

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

MAY 28 2015

JAMES W. MCCORMACK, CLERK
By: *[Signature]*
DEP. CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS**

INNOVIS LABS, INC.

Plaintiff,

v.

BLIZZARD ENTERTAINMENT, INC.,

Defendant.

Civil No. *4:15cv303-SWW*

JURY TRIAL DEMANDED

This case assigned to District Judge *Wright*
by alternate judge *Kearney*

COMPLAINT FOR TRADEMARK INFRINGEMENT

Plaintiff Innovis Labs, Inc., (“INNOVIS”) by and through its undersigned counsel, for and as its Complaint against Defendant Blizzard Entertainment, Inc. (“BLIZZARD”), alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action seeking injunctive relief for false designation of origin under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and common law trademark infringement. As set forth in greater detail below, this action involves the likelihood of confusion created by BLIZZARD’s adoption and use of the OVERWATCH mark in commerce at least a year after INNOVIS began using the OVERWATCH trademark in commerce.

2. This Court has subject matter jurisdiction under 15 U.S.C. §§ 1121, 1125(a), 28 U.S.C. §§ 1331 and 1367.

3. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391 since BLIZZARD has committed acts of infringement in this Judicial District, has been, and is, engaged in substantial and continuous business activities in this Judicial District and a substantial part of property that is the subject of the action is situated in this Judicial District.

THE PARTIES


4. INNOVIS is an Arkansas corporation. It has a current place of business at 3700 Royal Oak Drive, North Little Rock, Arkansas 72116. Since 2013, INNOVIS has been in the business of developing, marketing, and offering to sell an interactive, multiple player, first person shooter game for use on portable electronic devices such as smart phones. OVERWATCH is the trademark INNOVIS has used and continues to use to market, promote and offer to sell its products.

5. Defendant BLIZZARD is a Delaware corporation. It is located at 16215 Alton Parkway, Irvine, California 92618. On November 7, 2014, BLIZZARD introduced an interactive, multiplayer shooter game branded as OVERWATCH through a national media campaign.

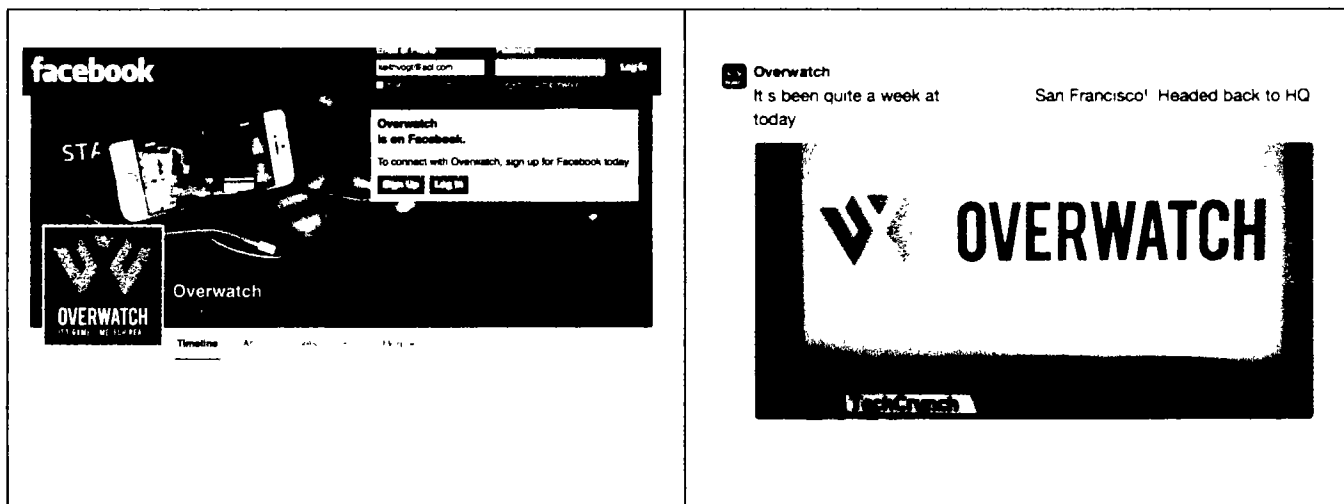
GENERAL ALLEGATIONS

6. This trademark infringement action arises out of BLIZZARD's adoption and use of the OVERWATCH trademark in connection with an interactive, multiplayer shooter game. Yet, at least a year before BLIZZARD, INNOVIS was promoting and offering to sell interactive games in connection with the OVERWATCH trademark. BLIZZARD has advertised and promoted the OVERWATCH name in a way that has so saturated the market that potential customers are likely to be misled into thinking that INNOVIS' products originate from BLIZZARD, and that the OVERWATCH mark is associated with BLIZZARD rather than INNOVIS. BLIZZARD's use of an identical mark in connection with nearly identical products has wrongfully interfered with INNOVIS' existing and prospective business relationships, and has caused a likelihood of confusion and actual confusion regarding the origin of INNOVIS' OVERWATCH products.

7. **OVERWATCH** is the brainchild of its CEO, Josh Moody. As a high school senior at the age of 17, Josh entered and won the 2013 ARK Challenge. The ARK Challenge “is a mentorship-driven accelerator program for technology startups.” (<http://arkchallenge.org/about/>).

	The ARK Challenge Helps Overwatch Get Off the Ground.
	<p>After the initial idea stage, Josh joined and won the ARK Challenge, a startup bootcamp and accelerator program which exposed him to initial investors and strategic partnerships necessary to bring his product to market</p>
	<p>“On a personal level, the ARK Challenge equipped me with all of the knowledge and resources I needed to succeed in running my company day to day. The mentorship provided was second to none, and I credit what Overwatch was able to accomplish in those first 14 weeks directly to that,” said Moody</p>
	<p>2014 has been an exciting year, Josh says. After launching his business and winning the ARK Challenge, the young CEO wrapped up high school, graduating this past spring. What’s next? Josh says that the initial app development is done and by leveraging a key strategic partnership, the Overwatch device should be on store shelves in early 2015</p>
	<p>http://tech.co/young-entrepreneur-merges-digital-real-life-combat-gaming-overwatch-app-2014-12</p>
<p>http://overwatchapp.com/about-us/</p>	

8. After winning the ARK Challenge, INNOVIS enjoyed significant media coverage. Since its launch, INNOVIS has promoted **OVERWATCH** on its website (www.overwatchapp.com), on social media such as Facebook and Twitter and elsewhere:

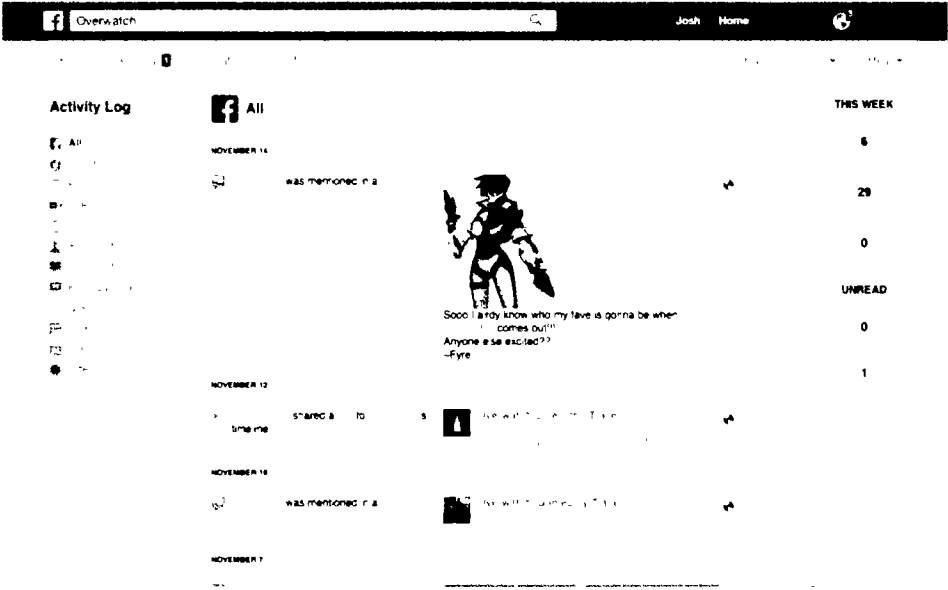


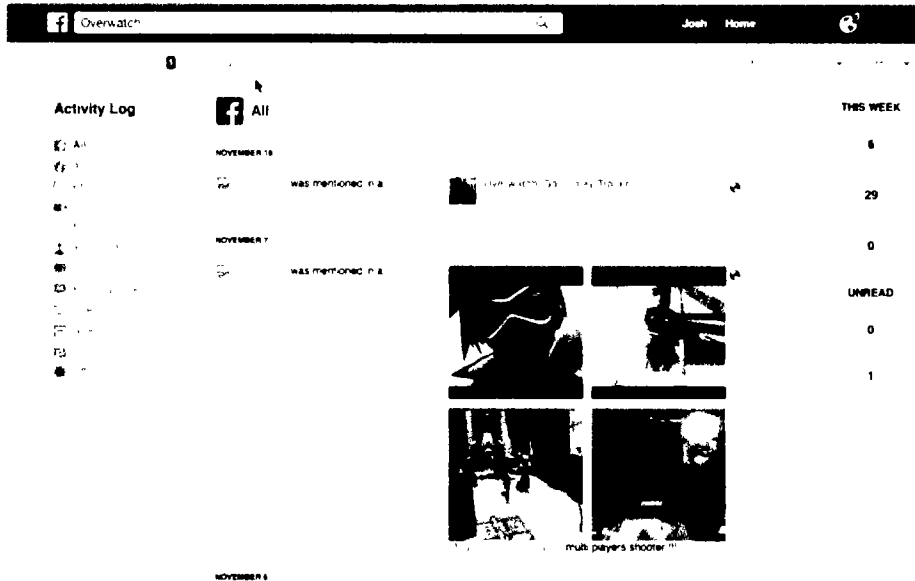
9. As a result of INNOVIS' efforts and investment of time and money, its OVERWATCH mark had enjoyed widespread use, exclusivity and prominence in the market and on search engines such as GOOGLE. Prior to BLIZZARD's adoption and use of an identical trademark, INNOVIS enjoyed a high level of search engine optimization with its OVERWATCH mark, which made INNOVIS and OVERWATCH easily searchable and findable on the Internet.

10. INNOVIS' unimpeded use and enjoyment of its OVERWATCH trademark ended when BLIZZARD launched its own interactive OVERWATCH game. BLIZZARD's advertising blitz included extensive media promotion including social media such as Facebook and Twitter, an animated short film that is extensively featured on YOUTUBE, and BLIZZARD's own website that features the OVERWATCH mark:



11. Since BLIZZARD launched its OVERWATCH game, INNOVIS has been unable to use its own mark free from confusion and mistake. For example, INNOVIS' OVERWATCH Facebook page has had multiple individuals post comments on it about BLIZZARD's game as a result of the public being confused over the ownership and source of the games being marketed and sold by INNOVIS and BLIZZARD:





13. The United States Patent and Trademark Office, has examined BLIZZARD's pending trademark application for OVERWATCH and has suspended BLIZZARD's pending trademark application on the grounds that there may be a likelihood of confusion with INNOVIS' superior trademark application Serial No. 86056160:

The trademark examining attorney is suspending action on the application for the reason(s) stated below. See 37 C.F.R. §2.67; TMEP §§716 *et seq.*

The effective filing date of the pending application identified below precedes the filing date of applicant's application. If the mark in the referenced application registers, applicant's mark may be refused registration under Section 2(d) because of a likelihood of confusion with that registered mark(s). See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, action on this application is suspended until the earlier-filed referenced application is either registered or abandoned. 37 C.F.R. §2.83(c). A copy of information relevant to this referenced application was sent previously.

- Application Serial No(s). 86056160

14. INNOVIS and BLIZZARD tried, by agreement, to prevent confusion from occurring in the marketplace. However, the efforts were unsuccessful with the both the United States Patent and Trademark Office and public. As a result, INNOVIS terminated the agreement.

**COUNT I
FEDERAL UNFAIR COMPETITION
(15 U.S.C. § 1125(a))**

15. INNOVIS repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint, and incorporates them herein by reference.

16. BLIZZARD's marketing and promotion of interactive games utilizing the OVERWATCH mark constitutes false designation of origin and false descriptions or representations that BLIZZARD's products originate from or are authorized by INNOVIS, when in fact they are not. Such conduct limits INNOVIS's ability to interact with current and potential customers.

17. As a result of BLIZZARD's unauthorized use of the OVERWATCH designation, the public is likely to be misled and confused as to the source, sponsorship, or affiliation of the interactive games being marketed, promoted and offered for sale by INNOVIS and BLIZZARD.

18. The likelihood of confusion caused by BLIZZARD's use of the OVERWATCH designation is likely to continue unless restrained and enjoined.

19. INNOVIS is entitled to injunctive relief as a result of INNOVIS having no adequate remedy at law because, among other things, (a) INNOVIS' OVERWATCH designation is unique and valuable intellectual property which has no readily determinable market value, (b) BLIZZARD's infringement constitutes harm to INNOVIS such that INNOVIS could not be made whole by any monetary award, and (c) if BLIZZARD's conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin, or authenticity of INNOVIS' OVERWATCH products.

**COUNT II
COMMON LAW TRADEMARK INFRINGEMENT**

20. INNOVIS repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint, and incorporates them herein by reference.

21. BLIZZARD's marketing and promotion of interactive games utilizing the OVERWATCH mark constitutes unauthorized trademark infringement.

22. As a result of BLIZZARD's infringement of the OVERWATCH trademark, the public is likely to be misled and confused as to the source, sponsorship, or affiliation of BLIZZARD's interactive games.

23. The likelihood of confusion caused by BLIZZARD's use of the OVERWATCH designation is likely to continue unless restrained and enjoined.

24. INNOVIS is entitled to injunctive relief as a result of INNOVIS having no adequate remedy at law because, among other things, (a) INNOVIS' OVERWATCH designation is unique and valuable property which have no readily determinable market value, (b) BLIZZARD's infringement constitutes harm to INNOVIS such that INNOVIS could not be made whole by any monetary award, and (c) if BLIZZARD's conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin, or authenticity of INNOVIS' OVERWATCH products.

PRAYER FOR RELIEF

WHEREFORE, INNOVIS respectfully requests that this Court enter judgment against BLIZZARD, including:

A preliminary and permanent injunction be issued enjoining BLIZZARD, and any employees, agents, servants, officers, representatives, directors, attorneys, successors, affiliates, assigns, and entities owned or controlled by BLIZZARD, and all those in active concert or

participation with BLIZZARD, and each of them who receives notice directly or otherwise of such injunction from:

i. using the OVERWATCH designations, or any other trademarks, trade names, domain names or designations that are confusingly similar to the OVERWATCH designation, for products and services, or making any other unlawful use of the OVERWATCH designation or other trademarks owned by INNOVIS;

ii. using any false designation of origin or false description, or performing any act which is likely to lead members of the trade or public to believe that any service or product, made, imported, distributed, offered for sale, or sold by BLIZZARD is in any manner associated or connected with INNOVIS, or is licensed, sponsored, approved, or authorized by INNOVIS; and

iii. engaging in any other activity constituting unfair competition or trademark infringement with INNOVIS.

JURY DEMAND

INNOVIS demands trial by jury on all issues so triable.

Respectfully submitted,

DATED: May 27, 2015

By: /s/ Keith A. Vogt

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