

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DAVID ALLISON, doing business as)
CHEAT CODE CENTRAL, a sole)
proprietorship,)

Plaintiff,)

vs.)

JEREMY N. WISE, an individual, and)
WISE BUY NOW LLC, an Ohio Corporation)

Defendant.)

Case No. 2:08-cv-00157-MHW-MRA

**AFFIDAVIT OF THOMAS P. HOWARD IN SUPPORT OF RESPONSE
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Thomas P. Howard, do swear and affirm as follows:

1. I am an attorney with the law firm Garlin Driscoll Howard, LLC and am licensed to practice law in the state of Colorado.

2. I represent the Plaintiff in the above-referenced matter and have been admitted on a *pro hac vice* basis to the U.S. District Court, Southern District of Ohio.

3. This affidavit is submitted in support of Plaintiff's Response to Defendants' Motion for Summary Judgment.

4. Opposing counsel has stated that I agreed on behalf of my client to limit his lawsuit alleging infringement to 12 infringement examples produced earlier in this proceeding. I at no time agreed to such a limitation.

5. On January 27, 2010, I informed opposing counsel via email that that my client had elected to seek statutory damages pursuant to Title 17.

6. Defendants' filed their Supplemental 26(a) Disclosures on July 29, 2009. A copy of their Supplemental 26(a) Disclosures is attached as *Exhibit A*. Defendants have not filed any further supplementation to their 26(a) Disclosures since that time.

7. I have reminded opposing counsel on more than one occasion since July 29, 2009 to send copies of any non-produced third-party affidavits in his possession. He has never produced the same, until the filing of the most recent motion.

8. I did an internet search using the google.com search engine to discover the release date for the video game "Fable 2." The top result led me to the following url from the popular video game website www.ign.com: <http://xbox360.ign.com/objects/741/741361.html>. A copy of the page associated with this url as saved by me on March 29, 2010 is attached as *Exhibit B*. According to ign.com, the release date for the video game "Fable 2" was October 21, 2008.

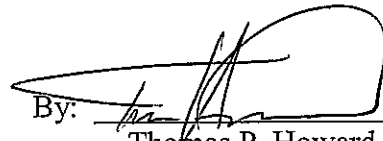
9. I then went to Plaintiff's website and printed out the content he has for this same game. The url for this part of his website is:

<http://www.cheatcc.com/xbox360/fable2cheatscodes.html>. A copy of the web pages associated with this url as saved by me on March 29, 2010 is attached as *Exhibit C*.

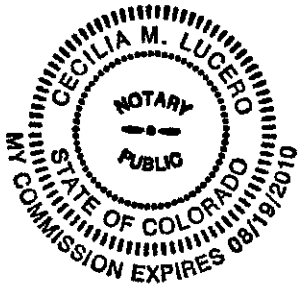
10. I went to the CD containing the materials submitted by Plaintiff for his 2005 Copyright and printed out the web pages captured as of that time for both the Game Cube and Play Station 2 versions of the game Rally Championship. Attached as *Exhibit D* is the Game Cube version. Attached as *Exhibit E* is the Play Station 2 Version. I used as my physical source for these exhibits the version of the CD that Defendants hand-filed as their Exhibit B to their Motion for Summary Judgment [Doc. #69].

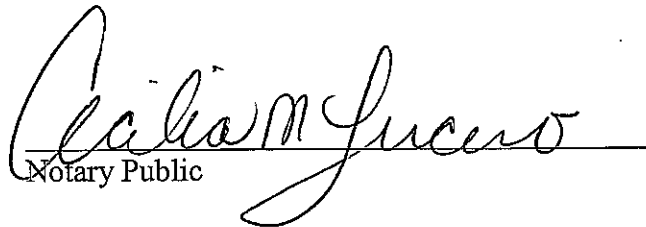
FURTHER AFFIANT SAYETH NOT.

Dated: March 29, 2010

By: 
Thomas P. Howard

Acknowledged and affirmed to before me on this 29th day of March, 2010 by Thomas P. Howard.




Notary Public

My commission expires: