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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

AIMJUNKIES.COM; PHOENIX
DIGITAL GROUP LLC; DAVID
SCHAEFER; JORDAN GREEN;
JEFFREY CONWAY; and JAMES
MAY,

Defendants.

C21-811 TSZ

PRELIMINARY INJUNCTION

THIS MATTER comes before the Court on a motion for preliminary injunction, docket no. 35, filed by plaintiff Bungie, Inc. (“Bungie”). The Court has reviewed all papers filed in support of, and in opposition to, the motion, and has determined that oral argument is unnecessary. For the following reasons, the motion is GRANTED.

Background

Bungie is the owner of the popular Destiny video game franchise, which includes Destiny 2. *See* Kaiser Decl. at ¶ 6 (docket no. 36). In September 2017, Bungie released Destiny 2, which is now a free-to-play video game with paid expansions and an

1 “estimated player base of over 30 million.” *Id.* On November 10, 2020, Bungie released
2 *Destiny 2: Beyond Light*, an expansion to *Destiny 2*. *Id.* Bungie owns multiple
3 copyrights in computer code and audiovisual material for *Destiny 2* and *Destiny 2:*
4 *Beyond Light*, which are registered in the Copyright Office. *See* Ex. 1 to Rava Decl.
5 (docket no. 37-1).

6 Bungie alleges that defendants Aimjunkies.com (“Aimjunkies”), Phoenix Digital
7 Group LLC (“Phoenix Digital”), David Schaefer, Jordan Green, Jeffrey Conway, and
8 James May (collectively the “Defendants”) “develop, advertise, use, and distribute” cheat
9 software that gives players an unfair advantage in *Destiny 2* and its expansions.¹

10 Am. Compl. at ¶ 2 (docket no. 34). Bungie claims that the Defendants previously sold
11 their cheat software through the Aimjunkies.com website for \$34.95 per month. *See*
12 Ex. 4 to Rava Decl. (docket no. 37-1). The Defendants contend that they stopped
13 distributing the cheat software on November 12, 2020. Schaefer Decl. at ¶ 7 (docket
14 no. 28-5).

15 On April 27, 2022, this Court dismissed all of Bungie’s claims against Schaefer,
16 Green, Conway, and May without prejudice. *See* Order (docket no. 33). The Court also
17 dismissed without prejudice Bungie’s claim of copyright infringement against Phoenix
18 Digital and Aimjunkies, and referred a number of Bungie’s claims against these entities

21 ¹ Bungie alleges that defendants Schaefer, Green, and Conway are managing members of Phoenix Digital
22 and actively participated in all infringing activities. Am. Compl. at ¶¶ 5–7 (docket no. 34). Bungie
contends that May, although not a member of Phoenix Digital, contributed to the development of the
cheat software. *See id.* at ¶ 8.

1 to mandatory arbitration.² *Id.* On April 28, 2022, the website torrentfreak.com published
2 an article discussing this Court’s ruling. *See* Ex. 5 to Rava Decl. (docket no. 37-1). The
3 article reported that Phoenix Digital was “in the final stages of selling the AimJunkies
4 websites to a Ukrainian group of investors.” *Id.*

5 On May 11, 2022, Bungie emailed the Defendants, asking whether the purported
6 sale had been completed and if it included the cheat software at issue in this case. *See*
7 Ex. 6 to Rava Decl. (docket no. 37-1). On May 19, 2022, having received no response to
8 its email, Bungie filed its amended complaint, docket no. 34, and the present motion for
9 preliminary injunction, docket no. 35. On May 23, 2022, Aimjunkies and Phoenix
10 Digital issued a press release reporting that Blome Entertainment (“BME”), an allegedly
11 Ukrainian company, had “completed and signed definitive agreements” with Phoenix
12 Digital to acquire the Aimjunkies.com website.³ Ex. 4 to 2d Rava Decl. (docket no. 43-1
13 at 20). The press release provides that the “acquisition will give BME access to
14
15

16
17 ² The Court granted Bungie leave to amend its complaint on or before May 27, 2022. *See* Order at 13
(docket no. 33).

18 ³ Bungie raises doubt concerning the Defendants’ claim that they sold the Aimjunkies.com website to a
19 group of Ukrainian investors. On November 20, 2020, before Bungie initiated this action, defendant
20 Conway sent a letter to Bungie’s counsel. *See* Ex. 2 to 2d Rava Decl. (docket no. 43-1). In his letter,
21 Conway alleged that he no longer owned Aimjunkies.com, and that the “referenced sites were sold to
22 Phoenix Digital Group LLC, and Phoenix Digital Group in turn sold them to CallofDutyHacks.RU site
owners some time ago.” *Id.* On June 29, 2021, the Defendants sent a letter to Bungie explaining that the
sale referenced in Conway’s November 20, 2020, letter “ultimately did not go through.” Ex. A to 2d
Schaefer Decl. (docket no. 39-2). Further, the press release announcing BME’s acquisition of
Aimjunkies.com appears to be an altered version of a January 31, 2022, press release announcing Sony
Interactive Entertainment LLC’s acquisition of Bungie. *Compare* Ex. 4 to 2d Rava Decl. (docket no. 43-1
at 20) *with* Ex. 5 to 2d Rava Decl. (docket no. 43-1 at 23).

1 Aimjunkies’s world-class cheat library,” and all equity and property rights in Phoenix
2 Digital’s other websites, VirtualAdvantage.com and Mombot.com. *Id.*

3 Bungie seeks a “narrowly tailored” preliminary injunction for its copyright
4 infringement claim to stop only the Defendants’ transfer of the Destiny 2 cheat software,
5 and not the entirety of the Aimjunkies.com websites, to any third party prior to the final
6 disposition of this case.

7 **Discussion**

8 A preliminary injunction is an extraordinary remedy, “never awarded as of right.”
9 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A party seeking a
10 preliminary injunction must establish: (1) a likelihood of success on the merits; (2) a
11 likelihood of irreparable harm in the absence of preliminary relief; (3) a balancing of
12 equities tips in favor of a preliminary injunction; and (4) an injunction is in the public
13 interest. *Id.* at 20. The Ninth Circuit has also articulated an alternative “sliding scale”
14 approach pursuant to which the first and third *Winter* factors are analyzed on a
15 continuum; under such standard, a weaker showing on the merits, combined with a
16 stronger demonstration on the balancing test, might warrant preliminary injunctive relief,
17 assuming the second and fourth *Winter* elements are met. *All. for the Wild Rockies v.*
18 *Cottrell*, 632 F.3d 1127, 1131–35 (9th Cir. 2011). Under this “sliding scale” method, the
19 movant need only raise “serious questions going to the merits,” but the balance of
20 hardships must tip “sharply” in the movant’s favor. *Id.* at 1131–32; *see also Farris v.*
21 *Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012).

22

1 **1. Likelihood of Success on the Merits**

2 In their response to Bungie’s motion, docket no. 39, the Defendants do not contest
3 Bungie’s assertion that it is likely to succeed on the merits of its direct and secondary
4 copyright infringement claims. Instead, the Defendants challenge only whether Bungie
5 has demonstrated immediate irreparable harm. Having reviewed the motion and
6 Bungie’s claims, the Court concludes that Bungie is likely to succeed on the merits of
7 some claims, and raises serious questions going to the merits of others.

8 **a. Direct Infringement**

9 Bungie alleges that the Defendants’ actions constitute direct copyright
10 infringement. Am. Compl. at ¶ 107. To establish direct copyright infringement, Bungie
11 must “(1) show ownership of the allegedly infringed material, and (2) demonstrate that
12 the alleged infringers violate at least one exclusive right granted to copyright holders
13 under 17 U.S.C. § 106.” *See Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856
14 (9th Cir. 2017) (internal quotations omitted). Bungie has shown that it owns two
15 audiovisual copyrights and two software code copyrights in *Destiny 2* and its expansion.
16 *See* Ex. 1 to Rava Decl. (docket no. 37-1); *see also United Fabrics Int’l, Inc. v. C&J*
17 *Wear, Inc.*, 630 F.3d 1255, 1257 (9th Cir. 2011) (explaining that a copyright registration
18 is “prima facie evidence” of the validity of a copyright). Bungie, therefore, has
19 sufficiently satisfied the first element of its claim.

20 Bungie has also submitted an un rebutted declaration which demonstrates that the
21 Defendants likely infringed its copyright. *See generally* Kaiser Decl. (docket no. 36).
22 Bungie contends that the Defendants created, advertised, and offered for sale cheat

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