

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

KABUSHIKI KAISHA BANDAI NAMCO
ENTERTAINMENT
5-37-8 SHIBA, MINATO-KU, TOKYO,
JAPAN 108-0014

Plaintiff,

v.

THE PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE "A",

Defendants.

Case No.:

DECLARATION OF _____

I, _____, declare and state as follows:

1. This declaration is based upon my personal knowledge of the facts stated herein or on the business records that were made at the time or in the regular course of business.

If called as a witness, I could and would testify to the statements made herein.

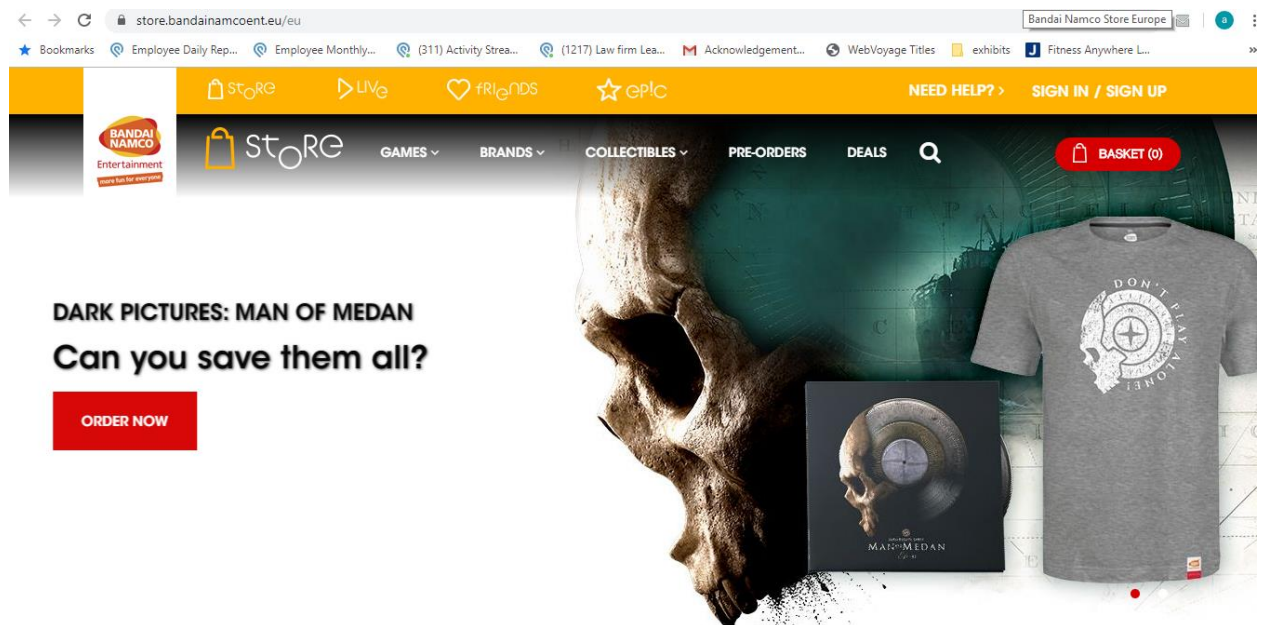
2. I am the _____ of KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT and am knowledgeable about or have access to business records concerning all aspects of the brand protection operation of KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT including, but not limited to, its trademarks, copyrights, other intellectual property, sales, on-line sales, advertising, marketing, media coverage, and associated international operations. I make this declaration from matters within my own knowledge save where otherwise stated.

3. Plaintiff, KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT acts

as the Licensing, Sales, Marketing, Design and Distribution arm of DARK SOULS, GALAGA, TEKKEN, PAC-MAN products and has a place of business at 5-37-8 Shiba, Minato-ku, Tokyo, Japan 108-0014. Plaintiff, KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT is a foreign company organized and existing under the laws of Japan.

4. KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT is in the business of developing, marketing, selling and distributing, and licensing DARK SOULS, GALAGA, TEKKEN, PAC-MAN products. KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT is the official source of DARK SOULS, GALAGA, TEKKEN, PAC-MAN products:

<https://store.bandainamcoent.eu/eu>



5. KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT is the owner of the trademark registration for DARK SOULS, GALAGA, TEKKEN, PAC-MAN with Registration Nos. 2142908, 1621388, 3234043, 4593187, 1746475, 4106672, 5850489, 4804958, 4061085, 4061084, 4061083, 4029793, 4029792, 3932304, 3932303, 3174638,

2727619, 1379379, 1260102, and 1259524.

6. The above registrations for DARK SOULS, GALAGA, TEKKEN, PAC-MAN are valid, subsisting, and in full force and effect. A true and correct copy of the federal trademark registration certificates for the above DARK SOULS, GALAGA, TEKKEN, PAC-MAN is attached hereto as Exhibit 1.

7. The DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademark is distinctive and identifies the merchandise as goods from KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT

8. The DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademarks have been continuously used and never abandoned.

9. KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT has expended substantial time, money, and other resources in developing, advertising, and otherwise promoting the DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademarks. As a result, products associated with the DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademarks are recognized and exclusively associated by consumers, the public, and the trade as being products sourced from KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT

10. The success of the DARK SOULS, GALAGA, TEKKEN, PAC-MAN brand has resulted in its significant counterfeiting. Consequently, KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT is implementing an anti-counterfeiting program and is investigating suspicious websites and online marketplace listings identified through external vendors in proactive Internet sweeps. KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT has identified numerous domain names linked to fully interactive websites and marketplace listings on platforms such as

iOffer and Aliexpress, including the fully interactive commercial Internet stores operating under the Defendant Domain Names and/or the Online Marketplace Accounts identified in Schedule A which is attached to the Complaint (collectively, the "Defendant Internet Stores"), which were offering for sale, selling, and importing counterfeit products in connection with counterfeit versions of KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's federally registered DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademark (the "Counterfeit DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products") to consumers in this Judicial District and throughout the United States. Despite KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's enforcement efforts online, Defendants have persisted in creating the Defendant Internet Stores.

11. We perform, supervise, and/or direct investigations related to Internet-based infringement of the DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademark. Our investigation shows that Defendants are using the Defendant Internet Stores to sell Counterfeit DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products from foreign countries such as China to consumers in the U.S. and elsewhere. We, or someone working under our direction, analyzed each of the Defendant Internet Stores and determined that Counterfeit DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products were being offered for sale to the United States, including Illinois. This conclusion was reached through visual inspection of the products listed for sale on the website, the price at which the Counterfeit DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products were offered for sale, other features commonly associated with websites selling counterfeit products, because Defendants offered shipping to the United States, including Illinois, and because Defendants and their websites do not conduct business with KABUSHIKI KAISHA

BANDAI NAMCO ENTERTAINMENT and do not have the right or authority to use the DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademark for any reason. True and correct copies of screenshot printouts showing the active Defendant Internet Stores reviewed are attached as Exhibit 2.

12. Upon information and belief, Defendants facilitate sales by designing the Defendant Internet Stores so that they appear to unknowing consumers to be authorized online retailers, outlet stores or wholesalers selling genuine DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products. Many of the Defendant Internet Stores look sophisticated and accept payment in U.S. dollars via credit cards, Western Union, Amazon and PayPal. The Defendant Internet Stores often include images and design elements that make it very difficult for consumers to distinguish such counterfeit sites from an authorized website. Defendants further perpetuate the illusion of legitimacy by offering "live 24/7" customer service and using indicia of authenticity and security that consumers have come to associate with authorized retailers, including the McAfee® Security, VeriSign®, Visa®, MasterCard®, and PayPal® logos. KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT has not licensed or authorized Defendants to use its DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademarks, and none of the Defendants are authorized retailers of genuine DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products.

13. Upon information and belief, Defendants also deceive unknowing consumers by using the DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademarks without authorization within the content, text, and/or meta tags of their web sites in order to attract various search engines crawling the Internet looking for websites relevant to consumer searches for DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products.

Additionally, upon information and belief, Defendants use other unauthorized search engine optimization (SEO) tactics and social media spamming so that the Defendant Internet Stores listings show up at or near the top of relevant search results and misdirect consumers searching for genuine DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products. Further, Defendants utilize similar illegitimate SEO tactics to propel new domain names to the top of search results after others are shut down.

14. Defendants often go to great lengths to conceal their identities and often use multiple fictitious names and addresses to register and operate their massive network of Defendant Internet Stores. Other Defendant Domain Names often use privacy services that conceal the owners' identity and contact information. Upon information and belief, Defendants regularly create new websites and online marketplace accounts on various platforms using the identities listed in Schedule A to the Complaint, as well as other unknown fictitious names and addresses. Such Defendant Internet Store registration patterns are one of many common tactics used by the Defendants to conceal their identities, the full scope and interworking of their counterfeiting operation, and to avoid being shut down.

15. Even though Defendants operate under multiple fictitious names, there are numerous similarities among the Defendant Internet Stores. For example, many of the Defendant websites have virtually identical layouts, even though different aliases were used to register the respective domain names. In addition, Counterfeit DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products for sale in the Defendant Internet Stores bear similar irregularities and indicia of being counterfeit to one another, suggesting that the Counterfeit DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products were manufactured by and come from a common source and that, upon information and belief,

Defendants are interrelated. The Defendant Internet Stores also include other notable common features, including use of the same domain name registration patterns, unique shopping cart platforms, accepted payment methods, check-out methods, meta data, illegitimate SEO tactics, HADJL user- defined variables, domain redirection, lack of contact information, identically or similarly priced similar hosting services, similar name servers, and the use of the same text and images.

16. In addition to operating under multiple fictitious names, Defendants in this case and defendants in other similar cases against online counterfeiters use a variety of other common tactics to evade enforcement efforts. For example, counterfeiters like Defendants will often register new domain names or online marketplace accounts under new aliases once they receive notice of a lawsuit. Counterfeiters also often move website hosting to rogue servers located outside the United States once notice of a lawsuit is received. Rogue servers are notorious for ignoring take down demands sent by brand owners. Counterfeiters also typically ship products in small quantities via international mail to minimize detection by U.S. Customs and Border Protection.

17. Counterfeiters such as Defendants typically operate multiple credit card merchant accounts as well as Amazon and PayPal accounts behind layers of payment gateways so that they can continue operation in spite of KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's enforcement efforts. Upon information and belief, Defendants maintain off-shore bank accounts and regularly move funds from their PayPal accounts to off-shore bank accounts outside the jurisdiction of this Court.

18. Monetary damages alone cannot adequately compensate KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT for ongoing infringement because monetary

damages fail to address the loss of control of and damage to KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's reputation and goodwill. Furthermore, monetary damages are difficult, if not impossible, to completely ascertain due to the inability to fully quantify the monetary damage caused to KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's reputation and goodwill by acts of infringement.

19. KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's goodwill and reputation are irreparably damaged when the DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademark are used on goods not authorized, produced, or manufactured by KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT. Moreover, consumer brand confidence is damaged, which can result in a loss of future sales and market share. The extent of harm to KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's reputation and goodwill and the possible diversion of customers due to loss in brand confidence are largely unquantifiable.

20. KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT is further irreparably harmed by the unauthorized use of the DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademark because counterfeiters take away KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's ability to control the nature and quality of products used with the DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademark. Loss of quality control over goods using the DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademark and, in turn, loss of control over our reputation is neither calculable nor precisely compensable.

The sale of Counterfeit DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products

using the DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademark also causes consumer confusion, which weakens KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's brand recognition and reputation. Consumers who mistakenly believe that the Counterfeit DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products they have purchased originated from KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT will come to believe that KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT offers low-quality products. Inferior quality products will result in increased skepticism and hesitance in consumers presented with genuine DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products, resulting in a loss or undermining of KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's reputation and goodwill.

21. KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT is further irreparably damaged due to a loss in exclusivity. The DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products are meant to be exclusive. KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's extensive marketing and distribution of DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products are aimed at growing and sustaining sales of DARK SOULS, GALAGA, TEKKEN, PAC-MAN Products. The DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademarks are distinctive and signify to consumers that the products originate from KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT and are manufactured to KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's high quality standards. When counterfeiters use the DARK SOULS, GALAGA, TEKKEN, PAC-MAN Trademarks on goods without KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's authorization, the exclusivity of KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's

products, as well as KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT's reputation, are damaged and eroded, resulting in a loss of unquantifiable future sales.

22 KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT will suffer immediate and irreparable injury, loss, or damage if an *ex parte* Temporary Restraining Order is not issued in accordance with Federal Rule of Civil Procedure 65(b)(1).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 10, 2020

/s/ _____