

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 12-02083-MWF (PLAx)**

Date: **November 27, 2012**

Title: Nexon America, Inc., et al. -v- Game Anarchy, LLC, et al.

PRESENT: HONORABLE MICHAEL W. FITZGERALD, U.S. DISTRICT
JUDGE

Rita Sanchez
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

None Present

PROCEEDINGS (IN CHAMBERS): ORDER DENYING DEFENDANT
BAKER'S MOTIONS TO DISMISS [34,
35]

This matter is before the Court on the two motions to dismiss filed by Defendant David Allen Baker: (1) the Motion to Dismiss for Failure to Join an Indispensable Party (the "Joinder MTD" (Docket No. 34)); and, (2) the Motion to Dismiss for Laches (the "Laches MTD" (Docket No. 35)). The Court has read and considered the papers filed on this Motion and deems the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); Local Rule 7-15. Accordingly, the hearing set for **December 3, 2012**, is removed from the Court's calendar. The Court addresses each motion in turn below.

Both Motions appear to be brought by Baker only, perhaps because Defendant Game Anarchy, LLC ("Game Anarchy") is not represented by counsel and could not currently file any motions. (*See* Docket No. 39). Baker did not comply with the meet-and-confer requirement of Local Rule 7-3 on either of these two motions to dismiss. (*See* Laches MTD Reply at 2). The Court takes such violations seriously and expects Baker to comply with the Federal Rules of Civil Procedure, as well as the Local Rules and any orders of this Court.

Plaintiffs Nexon America, Inc. and Nexon Korea Corporation ("Nexon") are the owners and exclusive licensees of a multiplayer online computer game known as "Combat Arms." (Compl. ¶¶ 1-2 (Docket No. 1)). Defendants Baker and Game

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 12-02083-MWF (PLAx)**

Date: **November 27, 2012**

Title: Nexon America, Inc., et al. -v- Game Anarchy, LLC, et al.

Anarchy are developers and distributors of a software product and service that enables Combat Arms players to cheat and gain an unfair advantage against other players. (Compl. ¶ 3). Nexon has alleged several claims for relief, including but not limited to direct and indirect copyright infringement and unlawful circumvention and trafficking in circumvention devices. (Compl. ¶ 4).

BAKER’S JOINDER MTD (Docket No. 34)

The Joinder MTD addresses Nexon’s claims for unlawful circumvention and trafficking in circumvention devices in violation of 17 U.S.C. § 1201 (fifth and sixth claims for relief). According to the Complaint, Combat Arms incorporates a third-party software program known as “HackShield” to control access to Combat Arms, to prevent players from hacking and cheating while playing Combat Arms, and to protect Nexon’s exclusive intellectual property rights in Combat Arms. (*See, e.g.*, Compl. ¶¶ 24, 82-83). Baker and Game Anarchy allegedly develop and distribute “technologies, products, services, devices, components, or parts thereof that primarily are designed or produced for the purpose of circumventing technological measures” such as HackShield. (Compl. ¶ 83).

Baker’s Joinder MTD argues that the Complaint should be dismissed because the licensor of HackShield (“Ahnlab”) is the real party in interest under Federal Rule of Civil Procedure 17 and/or pursuant to Rule 12(b)(7) because Nexon has failed to join Ahnlab as an indispensable party. Both arguments fail.

First, Rule 17(a) states that “[a]n action must be prosecuted in the name of the real party in interest.” Consequently, the Court interprets Baker’s Joinder MTD to argue that Nexon lacks standing to prosecute this action. (*See, e.g.*, Joinder MTD at 7 (Baker “argues that the injured party, if any, is not the plaintiff, but Ahnlab.”)).

Significantly, under 17 U.S.C. § 1203(a), “[a]ny person injured by a violation of section 1201 or 1202 may bring a civil action.” *Id.*; *see Realnetworks, Inc. v. DVD Copy Control Ass’n*, 641 F. Supp. 2d 913, 932 (N.D. Cal. 2009) (discussing Section 1203 remedies in lawsuit filed by plaintiff motion picture

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 12-02083-MWF (PLAx)**

Date: **November 27, 2012**

Title: Nexon America, Inc., et al. -v- Game Anarchy, LLC, et al.

studios, the content owners of copyrighted works, for circumvention of licensed third-party encryption technology); *Universal City Studios, Inc. v. Reimerdes*, 111 F. Supp. 2d 294, 341 (S.D.N.Y. 2000) (“[P]laintiffs obviously have suffered and, absent effective relief, will continue to suffer injury by virtue of the ready availability of means of circumventing the CSS access control system on their DVDs.”).

Nexon’s Complaint alleges injury to Nexon – specifically, its Combat Arms game – as a result of Baker and Game Anarchy’s circumvention of the HackShield protections in violation of Section 1201. Rule 17 requires no more, and the Joinder MTD is DENIED in this regard.

Second, Rule 12(b)(7) allows a defendant to bring a motion to dismiss based on a plaintiff’s failure to join an indispensable party under Federal Rule of Civil Procedure 19. The defendant has the burden of persuasion in arguing for dismissal. *Shermoen v. United States*, 982 F.2d 1312, 1317 (9th Cir. 1992); see also *Nexon America, Inc. v. Cornwall*, slip op. at 2-4, CV 12-160-GW(FFMx) (C.D. Cal. Sept. 18, 2012) (concluding that owners and operators of HackShield were not indispensable to action).

Rule 19 provides for a two-step analysis to determine whether a party should or must be joined. *Takeda v. Nw. Nat’l Life Ins. Co.*, 765 F.2d 815, 819 (9th Cir. 1985) (discussing the difference between a “necessary” party and an “indispensable” party). Rule 19(a)(1) delineates what is considered a “required” party and states that a person who will not destroy subject matter jurisdiction must be joined if: “(A) in that person’s absence, the court cannot accord complete relief among existing parties”; or, “(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may: (i) as a practical matter impair or impede the person’s ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.” *Id.*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 12-02083-MWF (PLAx)**

Date: **November 27, 2012**

Title: Nexon America, Inc., et al. -v- Game Anarchy, LLC, et al.

If a party is deemed “required” (that is, “necessary”), then the court determines whether the party is “indispensable” under Rule 19(b). *Takeda*, 765 F.2d at 819. “‘Necessary’ refers to a party who should be joined if feasible. ‘Indispensable’ refers to a party whose participation is so important to the resolution of the case that, if not joined, the suit must be dismissed. *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 867 n.5 (9th Cir. 2004) (citations and alterations omitted).

Baker has made no showing under Rule 19(a)(1)(A) that the absence of the HackShield owners and operators would prevent “complete relief” among the existing parties. Under Rule 19, Baker must support his argument with facts. *See Hood ex rel. Miss. v. City of Memphis*, 570 F.3d 625, 628 (5th Cir. 2009) (noting that courts can only evaluate a joinder claim after an “appraisal of the facts”). The Joinder MTD has not done so. Importantly, the relevant injury and relief alleged in this action relate to Nexon and Combat Arms and not to any harm suffered by Ahnlab. For the same reason, there is no risk of Baker facing double or multiple obligations.

Furthermore, Rule 19(a)(1)(B) requires that the party assert an “interest relating to the subject of the action” to be considered necessary. *See United States v. Bowen*, 172 F.3d 682, 689 (9th Cir. 1999) (noting that the “required” party must assert an interest in the claim). Here, the owners and operators of HackShield have not claimed any interest in this lawsuit, and they are therefore not necessary. As appropriate, however, Nexon may seek third-party discovery from the HackShield owners and operators, and Baker’s argument in this respect is likewise unavailing.

Therefore, Baker has failed to demonstrate that the owners and operators of HackShield are “necessary” under Rule 19(a), and the Court need not reach the question of whether they would be “indispensable” under Rule 19(b). The Joinder MTD is DENIED in this regard.

Accordingly, the Joinder MTD (Docket No. 34) is **DENIED**.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 12-02083-MWF (PLAx)**

Date: **November 27, 2012**

Title: Nexon America, Inc., et al. -v- Game Anarchy, LLC, et al.

BAKER'S LACHES MTD (Docket No. 35)

In the Laches MTD, Baker argues that the Complaint should be dismissed because Nexon had knowledge of the allegedly infringing activity for more than four years before filing this lawsuit. Quite simply, this argument is inappropriate for a motion to dismiss, and given the dearth of relevant facts in the record the Court declines to convert the Laches MTD into a motion for summary judgment. *See Teran v. Hagopian*, No. CV-F-07-1476 OWW/GSA, 2008 WL 4826124, at *6 n.1 (E.D. Cal. Nov. 5, 2008) (“[The defendant]’s motion to dismiss the [complaint] on the ground of laches raises matters outside the pleadings, which cannot be resolved at the motion to dismiss stage. [The defendant] must raise this affirmative defense at summary judgment or trial.”). The Laches Motion is **DENIED** in this regard.

Baker also argues that Nexon’s claims are barred by the applicable statute of limitations. Under 17 U.S.C. § 507(b), “[n]o civil action shall be maintained . . . unless it is commenced within three years after the claim accrued.” *Id.* “While a statute of limitations defense may be raised by a motion to dismiss, a complaint cannot be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts that would establish the timeliness of the claim.” *Seitz v. Rheem Mfg. Co.*, 544 F. Supp. 2d 901, 910 (D. Ariz. 2008) (citation and internal quotation marks omitted). The Laches MTD does not make the necessary showing. Indeed, Nexon points out that the “Exhibit A” attached to Baker’s Laches MTD would seem to indicate that the Complaint actually was filed within the three-year statute of limitations. (*See* Laches MTD Ex. A (dated March 27, 2009); Compl. (dated March 12, 2012)). The Laches Motion is **DENIED** in this regard.

Accordingly, the Laches Motion (Docket No. 35) is **DENIED**.

IT IS SO ORDERED.