

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

JOHN B. THOMPSON ON BEHALF
OF THE STATE OF FLORIDA,

Plaintiff,

v.

CASE NO.

MICROSOFT CORPORATION, INC.,
AND BEST BUY CO., INC.

Defendants.

**COMPLAINT FOR INJUNCTIVE RELIEF AND
FOR BREACH OF AGREEMENT**

COMES NOW petitioner, an attorney, on his own behalf and on behalf of the State of Florida as authorized by Florida Statute 60.05, and files this Verified Complaint for Injunctive Relief and for breach of agreement, and states:

THE PARTIES

1. Plaintiff has been a resident of Miami-Dade County, Florida, continuously since 1976. He is a citizen of the United States, more than eighteen years of age, and he is otherwise *sui juris*. He is licensed by and in good standing with The Florida Bar and has been since 1977..

2. Defendant Best Buy Co., Inc. (hereinafter Best Buy), is a foreign corporation registered to do and doing business in the State of Florida, at various retail stores located in Miami-Dade County, Florida, and throughout the state. Best-Buy is one of the largest, in volume of sales, retailer of video games in the United States.

3. Defendant Microsoft Corporation (hereinafter Microsoft), is a foreign corporation doing business in the State of Florida by virtue not only of its distribution and sale of millions of

units of its video games in the State of Florida but through multifarious commercial activities in this state.

THE STATUTORY AUTHORITY FOR THIS ACTION

4. Plaintiff brings this action against defendants based upon their future sale of a violent, interactive, Mature-rated video game entitled *Halo 3* (discussed more fully *infra*), to individuals under 17 years of age, which distribution and sale constitutes a public nuisance under Florida law. The statutory basis for this action is as follows:

5. Florida Statute 823.01 states:

823.01 Nuisances; penalty.--All nuisances that tend to annoy the community, injure the health of the citizens in general, or corrupt the public morals are misdemeanors of the second degree, punishable as provided in s. [775.083](#), except that a violation of s. [823.10](#) is a felony of the third degree.

6. Florida Statute 823.05 states, verbatim, as follows:

823.05 Places declared a nuisance; may be abated and enjoined.--Whoever shall erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. [823.01](#), or shall be frequented by the class of persons mentioned in ¹s. [856.02](#), or any house or place of prostitution, assignation, lewdness or place or building where games of chance are engaged in violation of law or any place where any law of the state is violated, shall be deemed guilty of maintaining a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures and contents are declared a nuisance. All such places or persons shall be abated or enjoined as provided in ss. [60.05](#) and [60.06](#).

7. Florida Statute 60.05 states, verbatim, as follows:

60.05 Abatement of nuisances.—

(1) When any nuisance as defined in s. [823.05](#) exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county may sue in the name of the state on his or her relation to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists.

(2) The court may allow a temporary injunction without bond on proper proof being made. If it appears by evidence or affidavit that a temporary injunction should issue, the court, pending the determination on final hearing, may enjoin:

- (a) The maintaining of a nuisance;
- (b) The operating and maintaining of the place or premises where the nuisance is maintained;
- (c) The owner or agent of the building or ground upon which the nuisance exists;
- (d) The conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with or incident to the

Maintenance of the nuisance.

The injunction shall specify the activities enjoined and shall not preclude the operation of any lawful business not conducive to the maintenance of the nuisance complained of. At least 3 days' notice in writing shall be given defendant of the time and place of application for the temporary injunction.

(3) Evidence of the general reputation of the alleged nuisance and place is admissible to prove the existence of the nuisance. No action filed by a citizen shall be dismissed unless the court is satisfied that it should be dismissed. Otherwise the action shall continue and the state attorney

notified to proceed with it. If the action is brought by a citizen and the court finds that there was no reasonable ground for the action, the costs shall be taxed against the citizen.

(4) On trial if the existence of a nuisance is shown, the court shall issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance and shall adjudge that the costs are a lien on all personal property found in the place of the nuisance and on the failure of the property to bring enough to pay the costs, then on the real estate occupied by the nuisance. No lien shall attach to the real estate of any other than said persons unless 5 days' written notice has been given to the owner or his or her agent who fails to begin to abate the nuisance within said 5 days. In a proceeding abating a nuisance pursuant to s. [823.10](#) or s. [823.05](#), if a tenant has been convicted of an offense under chapter 893 or s. [796.07](#), the court may order the tenant to vacate the property within 72 hours if the tenant and owner of the premises are parties to the nuisance abatement action and the order will lead to the abatement of the nuisance.

(5) If the action was brought by the Attorney General, a state attorney, or any other officer or agency of state government; if the court finds either before or after trial that there was no reasonable ground for the action; and if judgment is rendered for the defendant, the costs and reasonable attorney's fees shall be taxed against the state.

THE FACTS

8. Defendants Best Buy and Microsoft are presently selling, for delivery commencing on October 25, 2007, the violent, interactive video game” entitled *Halo 3*.

9. *Halo 3* is a video game that allows the virtual reality player to rehearse violent acts resulting in the death of one’s virtual victims. Lee Boyd Malvo, the younger of the two “DC

Beltway Snipers” was trained on *Halo* to kill residents within Virginia, Maryland, and Washington, D.C. His “mentor,” John Muhammad, knew the efficacy of the first *Halo* video game in this regard, because the Army in which he served used this same murder simulator to train snipers to kill. Malvo learned well on *Halo*.

10. The role of Microsoft’s *Halo* in the “DC Beltway Snipings” was reported on NBC News and was introduced into evidence in the trial of Lee Boyd Malvo.

11. The proof as to the causal nexus between violence simulation video games and real-world violence is legion, but one of the more notable proofs is found in the August 2005 Report of the American Psychological Association that establishes the direct causal link between violent teenaged video game play and teenagers’ aggression. The recent U. S. Supreme Court case of *Roper v. Simmons*, which struck down the juvenile death penalty, cites the brain scan studies similar to those coming out of Harvard, Indiana, and Michigan State Universities that prove that these violent games are processed in a different part of the brain in adolescents and teens than in adults, and it is the sector of the brain that leads of teen violence copycatting these violent games like *Halo 3*.

12. The video game industry itself acknowledges the peculiar harm of “Mature” games when played by anyone under 17, as the Entertainment Software Rating Board, by the agreement of the entire industry, age rates video games and agrees not to sell “Mature” games to anyone under 17 because of the public safety and health hazard such sales pose.

13. When plaintiff first filed an action similar to this in Miami-Dade Circuit Court it was against defendant Best Buy to stop the sale of “Mature-rated” video games at its stores to customers under the age of 17. Best Buy settled that suit by agreeing to henceforth age ID any

customer who appeared to be 21 years of age or younger in order to intercept and prevent any sales to anyone under 17. Best Buy announced this new policy nationwide.

14. Two weeks ago, undersigned's 15-year-old son was able to conduct a "sting" on Best Buy. He walked into a Best Buy store and purchased an extremely violent "Mature-rated" game with the clerk, despite the agreement by Best Buy that this would not happen, selling it to him without checking any age ID. There is no question that this is not an isolated incident and it will occur as to *Halo 3* sales. In fact, Best Buy is pre-selling *Halo 3* at its corporate Internet site at www.bestbuy.com to anyone of any age with no age verification.

15. Defendant Microsoft is creating a demand for this ESRB-rated "Mature" game, according to recent news reports, by aggressively marketing the game heavily to teen boys to assure it will be the best-selling video game of all time.

16. Both defendants claim that they are not selling and are not going to sell this Mature-rated video game to anyone under seventeen, but such sales are occurring and are intended by these two defendants to occur. Both companies should be held to the very standard that they themselves say is appropriate and that they say they are honoring but are in fact breaching.

COUNT I. INJUNCTIVE RELIEF

17. In light of all of the foregoing facts and the Florida statutes that afford a remedy for public nuisances, plaintiff seeks the following injunctive relief:

A temporary restraining order, to be followed by a permanent injunction, prohibiting both defendants from selling this Mature-rated video game, directly or indirectly, to anyone under 17 years of age, which practice constitutes a public nuisance, violates industry standards, constitutes a fraudulent and deceptive trade practice, as both companies, directly and/or through

their representatives have made promises to Congress and to the public to refrain from such practices, and represents a hazard to public safety, health, and morals.

COUNT II. BREACH OF AGREEMENT BY BEST BUY

18. Plaintiff readopts and realleges the preceding paragraphs 1 through 17 and incorporates them into this count.

19. Defendant Best Buy agreed with Thompson, in settlement of its suit with Thompson, not to sell any "Mature-rated" video games to anyone under 17 years of age. It has breached and is presently breaching that agreement with Thompson.

WHEREFORE, plaintiff seeks enforcement of that agreement, specific performance, and any other relief deemed appropriate by this court as a remedy for this breach by Best Buy.

Under penalty of perjury, I declare the foregoing facts are true, correct, and complete, so help me God, this September 21, 2007. Copies of this complaint have been provided by electronic means and by fax upon both parties on this date.