

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
JAMES J. O'NEILL
CLERK

08 FEB 19 PM 4:43

2:08 PM 157
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EAST. DIV. COLUMBUS

DAVID ALLISON, doing business as)
CHEAT CODE CENTRAL, a sole)
proprietorship,)
)
Plaintiff,)
)
vs.)
)
JEREMY N. WISE, an individual,)
)
Defendant.)

Case No.

JUDGE **JUDGE WATSON**

Magistrate Judge

MAGISTRATE JUDGE ABEL

COMPLAINT AND JURY DEMAND

Plaintiff David Allison, doing business as Cheat Code Central, a sole proprietorship, for his Complaint against Defendant Jeremy Wise, states as follows:

NATURE OF THE CASE

1. This is an action for copyright infringement brought under the Copyright Laws of the United States, 17 U.S.C. § 101 *et seq.*, unfair competition and passing off brought under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and state and common law unfair competition.

2. Plaintiff David Allison, doing business as Cheat Code Central, a sole proprietorship ("David Allison"), brings this action because Defendant, individually and in association with third parties, willfully infringed David Allison's copyrights by copying, reproducing, and distributing David Allison's copyrighted works without authorization and willfully engaged in unfair competition by passing off David Allison's copyrighted works as if they were Defendant's works.

JURISDICTION AND VENUE

3. Jurisdiction is predicated upon 28 U.S.C. §§ 1331, 1338(a) and (b), and 1367(a). As the parties are citizens of different states and as the matters in controversy

exceed the sum or value of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs, this court also has jurisdiction over the state-law claims herein under 28 U.S.C. § 1332.

4. Defendant Jeremy N. Wise resides in this District. Accordingly, venue is proper under 28 U.S.C. §§ 1391(b) and (c), and 1400(a).

PARTIES

5. David Allison is a sole proprietorship with its principal place of business located in Broomfield, Colorado, and operates a website located at *www.cheatcc.com*. David Allison owns the exclusive copyrights to each of the web pages posted at *www.cheatcc.com*, as fully set forth below.

6. Defendant Jeremy Wise (“Wise”) is a resident of Frazeytsburg, Ohio, and is an individual who, upon information and belief, owns and operates the “Lair Alliance Network.” Defendant Wise has directly participated in and/or directed the acts described below.

GENERAL ALLEGATIONS

Plaintiff's Ownership of Copyrights Covering Web Pages

7. David Allison operates a premier web site, located at *www.cheatcc.com*, which is devoted to “enhancing game experiences around the world,” which includes, among other things, Allison’s original descriptions of video game strategies, tips, hints, tricks, and cheat codes. These original descriptions of video game strategies, tips, hints, tricks, and cheat codes allow video game players to access hidden video game features, that are not typically included as part of the instruction manuals that accompany video game purchases. Rather, they must be discovered through either experimentation or receipt of direct information from video game programmers. There is a long tradition of video game programmers and manufacturers incorporating these hidden cheat codes in their video

games. As a result, a market has developed for information describing these hidden cheat codes for video game users.

8. David Allison began writing his original descriptions of video game strategies, tips, hints, tricks, and cheat codes as early as May 1997, and in 1999/2000, he wrote and published a book on video game cheat codes, entitled *The Ultimate Code Book*.

9. David Allison also owns and operates a web site located at *www.cheatcc.com*, where he writes, compiles, arranges, and posts information and commentary on video game strategies, tips, hints, tricks, and cheat codes for thousands of video games across the most popular platforms in the gaming industry. David Allison wrote the text contained on each cheat code web page located at *www.cheatcc.com*, and solely created the compilation and arrangement of the cheat code information on each of those pages.

10. David Allison has built up a reputation for presenting quality descriptions of video game strategies, tips, hints, tricks, and cheat codes through the published books and web site postings he has written. As part of his work, David Allison built relationships with video game developers, which allowed him to obtain and write about the latest and most interesting cheat codes. This information is a highly desired item among video game users.

11. David Allison began to post web pages containing his original video game descriptions on the *www.cheatcc.com* web site October 1998. Since that time, David Allison has continually updated the *www.cheatcc.com* website by posting new web pages about additional games and/or updating and revising the previously up loaded web pages. David Allison is the sole author of all original descriptions of video game strategies, tips, hints, tricks, and cheat codes published on the *www.cheatcc.com* website.

12. David Allison's book, *The Ultimate Code Book*, and the content of the *www.cheatcc.com* web site, ("the Copyrighted Web Pages"), have been registered with the United States Copyright Office as follows:

[REDACTED]		
The Ultimate Code Book	TX-5-116-527	January 5, 2000
Cheatcc.com web site	TX-6-162-180	May 12, 2005
Cheatcc.com web site	TX-6-516-407	January 29, 2007

(A true and correct copy of the copyright registration certificates for the Copyrighted Web Pages is attached as **Exhibit A**.)

13. David Allison created the Copyrighted Web Pages listed above and fixed them in a tangible medium, with the exception of any third party banner ads contained on the pages. The Copyrighted Web Pages are David Allison's original works of authorship and constitute copyrightable subject matter under the copyright laws of the United States.

14. David Allison's Copyrighted Web Pages have been published on the *www.cheatcc.com* web site, where they can be viewed and/or downloaded by any person. The *www.cheatcc.com* web site contains a copyright notice indicating that the content is owned by Cheat Code Central, the name of David Allison's sole proprietorship.

15. The quality and breadth of the video game cheat code commentary posted on the *www.cheatcc.com* drives a significant volume of traffic to the website, which in turn, generates advertising revenue. In the past, the *www.cheatcc.com* web site has received between six and seven million unique visitors per month.

Defendant's Wrongful Acts

16. After David Allison published his Copyrighted Web Pages, Defendant Wise created the Lair Alliance Network. According to the text on the www.lair-alliance.net web site, the Lair Alliance Network is a “recently formed affiliation of computer and video game based websites, situated throughout the world.” The Lair Alliance Network is composed of the following web domains: *Cheat-codes-for.com*, *Cheatdemon.com*, *Cheatmasters.com*, *Cheats2k.net*, *Playstation2-cheats.co.uk*, *Ps2Replay.com*, *Xbox-cheat-codes.com*, and *Xtreme-cheats.com* (“the Lair Alliance Sites”).

17. The Lair Alliance Sites are devoted to providing video game cheat codes for popular gaming platforms, including PlayStation 2, PlayStation 3, Sony PSP, XBox, XBox 360, Gameboy Advance, Nintendo DS, Nintendo Wii, Gamecube, PC, Playstation, Dreamcast, Nintendo 64, DVD and Gameboy platforms, that directly compete with David Allison's *www.cheatcc.com* website.

18. The text on the Lair Alliance web pages providing the cheat codes for the platforms listed above (“Lair Alliance Infringing Web Pages”) are identical to pages from David Allison's Copyrighted Web Pages, with the sole exception that banner ads contained on the respective pages are different.

19. On information or belief, Defendant copied David Allison's Copyrighted Web Pages and reproduced those pages in their entirety (with the exception of banner ads) on one or more of the Lair Alliance Sites, where they are currently and/or have been on public display.

20. Defendant displayed and distributed copies of the Lair Infringing Works without appropriately publishing on each copy an appropriate copyright notice crediting David Allison and/or Cheat Code Central as the original author of the work.

21. Defendant is not now, nor have ever been, authorized or licensed to copy, reproduce, modify, distribute, or display any of David Allison's Copyrighted Web Pages. Nor has David Allison authorized Defendant to engage in the activities about which he now complains.

22. Defendant falsely represented to customers, potential customers, and/or others, directly and/or indirectly, that the text on the Lair Alliance Infringing Web Pages posted on one or more of the Lair Alliance Sites originated from Defendant.

23. Defendant had actual knowledge of David Allison's copyrights and copyright notices. Despite this knowledge, Defendant willfully copied, reproduced, modified, displayed and/or distributed unauthorized (and therefore infringing) copies of David Allison's Copyrighted Web Pages, and passed off David Allison's Copyrighted Web Pages as Defendant's own.

24. Defendant copied, reproduced, modified, displayed, and/or distributed the Lair Alliance Infringing Web Pages for the purposes of commercial advantage and/or private financial gain.

Injury to David Allison

25. David Allison is informed and believes, and on that basis alleges, that unless enjoined by this Court, Defendant intends to continue their course of wrongful conduct and to continue to copy, reproduce, modify, distribute, display, use, infringe upon, and/or otherwise profit from David Allison's Copyrighted Web Pages and the Lair Infringing Web Pages directly copied from David Allison's Copyrighted Web Pages. Defendant additionally has used improper means to profit from the business value built up by Allison's expenditure of methods, skill, labor and money.

26. As a direct and proximate result of Defendant's wrongful acts, David Allison has already suffered irreparable injury and monetary damages in an undetermined amount.

27. David Allison is informed and believes that, since Defendant directly copied David Allison's Copyrighted Web Pages and posted them as his own on one or more of the Lair Alliance Sites, traffic to David Allison's *www.cheatcc.com* website has gone down, while traffic to Defendant's Lair Alliance Sites has increased. Defendant boasts that his combined publications "receive in excess of 100,000 unique visitors each and every single day."

28. David Allison has no adequate remedy at law to redress all of the injuries that Defendant has caused and are likely to continue to cause by his conduct. David Allison will continue to suffer irreparable injury and monetary damage until Defendant's wrongful actions are enjoined by this Court.

FIRST CLAIM FOR RELIEF

Copyright Infringement – 17 U.S.C. §§ 101 *et seq.*

29. David Allison repeats and realleges every allegation of this Complaint and incorporates them herein by this reference.

30. David Allison's Copyrighted Web Pages were automatically subject to copyright protection under 17 U.S.C. § 102(a) when David Allison fixed such works in a tangible medium of expression. David Allison received Copyright Registration TX-5-116-527 for his book entitled *The Ultimate Code Book*, which registration has an effective date of January, 5, 2000. David Allison received Copyright Registration TX-6-162-180 for the "Cheatcc.com web site," which registration has an effective date of May 12, 2005. David Allison received Copyright Registration TX-6-516-407 for the "Cheatcc.com web site," which registration has an effective date of January 29, 2007. These copyright registrations fulfill

the jurisdictional requirements of 17 U.S.C. § 411(a) to bring a copyright action regarding the Copyrighted Web Pages.

31. Certificates of Copyright Registration constitute *prima facie* evidence of the validity of the copyrights and of the facts stated in the certificates, under 17 U.S.C. § 410(c). David Allison's registered copyrights are entitled to a statutory presumption of validity.

32. By the actions alleged above, Defendant has infringed and/or is continuing to infringe David Allison's copyrights in and relating to the Copyrighted Web Pages by copying, reproducing, modifying, displaying and/or distributing, without David Allison's authorization, web pages which contain direct, verbatim copies of David Allison's Copyrighted Web Pages in violation of 17 U.S.C. §§ 106 and 501.

33. Upon information and belief, after a reasonable opportunity for further investigation or discovery, there is likely to be evidentiary support that Defendant's conduct was and is willfully done with knowledge of David Allison's copyrights.

34. David Allison has no adequate remedy at law. Defendant's conduct has caused, and, if not enjoined will continue to cause, irreparable harm to David Allison. As a result of Defendant's wrongful conduct, David Allison is entitled to injunctive relief, actual damages, and Defendant's profits.

SECOND CLAIM FOR RELIEF

Passing Off and Federal Unfair Competition – 15 U.S.C. § 1051 *et seq.*

35. David Allison repeats and realleges every allegation of this Complaint and incorporates them herein by this reference.

36. The aforesaid acts of Defendant are likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods, and also misrepresent the nature, characteristics, and qualities of Defendant's goods. Defendant's actions constitute false designations of origin, unfair competition, false advertising, and

passing off in violation of Section 43(a) of the Trademark Act of 1946, as amended, 15 U.S.C. § 1125(a). Such actions were and are willful and deliberate.

37. David Allison has no adequate remedy at law. Defendant's conduct has caused, and will continue to cause, irreparable harm to David Allison. As a result of Defendant's wrongful conduct, David Allison is entitled to injunctive relief, actual damages, Defendant's profits, exemplary damages, attorney's fees, and costs.

THIRD CLAIM FOR RELIEF
Common Law Unfair Competition

38. David Allison repeats and realleges every allegation of this Complaint and incorporates them herein by this reference.

39. Defendant has used improper means to profit from the business value built up by Allison's expenditure of methods, skill, labor and money.

40. The aforesaid acts of Defendant constitute common law unfair competition in Ohio and other states where Defendant offers and/or advertises his goods, including this District, and violate of the common law of Ohio and laws of other states, by reason of which David Allison has suffered, and will continue to suffer, irreparable injury and monetary damages in an undetermined amount. Such actions were and are willful and deliberate.

41. As a result of Defendant's wrongful conduct, David Allison is entitled to injunctive relief, actual damages, Defendant's profits, exemplary damages, attorney's fees, and costs.

FOURTH CLAIM FOR RELIEF
Deceptive Trade Practices -- Ohio Rev. Code Chapter 1465.01 *et seq.*

42. David Allison repeats and realleges every allegation of this Complaint and incorporates them herein by this reference.

43. The aforesaid acts of Defendant constitute deceptive trade practices in violation of Ohio Rev. Code Chapter 1465.01 *et seq.* Such actions were and are willful and deliberate.

44. David Allison has been injured by Defendant's deceptive trade practices taken in the course of his business. David Allison will continue to sustain irreparable injury and monetary damages from Defendant's deceptive trade practices unless and until Defendant is enjoined from continuing his unlawful conduct. David Allison is entitled to recover restitution, reasonable attorneys' fees and costs in connection with this claim, as well as appropriate equitable relief.

PRAYER FOR RELIEF

WHEREFORE, David Allison prays that this Court enter judgment in his favor on each and every claim for relief set forth above, and award David Allison all appropriate relief, including but not limited to the following:

- A. Permanent injunctive relief under 17 U.S.C. § 502 including an order enjoining and prohibiting Defendant and his respective offices, directors, agents, servants, employees and other representatives, as well as those in active concert with them, from:
 - (1) Publicly displaying or otherwise using in any way any of David Allison's copyrighted works; and
 - (2) Representing, affirmatively or by omission, that the Defendant created or own any of David Allison's copyrighted works.
- B. Declare that Defendant has infringed David Allison's copyrights covering his Copyrighted Web Pages.

- C. Declare that Defendant has engaged in unfair competition and deceptive trade practices, and has violated Section 43(a) of the Lanham Act, as well as Colorado and Ohio statutes and the common law.
- D. Order that, pursuant to 17 U.S.C. § 502 and/or 17 U.S.C. § 1203, Defendant and all of his employees, servants, agents, distributors, and persons in active concert or participation with it be preliminarily during the pendency of this action and permanently thereafter enjoined from copying, reproducing, modifying, displaying and/or distributing the Lair Alliance Infringing Web Pages and/or the Copyrighted Web Pages, or otherwise infringing David Allison's copyrights.
- E. Order the impounding for destruction of all copies or reproductions of any products containing unauthorized reproductions of David Allison's Copyrighted Web Pages, including but not limited to the Lair Alliance Infringing Web Pages.
- F. Order an accounting of Defendant's profits and award David Allison its actual damages and Defendant's profits not taken into account in calculating actual damages, including increased damages for willful violations of David Allison's rights.
- G. Award David Allison monetary relief in an amount to be fixed by the Court in its discretion as just, including:
 - (a) All profits received by Defendant from sales and revenues of any kind made as a result of its infringing or otherwise wrongful actions;
 - (b) All damages sustained by David Allison as a result of Defendant's acts, and that such damages be trebled pursuant to 15 U.S.C. § 1117 and/or 18 U.S.C. § 1964(c); and

- (c) Exemplary damages in view of the intentional, malicious, and bad faith nature of Defendant's actions.
- H. Award David Allison prejudgment and post-judgment interest, and David Allison's costs and attorney's fees.
- I. Award David Allison such other relief as this Court deems just and appropriate.

JURY DEMAND

Plaintiff David Allison, doing business as Cheat Code Central, demands a trial by jury on all issues so triable.

Respectfully submitted this 19th day of February, 2008.

Respectfully submitted,


Natalie Trishman Furniss (0075329)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
Telephone: (614) 227-8918
Facsimile: (614) 227-2390
nfurniss@bricker.com
Attorney for Plaintiff

Of Counsel:

James P. Schuck (0072356)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
Telephone: (614)227-2500
Facsimile: (614) 227-2390
jschuck@bricker.com

Jared B. Briant
FAEGRE & BENSON LLP
1700 Lincoln Street, Suite 3200
Denver, Colorado 80203
Telephone: (303) 607-3500
Facsimile: (303) 607-3600
jbriant@faegre.com