

This is a loose translation of the Blizzard vs. Bossland 2 document/findings or w/e it is...

This is not an accurate translation and was done with Google's document translation tool.

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Case No.: 312 O 390/11

I. Legal contest injunctive relief 4

1. Kollisionsrecht: Not applicable German competition law 4

a) No German legal form 4

b) Rome II Regulation 5

c) 6 Erfolgsort

Second § 4 No. 10 UWG: No unfair inducement to breach of contract

6

a) Notwithstanding the Federal Court of Justice 6

b) 7 Bundesligakarten.de

c) Automobile Exchange Online 8

Third § 4 No. 10 UWG: No unfair advantage foreign breach of contract

10

a) Non-prohibited 10

b) Contracts between contracting parties only 10

4th § 4 No. 10 UWG. No protection of "rules"

by competition law 11

a) Lady of the rules of the game? 11

b) no effect against third parties 12

c) Even outside of online games no restriction of competition 12

d) On the economic success of World of Warcraft 13 interested

5th § 4 No. 10 UWG: No competitive legal protection of technical means to comply rules of the game ("Warden") 14

6th § 4 No. 10 UWG: No competition law protection of the "subscription period"

15

7th § 4 No. 9 UWG. No unfair imitation  
16

8th § 2 para 1 no 3 UWG: No specific competitive relationship  
17

- a) sales of identical or similar goods within the same circle 17 customers
- b) work on the same relevant market 19
- c) correlation between promotion and sales impairment 19

9th Fact to talk to the applicant 20  
a) Sales-related disability 21  
aa) Basis 21

(A) No strict proof  
21

(B) the defendant does not affect software  
21

(C) Costs not understand / be denied  
23

-3

(D) No reduction in playing time 23

(E) Once again, "Warden"  
24

bb) details 25

cc) Failure of server economy, disruption of the game play 29

dd) Castranova outlandish statements by Professor 36

b) No "parasitic exploitation"  
40

c) No competitive advantage over other users 42

aa) No benefit by saving time 42

bb) No advantage in terms of material 47

cc) No advantage with respect to the player experience 47

dd) World of Warcraft bots will benefit from the 48

## II No breach of contract by the player 50

First Terms not part of the contract 50

a) No effective involvement of Terms 50

aa) General doubt 50

bb) account when you buy any 51

cc) Free sample season 52

dd) cover contractual 52

ee) game does not need to install 53

ff) software runs on disk 54

gg) Game Time Card 54

b) Ineffective clause 55

c) Surprising clause 69

d) Violation of § 307 para 1 BGB-69 copyright

aa) Ineffective "restriction"

of License 69

bb) the ineffectiveness of No. III of Terms 73

cc) to the macro keyboards and Multiboxing 79

(A) Macro Keyboard 80

(B) Multi-Boxing 81

(C) LUA scripts 119

(D) Legal Assessment 120

## III. Trademark dispute 121

First Use on the website [www.gatherbuddy.com](http://www.gatherbuddy.com) & [www.honorbuddy.com](http://www.honorbuddy.com) 121

Second Using the website [www.privatwowbot.com](http://www.privatwowbot.com) 125

-4

## I.

Legal competition claim for injunctive relief

The applicant has no competition claim for injunctive relief against the defendant. German competition law is not applicable because the applicant claims to their replica not on the German Market phenomenon occurs, but this is a French Subsidiary leaves.

Even once you get to the applicability of the German Competition law, subject to fulfilling the disputed Actions of the defendant in any way would constitute a unfair disability pursuant to § 4 No. 10 UWG.

First Conflict of Laws:

No applicability of German competition law

a) No German legal form

Aside from the question whether German competition law, in the absence Competitors property is relevant, the following should be noted.

The applicant is a company incorporated under U.S. law, established in California. The games are developed by the applicant after the applicant claims to be the "outside North America" not of it itself, but by "certain subsidiaries and affiliates" distributed (letter of 17.11.2011, p. 4). On the European market the applicant does not appear, but the Blizzard Entertainment

SAS in Valency, France, which is based on the information the applicant should be a subsidiary. With this knowledge

-5

Company to complete all contracts between the customer, such as directly from the issue of use is:

"Thank you to the Battle.net service (the "Service ")  
. use These terms and conditions (the  
"Agreement") contain the conditions under which  
Blizzard Entertainment SAS, a French company  
with registered office at 32 Avenue de L'urope, 78140

Velizy, France ("Blizzard" or "we"), provides access granted to the Service. This agreement replaces neither the end user license agreement ("EULA"), for the Blizzard's games is (individually the "Game"), nor other for a game-specific Terms ("Game-specific Terms ")."

Proof: Conditions of [www.battle.net](http://www.battle.net) expression, presented as Appendix B 20

#### b) Rome II Regulation

Competition law, the action is based (solely) on the charge a specific disability of the applicant (§ 4 No. 10 UWG, see Application, p. 22 ff).

The applicant challenges the distribution of the software by the defendant with the Grounds that affect the distribution of this software in an unfair Competitive manner legally protected interests of the applicant.

Whether the U.S. applicant to a German court German competition law may be relied determined, since the 11.01.2009 by the Rome II Regulation the EU, which, under Article 3 Rome II Regulation Universal has validity.

-6

Under Article 6 para 2 Rome II Regulation to determine the applicable law in Competition matters solely under Article 4 Rome II Regulation, if - as in this case - competitive activity is attacked, the only The interests of a specific competitor (the applicant) impaired. Thus Article 4 paragraph 1 shall apply Rome II Regulation:

"Save where this Regulation provides otherwise, is

a non-contractual obligation arising out of tortious  
Action to apply the law of the State in which the  
Damage occurs, regardless of the state in which the  
event to damage or indirect consequences  
have occurred. "

c) Erfolgsort

It is therefore solely on the place of effect, not the Handlungsort  
to -  
to the place where the damage has occurred (allegedly), and not  
to the place where one (allegedly) harmful competition act  
was committed. With regard to the California headquarters of the applicant  
is already thinking logically no place of effect outside the United States into consideration.  
Thus, according to Article 4 para 1 Rome II Regulation only U.S. law,  
but not the German competition law is applicable (cf. Härting,  
Internet Law, 4th Ed 2010, para. , 1853).

Second § 4 No. 10 UWG: No unfair inducement to breach of contract

a) Notwithstanding the Federal Court of Justice

If, however, once the application of § 4 No. 10 UWG assumed,  
meet the disputed offers of the defendant under any  
conceivable point of view the conditions of an unfair  
challenge This applies particularly to the aspect on which the

-7

Applicant on p. 23 ff largely based their replica: An Unfair  
Inducement of customers of the applicant (or of customers of the French  
Subsidiary) for breach of contract by the standards that the  
Supreme Court decisions in particular the bundesligakarten.de (BGH  
11/09/2008, BGHZ 178, 63 ff) and automotive online exchange (BGH  
Created 6/22/2011, AZ I ZR 159/10) has to negate clearly.

b) Bundesligakarten.de

In the Supreme Court's decision went to the football club bundesligakarten.de Hamburger SV against an online platform that the resale of Tickets possible. Such is the buyers of resale Tickets Hamburger SV prohibited. The Hamburger SV was of the opinion that the operator of the platform led the buyer of tickets to be on the prohibition of resale flout. Herein lies an unfair inducement to breach of contract and thus a violation of § 4 No. 10 UWG. The Supreme Court denied a The infringement on the grounds that such a violation only deemed to exist if it is specifically and deliberately encouraged that a other contractual obligation, he resides (aaCit, mn. 31).

Even from a "targeted" action on a "concrete" Contractors could not speak. The mere advertising to Customers who are in breach of contract for use of the platform may rich behave, is not an unfair practice:

"To the rich-looking ads for the general public Criterion of enticing at least in most cases, and so also here, not out. For the want ads in the defendant's Sports magazines and their purchase advertising on the Internet is is solicitation of offers to sell (Invitatio ad offerendum), how to accept or reject the

-8

already seen the defendant why not reserved, because they not already in the job advertising indefinitely for purchase want to commit tickets. It lacks so at a selective exposure to specific cardholders. "

A.a.Cit, mn. 32

Even if you follow the plaintiff's argument and therefore one Breach of online gamers accessing or using the software in question affirmative would be, from such breach of contract for a long time not close to an unfair practice by the defendant. The mere

Advertising for the disputed software on different sites met the  
Constitute an "inducement"  
neither does the advertising for the  
Card platform in the case decided by the Supreme Court.

c) Automobile Exchange Online

Felt the decision of the Supreme Court to automotive online market, the  
Operator of such an online platform through software sales  
hampered by the simultaneous search of several online exchanges  
allowed without the websites of individual platforms  
needed to be visited. The plaintiffs relied on his general  
Terms and Conditions, contained the following clause:

"An automated query is using scripts or the like is not permitted."

The software of the defendants thus inevitably led to a violation  
against the terms of the plaintiff, because just one  
automated interrogation took place without having to use the browser.  
Herein was the plaintiff an unfair inducement to breach of contract. The  
The Supreme Court is not followed:

-9

"An unfair hindrance of competitors according to § 4 No. 10  
UWG is a deterioration in the competitive  
Development opportunities ahead of competitors, beyond those relating to  
Each competition is judged to go out and  
Unlauterkeitsmerkmale certain exhibits. Is unfair  
Impairment in general, if the specific purpose  
pursued is to prevent competitors in their development and they  
to suppress this, or if the disability results in  
that affected their competitors' performance on the market  
by his own efforts no longer adequately to  
Can take advantage. "

A.a.Cit, para. 65, as BGH, 11.01.2007, BGHZ 171, 73 ff -



Field staff, para. 23; BGH, 07.10.2009,  
WRP 2010, 644 ff -  
Diversion, para. 12, Hamburg from  
09.03.2011, Az 315 O 489/10, para. 58)

Of a "displacement" could not speak. Quite the contrary:  
the software of the defendants was based on the applicant's online marketplace.  
The defendant was not there to "repression"  
go, he was  
rather dependent on the continued existence of the online market.

It's the same in this case: the defendant  
distributed software is functional accessory to the game that the applicant  
has developed. Like all accessories retailers have the defendants  
natural interest in the success of the "main article"  
the applicant. A  
unfair "predatory"  
The applicant is the defendant can not in any  
Way to go.

-10

Third § 4 No. 10 UWG: No unfair advantage foreign  
Breach of contract  
a) Non-prohibited

Just for completeness it should be noted that a  
Infringers in accordance with § 4 No. 10 UWG also not a  
be able to claim unfair exploitation of foreign breach of contract.  
Even if one assumes that the players, the software  
Defendant to purchase and use, to the applicant (or their  
French subsidiary) act in breach of contract, is in the  
Contribute to a breach of contract not unfair disability pursuant to § 4  
No. 10 UWG.

Following the recent ruling of the Supreme Court is the exploitation of a  
foreign breach of contract generally not prohibited, but permitted. Only  
to occur if special circumstances that make one unfairness

can be derived, may be a violation of § 4 No. 10 UWG are affirmed  
(Supreme Court of 11.01.2007, BGHZ 171, 73 ff -  
field service employee  
Rn. 15). This has been presented here, nor is this the case.

b) Contracts between contracting parties only

That participation in a breach of contract is generally permitted,  
results from the fact that the fulfillment of obligations, only the specific  
Contractor and do not hybridize with the means of competition law  
can be extended to third parties:

"The idea is to reason that the law of obligations  
Bond between the competitor and its counterparty  
generally no legal effects against third parties to  
able to develop and that the adoption of a

-11 -

Infringement of competition law already in exploiting foreign  
Breach of contract akin to a reification of  
legal obligations would lead to blame ... "

(BGH, 11.09.2008, BGHZ 178, 63 ff -  
bundesligakarten.de,  
Rn. 35)

If the applicant wants to prohibit the defendant, accessories  
offer the use of which the applicant (or their French  
Subsidiary) prohibits the players, is she in substance  
to such "reification"  
bonds of debt, which the  
Competition law to the recent jurisprudence of the BGH  
is alien. The defendant tried to think right here  
construct, the creators have not made aware of the Civil Code.

Even a "systematic"  
Approach of the defendant speaks in no

, For an unfairness:

"Systematic and planned action lies rather in  
Nature of competition. Regularity of action is therefore  
generally not a criterion of the competition  
Assessment:

(Supreme Court, cited Cit, mn. 38)

4th § 4 No. 10 UWG. No protection of "rules"  
by the  
Competition Law  
a) Lady of the rules of the game?

On p. 25 ff sought by the applicant, from an unfair handicap  
an (alleged) "major intrusion into the game system"  
to derive.

-12

The applicant is a developer of the game, mistress of the rules. They  
believes that compliance with the rules of the game with the means of  
Enforce competition law can and draws on the -  
From her  
so-called - "fundamental principles of fairness, justice and  
Equal Opportunities "  
(Application, page 25, below).

b) No effect against third parties

"Game rules"  
binding effect as between the unfold  
Participants of the game, if a contractual relationship between these  
there. To third parties do these "rules"  
is fundamentally  
not. In this respect, it is important to remember that the  
Competition law can not be exploited to

law of obligations bonds to "reify".

c) Even outside of online games no  
Restriction of competition

"Game rules"

available on the Internet not only for online games, but also  
on platforms such as eBay in the form of terms and conditions. A violation  
is against the Terms of eBay for a newer

Decision of the OLG Hamm, per se, no unfair disability  
is charged by competitors, which are the terms of use

("Rules") keep (OLG Hamm dated 21.12.2010, WRP 2011, 498 ff.)

For the earlier law, the Berlin District Court ruled in

2003 that the exposure to so-called processes auction on eBay

"Sniping"

could not be regarded as anti-competitive

though the use of such software as eBay

Terms were forbidden (LG Berlin of 11.02.2003, CR 2003,

F. 857, a.A. LG Hamburg, 16.07.2002, CR 2002, 763 et seq.)

13%

The "sniping software"

was an early sign of a phenomenon that

Today, the Internet en masse to watch is: Specialized

Vendors develop for platforms such as eBay, Google, Facebook, or even

Games platforms for applications that require the use of platforms

easier, simplified or supplemented to include additional functions. The

Operators of the platforms concerned in part, such applications

to regulate their use in conditions, or even completely

governmental permits.

d) On the economic success of World of Warcraft interested

Applications such as software, offering the defendant's benefit -  
indirectly -

the economic success of the platform or

Main product, for which applications have been developed. But from

Therefore, it is far from where such applications offer a  
Unfair to see disability in accordance with § 4 No. 10 UWG. In order to avoid  
repetition is referred to the defense. It is  
Interest of the applicant that the software of the defendant's maximum  
Distribution and has enjoyed great popularity.

An application to the "rules"  
The platform is injured  
competition law is not objectionable. Because it would free  
Not promote competition, but affect, if such  
"Game rules"  
(Terms), a quasi-proprietary effects  
could develop to third parties. Already, the legislature of the UWG  
would promote competition generally does not contain.

In any case, as long as no applications to rigid  
Damage and disruption of operations lead, the  
Platform operators from the unpleasant sight of its (economic or  
other) effects inherent in these applications as a competitive

14%

. accept This has the Supreme Court in its recent decision to  
Online automotive markets clearly emphasized:

"The offering, Promote and market the software A.  
Another reason why no violation of § 4 No. 10 UWG because the  
Use of the software is a disorder of operations in order  
Would result. Although the cause of a malfunction  
and in bringing about the risk of a malfunction  
deliberate obstruction of competitors within the meaning of § 4 No. 10  
UWG are ... The appellate court, however ... assumed  
the applicant has not demonstrated that the use of software to  
an unreasonable technical interference has caused. "

(BGH, 22.6.2011, I ZR 159/10 Az -  
Online automobile market,  
Rn. 73)

5th § 4 No. 10 UWG: No protection from competition law  
technical means to ensure compliance with rules of the game ("Warden")  
At p. 27 et seq of the application indicates the applicant that their "rules"  
not only trying to enforce the contract, but also technical  
Measures in order to use ungenehmer applications ("bots")  
to prevent.

Assuming the correctness of the plaintiff's time to talk  
alleged circumvention of technical measures by the  
Software of the defendant, can also be anything from this one for unfair  
Behavior of the defendant derived. The applicant does not claim that the so-  
called "program protection mechanism Warden"  
a technical  
Measure that the requirements for protection of the Copyright Act § 95 a  
complied with. Are protected only protection mechanisms, the copying of the

-15 -

Product concern. The game "World of Warcraft"  
However, completely free  
copyable, what is actually desired by the applicant explicitly.

Thus, the allegation of the applicant exhausted the fact that the defendant  
Software has been programmed to compliance with the "rules"  
Despite the "Program Safeguard Mechanism"  
is not guaranteed. A  
any involvement of the defendant in an infringement of "rules"  
is  
However, as already stated, not as an unfair handicap under § 4  
To see No. 10 UWG.

6th § 4 No. 10 UWG: No legal protection of competition  
"Subscription period"  
That -  
as the applicant says - "subscription periods"  
by using  
the accessories of the defendant "shortened"  
may be, can not

His circumstance from which an unfair handicap according to § 4 No. 10 UWG can be derived. The statements of the applicant's alleged shortened "subscription periods" move anyway in the speculative- Approximate and can save in eight others, that there be player will provide for the equipment at issue in the first place is the event, the games of the applicant for purchase. The details of this follow below.

In his commercial break-decision, the BGH has refused solely on potential revenue losses associated with the use of an accessory device are connected to an unfair handicap in accordance with § 4 No. 10 UWG to Close

"The defendants of the pecuniary interest on the distribution of Commercial break from the TV viewers offered technical Relief to prevent the plaintiff nothing because their performance on the market in a reasonable way to bring to bear. "

16

(BGH, 24.6.2004, NJW 2004, 3032 ff - Ad blocker, Rn. 28

Similarly, in the previous case, the applicant (or their French Subsidiary) by the support offered by the defendant in Accessories any way prevented by players for their online offerings to . advertise As far as the accessories - as the applicant claims - their economic interests contrary, the applicant in this Accept competition:

"While the deployment of commercial break running from the interest of Applicant contrary, not only with their editorial Program contributions, but especially with their

Advertisements to reach as many viewers as  
thereof depends on the amount of their advertising revenue. The only  
the offer and sale of services makes the defendant  
but not unfair competition law. A  
anticompetitive behavior would rather only given  
if the defendant is not competitive private agents  
served ... "

(Supreme Court, citedCit, see also OLG Cologne, 8.10.2004, MMR 2005,  
100 f.)

7th § 4 No. 9 UWG. No unfair imitation

As already stated several times, it is not apparent to the defendant  
about the business activities of the applicant (or their  
French subsidiary to interfere). On the contrary: the  
more players, the applicant wins, the more potential customers  
Defendant there.

17

The defendant does not interfere with the applicant, they benefit from it. After  
previous law would have the idea of a competition law  
unfair exploitation of reputation according to § 4 No. 9. b UWG may suggest.  
Since then, the Supreme Court jurisprudence on his old "pushed into a  
foreign series "

However, given (cf. BGH, has 02.12.2004,  
BGHZ 161, 204 ff -  
Terminal Blocks III), can also unfair by a  
Exploitation of reputation of the question.

8th § 2 para 1 no 3 UWG: No specific competitive relationship  
It remains doubtful, moreover, whether any concrete  
Competitive relationship between the parties.

What are the prerequisites for a specific competition with i.S  
§ 2 paragraph 1 must be received no 3, is not yet clear. It  
Several approaches to be partly together, partly for himself alone



is used.

a) sales of identical or similar goods within the same Buyers circle.

The applicants are neither representational bots or similar goods or they are directed to the same group of customers.

The applicant shall -  
claims to autonomy and a ready-  
functioning computer games ago. This game requires for its  
Functionality of any further additions. The defendant is  
produces only a small program. This program works  
not for himself alone, but only in conjunction with the  
Game of the applicant. To continue the example from the applicant

18

Human-worse-you-do not play here take up again: the applicant  
represents the board, playing pieces and dice available, so that the  
Purchasers of the game with the existing product already start something  
can, while the defendant manufactures custom dice, the  
Although the game complete, able to stand alone for the player completely useless  
are.

Furthermore, the products are aimed at different  
Purchaser groups. The computer game of the applicant is a self-  
Work that is produced in its proposed form en masse.  
Once a player buys this product, it has all the relevant benefits  
the product. It makes no sense for the player far more, the  
Product of the applicant to acquire a second time, he would gain no  
other benefits, especially since he is already playing with the individual in the  
Situation is to have multiple characters in the game and control  
(See also Multi-boxing). The product of the applicant is thus directed  
purchased exclusively at players who are not World of Warcraft.  
The product of the defendant is a dependent program without  
the game World of Warcraft no functional benefits for its  
Acquirer offers.

The player who wishes to purchase the product of the defendant, therefore, must already own the game World of Warcraft to be, otherwise he can from the Acquire no benefit. Thus directed, the product of the defendant to all players who are already in possession of the game World of Warcraft. Because But this property completely contrary to the property Customer group for the product is the applicant, at no point have a common intersection, between the Products also no competitive relationship.

19%

b) work on the same relevant market

After this -  
obviously borrowed from antitrust law -  
criterion  
it is essential, whether the services or products advertised or  
Services from the perspective of the intended public  
substitutes (substitutes) are.

That the two products are not interchangeable at all, is obvious. No player will choose from when buying the products have. The product works alone for the defendant in fact not. It always requires the Game World of Warcraft before the player can move at all to acquire the disputed bots into consideration.

c) correlation between promotion and  
Paragraph impairment.

Accordingly, there is a specific competitive relationship exists if between the benefits that someone with a measure to be Company or a third party is trying to achieve, and the Disadvantages suffered by the other by a correlation in the sense is that one's encouraging competition and foreign Competition may be affected.

Again, this is clearly not available. It is also clear from the

Statement to the applicant dated 17.11.2011. On page 43, the applicant complains of Defendants targeted against parasitic exploitation. A parasite uses the survival of another (host). If the product of the Defendant actually affect the sales of the applicant, then the defendant would dig their own grave. Finally, the Applicant to sell its product to rely on the applicant. Any negative effect on sales of computer games in Applicant also affects the market for the defendant's negative.

{0/}{1}{/1}{2}[20]{/2}

Respect, there is just no interaction, but a direct effect before It does not win one at the expense of others, but the concrete effects make both parties in the same way Way.

The result is between the parties has been no concrete Competitive relationship before. They are therefore not competitors i.S § 2 para 1 no 3 UWG. For this reason, it lacks a Infringers in accordance with § 4 No. 10 UWG.

9th To the fact the applicant's presentation  
The statements of the applicant on p. 26 et seq of the pleading of 17.11.2011 are largely in loose reference to § 4 No. 10 UWG and the The Federal Supreme Court. Instead, the effort  
- Claimant -  
for some kind of "bastard" theory  
to provide evidence  
that they are "disabled"  
and the players are "disturbed"  
feel this is due  
a behavior of the defendant, by the applicant on p. 43 f. as "parasitic" branding.

"Parasitic"  
behaves in every developer of a smartphone apps, if  
one would take seriously the polemics of the applicant. It's all about the Development of software as an application on pre-existing software touches the ground. Also according to the logic of the applicant would any other software you

need

Windows would be programmed to one of exploitation

Company "Microsoft"

have resulted. That this is not the case,

but even upside down, a "shoe it is"

and that

this is nothing, absolutely nothing to do with § 4 No. 10 UWG has, but simple behavior in the power market is competitive, we have already previously demonstrated extensively.

21)

Although not apparent or largely dubious, on why it largely in the actual designs on exhaustive

To arrive p. 26 et seq of the pleading of 11/17/2011, this is part the pleading must not remain unanswered.

a) Sales-related disability '

It is again denied that the disputed Bots

Players of World of Warcraft "massively upset and discouraged" be.

aa) General remarks

(A) No strict proof

To meet the one submitted by the applicant Screenshots

not the conditions of strict proof. From the

Screenshots is not clear who the depicted comments

complaints and has ever written (even if the

this CD-ROM of the applicant no user name, blackened

has been). As long as the authors are unknown, however, the

No evidence of the defendant nor the court on his

Accuracy can be checked. The applicant is supposed to ask first

Author to locate and invite as witnesses, or at least

private documents in accordance with § 416 ZPO present, in order to ensure

that the submitted comments and complaints from

players involved and are also meant serious.

(B) the defendant does not affect software  
On the other hand does not let the comments submitted  
, found that they do here in dispute bots

no. 22

concern. The defendant is not the only provider of such bots.  
From individual comments can be even partially already  
, found that it is impossible here in dispute bots  
concern. Below are just a few of the World of Warcraft for  
Available third-party programs:

LazyBot

Dreadnought

GPBot

Crawlerbots

SFisher

Fairplaybot

Macrogoblin

RwBot

Jenses Multihack

Lazy Raider. Auto-rotation offered

EVO Hack

Lag7 Strategic Lagtool

EverMorph

\_keySpam: Timed Keys v1.2 transmitter

Dreadnought-free multi bot for World of Warcraft

WoW BG bot: Moxzbot

Hopper Bot -  
Gatherbot

Freeze your arena arena-ninja opponents [U.S. realms only]

GPHack

WoWdar WoW-radar program

LUAProtectionRemover!

IcanhasFish WoW FishBot

HeliosBots.com Premium WoW Bots!

OpenWowBot open source project launch

LogicWin-hack, special for botting

PocketFork-opensource MacBot

Cyber Fish 4.9

23%

WIP-speed hack, teleport hack, Fly hack

OMGBot Beta Free Grinding, PvP, gathering, fishing bot

Even by the applicant as specific complaints about the  
Buddy bots submitted comments are sometimes obvious  
not related to the disputed bots. More on that later.

In that regard, it also lacks a proof that the disruption of Gameplay on the disputed bots is due.

(C) Costs not understood / be denied

Also the cost of processing the complaints are impossible due to the defendant alone. The applicant should please submit a proof that at all Complaints against the disputed bots exist.

(D) No reduction in playing time

It is also denied a shortening of the season.

Firstly, the information regarding the average game time in dispute.

Both the defendant first as well as his legal counsel The average time to have a multiple undercut.

24%

Secondly, there is a lack of evidence of the applicant that the Players reaching the highest levels of the other games setset Instead, the game reaches its real attraction but only when one has reached the higher level.

(E) Once again, "Warden"

It also denies that the disputed bots one would circumvent technical protection mechanism is wrong.

On the one Warden is no technical protection mechanism. To the f in § 69 paragraph 2 shall include all the technical means Protection mechanisms in the copyright infringement relating should be prevented in the protected program. This includes as well as a copy protection measures, a digital Management rights allow for the As a simultaneous To prevent multiple use of a network or operating or use only for a limited time to unlock. Warden does

none of that. Warden rather examined only  
Memory elements according to whether software, which supposedly against  
Terms of the applicant's notices on the relevant  
Computer system to run.

Secondly, the screenshot presented anything but a  
Evidence of circumvention. It is neither the author of the article  
seen, nor can the description of the mandatory  
Conclusion on the disputed bots can be drawn.  
The defendant can only turn to make it clear that the submitted  
Their website has been operated at any time.

Furthermore, the 100,000 buddy bot users completely  
exaggerated. The defendant would be very happy if this were so.

25

#### bb) Details

In the following example to put forward, alleged  
Plaints also be taken. This representation is  
show that all statements of the applicant without any probative value  
are, because even without referring to the strict proof, not for  
that dispute the relevant facts are established, but is  
the applicant is limited to propaganda, no doubt to the court  
To make us believe that their business by the software  
Defendants would be impaired, which simply is not realistic  
corresponds.

Page 31 1 complaint:

The defendant does not use routes, ie, no waypoints.  
but a navigation, the self-calculated each time and  
different propagation paths increases

Page 31 Appeals 2,

The software of the defendant as a navigation device or a



GPS. The bot is never fixed in stone, because this forbidden Areas in the navigation are

Page 31 Appeals 3, "playing in the minority"

This player uses a so-called "Afk Bot," a "Away from Keyboard" bot software which the defendant has no such Behavior.

26)

Page 31 Appeals 4,

here where the evidence is that there really is a bot?

Page 32 complaint 1,

This player uses a "Leech Bot"  
= Afk Bot, see above

Page 32 complaint 2

Where was here used a bot?

Page 32 3 complaint, "we see clearly"

This does not happen with the software of the defendant

Page 32 Complaint 4,

This is probably the use of neutral Auction house, a transfer of gold between players to . permit A good subject is in for some gold neutral auction house hired to own them with the To purchase a different faction and character as "Gold" to transfer between your own characters. This Players surprised that someone else faster the Subject snatches, as the two people who

for example, via Teamspeak agreed. The problem can quite well on the lag to the server is located, but normal Gambling behavior and has nothing to do with bots.

The user is upset because he carried around and stupidity Transfer fees to save, gold has lost (in the neutral Auction house are the transfer fees 15%). There is a

27)

Difference in one instant gold purchase or 10,000 gold for the Object, namely 1500 Gold fees. Try this  
To save players are overwhelmed by other players, what  
However, a normal part of the game mechanics.

Page 32 Complaint 5,

is one of many complaints are completely unfounded and let miss any probative value.

Page 33 complaint 1,

This complaint also has to do with a Botprogramm  
The boy does. Was probably only used because the keyword "bot" in it? It was incorrectly assigned by chance find in the instance "bastion of Twilight ", the abbreviation for the players 'bot'  
. use Here is  
well the applicant's own language, their own new  
Players walked into the trap, the massive, with abbreviations  
bypasses.

Page 33 complaint 2,

AFK bots, and the question is if he has notified the why are still there, despite the enormous human cost, the Applicant claims? A better explanation is, there are pretty bad players die every few seconds.  
Otherwise, the applicant, the players would still locked?

Page 33 3 complaint

Here is "waypoint bots" that the software  
Defendants use navigation and random routines.

28

Page 34 Appeal 1

This user uses the bot pirox, as he himself represents. And  
Users seem to use their own pirox, and sees its use  
at risk.

Page 34 complaint 2,

Except that here, no evidence exists  
are that the defendant's software is involved, can not  
Botprogramm 1000 gold per hour will be developed.

Page 34 complaint 3 and 4

Evidence for dismissal? Such threats are daily  
written in order to extort acts of Game Masters.

All the illustrations are absolutely worthless, do not meet the approach  
the strict requirements of proof and therefore all  
regarding the relevance to this litigation dispute.

Mention of a total of 11 533 German complaints  
only four! especially the Buddy software and the software  
Gatherbuddy, wherein this is not the slightest mention of  
Has probative value, since users could also be wrong.

In contrast bullet points about 10% are so-called underground  
Due bots, if you look at the text of the report looks.  
Approx. 700 over angelbot, which are very plentiful and all the  
are free of charge, about 80 reports are about teleportation hacks, a  
Feature that does not include the software of the defendant, about 400 bots

for the auction house, which does not include the software of the defendant,

29)

about 120 are about speed hacks, what the software is not the defendant supports approximately 10 hacks and jump around 50 Wall hacks, both of which Software does not support the defendant.

It is also erroneous to perceive that many users are bots or even disturb it. The applicant has conducted a survey in their own forum made as to whether the guild (union game) from the bot activities the user would know. Less than 305 messages, resulted in the Found that 61.31 percent do not know in their own friends would that someone uses a Botsoftware. The rest know and it still does not seem bothered.

cc) Failure of server economy, disruption of game play

Through the use of bots in general, and thus certainly not by the software of the defendant, the totally unobtrusive and act naturally, there is no interference with the game play. Instead, the game World of Warcraft now has its own Economy of space and as many users already Business simulation used. The defendant will get a report imagine what is expected in late February 2012th This is different as the opinion of the applicant from the most recent court filing by a Scientists are created, not by a person who themselves operator of an online game once was, and thus little is credible.

[http://en.wikipedia.org/wiki/Arden:\\_The\\_World\\_of\\_Shakespeare](http://en.wikipedia.org/wiki/Arden:_The_World_of_Shakespeare)

<http://news.cnet.com/Shakespeare-coming-to-a-virtual-world/2100>

1043\_3-6127294.html

The report is by Univ.-Prof. Dr. Wolfgang Broll,

Technical University of Ilmenau, Faculty of Mathematics and

30%

Natural Sciences, Institute for Media and  
Communication Studies (IfMK) with the virtual field  
Worlds and digital games are created.

The report is to clarify the following questions:

World of Warcraft has its own economy and those of the real world determines  
of supply and demand?

If yes, what influenced them?

- \* Vendor patches?
- \* Enhancements to the manufacturer?
- \* Bot programs? What are the differences in Bots-Farming / Leveling
- \* Professional Gold collectors, especially from China?
- \* Players who use the auction house intensive?
- \* Free to Play vs. model. Subscription model?

To prove Lord will Univ. Prof. Dr. Wolfgang Boll as  
Expert offered load on

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Various sources record but already a clear picture that the  
Use of bots has no negative effect on the gaming industry,

31%

since other effects this is how to compensate in any economy, again. This especially in the subscription model, there are no special services purchasable by the players are acquirable.

If someone, for example through the use of programs the defendant is prevented from money by killing Non-player characters to generate, then this is not devastating, since inflation is on the one ascending, the other prices in the Auction house change. Each player can continue in the same Measure things possible.

From the Journal of Virtual Worlds Research, Volume 2, Number 4 results, for example:

The current picture of gold farming is one On which data is frustratingly uneven. There are few Certainties at an aggregate level. Heeks (2008) provides a best estimate, based on other estimates that something like 400 000 people are employed in gold farming, Of which perhaps 85% are based in China. Globally, the secondary real-money trade associated with gold farming may well be worth in excess of U.S. \$ 1 billion. But the true figures could be Ryan (2009) for example cites one million gold, much more farmers working on a global trade worth more than U.S. \$ 10 billion.

However, we may question this simple reasoning. In-game inflation has undoubtedly been seen in the short-term (eg Castronova et al, 2009) but there seem to be few long-term records. One data set for a game # in which gold farming is present is EVE Online from October 2005 to June 2007 Which shows deflation, not inflation (Lehtiniemi, 2008). Yee (2005) claim in-game World of deflation in Warcraft and similarly Castronova's (2001) study of EverQuest showed deflation over time.

Overall, inflation between September 2006 and November 2009 was just

Which was 5% within a period of deflation up to late 2007 (when gold farmers were more likely to be Relatively active), and a period subsequent inflation of up to late 2009 (during a period when game redesign had made gold farming more difficult). -Runescape

There is, thus, little evidence as yet to support the supply-demand claims of in-game gold farming causing inflation. Some of the explanations are entirely consistent with supply-demand economic principles: that demand is not constant but rises and if, for example, due to changing numbers of players in the game, and That's Gold farmers represent only a minority of players and Thus have a limited impact on currency supply (Woodcock, 2008).

Other explanations rely more on the Particular characteristics of virtual economies, went on the fact that gold farmers DO NOT create anything tangible. Gold farmers make money by doing the all things that other players do: ore mining, picking herbs, killing monsters for their drops, and so on. Where would another player have, say, ore mined the same vein, not gold farmers are creating new value within the virtual economy, they are Merely diverting it.

Gold farming Arose because those with more money in the world than time (player-buyers) can trade a scarce resource (gold, or items, or high-level characters) online with those in the world with more time than money (gold farmers). In this sense, there is nothing different or unusual about the Particularly economics of farming gold.

Second, there is the game company: the virtual world's economic gods who ultimately control all inflows and outflows of currency

and items, and impact demand. Game patches and redesign may introduce new sources of in-game currency (such as daily quests

World of Warcraft), or new sinks (eg costly items like epic flying training mount in World of Warcraft);

So they may increase or decrease the demand for certain items and for CurrencyManager. These impacts are likely to far outweigh those of gold farming on prices. The company's ready ability to do this Arises because they control the code that creates the world and its economy. In many ways, they resemble a nation's economy central bank although they have transcendent powers compared to their real-world equivalents (and thus different purposes - game

Relatively little companies care about the core role of a real central bank: the control of inflation and economic growth).

In applying the simple idea of supply and demand to gold farming, then we, find

Relatively little evidence for a reality behind the perception of for inflation. We find a picture of more complexity than the initial "Headline" narrative, and we find a mixture of some standard application of economic ideas including those of scarcity and central banking, combined with some particular feature of the virtuality of production and in the overriding control of the game company.

The current image of the gold is frustrating when collecting the data inconsistently. There are only a few combined clarities.

Heeks (2009) provides a better estimate, again based to other estimates that about 400,000 people from Collect gold to live, of whom about 85% in China. global seen the market reach through third gold trading more than one Billion dollars, but the true figures could be higher. Ryan (2009) estimates that more than one million gold collector

34.

global business and the life of more than 10 billion U.S. Earn U.S. dollars.



In that regard, the question of the simple reasons for this. Inflation within games, it certainly has in a short time given (for example, Castronova et al, 2009), but it seems that only few long-term studies to be present. A Record for a game in the Gold collection is an integral part, is EVE Online October 2005 to June 2007, in which there is a Deflation came, (2008 Lehtiniemi,) not to inflation. Yee (2005) asserts deflation within the game World of Warcraft and just showed Castro Novas study of EverQuest (2001) to deflate over time.

"Overall, the inflation between September 2006 and November 2009, only 5%, within which was a period of Deflation by the end of 2007 (when gold collectors rather active should have been), and a further inflation by end-2009 (During a period when the renovation of the game Gold collection was more difficult). "Runescape

Therefore, there is little evidence yet to support the Inflation within the game through the supply-demand The ratio. Some of the explanations are fully consistent with the economic principles of supply and demand: Demand is not constant, but rises and falls, such By B. varying number of players in the game, and Gold Collector represent only a minority of players and thus have a limited influence on the situational supply (Woodcock, , 2008).

35%

Other explanations are more about the specifics the virtual economy, based on the fact that Gold collectors create anything real. Gold collectors earn Money by doing things that do all the other players: Ore that degrade harvest herbs, kill monsters to prey on, and so on. Where other players in the same vein Raw materials were removed, creating no new gold collector Value within the virtual economy, they simply redirect.

Gold collection was created because those in the world with more Money than time (player-purchaser) a limited resource (gold, or Objects or high-level characters) with those in the online World trade, the more time than money (Gold Collector) have. In this sense, there is nothing particular or Unusual about the economics of gold collecting.

Secondly there is the operator of the game: the gods of the economy in the virtual world that ultimately all inflows and outflows of cash and objects, and their impact on demand  
) Contro Patches and new features, new sources of Introduce money in the game (forAs the daily quests in World of Warcraft), or cut costs (eg As the expensive training of fast flying mounts in World of Warcraft);

You can also change the demand for certain products and Money to increase or decrease. Their impact on prices are probably far greater than that of gold collecting. The operator is able to do this because it makes the code, the created the world and its economy has control. In many Respects they resemble a national central bank Economy even if they have means overpowering, as their real counterparts (and comparatively

36.

different purposes-game operators take care of relatively little attention to the core of a genuine central bank: the control inflation and economic growth).

Applying the simple idea of supply and demand to collect the gold, then one finds relatively little evidence for a real impact on the perceived inflation. It was agreed discovered a more complex picture than the original "headline" suggests, and you discover a mix of some Standard application of economic ideas, including the Resource scarcity and central banks, with some Special features of the virtual and the combined production

superior control of the game operator. (Translation by the signatories)

Proof: B21 Certified translation as an attachment.

dd) Castranova outlandish statements by Professor

Moreover, already the testimony of Professor Castranova as not the reality to be considered accordingly.

Already the first statement is so absurd and far from the reality that with highly doubt the competence of the appraiser is. So has been informed repeatedly that the "leveling" with no bots faster, but slower and playing time is not reduced, since the goal of the game with reaching the maximum level is.

Statement No. 2 is to deny the same reason.

A proof for statement No. 3 is not provided. In addition, the Against advice indicates that not only does not have intrinsic

-37

be increased to collect gold, since there is a number Possibilities are that the applicant has established itself as solving of numerous daily repeatable quests that not all can be blocked by bots. In addition, the report will show, the applicant that the game has its own economy and therefore uses due to the higher volume of goods deflation, which the general inflation caused by the actions of the applicant, counteracts the longer time passes after a content update.

That the presence of bots, the more items and automatically collect and thus an excess supply of goods could provide, develop a hyper-inflation, economic unsustainable. If anything, caused by an oversupply hyper-Deflation because their goods are always Botnutzer other players

and sell it there is only a redistribution of gold, which is, because the Botnutzer are in the minority, deflationary effect. In this respect should it be assumed that the use of bots, the inflation caused by the applicant (by introducing new objects and enabling new tasks almost comparable to print money in the real economy) counteracted, and it is therefore positive for the average user impact that rising prices for items not in such a way as without bots would be the case.

Serve with the famous quote from Axel Zerdick, the Internet economy. Strategies for the digital economy. Berlin [ua]: Springer, 1999. (Issued together with Arnold Picot and others)

The Internet economy is dominated by the administration of Abundance, the real world of the defect.

Statement 5 is not at all evident. Perhaps it should be the Applicant realize to it in her game just is not a

-38

"Free to Play" -

Product is in the real one from the manufacturer  
Money for virtual exchanges, but a game that all contents  
by paying a monthly fee provides.

At No. 6 was already explained that the applicant no evidence of the statement in the specific case and the specific software Defendant on his part.

Also No. 8 is finally not at all comprehensible. why existing bots destroy the fantasy aspect of the game, opening up the defendant does not, especially as the applicant itself numerous Things, supports the fantasy aspect of the game lasting have destroyed, as the players to play together different worlds, sending items to Characters from different worlds and numerous further notice.

Rather, it is assumed that many other factors affect Economic influence in the game much more, such as Changes in the applicant, certain items of valuable or worthless, make available to the position of a test server, the only few people use intensive playing, but then the very good Information for the next content update gain.

As evidence we present numerous documents that prove this. The documents are held in English. If the court the documents are not evidence but also for deem necessary, this can of course later than Translation are included.

Proof: English documents, submitted as Exhibit B 22

That other factors are much larger than bots prove further information from the journal with the theme of "Virtual

-39 -

Economies in virtual goods and virtual service delivery Worlds, "which the defendant has to translate from English . It is interesting that Mr. Ted Cast Renova, author of Opinion has the applicant participated as a reviewer.

Proof: German version bb,

Also interesting is a representation of the World Bank about the size of the Secondary market of online games.

Too disruptive to the third market for users not be, when issued from almost ¼ of is claimed.

{0/}{1}{/1}{2}[40]{/2}

b) No "parasitic exploitation"

The applicant cites in its letter dated 17.11.2011 from the correct Comment by UWG Harte-Bavendamm/Henning-Bodewig. In this process, it overlooks the preceding sentence:

"Against the utilization of an interest in a supplementary requirement, the is triggered by the economic success of the competitor is, in usually no objection. "

For the benefit of the applicant here was a mistake, no intention to deceive reserved

The applicant was still in the application of the great popularity of its Product praised. This group of customers wants but constantly Additions and improvements to the game. This can be already working evident from the applicant himself, the Word of Warcraft game continuously evolve and increase in various ways, and innovations complements. In that regard, it seems, due to the economic success of the Applicant, a great interest in the growing community of players Improvements and innovations to be in the game.

If the defendant is this interest in the supplement is required for use in they are by offering simplifications of the play is in progress satisfied, that is not objectionable. In particular, the Applicant does not explain how the disputed the bots economic success of the applicant diminish. Neither the Complaints, nor could the costs for which the processing Applicant to demonstrate a relationship.

In addition, the applicant alleges that she was no longer competitive, when the game is not by a competent team of employees to to monitor the use of third party software would. But that would

mean that the applicant by the disputed bots  
Damage would occur, because otherwise the monitoring would be unnecessary.  
However, the applicant can not demonstrate what damage it by  
Defendant is accurate. Finally, the applicant shall maintain the  
Monitoring Team also not solely due to the defendant. They  
should demonstrate the extent that they would have a specific minimum effort,  
if the defendant would not offer the disputed bots.  
A claim is not quantifiable.

In addition, to demonstrate that even the arrogant exaggerated  
Expense of the applicant from its statement leads to a ratio, the  
certainly not as significant reduction of the turnover of the applicant  
refer to is which between a quarter and three quarters  
Billion U.S. dollars in the quarter was.

On page 48 of the pleading from the reported figures to 17.11.2011  
the alleged damages are neither factually nor legally  
understandable and certainly not to make any one  
Prima facie evidence dar.

Once again it must be emphasized that not only the arithmetic  
the applicant under 1 not true, but the whole  
Fact that a new player buys the game, a bot uses and  
Reaching the maximum level stops playing is completely insane and with  
no online play in this world is to reconcile.

To 2 and 3 may the applicant prove that, if anything,  
Impact of the software the defendant go.

Also 4 Is so far from reality, that the defendant is hardly describe  
can. Apart from the fact that only a minority of users of the applicant  
ever buys gold from third parties, it is unreasonable to assume that

-42 -

Users cease to play because this is one of the player's party  
not offered power can not afford.

For the same reason is also 5 completely absurd. Not only because the purchase of Gold is a marginal phenomenon and is not officially offered, but also because World of Warcraft with absolute certainty not for such a c is known. Otherwise might substantiate the applicant and . prove

That being said is not even presented to substantiate that it by bots ever comes to inflation and the fact that the software the defendant is guilty. It should be noted that the phenomenon gold sale on the external platforms such as eBay, which has a turnover of several hundred million € already been Existence of the game and has taken against the applicant does not going on, and the phenomenon of Botnutzung nothing to do with each other have.

c) No competitive advantage over other users

There is a lack of benefit of the user of the disputed bots over other players. Within the game, the bot behaves like just a normal player, too. He is not owned by functions that not in the game provided the player he can still pay Options make accessible free of charge. It should be emphasized again that not a player A, who used the bot, not necessarily economically playful or better off, as a player B who is not using the bot.

aa) No benefit by saving time

The only advantage that the disputed bots the player , is offering that he is no longer the entire season behind the

-43

Computer sits. The player wins in one respect, indeed Time advantage, but not, as the applicant claims, in the form of a shorter playing time, but he wins the extra time outside the virtual game world in real life. The player can run in parallel to Game still pursue other things. Changes within the gaming world



However, nothing through the use of bots. They are neither faster or better or otherwise have an advantage. The user must also during the use of bots for the game fees due pay to the applicant.

Rather, the applicant offers itself, by its own game mechanics Opportunities to achieve the maximum level.

The following experiment we could without the use of bots, perform by playing hand.

Strategy I:

LVL 10 in 1 hour 19 minutes.

LVL 20 in 4 hours 40 minutes.

LVL 40 in 13 hours 55 minutes.

LVL 50 in 21 hours and 2 minutes.

Level 60 was achieved in 28 hours and 22 minutes.

Then gave away the new Account B Account C  
(Name: free levels) 30 free levels.

Then gave away a new account Account B to A

44.

(Name: Freelevelzwo) 15 levels  $(30) / 2 = 15$ , "Freelevelzwo" was

16.

Then gave away the main character from another account C  
30 levels of Freelevelzwo = Freelevelzwo was 46th

Suppose a multi-boxing makes friends Advertising Account and the accounts linked to the following example: A-> B-> C-> D-> E-> F-> G-> H-> I-> J.

Then he can with a chain donation to the following values come after he has taken 10 to 80 characters:

80,80,80,80,80,80,80,80,80,80,80,75,75,75,74,74,72,68,59,40, ie 612 free levels for 800 or 76.5% earned Levels bonus levels.

Assuming that one for a five-card Multiboxing Group time of 7 playing days are required, which is very high but used for Beginner's thought), then one has for 336 hours of play time 19 characters for a total of 1412 levels. The seems to be a big difference to the alleged 440 hours that are needed for 60 levels.

These conclusions come from the fact that one gave away 50% level can give more. Not only earned Level!

The proof has already been delivered, the gifted Free Levels (LVL 1) was LVL 31 and 15 levels could continue to give away Freelevelzwo which of Honor was awarded two additional 30 LVL and thus in 2 minutes and 38 seconds LVL 46! was.

-45 -

Strategy II:

Would do to the levels of 2 x 5 at level 80, two new Groups begin to play this then to each level 40 (approximately 2 x 15 hours), then it would be within less than 400 hours playing time is exactly 10 x LVL 80, LVL 10 x 79 and have small number of characters.

Even for users in the applicant's own forums are the days when one To achieve Level as specified by the applicant, completely unrealistic. Level

85 is to achieve much faster, especially in times that not a bot creates this world.

Level 85 in 3 days and 14 hours

-46

Level 1-85 4T with enchantment and tailoring to the maximum level

Level 1-85 3d 15h

Level 1-85 already 1 day after the new Addon Cataclysm Level 85

-47

bb) No benefit in material terms

The applicant alleges that the defendants, that the players through the disputed bots collect resources and sell them.

If the applicant wants that in their virtual world, no trade longer be operated with raw materials, then they must simply this function take from the game. Also in this respect by the bots are not functions performed, not the all other players are available.

cc) No advantage with respect to the player experience

It can be repeated only to the extent of what was said previously has been: the bots do not have additional functions. Each Players, at least without the disputed bots just as fast if not faster experience points . collect

The evidence submitted by the applicant, the Board records Allegations of the applicant to prove it either. It can range from Sides of the defendants are merely noted that the sides and their entries do not come from the defendant.

Furthermore, there are other forms of the game already automated movement, suchAs the multi-boxing. By the Pressing a button command of all the leading players carried Characters from this command automatically. In the special Computer keyboards and mice are multiple key commands in only a single button. Operates one of the players these keys are the keys for remaining in the game programmed instruction is executed automatically.

-48 -

The result is unbalanced by the bots not the game but it is much more balanced. The applicant is to Its maxim of fairness, justice and equal opportunity among the players. They completely overlook but that by Bots no inequity arises. Players from professional or personal reasons not to have enough time to extensively with the development of her character in the world of World of Warcraft are too busy, over time players a clear disadvantage. This imbalance by different time frame, the player will be the disputed bots balanced. Long-time players have however, by Buddy bots no benefit because they do not quickly Work as the players personally.

dd) World of Warcraft is benefiting from the bots

Ultimately, the product of the applicant, however, benefited from the software the defendant.

Many users use the software the defendant only to boring points of the game to skip, for example, to to fill the gap between further content to expand or

to play the x-simplified to the maximum character level. In this respect can rather be assumed that the  
Using the software of the defendant, the applicant earns money as the software unique to long-term / frequent player points and Beginners are not used. The number of games the applicant are so far removed from the reality of their own product, that can hardly be assumed that these on their own  
Accuracy can be assumed.

-49

The defendant in this context, the following statistics performed by measuring the licensed software was made.

24.11. 20:13

Buddy & Gatherbuddy: 3815

25.11 10:40

Buddy & Gatherbuddy: 3490

25.11 19:59

Buddy & Gatherbuddy: 3650

26.11 9:37

Buddy & Gatherbuddy: 3375

28.11 17:34

Buddy & Gatherbuddy: 3638

At 29.11, the applicant published version 4.3 of World of Warcraft in North America, at 30.11. in the EU. This patch brought massive changes with it, all the players who play themselves need and want to play yourself. Accordingly, the numbers of Botnutzung on:

03.12. 11:26

Buddy & Gatherbuddy: 2449

This clearly leads to the indication that the user of the applicant Defendants use the software only to boring places to and not bridge to the game "stop" faster. In this respect

-50.

can be assumed that the software the defendant  
the so-called "lifetime value"  
a user and thus the  
Revenues of the applicant even still increased.

Proof:

Witnesses from users of the software  
Defendants, addresses be submitted when required

II.

No breach of contract by the players  
Even if one were available inducement by the defendant, it would still  
no breach of contract by the players against the applicant or the  
Blizzard Entertainment SAS actually actively committed legitimized  
be.

First Terms not part of the contract

a) No effective involvement of Terms

aa) Fundamental doubts

Already there are basically huge doubts whether regulations that  
are now distributed on four documents and enormous 25 pages,  
and in places by solid capitalization, as in the  
United States are common, difficult to read, have legal force  
and from this fact alone can not provide all  
are surprising.

Even viewed magazines have been reporting over the years  
Shortcomings, most recently the PC Games Hardware in the output

51.

1 / 12, in which the applicant is severely criticized and numerous regulations  
Conditions are referred to as contravening legislation.

Proof: PCG hardware items, presented as Appendix B 23

This increases the number of those who, even if, despite a unauthorized change of title, changes take place, the Regulations do not read anyway.

bb) account with any purchase

The players buy the game World of Warcraft from the dealer. with this purchase, they acquire all out of the game devoted Rights including a free use of their accounts of 14 days and an additional 30 days usage fee, which already settled in the purchase price. At the time the contract was concluded with the dealers are the Terms of the buyer but not yet been shown before. Accordingly, they can also have been included in the contract is not effective. This issue has the Supreme Court in its decision Half Life 2 still not answered.

The applicant attempted unsuccessfully to construct a second contract, to get an effective inclusion of rights.

In the opinion of the applicant, the player acquires the dealer only Installation program. This program (apart from the fact that with the purchase price already activated the first virtual game time has been) has, in addition to installing the game, the player does not Value The applicant would now, by setting up an account closed on the Blizzard servers look a second contract, with the player for a much lower price then the full Game gets. Given the free use of the account by payment on the purchase of the game, this would mean that the player

-52

about is the dealer gets the money and for one reason to lack of rights worthless installation file.

cc) Free sample game time

After the player gets his free trial play time given to the applicant. This acceptance of two donations without synallagmatic one connection is not tenable. Rather, by synallagmatic a combination of actions, working in Business and playing on the computer to see. Together with the game on the disk usage agreements contained the players were therefore not available at the conclusion of the contract.

It is important to emphasize that the fact in this case, as often stressed at this point, is not comparable with previously decisions taken. In online games, it is a different kind normal, that is only created when an access to the manufacturer, thus a Contract is concluded and agreed on a possibly effective Conditions has been downloaded for free and after that the game program can be. This is not only factually but also legally, to look completely different and should be treated as the present situation, since even before the establishment of a Access to the game system of the operator one synallagmatic Relationship between the parties exists.

dd) cover contractual

This kind of retrospective arrangement corresponds to the Conditions of America, the country of origin of the applicant, popular Cover contract. This principle is contrary to the German Law It is generally recognized to the extent that cover contracts in

-53 -

Germany lead to any relevant contract. A similar also applies to so-called Enter agreements (Hoeren in: Graf von Westphalen, Contract Law and Conditions, clause works, IT Contracts, para. 209).

The Supreme Court decision on the related article from the K24 is already for several reasons not to the facts applicable. First, it is in World of Warcraft at Standard software used by anyone without thinking in a shop is acquired. Unlike the case was in the enterprise software



Company Oracle. On the other hand is just below the "2 License item " fact not mentioned on the disputed situation applies.

ee) game will not be installed

The game "World of Warcraft" must be one of very few Computer games are just NOT installed. There are at an installation process, as with other software products, especially No files have been modified or merged with the operating system, a, from the perspective of the defendant even if completely misguided, To create an auxiliary construction of another plant.

The directory where the files of World of Warcraft on the Hard disk can be, again unlike the vast majority of Software products, back and forth freely copied and theoretically be started even from a USB stick or a CD. The Software can even be easily downloaded from the Internet and the .exe file to run easy. It needs no further interaction with the operating system, as there is any software on this world needs, namely that any one operating system is available. These are flat, unlike in the article

54

shown absolutely exceptional but just for pure copies of the Installation files.

ff) software runs on disk

It also does not correspond to the truth that the software on the Disk is not executable. The software is completely run and could also for example with full functionality for other Purposes, for example for use on servers that are not of the Applicant will be operated, are used. It is absolutely absurd to They claim that by entering into a subscription with the applicant to

Rights to the executable program to be acquired. This is equivalent to:  
not approach the current legal opinion on the legal nature of  
"Accounts"

with online game providers, the extent of a rental, some of  
a contract for works out, but never by an additional  
License Agreement.

In addition, the applicant also shares with the end user that the acquisition  
of the software is included free account for one month.

Proof: Screenshot game box, presented as Annex B 24

gg) Game Time Card

Even with the acquisition of a so-called "Game Time Card" for  
Pay of 60 days subscription, there is a coupon for a  
Friend to advertise.

With the purchase of the CD with software, "the buyer acquires"  
thus already  
an account, not only, as the applicant and try right-  
tatsachenirrig present, the right to use the installation file.

-55 -

At the time at which the applicant by advertising on your own  
Packaging the Games end a month-long account  
promises, the buyer has not seen any terms and conditions or this could  
reasonable notice.

Proof: visual inspection

b) Ineffective clause

Even if the terms, conditions effectively incorporated into the contract  
would have been, then the clause cited by the applicant is also  
ineffective.

Contrary to the representations of the applicant is not legally relevant, whether the end user the option would have the kind of terms and conditions, including the disputed clause to read. The decisive question is whether, when you purchased the GTC was reasonably discernible. This is not the case. Even if one perceives his already acquired right, to use a free monthly account, which is a non-Opportunity offered to read the Terms and Conditions in German. If the match in the non-German version copied to the hard disk and not in the launched German version, no German-language terms will be displayed.

Proof: screenshot, submitted as Exhibit B 25 + appearances

Even if you are on the website of the applicant, [www.battle.net](http://www.battle.net), the Language of the browser is in English, are obtained even with a German IP address, only the English version of the Terms of Service.

Also, the user has, contrary to what the applicant presented the Terms not scroll through. A simple click on the

56

lower part of the right scroll bar and the window is on screen lower end, without the consumer the terms and conditions, or even the disputed clause is perceived. He can then immediately confirm

Advertising at a friends the user has not even the terms and conditions to read when he logs on to the website. Rather, he only needs one Checked that the applicant read the personal messages and that he could for his country, the applicable terms and conditions has read, or that a guardian had done so. A Such a procedure is just as pointless as a youth protection barrier, the just ask you if you really except age. Of Taking note of the Terms may indeed be no question.

The presentation of the applicant, under the terms of the application would be be seen, as in K26 asserts is therefore definitely wrong.

Proof: Conditions, submitted as Exhibit B 26

Proof: onsite inspection

The same applies if a user with account for the server on Battle.net the Internet creates. The user has to scroll down once the GTC, he need only confirm that he had read it.

Proof: visual inspection

Furthermore, it is considered that previous versions of the Terms of applicant absolutely no reference to the disputed clause had  
Thus, at the time of conclusion of the users, even if he would have fully read the terms and conditions, would have received no warning.

-57

READ THE FOLLOWING END USER LICENSE AGREEMENT  
PLEASE CAREFULLY BEFORE  
INSTALLING THIS SOFTWARE PROGRAM. IF  
WITH THE TERMS OF THIS AGREEMENT  
AGREE TO DELETE THE SOFTWARE PROGRAM  
AND PROMPTLY RETURN THE SOFTWARE PROGRAM  
IMMEDIATELY TO YOUR RETAILER.

#### END USER LICENSE AGREEMENT

This software program on CD-ROM, and any files that  
They are made available by Blizzard Entertainment  
(Via on-line transmission or otherwise) to the software  
To "patch" program to update or otherwise  
to modify, as well as any printed or online, or in  
electronic format documents (the "Manual")  
and all of such software program and this  
Materials derivative works (in their entirety  
below, including the game-clients, the "Game"  
respectively) are the copyrighted work of Blizzard  
Entertainment, a subsidiary of Davidson &

Associates, Inc., its partners, including Vivendi Universal Games International SA, and / or its suppliers and Blizzard Entertainment (Blizzard in this Agreement as a whole "Entertainment called "). Any use of the Game is governed the terms of this End User License Agreement (the "License Agreement" or "Agreement"). The game may only Asked about the disposal of Blizzard Entertainment Access to the massively multiplayer online role-playing game service WORLD OF WARCRAFT (the "Service") are played, the Subject of a separate Terms of Service - Agreement (the "Terms of Use"). If the Delivery of the purchased game you have "free access" to

-58

included a limited period, subject to the provisions of Terms of use for your access to the Service during the period of "free access". The game is exclusively for use by authorized end users distributed, with the terms of the license agreement agree. Any use, reproduction or transmission of the game, by the terms of the license agreement is not expressly permitted is prohibited.

First Granting a limited user license. The game installs computer software (the "Game Client" called) on your computer to allow you to play of the Service through your account (your "Account") to play. Blizzard hereby grants, and by installing of the game client you agree, a limited non-exclusive license and right, the game client for your personal use on one (1) or more Computers that are in your possession or on the Personal checks will have to install. Any use of the Game Client is subject to this License Agreement and the Terms of Use Agreement, which you must agree before you use your account able to help with access to the service to the game

. play Blizzard Entertainment reserves the right to  
Terms of Use at any time in accordance with the stipulated herein  
Conditions to update, modify or amend.  
Second Service and user agreement. As mentioned above,  
You must agree to its terms  
explain that you can use the Service to play.  
The Terms of Use agreement governs all aspects of  
Game. You can use these provisions to  
See the following website: [www.wow-europe.com/de/legal/](http://www.wow-europe.com/de/legal/)

59

<<http://www.wow-europe.com/de/legal/>>. If you are with the  
Terms of this agreement do not agree,  
You should (i) does not account for one for playing the  
Register the game and (ii) within thirty (30) days after  
the original purchase date to return the game to the  
Store where you bought the game, arrange.

Third The property.

A. All title, ownership rights and intellectual  
Property rights to the Game and all copies thereof  
(Including but not limited to, any titles,  
Computer code, themes, objects, characters, character names,  
Stories, dialog, catch phrases, locations, concepts, artwork,  
Character inventories, structural or landscape designs,  
Animations, sounds, musical compositions, audiovisual  
Effects, storylines, character likenesses,,  
Methods of operation, moral rights, any  
Related documentation, and in the game  
built-in "applets" [special applications]) are the property  
Blizzard Entertainment or explicitly by the licensor  
licensed. The game is by the copyright laws  
(Copyright laws) of the United States, international  
Copyright treaties and conventions, and other laws  
protected. All rights reserved. The game can be certain  
licensed materials contained and the licensors of those  
Materials may enforce their rights in the event of a breach  
make claims of this License Agreement.

B. In order to be able to play World of Warcraft you need one User account (the "Account") in accordance with the description, which is included in its terms, create, the limited to you and is not transferable. To the

60

To account you will be prompted to Blizzard Entertainment an authentication key of the game know which is exclusively assigned to your account. Therefore, Blizzard Entertainment will allow you not the possession of Transferred to the game. If you do this in spite of the provisions this section do anyway, thereby violating the This license agreement, and the transfer is not Blizzard Entertainment approved.

#### 4th Responsibilities of End User.

A. Subject to the foregoing license grant, you may no copies, photocopies, reproductions, translations, Reverse engineer, source derivations, modifications, Disassemble, disassemble, decompile or create derivative works that manufacture based in whole or in part on the game, nor any proprietary notices or labels on Install the game. The disregard of this Section 4 limitations and restrictions contained leads to immediate and automatic termination of the following license granted for you and can zivil-und/oder criminal Have consequences. Notwithstanding the foregoing, you may one (1) copy of the game client and manuals prepare for archival purposes only.

B. You agree that you will under no circumstances (I) without the express permission of reproductions of the Game sell to third parties in any way, given or use to a third party a security interest or give the game to a third party, rent, lease or License issued to it;

(li) without the prior express written permission of Blizzard Entertainment with the game or any part thereof, including the game client, but not limited to him, pursue a commercial purpose, which includes, but is not limited to use at a cyber café, a computer gaming center or any other location-based site;

(lii) act as a game master (host) for the game or for that Develop services that serve the initiation of games, or Communication protocols intercept, emulate or pass, used in any way by Blizzard Entertainment be, and to use methods, but not in this limited, such as protocol emulation, tunneling, spying of packets, the modification or addition of Components to the game, a utility program or any other already known or hereafter developed technology. This for any purpose, including but not limited to, unauthorized network play over the Internet, Network games, the commercial or noncommercial Gaming networks or the use of content aggregation Networks are, or

(Iv) any unauthorized connections to the Game or maintain or restore the service. All the compounds Game and / or the Service, whether through the game client or established by other tools and utilities, may only be made through methods and means used by Blizzard Entertainment explicit approval. Under no Circumstances may you connect to the Game's own Interface or interfaces other than those of Blizzard Entertainment expressly for public use be made available to produce, or tools

-62

develop, which you or others to connect  
. permit

5th Termination. This license agreement is valid indefinitely



Time, unless it is expressly agreed otherwise. They may terminate the Agreement at any time by cumulatively (i) destroy the game, and (ii) the game client Remove your hard disk, and (iii) notifying Blizzard Entertainment by your Intention to terminate this license agreement, using a Registered letter with acknowledgment of receipt addressed to the following Address in knowledge set: Blizzard Europe support clients 32, avenue de l'Europe, Bât. Energy 1, Porte A. 78 143 Velizy-Villacoublay, France. Blizzard Entertainment may, at its Discretion terminate this License Agreement in the event that Them against the herein or in the terms of use conditions and provisions contained notices. In this case, you must immediately destroy the Game and remove the Game Client from your hard disk. With the termination this Agreement for any reason whatsoever, subject to all licenses granted herein will immediately terminate. 6th Export restrictions. The game may not re-exported downloaded or otherwise in any country (or at be a national or resident of exports), the been occupied by the United States has embargoed goods for goods, or to someone who is on the list of "Specially Designated Nationals "of the U.S. Treasury Department or the" Table of Denial Orders "of the U.S. Commerce Department is located. With the Installing the Game, you agree to the foregoing, and explain and warrant that you are not in such a Country are not a citizen or resident of any such and are not under the control of any such list.

-63

7th Patches and updates. Blizzard Entertainment can patch, Updates and modifications to the game to provide or deliver the need to install the player to the game to continue to use ca Blizzard Entertainment, the game through remote access Update, including, but not limited to, on the the user's computer game installed clients, without that the user has knowledge of it and agrees. They hereby grant Blizzard Entertainment's permission, such Patches, updates and modifications made to the game.

8th Duration of the "online" component of the game. This game is a "Online" game over the Internet through the Service, as of Blizzard Entertainment provided, must be played. The Secure an Internet connection is your sole Responsibility, and you are solely responsible for all this costs on. You acknowledge and agree that the service at the discretion of Blizzard Entertainment will be made available and that he by Blizzard Entertainment accordance with its terms or otherwise terminated , Can be adjusted.

9th Limited warranties. Blizzard rejects expressly disclaims any warranty for the game, including the Game clients and the manual or manuals from. THE GAME, THE GAME CLIENT AND MANUAL OR. THE MANUALS ARE PROVIDED "AS IS" BASIS, WITHOUT ANY WARRANTIES, EITHER EXPRESS EXPLAINED IMPLIED GRANTED KIND INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF CONDITION, DEFECTS, USE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR

-64

#### USE OR NON-INFRINGEMENT

A LAW. The entire risk arising out of execution or the use of the game, the game client and the Manual and the manuals results remains with the user. Notwithstanding the foregoing, and pursuant to the European Directive 99/44/EC, if it should turn out that these Media is defective and just in case you Blizzard Entertainment within (i) two (2) months after your Discovery of the defect and (ii) within two (2) years information on purchasing the game through this defect, Blizzard Entertainment presentation of a sales receipt at the defective media optionally select whether they 1) a lack to fix 2) offer you a product of equal or lesser value provide three or refund) your money. THE FOREGOING IS

YOUR SOLE AND EXCLUSIVE LEGAL BASIS  
FOR THE SET FORTH IN THIS SECTION  
EXPRESS WARRANTY. SOME  
JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR  
NO LIMITATION OF IMPLIED  
OR WARRANTIES OF LIABILITY FOR CONSEQUENTIAL DAMAGES,  
SO THE ABOVE LIMITATIONS  
YOU MAY NOT APPLY.

10th Limitation of Liability. NEITHER BLIZZARD  
ENTERTAINMENT, ITS PARENT,  
SUBSIDIARIES OR AFFILIATES MAKE  
IN ANY WAY BE LIABLE FOR LOSS  
OR DAMAGE OF ANY KIND ARISING FROM THE  
USE OF THE GAME RESULTING INCLUDING  
BUT NOT LIMITED TO, LOSS OF  
DATA, LOSS OF BUSINESS REPUTATION,  
BUSINESS INTERRUPTION, COMPUTER FAILURE  
OR MALFUNCTION, OR ANY

65%

OTHER DAMAGES OR LOSSES. IT IS ALSO  
BLIZZARD ENTERTAINMENT IN ANY WAY LIABLE TO  
FOR ANY LOSS OR DAMAGE TO  
PLAYER CHARACTERS, ACCOUNTS, STATISTICS OR  
USER PROFILE INFORMATION FROM THE GAME  
AND / OR THE SERVICE BE STORED.  
BLIZZARD ENTERTAINMENT IS NOT LIABLE  
FOR ANY FAILURES OF SERVICE,  
INCLUDING, BUT NOT LIMITED TO, FOR  
PROBLEMS WITH INTERNET PROVIDERS (ISPs), FOR  
SOFTWARE OR HARDWARE FAILURES OR OTHER  
EVENTS LEADING TO LOSS OF DATA OR FOR  
INTERRUPTION OF SERVICE, MAY BE. IN  
BE LIABLE TO YOU BLIZZARD ENTERTAINMENT  
PARTY FOR ANY INDIRECT,  
INCIDENTAL, SPECIAL, EXCEPTIONAL  
OR CONSEQUENTIAL DAMAGES. In some jurisdictions the

Exclusion or limitation of incidental or resulting damages are not allowed. Some states do not allow also no restriction on the length of the warranty, so the above limitations may not apply to . apply

11th Cheap appeal. You hereby agree that Blizzard Entertainment would suffer irreparable damage if the Terms of this license agreement does not in any Validity may be procured. Why are you so agree that Blizzard Entertainment without limitation, without any further security or proof of incurred Damage is entitled to make cheap appeals, regarding the violations of this license agreement and in addition to such remedies available to Blizzard Entertainment in Under applicable laws already available

66

standing If, on the basis of this User Agreement from a the two parties, a lawsuit is brought, has the Party, it was decided in their favor, be entitled to compensation by the losing party of all costs, Attorneys' fees and other expenses that the party to whose benefit it was decided by the dispute are incurred.

12th Changes to the agreement. As part of a Keeps updating the game client is Blizzard Entertainment the right, in its sole discretion, all rules and To modify conditions of this License Agreement to modify, expand, replace or remove, where such agreements are amended effective after one (1) month before the following known were made: Blizzard Entertainment Release date each Modification of the license agreement and the revised Version of the license agreement at the World of Warcraft site and may, at its discretion, other means for Notification choose, for example, e-mail, letter or

Pop-up screens. If you any future  
Changes made to this License Agreement or  
these have the effect that with the license agreement  
your permission, you can license agreement,  
as described in Section 5 finish. Their installation and  
Use of an updated game or modifications  
Game or your continued use of the game after you like  
above about changes to this Agreement in  
Knowledge have been set, it means that you are with each of these  
Changes are agreed. Blizzard Entertainment may  
all aspects of the game at any time modify, change,  
interrupt or cancel. Blizzard Entertainment may continue  
without liability or prior notice certain features

67

or your access to the game or partially confined  
total limit. You have no claims, neither  
Collect monies or otherwise, on any features, content,  
or availability of the game.

13th Miscellaneous. This license agreement is accepted  
be, as though it were your country created and signed  
would have been, and always below the resulting conflict is to  
in accordance with the applicable laws in your country  
be regulated. You agree that any  
Claim that in any legal proceedings by a  
of the parties against the other is made, before  
a state or federal court located in  
Their home country, is made is pending in the  
Jurisdiction of the litigation between the  
Parties falls. In the event that any provision of this  
License Agreement by a court or other tribunal  
within the jurisdiction of the dispute is declared invalid  
is permissible under this provision shall, as far as  
possible to remain in force, and the remaining parts of this  
This Agreement shall remain unaffected and in full  
remain effective. This License Agreement constitutes and contains  
entire agreement between the parties with respect

to the subject matter hereof and supersedes all prior oral or written agreements, and as provided however, that this arrangement parallel to the Terms of use exists and does not replace them. Where the provisions of this Agreement the provisions of Terms and Conditions contradict the provisions the terms of use. The Sections 9, 10, 11, 12, and 13 this Agreement shall survive termination of this Agreement has expired.

-68 -

I hereby read the foregoing License Agreement have to understand them and agree to these terms, that the action of the game client installation, a confirmation of my Agreement is bound by the conditions be contained in the license agreement.

© 2004 Blizzard Entertainment. All rights reserved. World of Warcraft is a trademark, and Warcraft and Blizzard Entertainment are in the U.S. and / or other trademarks or registered Trademarks of Blizzard Entertainment. All rights reserved.

Even in 2008 there was no indication by the applicant recited clause.

<http://web.archive.org/web/20091014193155/http://eu.blizzard.com/De-de/company/about/termsfuse.html>. Alternative sources can be offered as evidence in doubt.

After it has been demonstrated in numerous situations that, in Creating an account is not apparent or the Terms and Conditions are not the disputed clause is included, the applicant does not to withdraw, with additional content that may be offered the Conditions have been changed and the said clause was included. Basic This is because the applicant with the delivery of their product, a file with the name extradite config.wtf. Are freely editable in this file is three options

SET readTOS "X"

SET readEULA "X"

SET read scanning "X"

-69 -

These values are in original condition and after each update of Program, the value 0. However, these values can be manually, by simple text editor, to "1" be changed. Looks in this case the Users either when you first start the game and not even after an update of the client, the additional regulations.

Proof: visual inspection

c) Surprising clause

After the player's account without already Terms was allowed free use of the sample, a subsequent introduction of Use restrictions in such a serious extent in each Case as a surprise. That all the players of online games is clear that Programs is prohibited from third parties, such as the applicant claims, particularly that Blizzard itself an interface for Third program is offered, and is also not denied the Reality. What is write some users in the forum of the defendant not only completely without any probative value, since statements are also well indexed yet by the subject itself, but also legally totally irrelevant.

d) Violation of § 307 para 1 BGB copyright

aa) Ineffective "restriction"  
the license

The applicant used for "World of Warcraft"  
extensive

Terms of Service, whose purpose it is apparent that use under copyright law powers of the massive player limiting. The customer buys a computer game in the belief that the monthly fee for one game, including all rights, after the

Intellectual property necessary to acquire rights of use.

70

Conditions of the entire view is that it seems to be one mere translation from the U.S. model is that in no way to German AGB-law have been adjusted. This is see also independent of the disputed clauses. So the applicant makes their product in Starcraft II, an irrevocable, unlimited right to give all plants, the Users in the use of their products create

You acknowledge that the card contents and for any Creation or modification of Revised maps for STARCRAFT ® II (as defined below) required content included in the game, and that the map editor and any such Content property of Blizzard Entertainment, Inc. and the this agreement is subject. YOU AGREE TO AND THIS IS HEREBY CONFIRM THAT ALL OF THE LIGHT MAP EDITOR CREATED OR AMENDED MAPS, LEVELS AND OTHER CONTENT (COLLECTIVELY "AMENDED MAP") THE SOLE PROPERTY OF BLIZZARD ARE AND REMAIN. WITHOUT THE FOREGOING LIMITATION, YOU HEREBY TRANSFER ALL YOUR RIGHTS, TITLE AND INTERESTS OF ALL AND ALL FOR MODIFIED MAPS TO BLIZZARD WHEN SUCH A LAW BORN, AND AGREE, FUTURE TRANSFER IMMEDIATELY AFTER RECEIPT OF SUCH REQUEST BY BLIZZARD ANY TIME. If such a transfer is not possible or on a global basis is not possible to give you Blizzard herewith an exclusive, irrevocable, royalty-free, transferable, sublicensable, temporally and geographically unlimited right to use the Revised maps for any purpose



and use them in any way. This grant of rights include, but are not limited to, the right to Revised maps reproduce, distribute, and Revised and publish the maps to the public Providing, in particular on the service, with the Opportunity for third parties to use the Revised maps to To edit or change. The right to use the Revised maps includes all of the time of issue Rights are not well known or hereafter devised. It is an indefinite Time and without any territorial capacity constraints given. The Law may freely transferred to third parties or be licensed.

and it discourages the applicant can not return to the right grant to monitor all chat messages at any time, be confirmed by the creation of an access must

I allow Blizzard to my personal message monitor and evaluate, where appropriate.

Proof: visual inspection

\*

The usage rights are already in No. I 2 under the misleading heading

"Access to Services"

vehemently "limited":

-72

Second Granting a limited license to use the Service Subject to your agreement to all current and Compliance with the Blizzard agreements, grants you Blizzard

Entertainment herewith a limited, revocable, non-transferable, non-sub-license assignable, non-exclusive License, you hereby accept to use the service solely for your own non-commercial Entertainment purposes by accessing the Service using a approved, unmodified game client. You may not, Service not connected with or for any other purpose use any other software.

In this clause alleges her entire copyright Argument by them on p. 34 ff seriously the application an (alleged) violation of the terms and conditions on one Would include copyright infringement. It ignores the applicant, that the wording of the "limited license" unquestionably

Terms and conditions are in accordance with § 305 para 1 BGB. As Terms and Conditions, the terms in more ineffective ways:

No. I. 2 the customer pushes a declaration of consent under the (... , You hereby accept ...) and thus fails as a pre-formulated affirmative statement to § 309 No. 12 BGB (cf. M. Habersack in Ulmer / Brandner / Hensen, AGB-law, 11 Edition 2011, § 309 No. 12 BGB, Rn. 18

-The clause contains an unrestricted right of withdrawal The user. This is the essential rights of a Licensee incompatible

-73

- (§ 307 para 2 No. 2 BGB). Because a right of withdrawal after the Mission Statement of the Copyright Act § § 41 and 42 only in very exceptional cases.

The clause is more-than-transparent and is thus contrary to § 307 Paragraph 1, sentence 2 BGB. Just take the last half-sentence: What should be an average player because if you please, under the prohibition of Connection "with any other software"

. Im

bb) the ineffectiveness of No. III of the Terms of Service

Under No. III contain the terms and conditions (Appendix K 4) comprehensive regulations

"III. Use restrictions for World of Warcraft. "

After No. III 1 will allow the player to be prohibited, inter alia, "to World of Warcraft create derivative works based ".

"1 The license will be granted in Article I.2 subject to the Limitations under the Terms, EULA and BNET TOU. Limitations of your right to use World of Warcraft may include, but not necessarily limited to, the following circumstances result: Blizzard Entertainment expressly reserves the exclusive right to derivative based on World of Warcraft Plants produce. This means that you, without prior express written consent of Blizzard

-74

Entertainment not based on World of Warcraft derivative works may make.

Only Blizzard Entertainment or its licensees have the Right to host World of Warcraft.

Accordingly, you may not play ladder (host) act or offer services that the initiation of games , are still emulate intercept communications protocols, or , forward by Blizzard Entertainment as part of World of Warcraft can be used, regardless of what methods it can be used. Such prohibited methods include, but are not limited to, the emulation of protocols, reverse engineering, modifying World of Warcraft, adding components to World of Warcraft

or the use of software tools that allow a host to serve in World of Warcraft. "

Whatever the applicant with exactly these terms mean and may object: The average player will be the deeper meaning certainly not open. The clause is unclear, unintelligible, and after § 307 para 1 sentence 2 BGB (transparency) is ineffective.

The same applies to the limitations in Section III. Second There follows first already from the opening sentence ("you agree to a violation of ...") No. 12 BGB § 309, so for completeness and to the Transparency should be noted that the apparent crude Translation from English is certainly not entirely preserved:

75

"2 You agree that you will under no circumstances

(1) files that are part of a World of Warcraft installation are modify or cause to be modified;

(2) cheats, "mods"

and / or hacks used to create or

and any other third-party software

using the experience of World of Warcraft changed.

(3) Software

use of third-party "data mining"

permits or other means of information or

by World of Warcraft intercepts or collects;

(4)

Allow players who aligned with the "Alliance"

members, with players who are playing characters of the "horde"

belonging to chat or otherwise directly to

to communicate and vice versa;

(5) gold, weapons, armor and other virtual items

used in the World of Warcraft, are outside the

World of Warcraft platform for "real"

Money to buy  
or to sell or exchange;  
(6) third party (other than one (1) minors for whom you  
have opened the account) to play on your account  
, can be limited to, the use  
so-called "power leveling services", ie paying  
Third, for playing on your account;

-76

(7) on the account of a third play, especially for  
Providing so-called "power leveling  
Services.

(8) oral communication, which is not intended for you,  
eavesdrop, intercept or monitor, or any  
Agents which are intended for the oral  
To distort communication between users or  
to prevent.

Notwithstanding the foregoing, you may not World of  
Warcraft with authorized patches and updates of  
Blizzard releases will update, and after  
Article XVI 7th authorized User Interfaces  
Third-party use, or

(9)  
You may not in connection with your use of  
World of Warcraft or the Service, whether intentionally  
or unintentionally, against each of the applicable local,  
state, national or international law  
notices. "

How is an average player alone the many English terms  
understand particularly if this is in quotes -  
a

Style means that the approximate even the English words  
explicitly emphasized. What should a below average player  
Software imagine that a "third party"  
comes, "Data Mining"  
permits or "information from or through World intercepts Warcraft  
or collect "

Code::3)))? What is "verbal communication"  
is in  
No. (8) mean? And how is that -  
completely preposterous -  
To ban  
be understood, "accidentally"  
against "the ...  
international law "  
to

-77

notices (no (9)))? If the players have to expect because  
an "unintentional"  
Its copyright law violation  
Rights and thus losing its power play and -  
Despite paying the subscription fee -  
Damages and other  
Claims under § 97 of the Copyright Act to see exposed?

And of course it is not transparent, if  
Should use the powers as soon as a player under No. (2)  
Software used, "the experience of the game World of Warcraft  
changed ". For what is this supposed to mean anyway? If the  
"Gaming experience"  
for example, not influenced by music, which the  
Players in the background and listening nowadays typically as  
Software (mp3/iTunes etc.) is "consumed"  
is? Should any "hacker" who -  
without any connection to the applicant -  
appropriate  
Software programmed ("created Hacks") its full purchased  
Right of use for "World of Warcraft"  
lose???

The entire clause No. III, and certainly the No. 2 (2) notices  
clearly against the transparency according to § 307 para 1 sentence 2  
BGB. We have here a classic example of a failed

To do translation from the English language, with obvious  
has lacked any legal review of the German translation.

What is an "insider"

the "gaming scene"

Whatever the "cheats"

Cheatbots ", " bots "

or "hacks"

and "mods"

may understand: The

Applicant is free to its obligation under § 307 para 1 sentence 2

Civil Code and to comply with the terms in a way einzudeutschen

and to clarify and define what they like because prohibit

would like. An average user of the game has to § 307 para 1

Sentence 2 BGB a right to an understandable formulation. A

78.

Copyright infringement in any case, the applicant can not seriously

Terms derive their ineffective.

Comparing the time of the applicant submitted as Attachment 4 K

Terms with Google's terms, the subject

the Judgement of the Court of Hamburg on 08.07.2009 (Az 324 O 650/08,

Wieduwilt K & R 2009, 735 ff with footnote) were pushing, also a

Only right-to-end: If even the -

nor of course

sought -

Google's terms of applicable law in general terms and conditions

violate several points, this must be for terms and conditions

the applicant can only obtain at least as far to the

Transparency (§ 307 para 1 sentence 2 BGB) goes.

Relevant to the assessment of the commitment to transparent

Clause are shaping the vision and the understanding of a

average user. A clause is therefore incomprehensible

if the user is under consideration and reasonable appraisal

all known circumstances the contents of the contract terms are not

unequivocally can determine (cf. BGH decision of 24.03.2010,

Az VIII ZR 304/08). In particular, the part of the contract for the

Users must be verifiable and not misleading (cf. BGH decision by the 23.02.2011, Az XII ZR 101/09).

It must also be considered in principle that in interpreting general terms and conditions of doubt, always at the expense of Use impact, § 305 c paragraph 2 BGB. The same must also apply understanding and determination of user requirements and apply to terms used.

-79 -

Not least of the user under conditions III. Para. 2.2. Use of Equipment by hand term "Cheat" is not sufficiently determined and satisfies Therefore, the transparency requirement of § 307 paragraph 1 sentence 2 BGB.

A generally accepted definition, rely on a user could not be there. Likewise, there is in general usage no unanimous understanding of when a permitted help and when a game tort of "fraud" or negatively affect Gameplay is present. Recourse to the free online encyclopedia "Wikipedia" for the determination of "cheat" as though the concept may Means of interpretation are, however, can such an approach to definition not suffice to a generally recognized and certainly free Demonstrate understanding of the average user.

In vague terms, which in particular is no general accepted meaning is awarded, it has rather the task be of the user of the terms of use, such progressive concept to define and to formally state that each Users can form a clear understanding to the Determination needs to be. Only a general citation and use of the word "cheat" can such a Definiteness requirement can not be fair since this is no unambiguous interpretation of results.



cc) To Multiboxing Macro and keyboards

The clause also violates another reason against the Transparency: it prohibits the use of Automation software, which the applicant itself but is offered (see Multi Boxing). In that regard, it is just the player

-80

not clearly demonstrated, which allows automation and which are prohibited.

Even the statements submitted by the applicant from Internet forums make it change.

First, the use of such terms and conditions by faulty  
Third no evidence about their accuracy.

Secondly, as a measure of properties of the clause as  
Surprisingly or not understand the recognition of individual relevant, but the average player you have to basically  
. put

The GTC is not recognized or understood and therefore not clear that only the software of the defendant falls under it. The Submission of the defendants, that both the macro keyboards, as well Multiboxing or the LUA interface are completely different than the Software of the defendants are misleading and fail to recognize the Legal problem. Because at the time of the alleged notice of the GTC is not named, which scripts "allowed" are, can be achieved by, also arbitrary, alleged acquiescence or approval of some Software by the applicant, this feature can be no differentiation and produce even less transparency.

(A) Macro Keyboards

The applicant should explain, where is a difference between a player

via a keyboard or a mouse, which has special functions, Executing macros, or other than a software. Both things functions that occur in a row enable automated and thus of end-users, without these devices, not in this way

-81 -

Way can be carried out. Moreover, the statement that there states that it is not about hardware and software, technical to absolute nonsense.

The hardware controls nothing, there is software which, by the Hardware is discussed, and then signals the hardware performs certain functions. Without specific driver software hardware products that could not only function in addition execute, to

#### (B) Multi-Boxing

It is erroneous to claim that multi-boxing software from the Software distinguishes the defendant because the action of one People will be thrown. The program of the defendant of a man started, stopped, programs that Short self-controlled character, etc. If a person 20 or more Characters can be controlled simultaneously, all other functions, out of character, which is controlled automatically. Other Allegations are absurd.

There are also in the forums of the applicant's own massive Complaints of users of multi-boxing. The Multi-Boxing interferes with the play more than any bot that only one Character controls could ever do. Examples below, and also breach the strict proof of the following documents are listed.

<http://eu.battle.net/wow/de/forum/topic/1417589229> # 1

<http://eu.battle.net/wow/de/forum/topic/1417589229> # 9

<http://eu.battle.net/wow/de/forum/topic/1417589229> # 15

<http://eu.battle.net/wow/de/forum/topic/1417589229?page=2> # 21

<http://eu.battle.net/wow/de/forum/topic/1417589229?page=2> # 23

<http://eu.battle.net/wow/de/forum/topic/1417589229?page=3> # 46

-82

<http://eu.battle.net/wow/de/forum/topic/1912411406> # 1  
<http://eu.battle.net/wow/de/forum/topic/1912411406> # 7  
<http://eu.battle.net/wow/de/forum/topic/1912411406> # 14  
<http://eu.battle.net/wow/de/forum/topic/1912411406?page=2> # 21  
<http://eu.battle.net/wow/de/forum/topic/1912411406?page=2> # 26  
<http://eu.battle.net/wow/de/forum/topic/2094109607> # 1  
<http://eu.battle.net/wow/de/forum/topic/2505101465> # 1  
<http://eu.battle.net/wow/de/forum/topic/2690871575> # 5  
<http://eu.battle.net/wow/de/forum/topic/2690871575> # 7  
<http://eu.battle.net/wow/de/forum/topic/2690871575> # 9  
<http://eu.battle.net/wow/de/forum/topic/2690871575> # 13  
<http://eu.battle.net/wow/de/forum/topic/2690871575> # 14  
<http://eu.battle.net/wow/de/forum/topic/2690871575> # 18  
<http://eu.battle.net/wow/de/forum/topic/2690871575?page=2> # 21  
<http://eu.battle.net/wow/de/forum/topic/1622868452> # 1  
<http://eu.battle.net/wow/de/forum/topic/1622868452> # 11  
<http://eu.battle.net/wow/de/forum/topic/1622868452> # 13  
<http://eu.battle.net/wow/de/forum/topic/1622868452> # 17  
<http://eu.battle.net/wow/de/forum/topic/1622868452?page=2> # 25  
<http://eu.battle.net/wow/de/forum/topic/1622868452?page=2> # 40  
<http://eu.battle.net/wow/de/forum/topic/1622868452?page=3> # 41  
<http://eu.battle.net/wow/de/forum/topic/1622868452?page=3> # 53  
<http://eu.battle.net/wow/de/forum/topic/1622868452?page=5> # 85  
<http://eu.battle.net/wow/de/forum/topic/1622868452?page=5> # 90  
<http://eu.battle.net/wow/de/forum/topic/1622868452?page=5> # 92  
<http://eu.battle.net/wow/de/forum/topic/2999700371> # 1  
<http://eu.battle.net/wow/de/forum/topic/2290800564> # 3  
<http://eu.battle.net/wow/de/forum/topic/2690869243?page=2> # 37  
<http://eu.battle.net/wow/de/forum/topic/2690869243?page=3> # 42  
<http://eu.battle.net/wow/de/forum/topic/2690869243?page=3> # 57  
<http://eu.battle.net/wow/de/forum/topic/2690869243?page=4> # 71  
<http://eu.battle.net/wow/de/forum/topic/2690869243?page=4> # 73  
<http://eu.battle.net/wow/de/forum/topic/2690869243?page=4> # 77  
<http://eu.battle.net/wow/de/forum/topic/2690869243?page=4> # 78

<http://eu.battle.net/wow/de/forum/topic/2690869243?page=5> # 83  
<http://eu.battle.net/wow/de/forum/topic/2690869243?page=5> # 91  
<http://eu.battle.net/wow/de/forum/topic/3010493885?page=1> # 1  
<http://eu.battle.net/wow/de/forum/topic/3010493885?page=1> # 2  
<http://eu.battle.net/wow/de/forum/topic/3010493885?page=2> # 28  
<http://eu.battle.net/wow/de/forum/topic/1549673548> # 1  
<http://eu.battle.net/wow/de/forum/topic/2423162361?page=1> # 1  
<http://eu.battle.net/wow/de/forum/topic/2423162361?page=1> # 4  
<http://eu.battle.net/wow/de/forum/topic/2423162361?page=1> # 7  
<http://eu.battle.net/wow/de/forum/topic/2423162361?page=1> # 11  
<http://eu.battle.net/wow/de/forum/topic/2423162361?page=2> # 29  
<http://eu.battle.net/wow/de/forum/topic/2423162361?page=3> # 44  
<http://eu.battle.net/wow/de/forum/topic/2423162361?page=3> # 58

-83

<http://eu.battle.net/wow/de/forum/topic/2423162361?page=4> # 70  
<http://eu.battle.net/wow/de/forum/topic/2423162361?page=4> # 70  
<http://eu.battle.net/wow/de/forum/topic/2423162361?page=4> # 73  
<http://eu.battle.net/wow/de/forum/topic/2423162361?page=6> # 113  
<http://eu.battle.net/wow/de/forum/topic/2505101465> # 12  
<http://eu.battle.net/wow/de/forum/topic/2560046727> # 1  
<http://eu.battle.net/wow/de/forum/topic/2560046727> # 2  
<http://eu.battle.net/wow/de/forum/topic/2560046727> # 6  
<http://eu.battle.net/wow/de/forum/topic/1535585702?page=1> # 1  
<http://eu.battle.net/wow/de/forum/topic/1535585702?page=1> # 11  
<http://eu.battle.net/wow/de/forum/topic/1535585702?page=1> # 15  
<http://eu.battle.net/wow/de/forum/topic/1535585702?page=1> # 16  
<http://eu.battle.net/wow/de/forum/topic/1535585702?page=2> # 27  
<http://eu.battle.net/wow/de/forum/topic/1535585702?page=3> # 43  
<http://eu.battle.net/wow/de/forum/topic/1535585702?page=4> # 70  
<http://eu.battle.net/wow/de/forum/topic/1535585702?page=4> # 73  
<http://eu.battle.net/wow/de/forum/topic/2624876822> # 1  
<http://eu.battle.net/wow/de/forum/topic/2624876822> # 14  
<http://eu.battle.net/wow/de/forum/topic/2624876822?page=2> # 21  
<http://eu.battle.net/wow/de/forum/topic/2624788679> # 1  
<http://eu.battle.net/wow/de/forum/topic/2624788679> # 11  
<http://eu.battle.net/wow/de/forum/topic/1679608168> # 1

<http://eu.battle.net/wow/de/forum/topic/1934583477> # 9  
<http://eu.battle.net/wow/de/forum/topic/2491519601> # 1  
<http://eu.battle.net/wow/de/forum/topic/2601291344> # 1  
<http://eu.battle.net/wow/de/forum/topic/2601191444?page=1> # 1  
<http://eu.battle.net/wow/de/forum/topic/2601191444?page=1> # 15  
<http://eu.battle.net/wow/de/forum/topic/2463347840> # 6  
<http://eu.battle.net/wow/de/forum/topic/2463347840> # 1  
<http://eu.battle.net/wow/de/forum/topic/2868707569?page=1> # 1  
<http://eu.battle.net/wow/de/forum/topic/2868707569?page=1> # 10  
<http://eu.battle.net/wow/de/forum/topic/2868707569?page=2> # 23  
<http://eu.battle.net/wow/de/forum/topic/2868707569?page=2> # 25

84

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-114

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-116 -

Unfortunately, the applicant contradicts itself. For example, with the Statement:

Our current view on Multiboxing is the time that this is allowed as long as no automation of the actions taking place.

<http://eu.battle.net/wow/de/forum/topic/2690871575> # 13

-117 -

If a keystroke, 10 or more characters controlled there will still be necessary for thought every other character automated. Another view is simply absurd.

How Multiboxing in reality "feels" and the unfairness of this kind can be automated, show the following explicit Videos

<http://www.warcraftmovies.com/movieview.php?id=187129>

<http://warcraftmovies.com/movieview.php?id=199337>

Another of many examples can be seen here:

<http://www.youtube.com/watch?v=3nsFfNg9kH0>

This is what happens to a guild on Aegwynn when they go messing with a 10 multibox player. They came through and wiped out the Undercity NPCs around the bank But they were not "prepared" for this!

Wow I am the best multi-boxer! No other multi-boxers in the World of Warcraft can defeat me. Sure if I go up against 40 opponents in Alterac Valley, they may beat me sometimes. But the best I've done at once in AV has been 34 kills at Galv. And at Wintergrasp, the best I've done is destroyed at the 80 alliance keep when they won the battle. I love when they win because they all hang at the cone and I can get a lot of kills that massive way: 0

I

use Pwnboxer from <http://www.multiboxing.com> as the other multiboxing tools do not give as much power as Pwnboxer! As you can see, everything gets destroyed all from Pwnboxer!

-118 -

This happens to a guild Aegwyinn when dealing with Multibox a 10-player to create. They came through and have the entire non-player characters killed in Undercity. "But..." they were not prepared for it.

I am the world's best multi-boxer. No other multi boxer can defeat me. Ok, if I was facing 40 opponents in Alterac Gorge play defeat to me, maybe. But the best I could, there were 34 killings in Galv. And Wintergrasp, the best thing I could ever had,

To destroy 80 Alliance players, as they won the battle had. I love it when they win, because this will ensure all in the fortress, and I get a lot of good kills written.

I use Pwnboxer of <http://www.multiboxing.com> because the other tools do not give as much power as Pwnboxer! As you can see everything is destroyed by Pwnboxer! (Translation by the signatories)

A player defeated so up to 80 other players through the Use of multi-boxing. As the applicant is not from here existing automation can speak and assume that Multiboxing is affected with no fairness remains a mystery.

There is prima facie evidence already offered by the Appointment with a representative of the applicant's character plays and one representative of the defendant with 10 characters on For example, four PCs simultaneously. The court may be then give yourself clarity, if both the tax 10 characters on four PCs from one person really does not

-119 -

Automation represents and second, whether this is still fairly and actually feel the game is not affected.

Then use the applicant's users, the multi-boxing, but some € 100-200 per month is earned, the adjustment to This type of technology clearly makes the terms of the applicant but not less opaque. The enumeration of these complaints hinders also not possible "in the wrong, there is no law" argument of Applicant, because it's all about the question of whether the evident Conditions and are at first glance, differentiate, which allows software and what is forbidden.

(C) LUA scripts

The applicant should not hesitate even once to check that Software products on the external features LUA interface

can accomplish. Which begins at the direction of arrows in the Landscape to the quest givers, including color markings on Map of completely different form of graphics interfaces to to extensive warnings about the skills Non-player characters during encounters with these inclusive loud acoustic device, or the complete change of Auction house in the game itself. Also in the Player vs. Players are many game-changing LUA scripts, for example, to highlight certain players, analyze, effective attack and much more.

-120

#### (D) Legal Review

The exact classification and evaluation of individual species but actually irrelevant, because it only matters that the Applicant, that allows external programs and the terms of the Applicant in this regard make no difference. Several times uses the applicant's formulation, the efficacy of contracts under that: "[...] "Cheats," mods ", and / or create or use hacks, and produced by any other third party software that supports the World of Warcraft gaming experience changed. That being said, that the defendant continues to deny that it is in software, these markets, a cheat, a hack or a mod is, the clause itself is not clear enough to serve as GC, in the sense German jurisdiction, effect on consumers to unfold. Also LUA scripts, keyboards and gaming or Mice, and multi boxing software alter the gaming experience of World of Warcraft without this software that prohibit the applicant wants or prohibited.

For an end user is thus not clear what software should be allowed and which not. The mere "permission" by the Applicant can not be a ground of discrimination, as this in the Decision to accept the terms and conditions, and it is not visible even after the adoption is not a list of what software the applicant as "legal"

considered.

-121

### III.

Trademark dispute

First Use on the website & [www.gatherbuddy.com](http://www.gatherbuddy.com)

[www.honorbuddy.com](http://www.honorbuddy.com)

The use of the mark "WOW Bot"

and "World of Warcraft Bot"

on

the website is [www.gatherbuddy.com](http://www.gatherbuddy.com) & [www.honorbuddy.com](http://www.honorbuddy.com)

No trade mark be used.

The recent confirmation by the defendant as its legal view

mentioned by the BGH 13.01.2011 (-

I ZR 125/07 -

Bananabay II)

based on a ruling by the ECJ of 26.03.2010,

Az C-91/09. In this preliminary decision, it was about the extent to which

the then Article 5 paragraph 1 letter a of the First Council Directive 89/104/EEC of

Council of 21 December 1988 on the approximation of the laws of the

Member States relating to trade marks (now Article 9 of Regulation (EC) No

207/2009 on the Community trade mark of 26 February 2009)

interpreted as meaning that the owner of a mark to an advertiser

may prohibit, on an identical branded with this keyword, which of

This advertiser without his consent in the context of a

Internet referencing was selected for the goods or

Services which are identical with those for the same brand, to

, from advertising if such advertising for the average Internet user

or not is hard to see, whether advertised on the display

Goods or services from the owner of the trade mark or an

him or economically linked undertakings but by a third party

come.

Although the explicit request of the Supreme Court in advertising on one

Internet search provider, referred to the ECJ has answered the question in general

while the following recorded:

-The use of trademarks as keywords as part of a  
Referencing is a benefit "in the business  
Transport  
okS Article 5 § 1 (now Article 9, paragraph 1).

For the use-it does not matter whether the key word here  
for Internet users is visible.

-For a ban on the use of all the prerequisites have  
to be of article 5, paragraph 1 (now Article 9, paragraph 1) met (article 9 paragraph 2:  
"If the conditions in paragraph 1 are met ...").

-The trademark owner may prohibit such use only  
if they can affect one of the functions of the mark.

The Supreme Court has, therefore, in its ruling of 13.01.2011 (-  
I ZR 125/07 -  
Bananabay II noted):

"The owner of a mark may use the one with the brand  
identical sign this Statement, if such use does not  
impair the functions of the mark (ECJ may, IIC 2009, 756  
Rn. 60  
L'Oréal / Bellure, IIC 2010, 445 Rn. 76 -  
Google France). "

Considered here is only an impairment of the function of which  
Brand.

On the origin function, the ECJ stated that the question of whether it  
this function is impaired when Internet users to use one of  
Mark which is identical keyword a complaint by a third party shows  
in particular, depends on how this indicator is designed. The  
indication of origin of the brand is affected when the

Advertisement for a well informed and reasonably observant Internet users or not is hard to see whether the display in the advertised goods or services from the owner of the brand with him or economically linked undertakings, or rather

-123

originate from a third party (Google France and Google sentence paragraphs. 83 and 84).

The Supreme Court stated:

"An impairment of the origin function would require that the Selected as a keyword term in the context of product sales certainly also the distinction of the goods or services Complained of which is of other companies (see ECJ, IIC 2003, 55 para. 51 ff - Arsenal Football Club / Reed, BGH, Judgement of 22 September 2005, BGHZ 164, 139, 145 - Dental impression material; BGH, IIC 2010, 726 Rn. 16 Opel Blitz II, Supreme Court, Judgement of 22 April 2010 - I ZR 17/05, IIC 2010, 1103 para. 25 = WRP 2010, 1508 - Chocolates form II). "

and "For impairment in this sense, it speaks, therefore, if the Will display the third party suggests that between him and the Brand owner an economic connection. "

Detriment to the original function now is to determine the following:

-Neither during a search "WoW"  
still in search order  
"World of Warcraft"  
is the website of the defendant without  
another to see it at all.

-In the said Order of the applicant search "WoW bot" is

Although the defendant is actually on the first page (the 10th Entry), but there is obviously no connection to the applicant before Firstly, is that none of the search order illustrated pages in a relationship with the applicant, on the other contains the name of the Inter side of the defendant neither Names "wow" or "World of Warcraft", but only the name of its own product (www.honorbuddy.com).

-The defendant has, on its website again explicitly and conspicuously indicate that the Website in any Connection to the applicant stands.

-124 -

Therefore, by the use of signs "WOW Bot" and "World of Warcraft bot " the origin function of trademarks is not the applicant impaired.

But even if one were to assume that an impairment of Origin function would have existed, could form the applicant to use because Article 12 of Regulation (EC) No 207/2009 does not continue to prohibit. With the Character is described merely the product of the defendant.

By the addition of "WoW" and/or "World of Warcraft" , the defendant

only then that their products exclusively for use along with the game "WoW" and/or "World of Warcraft" are designed.

The defendant must indicate such an addition also because of the average Internet user would otherwise not be seen, that he the product of the defendant does not obtain an independent program and which products they acquire additional needs to the product of



Defendant to use. A concealment of the characteristics of the Product of the defendant as a mere complement of the game heteronomous "World of Warcraft" would be the extent misleading.

The applicant is in your letter of 17.11.2011, p. 51, the Recommendation, the current description of "WoW bot" by "Buddy - A bot for the online game World of Warcraft " to replace. It is the Opinion such a description would not trademark law in report, to (transportation services)

For the descriptive character of a word is its position in Sentence structure is irrelevant, ie, a description is not necessarily necessary that the described property as an addition to the Product name will be attached as required by the applicant in the written statement from 11/17/2011 cites as an example. Rather, the characters also like an adjective used. An adjective is encoded in the Linguistics The part of speech, what the condition or

-125 -

Relationship of a (concrete) thing, an (abstract) thing, one Process or condition, etc. describes. A possessive is thus represented grammatically correct, that the owner of the genitive to his possession is: WoW's bot (or the English version of the Genitive: WoW's bot). The use of the mark "WoW" and "World of Warcraft " can be seen as the product of the defendant preceding adjectives therefore be treated no different than stated by the applicant Example

Second Using the website [www.privatwowbot.com](http://www.privatwowbot.com)  
The website [www.privatewowbot.com](http://www.privatewowbot.com) is not the defendant. They is used by an independent reseller of the defendant, the only a fixed commission from the revenue generated by it receives.

The content of this page are created by the defendant nor controlled. The defendant has also filed does not have the option because she has no access to the design of the website. A possible violation, the applicant would have to directly to the operator the website claim.

Marian Härtel  
Lawyer