

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WIZARDS OF THE COAST LLC

Plaintiff,

v.

LYNDSY REDMORE AND JAMIE SKEEN
(D/B/A MAGICPROXIES.COM, GZ
DESIGNS & IT SERVICES); RANDY
CHRISTENSEN (D/B/A
THEPROXYGUYS.COM, THE PROXY
STATION); VICTORIA MARTICEK (D/B/A
MAGIC MAN, MTGREPLICA); AND
FREDERICK CARR (D/B/A ABLINDCAT)

Defendants.)

Civil Action No.

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT; TRADEMARK
INFRINGEMENT; COMMON LAW
TRADEMARK INFRINGEMENT;
UNFAIR COMPETITION; UNJUST
ENRICHMENT; DECLARATORY
AND INJUNCTIVE RELIEF; AND
DAMAGES**

DEMAND FOR JURY TRIAL

Plaintiff Wizards of the Coast LLC ("Wizards") alleges as follows:

I. NATURE OF THE CASE

1. This action results from Defendants' blatant and willful misappropriation and infringement of some of Wizards' most valuable intellectual property assets, namely its Magic: The Gathering® trading card game and trading cards ("Magic").

2. Wizards is a worldwide leader in the trading card game and role-playing game categories, and a leading developer and publisher of game-based entertainment products.

1 Wizards develops, manufactures, and distributes the popular and unique Magic trading card
2 game.

3 3. Defendants have repeatedly and unlawfully manufactured, marketed and
4 distributed unauthorized reproductions of Magic trading cards ("Counterfeit Cards").
5 Defendants' willful and malicious actions undermine Magic trading cards and its fans'
6 enjoyment of the game. Wizards brings this suit to address its considerable losses and prevent
7 the willful infringement of its valuable intellectual property rights. Defendants' willful and
8 malicious misappropriation has caused and will continue to cause irreparable and continuing
9 harm to Wizards.

10 II. JURISDICTION AND VENUE

11 4. This Court has original jurisdiction over this action pursuant to 28 U.S.C.
12 §§ 1331 and 1338 because this action alleges violations of federal statutes including the
13 Copyright Act (17 U.S.C. § 101) and the Lanham Act (15 U.S.C. §§ 1114).

14 5. This Court has subject matter jurisdiction over this action pursuant to 28
15 U.S.C. § 1332 (diversity jurisdiction).

16 6. This court has supplemental jurisdiction over the related state law claims under
17 28 U.S.C. §§ 1367 and 1338.

18 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) as each
19 Defendant has committed tortious acts in this jurisdiction; a substantial part of the events
20 giving rise to the claim occurred here; and a substantial part of the property that is the subject
21 of the action is situated here. Additionally, this Court has personal jurisdiction over Defendant
22 Carr.

23 III. THE PARTIES

24 8. Wizards is a Delaware limited liability company, maintaining its principal
25 place of business at 1600 Lind Avenue Southwest, Suite 400, Renton, Washington 98057.
26

MagicProxies.com

9. Defendant Lyndsy Redmore (a/k/a lyndsygirl, Liz Grisham and Lizgrisham1990) ("Redmore") is an individual residing in Carthage, Tennessee.

10. Defendant Jamie Skeen ("Skeen") is an individual residing in Carthage, Tennessee.

11. Defendants Redmore and Skeen together own and operate the online business located at <http://www.magicproxies.com> ("MagicProxies.com") through which they market and sell Counterfeit Cards.

12. Defendant Redmore uses the online alias Lyndsygirl to market and sell Counterfeit Cards through the third-party retail website Listia.com as well as to drive consumers to MagicProxies.com.

13. Defendant Redmore uses the alias "Liz Grisham" to market and sell Counterfeit Cards through the third-party retail website iOffer.com as well as to drive consumers to MagicProxies.com.

14. Defendant Redmore uses the alias "LizGrisham1990" to market MagicProxies.com and display Counterfeit Cards through multiple videos she uploaded to the video sharing website located at <http://www.youtube.com> ("YouTube").

15. Defendants Redmore and Skeen together own and operate the website located at <http://www.gzit.biz> ("GZ Designs"), doing business as GZ Designs & IT Services. Defendant Skeen is listed as the owner of the business through its Facebook business page, and Defendant Redmore's email address is listed as the contact email.

16. GZ Designs is a partnership between Redmore and Skeen and acts as the payment recipient for MagicProxies.com.

TheProxyGuys.com

17. Defendant Randy Christensen ("Christensen") is an individual residing in Grand Rapids, Michigan.

18. Defendant Christensen owns and operates the online business located at <http://www.theproxyguys.com>, doing business as The Proxy Station ("TheProxyGuys.com"), through which he markets and sells Counterfeit Cards.

MTGReplica

19. Defendant Victoria Marticek ("Marticek") is an individual residing in Ridgewood, New Jersey.

20. Defendant Marticek is actively engaged in marketing and selling Counterfeit Cards to consumers through third-party retail websites such as Etsy.com and iOffer.com using the aliases Magic Man and MTGReplica.

21. Defendant Marticek also uses the online alias Minfiniteworld to market and display Counterfeit Cards through videos she uploaded to YouTube, as well as to drive consumers to her MTGReplica online retail shops.

ABlindCat

22. Defendant Frederick Carr ("Carr") is an individual residing in Puyallup, Washington.

23. Defendant Carr is actively engaged in marketing and selling Counterfeit Cards to consumers through third-party retail websites such as Etsy.com using the alias ABlindCat.

IV. FACTUAL ALLEGATIONS

24. In 1993, Wizards created a new game category – trading card games – with the release of Magic. Magic is played using elaborately illustrated cards that transport players into an imaginary realm in which they do battle with one another. Wizards holds an exclusive patent on trading card games and their method of play. Today, an estimated 6 million players worldwide enjoy the challenge, strategy and dynamic play of Magic.

25. Wizards is the sole and exclusive owner of copyrights in Magic. For example, Wizards holds a valid United States copyright registration in the Alpha and Beta sets of Magic (Copyright Reg. VA-0-596-507)) as well as expansion card sets such as "Legends" (VA-0-

1 597-276), “Worldwake” (VA-1-717-649), and “Ravnica: City of Guilds” (VA-1-330-944).
2 Each expansion set is derivative of prior expansion sets.

3 26. Wizards is the sole and exclusive owner of United States federally registered
4 trademarks for Magic. For example, Wizards holds valid registrations for, among other
5 trademarks, MAGIC: THE GATHERING (U.S. Registration No. 1919923), THE FIVE
6 SPHERES MANA SYMBOL (Reg. No. 1969759); MIRRODIN BESIEGED (Reg. No.
7 4046531), WORLDWAKE (Reg. No. 3908674), RAVNICA: CITY OF GUILDS (Reg. No.
8 3218467), and TEZZERET (Reg. No. 3951017).

9 27. Wizards is also the sole and exclusive owner of common law trademark rights
10 for Magic. For example, Wizards uses the aforementioned trademarks in in-state commerce
11 for Washington State.

12 28. The Magic trading card game is typically played by two or more players, each
13 of whom has his or her own unique library of cards from which the player assembles a deck
14 of 60 cards to play the game. In addition to original illustrations, cards contain written
15 instructions directing how they can be played. Players can purchase starter game sets, theme
16 decks and booster packs to add to their libraries of cards from which they construct decks.
17 Currently, over twelve thousand (12,000) unique Magic trading cards have been created by
18 Wizards, of which over six and half billion (6,500,000.000) copies have been printed and sold
19 worldwide.

20 29. The popularity and sophistication of the Magic trading card game is such that
21 tournaments of all sizes regularly occur, including tournaments with hundreds of players from
22 various countries. In 1994, Wizards instituted the DCI, the official sanctioning body for
23 enforcing consistent rules and promoting fairness in competitive Magic tournament play. The
24 DCI publishes tournament rules and operating procedures and sanctions tournaments. Since
25 its inception, the DCI has sanctioned more than 3 million tournaments worldwide. In 2011,
26

1 more than 520,000 DCI members played in over 335,000 DCI-sanctioned tournaments
2 worldwide.

3 30. The rules of DCI-sanctioned events permit the event judge to create a
4 replacement card (a "Proxy Card") if an authentic Magic trading card becomes damaged or
5 unplayable due to damage or excessive wear occurring at that sanctioned event. A Proxy Card
6 may be created only by an event judge and, typically, is created by crossing out the text of an
7 authentic Magic card and replacing it with the text of the substitute card. Below is an image of
8 a typical Proxy Card.



Image 1 – Typical Representation of a Proxy Card

18 31. Proxy Cards are not graphical reproductions of their intended substitutes, but
19 are authentic Magic trading cards on which different rules are written so they can be
20 substituted for a damaged or unplayable card during an event.

21 32. Defendants (individually and collectively) are engaged in the creation,
22 marketing, sale and distribution of Counterfeit Cards. Below are comparative images of an
23 actual Magic trading card and a Counterfeit Card.



Image 2 – Authentic Magic trading card



Image 3 – Counterfeit Card sold by MagicProxies.com

33. Defendants also create, market, and distribute unauthorized reflective foil covered Counterfeit Cards. Below is an image of a foil Counterfeit Card.



Image 4 – Foil Counterfeit Card sold by Defendant Marticek a/k/a MTGReplica

34. In manufacturing Counterfeit Cards, Defendants copy, reproduce, and in some instances, remove, Wizards' trademark and copyright notices.

35. In an attempt to legitimize their unauthorized activities, Defendants market and distribute Counterfeit Cards as Proxy Cards, creating consumer confusion as to whether such cards may be allowed for use in DCI-sanctioned tournaments. Defendants actions,

1 detailed below, maliciously tread upon the goodwill of the Magic brand and have harmed and
2 continue to harm Wizards.

3 MagicProxies.com

4 36. On or about October 2, 2011, Wizards identified that “Lyndsygirl” was selling
5 Counterfeit Cards on www.listia.com. On the web pages marketing Counterfeit Cards,
6 “Lyndsygirl” states that her Counterfeit Cards are also available directly from the website
7 MagicProxies.com.

8 37. On or about October 6, 2011, and again on November 8, 2011, Wizards
9 facilitated secret-shopper purchases of Counterfeit Cards from MagicProxies.com. Below are
10 comparative images of the actual Magic trading card and the Counterfeit Card purchased from
11 MagicProxies.com on October 6, 2011.



22 Image 5 - Authentic Magic Card



23 Image 6 – Counterfeit Card purchased
24 from MagicProxies.com



Image 7 – Authentic Magic Card



Image 8 – Counterfeit Magic trading card purchased from TheProxyGuys.com

MTGReplica

46. On or about September 19, 2011, Wizards became aware of Defendant Marticek's videos hosted by YouTube depicting Counterfeit Cards attributed to her.

47. In these videos, Defendant Marticek directs consumers to purchase her Counterfeit Cards through her online retail business MTGReplica offered through third party websites such as Etsy.com and iOffer.com.

48. Defendant Marticek acknowledges through her website that the Counterfeit Cards she sells are intended to look like actual Magic trading cards.

49. On or about September 19, 2011 and November 8, 2011, Wizards facilitated secret-shopper purchases of Counterfeit Cards from MTGReplica through Etsy.com.

50. Below are comparative images of an authentic Magic trading card and the Counterfeit Card purchased from MTGReplica on September 19, 2011.

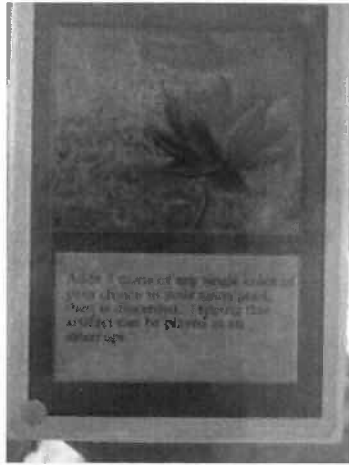


Image 9 – Authentic Magic Card



Image 10 - Counterfeit Magic trading card purchased from MTGReplica

51. As of November 21, 2011, Defendant Marticek has conducted at least 136 transactions through its iOffer.com account and offers at least 82 different Counterfeit Card offerings.

ABlindCat

52. Defendant Carr displays, markets and sells various Counterfeit Cards through his online retail business ABlindCat offered through third party websites such as Etsy.com.

53. On or about November 15, 2011, Wizards facilitated secret-shopper purchases of Counterfeit Cards from ABlindCat through Etsy.com.

54. Below are comparative images of an authentic Magic trading card and the Counterfeit Card purchased from ABlindCat on November 15, 2011.



Image 11 – Authentic Magic Card

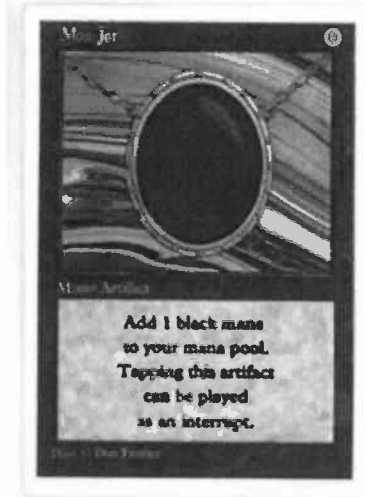


Image 12 - Counterfeit Magic trading card purchased from ABlindCat

V. CLAIMS FOR RELIEF

Count I. Federal Copyright Infringement (17 U.S.C. § 106)

55. Wizards realleges and incorporates paragraphs 1 – 54 as though fully set forth herein.

56. Wizards holds U.S. registered copyrights for its Magic card sets which are in full force, effective and enforceable.

57. Defendants, without authorization, are reproducing, manufacturing, marketing, displaying and distributing Wizards' registered copyrighted works. Moreover, Defendants' manufacturing of foil covered Counterfeit Cards constitutes the creation of unauthorized derivative works.

58. Defendants' willful, malicious, intentional and purposeful actions constitute direct infringement of Wizards' exclusive rights under the Copyright Act of 1976 (17 U.S.C. §106).

59. As a direct and proximate result of Defendants' infringement of Wizards' copyrights, Wizards has and will continue to suffer great damage and irreparable harm that

1 cannot fully be compensated or measured in money. Wizards is entitled to injunctive relief
2 against Defendants, as well as all other remedies available under the Copyright Act including,
3 without limitation, damages in an amount to be proven at trial, statutory penalties,
4 disgorgement of Defendants' profits, and costs and attorneys' fees.

5 **Count II. Trademark Infringement (15 U.S.C. § 1114)**

6 60. Wizards realleges and incorporates paragraphs 1 - 59 as though fully set forth
7 herein.

8 61. Wizards owns several U.S. registered trademarks in and to the Magic brand
9 which are in full force, effective and enforceable.

10 62. Defendants, without consent, intentionally and knowingly used, reproduced
11 and distributed, in interstate commerce, Counterfeit Cards bearing Wizards' Magic
12 trademarks including, without limitation, MAGIC: THE GATHERING and THE FIVE
13 SPHERES MANA SYMBOL ("Wizards' Marks").

14 63. Defendants, without consent, intentionally and knowingly used and displayed,
15 and in interstate commerce, Wizards' Marks on websites to market, promote and distribute
16 Counterfeit Cards.

17 64. Defendants, without consent and in bad faith, used and reproduced in interstate
18 commerce Wizards' name and marks to bolster the sales of their respective infringing
19 Counterfeit Cards thereby misappropriating the goodwill associated with the Magic brand.

20 65. Defendants' conduct has caused and continues to cause, damage and injury to
21 Wizards' brand, goodwill and reputation.

22 66. Defendants' conduct constitutes trademark infringement in violation of § 32(1)
23 of the Lanham Act, 15 U.S.C. § 1114(1).

24 67. As a direct and proximate result of Defendants' infringement of Wizards'
25 trademarks, Wizards has and will continue to suffer great damage and irreparable harm that
26 cannot fully be compensated or measured in money. Wizards is entitled to injunctive relief

1 against Defendants, as well as all other remedies available under the Lanham Act including,
2 without limitation, damages in an amount to be proven at trial, statutory penalties,
3 disgorgement of Defendants' profits, and costs and attorneys' fees.

4 **Count III. Common Law Trademark Infringement**

5 68. Wizards realleges and incorporates paragraphs 1 - 67 as though fully set forth
6 herein.

7 69. By the conduct described above, Defendants intentionally engaged in acts of
8 trademark infringement in violation of the common laws of Washington State.

9 70. Defendants, without consent, intentionally and knowingly distributed
10 Counterfeit Cards bearing Wizards' Marks in the State of Washington.

11 71. Defendants, without consent, intentionally and knowingly used and displayed
12 in Wizards' Marks on websites to market, promote and sell Counterfeit Cards into
13 Washington.

14 72. Defendants, without consent and in bad faith, used and reproduced Wizards'
15 Marks to bolster the sales of their respective infringing Counterfeit Cards thereby
16 misappropriating the goodwill associated with the Magic brand in Washington.

17 73. As a direct and proximate result of Defendants' infringement of Wizards'
18 Marks, Wizards has and will continue to suffer great damage and irreparable harm that cannot
19 fully be compensated or measured in money. Wizards is entitled to injunctive relief against
20 Defendants, as well as all other remedies available under common law.

21 **Count VI. Unfair Competition (R.C.W. 19.86.202)**

22 74. Wizards realleges and incorporates paragraphs 1 - 73 as though fully set forth
23 herein.

24 75. By the conduct described above, Defendants have intentionally engaged in bad
25 faith, and are continuing to engage in deceptive and unfair acts of competition by
26 misappropriating Wizards' intellectual property.

76. By reason of Defendants' unlawful conduct, Wizards has been substantially injured and it is entitled to damages and Defendants' profits attributable to their respective wrongful acts, which are presently indeterminate, the costs of this action, and attorneys' fees.

Count V. Unjust Enrichment

77. Wizards realleges and incorporates paragraphs 1 - 76 as though fully set forth herein.

78. As a result of Defendants' aforementioned unlawful acts, Defendants have had a financial benefit conferred upon them and are thereby unjustly enriched. It is inequitable for Defendants to retain those benefits and they should be disgorged of any profits.

Count VI. Injunctive Relief

79. Wizards incorporate by reference paragraphs 1 - 78 as if set forth herein.

80. Defendants' actions have and will continue to cause substantial and irreparable harm to Wizards.

81. Wizards is entitled to an injunction ordering Defendants to cease and desist all infringing activity.

PRAYER FOR RELIEF

Wizards prays for the following relief:

1. Issue a declaration that Defendants' actions willfully infringe Wizards' copyrights and trademarks.

2. Issue a permanent injunction requiring that Defendants and their agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns, and all persons acting in concert or participation with each or any of them, cease directly or indirectly infringing, or causing, enabling, facilitating, encouraging, promoting and inducing or participating in the infringement of, any of Wizards' respective copyrights and trademarks or exclusive rights protected by the Copyright Act or Lanham Act (respectively), whether now in existence or hereafter created;

1 3. Order Defendants to account to Wizards for all profits and damages resulting
2 from the activities complained of in this Complaint;

3 4. Order an award to Wizards for direct and consequential damages in an amount
4 to be proven at trial;

5 5. Order an award to Wizards for compensatory damages in an amount to be
6 proven at trial, or in the alternative, for an award of statutory damages;

7 6. Order an award of attorneys' fees and costs to Wizards as provided by the
8 Copyright Act, or as otherwise provided by the law;

9 7. Order an award of attorneys' fees and costs to Wizards as provided by the
10 Lanham Act, or as otherwise provided by the law;

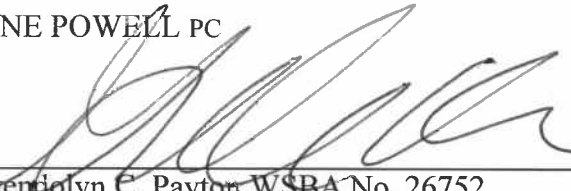
11 8. Order an award of attorneys' fee and costs to Wizards as provided by R.C.W.
12 19.108.040.

13 9. Order an award to Wizards for pre- and post-judgment interest according to
14 law; and

15 10. For such other and further relief as the Court may deem just and proper.
16

17
18 DATED: December 14, 2011

19 LANE POWELL PC

20
21 By 
22 Gwendolyn C. Payton WSBA No. 26752
23 Attorneys for Plaintiff Wizards of the Coast LLC
24
25
26

CERTIFICATE OF SERVICE

Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 14 day of December, 2011, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

Frederick Carr – flrcharr@hotmail.com

Victoria Marticek – vmils3787@aol.com

Lyndsy Redmore – lizgrisham@rocketmail.com

Jamie Skeen – degenerationx@hotmail.com

Randy Christensen – randychristensen@email.grcc.edu

Executed on 14 day of December, 2011, at Seattle, Washington.

s/

