

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.

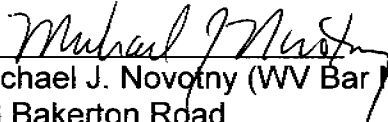
Prayer for Relief

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: 
Michael J. Novotny (WV Bar No. 5566)
36 Bakerton Road
Harpers Ferry, West Virginia 25425
(304) 671-2297; Fax (304) 725-3851
Michael@potomacconsultingservices.com
Attorney for Blingville, LLC

From: Dennis L. Wilson [dwilson@kmwlaw.com]
Sent: Tuesday, November 02, 2010 4:15 PM
To: hfwbftbcdq@whoisprivacyprotect.com
Subject: Zynga Game Network Inc. 'VILLE Family of Marks

November 2, 2010

Dennis L. Wilson
Keats McFarland & Wilson
9720 Wilshire Blvd., Penthouse Suite
Beverly Hills, CA 90212
(310) 248-3830

VIA ELECTRONIC MAIL

hfwbftbcdq@whoisprivacyprotect.com

Re: Zynga Game Network Inc. 'VILLE Family of Marks

Dear Sir or Madam:

We serve as intellectual property counsel to Zynga Game Network Inc. ("Zynga"). Among other things, Zynga publishes and owns intellectual property rights in the 'VILLE family of social networking games, which includes YoVille®, FarmVille™, PetVille™, FrontierVille™ and FishVille™, as well as other 'VILLE games in various stages of development (collectively the 'VILLE Family of Marks). Each of Zynga's games using the 'VILLE Family of Marks is published and played by millions of users on various social networking portals, including Facebook and MySpace, among others.

Zynga has consistently used and promoted the 'VILLE Family of Marks together as members of a family of games offered by Zynga. As a result of Zynga's extensive marketing efforts and commercial success, the 'VILLE Family of Marks is strongly identified by consumers with Zynga's games and Zynga's reputation for quality.

We have recently noticed that you have registered and created a placeholder page for an online game called "BlingVille" at the Internet domain name <blingville.com>, and are also advertising "BlingVille" as a "Facebook Game" on <blingville.com> and on the Facebook website. We have also noted your designation of BLINGVILLE as an alleged trademark. Your company's planned use of BLINGVILLE, either as a title for your game or as an alleged trademark, is confusingly similar to the 'VILLE Family of Marks owned by Zynga, and users are likely to believe, erroneously, that your "BlingVille" game is published, sponsored or endorsed by, or otherwise associated with, Zynga.

Zynga has invested substantial time and resources in developing and promoting the 'VILLE Family of Marks, and it will vigorously protect its rights in those marks, both collectively and individually. In order to avoid a dispute over the confusion likely to be caused by your use of the BLINGVILLE title and mark, Zynga requests that you

EXHIBIT A

immediately cease advertising your game using the title "BlingVille," and refrain from any further use of the 'VILLE suffix for social gaming.

We expect that you will accede to this request. Because this is an important issue, please respond no later than Friday, November 5. For your convenience, my direct line is 310-777-3740. I look forward to receiving your response. Nothing contained in this letter constitutes an express or implied waiver of any rights, remedies, or defenses of Zynga, all of which are expressly reserved.

Very truly yours,

/s/

Dennis L. Wilson
Keats McFarland & Wilson LLP

DLW/kat

From: Dennis L. Wilson [mailto:dwilson@kmwlaw.com]
Sent: Monday, December 06, 2010 2:02 PM
To: info@overtimeapps.com; hfwbftbcdq@whoisprivacyprotect.com;
kksqlyqn@whoisprivacyprotect.com; msxqpbyf@whoisprivacyprotect.com
Subject: Email re BlingVille

December 6, 2010
Dennis L. Wilson
Keats McFarland & Wilson
9720 Wilshire Blvd., Penthouse Suite
Beverly Hills, CA 90212
(310) 248-3830

VIA ELECTRONIC MAIL

Overtime Apps, LLC
info@overtimeapps.com
hfwbftbcdq@whoisprivacyprotect.com
kksqlyqn@whoisprivacyprotect.com
msxqpbyf@whoisprivacyprotect.com

Re: Launch of BLINGVILLE Social Networking Application

Dear Sir or Madam:

This letter follows my correspondence of November 2, 2010 regarding your company's anticipated launch of a social networking application bearing the name and purported trademark BLINGVILLE. As you are aware, we serve as intellectual property counsel to Zynga Game Network Inc. ("Zynga"). In my previous letter, I advised you of Zynga's intellectual property rights in the 'VILLE family of social networking games, which includes YoVille®, FarmVille™, PetVille™, FrontierVille™ and FishVille™, as well as other 'VILLE games in various stages of development (collectively the 'VILLE Family of Marks). I also advised you that your company's planned use of BLINGVILLE is confusingly similar to 'VILLE Family of Marks owned by Zynga, and that users are likely to believe, erroneously, that your game is published, sponsored or endorsed by, or otherwise associated with, Zynga.

Shortly after I transmitted my November 2 letter, you registered the Internet domain name <blingvilla.com> and announced on Facebook that your game's name was changing to "BlingVilla." However, you have continued to advertise your forthcoming social networking game using the name "BlingVille", and are currently advertising a December 31, 2010 launch of the "BlingVille" beta. You are also soliciting users to sign up for a "BlingVille" newsletter at the <blingville.com> Internet domain name. I am writing to request that you immediately cease all use of the BLINGVILLE name and mark, and complete your transition to the "BlingVilla" name. This includes, without limitation, redirecting <blingville.com> to <blingvilla.com>, replacing all of your references to "BlingVille" on Facebook and other websites with "BlingVilla," and confirming by reply letter that you will no longer use "BlingVille" in connection with

social gaming. Because time is of the essence in light of your upcoming launch, please comply with these requests no later than this Friday, December 10. I am available at 310-777-3723 if you have questions about compliance with these requests. Nothing contained in this letter constitutes an express or implied waiver of any rights, remedies, or defenses of Zynga, all of which are expressly reserved.

Very truly yours,

/s/

Dennis L. Wilson
Keats McFarland & Wilson LLP

DLW/kat

From: Dennis L. Wilson
Sent: Friday, December 03, 2010 12:15 PM
To: Christopher T. Varas
Subject: RE: Email re BlingVille

Go ahead and draft the short letter warning them

From: Christopher T. Varas
Sent: Friday, December 03, 2010 10:40 AM
To: Dennis L. Wilson
Subject: FW: Email re BlingVille

Did you discuss BlingVille with Jed? They still have blingville.com and still have a blingville page on FB, and the "blingvilla" page is still up as well. I think we should follow up with a letter warning them not to launch as BlingVille. They are supposedly launching on New Year's Eve.

From: Christopher T. Varas
Sent: Wednesday, November 17, 2010 3:53 PM
To: Dennis L. Wilson
Subject: Email re BlingVille

Here is a draft email to Jed re Blingville.

Jed,

As you may remember, one of the 'VILLE games we sent a demand letter to was "BlingVille." This is a game that is preparing to launch on Facebook, and also has a website at <blingville.com>. They have announced that they are changing their name to "BlingVilla." We are continuing to monitor their website and Facebook pages, and will follow-up with them as appropriate to ensure that they completely stop using "BlingVille." We will keep you posted.

From: Dennis L. Wilson [mailto:dwilson@kmwlaw.com]
Sent: Tuesday, January 04, 2011 6:25 PM
To: hfwbftbcdq@whoisprivacyprotect.com
Subject: Third Notice of Infringement of Zynga Inc. 'VILLE Family of Marks

Dennis L. Wilson
Keats McFarland & Wilson
9720 Wilshire Blvd., Penthouse Suite
Beverly Hills, CA 90212
(310) 248-3830

**VIA FAX, EMAIL AND
OVERNIGHT MAIL**

PMB 368
14150 NE 20th St. - FL
C/O Blingville.com
Bellevue, WA 98007
Email: hfwbftbcdq@whoisprivacyprotect.com
Fax: 425-274-0657

Re: Third Notice of Infringement of Zynga Inc. 'VILLE Family of Marks

Dear Sir or Madam:

This firm represents Zynga Inc. which, among other things, publishes and owns intellectual property rights in the 'VILLE family of social networking games, which includes YoVille®, FarmVille®, FishVille®, PetVille™, FrontierVille™ and CityVille™, as well as other 'VILLE games in various stages of development (collectively the 'VILLE Family of Marks). I previously wrote to you on November 2, 2010 and on December 6, 2010 advising you of Zynga's rights in the 'VILLE Family of Marks, and informing you that your proposed use of the name and purported trademark BLINGVILLE for a social networking game is confusingly similar to Zynga's 'VILLE Family of Marks. Specifically, Internet users are likely to believe, erroneously, that your game is published, sponsored or endorsed by, or otherwise associated with, Zynga.

Following your receipt of my November 2 email, you appeared to be transitioning from the infringing name BLINGVILLE for your game to the name BLINGVILLA. However, you subsequently abandoned the name change and now appear to have launched your game in beta using the name and alleged trademark BLINGVILLE. You have launched BLINGVILLE in knowing disregard of Zynga's rights in the 'VILLE Family of Marks, and with what Zynga can only conclude is the intent to profit unlawfully from the substantial goodwill associated with Zynga's reputation for quality.

Zynga takes the protection of its intellectual property rights very seriously, and intends to vigorously defend its rights in the 'VILLE Family of Marks. Zynga hereby

renews its demand that you immediately cease all use of the name BLINGVILLE, and refrain from any further infringement of Zynga's intellectual property rights, including without limitation Zynga's rights in the 'VILLE Family of Marks. In light of the fact that this is our third notice to you, I will expect to receive confirmation of your compliance with this demand no later than Tuesday, January 11, 2011. If you have not complied with this demand by that time, I will have no choice but to recommend that Zynga consider appropriate legal action to protect its trademark rights. I look forward to receiving your prompt response.

Very truly yours,

/s/

Dennis L. Wilson
Keats McFarland & Wilson LLP