

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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HASBRO, INC.		:	
	Plaintiff,	:	
		:	
v.		:	C.A. No. 09-cv-610
		:	
INFOGRAMES ENTERTAINMENT S.A.		:	
a/k/a ATARI, S.A.,		:	
	Defendant.	:	
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**ANSWER OF THE PLAINTIFF/DEFENDANT-IN-COUNTERCLAIM,
HASBRO, INC., TO THE COUNTERCLAIMS FILED AGAINST
IT BY THE DEFENDANT/PLAINTIFF-IN-COUNTERCLAIM
INFOGRAMES ENTERTAINMENT S.A. a/k/a ATARI, S.A.**

Introduction

1. This paragraph simply summarizes alleged counterclaims against Hasbro, and does not require a response. However, if this paragraph is deemed to require a response, it is hereby denied.

The Parties

2. Hasbro is without sufficient information to either admit or deny this allegation and calls upon the Defendant to prove the same.

3. Admitted.

4. Admitted.

Jurisdiction and Venue

5. Admitted.

6. Admitted to the extent that Section 22.2 of the License Agreement provides for jurisdiction of this type of dispute in the federal and state courts in Rhode

Island. The remainder of this paragraph contains an issue of law for which a response is not required. If this is not considered an issue of law, it is hereby denied.

The Facts

The Parties and Their Businesses

7. Admitted.

8. Admitted.

9. Admitted.

10. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

11. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

12. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

The June 3, 2005 Dungeons and Dragons License Agreement Between Hasbro and Atari

13. Admitted to the extent that on June 3, 2005, Hasbro and Atari entered into a "Dungeons and Dragons License Agreement," and that the License Agreement speaks for itself. Denied as to the remainder of this allegation.

14. Admitted to the extent that the parties entered into a license agreement in 2000 involving a number of properties, including D&D. Denied as to the remainder of the allegation.

15. Admitted.

16. Admitted that Amendment No. 4 extended the License Agreement, but denied as to the remainder of this allegation.

17. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Defendant to prove the same.

18. Denied.

19. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

20. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

21. Denied as to the fact that Hasbro made any “protests” compelling Atari to cease any obligation Atari had under the contract. The remainder of the allegation can neither be admitted nor denied because Hasbro is without sufficient information to do so, and calls upon Atari to prove the same.

22. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

23. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

24. Although Hasbro is aware that Atari alleges it was in ongoing negotiations with Microsoft and Perfect World, Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

25. To the extent that this paragraph sets forth Atari’s future plans, Hasbro can neither admit nor deny it and calls for Atari to prove the same.

26. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

Hasbro Commences its Bullying and Obstructionist Campaign to Require the License Rights

27. Denied.

28. Denied.

29. Admitted to the extent that Mark Blecher spoke with James Wilson by phone on or about July 29, 2009, but denied as to the specifics as alleged in this paragraph.

30. Denied.

31. Denied.

The NBP Wholesaling Arrangement

32. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same. Hasbro, however, denies this allegation to the extent it is implied in this allegation that Hasbro was aware of this business relationship and/or had an obligation to raise this issue to Atari.

33. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

34. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

35. Admitted to the extent that Mark Blecher wrote to James Wilson on September 2, 2009, about the general subject matter alleged in this paragraph. Denied as to the specific demands, assertions, and/or allegations made by Hasbro in this letter. The letter speaks for itself.

Atari's Termination of NBP as a Wholesaler of Licensed D&D Products in Europe

36. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same. Much of the paragraph is a legal conclusion as to whether or not Hasbro had a contractual right to dictate distributors of D&D products. To the extent this is not considered an issue of law, it is hereby denied.

37. Admitted to the extent that Atari provided to Hasbro a letter purporting to be from NBP and is correctly quoted. Hasbro is without sufficient information to either admit or deny the remainder of this allegation and calls upon Atari to prove the same.

38. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

39. Admitted to the extent that a September 11 letter was sent by Mr. Wilson to Hasbro. Denied as to the specifics of that letter.

Hasbro's September 29 Notice of Alleged Breach

40. Admitted that Hasbro requested a copy of the Agreement but denied as to the remainder of this allegation.

41. Admitted that a notice of breach letter was sent on September 29, 2009, which included a demand that Atari cure its breaches within 30 days, but denied that the letter falsely stated that Atari was in breach of several provisions of the agreement. The letter speaks for itself.

42. Denied as to the first sentence and admitted as to the second sentence.

43. Denied.

44. Denied.

45. Admitted that Hasbro was seeking to review a “redacted” copy of the Distribution Agreement and requested information about Atari’s current and future marketing and product plans in Europe. Hasbro denies the remainder of this allegation.

The October 14, 2009 Meeting

46. Admitted that a meeting was requested. However, Hasbro is without sufficient information to either admit or deny the remainder of this allegation and calls upon Atari to prove the same.

47. Denied.

48. Admitted that a meeting took place on October 14, 2009. Denied as to the remainder of the allegation.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

Atari’s October 26, 2009 Response to Hasbro’s Notice

55. Admitted that Atari conveyed a letter dated October 26, 2009 to Hasbro. Denied as to the remainder of this allegation.

56. Admitted that Atari claimed it did not sublicense or assign D&D rights to NBP. Denied as to the remainder of this allegation.

57. Admitted that an October 6, 2009 letter was conveyed but denied as to the remainder of this allegation.

58. Denied.

59. Denied.

Hasbro's Interference with Sublicensing by Atari

60. Denied.

61. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

62. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

63. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

64. Denied.

65. Hasbro is without sufficient information to either admit or deny this allegation, particularly as it pertains to the state of mind of a third-party, EA. Hasbro calls upon Atari to prove the same.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

Hasbro Prevents Sales in Europe

70. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same. However, admits that Mr. Wilson enclosed an alleged "wholesale agreement" and that Atari sought Hasbro's approval.

71. Denied.

72. Denied.

Hasbro's November 24, 2009 Letter and Continued Campaign of Harassment

73. Hasbro admits to sending Atari a letter on November 24, 2009. The letter speaks for itself. Hasbro denies that it was sent as part of a campaign of pressure and/or constant harassment directed against Atari. Hasbro is without sufficient information to either admit or deny the status of any “wholesaling” relationship between Atari and NBP.

74. Hasbro is without sufficient information to either admit or deny this allegation and calls upon Atari to prove the same.

75. Denied.

76. Admitted, except to the extent that Hasbro “refused to disclose” this information. Hasbro said it would give Atari all its information as soon as it could.

77. Denied.

78. Denied

79. Denied.

80. Admitted to the extent that a letter was sent on December 11, 2009, from James Wilson to Mark Blecher. Denied as to the content or significance of that letter.

81. Admitted to the extent there was a December 9, 2009, meeting to review two Atari sublicensing proposals, which Kate Ross attached. Denied as to the reasons why certain personnel did or did not attend.

82. Admitted to the extent there was a meeting on December 9, 2009, and there was discussion about D&D Eberron and Dragonlance, and Wizards would not be producing new products until 20014. Denied as to the remainder of this allegation.

83. Denied.

84. Denied.

85. Admitted that a letter was sent dated December 14, 2009, from Ms. Keller. However, Atari is seeking a legal conclusion with regard to whether that letter is sufficient to demand a cure of breaches within thirty (30) days. If this is not determined to be a legal conclusion, it is hereby denied.

86. Admitted that Mr. Wilson called Mr. Leeds on December 14, 2009, but denied as to the specific content of that conversation.

87. Denied.

88. Denied.

89. Admitted that Mr. Leeds called Mr. Wilson, but denied as to the remainder of this allegation.

90. Admitted that this is an accurate quote, but denied as to Hasbro's intent as to the press release.

91. Denied.

92. Denied.

93. Denied.

94. Admitted insofar as Section 20.2 and Amendment No. 4 reflect that those issues stated therein, but denied as to the specific language of those provisions.

95. Denied.

96. Admitted that Section 22.3 contains the cited language.

97. This seeks a legal conclusion, to which Hasbro is not required to respond. If Hasbro is deemed to be required to respond to this allegation, it is hereby denied.

As a First Counterclaim
(Breach of Contract)

98. Hasbro repeats and reiterates its responses to Paragraphs 1 through 97 as if fully set forth herein.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. This seeks a legal conclusion to which Hasbro is not required to respond.

If it is deemed not to be seeking a legal conclusion, it is hereby denied.

104. Denied.

105. Denied.

As a Second Counterclaim
(Breach of Contract)

106. Hasbro repeats and realleges its responses to Paragraphs 1 through 105 as if set forth fully herein.

107. Denied.

108. Denied.

109. Denied.

110. Denied.

111. Denied.

As a Third Counterclaim
(Breach of Implied Covenant of Good Faith
and Fair Dealing)

112. Hasbro repeats and realleges its responses to Paragraphs 1 through 111 as if fully set forth herein.

113. Admitted that there is an obligation of good faith and fair dealing in contracts.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

As a Fourth Counterclaim
(Tortious Interference with Contractual Relationship
and Actual Prospect Business Relations)

118. Hasbro repeats and realleges its responses to Paragraphs 1 through 117 as if fully set forth herein.

119. Denied.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

As a Fifth Counterclaim
(Breach of Contract – Specific Performance – Pleaded

in the Alternative)

128. Hasbro repeats and realleges its responses to Paragraphs 1 through 127 as if fully set forth herein.

129. Denied.

130. Denied.

131. Denied.

132. Denied.

As a Sixth Counterclaim
(Costs, Expenses, and Attorneys' Fees)

133. Hasbro repeats and realleges its responses to Paragraphs 1 through 132 as if fully set forth herein.

134. Denied.

135. Denied.

136. Denied.

WHEREFORE, Hasbro, Inc. requests this Court enter judgment on its behalf with respect to all allegations leveled against it by Atari, including any costs and fees as may be required in a contract or within the powers of this Court. Hasbro also requests the declaration of the rights and obligation of each party to the agreements as outlined in Hasbro's Complaint.

AFFIRMATIVE DEFENSES OF THE PLAINTIFF/
DEFENDANT IN COUNTERCLAIM, HASBRO, INC.

First Affirmative Defense

The counterclaim fails to state a claim upon which relief can be granted.

Second Affirmative Defense

Hasbro did not breach any duty or obligation it may have owed to Atari and, therefore, these claims are barred.

Third Affirmative Defense

The doctrines of waiver, estoppel, and unclean hands bar Atari's counterclaims.

Fourth Affirmative Defense

Atari materially breached the contract, allowing Hasbro the right to terminate without resort to a cure. As a result of those material breaches, the claims of Atari are barred.

Fifth Affirmative Defense

Atari cannot recover because it cannot establish by the required preponderance of the evidence the damages it has alleged to have sustained if, in fact, Hasbro at any time breached an obligation it had to Atari.

Sixth Affirmative Defense

Atari's claims are barred because if there was a material breach – which Hasbro steadfastly denies – the cure period has not run for Hasbro to have been provided opportunity to overcome those breaches.

Hasbro requests a trial by jury on Atari's Counterclaims

HASBRO, INC.
By its Attorneys,

/s/ Todd D. White

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January, 2010, the within document was filed electronically through the court ECF system, and service to the following counsel of record has been effectuated by electronic means:

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/s/Todd D. White

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