

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

**FILED**

JEROME GLASSER,

*Plaintiff,*

v.

GABRIEL R. BARBOZA,  
JORDAN L. MAISON,  
JOSHUA L. DUNFORD,  
CINELINX MEDIA,

*Defendants.*

2017 JUN 12 P 12:58

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

Civil Action No. 1:17-cv-0322 (CMH/IDD)

**AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND  
COPYRIGHT INFRINGEMENT AND DEMAND FOR JURY TRIAL**

NOW COMES Plaintiff Jerome Glasser ("Plaintiff Glasser") and for his Amended Complaint against Defendants states as follows:

**PROCEDURAL STATUS**

On March 21, 2017 Plaintiff Glasser filed his original complaint with this Court and thereafter made effective Service on Defendants in Texas.

On May 22, 2017, Defense Counsel Findley of Protorae Law filed his notice of Appearance As Counsel for all Defendants and contemporaneously filed his Motion to Dismiss the Complaint, and a hearing date in this matter was set for Friday, June 23, 2017 at 10:00AM.

May 24, 2017, the Court granted Defendants an Extension of Time to File a Responsive Pleading and on June 1, 2017, Defendants did timely file a responsive pleading.

The Court set a Pre-Trial hearing for July 5, 2017.

Plaintiff's Motion in Opposition to Defendants' Motion to Dismiss the Complaint has been timely filed within the 21-day filing deadline of June 12, 2017, contemporaneously with this Amended Complaint.

Defendants Gabriel R. Barboza, Jordan L. Maison and Joshua L. Dunford and Cinelinx Media have not yet served an answer.

### **NATURE OF THE ACTION**

1. This is an action for willful patent infringement to disgorge the profits earned by Defendants which, but for their infringement, would otherwise have naturally gone to Plaintiff, and to stop each Defendant's continuing infringement of Plaintiff's granted U.S. Patent Registration No. 6,017,035 (hereinafter "the '035 Patent") entitled: *Method for playing an educational game*, which after full and fair examination was duly and legally issued to Jerome Glasser and to Jared Phillips by the United States Patent and Trademark Office ("USPTO") on January 25, 2000 and which is in full force and effect. A copy of the '035 Patent is attached hereto. (EXHIBIT A)

2. This is an action for willful copyright infringement action to stop each Defendant's infringement of Plaintiff's Registered U.S. Copyright No. TX0005995224, entitled: "Reel Relations Guide" which, among other rights, entitles Plaintiff Glasser to make translations of his copyrighted Work into other languages, or make any other version thereof, and for which each Defendant has unabashedly taken credit, claiming it to be his own work. The copying certainly is making more than half of Plaintiff Glasser's Work and, moreover—at the very least—constitutes a derivative version of Plaintiff Glasser's Work. Plaintiff Glasser has received no value from Defendant's deliberate taking of his Work, and has brought this action to vindicate his rights, recover damages, and to ask, as the law provides, that Defendants be required to disgorge their ill-gotten profits attributable to their intentional infringement of Plaintiff Glasser's intellectual property. U.S. Copyright Registration information relating to Plaintiff Glasser's work is attached. (EXHIBIT B)

3. This case relates to at least three, Texas-residing individual defendants who are engaged in a business venture and have created, advertised and sold a game called CINELINX via

online websites which actively target all U.S. states and certainly Virginia. Plaintiff has a good-faith belief that Defendants are infringing his rights for many reasons including because:

- a) Defendants have knowingly and intentionally directed sales outside the territory of the State of Texas where their enterprise is based, calculating (in this case incorrectly) that they could evade accountability for their infringing sales to every state in the United States on the basis that for most prospective micro- and small-entity plaintiffs, the typical complexity and expense of suing to enforce IP rights today unfortunately serves as an insurmountable hurdle to their even attempting to seek justice;
- b) Defendants have made multiple sales to Virginia and through Virginia which satisfy the standards for finding minimum contacts partly by virtue of their having sold games directly to Virginia residents and partly because every sale that Defendants made through their sales agent, Amazon, was conducted through a Virginia-based server. Consequently, each sale—irrespective of the ultimate destination of the shipped product—constitutes an “act” according to Virginia Code which has caused tortious injury in Virginia such that Defendants should have reasonably anticipated being haled into Virginia to answer for the misconduct. Finding Personal Jurisdiction over all Defendants, therefore, does not offend traditional notions of “fair play and substantial justice.”

#### **PARTIES**

4. Plaintiff Glasser is an individual residing in the Commonwealth of Virginia with a principal address located at: 2308 Mt. Vernon Avenue, #240, Alexandria, VA 22301 and is a first-named inventor and sole owner by virtue of an executed Assignment of United States Patent Registration No. 6,017,035 entitled: *Method for playing an educational game* (hereinafter the “’035 Patent”), which was filed on August 15, 1997 and granted on January 25, 2000. (EXHIBIT C)

5. Defendant Gabriel R. Barboza is an individual residing at: 4701 Monterrey Oak Blvd., Apt 326, Austin, TX 78749-1083. Defendant Barboza offers a party admission by describing himself to the world on his Facebook page as “Co-Founder at Cinelinx Media”. Under a plain reading of the term “Co-Founder”, at least one other founder may reasonably be inferred. (EXHIBIT D)

6. Defendant Jordan L. Maison is an individual residing at: 2305 Alta Canada Lane, Apt 916, Fort Worth, TX 76177-8248. Defendant Maison is a co-creator and co-founder of CINELINX and of CINELINX MEDIA, a fact which is readily verifiable through not merely one location, but rather, through a great many locations on the Internet. (EXHIBIT E)

7. Defendant Joshua L. Dunford is an individual residing at: 4133 Fossile Butte Drive, FT Worth, TX 76244. Defendant Dunford is a co-creator and co-founder of CINELINX and of CINELINX MEDIA, a fact which is readily verifiable through not merely one location, but rather, through a great many locations on the Internet. (EXHIBIT F)

8. Defendant Cinelinx Media is an unincorporated business entity having a principal place of business located at: 4701 Monterrey Oak Blvd., Apt 326, Austin TX 78749-1083. Defendants have at all times conspired in a scheme to intentionally infringe Plaintiff’s enforceable U.S. Intellectual Property rights, and in order to better do so, they have cloaked themselves in the appearance of being an “upright” business entity registered as an LLC. (EXHIBIT G)

9. In fact, they have been merely colluding as a Partnership, as shown by the absence of any record of business registration where it normally would have been found within the database of the Texas Secretary of State were it to exist. (EXHIBIT H)

### **JURISDICTION AND VENUE**

10. This court has original subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. § 1331 (Federal Question), § 1332 (Diversity), § 1338(a) (Patents) and (Copyrights).

11. Defendants are subject to personal jurisdiction in this Court because, given their willful and knowing exploitations in the Commonwealth of Virginia represented by their infringing products, each Defendant could certainly reasonably anticipate being haled into a court in this Commonwealth. Each Defendant has enjoyed minimum contacts within the Commonwealth of Virginia; each Defendant has intentionally and purposefully availed himself or itself of the privileges, protections and benefits of conducting business in the Commonwealth of Virginia. More specifically, each Defendant, directly and/or through its intermediaries, makes, ships, distributes, uses, offers for sale, sells, and/or advertises (including via a sales-promoting web page) its products and services in the Commonwealth of Virginia, which products and services infringe the intellectual property rights conferred upon Plaintiff Glasser, whose causes of action arise directly from each Defendant's business contacts and other activities in the Commonwealth of Virginia.

12. Defendants has committed U.S. Patent Infringement in the Commonwealth of Virginia; each Defendant has committed U.S. Copyright infringement in the Commonwealth of Virginia; Defendants solicit customers for their products and services in the Commonwealth of Virginia; each Defendant has participated in the sale to at least one paying customer who resides in the Commonwealth of Virginia.

**TORTIOUS CONDUCT BY ALL DEFENDANTS IN VIRGINIA SATISFIES  
MINIMUM CONTACTS IN VIRGINIA FOR ESTABLISHING PERSONAL JURISDICTION**

13. Defendants have at all times been and are continuously—even now—directing sales to all states via a multitude of websites. Defendants have made absolutely no efforts to constrain their sales exclusively to Texas, and have, in fact, absolutely transacted business in Virginia by selling product directly in Virginia.

14. Defendants sold their game, CINELINX, on August 29, 2016 to Virginia resident David Drake, who purchased the game online through Amazon.com via Defendants' agent, Amazon. (EXHIBIT I)

15. The CINELINX game was shipped not from Texas, but rather, from “Cinelinx Media, 172 Trade Street, Lexington, KY 40511.” An online search reveals that this address, in actuality belongs NOT to Cinelinx Media, (nor to Cinelinx Media, LLC) bur rather, to Amazon /Warehouse Deals Returns Department. (EXHIBIT J)

16. According to the Code of Virginia § 8.01-328.1(A)(1), a Virginia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's: Transacting *any* business in this Commonwealth.

17. Defendants’ own website actively targets sales to all states, including Virginia by virtue of its having a phone number and expressive messaging engineered to induce sales. Moreover, Defendants’ website directly links to its third-party agent, Amazon, which Defendants engaged to aid in reaching-out directly to all states, including Virginia. Along with having an authorized Agent that defendants knew and wished would directly solicit sales from Virginia, every transaction that Agent Amazon made on behalf of Defendants was accomplished via the Internet and through servers that are well-known to be based in Virginia. (This fact is also confirmed in the case of *Kevin P. Lucido v. Jeffrey Neill Maxwell*, CL-2016-2749 which states that, “In addition to the facts set forth in the Complaint, Plaintiff submitted an affidavit indicating that Sports: Unstoppable uses Amazon Web Services to provide bandwidth and server hosting for the Wrestler Unstoppable online game site, and that the servers used by Amazon Web Services are located in Northern Virginia. Affidavit of Carla Emmons 8, 9.) (EXHIBIT K)

18. According to Virginia Code, any such transmission which occurs through servers based in Virginia constitutes an “act” in Virginia which subjects such actors to Personal Jurisdiction. Today, almost without exception, companies endeavor to sell products online. The Internet is the “www”, meaning WORLD-wide-web and almost without exception, online merchants strive to concoct schemes to better avail themselves of every possible sales territory. Accordingly, as a vendor attempts to sell into every

territory, it should reasonably expect to be subject to suit for tortious acts in every such territory. Defendants in this case are no different from almost every other commercial venture in this respect; they hoped to gain as many sales possible and actively solicited sales from every jurisdiction including the Commonwealth of Virginia. Having filed for federal trademark protection to protect their deliberate campaign of INTER-state commerce, they are reasonably estopped from contending that they intended to restrictively constrain their sales exclusively to their native state of Texas. At least one defendant, on behalf of the partnership, affirmed under oath to the USPTO that efforts to sell in *Interstate* Commerce commenced as of February 15, 2014. (EXHIBIT L)

19. Defendants have endeavored to sell as many editions of their CINELINX game as they possibly can throughout the United States, but also wish to make themselves immune to suit by diligent efforts to conceal their whereabouts for Service of Process purposes. This is an unreasonable and untenable business practice containing mutually exclusive objectives. Defendants should reasonably have been aware that by actively targeting their commercial sales campaigns towards every state, they would be subjected to being haled into every state's court system.

20. Personal Jurisdiction May Be Found Over Defendants According to Virginia Code § 8.01-328.1(A)(1). Virginia's Long Arm Statute is designed to increase the jurisdictional power of this state so as to provide adequate redress in Virginia courts against persons who inflict injuries upon or incur obligations to those in whose welfare this state has a legitimate interest. The Code of Virginia § 8.01-328.1(A) vests courts in our Commonwealth with personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from that person transacting any business in this state. The Virginia Supreme Court has construed this section to provide Virginia's courts with the maximum jurisdictional power permissible under the due process clause of the fourteenth amendment.

21. Personal Jurisdiction May Be Found Over Defendants According to Virginia Code § 8.01-328.1(A)(2). According to the Code of Virginia § 8.01-328.1(A)(2), a Virginia court may exercise personal jurisdiction over a person who is: Contracting to supply services or things in this Commonwealth; In order for a business entity to sell through Amazon, such a business entity must contract with Amazon to do so and, thus, it can be reasonably inferred from the fact that Defendants sell infringing CINELINX games on Amazon that Defendants contracted online with Amazon and the place of the contracting was Virginia. (EXHIBIT M)

22. Personal Jurisdiction May Be Found Over Defendants According to Virginia Code § 8.01-328.1(B). According to the Code of Virginia § 8.01-328.1(B), a Virginia court may exercise personal jurisdiction over a person who is: Using a computer or computer network located in the Commonwealth [as this] shall constitute an act in the Commonwealth. For purposes of this subsection, “use” and “computer network” shall have the same meanings as those contained in 18.2-152.2. Code of Virginia, § 18.2-152.2 offers the following meanings:

“Person” shall include any individual, partnership, association, corporation or joint venture.

“Computer” means a device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions....

“Computer network” means two or more computers connected by a network;

“Network” means any combination of digital transmission facilities and packet switches, routers, and similar equipment interconnected to enable the exchange of computer data.

A person "uses" a computer or computer network when he attempts to cause or causes a computer or computer network to perform or to stop performing computer operations.

23. Personal Jurisdiction May Be Found Over Defendants According to Virginia Code § 8.01-328.1(A)(4). According to the Code of Virginia § 8.01-328.1(A)(4), personal jurisdiction can be found over a Defendant who causes tortious injury by an act or omission in this Commonwealth



if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this Commonwealth. Therefore, even though Defendants may never have set foot in Virginia, because Defendants are persons who used a computer network belonging to Amazon which is well-known to have its servers and Internet bandwidth in Virginia, the fact that it *contracted* with Amazon means that the contract (which is a paperless, electronic document) *itself* passed-through Virginia-based servers and accordingly, the contract was *signed* in Virginia. Thus, not only did Defendants contract with a Virginia agent, but the contract itself was signed in Virginia. Moreover, the contract was for Amazon's services as a sales agent, and Amazon certainly reaches out to every state in the United States. In *Bochan v. La Fontaine*, the United States District Court for the Eastern District of Virginia held that a defendant's use of an AOL account, a Virginia-based service, to publish the allegedly defamatory statements was a sufficient act in Virginia to satisfy § 8.01-328.1(A)(3). 68 F. Supp. 2d 692, 699 (E.D. Va. 1999). “[B]ecause the postings were accomplished through defendant's AOL account, they were transmitted first to AOL's USENET server hardware, located in Loudoun County, Virginia.” In the present case, as in *Bochan*, because the servers and Internet bandwidth provided by Amazon site are located in Virginia, use of a computer or computer network located in the Commonwealth constitutes an act in the Commonwealth. Accordingly, the act of Contracting with Amazon itself constitutes an “act” in Virginia under § 8.01-328.1(A)(3) as well as under § 8.01-328.1(B). Defendants by virtue of their many sales through Amazon have generated systematic and continuous contacts with Virginia which have earned Defendants considerable profits.

24. Defendants were able to make hundreds of sales through the Kickstarter.com website which also actively targets all states including Virginia. How many of those Kickstarter sales were actually transacted with Virginia residents remains to be determined through discovery.

25. Defendants' act to contract in Virginia was not the least of its tortious "acts"; the purpose of Defendants' contract to establish a Principal-Agent relationship with Amazon was to procure sales to all states including Virginia. Amazon through its *amazon.com* website actively solicits and invites sales from our Commonwealth, and considering that Amazon is one of the top 10 retailers in the world today, it is reasonable to ascribe to Amazon that it directs systematic and continuous both advertising and sales efforts towards and with Virginia. Therefore, not only should defendants have anticipated that Amazon would as an agent of Defendants make sales to Virginia—which Amazon did do—but since every sale that Defendant made through Amazon was processed via Amazon's Virginia-based computer network, Defendants, accordingly, enjoyed the privileges and protections of doing business in Virginia for each and every sale which constituted an "act" according to the Virginia Code.

26. Defendants are properly joined in this action pursuant to Rule 20(a) of the Federal Rules of Civil Procedure because Plaintiff Glasser is asserting claims against Defendants for which they are jointly and/or severally liable, or, in the alternative, a right to relief in respect of or arising out of the same series of transactions or occurrences, namely, the development of, advertising, offering for sale, and the provision of infringing products and services to customers through a website. Questions of law and/or fact common to all Defendants will arise in this action due to the close business relationship of the Defendants to each other and their shared customers.

27. Venue in this Court is proper pursuant to 28 U.S. C. §§ 1391(b) and 1391 (c), and 28 U.S.C. §§1400(b) and 1400(a) because Defendants are subject to personal jurisdiction in this Judicial District and have committed unlawful acts of U.S. Patent and Copyright infringement in this Judicial District.

### **PATENT IN SUIT**

28. The '035 Patent is entitled: "*Method for playing an educational game.*"

## **BACKGROUND**

29. Pursuant to Rule 11, prior to filing the original complaint Plaintiff conducted a significant pre-filing investigation to adequately established a good-faith belief in Defendants' infringement after having been presented with Defendants' CINELINX game which was purchased on August 29, 2016 by Virginia resident, David Drake, through Defendants' Virginia Agent, Amazon, via its Amazon.com website, which actively directs its sales towards our Commonwealth.

30. To avoid violating Rule 11, a prelitigation opinion should examine:

- (1) whether the competitor's product or method infringes the patent; and
- (2) whether there are bases that cast doubt on the validity and enforceability of the patent.

The "infringement" part of the prelitigation opinion should consider as many of the issues as possible that one would expect to be considered by the Court and the opinion should analyze claim construction issues and then compare the construed claims to the device or process under scrutiny. The opinion should analyze whether the competitor's device or process infringes the patent either literally and/or under the doctrine of equivalents. If possible, the prefiling investigation should also include testing of the actual accused product.

The results of Plaintiff Glasser's pre-complaint-filing investigation of Defendants' infringing CINELINX game revealed that Plaintiff absolutely does have good reason to believe Defendants have been and continue to infringe the valid '035 patent held by Plaintiff who, therefore, has a good-faith basis to file an infringement suit, and herein offers supplemental information related thereto:

1. Defendants all, through their joint development and sale of their infringing game, CINELINX, compose in their patent-infringing game directions which command CINELINX players to "randomize the deck" by shuffling:  
  
CINEXLINX DIRECTIONS:
  - a. "Shuffle the main deck and allow each player to draw Seven (7) cards."

b. “A connection can be defined as the relationship between two cards.

**Example announcement:** “Jonah Hill and Leonardo DiCaprio can be connected because they were both in ‘The Wolf of Wall Street’ ” and “2<sup>nd</sup> degree connections can be played by announcing the relationship between two cards that would be considered one step, or degree removed from a direct connection...  
Examples: An ACTOR CARD can connect to another ACTOR CARD by announcing a movie they have been in together.”

**5) CONNECTIONS\* must be verbally announced to be considered valid. A connection can be defined as the relationship between two cards.**

***Example announcement: “Jonah Hill and Leonardo DiCaprio can be connected because they were both in ‘The Wolf of Wall Street’ ”***

Compare this with Independent Claim 1 of the ‘035 Patent:

1. A method for playing a game with at least one player comprising the steps of:  
providing a plurality of separate sets of game information, each set of game information having an identity of an actor, wherein the identity of an actor of one set of game information and the identity of an actor of any other set of game information are different;  
randomizing or mixing said plurality of separate sets of game information;  
a player randomly receiving a first set of game information and at least one second set of game information from said mixed plurality of separate sets of game information;  
the player attempting to connect said random first set and said at least one random second set of game information via a motion picture in which the actor of said random first

set of game information and the actor of said at least one random second set of game information each play at least one role in said motion picture.

Independent Claim 1 covers a collection of cards each identifying a different actor which are shuffled, and at least two of which are dealt to a player who attempts to connect the actors by movies in which they appear together. This very first Independent claim is EXACTLY infringed by Defendants' game, CINELINX.

**Examples: An ACTOR CARD can connect to another ACTOR CARD by announcing a movie they have been in together.**

CINELINX, further

- c. “ 7) A connection can be challenged by any player. Please see CHALLENGING PLAY for details. CHALLENGING A PLAY: If a connection is challenged and is proven to be VALID then the challenger must either draw a card or lose a turn...  
*Challenges and Disputes can be resolved with a “majority vote” system or with a quick check on IMDB Google, or at Cinelinx.com/check.*

Compare this with Dependent Claim 5 of the '035 Patent:

5. The method of claim 1 further including:

in combination, a game of connecting information sets having at least one player and means for determining the factual correctness of connections.

Independent Claim 5 covers challenges and disputes relating to factual connections and not only does CINELINX itself infringe by offering its *own* means to determine factual connections, but it induces customers of Plaintiff to use other websites, such as IMDB (based extra-territorially in the UK), in an infringing manner.

31. Even Defendants' infringing CINELINX game infringes Plaintiff's U.S. Copyright in a derivative manner, both the directions and content. CINELINX directions state:

- "1)...Shuffle the main deck and allow each player to draw Seven (7) cards.
- 2) An anchor card is needed to start the game.
- 3) Decide among yourselves who will go first and then continue playing clockwise.
- 4) Players should take turns connecting cards in their hands to cards in play. Players can only play One (1) card during their turn...
- 5) CONNECTIONS\* must be verbally announced to be considered valid. A connection can be defined as the relationship between two cards.

Compare this with the Specification of the '035 Patent:

"The players among themselves designate who goes first and after having turned over one card from the draw pile so that the newly turned-over card functions as the target card of a discard pile, the first player elects to pick-up target card from the newly created discard pile, or may at his or her discretion pick-up a card from draw pile. After the first player evaluates the worth of the newly selected card to his or her strategic efforts to create a set, the newly selected card or one of the hands originally dealt seven cards is discarded face up in discard pile. The second player then repeats the process. This process alternating between players taking turns is repeated until one of the players holds a hand of eight cards, seven of which link sequentially one to another through having the images on the cards representing real movie stars who were together in motion pictures. To declare his or her win, the winning player next takes the card that doesn't fit within the set—the extra eighth card—and discards it face down on discard pile saying "Cut! That's a Wrap!" Subsequently he or she verbally delineates the names of the motion pictures that the actors and/or actresses acted in together. Male-to-male,

female-to-female, star-to bit-player, as long as the two actors appeared together in the same motion picture a match can be considered qualified.”

32. In this case, the ‘035 Patent claims reflect that which is disclosed in the ‘035 Patent specification, and the claims, while accurately depicting a novel and unobvious innovation, are readily understandable even by a patent novice. The directions in Defendants’ game, CINELINX, is an absolute, represent an obvious, one-to-one match to the ‘035 Patent’s Claims. (EXHIBIT N)

33. Also Compare this with the instructions of Plaintiff’s Reel Relations Game and it is evident that Defendants’ CINELINX directions are derivative from a copyright perspective down to Defendants’ inclusion of “Wildcards”.

34. Defendants’ CINELINX directions are derivative of Plaintiff’s directions.

35. Defendants’ infringement is continuous as evidenced by their recently announced “mobile” electronic version which relies upon the connections which are protected by U.S. Copyright as a collection under 17 US Code 101 which defines a compilation as “a collection and assembling of preexisting materials or of data that are selected in such a way that the resulting work as a whole constitutes an original work of authorship.” It is required that the selection involves some creative expression and Plaintiff asserts that the almost a year invested in researching and detailing the collection of data he collected satisfies the requisite threshold to be characterized as meriting copyright protection as an original work of authorship.

36. Prior to filing the U.S. Patent Application for his game play method, Jerome Glasser learned of the existence of the concept of “Intellectual Property” and the vital importance of the role it historically has played—and still continues to play—in the successful functioning of U.S. Commerce. Thereafter—properly, as appropriate standards of American business behavior demands—he learned to research U.S. Patent law in order to perform a comprehensive patent search relating to intellectual property, in order to ascertain whether his innovation which he discloses in the ‘035 Patent was “novel

and unobvious”. He invested significant time, efforts and funds to travel to visit personally the Virginia-based public search library of the USPTO in order to perform both a patent search and a non-patent literature prior art search, the type of searching which has been the customary and reasonably expected practice of those contemplating the introduction of new products into the stream of commerce within the United States for at least a century. Having conducted a thorough Prior Art Patent Search, he then filed a U.S. Patent Application which he successfully prosecuted *pro se* to grant, as indicated by the USPTO’s conferring of U.S. Governmental Intellectual Property rights upon determining that his innovation was, indeed, “new, novel and unobvious.” (It should be noted that at the time that this effort was undertaken, no online patent searching—either for pay or for free—was available, unlike the circumstances today in which a multitude of prior art search options exist, including the USPTO’s own quality online searchable database, as well as that of Google Patents, both of which are easy and free to use.)

37. Based on the presumptively valid U.S. Patent rights conferred by the ‘035 Patent, Plaintiff Glasser also undertook to write—and did write and publish—a guidebook detailing with specificity the connections between motion picture actors and actresses, as well as other miscellaneous motion picture participants represented by “Wild Cards”, and this endeavor occupied over a year of research and diligent toil. U.S. Copyright Applications relating to this guidebook and game play directions were subsequently filed, and did mature into a U.S. Copyright Registration.

38. Plaintiff Glasser personally produced two editions of his game with factories located in both the United States and in China. In anticipation of the China production endeavor, Plaintiff Glasser undertook to learn Mandarin Chinese, a language which he now speaks fluently.

39. Although Plaintiff Glasser’s rights to exercise control relating to the commercial exploitation of the rights granted by the USPTO under the ‘035 Patent do not compel his actual



use in commerce of any product falling within the scope of the '035 Patent Claims, nevertheless, Plaintiff Glasser did, indeed, introduce into the stream of U.S. commerce a game product called "REEL RELATIONS", and so he does commercially "practice" his innovation. His efforts to selectively attempt to place and to actually place the REEL RELATIONS game for sale for retail sale precludes any characterization of him, or any business entity with which he is associated, as a Non-Practicing Entity ("NPE").

40. In order to ensure that the packaging for the REEL RELATIONS game was professionally developed and executed, Plaintiff Glasser became a self-taught, Master Graphic Designer with an expertise relating to leading professional computer graphic design programs including Adobe Photoshop, Adobe Illustrator, and CorelDraw. Further, in order to ensure the development of an attractive, high-quality game and packaging, Plaintiff Glasser also benefited from the incorporation into the game of artwork created by a superlative, professional artist.

41. Plaintiff Glasser is currently the owner of the currently LIVE U.S. Trademark Reg. Ser. No. 4,275,150 for the Mark, "REEL RELATIONS", for Playing Cards and Card Games in International Class 28 and registered on January 15, 2013.

42. In 2006, during his first year at law school in New York, a law journal article that Plaintiff Glasser authored (which defended the parody use of illustrations of the type portrayed in his REEL RELATIONS game as meriting First Amendment Free Speech protection) was selected as the winning entry in the BMI Music Scholarship Law Student Essay Competition and subsequently accorded the honor of being published by the prestigious New York State Bar Association's *Entertainment, Arts and Sports Law Journal* (Spring, 2006).

43. Instructions for play of Plaintiff Glasser's patented game along with a guide that cross-referenced links were registered with the United States Copyright Office on May 20, 2004 under Registration No. TX0005995224. These rules are highly original and unique, and

Defendants' infringing expression of such game rules are a distinct derivation of Plaintiff Glasser's game rules, as they capture the spirit of Plaintiff Glasser's game rules.

44. In August, 2016, by visiting the Kickstarter online website ([www.kickstarter.com](http://www.kickstarter.com)), Plaintiff Glasser became aware of Defendants' offer in exchange for valuable consideration—sales—of a game which infringes the claims of the '035 Patent, and the U.S. Copyright granted to Jerome Glasser, and which earned Defendants at least \$36,184 to which they are not entitled. Defendants earned these funds without even having yet produced a game, but merely based on the strength of Plaintiff's already-patented game method. Defendants usurped the rightful opportunity to raise funds which Plaintiff earned by virtue of the market monopoly conferred upon him by the USPTO through what should be considered a reliable government grant of patent rights for which plaintiff paid good consideration, and for which plaintiff CONTINUED TO PAY CONSIDERATION OVER A PERIOD OF MANY YEARS IN THE FORM OF PATENT MAINTENANCE FEES. (EXHIBIT O)

45. Having had by this time significant exposure to the field of U.S. Patent and Trademark law, Plaintiff Glasser then searched for free on the United States Patent and Trademark Office's (TARR) database, and learned that Defendants have at all relevant times been aware of the existence of the concept of intellectual property, as well as its nature: that being rights to intangible property which can be owned/controlled by a specific individual and/or a business entity. The fact of such awareness is evidenced certainly by Defendant Barboza by virtue of his personally having elected to secure *pro se* precisely the type of intellectual property right for Defendants' infringing game product, called "*CINELINX*", that he and the other named Defendants have blatantly infringed which belong to Plaintiff Glasser and that Defendants continue to infringe.

46. Defendant Barboza applied for and secured trademark rights on a “1A” USE MARK, a trademark application category which requires as a filing basis “Actual Use” in *interstate* commerce in the United States. The currently LIVE Mark for which Defendant Barboza applied for trademark protection is “CINELINX”, U.S. Trademark Reg. Ser. No. 4,723,393 for Board Games [and] Card Games in International Class 28 and registered on April 21, 2015. The Date of First Use Anywhere is listed as February 15, 2014, and the Registered Owner is indicated as: “Barboza, Gabriel R / Individual UNITED STATES/P.O. Box 92244 Austin, TEXAS 78709.”

47. Defendants certainly understood that by filing for *Federal* Trademark Registration which requires *interstate* sales that they could and very likely would be subject to personal jurisdiction for acts (or failure to perform legally required acts) in those jurisdictions into which they made sales.

48. Defendants demonstrated a sophisticated understanding of the both the existence and function of concept of “Intellectual Property”, by having filed *pro se* for intellectual property protections which the U.S. Government confers via the authority it vests in the USPTO. Defendant Barboza certainly had actual notice regarding the existence of the claim staked by Plaintiff Glasser to his innovative method for playing an educational game and the patent rights awarded to him by the U.S. Government Department of Commerce through the USPTO under the ‘035 Patent. The reason this is the case is that today, thanks to the maturity of the Internet, a prospective innovator/product developer has easy and free rights to execute a comprehensive online U.S. Patent Search. Moreover, such a patent search is not even restricted exclusively to the U.S. Patent Office’s own free database; today, Google Patents also serves as *yet another* easy and comprehensive patent search tool which also is *FREE!* (At the time of the filing of this suit, a search of Google Patents using the terms “motion picture actor game” reveals that Plaintiff Glasser’s ‘035 Patent is the eighth (8<sup>th</sup>) result.) Certainly, an inexpensive consultation with a Registered Patent Attorney or Agent which would have resulted in the commissioning of a common “Freedom-to-Operate” report would certainly have disclosed Plaintiff

Glasser's '035 Patent. It staggers the bounds of credulity to imagine that one such as Defendant Barboza who possessed the requisite sophistication and intellect to accurately on his own prosecute an arguably complex U.S. Trademark Application—and to do so to grant!—was so mentally enfeebled as to not ascertain whether Defendants' CINELINX enterprise would infringe patent rights of others. He certainly invested the 10 minutes that it takes to perform a patent search as only an utter fool would apply for a U.S. Trademark with the United States PATENT and Trademark Office to secure for himself Trademark rights, while entirely ignoring the “other” and first-positioned rights which caption the august body to which he was petitioning for protection. To a reasonably prudent person, it certain can appear quite ironic for Defendants to seek-out the cloak of IP protection from the very same august body whose judgment on behalf of others Defendants appear not to respect to even the slightest degree...

49. The sole conclusion which is compelled is that Defendants were either aware of the existence of Plaintiff Glasser's '035 Patent—which they willfully disregarded—or they were “willfully blind” to the existence of Plaintiff Glasser's U.S. Patent rights conferred via the '035 Patent by having intentionally elected not to perform the most rudimentary patent search which could easily have been performed by the most novice online patent researcher—and *for free*. Therefore, Defendants had either: a) actual or b) constructive notice of Plaintiff Glasser's '035 Patent, thereby making their infringement readily characterizable as “willful.”

50. Defendants' willful infringement not only usurped market opportunities rightfully reserved and secured by Plaintiff Glasser through the granting of the '035 Patent and the Registered U.S. Copyright protection he secured, but further, also deprived Plaintiff Glasser of the recognition which his much-earlier innovation merits.

51. None of the Defendants ever solicited or obtained permission from Plaintiff Glasser reproduce, modify, distribute or display any of the Work that is under U.S. Copyright Registration

or to commercially exploit any product under the U.S. Patent Rights conferred upon Plaintiff Glasser by the USPTO under the '035 Patent.

**PRAYER FOR JUDGMENT AND RELIEF**

52. Plaintiff Glasser incorporates by this reference paragraphs (1-51) above as though fully set forth herein.

53. On information and belief, Defendants have directly infringed the '035 Patent by making, using, importing, offering for sale, and/or selling in the United States card game(s) covered by one or more claims of the '035 Patent.

54. On information and belief, Defendants' infringement of the '035 Patent has been and continues to be willful, and such infringement will continue unless Defendants are enjoined by this Court.

55. On information and belief, Defendants have directly infringed Plaintiff Glasser's U.S. Copyright by making, using, importing, offering for sale, and/or selling in the United States card game(s) and/or mobile apps covered by his Registered U.S. Copyright.

56. On information and belief, Defendants are developing an electronic mobile app which will permit an even greater, more widespread infringement of Plaintiff Glasser's intellectual property rights.

57. On information and belief, Defendants' infringement of Plaintiff Glasser's U.S. Copyright has been and continues to be willful, and such infringement will continue unless Defendants are enjoined by this Court.

58. As a consequence of Defendants' infringement complained of herein, Plaintiff Glasser has been damaged and will continue to sustain damages by such acts in an amount to be determined at trial, and will continue to suffer irreparable loss and injury.

59. W H E R E F O R E, Plaintiff Glasser respectfully requests judgment as follows:

**First Claim for Relief**

**INFRINGEMENT OF U.S. PATENT 6,017,035**

(A) Pursuant to 35 U.S.C. § 271, that judgment be entered for Plaintiff against Defendants and a determination be made that Defendants and those in privity with Defendants have directly infringed and/or contributorily infringed at least one or more of the claims of the '035 Patent, literally and/or under the doctrine of equivalents;

(B) Pursuant to 35 U.S.C. § 271, that judgment be entered for Plaintiff against Defendants and a determination be made that Defendants and those in privity with Defendants willfully acted with knowledge of the '035 Patent in suit.

(C) Pursuant to 35 U.S.C. § 283, that judgment be entered for Plaintiff against Defendants and an order issued that Defendants and those in privity with Defendants be enjoined from further acts of infringement with respect to the '035 Patent through the manufacture, use, import, offer for sale, and/or sale of infringing items;

(D) An order issued that Defendants assign to Plaintiff Glasser all right, title and interest in and to the "CINELINX" Registered U.S. Trademark;

(E) An order issued that Defendants turn over to Plaintiff Glasser and keep no copies of all customer lists generated by Defendants containing contact information relating to customers for the infringing CINELINX game;

(F) An order issued that Defendants assign to Plaintiff Glasser all right title and interest in the web domain address: [www.cinelinx.com](http://www.cinelinx.com) ;

(G) An order issued that Defendants turn over to Plaintiff Glasser and keep no copies of all marketing materials relating to the CINELINX game and U.S. Trademark;

(H) Pursuant to 35 U.S.C. § 284, that judgment be entered for Plaintiff against Defendants and that an award of damages to be paid by Defendants adequate to

compensate Plaintiff Glasser for the infringement of the '035 Patent, and any continuing or future infringement up until the date such judgment is entered, including prejudgment interest, costs, and disbursements as fixed by the Court, and, if necessary to adequately compensate Plaintiff for Defendants' infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;

(I) Pursuant to 35 U.S.C. § 284, an award of enhanced damages increasing damages up to three times the amount found or assessed for infringement by Defendants of the '035 Patent due to the willful and deliberate nature of the infringement;

(J) Pursuant to 35 U.S.C. § 285, a determination that this is an exceptional case and an assessment of reasonable attorneys' fees; and

(K) Such other and further relief as the Court deems equitable and just.

### **Second Claim for Relief**

#### **INFRINGEMENT OF THE U.S. COPYRIGHT ACT**

(L) That judgment be entered for Plaintiff against Defendants and a declaration be issued that Defendants have willfully infringed Plaintiff's copyrighted Work in violation of the U.S. Copyright Act;

(M) That judgment be entered for Plaintiff against Defendants and a permanent injunction be issued requiring 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 one of them, to cease directly and indirectly infringing, and causing, enabling, facilitating, encouraging, promoting, inducing, and/or participating in the infringement of any of Plaintiff's rights protected by the Copyright Act.

(N) An order that Defendants assign to Plaintiff Glasser all right, title and interest in and to the "CINELINX" Registered U.S. Trademark;

(O) An order that Defendants turn over to Plaintiff Glasser and keep no copies of all customer lists containing contact information relating to customers for the CINELINX game;

(P) An order that Defendants turn over to Plaintiff Glasser all unsold or undelivered copies that have been made or used in violation of Plaintiff Glasser's exclusive rights;

(Q) An order that Defendants turn over to Plaintiff Glasser all printing plates, molds, masters, film negatives, computer files, papers and other mediums from which infringing copies may be made;

(R) An order that Defendants turn over to Plaintiff Glasser and keep no copies of all marketing materials relating to the CINELINX game and Mark;

(S) Pursuant to 35 U.S.C. § 285, a determination that this is an exceptional case;

(T) An award of reasonable attorneys' fees pursuant to 17 U.S.C. § 505 and/or the inherent powers of the Court and/or under other applicable law;

(U) That judgment be entered for Plaintiff against Defendants and an award of damages be rendered pursuant to 17 U.S.C. § 504(b), including actual damages, and the profits of Defendants as will be proven at trial, which, on information and belief, are believed to exceed \$100 thousand dollars (\$100,000) including a finding that Defendants are practical partners of each other and jointly and severally liable;

(V) Such other and further relief as the Court deems equitable and just.

### **JURY DEMAND**

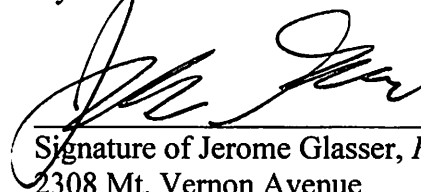
60. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Glasser hereby demands a trial by jury on all issues raised by the complaint which are properly triable to a jury.



Dated: June 12, 2017

Respectfully Submitted,

By: JEROME GLASSER

A handwritten signature in black ink, appearing to read 'Jerome Glasser', is written over a horizontal line.

Signature of Jerome Glasser, *Pro Se*

2308 Mt. Vernon Avenue

#240

Alexandria, VA 22301

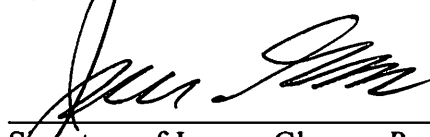
(703)475-2953

**CERTIFICATE OF SERVICE**

I certify that on the 12<sup>th</sup> day of June, 2017, I filed this AMENDED COMPLAINT with the Clerk of the Court for the Eastern District of Virginia and to Counsel of Record for the Defendants, Clyde Findley ~~at~~ *THROUGH THE ECF ELECTRONIC FILING SYSTEM.*

PROTORAE LAW  
1921 Gallows Road, Suite 950  
Tysons, VA 22182  
Attn: Clyde Findley

By: JEROME GLASSER

  
\_\_\_\_\_  
Signature of Jerome Glasser, *Pro Se*  
2308 Mt. Vernon Avenue  
#240  
Alexandria, VA 22301  
(703)475-2953

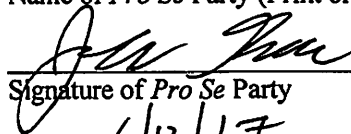
**CERTIFICATION**

I declare under penalty of perjury that:

- (1) No attorney has prepared, or assisted in the preparation of this document.

JEROME GLASSER

Name of *Pro Se* Party (Print or Type)



Signature of *Pro Se* Party

Executed on: 6/12/17 (Date)

OR

- (2)

\_\_\_\_\_  
(Name of Attorney)

\_\_\_\_\_  
(Address of Attorney)

\_\_\_\_\_  
(Telephone Number of Attorney)

Prepared, or assisted in the preparation of, this document.

\_\_\_\_\_  
(Name of *Pro Se* Party (Print or Type)

\_\_\_\_\_  
Signature of *Pro Se* Party

Executed on: \_\_\_\_\_ (Date)