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JUDGE SEIBEL

09 CV 4914

Attorneys for Plaintiff
Justin Barnes

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JUSTIN BARNES, :

Plaintiff, :

- against - :

ORANGE COUNTY CHOPPERS, INC., :

DISCOVERY COMMUNICATIONS, LLC, :

RC2 CORPORATION and ACTIVISION, INC., :

Defendants. :

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09 Civ. **RECEIVED**
MAY 26 2009
COMPLAINT AND CASHIERS
U.S.D. N.Y.

Plaintiff Justin Barnes, by his attorneys, Dorsey & Whitney LLP, for his
Complaint against defendants Orange County Choppers, Inc., Discovery Communications, LLC,
RC2 Corporation and Activision, Inc. (collectively, "Defendants") alleges as follows:

Parties, Jurisdiction and Venue

1. Plaintiff Justin Barnes ("Plaintiff") is an individual resident of Newburgh, New York.
2. Upon information and belief, defendant Orange County Choppers, Inc. ("OCC") is a corporation organized under the laws of the State of New York with a principal place of business located at 14 Crossroads Court, Newburgh, New York.

3. Upon information and belief, defendant Discovery Communications, LLC (“Discovery”) is a limited liability company organized under the laws of the State of Delaware with a principal place of business located at One Discovery Place, Silver Spring, Maryland.

4. Upon information and belief, defendant RC2 Corporation (“RC2”) is a corporation organized under the laws of the State of Delaware with a principal place of business located at 1111 W. 22nd Street, Suite 320, Oak Brook, Illinois.

5. Upon information and belief, defendant Activision, Inc. (“Activision”) is a corporation organized under the laws of the State of Delaware with a principal place of business located at 3100 Ocean Park Boulevard, Santa Monica, California.

6. This is a civil action arising out of Defendants’ infringement of Plaintiff’s copyrights in violation of § 501 of the U.S. Copyright Act, 17 U.S.C. § 501.

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338.

8. Upon information and belief, this Court has personal jurisdiction over OCC and Discovery under CPLR 301 and 302 by virtue of their residence and/or presence within the State of New York and their commission of tortious conduct as described herein in the State of New York. Upon information and belief, this Court has personal jurisdiction over RC2 and Activision under CPLR 302, *inter alia*, by virtue of their commission of tortious conduct as described herein in the State of New York. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

Plaintiff’s Relationship With OCC and Discovery

9. Plaintiff is a graphic designer who conceives of and paints original designs on motorcycles, cars, helmets, snowboards and many other types of products.

10. Discovery produces and airs a popular television show called “American Chopper” on the TLC cable channel that depicts the process through which OCC builds custom motorcycles (“*American Chopper*”).

11. Plaintiff has created a number of original designs for motorcycles whose construction has been depicted on *American Chopper*. Plaintiff has also created other original designs for motorcycles built by OCC whose construction was not depicted on *American Chopper*. Copies of the eighteen (18) original designs at issue in this action, both those depicted on *American Chopper* and those not depicted on *American Chopper* (the “Designs”), are attached hereto as Exhibit 1.

12. Plaintiff has registered the Designs with the U.S. Copyright Office under U.S. Copyright Registration No. VAu 975-386, dated February 5, 2009. A copy of Plaintiff’s copyright registration certificate is attached hereto as Exhibit 2.

Defendants’ Infringing Acts

13. Upon information and belief, Defendants have taken the copyrighted Designs created by Plaintiff alone and, without authorization or compensation, and in violation of Plaintiff’s copyright, copied such Designs and incorporated them into many types of merchandise tied into the business of OCC, *American Chopper*, or both. Such unauthorized merchandise has, upon information and belief, been advertised, marketed and sold by Defendants, directly or indirectly, worldwide, nationwide and within the State of New York.

14. Specifically, upon information and belief, defendant OCC has sold or purportedly authorized others to sell without authorization from Plaintiff merchandise incorporating Plaintiff’s copyrighted Designs, including but not limited to apparel, motorcycle die-casts, artwork, mouse pads, lunchboxes, key chains and other goods that are being or have

been sold directly to consumers by OCC, Discovery or third-parties. To the extent OCC has licensed or otherwise permitted others to use Plaintiff's copyrighted Designs without authorization from Plaintiff in connection with various types of merchandise, OCC derives a direct financial benefit from the sale of such merchandise and has the right and ability to supervise the infringing sales of such merchandise that have occurred worldwide, nationwide and in the State of New York.

15. In addition, upon information and belief, defendant Discovery has sold or purportedly authorized others to sell without authorization from Plaintiff merchandise incorporating Plaintiff's copyrighted Designs, including but not limited to apparel, motorcycle die-casts, artwork, video games and other goods that are being or have been sold directly to consumers by Discovery, OCC or third-parties. To the extent Discovery has licensed or otherwise permitted others to use Plaintiff's copyrighted Designs without authorization from Plaintiff in connection with various types of merchandise, Discovery derives a direct financial benefit from the sale of such merchandise and has the right and ability to supervise the infringing sales of such merchandise that have occurred worldwide, nationwide and in the State of New York.

16. Upon information and belief, Discovery has also prominently featured certain of Plaintiff's copyrighted Designs, again without authorization from Plaintiff, on the front covers of DVDs it has sold and authorized others to sell containing the first three seasons of "*American Chopper*." Depictions of the front covers of these DVDs are attached hereto collectively as Exhibit 3.

17. Upon information and belief, among the entities to which Discovery and/or OCC have purportedly licensed Plaintiff's copyrighted Designs without authorization

from or compensation to Plaintiff are RC2 and Activision. Upon information and belief, defendant RC2 has sold without authorization die casts of motorcycles bearing certain of Plaintiff's copyrighted Designs worldwide, nationwide and in the State of New York. Upon information and belief, defendant Activision has sold without authorization video games incorporating certain of Plaintiff's copyrighted Designs worldwide, nationwide and in the State of New York.

18. Upon information and belief, other entities not named as defendants herein have been purportedly licensed by OCC or Discovery, without authorization from or compensation to Plaintiff, to use Plaintiff's copyrighted Designs with various types of merchandise. Such entities shall be added as defendants herein when their identities are determined and confirmation that they are subject to personal jurisdiction in the State of New York can be obtained.

19. Upon information and belief, all Defendants have earned substantial profits from their marketing, advertising, promotion, distribution and sale of the merchandise upon which Plaintiff's Designs have been incorporated without authorization. None of these profits have been shared with Plaintiff.

20. Upon information and belief, in connection with their marketing, advertising, promotion, distribution and sale of the merchandise upon which Plaintiff's copyrighted Designs appear without authorization, OCC and Discovery have also falsely claimed that they are authorized to license the Designs to other entities, in addition to defendants RC2 and Activision, and have entered into agreements with such entities for the sale of such merchandise depicting Plaintiff's Designs. Plaintiff has not received any share of any revenue

earned by Defendants or their additional licensees from the sale of merchandise incorporating Plaintiff's copyrighted Designs.

COUNT I

**Copyright Infringement in
Violation of 17 U.S.C. § 501**

21. Plaintiff repeats and realleges each and every allegation of paragraphs 1 through 20 as if fully set forth herein.

22. The foregoing conduct of Defendants is without authority from Plaintiff and constitutes infringement of Plaintiff's registered copyright in violation of 17 U.S.C. § 501.

23. As a result of the aforesaid conduct by Defendants, Plaintiff has suffered, and is continuing to suffer, irreparable injury, and has incurred and is continuing to incur, damage in an amount to be determined.

24. The activities of Defendants complained of herein are likely to continue unabated unless and until Defendants are enjoined and restrained by this Court.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

(a) Permanently and mandatorily restraining and enjoining Defendants, their employees, servants, agents, representatives, licensees, attorneys, related companies, successors and assigns, and all persons or entities in concert or in participation with them or any of them from directly or indirectly violating the exclusive rights of Plaintiff under 17 U.S.C. § 101 et seq., and the copyright in and to the Designs shown in Exhibit 1 hereto, and from infringing said copyright in any other manner or contributing to or participating in such infringement by others;

(b) Requiring Defendants to pay to Plaintiff all of Plaintiff's actual damages suffered as a consequence of Defendants' infringement, and any of Defendants' profits that are attributable to the infringement and are not taken into account in computing Plaintiff's actual

damages, under 17 U.S.C. § 504, together with pre-judgment interest accruing from the date of the infringement and post-judgment interest accruing from the date of judgment;

(c) Awarding Plaintiff his costs and disbursements in this action; and

(d) Awarding Plaintiff such other and further relief as this Court may deem

just and proper under the circumstances.

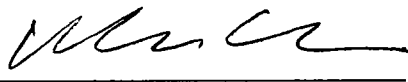
JURY DEMAND

Please take notice that Plaintiff demands that this action be tried by a

jury.

Dated: New York, New York
May 26, 2009

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