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2012 DEC 20 PM 4:19
CLERK U.S. DISTRICT COURT
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SANTA ANA

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10 UNITED STATES DISTRICT COURT FOR THE
11 CENTRAL DISTRICT OF CALIFORNIA

12 CRANEBALLS STUDIOS, LLC,

13 Plaintiff,

14 v.

15 FEELINGTOUCH, INC.; FT GAMES;
16 LIANWU PAN; AND DOES 1-10,

17 Defendants.

Case No.: SACV 12 - 02196 JVS (ANx)

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

18
19
20 Plaintiff Craneballs Studios, LLC ("Craneballs" or "Plaintiff"), by and
21 through its attorneys, brings this Complaint against Defendants Feelingtouch,
22 Inc., FT Games, Lianwu Pan, and any related business entities, incorporated or
23 not, currently designated as Does 1-10 (collectively, "Feelingtouch" or
24 "Defendants") for injunctive relief and damages under the laws of the United
25 States, as follows:

26 **NATURE OF THE ACTION**

27 1. Plaintiff Craneballs is a successful developer of original video games
28 for the iOS (iPhone/iPad) and Android platforms. One of Craneballs' most

1 popular games is *Overkill*, which has been downloaded more than 10 million
2 times from various online channels, including iTunes, Google Play (formerly
3 Google Marketplace), and the Amazon.com App Store. *Overkill* has over
4 135,000 customer reviews on iTunes, with an average rating of 4.6 of 5 stars. A
5 printout of *Overkill's* iTunes product page is attached as Exhibit 1. The Android
6 version of *Overkill* has over 25,000 reviews on Google Play and is also rated 4.6
7 out of 5 stars. A printout of *Overkill's* Google Play product page is attached as
8 Exhibit 2. Craneballs devoted over 5,000 hours to the conception and
9 development of *Overkill* and owns all intellectual property rights associated with
10 the title.

11 2. Feelingtouch is a Chinese game maker that also makes and distributes
12 video games for the Android and iOS platforms. Feelingtouch's game
13 development strategy is based in whole or part on copying of successful games
14 from other developers, sometimes "porting" them to a different operating system
15 before the original publisher. This is suggested by a 2011 article in *Pocket*
16 *Gamer*, attached as Exhibit 3, which discusses Feelingtouch's *Rope Cut* and notes
17 that it is nearly identical to developer Chillingo's successful iOS game, *Cut the*
18 *Rope*. Among other things, the article notes, "Feelingtouch's game is about as
19 blatant a copy of an existing title as we've seen in a long time."

20 3. Feelingtouch's most successful game is *Gun & Blood*, with between 5
21 and 10 million downloads on Google Play since April 2012. *Gun & Blood* is
22 little more than a wholesale clone of Craneballs' *Overkill*, with nearly identical
23 gameplay, graphics, sound, design elements, menus, pacing, structure, etc., such
24 that the overall impression and effect of playing the two games is virtually
25 indistinguishable. A screenshot of the Google Play product page for *Gun &*
26 *Blood* is attached hereto as Exhibit 4. A side-by-side comparison showing some
27 of the striking similarities between the games attached as Exhibit 5. Among
28 other things, Exhibit 5 shows that *Gun & Blood* is simply a clone of *Overkill*

1 with minor alterations and not an independent creative work.

2 4. In May 2012, Craneballs sent Feelingtouch a cease and desist letter
3 demanding that it stop infringing Craneballs' intellectual property rights. A copy
4 of the letter is attached as Exhibit 6. Feelingtouch received Craneballs' letter but
5 not respond and instead continued to expanded its distribution of *Gun & Blood*.

6 5. To remedy Feelingtouch's continuing willful infringement, Craneballs
7 brings this action for injunctive relief and damages, and Feelingtouch's unjust
8 profits, gains and advantages as a proximate result of its infringement under the
9 Copyright Act of 1976, as amended, 17 U.S.C. § 101 et seq.

10 **THE PARTIES**

11 6. Plaintiff Craneballs Studios, LLC is a Nevada corporation with its
12 principal place of business in Ostrava, Czech Republic.

13 7. Feelingtouch and FT Games are a business entity headquartered in
14 Hangzhou (杭州), Zhejiang Province, China. The names Feelingtouch and FT
15 Games are often used interchangeably by the entity on its website
16 (www.feelingtouch.com) and in online stores that distribute their games. On
17 information and belief, neither company nor any related entity is incorporated in
18 the U.S. On information and belief, Feelingtouch and FT games are the alter ego
19 of founder Lianwu Pan.

20 **JURISDICTION AND VENUE**

21 8. This action arises under the copyright laws of the United States, 17
22 U.S.C. § 501, *et seq.*

23 9. This Court has jurisdiction over the federal causes of action pursuant to
24 17 U.S.C. § 501, 28 U.S.C. §§ 1331 and 1338.

25 10. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c).

26 11. This Court has personal jurisdiction over defendants, who transact
27 significant business in this District and have committed acts of infringement
28 within this District.

FACTUAL ALLEGATIONS

1
2 12. Craneballs is a successful and growing video game company founded
3 by three friends in 2008. In March 2011, Craneballs published *Overkill*, a first
4 person action shooting game for the iOS platform on iTunes. In *Overkill* a player
5 faces successive waves of gun-toting enemies in different environments and,
6 using a touch screen, must aim and shoot at the enemies before being eliminated
7 by them. By prevailing over waves of enemies the player earns medals, which
8 can be used in an in-game store to upgrade existing or purchase new weapons
9 and items for use in the game. *Overkill* has 18 different weapons, each with
10 numerous means of customization (e.g., improved gun scope, less recoil, etc.).
11 The process of clearing enemies, upgrading weapons, and gaining greater power
12 gives the player a personal connection to his customized character and provides a
13 sense of progress, making *Overkill* a compelling game experience. While
14 *Overkill* is free to download, medals can be purchased by players for real money
15 (e.g., 70 medals for \$5.99) to ease a player's way through the game.

16 13. *Overkill* was released on iTunes on March 17, 2011 and was an
17 immediate hit, debuting in the top 10 and remaining one of the top 50 action
18 games for the iOS for over six months. To date over 8 million users have
19 downloaded the iOS version of *Overkill*.

20 14. *Overkill*, like all computer programs, was designed and programmed
21 for a particular platform, the iOS operating system used by the Apple iPhone and
22 iPad. There are currently two dominant operating system in the rapidly growing
23 smartphone/tablet market, iOS and Android. It is very common for a company
24 with a successful iOS or Android game to "port" the program to the other
25 operating system. Such ports are also common in the desktop computer space,
26 where the Windows and Macintosh operating systems dominate, and in the
27 consol game market, where the same game is often sold across multiple
28 platforms, such as the Sony Playstation, XBOX 360, and Nintendo Wii.

1 15. Having achieved success with *Overkill* on the iOS, Craneballs was
2 eager to introduce a version for the Android operating system. The Android
3 version of *Overkill* was almost guaranteed to be a hit, as the iOS version of the
4 game already had millions of fans.

5 16. Craneballs' port of *Overkill* for Android was first introduced on
6 Google Play, the largest market for Android applications, on December 14, 2011.
7 While the game was successful and rapidly gained market share, it was not as
8 popular as it had been for the iOS. Craneballs began to ramp up its marketing
9 efforts to increase the penetration of *Overkill* on Android systems. To date the
10 Android version of *Overkill* has been downloaded approximately 2 million times.

11 17. In the Spring of 2012, Craneballs became aware of *Gun & Blood*, a
12 clone of *Overkill* that was doing well on the Android platform. Frustrated that
13 Feelingtouch was using its own creative work to generate significant profits,
14 Craneballs produced a short side-by-side comparison of the games and called out
15 Feelingtouch for copying its work. Exhibit 5. On April 19, 2012, Craneballs
16 posted a link to the comparison on Twitter with the message, "Find 5 differences
17 between *Overkill* and its copycat called *Gun & Blood*! Isn't it mission
18 impossible? Check the picture."

19 18. To add injury to insult, *Gun & Blood* had become one of the top 20
20 most popular games on Google Play during the Spring of 2012. Because
21 Feelingtouch copied its work and was receiving unearned credit and taking
22 market share, Craneballs sent Feelingtouch a cease and desist letter on May 3,
23 2012. Exhibit 6. Befitting of its status as a small company with no interest in
24 protracted litigation, Craneballs' letter discusses relevant legal authority but
25 offers to allow Feelingtouch to continue distributing *Gun & Blood* under license.
26 Feelingtouch did not respond to the letter, though it has discussed it with at least
27 one third party. Feelingtouch apparently believes its location in China places it
28 beyond the reach of U.S. copyright law, though the U.S. is its largest market and

1 its games are hosted on and downloaded from U.S. servers owned by U.S.
2 companies such as Apple and Google.

3 19. In November 2012, while considering its next move, the issue of
4 Feelingtouch's copying was highlighted in a particularly exasperating manner.
5 *Gun & Blood* was awarded the \$200,000 grand prize for games in the Samsung
6 Smart App Challenge, a competition intended to reward developers of
7 "innovative apps" for Samsung's Galaxy Note and Tab devices. The award was
8 open to games and applications distributed via the Samsung Apps online
9 marketplace, a competitor of Google Play. Not only had Feelingtouch not ceased
10 distribution of *Gun & Blood*, it had expanded it to new platforms and, in doing
11 so, received a major award. Needless to say, a major award from a leading
12 manufacturer of Android devices can significantly enhance the prospects of a
13 game developer.

14 20. The fact that a cloned title could win such a prestigious and lucrative
15 award has been the subject of commentary within the mobile game industry. For
16 example, Appaddict.net published an article entitled, "Copycatter Samsung
17 Rewards Top Prize In Their Android Gaming Competition To Another Blatant
18 iOS Copycat." Exhibit 7. Among other things, the article notes, "It is sickening
19 to see Samsung actively rewarding and promoting such behavior and calling it
20 innovative....Instead you are just hurting a hard-working indie developer and
21 sending the wrong message, saying that it's alright to clone."

22 21. On November 28, 2012, the Malaysian mobile gaming website
23 Nineoverten.com ran an article headlined, "Feelingtouch Plagiarises Hit iOS
24 Title Overkill & Wins Samsung Smart App Challenge." Exhibit 8. The article
25 notes, "Imagine that you have it good with a hit game on both Android and iOS
26 platforms, and someone plagiarises your game, submits that new game into a
27 competition and then wins it. The whole scenario sounds incredulous, but for the
28 sake of argument, if I were the developer of the plagiarised game, I would be

1 totally incensed and would go on a warpath to set things straight." While
2 Craneballs initially complained to Samsung about the award, it has decided that
3 the preferred vehicle for obtaining redress for Feelingtouch's infringement is this
4 lawsuit.

5 22. Craneballs has standing to bring this suit as a result of having filed an
6 expedited application with the Copyright Office for registration of its copyright
7 in *Overkill* ("Copyrighted Work"). Exhibit 9. Feelingtouch has and continues to
8 willfully use, leverage, and profit from Craneballs' Copyrighted Work without
9 permission. Though its actions Feelingtouch has and continues to violate
10 Craneballs' rights under federal law.

11 **FIRST CAUSE OF ACTION**

12 **(Federal Copyright Infringement, 17 U.S.C. § 501)**

13 23. Craneballs repeats, realleges, and incorporates each allegation of the
14 forgoing paragraphs, as though fully set forth in this cause of action.

15 24. At all relevant times, Craneballs has owned all applicable right, title,
16 and interest in and to *Overkill* ("Copyrighted Work").

17 25. Craneballs has complied in all respects with Title 17 of the United
18 States Code, applied for the exclusive rights and privileges in and to the above
19 referenced Copyrighted Work, and is awaiting from the Register of Copyrights
20 the appropriate certificates of registration.

21 26. Defendants have infringed and continue to infringe Craneballs'
22 copyright by copying, using, and distributing Craneballs' Copyrighted Work in
23 and from the United States without the consent of Craneballs and in disregard of
24 Craneballs' exclusive rights under copyright.

25 27. Defendants have acted with full knowledge of Plaintiff's rights under
26 copyright without regard for the damage to plaintiff caused by defendants'
27 activities.

28 28. Defendants' use, reproduction, and distribution of the Copyrighted
Work has been and is without authorization and without Craneballs' consent.

1 29. Defendants' actions demonstrate an intentional, willful, and malicious
2 intent to infringe upon plaintiff's copyright resulting in injury to plaintiff.

3 30. Defendants have unlawfully and wrongfully derived, and will
4 continue to derive, income and profits from their infringing acts.

5 31. Plaintiff has no adequate remedy at law. The conduct of Defendants
6 has caused and, if not enjoined, will continue to cause irreparable damage to the
7 rights of Plaintiff.

8 32. As a result of Defendants' wrongful conduct, Plaintiff is entitled to
9 injunctive relief and damages in an amount to be proven at trial.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Craneballs prays for judgment against defendants and for
12 injunctive and monetary relief as follows:

- 13 a. For an injunction enjoining and restraining defendants and all
14 persons or entities acting in concert with them, from manufacturing,
15 producing, distributing, adapting, displaying, advertising,
16 promoting, offering for sale and/or selling, any materials that are
17 substantially similar to *Overkill*, including *Gun & Blood* and
18 infringing derivatives thereof;
- 19 b. An award to Craneballs of damages it has sustained or will sustain
20 by reason of defendants' conduct, all profits derived by defendants
21 from such conduct, or in lieu of any portion thereof, should
22 Craneballs so elect, such statutory damages as provided by law;
- 23 c. The defendants account for and disgorge to plaintiff profits realized
24 by defendants by reason of defendants' unlawful acts herein alleged
25 and that those disgorged profits be increased as provided by law;
- 26 d. Craneballs' costs and reasonable attorneys' fees;
- 27 e. Prejudgment and post-judgment interest;
- 28

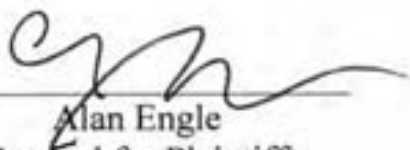
1 f. All such further and additional relief, in law or in equity, to which
2 Craneballs may be entitled or which the Court deems just and
3 proper.

4 **JURY DEMAND**

5 Plaintiffs demand a trial by jury.

6
7 Dated: December 19, 2012

MEADOR & ENGLE

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10 _____
11 Alan Engle
12 Counsel for Plaintiff
13 Craneballs Studios, LLC
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