraphs of this Complaint.

89. Bethesda owns the FALLOUT SHELTER Trade Secrets.

90. The FALLOUT SHELTER Trade Secrets are not generally known to the public.

91. Bethesda derives economic value from maintaining the FALLOUT SHELTER Trade Secrets.

92. Behaviour is aware of the confidentiality and existence of the FALLOUT SHELTER Trade Secrets.

93. Warner Bros. is aware or reasonably should have been aware of Bethesda's ownership of the FALLOUT SHELTER Trade Secrets.

94. Behaviour and Warner Bros. knowingly used the FALLOUT SHELTER Trade Secrets in the development of the Westworld mobile game.

95. The Westworld mobile game misappropriates the FALLOUT SHELTER Trade Secrets in interstate and foreign commerce.

**COUNT VII AGAINST BEHAVIOUR AND WARNER BROS.
MISAPPROPRIATION OF TRADE SECRETS UNDER
MD. CODE ANN. §§ 11-1201 ET SEQ.**

96. Bethesda repeats and realleges each and every allegation set forth in the preceding paragraphs of this Complaint.

97. Bethesda owns the FALLOUT SHELTER Trade Secrets.

98. The FALLOUT SHELTER Trade Secrets are not generally known to the public.

99. Bethesda derives economic value from maintaining the FALLOUT SHELTER Trade Secrets.

100. Behaviour is aware of the confidentiality and existence of the FALLOUT SHELTER Trade Secrets.

101. Warner Bros. is aware or reasonably should have been aware of Bethesda's ownership the FALLOUT SHELTER Trade Secrets.

102. Behaviour and Warner Bros. knowingly used the FALLOUT SHELTER Trade Secrets in the development of the Westworld mobile game.

103. The Westworld mobile game misappropriates the FALLOUT SHELTER Trade Secrets in interstate and foreign commerce including in this District

**COUNT VIII AGAINST BEHAVIOUR AND WARNER BROS.
UNFAIR COMPETITION**

104. Bethesda repeats and realleges each and every allegation set forth in the preceding paragraphs of this Complaint.

105. Behaviour has breached its contract with Bethesda related to the development of FALLOUT SHELTER.

106. Behaviour and Warner Bros. have misappropriated Bethesda's trade secrets related to the related to its FALLOUT SHELTER game as described herein.

107. Behaviour and Warner Bros. have relied on each of these unlawful and unfair actions alone and in combination to gain an unfair competitive advantage in the video game market.

PRAYER FOR RELIEF

WHEREFORE, Bethesda requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief, including the following:

a. That an Order be entered granting injunctive relief against Defendants Behaviour and Warner Bros. preventing and restraining Defendants, their agents, or anyone working for, in concert with, or on their behalf from infringement of Plaintiff's copyrights, misappropriation of Plaintiff's trade secrets, and unlawful or unfair business conduct;

b. That an Order be entered granting injunctive or other equitable relief pursuant to the agreed contract provisions between Plaintiff and Defendant Behaviour.

c. That an Order be entered against Defendants Behaviour and Warner Bros. to remove each and every version of the Westworld mobile game from distribution and to cease developing and supporting the game.

d. That an Order be entered against Defendants Behaviour and Warner Bros. awarding statutory damages for willful copyright infringement pursuant to 17 U.S.C. § 504(c), or, in the alternative, at Plaintiff's election, pursuant to 17 U.S.C. § 504(b), Plaintiff's actual damages and Defendants' profits from infringement, in amounts to be proven at trial.

e. That an Order be entered against Defendants Behaviour and Warner Bros. for actual damages as Plaintiff has sustained in an amount to make Plaintiff whole from the effects of Defendants' unlawful acts.

f. That an Order be entered requiring Defendants Behaviour and Warner Bros. to pay Plaintiff its costs and attorneys' fees in this action pursuant to 17 U.S.C. § 505, 15 U.S.C. § 1117(a), and/or the agreed contract provisions between Plaintiff and Defendant Behaviour.

g. That an Order be entered requiring Defendants Behaviour and Warner Bros. to pay Plaintiff punitive damages, as permitted by law, in an amount to be determined due to the foregoing willful acts.

h. That Plaintiff be granted prejudgment and post-judgment interest as permitted by law.

i. Other relief as the Court may deem appropriate.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Bethesda respectfully demands a trial by jury on all issues properly triable by a jury in this action.

Dated: June 21, 2018

Respectfully submitted,

/s/ Margaret A. Esquenet

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

BETHESDA SOFTWARE LLC,

Plaintiff,

v.

BEHAVIOUR INTERACTIVE, INC. and
WARNER BROS. ENTERTAINMENT,

Defendants.

CASE NO.

**COMPLAINT FOR BREACH OF
CONTRACT, COPYRIGHT
INFRINGEMENT, TRADE DRESS
INFRINGEMENT, MISAPPROPRIATION
OF TRADE SECRETS, AND UNFAIR
COMPETITION**

JURY TRIAL DEMANDED

INDEX OF EXHIBITS TO THE COMPLAINT

- Exhibit A:** Copy of *Wikipedia* article about FALLOUT 3
- Exhibit B:** Copy of *Wikipedia* article about FALLOUT 4
- Exhibit C:** Copy of *Game Rant* article about Fallout Shelter success
- Exhibit D:** Copy of *Games Radar* article about Fallout Shelter success
- Exhibit E:** Copy of the Westworld mobile game website
- Exhibit F:** Copy of *Forbes* article about the Westworld mobile game's similarity to
FALLOUT SHELTER
- Exhibit G:** Copy of *Shacknews* article about the Westworld mobile game's similarity to
FALLOUT SHELTER
- Exhibit H:** Copy of *VentureBeat* article about the Westworld mobile game's similarity to
FALLOUT SHELTER
- Exhibit I:** Copy of *Pocket Gamer* article about the Westworld mobile game's similarity to
FALLOUT SHELTER

Exhibit J: Copy of *Den of Geek* article about the Westworld mobile game's similarity to FALLOUT SHELTER

Exhibit K: Copy of *CinemaBlend* article about the Westworld mobile game's similarity to FALLOUT SHELTER

Exhibit L: Copy of *Kotaku* article about the Westworld mobile game's similarity to FALLOUT SHELTER

Exhibit M: Copy of *GameCrate* YouTube web page with the Westworld mobile game trailer and commentary about the similarity to FALLOUT SHELTER

Exhibit N: Copy of *Beyond Westworld* article about the Westworld mobile game's similarity to FALLOUT SHELTER