

CASE NO.  
CV09697625

D1 CM

SUMMONS NO.  
14069048

Rule 4 (B) Ohio

Rules of Civil  
Procedure

**SUMMONS**

JOHN BIG DAWG THOMPSON  
VS  
ELECTRONIC ARTS INC.

PLAINTIFF

DEFENDANT

ELECTRONIC ARTS INC.  
209 REDWOOD SHORES PARKWAY  
REDWOOD CITY CA 94065-0000

You have been named defendant in a complaint (copy attached hereto) filed in Cuyahoga County Court of Common Pleas, Cuyahoga County Justice Center, Cleveland, Ohio 44113, by the plaintiff named herein.

You are hereby summoned and required to answer the complaint within 28 days after service of this summons upon you, exclusive of the day of service.

Said answer is required to be served on:



Said answer is required to be served on Plaintiff's Attorney (Address denoted by arrow at left.)

Plaintiff's Attorney  
ALAN B PARKER  
1400 MIDLAND BUILDING  
  
101 PROSPECCT AVE...WEST  
CLEVELAND, OH 44115-0000

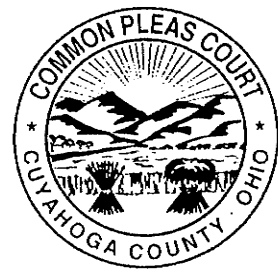
Your answer must also be filed with the court within 3 days after service of said answer on plaintiff's attorney.

If you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

Case has been assigned to Judge:

STEVEN J TERRY  
Do not contact judge. Judge's name is given for attorney's reference only.

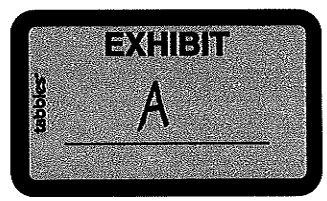
GERALD E. FUERST  
Clerk of the Court of Common Pleas



DATE  
Jul 10, 2009

By [Signature]  
Deputy

COMPLAINT FILED 07/02/2009



FILED -2 P 22

CLERK OF COURT  
CUYAHOGA COUNTY, OHIO

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

JOHN BIG DAWG THOMPSON  
3639 West 122<sup>nd</sup> Street  
Cleveland, Ohio 44111

Judge: STEVEN J TERRY  
CV 09 697625

Plaintiff

vs.

ELECTRONIC ARTS INC.  
209 Redwood Shores Parkway  
Redwood City, California 94065

Defendant

COMPLAINT

*(Jury Demand Endorsed Hereon)*

PARTIES and INTRODUCTION

1. Plaintiff, John Big Dawg Thompson, is an individual residing in Cuyahoga County, Ohio. Plaintiff is the owner of the Big Dawg character, likeness, and image.

2. Defendant, Electronic Arts Inc. is, on information and belief, a Delaware corporation with its principal place of business located in the State of California.

3. This Complaint seeks equitable and monetary relief to remedy the injuries caused to plaintiff by Defendant Electronic Arts Inc. (hereafter "EA") relating to the unauthorized and unlicensed use of the images, likenesses, characters and

persona of plaintiff's Big Dawg character in connection with the defendant's commercial operation of the video game Madden NFL '09. In addition, this action seeks to prevent the defendant from improperly and unlawfully using the intellectual property rights of the plaintiff in connection with its promotion and advertising of Madden NFL '09. Such wrongful acts have caused plaintiff to suffer monetary damages as well as irreparable harm to his intellectual property rights for which plaintiff seeks relief.

4. EA has misappropriated the likeness, persona, or character that rightly belongs to plaintiff, John Big Dawg Thompson, in the video game Madden NFL '09, in violation of the common law right of publicity, Ohio statutory prohibitions against unfair competition and deceptive trade practices, in violation of the Lanham Act, and to the unjust enrichment of EA. This action seeks monetary and injunctive relief for such tortious conduct and statutory violations.

5. EA develops, publishes, and distributes interactive software for video game systems, personal computers, wireless devices, and the Internet, and pertinent to this lawsuit, sells the title Madden NFL '09.

6. The defendant transacts business in the State of Ohio, and by virtue of the conduct alleged herein, has caused tortious injury by act or omission in the State of Ohio.

#### **STATEMENT OF COMMON FACTS**

7. For nearly twenty-five (25) years, plaintiff Thompson has appeared as a costumed character at Cleveland Browns football games using a distinctive image, likeness, character, and persona known as Big Dawg.

8. In character, plaintiff is recognized by hundreds of thousands of people in his unique and famous costume, which features a distinctive pop-eyed and heavily jowled dog-face mask and orange hard hat with a brown and white stripe, a dark brown football jersey bearing the numeral "98," orange gloves, an oversize orange dog bone, and in cold weather white sleeves covering the forearms.

9. Plaintiff's Big Dawg character has become a recognizable fixture of Cleveland Browns home games, and a prominent symbol of individual and community devotion to the NFL franchise.

10. Plaintiff's character, in addition to being a Cleveland Browns stadium fixture, has appeared in a variety of published and broadcast media.

11. The Big Dawg character was inducted into professional football's Hall of Fans Inaugural Class at the Pro Football Hall of Fame in Canton, Ohio, in 1999.

12. The plaintiff has appeared in character in numerous publications including GQ, Sports Illustrated, Cleveland Magazine, Northern Ohio, and ESPN Magazine.

13. The plaintiff has appeared in character in television broadcasts including Entertainment Tonight, Politically Incorrect, Good Morning America, the Drew Carey Show, documentaries of Cleveland Browns history, PM Magazine, the Today Show, ESPN Close-Up, ESPN First Take, and numerous news broadcasts.

14. The plaintiff has appeared in character in commercial advertisements on behalf of Pizza Hut, Northeastern Ohio McDonald's Restaurants, Miller High Life, Geppetto's Pizza, and on promotional advertisements for CBS Sports and ESPN.

15. The plaintiff appeared in partial costume in connection with Congressional testimony following the transfer of the Cleveland Browns franchise from Cleveland, Ohio to Baltimore, Maryland.

16. The plaintiff has also appeared in character for numerous charitable, civic, and community organizations and causes, such as the American Diabetes Association, the American Red Cross, the United Way, Harvest for Hunger, the Western Reserve Historical Society, the Fairview Hospital Wellness Center, the Jerry Lewis MDA Telethon, the May Dugan Center and Neighborhood Counseling Service, and the Save Our Browns campaign.

17. Plaintiff's Big Dawg character is a prominent and well-known image, likeness, and persona, particularly in the context in which the use and infringements described below have taken place.

18. In addition to being the well-known and generally recognized name of the character, "Big Dawg" is also a part of plaintiff's legal name.

19. On occasion, plaintiff has licensed or received compensation for use of the Big Dawg name or the Big Dawg image, likeness, portrayal, appearance, or persona for the purposes of advertising or endorsement.

20. Although the Big Dawg character is occasionally compensated for purposes of sponsorship or endorsement, the plaintiff usually utilizes the character to affiliate, endorse, or sponsor civic, community, or charitable causes. Most frequently this entails rallying community and fan support behind Cleveland Browns football-related activities, Cleveland and Northeast Ohio civic pride, or charitable organizations.

21. As one would expect, the use of the plaintiff's character to imply affiliation, sponsorship or endorsement should be authorized and ordinarily should be compensated, or in the case of community, civic, or charitable causes, should be voluntarily donated by the plaintiff.

22. The defendant, EA, has undertaken to exploit and trade upon the Big Dawg image, likeness, character and persona without authorization, without license, without notice, and without compensation.

23. The defendant's video game, Madden NFL '09, features portrayals of distinctly costumed fans in their respective teams' home stadiums. The Cleveland Browns stadium portrayal includes animated fans featuring a character dressed unmistakably as Big Dawg, with a distinctive pop-eyed and heavily jowled dog-face mask and orange hard hat with a brown and white stripe, a dark brown football jersey, orange gloves, an oversize orange dog bone, white sleeves covering the forearms, and positioned at the site within the stadium where the plaintiff sits.

24. The animated fan portrayed in Exhibit A attached hereto in Madden NFL '09 is unmistakably a reference to, and incorporation of, an appropriation of, and an infringement of the image, likeness, persona, and portrayal of the plaintiff's Big Dawg character.

25. On information and belief, the portrayal of the Big Dawg character has been included on previous versions of Madden NFL for an unknown period of time.

26. Plaintiff recently discovered that defendant consciously, deliberately, and wilfully changes jersey numbers on otherwise identifiable individuals portrayed in the Madden NFL video games in order to avoid its legal obligation to secure

authorization to use the names, likenesses, images, and characters of the individuals portrayed.

27. The animated character portrayed on Madden NFL '09 wears a Cleveland brown jersey bearing the numeral "92," which as noted previously differs from the number worn by plaintiff's Big Dawg character.

#### **MISAPPROPRIATION**

28. Plaintiff restates the allegations of Paragraphs 1 through 27 as if repeated herein.

29. The defendant has tortiously misappropriated the image, likeness, character, persona, or distinctive appearance of plaintiff's Big Dawg character and intellectual property.

30. As a result of the defendant's wrongful conduct, the defendant has gained economic benefit and the plaintiff has suffered economic and reputational harm.

#### **COMMON LAW RIGHT OF PUBLICITY**

31. Plaintiff restates the allegations of Paragraphs 1 through 30 as if repeated herein.

32. As a result of defendant's conduct, the defendant has violated or infringed the plaintiff's right of publicity in the image, likeness, character, persona, and distinctive appearance of plaintiff's Big Dawg character.

33. As a result of the defendant's wrongful conduct, the defendant has gained economic benefit and the plaintiff has suffered economic and reputational harm.

**LANHAM ACT (§43; 15 USC 1125(A))**

34. Plaintiff restates the allegations of Paragraphs 1 through 33 as if repeated herein.

35. The defendant's use of the fan portrayed in Exhibit A is likely to cause confusion, mistake, or deception as to the affiliation, sponsorship, or approval of the defendant's product by plaintiff.

36. As a result of the defendant's wrongful conduct, the defendant has gained economic benefit and the plaintiff has suffered economic and reputational harm.

**OHIO DECEPTIVE TRADE PRACTICE ACT (ORC §4165.02(A))**

37. Plaintiff restates the allegations of Paragraphs 1 through 36 as if repeated herein.

38. The defendant's use of the fan portrayed in Exhibit A is likely to cause confusion, mistake, or deception as to the affiliation, sponsorship, or approval of the defendant's product by plaintiff.

39. As a result of the defendant's wrongful conduct, the defendant has gained economic benefit and the plaintiff has suffered economic and reputational harm.

**UNJUST ENRICHMENT**

40. Plaintiff restates the allegations of Paragraphs 1 through 39 as if repeated herein.

41. By the conduct set forth in here, the defendant has sought to obtain, and thereby obtained, benefit from the use of plaintiff's image, likeness and persona

of the plaintiff's Big Dawg character to the detriment of plaintiff's own economic or reputational benefits from the Big Dawg character.

42. As a result of the defendant's wrongful conduct, the defendant has gained economic benefit and the plaintiff has suffered economic and reputational harm.

**WHEREFORE**, plaintiff, John Big Dawg Thompson, prays that after due proceedings are had, that judgment be rendered in his favor and against the defendant, Electronic Arts Inc. in a reasonable sum in excess of \$25,000, that the defendant, Electronic Arts Inc., be permanently enjoined from the use of the image, likeness, or visual portrayal of plaintiff's Big Dawg character; and be permanently enjoined from the distribution or sale of video games containing images of the plaintiff's Big Dawg character.

Respectfully submitted,



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ALAN B. PARKER (0040008)  
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101 Prospect Avenue, West  
Cleveland, Ohio 44115-1093  
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(Fax) (216) 687-1841  
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**JURY DEMAND**

Plaintiff hereby demands a trial by jury.



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ALAN B. PARKER (0040008)

ABP/dn

