

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

GEARBOX ENTERPRISES, LLC,

Plaintiff,

v.

THE PARTNERSHIPS and
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE A,

Defendants.

Case No. 23-cv-5051

COMPLAINT

Plaintiff, Gearbox Enterprises LLC (“Plaintiff”), by and through its attorneys, Aronberg Goldgehn Davis & Garmisa, for its Complaint against the Partnership and Unincorporated Associations identified on Schedule A (collectively referred to as “Defendants”) states as follows:

ALLEGATIONS COMMON TO ALL COUNTS

Nature of the Case

1. Plaintiff uses and is the owner of the federally registered copyrights: U.S. Registration Nos. VA0001924112, PA0001817977, PA0001819184, PAu0003768973, PA0001933033, PA0002212509, TX0007788848, VA0001924109, VA0001933131, VA0001924111, VA0001924113, VA0001933130, TX0007490416, TX0007613376, VA0001924110, VA0002160110, PA0002068138, PA0001922835, V9930D092, V9970D637, PA0001812111, V9912D193, and PA0001782911. True and correct copies of the registration certificates for the above copyrights are attached as **Exhibit A** (the “Gearbox Copyrights”).

2. This action has been filed to stop and prevent Defendants' selling of unauthorized products that use, are based on, and/or are derived from, Plaintiff's copyrighted subject matter, through unauthorized and infringing products (the "Unauthorized/Infringing Works").

3. This action has been filed to combat the online copyright infringement and of the Defendants, who infringe upon Plaintiff's valuable copyrights by selling and/or offering for sale unauthorized, unauthentic, and infringing products in connection with Plaintiff's federally registered copyrights.

4. Defendants use and operate fully interactive e-commerce stores¹ operating under the seller aliases identified in Schedule A attached hereto (the "Seller Aliases").

5. Defendants create e-commerce stores operating under one or more Seller Aliases that are advertising, offering for sale, and selling Unauthorized/Infringing Works to unknowing consumers.

6. E-commerce stores operating under the Seller Aliases share unique identifiers, establishing a logical relationship between them and that Defendants' infringement arises out of the same transaction, occurrence, or series of transactions or occurrences.

7. Defendants attempt to avoid and mitigate liability by operating under one or more Seller Aliases to conceal both their identities and the full scope and interworking of their infringement operation.

8. Plaintiff is forced to file this action to combat Defendants' infringement of its Gearbox Copyrights, as well as to protect unknowing consumers from purchasing Unauthorized/Infringing Works over the Internet.

¹ The e-commerce store URLs are listed on Schedule A under the Online Marketplaces.

The Parties

9. Gearbox Enterprises is an American video game development company based in Frisco, Texas.

10. Defendants are individuals and business entities of unknown makeup who own and/or operate one or more of the e-commerce stores under at least the Seller Aliases identified on Schedule A and/or other seller aliases not yet known to Plaintiff.

11. On information and belief, Defendants reside and/or operate in the People's Republic of China or other foreign jurisdictions with lax intellectual property enforcement systems or redistribute products from the same or similar sources in those locations.

12. Defendants have the capacity to be sued pursuant to Federal Rule of Civil Procedure 17(b).

13. On information and belief, Defendants, either individually or jointly, operate one or more e-commerce stores under the Seller Aliases listed in Schedule A, attached hereto.

14. Tactics used by Defendants to conceal their identities and the full scope of their operation make it virtually impossible for Plaintiff to learn Defendants' true identities and the exact interworking of their network.

Jurisdiction

15. This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Copyright Act 17 U.S.C. § 501, *et seq* and 28 U.S.C. § 1338.

16. This Court has personal jurisdiction over Defendants because Defendants transacted business relative to the claims made within the State of Illinois and within this District and because Defendant purposefully availed itself of the benefits and privileges of conducting business activities within the State of Illinois and within this District.

17. More particularly, Defendants utilize online retail accounts to promote and offer to sell the Unauthorized/Infringing Works in Illinois and to Illinois residents, and provide for the shipment of the Unauthorized/Infringing Works to customers in Illinois.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(3) because Defendants are foreign defendants and are subject to this Court's personal jurisdiction as alleged above.

Factual Background

Plaintiff's Products Branded Under the Gearbox Copyrights

20. Plaintiff is an award-winning, independent developer of interactive video games such as the Borderlands game series and Duke Nukem.

21. Borderlands is a first-person shooter game set in the fictional planet, Pandora, where players can choose between a number of mercenaries to complete objectives. Duke Nukem is also a first-person shooter game that originated in 1991 where players play as Duke Nukem in a quest to save civilians from their attack on earth.

22. Since then, Plaintiff has marketed, advertised, sold, and offered for sale various goods under the Gearbox Copyrights.

23. Among the exclusive rights granted to Plaintiff under the U.S. Copyright Act are the exclusive rights to reproduce, prepare derivative works of, distribute copies of, and display the Gearbox Copyrights to the public.

24. Plaintiff markets and sells a variety of products that feature the Gearbox Copyrights.

25. Whether Plaintiff manufactures the products itself or contracts with others to do so, Plaintiff has ensured that products bearing the Gearbox Copyrights are manufactured to the highest quality standards.

26. Based on the Gearbox Copyrights having been in continuous and substantially exclusive use, as well as being the subject of the expenditure of substantial resources in promoting and advertising, there is substantial and valuable goodwill associated with the Gearbox Products, and Plaintiff's customer services respecting its products.

27. Through its marketing, diligence, services and commitment to excellence, Plaintiff has established a celebrated and high-distinguished brand.

28. The Gearbox Copyrights portfolio is an extremely valuable asset of Plaintiff.

29. Plaintiff maintains authorized sellers of products that utilize the Gearbox Copyrights for the United States. By only permitting authorized sellers to use and sell Gearbox marked products in the United States, Plaintiff is able to maintain controls over the seller's quality commitments, customer service requirements, and product handling. These restrictions are important and valuable to Plaintiff to ensure that customers of Gearbox products not only receive genuine Gearbox goods, but also enjoy the appropriate high level of service and customer care that is represented by the Gearbox brand and its goodwill.

30. Plaintiff has made substantial effort in protecting its interests in the Gearbox Copyrights. Only Plaintiff's licensees and/or individuals or businesses it expressly authorizes to manufacture, import, export, advertise, offer for sale, derive from, or sell any goods utilizing or featuring the Gearbox Copyrights.

31. Plaintiff has not licensed or authorized Defendants to manufacture, import, export, advertise, offer for sale, derive from, or sell any goods utilizing or featuring the Gearbox Copyrights.

Defendants' Wrongful Acts

32. The success of the Gearbox brand has resulted in its significant infringement.

33. Plaintiff actively works with a brand protection program to investigate suspicious e-commerce stores identified in proactive Internet sweeps and reported by consumers.

34. Recently, Plaintiff has identified numerous fully interactive e-commerce stores, including those operating under the Seller Aliases, which were offering for sale and/or selling Unauthorized/Infringing Works to consumers in this Judicial District and throughout the United States. E-commerce sales, including through e-commerce stores like those of Defendants, have resulted in an increase in the shipment and importation of unauthorized products into the United States.

35. Third party service providers like those used by Defendants do not adequately subject new sellers to verification and confirmation of their identities, allowing infringers to routinely use false or inaccurate names and addresses when registering with these e-commerce platforms.

36. Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target United States consumers using one or more Seller Aliases, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and have sold Unauthorized/Infringing Works to residents of Illinois.

37. Defendants concurrently employ and benefit from substantially similar advertising and marketing strategies. For example, Defendants facilitate sales by designing the e-commerce

stores operating under the Seller Aliases so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers. E-commerce stores operating under the Seller Aliases appear sophisticated and accept payment in U.S. dollars via credit cards, Alipay, and/or PayPal. E-commerce stores operating under the Seller Aliases often include misleading images that make it very difficult for consumers to distinguish such stores from an authorized retailer.

38. Plaintiff has not licensed or authorized Defendants to use of the Gearbox Copyrights and none of the Defendants are authorized retailers of genuine Gearbox products.

39. More specifically, Defendants are not authorized sellers of Gearbox branded products in the United States. Defendants operate outside of Plaintiff's authorized seller network and are not subject to the same levels of control and requirements as Plaintiff's authorized sellers. Because of that, Plaintiff is not able to demand the same level of customer care and product handling that it can of its authorized sellers. As a consequence, customers purchasing from Defendants can have negative purchasing experiences which damages Plaintiff, its Gearbox brand, and its goodwill.

40. Defendants know that they are not authorized dealers of Gearbox products, and through the use of the Gearbox Copyrights, Defendants intend to induce customers to purchase from them, rather than from authorized dealers thereby damaging Plaintiff including by damaging Plaintiff's ability to maintain its authorized dealer network and the quality controls associated with it.

41. Many Defendants also deceive unknowing consumers by using the Gearbox Copyrights without authorization within the content, text, and/or meta tags of their e-commerce

stores to attract various search engines crawling the Internet looking for websites relevant to consumer searches for Gearbox products.

42. Many Defendants further package their products in packaging that appears identical or nearly identical to the product packaging used to sell genuine products under the Gearbox Copyrights. The false packaging is further efforts to confuse customers that believe they have purchased genuine products and is intended by Defendants to try and pass off the infringing products while evading detection.

43. Defendants routinely sell their infringing products at price points that are well below the value of genuine Gearbox products. The reduced prices, packaging and product images, and use of the Gearbox Copyrights are used by Defendants to trick customers into purchasing an infringing and inferior product.

44. Plaintiff extensively researches the market and identifies those entities, such as Defendants, that are not approved vendors of genuine Gearbox products.

45. Defendants are not licensed by Plaintiff to reproduce the Gearbox Copyrights.

46. Defendants' sales of products at below-value prices further establish Defendants' products are infringing.

47. Other e-commerce stores operating under Seller Aliases omit using the Gearbox Copyrights in the item title to evade enforcement efforts while using strategic item titles and descriptions that will trigger their listings when consumers are searching for Gearbox products.

48. E-commerce store operators, like Defendants, commonly engage in fraudulent conduct when registering the Seller Aliases by providing false, misleading, and/or incomplete information to e-commerce platforms to prevent discovery of their true identities and the scope of their e-commerce operation.

49. E-commerce store operators like Defendants regularly register or acquire new seller aliases for the purpose of offering for sale and selling Unauthorized/Infringing Works. Such seller alias registration patterns are one of many common tactics used by e-commerce store operators, like Defendants, to conceal their identities and the full scope and interworking of their infringement operation, and to avoid being shut down.

50. Even though Defendants operate under multiple fictitious aliases, the e-commerce stores operating under the Seller Aliases often share unique identifiers, such as templates with common design elements that intentionally omit any contact information or other information for identifying Defendants or other Seller Aliases they operate or use. E-commerce stores operating under the Seller Aliases include other notable common features such as use of the same registration patterns, accepted payment methods, check-out methods, keywords, advertising tactics, similarities in price and quantities, the same incorrect grammar and misspellings, and/or the use of the same text and images. Additionally, Unauthorized/Infringing Works for sale by the Seller Aliases bear similar irregularities and indicia of being connected to one another, suggesting that the Unauthorized/Infringing Works were manufactured by and come from a common source and that Defendants are interrelated.

51. On information and belief E-commerce store operators like Defendants are in regular communication with each other and regularly participate in QQ.com chat rooms and through websites such as sellerdefense.cn, kaidianyo.com, and kuajingvs.com regarding tactics for operating multiple accounts, evading detection, pending litigation, and potential new lawsuits.

52. Infringers, such as Defendants, typically operate under multiple seller aliases and payment accounts so that they can continue operation in spite of Plaintiff's enforcement. E-commerce store operators, like Defendants, maintain off-shore bank accounts and regularly move

funds from their financial accounts to off-shore accounts outside the jurisdiction of this Court to avoid payment of any monetary judgment awarded to Plaintiff. Indeed, it has been reported that financial transaction logs from previous cases involving claims similar to the present claims indicate that off-shore infringers regularly move funds from U.S.-based financial accounts to off-shore accounts outside the jurisdiction of this Court.

53. On information and belief, Defendants are working in active concert to knowingly and willfully manufacture, import, distribute, offer for sale, and sell Unauthorized/Infringing Works in the same transaction, occurrence, or series of transactions or occurrences.

54. Defendants, without any authorization or license from Plaintiff, have jointly and severally, knowingly and willfully used and continue to use the Gearbox Copyrights in connection with the advertisement, distribution, offering for sale, and sale of Unauthorized/Infringing Works into the United States and Illinois over the Internet.

55. Defendants' unauthorized use of the Gearbox Copyrights in connection with the advertising, distribution, offering for sale, and sale of Unauthorized/Infringing Works, including the sale of Unauthorized/Infringing Works into the United States, including Illinois, is likely to cause and has caused harm, loss of goodwill, confusion, mistake, and deception by and among consumers.

56. Defendants' wrongful acts and/or willful infringements have caused and will continue to cause irreparable harm to Plaintiff unless permanently enjoined, for which Plaintiff has no adequate remedy at law.

57. Defendants are profiting and will continue to profit from their unlawful actions.

58. Defendants' unlawful actions are causing and will continue to cause Plaintiff monetary damages in an amount presently unknown, but to be determined at trial.

COUNT I
COPYRIGHT INFRINGEMENT (17 U.S.C. §§ 106 and 501)

59. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

60. Plaintiff's Gearbox Copyrights constitute original works and copyrightable subject matter pursuant to the Copyright Act, 17 U.S.C. § 101, et seq.

61. Plaintiff is the owner of the Gearbox Copyrights. Plaintiff has complied with the registration requirements of 17 U.S.C. § 411(a) for Plaintiff's Gearbox Copyrights. Plaintiff's Gearbox Copyrights are protected by the registrations attached hereto as Exhibit A, which were duly issued to Plaintiff by the United States Copyright Office. At all relevant times, Plaintiff has been, and still is, the owner of all rights, title, and interest in Plaintiff's Gearbox Copyrights, which have never been assigned, licensed, or otherwise transferred to Defendants.

62. Plaintiff's Gearbox Copyrights are published and sold on the Internet and available to Defendants online. As such, Defendants had access to Plaintiff's Gearbox Copyrights via the Internet.

63. Without authorization from Plaintiff, or any right under the law, Defendants have deliberately copied, displayed, distributed, reproduced, and/or made derivative works incorporating Plaintiff's Gearbox Copyrights on e-commerce stores operating under the Seller Aliases and the corresponding Unauthorized/Infringing Works. Defendants' derivative works are virtually identical to and/or are substantially similar to the look and feel of Plaintiff's Gearbox Copyrights. Such conduct infringes and continues to infringe Plaintiff's Gearbox Copyrights in violation of 17 U.S.C. § 501(a) and 17 U.S.C. §§ 106(1)–(3), (5).

64. Defendants reap the benefits of the unauthorized copying and distribution of Plaintiff's Gearbox Copyrights in the form of revenue and other profits that are driven by the sale of Unauthorized/Infringing Works.

65. Defendants have unlawfully appropriated Plaintiff's protectable expression by taking material of substance and value and creating Unauthorized/Infringing Works that capture the total concept and feel of Plaintiff's Gearbox Copyrights.

66. On information and belief, the Defendants' infringement has been willful, intentional, purposeful, and in disregard of and with indifference to Plaintiff's rights.

67. The Defendants, by their actions, have damaged Plaintiff in an amount to be determined at trial.

68. Defendants' conduct is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants Identified in Schedule A as follows:

1. That Defendants, their affiliates, officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, under or in active concert with them be temporarily, preliminarily, and permanently enjoined and restrained from:

a. using the Gearbox Copyrights or any reproductions, copies or colorable imitations thereof in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a

genuine Gearbox product or is not authorized by Plaintiff to be sold in connection with the Gearbox Copyrights;

- b. using the Gearbox Copyrights or any reproduction, copy, or colorable imitation of the same, in any manner likely to cause others to believe that Defendants' products are approved by Plaintiff;
- c. passing off, inducing, or enabling others to sell or pass off any product as a genuine Gearbox product or any other product produced by Plaintiff, that is not Plaintiff's or not produced under the authorization, control, or supervision of Plaintiff and approved by Plaintiff for sale under the Gearbox Copyrights;
- d. committing any acts calculated to cause consumers to believe that Defendants' Unauthorized/Infringing Works are those sold under the authorization, control or supervision of Plaintiff, or are sponsored by, approved by, or otherwise connected with Plaintiff;
- e. manufacturing, shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory not manufactured by or for Plaintiff, nor authorized by Plaintiff to be sold or offered for sale, and which bear any of Plaintiff's copyrights including the Gearbox Copyrights, or any reproductions, copies or colorable imitations thereof;
- f. disposing of, destroying, moving, secreting, relocating, and/or transferring any and all of Defendants' Unauthorized/Infringing Works, without Court direction; and

g. assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in the above subparagraphs;

2. Enter an Order, upon Plaintiff's request, those with notice of the injunction, including without limitation, any online marketplace platforms such as eBay, AliExpress, Wish.com, Amazon, and Walmart (collectively, the "Third Party Providers") shall disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of Unauthorized/Infringing Works bearing the Gearbox Copyrights;

3. Enter an Order that Defendants and any and all persons controlled by or acting in concert with Defendants to be required to deliver up to Plaintiff for destruction all goods, works, packages, and any other written or printed materials (including electronic files) that bear or depict the Gearbox Copyrights, or any reproduction, copy, or colorable imitation of the same, or that are otherwise in violation of this Court's order issued pursuant hereto, and all means for making the same;

4. For Judgment in favor of Plaintiff against Defendants that they have: a) willfully infringed Plaintiff's rights in its federally registered copyrights pursuant to 17 U.S.C. §501;

5. That Plaintiff be awarded actual damages, statutory damages, and/or other available damages pursuant to 17 U.S.C. §504, at the election of Plaintiff;

6. Find that this is an exceptional case and award Plaintiff the attorneys' fees, costs, and disbursements, with interest, expended in connection with any actions taken to investigate and confirm the claims made herein pursuant to 17 U.S.C. § 505 or otherwise by law;

7. Award Plaintiff pre-judgment and post-judgment interest on each and every monetary award; and

8. Award any and all other relief that this Court deems just and proper.

Dated: August 1, 2023

Respectfully submitted,

/s/ Sofia J. Quezada
Sofia J. Quezada

***One of the Attorneys for Plaintiff, Gearbox
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