

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA, MARTINSBURG

FILED

JAN 14 2011

US DISTRICT COURT
MARTINSBURG, WV 25401

BLINGVILLE, LLC,
a West Virginia Limited Liability Company,

Plaintiff,

v.

CIVIL ACTION NO. 3:11cv4

ZYNGA INC.,
a Delaware Corporation
and
ZYNGA GAME NETWORK INC.,
a California corporation

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Blingville, LLC, a West Virginia limited liability company (hereinafter "Blingville"), as and for its complaint against Defendants alleges as follows:

Introduction

1. This is an action seeking a declaratory judgment under 28 U.S.C. 2201 and 2202 with respect to Blingville's authorized use of the trademark name "Blingville" and Zynga's assertions to the contrary in its cease and desist letters dated November 2, 2010, December 6, 2010 and January 4, 2011 (hereinafter collectively referred to as the "Cease and Desist Letters", copies of all of which are attached hereto as Exhibit A).

Parties

2. Blingville is a West Virginia limited liability company in the computer game software business with its principal place of business located in Harpers Ferry, West Virginia, with an address of Post Office Box 641, Harpers Ferry, West Virginia 25425.

3. Upon information and belief, Zynga Inc. is a Delaware corporation involved in the computer game software business.

4. Upon information and belief Zynga Game Network Inc. is a California corporation involved in the computer game software business.

5. Upon information and belief, Zynga Inc. conducts business under the name Zynga Inc. and/or Zynga Game Network Inc. Hereinafter, Zynga Inc. shall be referred to as "Zynga" and all such references shall include Zynga Inc. and/or Zynga Game Network Inc.

Jurisdiction and Venue

5. This Court has jurisdiction over this matter as it arises under federal law concerning violations of the Lanham Act 15 U.S.C. 1114 and 1125 and under the federal question and trademark jurisdiction 28 U.S.C. 1331 and 1338 and as a declaratory judgment action under 28 U.S.C. 2201 and 2202.

6. This Court has personal jurisdiction over Zynga because Zynga distributes computer games which are operated by persons in the State of West Virginia in this District, Zynga conducts business in the state of West Virginia in this District and, Zynga, through its counsel, sent the Cease and Desist Letters to Blingville which is owned and operated by Blingville, LLC a West Virginia limited liability company in the State of West Virginia in this District.

7. Venue is proper in this District under 28 U.S.C. 1391.

8. This action for declaratory judgment is timely and proper.

9. An actual case or controversy exists between the parties. Zynga, by and through its Cease and Desist Letters, has threatened litigation against Blingville for trademark infringement. The accusations and threats in the Cease and Desist Letters threaten injury to Blingville. As a result, a declaratory judgment is necessary to validate Blingville's continued use of the trademark name "Blingville".

Factual Background

10. Blingville is headquartered in Harpers Ferry, West Virginia and is in the computer game software business and is in the process of launching a social networking computer game entitled "Blingville".

11. Overtime Apps, LLC filed a trademark registration application with the United States Trademark and Patent Office (hereinafter "USTPO") on November 5, 2010 for use of the word mark "Blingville" (sometimes hereinafter referred to as "Trademark").

12. Overtime Apps, LLC's, predecessor, WebsiteGrowers.com, Inc., registered the domain name of blingville.com in October of 2004 at which time it first began using the name and mark "Blingville" in interstate commerce.

13. Overtime Apps, LLC assigned all of its right title and interest in and to the "Blingville" name and trademark application to Blingville.

14. Zynga does not own and has not registered or applied for any trademark registrations at the USPTO for any trademark rights in the word "blingville" or any word marks similar thereto.

15. On November 2, 2010, Zynga, through its counsel, forwarded to a representative of Blingville a written Notice of Infringement of trademark rights (hereinafter "November 2, 2010 Cease and Desist Letter") which asserted that Blingville's use of the name and trademark "Blingville" for a social networking game violates the Lanham Act, 15 U.S.C. 1114 and/or 1125, and demanded that Blingville cease the use of the mark "Blingville" by November 5, 2010.

16. On December 6, 2010, Zynga, through its counsel, forwarded to a representative of Blingville a written Notice of Infringement of trademark rights (hereinafter "December 6, 2010 Cease and Desist Letter") which asserted that Blingville's use of the name and trademark "Blingville" for a social networking game violates the Lanham Act, 15 U.S.C. 1114 and/or 1125, and demanded that Blingville cease the use of the mark "Blingville" by December 10, 2010.

17. On January 4, 2011, Zynga, through its counsel, forwarded to a representative of Blingville a written Notice of Infringement of trademark rights (hereinafter "January 4, 2011 Cease and Desist Letter") which asserted that Blingville's use of the name and trademark "Blingville" for a social networking game violates the Lanham Act, 15 U.S.C. 1114 and/or 1125, and demanded that Blingville cease the use of the mark "Blingville" by December 10, 2010 or face legal action to enforce such demand.

18. Blingville's use of the trademark "Blingville" does not violate the Lanham Act with respect to Zynga or any of Zynga's trademarks or its social networking games containing the letter combination of "ville".

19. Blingville's use of the trademark "Blingville" in its social networking game constitutes a fair use of the Trademark.

Trademark Infringement

20. Blingville incorporates the foregoing paragraphs 1-19 as if fully set forth verbatim herein.

21. Zynga has asserted, and Blingville denies, that Blingville's use of the trademark name "Blingville" in its social networking game violates the Lanham Act with respect to Zynga or any of Zynga's trademarks or its social networking games containing the letter combination of "ville".

22. Zynga's assertions create a reasonable apprehension by Blingville that Zynga will file a lawsuit against Blingville asserting claims for trademark infringement under 15 U.S.C. 1114 and/or 1125.

23. The Cease and Desist Letters prepared by or on behalf of Zynga and forwarded to Blingville create an actual controversy regarding the right of Blingville to use the trademark name "Blingville" in connection with its social networking computer game.

24. Zynga's assertion of trademark infringement adversely affects Blingville and will continue to do so until this Court makes a determination of Blingville's absolute right to continue to use the trademark name "Blingville" in connection with its social networking computer game.

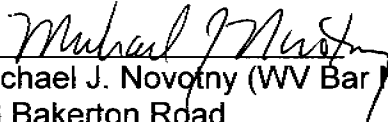
Prayer for Relief

Wherefore, Blingville respectfully requests that this Court enter a declaratory judgment against Zynga as follows:

1. That the Court enter judgment declaring that Blingville's use of the trademark name "Blingville" does not constitute trademark infringement under 15 U.S.C. 1114 and/or 1125 and does constitute fair use of the Trademark, with respect to Zynga and any of Zynga's trademarks including its social networking games containing the letter combination of "ville";
2. That Zynga be ordered to pay Blingville's attorneys' fees, costs and other expenses incurred as a result of this controversy created by the Cease and Desist Letters;
3. That this Court grant such further and other relief as the Court deems just and proper.

Dated this 13th day of January, 2011

Blingville, LLC

By: 
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