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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 WIZARDS OF THE COAST LLC)

10 Plaintiff,)

11 v.)

12 JONATHAN DEWAYNE CLIFTON;
13 JENNIFER ROSE CLIFTON; JASON
BAILEY; ADAM SCHLAGETER,

14 Defendants.)

No.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

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

16 **I. NATURE OF THE CASE**

17 1. This action results from the Defendants' fabrication of hundreds of people,
18 places, and events, all in an effort to obtain under false pretenses valuable Magic: The
19 Gathering®-branded premium and promotional cards they then sold through eBay.

20 2. Wizards is a worldwide leader in the trading card game and role-playing game
21 categories, and a leading developer and publisher of game-based entertainment products.
22 Wizards sells popular and unique trading card games called Magic: The Gathering®
23 ("Magic"), and supports and sponsors independently organized tournaments attracting players
24 from around the world. Wizards supports and promotes tournaments by providing organizers
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119153.0014/1831021.1

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1 with special and unique playing cards, "Premium and Promotional Cards," free of charge to
2 be used exclusively for promotions and prizes at tournaments.

3 3. The Defendants' fabricated players, tournament organizers, venues and events
4 in order to fraudulently acquire Premium and Promotional Cards from Wizards, free of
5 charge. The Defendants subsequently sold the Premium and Promotional Cards on eBay and
6 elsewhere. Their actions have undermined the integrity and brand proposition of the Magic
7 trading card game and its tournament system. Wizards brings this suit to address its losses
8 and prevent further damage caused by Defendants' willful fraudulent activities.

9 II. JURISDICTION AND VENUE

10 4. This Court has subject matter jurisdiction over this action pursuant to 28
11 U.S.C. § 1332 (diversity jurisdiction).

12 5. Defendant has committed tortious acts aimed at causing harm to Wizards in the
13 state of Washington.

14 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because
15 Defendants are subject to personal jurisdiction here; a substantial part of the events giving rise
16 to the claim occurred here; and a substantial part of the property that is the subject of the
17 action is situated here.

18 III. THE PARTIES

19 7. Wizards is a Delaware limited liability company, maintaining its principal
20 place of business at 1600 Lind Ave. S.W., Renton, Washington 98057.

21 8. Defendant Jonathan Dewayne Clifton is an individual residing in Fort Payne,
22 Alabama.

23 9. Defendant Jennifer Rose Clifton is an individual residing in Fort Payne,
24 Alabama.

25 10. Defendant Jason Bailey is an individual residing in Rainsville, Alabama.

26 11. Defendant Adam Schlageter is an individual residing in Fort Payne, Alabama.

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IV. FACTUAL ALLEGATIONS

12. 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 Magic trading card games and their method of play. Today, an estimated 5 million players worldwide enjoy the challenge, strategy and dynamic play of Magic.

13. Trading card games typically are played by two or more players, each of whom has his or her own unique library of cards from which the player assembles a deck of 60 cards to play the game. In addition to original illustrations, cards contain written instructions directing how they can be played. Cards have different values and other characteristics that impact their potency or usefulness in game play. Cards vary in frequency or rarity; some are designated “rare,” others “common” or “uncommon.” Players can purchase starter game sets, theme decks and booster packs to add to their libraries of cards from which they construct decks. Over 10,000 unique Magic cards have been created by Wizards, of which over five billion copies have been printed and sold.

14. The popularity and sophistication of Magic is such that tournaments of all sizes regularly occur, including tournaments with hundreds of players from various countries. In 1994, Wizards instituted the DCI, the official sanctioning body for enforcing consistent rules and promoting fairness in competitive Magic tournament play. The DCI publishes tournament rules and operating procedures and sanctions tournaments. Since its inception, the DCI has sanctioned more than 2.2 million tournaments worldwide. In 2009, more than 330,000 DCI members played in over 212,000 DCI-sanctioned tournaments worldwide.

15. DCI-sanctioned tournaments are primarily operated by independent tournament organizers. Like players, to operate a sanctioned tournament, tournament organizers register with the DCI.

1 16. Tournament organizers include retailers, hobbyists, librarians, and many
2 others. Organizers must be at least eighteen years old and register an event at a valid public
3 venue. Tournament organizers sign up through a Wizards-operated web site, located at
4 <https://www.wizards.com/Company/WPN/Join.aspx>.

5 How Tournaments Work

6 17. To participate in a DCI sanctioned event, a prospective player need only show
7 up at a sanctioned event. These events are typically advertised by the tournament organizer,
8 and may also be found online through Wizards' Event Locator search tool, located at
9 <http://www.wizards.com/StoreAndEventLocator/Default.aspx>.

10 18. DCI-sanctioned Magic tournaments are frequently held at hobby shops.
11 Players either bring their own decks of Magic cards, or they build a new deck from previously
12 unopened booster packs at the event.

13 19. Typical tournament play involves multiple rounds of 3 games each. Most
14 tournaments are 3-5 rounds in length, meaning the player plays 3-5 different opponents
15 throughout the tournament. At the end of the tournament prizes such as booster packs of
16 Magic cards, premium Magic cards, or store credits, may be awarded at the discretion of the
17 tournament organizer.

18 How Tournaments are Organized and Reported

19 20. Tournament organizers can register events for sanctioning through web tools
20 located through Wizards' website, at <https://www.membership.wizards.com/login.aspx>, or
21 through a software application called Wizards Event Reporter (collectively, "WER").

22 21. Tournaments are either single elimination or Swiss rounds. The number of
23 rounds depends on the number of players. Tournament organizers can enter DCI numbers in
24 WER, and WER will determine player pairings for each round. Once a tournament has
25 concluded, the results can be sent to Wizards through WER. Results are reported using a DCI
26

1 number, and the player's first and last name. Tournament reports record each player's wins,
2 losses, ties and byes, and a finishing order (first place, second place, third place, etc.).

3 22. Players are rated and ranked based on tournament results as uploaded in WER.
4 Ratings gains or losses are calculated based on a player's current rating, his or her opponent's
5 current rating, and the outcome of each round. Wizards' rating system is similar to the system
6 that the US Chess federation uses to rate its players.

7 Benefits of Participation

8 23. Among the many benefits of participating in a DCI-sanctioned event, players
9 can participate in a loyalty program called "Magic Player Rewards"—participants are
10 rewarded with promotional and premium cards ("Reward Cards") for participating in
11 sanctioned events.

12 24. Players enrolling in Magic Player Rewards must provide to Wizards a valid
13 home address, date of birth, email address, and depending on their age, parental consent.

14 25. Players enrolled in Magic Player Rewards receive one point for each
15 sanctioned tournament in which they participate. Players are mailed two promotional cards for
16 every five points they earn and one premium foil reward card for every twenty points they
17 earn.

18 26. Tournament organizers also receive benefits for their participation. All
19 tournament organizers can order the "Gateway Support kit" for free. This kit includes 80
20 promotional Magic cards, to be used as prize support for events run by the tournament
21 organizer. A new Gateway Support kit is available after each new Magic set is released, and a
22 tournament organizer need only register a new sanctioned event through WER in order to be
23 sent this kit.

24 27. Core-level organizers who timely register Friday Night Magic ("FNM")
25 tournaments for sanctioning are sent an FNM kit. These contain, among other things, four
26 premium foil cards for each FNM event, as prize support at the events.

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28. Core-level organizers who timely register for Magic Prerelease receive prize and participation support for Magic Prerelease events, which are specially sanctioned events that enable players to play with new Magic cards before they are officially on sale. For every 18 players anticipated at a prerelease event, the tournament organizer receives 18 premium foil cards to be given away at the Magic Prerelease event.

29. Advanced-level organizers may also sign up to run promotional events called Magic Game Days. Wizards supports these events with Magic Game Day kits, which include dozens of promotional, premium and exclusive cards.

30. All of the game cards provided to tournament organizers for promotional and prize support must be used to promote and support the Magic tournaments. Wizards provides them on condition that they will exclusively be used for tournament promotions and prizes and not for resale.

Reward Cards

31. Reward Cards sent to players through Magic Player Rewards, and cards sent to tournament organizers for use as prize and promotional support, are different from regular Magic cards offered for sale. They are usually exclusive (i.e., not available for purchase in regular Magic products), and often have a premium treatment, such as having only art and no text, or having a foil treatment, or being embossed.

32. These cards are valuable as collectibles. Because they can only be obtained through participation in tournaments, they often command a higher secondary market value. For example, a search on March 16, 2010 on eBay revealed Reward Cards selling between \$4 and \$45 apiece.

The Defendants' Unlawful Actions

33. In December of 2000, Defendant Jonathan Clifton registered with Wizards to be a tournament organizer for DCI-sanctioned Magic tournaments. Between April 2001 and October 2009, Clifton reported 676 sanctioned events as a tournament organizer.

1 34. In October 2009, a large number of promotional cards made available to
2 tournament organizers were offered for sale from seller "CPTDZNUTZ" through eBay.
3 Wizards had made these cards available to tournament organizers for use as tournament
4 prizes, not for resale by the organizers.

5 35. On or about October 22, 2009, a Wizards employee purchased four Vampire
6 Nighthawk promotional cards from seller CPTDZNUTZ, for \$24.65 (\$2.65 shipping
7 included). These promotional cards were sent to the Wizards employee's home on or about
8 November 3, 2009. These cards were delivered in an envelope bearing the sender's name
9 "Jonathan Clifton," and a return address in Alabama.

10 36. After a full investigation, Wizards concluded that Clifton created and reported
11 false players and organizers, and false tournaments in order to obtain promotional cards and
12 Reward Cards which he then sold on eBay for approximately \$3 to \$10 each. Wizards
13 suspended Clifton from participation in the DCI, as a tournament organizer or as a player, for
14 five (5) years, on the grounds that he had engaged in tournament fraud.

15 37. In February 2010, a large number of Reward Cards and promotional
16 tournament support cards were again made available for purchase through eBay, from a seller
17 named "abur4th" located in a fictitious city in the United States. Believing that eBay seller
18 abur4th's actions were similar to the past pattern of sales believed to have been made by
19 Defendant through the CPTDZNUTZ eBay account, Wizards reviewed its internal records of
20 Magic Player Rewards and tournament organizer card shipments during the previous two
21 months. Wizards discovered that 238 unique names and DCI numbers ("Dubious Members")
22 were listed as having one of 27 different addresses located in Crestview, Fyffe, Fort Payne,
23 Sylvania, Henagar and Rainsville Alabama (collectively, the "Alabama Addresses"). Fyffe,
24 Fort Payne, Sylvania, Henagar and Rainsville Alabama are all within 15 miles of each other.
25 Wizards discovered that 212 of these Dubious Members received Reward Cards at 12 of the
26 Alabama Addresses.

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1 38. Upon information and belief, one of the Alabama Addresses is a residence
2 owned by Dewayne and Margaret Clifton, the parents of Defendant Jonathan Clifton. Upon
3 information and belief, another of the Alabama Addresses is the residence of Defendants
4 Jonathan and Jennifer Rose Clifton. Upon information and belief, a third address is the
5 residence of an individual named Dustin Brown; three are PO Boxes, and the remainder are at
6 this time unknown to Wizards.

7 39. Upon information and belief, of these Dubious Members, 206 are believed to
8 be purported tournament players ("Dubious Players"), and 9 are believed to be purported
9 tournament organizers ("Dubious TOs"). The Dubious Players and Dubious TOs are
10 connected to at least 1345 reported events ("Dubious Tournaments"). All of these Dubious
11 TOs signed up between June and October of 2009. All of these Dubious Players and Dubious
12 TOs can be tied back to the Alabama Addresses.

13 40. Between June 2009 and March 2010 at least 758 events were reported by the
14 Dubious TOs. Between June 2009 and March 2010 Wizards sent at least 2820 promotional
15 and premium tournament support cards to the Dubious TOs. Between June 2009 and March
16 2010, at least 206 Dubious Players were reported to have played in at least 758 tournaments.
17 As a result, between June 2009 and March 2010 the Dubious Players earned and were sent, to
18 one of the Alabama Addresses, at least 6553 Reward Cards.

19 41. Defendants Jennifer Clifton and Jason Bailey personally participated in these
20 deceptive activities. Jennifer Clifton is, upon information and belief, Jonathan Clifton's wife.
21 Jennifer Clifton owns or maintains the email addresses dragonangelevents@yahoo.com,
22 which was used in connection with the registration of Dubious tournaments by Dubious TOs.
23 Jennifer Clifton owns or maintains the email address jennrbryant@farmerstel.com, which was
24 used in connection with the registration of at least five Dubious Tournaments by Dubious
25 TOs. The Defendants used the name of Jennifer Clifton's son, Elijah Clifton, a child less than
26 ten years old, to receive Magic Player Rewards.

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1 42. Jason Bailey is, upon information and belief, a friend of the Cliftons. Bailey
2 owns or maintains the email addresses bcwarlock79@gmail.com and gamingetc@live.com.
3 Mr. Bailey used the email address bcwarlock79@gmail.com to register Dubious Tournaments
4 at a non-existent venue called Gaming, Etc. At least 20 Dubious Players, each registered
5 listing the same address of PO Box 2354, Rainsville, AL 35986-2354, received Magic Player
6 Rewards for participation in Dubious Tournaments.

7 43. Adam Schlageter is, upon information and belief, a friend of the Cliftons.
8 Schlageter owns or maintains the email addresses schlageter@live.com,
9 dracoincstore@yahoo.com and jerryberryds@yahoo.com. Ms. Schlageter used the email
10 address schlageter@live.com to register Dubious Tournaments at a non-existent venue called
11 Draco, Inc. At least 7 Dubious Players, each registered listing the same address of 583
12 County Road 607, Fort Payne, Alabama, 35968. At least 16 Dubious Players, each registered
13 listing the same address PO Box 165, Henegar, Alabama, 35978 received Magic Player
14 Rewards for participation in Dubious Tournaments.

15 44. In order to determine whether any of the Dubious Players were legitimate, on
16 or about March 15, 2010, Wizards sent 167 of the Dubious Players an e-mail requesting they
17 call Wizards' Customer Service telephone line to confirm. As of April 2, 2010, Wizards had
18 received no calls, e-mails, or any response from any of the Dubious Players.

19 45. In order to determine whether any of the tournaments reported by Dubious
20 TOs were legitimate, Wizards evaluated the venues listed as having hosted the events and
21 determined that all of the locations in question either did not exist or were not involved in the
22 hobby gaming industry nor had any knowledge of Magic. Wizards thus determined that all
23 758 of the Dubious Tournaments reported did not actually occur.

24 46. On or about March 9, 2010, Wizards removed the venues listed as the locations
25 of Dubious Tournaments from its Event Locator. Within four days after taking this action, the
26 eBay listings of promotional cards from seller abur4th were removed from eBay.

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1 **V. CLAIMS FOR RELIEF**

2 **Count I. Injunctive Relief**

3 47. Wizards re-alleges the above allegations as though fully set forth herein.

4 48. Defendants' actions have and will continue to cause substantial and irreparable
5 harm to Wizards. Defendants' fabrication of players, tournament organizers, and events, and
6 subsequent deceptive acquisition of promotional cards undermines the integrity and brand
7 proposition of Magic and its tournament system.

8 49. Wizards is entitled to an injunction ordering Defendants to cease and desist all
9 contact with Wizards and all activities related in any way to Wizards or its products.

10 **Count II: Fraud**

11 50. Wizards re-alleges the above allegations as though fully set forth herein.

12 51. Defendants falsely represented material facts to Wizards or failed to disclose
13 material facts, which were all existing material facts, in an effort to induce Wizards to send
14 them Promotional and Premium cards that Wizards intended only to be used as support and to
15 promote actual and legitimate Magic game card tournaments. Meanwhile, Defendants knew
16 that Wizards provided the Promotional and Premium Cards exclusively as prize support and
17 to promote Magic game card tournaments, and provided the Promotional and Premium Cards
18 on that sole condition. Defendants therefore knew that their representations or omissions
19 were false or misleading, and concealed the falsehood of the statements from Wizards with
20 the intent to defraud Wizards or to induce its reliance.

21 52. As a proximate result, Wizards was damaged in amounts to be proven at trial
22 exceeding \$75,000, including damages to Magic's trademarks and goodwill.

23 **Count III: Conversion**

24 53. Wizards re-alleges the above allegations as though fully set forth herein.
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64. Because Defendants' actions involved the tortious and unlawful actions discussed above, their actions were unlawful in their purpose and execution.

65. Accordingly, Wizards is entitled to a judgment against Defendants, jointly and severally, for direct and consequential damages, and for injunctive relief, attorneys' fees and costs.

PRAYER FOR RELIEF

Wizards prays for the following relief:

1. Direct and consequential damages in an amount to be proven at trial;
2. Appropriate injunctive relief in Wizards' favor against each Defendant;
3. That Wizards be awarded its attorneys' fees and the costs; and
4. Such other and further relief as the Court determines is just and proper.

DEMAND FOR A JURY TRIAL

Wizards hereby demands a trial by jury on any and all issues so triable.

DATED: April 2, 2010

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By

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