

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 16-455 (RGA)
	)	
TAKE-TWO INTERACTIVE SOFTWARE,	)	<b>REDACTED –</b>
INC., ROCKSTAR GAMES, INC. and	)	<b>PUBLIC VERSION</b>
2K SPORTS, INC.,	)	
	)	
Defendants.	)	

**DEFENDANTS’ REPLY BRIEF IN SUPPORT OF  
THEIR MOTION FOR FEES AND COSTS**

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Acceleration’s opposition brief does not attempt to refute much of Take-Two’s motion. Acceleration does not deny that its infringement theories for NBA 2K and GTA O were the exact opposite of what the claims require. It does not dispute that its doctrine of equivalents arguments were “especially weak,” that its validity arguments for the computer readable medium claims were contrary to its own admission at oral argument, that its damages assertions were so weak as to be nonexistent, or that its standing arguments were contrary to black letter law and the express words of a prior license. Acceleration also does not dispute that it repeatedly relitigated issues it had already lost, or that multiple courts have found that Acceleration’s counsel have engaged in the same type of misconduct at issue here. Acceleration admits that it manipulated a screenshot to match its infringement theory, gave it to its experts without telling them the screenshot had been manipulated, and then sat idly by while its experts testified the screenshot was genuine. Instead of addressing these issues directly, Acceleration offers a litany of distractions, non-sequiturs and weak excuses for its misconduct. Its arguments for why its attorneys and principal should be able to shirk direct financial penalties are particularly unpersuasive. Acceleration’s lawyers controlled each and every aspect of Acceleration, including forming it as an uncapitalized shell company [REDACTED] with the majority of those funds going directly to the lawyers themselves.

**I. Acceleration Fails to Excuse Its Weak “m-regular” Infringement Position**

**A. Acceleration’s Literal Infringement Positions Were Exceptionally Weak**

Acceleration attempts to sidestep the profound deficiencies in its infringement cases by arguing that it “provided a detailed infringement case, backed by thorough and substantive technical reports.” 455 DI 524 at 7-11 (*see* 455 DI 521 at 1, n. 1 for citation convention). Given how badly the infringement theories missed the mark, their level of detail is beside the point.

The level of detail is beside the point for NBA 2K because Acceleration’s sole defense of

its literal infringement case was already found to be mere attorney argument. Acceleration again argues “the Park Relay Server [is] part of the underlying network layer and not a participant in the application layer.” *Id.* at 10. But as the Court found in granting summary judgment, its own expert, Dr. Mitzenmacher, said exactly the opposite. *Acceleration Bay LLC v. Take-Two Interactive Software, Inc.*, Civil Action No. 16-455-RGA, 2020 U.S. Dist. LEXIS 49607, at \*27 (D. Del. Mar. 23, 2020). He opined that the Park Relay Server *is* a “participant.” *Id.*; *see also* 455 DI 464, Ex. E-5 (Mitz. Tr.) at 165:8–166:7. This fact led him to admit that there was no literal infringement:

Q. So [NBA2K] doesn’t meet the literal definition of an m-regular incomplete network because the MyPARK server participant has 40 connections and the player participants have 10; correct?

A. Give me one sec to check, but... As I recall, that’s right, yes.

455 DI 464, Ex. E-5 (Mitz. Tr.) at 167:14-19. Thus, Acceleration’s literal infringement claim for NBA2K stands out from others because, as the Court observed, (1) Acceleration’s principal argument—that the Park Relay server “is not a participant”—was mere attorney argument that directly contradicted its own expert and (2) the accused network is “fundamentally different” than the claimed network. *Acceleration* at \*27, 29.

For GTA0, the supposedly “detailed” infringement case does not matter because Take-Two “accept[ed] Plaintiff’s characterization” of the GTA0 network for summary judgment. 455 DI 463 at 9-10. The Court nonetheless granted summary judgment of no infringement. *Acceleration* at \*21. Acceleration’s infringement thesis—that GTA0 infringed due to natural player movement—was effectively the opposite of what the claims require because such a network is not “‘configured to maintain’ any particular state.” *Id.* In fact, the Court found that Acceleration “has not shown (and does not try to show)” that GTA0 met the Court’s claim construction. *Id.* at \*23. The infringement case for GTA0 stands out from others because Acceleration’s infringement theory—even when accepted as true—was effectively the opposite of what the claims require.

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