UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

KONAMI CORPORATION, **a Japanese corporation,** **Plaintiff and Counter-defendant,** **v.** **ROXOR GAMES, INC.,** **a Texas corporation,** **and** **MAD CATZ, INC.** **a California corporation,** **and** **REDOCTANE,** **a California corporation,** **Defendants and Counterclaimants.**	)	**No. 2:05-CV-00173** **JUDGE DAVIS** **JURY**

PLAINTIFF'S SECOND AMENDED COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiff KONAMI CORPORATION files this Second Amended Complaint and complains of Defendants ROXOR GAMES, INC., MAD CATZ, INC. and REDOCTANE as follows:

Parties

1. Plaintiff KONAMI CORPORATION ("Plaintiff") is a Japanese corporation with its principal place of business located at 2-4-1, Marunouchi, Chiyoda-ku, Tokyo 100-6330, Japan.

2. On information and belief, Defendant ROXOR GAMES, INC. ("Roxor") is a Texas corporation with its principal place of business located at 3601 N. Hills Drive, Austin, TX 78731.

3. On information and belief, Defendant MAD CATZ, INC. ("Mad Catz") is a California corporation with its principal place of business located at 7480 Mission Valley Road, Suite 101, San Diego, CA 92108.

4. On information and belief, Defendant REDOCTANE ("RedOctane") is a California corporation with its principal place of business located at 955 Benecia Avenue, Sunnyvale CA 94085.

Jurisdiction and Venue

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338, because this action arises in part under Title 15 and Title 35, United States Code.

6. This Court has supplemental jurisdiction over Plaintiff's state law and common law claims pursuant to 28 U.S.C. § 1367.

7. This Court also has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a) because this civil action is between citizens of different states and the amount in controversy exceeds $75,000.00, exclusive of interest and costs.

8. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's claims occurred in this District.

Factual Background

9. Plaintiff is a worldwide developer and seller of arcade games and computer and video games. Since its inception over 30 years ago, the company has become an international leader in the arcade and video game industry.

10. In 1998, Plaintiff introduced the Dance Dance Revolution ("DDR Game") video arcade game. The landmark DDR Game swept the arcade and video game industry off its feet. Since Plaintiff created the DDR Game, it has been featured in numerous newspaper and magazine reviews, including publications with nationwide circulation for its ground-breaking DDR Game. Many fan websites are devoted to DDR Game, including the popular "DDR Freak" site at www.ddrfreak.com, which maintains user chat boards, machine locations, press clippings, and other information about the DDR Game. The DDR Game has been covered in diverse and international, national, and regional publications, including the BBC News (http://news.bbc.co.uk/1/hi/technology/3437819.stm), the New York Times, CNN (http://archives.cnn.com/2001/TECH/fun.games/03/26/dance.revolution.idg/index.html), the USA Today, and many other publications. It has been featured in television and radio news stories as well. In short, it has been a phenomenon in the game community. Plaintiff also has widely distributed its home-version DDR Game throughout the United States to millions of home users.

11. Plaintiff recently learned that Defendant Roxor is selling and distributing its In The Groove video arcade game ("ITG Game" or "ITG Games"), through the refitting of the DDR Game. Specifically, Roxor is manufacturing and selling kits that refit the DDR Game. According to instructions provided with Roxor's ITG Game kits, the purchaser is instructed to remove the original main circuit board from the DDR Game and replace it with Roxor's ITG Game circuit board.

12. Plaintiff is also aware that Defendant Roxor has entered into an agreement with Defendant RedOctane for RedOctane to sell and distribute a home version of the ITG Game for use and play on PlayStation 2® ("ITG for PS2 Game").

13. Plaintiff is also aware that Defendant RedOctane has recently begun selling and distributing the ITG for PS2 Game in accordance with its agreement with Defendant Roxor. Plaintiff also is aware that RedOctane has been publicly demonstrating the ITG for PS2 Game at various retail locations.

14. Plaintiff is further aware that that Defendant Mad Catz is selling and distributing home video game software under the brand name MC GROOVZ danceCRAZE ("Dance Craze") for use and play on GameCube®. Mad Catz's Dance Craze video is an interactive video game similar to Plaintiff's DDR game in design, function, and user interface.

COUNT I

Patent Infringement by Roxor

15. Plaintiff incorporates by reference the statements and allegations set forth in paragraphs 1 through 14, inclusive, with the same force and effect as though fully rewritten herein.

16. Plaintiff, also known by the name Konami Co., Ltd., is the sole owner of U.S. Patent No. 6,410,835 titled "DANCE GAME APPARATUS AND STEP-ON BASE FOR DANCE GAME," duly and legally issued on June 25, 2002 ("the '835 Patent").

17. A true and correct copy of the '835 Patent is attached hereto as Plaintiff's Exhibit A.

18. Plaintiff has not licensed any of its rights in the '835 Patent to Roxor.

19. On information and belief, Roxor's ITG Game literally infringes and/or infringes under the doctrine of equivalents, either directly or indirectly, the claims of the '835 Patent.

20. On information and belief, Roxor's ITG for PS2 Game literally infringes and/or infringes under the doctrine of equivalents, either directly or indirectly, the claims of the '835 Patent.

21. Roxor has been, and still is, infringing the '835 Patent literally and/or under the doctrine of equivalents by manufacturing, importing, using, offering for sale and/or selling apparatuses embodying the patented inventions as claimed in the '835 Patent and/or has contributorily infringed or induced infringement of the '835 Patent.

22. The infringing acts of Roxor have been the actual and proximate cause of damage to Plaintiff. Plaintiff has sustained damages and will continue to sustain damages as a result of Roxor's infringement of the '835 Patent.

23. Plaintiff has no adequate remedy at law.

24. Roxor will continue to infringe the '835 Patent unless the Court enjoins its infringing acts.

COUNT II

Trademark Infringement in Violation of Lanham Act

25. Plaintiff incorporates by reference the statements and allegations set forth in paragraphs 1 through 24, inclusive, with the same force and effect as though fully rewritten herein.

26. Plaintiff has acquired extensive rights, including a nationwide reputation for quality of goods and other goodwill, in the trademarks "KONAMI" (the "Konami Marks") and "DANCE DANCE REVOLUTION" (the "DDR Mark") and variations thereof (collectively, the "Plaintiff's Marks"), as described and defined in paragraphs 27 through 45.

27. Plaintiff is the owner of United States Trademark Registration No. 1,583,616 (KONAMI) for *inter alia*, computer and video game programs, video output game machines and instructional materials therefore in International Class 28.

28. Plaintiff is the owner of United States Trademark Registration No. 1,244,685 (KONAMI) for coin operated video output game machines in International Class 28.

29. Plaintiff is the owner of United States Trademark Registration No. 1,583,616 (KONAMI) for computer game programs recorded on storage disk and disk cartridge for use in personal computers; computer and video game programs, video output game machines and instructional materials therefor in International Class 28.

30. Plaintiff is the owner of United States Trademark Registration No. 2,598,496 (KONAMI ARCADE CLASSICS) for computer game programs, video game cartridges, video game CD-ROMS and video output game machines, all for use with television sets, and instructional materials sold therewith in International Class 9.

31. Plaintiff is the owner of United States Trademark Registration No. 2,532,982 (KONAMI & Design) for computer game programs and video game machines, video game cartridges, video game CD roms and video output game machines, all for use with television sets, and instructional materials sold therewith in International Class 9.

32. Plaintiff is the owner of United States Trademark Registration No. 2,610,395 (KONAMI & Design) for stand alone video game machines, stand alone video output game machines, hand held unit for playing video games, and instructional materials sold therewith in International Class 28.

33. Plaintiff is the owner of United States Trademark Registration No. 2,584,516 (KONAMI) for gaming equipment, namely, gaming machines and computer game software used therewith in International Class 9.

34. Plaintiff is the owner of United States Trademark Registration No. 2,697,349 (KONAMI & Design) for computer products, namely, computer game programs; video game cartridges; video game CD-ROMs; video game machines for use with televisions; computer game CD-ROMs; video game programs; video game programs for use with television sets; video game joysticks in International Class 9 and for *inter alia*, stand-alone video game machines; and hand-held units for playing electronic games.

35. Plaintiff is the owner of United States Trademark Registration No. 2,707,534 (KONAMI GAMING) for gaming equipment, namely, gaming machines and computer game software used therewith in International Class 9.

36. Plaintiff is the owner of United States Trademark Registration No. 2,854,446 (KONAMI COLLECTOR'S SERIES) for video game software; video game programs; video game CD-ROMS; video game Digital Versatile Disc-ROMS; computer game programs; computer game CD-ROMS; computer game Digital Versatile Disc-ROMS; electronic game programs; electronic game CD-ROMS; electronic game Digital Versatile Disc-ROMS; cartridges and cassettes for use with hand-held video game machine; circuit boards containing game programs for use with hand-held video game machine; video output game machines; downloadable electronic game software, downloadable computer game software and downloadable video game software in International Class 9.

37. Plaintiff is the owner of United States Trademark Registration No. 2,339,276 (DANCE DANCE REVOLUTION) for stand alone video game machines, stand alone video

output game machines, hand held unit for playing video games, and instructions materials sold therewith in International Class 28.

38. Plaintiff is the owner of United States Trademark Registration No. 2,582,622 (DANCE DANCE REVOLUTION) for computer game programs, video game cartridges, video game CD-ROMS and video output game machines, all for use with television sets, and instructional materials sold therewith in International Class 9.

39. Plaintiff is the owner of United States Trademark Registration No. 2,503,887 (DANCE DANCE REVOLUTION USA) for stand alone video game machines, stand alone video output game machines, hand held unit for playing video games, and instructional materials sold therewith International Class 28.

40. Plaintiff is the owner of United States Trademark Registration No. 2,581,271 (DANCE DANCE REVOLUTION USA) for computer game programs, video game cartridges, video game CD-ROMS and video output game machines, all for use with television sets, and instructional materials sold therewith International Class 9.

41. Plaintiff is the owner of United States Trademark Registration No. 2,848,207 (DANCE DANCE REVOLUTION KONAMIX) for computer products, namely, computer game programs; computer game CD-ROMS; computer game Digital Versatile Disc-ROMS; video game cartridges, cassettes and programs for hand-held units for playing electronic games; video game CD-ROMS; video game Digital Versatile Disc-ROMS; video game machines for use with televisions; video game programs; video game programs for use with television sets; video game joysticks; downloadable electronic games, downloadable computer games and downloadable video games in International Class 9.

42. Plaintiff is the owner of United States Trademark Registration No. 2,849,077 (DANCE DANCE REVOLUTION) for downloadable electronic game software, downloadable computer game software, downloadable video game software in International Class 9.

43. Plaintiff is the owner of United States Trademark Registration No. 2,860,868 (DDRMAX DANCE DANCE REVOLUTION & Design) for video game software; video game programs; video game CD-ROMS; video game Digital Versatile Disc-ROMS; computer game programs; computer game CD-ROMS; computer game Digital Versatile Disc-ROMS; electronic game programs; electronic game CD-ROMS; electronic game Digital Versatile Disc-ROMS; cartridges and cassettes for use with hand-held video game machine; circuit boards containing game programs for use with hand-held video game machine; video output game machines for use with televisions; downloadable electronic game software, downloadable computer game software and downloadable video game software in International Class 9.

44. Plaintiff is the owner of United States Trademark Registration No. 2,914,919 (DANCE DANCE REVOLUTION ULTRAMIX) for *inter alia*, video game software; video game programs; video game CD-ROMS; video game Digital Versatile Disc-ROMS; computer game programs; computer game CD-ROMS; computer game Digital Versatile Disc-ROMS; electronic game programs; electronic game CD-ROMS; electronic game Digital Versatile Disc-ROMS; cartridges and cassettes for use with hand-held video game machine; circuit boards containing game programs for use with hand-held video game machine; video output game machines for use with televisions; downloadable electronic game software, downloadable computer game software and downloadable video game software in International Class 9.

45. Plaintiff is the owner of United States Trademark Registration No. 2,934,178 (DANCE DANCE REVOLUTION EXTREME & Design) for video game software; video game

programs; video game Digital Versatile Disc-ROMS; computer game programs; computer game Digital Versatile Disc-ROMS; electronic game programs in International Class 9.

46. Plaintiff has used the Konami Marks to identify its goods in the United States since as early as July 1980.

47. Plaintiff has used the DDR Mark to identify its goods in the United States since as early as November 1998.

48. Roxor provides materials bearing its own name and/or trademarks to purchasers of the ITG Game to be placed over the Plaintiff's Marks and other identifying material on the DDR Game. On information and belief, purchasers fail to cover Plaintiff's Marks and/or other identifying material in all instances. The ITG Game, as refitted by purchasers, therefore displays both Plaintiff's Marks and Roxor's name and/or trademarks, and in at least some observed instances these marks are displayed directly next to each other on a refitted DDR Game.

49. Roxor targets consumers identical to those targeted by Plaintiff, specifically, the groups of consumers targeted by both would be pre-teens, teens, and young adults. Roxor conducts business in identical trade channels as Plaintiff. In addition, Roxor utilizes the same marketing channels as Plaintiff, specifically for the coin-op video arcade game market as well as the home video game market.

50. Roxor's use of its name and/or trademarks on or in association with the ITG Game also bearing Plaintiff's Marks is likely to confuse consumers. Roxor's use constitutes trademark infringement, and such use will lead to the erroneous belief that Roxor's goods originate with, are associated with, or are sponsored by Plaintiff. This erroneous belief misappropriates and unfairly trades upon Plaintiff's valuable goodwill and reputation in Plaintiff's Marks, subjecting

Plaintiff to the perils and hazards of being erroneously associated with Roxor's business activities, over which Plaintiff has no control.

51. Roxor's conduct constitutes trademark infringement in violation of section 32 of the Lanham Act, 15 U.S.C. § 1114, and section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Such conduct entitles Plaintiff to injunctive relief, profits, damages, costs, and reasonable attorneys' fees.

52. Roxor provides the ITG Game that is similar to Plaintiff's products. The ITG Game displays Roxor's name and/or trademarks in proximity to Plaintiff's Marks. Roxor's continued infringement of Plaintiff's Marks has caused and, unless enjoined, will continue to cause immediate and irreparable injury that cannot be adequately compensated by legal remedies. Plaintiff is entitled to and prays for injunctive relief to enjoin Roxor from continuing to use Plaintiff's Marks or confusingly similar or colorably imitative marks in unlawful manners. Roxor's unlawful conduct will continue to Plaintiff's detriment unless enjoined.

53. As a result of Roxor's intentional and knowing violations, Plaintiff has suffered, and will continue to suffer, damages in excess of the minimum jurisdictional limits of this Court, and Plaintiff seeks judgment for same, and for treble Plaintiff's damages for Roxor's willful violation of Plaintiff's rights under the Lanham Act.

COUNT III

False Designation of Origin, False Description, False Advertising and Unfair Competition In Violation of the Lanham Act

54. Plaintiff incorporates by reference the statements and allegations set forth in paragraphs 1 through 53, inclusive, with the same force and effect as though fully rewritten herein.

55. Roxor's use of its name and/or trademarks on or in association with the ITG Game also bearing Plaintiff's Marks is likely to confuse consumers. Roxor's use will lead to the erroneous belief that the ITG Game originates from, is associated with, or is sponsored by Plaintiff, thus enabling Roxor to misappropriate and unfairly trade upon Plaintiff's valuable goodwill and reputation in Plaintiff's Marks to the perils and hazards arising out of Roxor's business activities, over which Plaintiff has no control.

56. Roxor's conduct constitutes unfair competition, false advertising, false designation of origin and false or misleading description of fact, in violation of section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

57. On information and belief, Roxor's conduct was, and continues to be, deliberate and willful.

58. Roxor provides the ITG Game that is similar to Plaintiff's products. At least some of the ITG Games display Roxor's name and/or trademarks in close proximity to Plaintiff's Marks. Roxor's continued infringement of Plaintiff's Marks has caused and, unless enjoined, will continue to cause immediate and irreparable injury that cannot be adequately compensated by legal remedies. Plaintiff is entitled to and prays for injunctive relief to enjoin Roxor from continuing to use Plaintiff's Marks or confusingly similar marks in unlawful manners. On information and belief, Roxor's unlawful conduct will continue to Plaintiff's detriment unless enjoined.

59. As a result of Roxor's intentional and knowing violations, Plaintiff has suffered, and will continue to suffer, damages in excess of the minimum jurisdictional limits of this Court, and Plaintiff seeks judgment for same, and for treble Plaintiff's damages for Roxor's willful violation of Plaintiff's rights under the Lanham Act.

COUNT IV

Trademark Dilution in Violation of the Lanham Act

60. Plaintiff incorporates by reference the statements and allegations set forth in paragraphs 1 through 59, inclusive, with the same force and effect as though fully rewritten herein.

61. Plaintiff has expended significant efforts in creating and maintaining Plaintiff's Marks, which are both inherently distinctive and famous.

62. On information and belief, Roxor's unauthorized use of Plaintiff's Marks began after Plaintiff's Marks became famous.

63. Roxor's conduct dilutes the distinctive quality of Plaintiff's Marks in violation section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

64. The conduct and actions of Roxor have lessened the capacity of Plaintiff's Marks to identify and distinguish Plaintiff's goods in violation of section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

65. Roxor provides the ITG Game that is similar to Plaintiff's products. At least some of the ITG Games display Roxor's name and/or trademarks in proximity to Plaintiff's Marks. Because of Roxor's uses, the public will or likely will associate Plaintiff's Marks with the degraded quality or prestige depicted by the Roxor's infringing and inferior ITG game. Roxor's continued dilution of Plaintiff's Marks has caused and, unless enjoined, will continue to cause immediate and irreparable injury that cannot be adequately compensated by legal remedies. Plaintiff is entitled to and prays for injunctive relief to enjoin Roxor from continuing to use Plaintiff's Marks or confusingly similar marks in unlawful manners.

66. On information and belief, Roxor's conduct was, and continues to be, deliberate and willful.

67. As a result of Roxor's intentional and knowing violations, Plaintiff has suffered, and will continue to suffer, damages in excess of the minimum jurisdictional limits of this Court, and Plaintiff seeks judgment for same, and for treble Plaintiff's damages for Roxor's willful violation of Plaintiff's rights under the Lanham Act.

COUNT V

Trade Dress Infringement

68. Plaintiff incorporates by reference the statements and allegations set forth in paragraphs 1 through 67, inclusive, with the same force and effect as though fully rewritten herein.

69. Plaintiff has acquired extensive rights, including a nationwide reputation for quality of goods and other goodwill, in the trade dress embodied in the DDR Game ("Plaintiff's Trade Dress"). Plaintiff's Trade Dress includes, but is not limited to, the overall appearance of the DDR Game, the DDR Game's dance platform and rails, and the DDR Game's speaker and light arrangements.

70. Plaintiff has used Plaintiff's Trade Dress in the United States since as early as 1999.

71. Plaintiff has expended significant efforts in creating and maintaining Plaintiff's Trade Dress, which is inherently distinctive or has acquired secondary meaning.

72. Plaintiff's Trade Dress serves primarily as a designator of origin of products emanating from or sponsored by Plaintiff.

73. The features of Plaintiff's Trade Dress are primarily non-functional.

74. Roxor's refitting the DDR Game, which embodies Plaintiff's Trade Dress, with its ITG Game circuit board is likely to confuse consumers, and such use will lead to the erroneous belief that Roxor's products originate from, are associated with, or are sponsored by Plaintiff, thus enabling Roxor to misappropriate and unfairly trade upon Plaintiff's valuable goodwill and reputation in Plaintiff's Marks to the perils and hazards arising out of Roxor's business activities, over which Plaintiff has no control.

75. Roxor's conduct constitutes trade dress infringement in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Roxor's conduct constitutes unfair competition, false advertising, false designation of origin and/or false or misleading description of fact, in violation of section 43(a) of the Lanham Act, 15 U.S.C. §1125(a). Such conduct entitles Plaintiff to injunctive relief, profits, damages, costs, and reasonable attorneys' fees.

76. Roxor provides the ITG Game that is similar to Plaintiff's products. Roxor's continued infringement of Plaintiff's Trade Dress has caused and, unless enjoined, will continue to cause immediate and irreparable injury that cannot be adequately compensated by legal remedies. Plaintiff is entitled to and prays for injunctive relief to enjoin Roxor from continuing to use Plaintiff's Trade Dress or confusingly similar trade dress in unlawful manners.

77. On information and belief, Roxor's conduct was, and continues to be, deliberate and willful.

78. As a result of Roxor's intentional and knowing violations, Plaintiff has suffered, and will continue to suffer, damages in excess of the minimum jurisdictional limits of this Court, and Plaintiff seeks judgment for same.

COUNT VI

Injury to Business Reputation and Unfair Competition Under Texas Law

79. Plaintiff incorporates by reference the statements and allegations set forth in paragraphs 1 through 78, inclusive, with the same force and effect as though fully rewritten herein.

80. Roxor's use of its name and/or trademarks on or in association with the ITG Game also bearing Plaintiff's Marks constitutes injury to Plaintiff's business reputation and unfair competition, and such use will lead to the erroneous belief that the ITG Game originates with, is associated with, or is sponsored by Plaintiff, thus enabling Roxor to misappropriate and unfairly trade upon Plaintiff's business reputation and valuable goodwill in Plaintiff's Marks to the perils and hazards arising out of Roxor's business activities, over which Plaintiff has no control.

81. The foregoing acts of Roxor constitute unfair competition, palming off, and misappropriation in violation of the common law of the State of Texas.

82. Roxor's conduct constitutes injury to Plaintiff's business reputation pursuant to Texas Business & Commerce Code § 16.29.

83. Roxor provides the ITG Game that is similar to Plaintiff's products. The ITG Game displays Roxor's name and/or trademarks in proximity to Plaintiff's Marks. Roxor's continued use of Plaintiff's Marks has caused and, unless enjoined, will continue to cause immediate and irreparable injury that cannot be adequately compensated by legal remedies. Pursuant to Texas Business & Commerce Code § 16.29, Plaintiff is entitled to and prays for injunctive relief to enjoin Roxor from continuing to use Plaintiff's Marks or confusingly similar or colorably imitative marks in unlawful manners. Unless enjoined, the continuing actions of

Roxor will continue to constitute acts of unfair competition, palming off and misappropriation by Roxor against Plaintiff , thereby causing Plaintiff irreparable harm.

84. As a result of Roxor's intentional and knowing violations, Plaintiff has suffered, and will continue to suffer, damages in excess of the minimum jurisdictional limits of this Court, and Plaintiff seeks judgment for same.

COUNT VII

Trademark Dilution Under Texas Law

85. Plaintiff incorporates by reference the statements and allegations set forth in paragraphs 1 through 84, inclusive, with the same force and effect as though fully rewritten herein.

86. Roxor's conduct dilutes the distinctive quality of Plaintiff's Marks. Roxor's conduct constitutes dilution of Plaintiff's Marks pursuant to Texas Business & Commerce Code § 16.29.

87. The conduct and actions of Roxor have lessened the capacity of Plaintiff's Marks to identify and distinguish Plaintiff's goods.

88. Roxor provides the ITG Game that is similar to Plaintiff's products. At least some of the ITG Games display Roxor's name and/or trademarks in proximity to Plaintiff's Marks. Because of Roxor's uses, the public will or likely will associate Plaintiff's Marks with the degraded quality or prestige depicted by the Roxor's infringing and inferior ITG game. Roxor's continued dilution of Plaintiff's Marks or confusingly similar marks has caused and, unless enjoined, will continue to cause immediate and irreparable injury that cannot be adequately compensated by legal remedies. Pursuant to Texas Business & Commerce Code § 16.29,

Plaintiff is entitled to and prays for injunctive relief to enjoin Roxor from continuing to use Plaintiff's Marks or confusingly similar marks in unlawful manners.

89. Roxor's continued dilution of Plaintiff's Marks or confusingly similar marks has caused and, unless enjoined, will continue to cause immediate and irreparable injury that cannot be adequately compensated by legal remedies. Pursuant to Texas Business & Commerce Code § 16.29, Plaintiff is entitled to and prays for injunctive relief to enjoin Roxor from continuing to use Plaintiff's Marks or confusingly similar marks in unlawful manners.

90. On information and belief, Roxor's conduct was, and continues to be, deliberate and willful.

91. As a result of Roxor's intentional and knowing violations, Plaintiff has suffered, and will continue to suffer, damages in excess of the minimum jurisdictional limits of this Court, and Plaintiff seeks judgment for same.

COUNT VIII

Patent Infringement by Mad Catz

92. Plaintiff incorporates by reference the statements and allegations set forth in paragraphs 1 through 17, inclusive, with the same force and effect as though fully rewritten herein.

93. Plaintiff has not licensed any of its rights in the '835 Patent to Mad Catz.

94. On information and belief, Mad Catz Dance Craze literally infringes and/or infringes under the doctrine of equivalents, either directly or indirectly, the claims of the '835 Patent.

95. Mad Catz has been, and still is, infringing the '835 Patent literally and/or under the doctrine of equivalents by manufacturing, importing, using, offering for sale and/or selling

games embodying the patented inventions as claimed in the '835 Patent and/or has contributorily infringed or induced infringement of the '835 Patent.

96. The infringing acts of Mad Catz have been the actual and proximate cause of damage to Plaintiff. Plaintiff has sustained damages and will continue to sustain damages as a result of Mad Catz's infringement of the '835 Patent.

97. Plaintiff has no adequate remedy at law.

98. Mad Catz will continue to infringe the '835 Patent unless the Court enjoins its infringing acts.

COUNT IX

Patent Infringement by RedOctane

99. Plaintiff incorporates by reference the statements and allegations set forth in paragraphs 1 through 17, inclusive, with the same force and effect as though fully rewritten herein.

100. Plaintiff has not licensed any of its rights in the '835 Patent to RedOctane.

101. On information and belief, the ITG for PS2 Game sold and distributed by RedOctane literally infringes and/or infringes under the doctrine of equivalents, either directly or indirectly, the claims of the '835 Patent.

102. RedOctane has been, and still is, infringing the '835 Patent literally and/or under the doctrine of equivalents by manufacturing, importing, using, offering for sale and/or selling games embodying the patented inventions as claimed in the '835 Patent and/or has contributorily infringed or induced infringement of the '835 Patent.

103. The infringing acts of RedOctane have been the actual and proximate cause of damage to Plaintiff. Plaintiff has sustained damages and will continue to sustain damages as a result of RedOctane's infringement of the '835 Patent.

104. Plaintiff has no adequate remedy at law.

105. RedOctane will continue to infringe the '835 Patent unless the Court enjoins its infringing acts.

COUNT X

Claim For Injunctive Relief – Patent Infringement by Roxor and RedOctane

106. Konami incorporates herein by reference their allegations in the foregoing paragraphs.

107. Despite the filing of this lawsuit against Roxor based on its ITG Game (arcade version), Defendant Roxor and now RedOctane have now released, promoted, and toured with the infringing ITG for PS2 Game (home version), causing irreparable harm to Konami for which Konami has no adequate remedy at law.

108. Plaintiffs request that the Court determine that no amount of bond is necessary under Fed. R. Civ. P. 65(c).

RELIEF REQUESTED

WHEREFORE, Plaintiff prays that this Court enter judgment against Roxor, Mad Catz and RedOctane, as follows:

1. Roxor and its officers, agents, employees, representatives, and all persons in privity therewith, be preliminarily enjoined from:

(A) directly or indirectly making or causing to be made, manufacturing, importing, offering for sale, selling, causing to be sold, using, or in any way distributing any

products designed, intended, or adapted to infringe the '835 Patent, and from inducing, aiding, or contributing to such infringement; and

(B) attempting, causing, or assisting any of the above-described acts;

2. Roxor account to Plaintiff for all gains, profits and advantages derived by Roxor as a result of its infringement;

3. Plaintiff be awarded damages adequate to compensate it for the infringement by Roxor;

4. Plaintiff be awarded treble damages as a result of the willful and deliberate acts of Roxor;

5. Plaintiff be awarded damages adequate to compensate it for the damage to its reputation, goodwill, and trademarks under the above-recited provisions of federal and Texas law by Roxor;

6. Roxor and its officers, agents, employees, representatives, and all persons in privity therewith, be permanently enjoined from:

(A) directly or indirectly making or causing to be made, manufacturing, importing, offering for sale, selling, causing to be sold, using, or in any way distributing any products designed, intended, or adapted to infringe the '835 Patent, and from inducing, aiding, or contributing to such infringement; and

(B) attempting, causing, or assisting any of the above-described acts;

7. Roxor be ordered to pay costs, disbursements and attorneys' fees to Plaintiff;

8. Roxor and its officers, agents, employees, representatives, and all persons in privity therewith be enjoined from using or in connection with the sale, offering for sale, distribution, exhibition, display or advertising of its goods, Plaintiff's Marks, Plaintiff's Trade

Dress and/or any other trademark, service mark or trade dress in combination with other words or symbols, or any other marks or symbols which are confusingly or deceptively similar to or colorably imitative of Plaintiff's Marks or Plaintiff's Trade Dress;

9. Roxor be ordered to deliver for destruction: (1) all advertising circulars, signs, prints, packages, labels or any other materials in the possession or under the control of Roxor used in connection with the distribution, advertising, sale or offer to sell of Roxor's goods bearing or incorporating Plaintiff's Marks or Plaintiff's Trade Dress, or marks or trade dress that are confusingly similar; and (2) all such products or materials bearing or displaying marks confusingly similar to the products advertised, provided, sold and/or distributed by Plaintiff;

10. Roxor and their officers, agents, employees, or representatives, and all persons in privity with Roxor not destroy but deliver up to this Court all: letterheads, advertising materials, computer programs, labels, packages, containers, name plates, magazines and any other printed matter of any nature and of any products in its possession bearing Plaintiff's Marks or confusing similar or colorably imitative marks for the purpose of destruction thereof;

11. Roxor be required to account to Plaintiff for the profits Roxor has made, and that Plaintiff be awarded damages for such;

12. Roxor be required to file with this Court and serve on Plaintiff a report in writing and under oath setting forth in detail the manner and form in which Roxor has complied with the terms of the injunction;

13. Mad Catz account to Plaintiff for all gains, profits and advantages derived by Mad Catz as a result of its infringement;

14. Plaintiff be awarded damages adequate to compensate it for the infringement by Mad Catz;

15. Plaintiff be awarded treble damages as a result of the willful and deliberate acts of Mad Catz;

16. Mad Catz and its officers, agents, employees, representatives, and all persons in privity therewith, be permanently enjoined from:

(A) directly or indirectly making or causing to be made, manufacturing, importing, offering for sale, selling, causing to be sold, using, or in any way distributing any products designed, intended, or adapted to infringe the '835 Patent, and from inducing, aiding, or contributing to such infringement; and

(B) attempting, causing, or assisting any of the above-described acts;

17. Mad Catz be ordered to pay costs, disbursements and attorneys' fees to Plaintiff;

18. RedOctane and its officers, agents, employees, representatives, and all persons in privity therewith, be preliminarily enjoined from:

(A) directly or indirectly making or causing to be made, manufacturing, importing, offering for sale, selling, causing to be sold, using, or in any way distributing any products designed, intended, or adapted to infringe the '835 Patent, and from inducing, aiding, or contributing to such infringement; and

(B) attempting, causing, or assisting any of the above-described acts;

19. RedOctane account to Plaintiff for all gains, profits and advantages derived by RedOctane as a result of its infringement;

20. Plaintiff be awarded damages adequate to compensate it for the infringement by RedOctane;

21. Plaintiff be awarded treble damages as a result of the willful and deliberate acts of RedOctane;

22. RedOctane and its officers, agents, employees, representatives, and all persons in privity therewith, be permanently enjoined from:

(A) directly or indirectly making or causing to be made, manufacturing, importing, offering for sale, selling, causing to be sold, using, or in any way distributing any products designed, intended, or adapted to infringe the '835 Patent, and from inducing, aiding, or contributing to such infringement; and

(B) attempting, causing, or assisting any of the above-described acts;

23. RedOctane be ordered to pay costs, disbursements and attorneys' fees to Plaintiff;

24. Plaintiff be awarded such other and further relief as this Court may deem just and proper.

Date: August 30, 2005

Respectfully submitted,

BAKER & McKENZIE LLP

/s/ Brian C. McCormack
John G. Flaim, Attorney-in-Charge
State Bar No. 00785864
E-mail: john.g.flaim@bakernet.com
Brian C. McCormack
State Bar No. 00797036
E-mail: brian.c.mccormack@bakernet.com
Mark D. Taylor
State Bar No. 19713250
E-mail: mark.d.taylor@bakernet.com
2300 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201
Phone: (214) 978-3000
Fax: (214) 978-3099

Michael E. Jones
State Bar No.10929400
mikejones@potterminton.com
John F. Bufe
State Bar No. 03316930
johnbufe@potterminton.com
Potter Minton, P.C.
110 N. College, 500 Plaza Tower
Tyler, Texas 75702
903-597-8311

ATTORNEYS FOR KONAMI CORPORATION

PROOF OF SERVICE

The undersigned hereby certifies that a copy of KONAMI'S SECOND AMENDED COMPLAINT was served on August 30, 2005 on the following counsel of record via the following means:

Gerald C. Conley	☐	Personal Service
	☐	Facsimile
	☐	Overnight Mail
	☒	E-mail (via Court's electronic docket)
Kimberly A. Donovan	☐	Personal Service
	☐	Facsimile
	☐	Overnight Mail
	☒	E-mail (via Court's electronic docket)
John G. Flaim	☐	Personal Service
	☐	Facsimile
	☐	Overnight Mail
	☒	E-mail (via Court's electronic docket)
Tonya Michelle Gray	☐	Personal Service
	☐	Facsimile
	☐	Overnight Mail
	☒	E-mail (via Court's electronic docket)
Jeffrey Kenton Lee	☐	Personal Service
	☐	Facsimile
	☐	Overnight Mail
	☒	E-mail (via Court's electronic docket)
Whitney E. Peterson	☐	Personal Service
	☐	Facsimile
	☐	Overnight Mail
	☒	E-mail (via Court's electronic docket)

Nicole W. Stafford	☐	Personal Service
	☐	Facsimile
	☐	Overnight Mail
	☒	E-mail (via Court's electronic docket)
Marvin Craig Tyler	☐	Personal Service
	☐	Facsimile
	☐	Overnight Mail
	☒	E-mail (via Court's electronic docket)
Brian Charles McCormack	☐	Personal Service
	☒	Facsimile
	☐	Overnight Mail
	☐	E-mail (via Court's electronic docket)

/s/ Michael E. Jones
An Attorney for Plaintiff
Konami Corporation