

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

BOOKER T. HUFFMAN,
Plaintiff,

V.

ACTIVISION PUBLISHING, INC.,
ACTIVISION BLIZZARD, INC., and
MAJOR LEAGUE GAMING CORP.,
Defendants.

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C.A. NO. 2:19-cv-50

JURY

COMPLAINT

Plaintiff Booker T. Huffman complains of Defendants Activision Publishing, Inc., Activision Blizzard, Inc., and Major League Gaming Corp., and for his cause of action for copyright infringement, respectfully would show the following:

The Parties

1. Plaintiff Booker T. Huffman (hereinafter “Booker T.”) is an individual who resides in Friendswood, Texas.

2. Defendant Activision Publishing, Inc. (hereinafter “Activision”) is a corporation organized under the laws of the State of Delaware. Activision may be served with process by serving its registered agent, Corporation Service Company, 251 Little Falls Dr., Wilmington, Delaware 19808.

3. Defendant Activision Blizzard, Inc. (hereinafter “Activision Blizzard”) is a corporation organized under the laws of the State of Delaware. Activision Blizzard has done business in Texas and has committed copyright infringement in the State of Texas, as is further alleged below. Activision Blizzard may be served with process by serving its registered agent, Corporation Service Company, 251 Little Falls Dr., Wilmington, Delaware 19808.

4. Defendant Major League Gaming Corp. (hereinafter “MLG”) is a corporation organized under the laws of the State of Delaware. MLG has done business in Texas and has committed copyright infringement in the State of Texas, as is further alleged below. MLG may be served with process by serving its registered agent, Corporation Service Company, 251 Little Falls Dr., Wilmington, Delaware 19808.

5. Activision, Activision Blizzard and MLG will be referred to collectively herein as "Defendants."

The Case

6. This is an action for copyright infringement. Booker T. created two comic books based on his character “G. I. Bro.” G.I Bro is a special operations action hero. Defendants published a series of multiplayer, first-person shooter games under the general title “*Call of Duty*.” In 2018, Defendants released *Call of Duty: Black Ops 4*, a “prequel” to the prior videogame *Call of Duty: Black Ops III*. In *Call of Duty: Black Ops III*, one of the “specialist” characters was David “Prophet” Wilkes, who had replaced 90% of his body with “cybernetics” to enhance his fighting ability. For the “prequel,” *Call of Duty: Black Ops 4*, Defendants chose to depict “Prophet” as he was before he remade himself. They could have drawn him any way they wanted. But they chose to steal Booker T.’s “G. I. Bro.”

7. In the pictures below, “G. I. Bro” is on the left, and “Prophet is on the right:



There is no doubt that Defendants copied “G. I. Bro.”

Jurisdiction and Venue

8. This Court has exclusive federal jurisdiction over the subject matter of Booker T.’s copyright infringement action under 28 U.S.C. § 1338. In addition, this Court has subject matter jurisdiction under 28 U.S.C. § 1331 as this claim arises under the copyright laws of the United States, 17 U.S.C. § 101, *et seq.*

9. This Court has specific personal jurisdiction over all Defendants. Defendants have done business in Texas and have committed copyright infringement in Texas, as is further alleged below. This Court has specific jurisdiction of the Defendants because Defendants knowingly, intentionally and purposefully committed acts of copyright infringement in Texas, in the form of every sale of *Call of Duty: Black Ops 4* that took place in Texas or resulted in the download or other delivery of a copy of the game to a purchaser in Texas. Under the Copyright

Act of 1976, a copyright owner has certain exclusive rights, including the exclusive right to make copies and derivatives of the owner's works, and the exclusive right to distribute, by sale, rental, gift or otherwise, copies of the copyright owner's works. Any violation of the copyright owner's exclusive rights is an infringer of the copyrights. 17 U.S.C. § 501(a). Each distribution or sale of each infringing copy is a new, separate, and distinct act of copyright infringement.

10. A substantial portion of Booker T.'s entitlement to relief under the Copyright Act arises from the sales and distributions of *Call of Duty: Black Ops 4* in Texas. Booker T. incorporates by reference his allegations below describing the specific infringing conduct of Defendants that was directed to Texas.

11. Venue in this District is proper under 27 U.S.C. § 1400(a) and 28 U.S.C. § 1391(b) and (c) because Defendants do business in and may be found in this District.

Factual Background

12. Booker T. Huffman has led a blessed life. Born in Louisiana and raised in inner-city Houston, he learned as a young man that he had to live his life with no excuses, and that he was responsible for his own actions and decisions. "Legend" does not do justice in describing Booker T.'s career as a wrestler. He is famous for winning the world champion title while wrestling in the WCW circuit not once but five (5) times. Booker T. is often ranked amount the top five heavyweight wrestlers in history.

13. In creating his wrestling personality and the stories for his performances in the ring, Booker T. realized that he could create characters and stories beyond professional wrestling. He conceived a character like his wrestling personality who would be a retired special operations soldier, fighting an old enemy he thought he had finished off years before, with the support of his old military friends.

14. In 2015, Booker T. teamed with an independent contractor, Travis Huffman (they are not related). Travis Huffman and his employees took Booker T.'s G. I. Bro and created artwork, four cartoon versions of G. I. Bro. They then took Booker T.'s story and produced a preview comic book, *G. I. Bro and the Dragon of Death*. In it, the retired soldier is "Book," based on Booker T. himself. His old enemy taunts him as "G. I. Bro." They produced a longer version later the same year, *G. I. Bro and the Dragon of Death*. Booker T. has promoted his character and his comic books by appearing at comic book events dressed as G.I Bro.

15. Booker T. is the author of, and at all times relevant to this claim, has been and is now the sole owner of all right, title and interest in and to the copyrights in the following:

G. I. Bro Artwork, four drawings of the G. I. Bro character,

G. I. Bro and the Dragon of Death Preview, a comic book,

G. I. Bro and the Dragon of Death, a comic book.

Each of the foregoing works is an individual work of authorship created by Booker T. Each of these works is protectable subject matter pursuant to 17 U.S.C. § 102(a)(1) and (5). (Hereinafter, the foregoing works will be referred to collectively as the "G.I. Bro Works.")

16. Booker T. has filed an application for registration of his copyright in *G. I. Bro Artwork*. He has paid the requisite fee, and has deposited the necessary copy of the work with the United States Copyright Office. The United States Copyright Office has received these materials, and has assigned the application Case No. 1-7398740741.

17. Booker T. has filed an application for registration of his copyright in *G. I. Bro and the Dragon of Death Preview*. He has paid the requisite fee, and has deposited the necessary copy of the work with the United States Copyright Office. The United States Copyright Office has received these materials, and has assigned the application Case No. 1-7398741148. *G. I. Bro and the Dragon of Death Preview* is based on the character G. I.

Bro, first drawn in *G. I. Bro Artwork*, and includes two of the drawings from *G. I. Bro Artwork*; to that extent it is a derivative of *G. I. Bro Artwork*.

18. Booker T. has registered *G. I. Bro and the Dragon of Death* with the United States Copyright Office. The Copyright Office has issued Certificate of Registration No. TX 8-668-892 for this work, dated January 8, 2019. *G. I. Bro and the Dragon of Death* is a derivative of *G. I. Bro Artwork* and *G. I. Bro and the Dragon of Death Preview*. *G. I. Bro and the Dragon of Death* is based on the character G. I. Bro, first drawn in *G. I. Bro Artwork*, and includes one of the drawings from *G. I. Bro Artwork*; to that extent it is also a derivative of *G. I. Bro Artwork*.

19. Booker T. has complied in all respects with Title 17 of the United States Code, §101 *et seq.*, (the Copyright Act of 1976) and all other United States laws governing copyrights, and has secured the exclusive rights and privileges in and to the copyrights to the G. I. Bro Works. Booker T.'s copyrights in the G. I. Bro Works are presently valid and subsisting, and were valid and subsisting from the moment of their creation.

20. All conditions precedent to the filing of this action for copyright infringement have occurred.

21. Defendants began utilizing Booker T's G.I. Bro image in *Call of Duty: Black Ops 4* which went on sale in late 2018. It sold \$500 Million worth of copies/downloads in the first three days following its release. Total sales to date are thought to exceed One Billion Dollars.

22. Booker T. has never authorized Defendants to make copies of his G.I. Bro Works, including the depictions of the characters "Book" or "G.I. Bro." Booker T. has never authorized Defendants to make derivatives of his G.I. Bro Works, including the depictions of the characters "Book" or "G.I. Bro." Booker T. has never authorized Defendants to distribute copies or derivatives of his G.I. Bro Works, including the depictions of the characters "Book" or "G.I.

Bro.” Booker T. as never authorized Defendants to reproduce his G.I. Bro Works, including the depictions of the characters “Book” or “G.I. Bro,” in any form. Booker T. has never entered into any agreements of any kind with Defendants; in fact, to his knowledge, Booker T. has never personally had any contact with Defendants.

23. Defendants have infringed Booker T.’s copyrights in the G. I. Bro Works by violating Booker T.’s exclusive rights as a copyright owner, including the following:

- a. Defendants have made copies of the G. I. Bro Works by creating, or causing to be created, the videogame character “Prophet” in *Call of Duty: Black Ops 4*.
- b. Defendants have made derivatives of the G. I. Bro Works by creating, or causing to be created, the videogame character “Prophet” in *Call of Duty: Black Ops 4*.
- c. Defendants have distributed, or caused to be distributed, by sale or otherwise, copies or derivatives of the G. I. Bro Works by distributing the game *Call of Duty: Black Ops 4*.

These infringing activities have resulted in hundreds of millions of dollars in sales of infringing copies of Booker T.’s G. I. Bro Works. Booker T. therefore brings this action to protect his rights under federal law.

Count 1: Copyright Infringement

24. Booker T. complains of Defendants for copyright infringement, and incorporates paragraphs 1 - 23 above by reference.

25. The creation of copies or derivatives of Booker T.’s G. I. Bro Works and the distribution of such copies or derivatives by Defendants has infringed and continues to infringe Booker T.’s copyrights in the G. I. Bro Works.

26. In the alternative, Activision Blizzard has or has had a direct financial interest in the infringement of Booker T.'s copyrights in his G. I. Bro Works by Activision and MLG, but has failed and continues to fail to prevent Activision's infringement of Booker T.'s copyrights. Activision Blizzard is therefore liable for vicarious infringement of Booker T.'s copyrights in his G. I. Bro Works by Activision and MLG.

27. In the further alternative, Activision has or has had a direct financial interest in the infringement of Booker T.'s copyrights in his G. I. Bro Works by MLG, but has failed and continues to fail to prevent MLG's infringement of Booker T.'s copyrights. Activision is therefore liable for vicarious infringement of Booker T.'s copyrights in his G. I. Bro Works by MLG.

28. Defendants are each jointly and severally liable for all of their profits attributable to the infringements, pursuant to 17 U.S.C. § 504(b).

Jury Demand

29. Pursuant to Federal Rule of Civil Procedure 38, Booker T. respectfully demands trial by jury on all issues so triable. Pursuant to Local Rule CV-38(a), Booker T. is filing a separate document making this jury demand.

WHEREFORE, PREMISES CONSIDERED, Booker T. Huffman prays that Defendants be cited to appear and answer, and that upon final trial have and recover from Defendants as set forth above, and that he have such other relief as it may show himself to be entitled.

Dated: February 12, 2019

Respectfully submitted,

/s/ Patrick Zummo

Patrick Zummo

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