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Attorneys for World Chess US, Inc. and World Chess Events Ltd.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	Index No. 16 Civ. ____
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WORLD CHESS US, INC., and WORLD CHESS EVENTS LTD.	:	
	:	COMPLAINT AND DEMAND FOR
Plaintiffs,	:	JURY TRIAL
	:	
- against -	:	
	:	
CHESSGAMES SERVICES LLC, E-LEARNING LTD., and LOGICAL THINKING LTD.,	:	
	:	
Defendants.	:	
	:	
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Plaintiffs World Chess US, Inc. and World Chess Events Limited (collectively, “World Chess”), by and through their attorneys Patterson Belknap Webb & Tyler LLP, for their complaint against Defendants Chessgames Services LLC (“Chessgames”), E-Learning Limited, and Logical Thinking Ltd. (E-Learning Ltd. and Logical Thinking Ltd. are collectively referred to herein as “Chess24”), allege as follows:

NATURE OF THE CASE

1. World Chess seeks the aid of this Court in protecting its right to disseminate in real time the chess moves played at the upcoming World Chess Championship, scheduled to commence in New York City on November 11, 2016, from internet piracy. This is an action to restrain the defendants from (1) misappropriation of hot news, and (2) breach of contract or, in the alternative, tortious interference with contractual relations. World Chess also seeks declaratory relief to confirm the enforceability of World Chess's website and admission ticket terms and conditions and that the defendants' retransmission of the chess moves is in violation of one or both of these contracts and also constitutes actionable misappropriation.

2. World Chess is in the business of organizing championship-level tournaments and publicizing those tournaments, including the moves played by the contestants, in a modern and speedy way. To do so, World Chess has partnered with the Fédération Internationale des Échecs ("FIDE"), a non-profit entity recognized by the International Olympic Committee as the supreme body responsible for the organization of chess and its championships at global and continental levels. Gaining such unique access to championship-level chess events requires the outlay of significant funds and effort. Thus, by arrangement with FIDE, World Chess will stage the 2016 World Chess Championship Match (the "Championship") and finance the prize fund. In order to reap the financial rewards of such efforts, World Chess regulates by contract the terms of access to both its website and live admission of persons to the event space, and prohibits any such viewers from publishing updates of the games for the duration of each game.

3. There are other entities that compete directly with World Chess in the real-time reporting of updates from prominent chess matches. These entities expend no time, effort, or money of their own in organizing, producing, or hosting the chess events for the World

Championship and instead reap economic benefit from free-riding on the work and effort of World Chess. By live redistribution on their own websites of the reports of chess moves that World Chess has produced and distributed at significant investment and expense, these free-riders offer a pirated product at a cheaper price. Chessgames and Chess24 (collectively, “Defendants”) are such pirates.

4. To combat this unauthorized free-riding, and to maintain the incentives necessary to continue coverage of this venerated sport, World Chess is seeking relief for Defendants’ misappropriation of hot news and breach of contract, or, in the alternative, tortious interference with contract. The misappropriation of the chess moves not only devalues the dissemination of such events, it also threatens the continued viability of chess tournaments and the enjoyment of such events by chess fans around the world.

THE PARTIES

5. Plaintiff World Chess US, Inc. is a Delaware corporation, with its principal place of business currently located at 433 Broadway, New York, New York 10013.

6. Plaintiff World Chess Events Limited is a British Virgin Islands limited company, with its principal place of business located at Tropic Isle Building, P.O. Box 3423, Road Town, Tortola, BVI.

7. On information and belief, Defendant Chessgames is a Florida limited liability company. It claimed when registering its website to have a principal office at 646 93rd Ave North, Naples, Florida 34108-2439.

8. On information and belief, Defendant E-Learning Limited is a Gibraltar limited company. It claimed when registering the chess24 website to have a principal office at 4 Pitman’s Alley, Gibraltar, GX111AA.

9. On information and belief, Defendant Logical Thinking Limited is a Gibraltar limited company with its principal office at Suite 7, Hadfield House, Library Street, Gibraltar GX11 1AA.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(3) as an action between citizens of different states and in which citizens of foreign states are additional parties. The matter in controversy exceeds \$75,000, exclusive of interest and costs.

11. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b), (c), and (d), because a substantial part of the events or omissions giving rise to World Chess's claims occurred in this district; because Defendants are subject to personal jurisdiction in this district; and because the alien defendants may be sued in any district.

FACTS

A. World Chess

12. Through agreement with FIDE, World Chess Events Limited is the exclusive disseminator of the 2016 World Chess Championship Match (the "Championship").

13. In order to obtain unique access to this competition and report on it, World Chess Events Limited agreed to produce the event and underwrite the expenses of staging it, including the prize fund.

14. World Chess Events Limited assigned some of its rights and obligations for the 2016 Championship to its wholly-owned subsidiary, World Chess US, Inc.

15. World Chess, at great expense and as a result of effort and labor, has thus obtained unique access to and rights to disseminate the moves from the 2016 Championship.

16. The Championship will take place at South Street Seaport in New York, New York through twelve rounds commencing on November 11, 2016, between the current World Champion Mr. Magnus Carlsen of Norway and the challenger Mr. Sergey Karjakin of Russia. The event is scheduled to end no later than November 30, 2016. The Championship is expected to attract a large global audience and the Grandmasters will be competing for a Prize Fund of at least €1 million.

17. World Chess will not only produce the Championship—including securing a venue and selling admission to a live audience—but will also promote, commercialize, and distribute the updates from the match by webcast on www.worldchess.com. This year, World Chess has created a new online viewing experience on its website including through a 360° view via any smartphone, tablet, or computer; a “Virtual Reality” view using a stereoscopic live video; a multi-camera view; live commentary from grandmasters and guest celebrity chess fans; and an interactive dashboard. World Chess’s live webcast of the chess moves from the Championship will be a primary feature and the chief attraction of its website.

18. Chess fans will be able to view the moves from the Championship live on www.worldchess.com, as well as pay for one of several premium memberships which offer other value-added features. The revenues earned make the Championship commercially viable and support World Chess’s continuing ability to host chess tournaments and create and improve distribution technology for the sport.

19. The upcoming November 2016 Championship is expected to attract a large global audience. For many of these viewers, receiving instantaneous updates of the progress of each game is of paramount importance and a major selling point. World Chess’s real-time dissemination of the chess moves from championship matches is thus a time-advantaged service

and is promoted as such.

20. Because World Chess stages the tournament and controls access to it, it necessarily controls the ability of others to obtain information about the progress of the games. The exclusive ability to control the publication of the chess moves from these events is one of World Chess's most valuable and proprietary assets. In addition to generating subscriber fees, World Chess's unique position as disseminator of Championship updates enables it to attract and retain commercial sponsors, revenues from which make the hosting of the Championship economically viable for World Chess. This in turn stimulates the global appeal of chess for the benefit of all fans of the sport.

21. Subscribers to the World Chess website are required to enter into a contract before gaining access to the chess moves posted on the website. The agreement permits users to access and use the website content "for private noncommercial use." The agreement requires, however, that users "not copy or communicate any information concerning the chess moves of the broadcasted games during such games" to any third party, or to make the moves available for any such use. All those who access the chess moves or other content must click "I agree" to the website terms and conditions restricting their ability to redistribute World Chess content. World Chess has also contractually authorized a limited number of other websites to carry the live reports of the Championship games by incorporating a software "widget" on the authorized websites which retransmits the information as originally presented on the World Chess website. All authorized websites are contractually required by World Chess to deploy terms of use with the same restrictions on subscribers—i.e., for private personal use only, and no retransmission of the games allowed.

22. Likewise, all who purchase in-person tickets to the Championship are

required as a condition of admission to agree to substantially the same terms, prohibiting them from transmitting to others outside the venue any information about the match.

B. Chessgames and Chess24

23. Both Defendants operate websites that offer, *inter alia*, a display of “live events,” such as the chess tournaments covered by World Chess. Neither of these Defendants has expended any time, money, or effort in the organization of the Championship. Rather, both of these Defendants intend to free-ride on the reports of the games made by World Chess. For example, both of these Defendants promptly copied updates of the Candidates’ Tournament in March 2016 from and in direct competition with the reports offered by World Chess, causing enormous damage to World Chess.

24. Chessgames operates a website at www.chessgames.com. On information and belief obtained from the website WHOIS.com, the generic top-level domain registry of the Chessgames website is Verisign, Inc., based in Reston, Virginia. Verisign is recognized by ICANN (The Internet Corporation for Assigned Names and Numbers) as the registry for all top-level domains bearing the extension “.com.” According to WHOIS, Network Solutions, LLC based in Herndon, Virginia is the registrar of chessgames.com (the company that acts on behalf of Chessgames in securing its web address).

25. Chessgames offers a premium subscription on its website for those who wish to view “live chess broadcasts” and it freely admits that in order to cover the “very newest games” it takes the chess moves “from the official websites of the chess events.” In other words, Chessgames operates one of the most profitable aspects of its website through the systematic and unauthorized reproduction and redistribution of chess moves from World Chess’s website. Though Chessgames has existed since as early as 2002, it was originally only “a database of historical chess games” and it was not until the Dutch Championship in 2003 when the

disseminator's website distributed the chess moves live that Chessgames was able to add the live distribution of chess moves from current events. This real-time dissemination "w[as] such a success" that Chessgames decided to live disseminate future chess matches if available from the disseminators' websites. Late in the day on October 31, 2016, despite being on notice of World Chess's rights, Chessgames announced that it would provide live coverage of the Championship and advertised that its website users would be able to "watch the games as they happen" on chessgames.com.

26. On information and belief, Defendants E-Learning Ltd. and Logical Thinking Ltd. own and/or operate a website and do business under the name "Chess24" and are collectively referred to herein as "Chess24."

27. Chess24 operates a commercial website, www.chess24.com. On information and belief obtained from the website WHOIS.com, the generic top-level domain registry of the Chess24 website is Verisign, Inc. According to WHOIS, united-domains AG, based in Munich, Germany, is the registrar of chessgames.com.

28. Chess24 boasts it is "the world's fastest growing chess website" that lets consumers "watch major chess events live." It further states that it "will cover all the best chess events with a state-of-the-art live broadcast system, bringing viewers close to the action with lightning-fast move transmission." This "coverage" is intended to attract viewers to the site, where they are offered a \$99 per year "Premium" subscription. On November 3, 2016, despite being on notice of World Chess's rights, Chess24 announced that it would provide live coverage of the Championship and advertised that its website users would be able to "follow every twist in the tale here on chess24." Chess24's website did not exist in its current form until, upon information and belief, June 2013, and its live coverage of major chess events heavily depends on

World Chess and its website.

C. The Unique Nature of Chess Moves

29. Chess is a purely intellectual sport and thus differs from other widely followed sporting events in that reporting of the chess moves conveys the playing of the game. That is why the moves themselves are the very essence of the game. Whereas basketball games, concerts, dance, and theatrical performances may only be fully appreciated when watched live or in video form where the audience can see and hear the performers, a chess game is fully comprehended through the notation of the moves. At the end of a chess game, the score represents a complete record of a game for all time—quite unlike an athletic contest or a ballet.

30. Since the first international chess tournament in 1851, tournament organizers have noted the considerable expense required to host and create a chess tournament and thus have contracted for the rights to publish in the first instance the chess moves of each game. Indeed, today the ability to control and profit from the first publication of the chess moves determines an organizer's ability to finance other chess tournaments. Ever since that first international tournament, tournament organizers have struggled to generate enough capital to host more tournaments and their struggles are due in large part to an inability to control the dissemination of the chess moves in the first instance.

31. As William Henry Watts of the British Chess Federation, and an amateur chess player himself, lamented in 1925: "Under our existing arrangements a few papers send their reporters and reproduce a game – other papers which do not go to the expense, copy this game from the first newspaper, knowing that is free 'copy.' . . . The fact remains that there is an untapped source of revenue and one which if properly . . . developed should go far to provide the means towards holding" more frequent chess tournaments. At the time Watts made this observation, twenty years often separated one international tournament from the next, because

more frequent tournaments were not financially feasible.

32. The problem Watts described in 1925 remains an issue today. And though Watts was concerned with the republication of chess moves in a newspaper, the modern analog is the republication of the chess moves on the World Wide Web. Today, the most valuable aspect of hosting and generating content for a chess tournament is the ability to profit from publication of the chess moves and to publish the moves in real time.

33. Defendants have made a pattern and practice of copying and redistributing in real time the chess moves from tournaments covered by World Chess shortly after the moves appear on World Chess's website, and unless restrained by this Court will do the same with respect to the November 2016 Championship.

34. Defendants are direct competitors of World Chess for live updating of chess tournament matches on the Internet. These Defendants market themselves to the same customer base as World Chess and their activities divert both subscriber and advertising revenue from World Chess. Defendants' free-riding on World Chess's extensive efforts in organizing, publicizing, and webcasting the Championship is likely to undermine World Chess's economic incentive to invest in the costly organization of chess tournaments and the real-time dissemination of chess moves. The predictable result of the Defendants' piracy is that chess tournaments will be mounted less frequently and dissemination of news in the form of updates and commentary on those matches will be degraded.

D. Defendants Threaten Immediate Harm to World Chess

35. Defendants are well aware that World Chess objects to and contractually prohibits the re-dissemination from its website and live venue of updates of the matches it covers. Defendants are also well aware that World Chess has an exclusive arrangement with FIDE for the right to disseminate updates from the Championship.

36. Despite having such awareness, Defendants willfully flouted World Chess's rights and redistributed in real time the chess moves from the March 2016 Candidates Tournament.

37. Defendants have announced that they plan to webcast real-time updates of the moves from the Championship to be played in New York in November 2016. Upon information and belief, Defendants plan to obtain these updates from the World Chess website, and refuse to recognize World Chess's rights to control access to and redistribution of those updates.

FIRST CLAIM FOR RELIEF

(Hot News Misappropriation)

38. World Chess re-alleges and incorporates by reference paragraphs 1 through 37 of this Complaint.

39. Through substantial efforts and at a significant cost to World Chess, World Chess disseminates real-time moves from leading chess tournaments through its website.

40. The updating of chess moves is time-sensitive in nature and derives particular value from its immediacy in light of the many chess fans who would like to follow the game in real time.

41. Defendants' threatened copying and redistribution of chess moves obtained either from the World Chess website or from a visitor present at the live venue constitutes free riding on World Chess's significant and costly efforts to organize, publicize, and disseminate major chess tournaments.

42. Defendants plan to publicize the copied chess moves to Defendants' customers in direct competition with World Chess, thus diverting a material portion of World Chess's profit.

43. If Defendants and similar entities continue to free-ride on World Chess's costly efforts to organize, publicize, and disseminate major chess tournaments and to maintain the infrastructure necessary for doing so, World Chess's incentives for undertaking these costly efforts will be significantly reduced, if not entirely eliminated.

44. Defendants' actions constitute actionable misappropriation of hot news.

45. Defendants' actions were undertaken in bad faith, maliciously, willfully, wantonly, and in utter disregard of World Chess's rights.

46. As a consequence of Defendants' misappropriation of hot news, World Chess is entitled to recover compensatory and punitive damages, in an amount to be determined at trial but no less than \$4.5 million.

47. As a consequence of Defendants' misappropriation of hot news, World Chess is entitled to disgorgement to it of Defendants' profits occasioned by its unlawful conduct.

48. The persistent misappropriation of World Chess content by Defendants is not fully compensable in money damages. World Chess is therefore entitled, in addition to damages for past misappropriation, to injunctive relief to restrain Defendants from continuing their acts of misappropriation.

SECOND CLAIM FOR RELIEF

(Breach Of Contract, Or Alternatively, Tortious Interference With Contractual Relationships)

49. World Chess re-alleges and incorporates by reference paragraphs 1 through 37 of this Complaint.

50. World Chess is not aware of precisely how each Defendant acquires or plans to acquire access to the chess moves. It is likely, however, and discovery will likely confirm, that each Defendant will either cause an individual operating on its behalf to purchase an

admission ticket to attend the live event where moves can be viewed as they occur, and somehow transmit those moves from the venue in violation of the conditions of admission, or to subscribe to the World Chess or another authorized website and redistribute the moves as they are posted on that website in violation of the contractual Terms of Use of that website. Nor is World Chess aware of whether each Website Defendant causes its own employees to acquire the chess moves, or induces a third party to do so. Nonetheless, the Defendants will likely acquire real time access to the entirety of World Chess's real-time updates by breaching the contractual terms of such access established by World Chess, or inducing a third party to do so and then to supply the information. Accordingly, the World Chess content distributed by Defendants will likely be acquired in breach of, or by inducing breach of, such contractual terms.

51. Users of the World Chess website must agree to, and are bound by, the terms of the World Chess Terms of Use, which prohibit redistribution of the chess moves.

52. The World Chess Terms of Use constitute valid and enforceable contracts.

53. All persons who purchase an admission ticket to the live venue for the Championship are bound by the written Visitor Rules, which prohibit redistribution of the chess moves.

54. The Visitor Rules constitute valid and enforceable contracts.

55. Defendants each have notice of the World Chess Terms of Use and the conditions of admission to the live event.

56. By reproducing World Chess's content and redistributing it to its customers without World Chess's permission, Defendants have either breached the express contractual restrictions of World Chess's Terms of Use to which it agreed or, in the alternative, with knowledge of the existence of the express contractual restrictions of the World Chess Terms

of Use and without justification, intentionally induced a third party to breach the World Chess Terms of Use by transmitting the moves to Defendants.

57. By reproducing World Chess's content and redistributing it to its customers without World Chess's permission, Defendants have either breached the express contractual conditions on admission to the live event or, in the alternative, with knowledge of the existence of the restrictions and without justification, intentionally induced a third party to breach the conditions on admission to the live event by transmitting the moves to Defendants.

58. Defendants' breach of contract, or, alternatively, inducement of a third party to breach his or her contract, has caused and continues to cause significant damage to World Chess, not all of which is readily calculable.

59. Defendants' persistent interference with World Chess's contractual relationships even after being specifically placed on notice of the relevant terms of those contracts constitutes willful misconduct not adequately compensable in money damages. Accordingly, World Chess is entitled to injunctive relief restraining Defendants from continuing such misconduct.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment)

60. World Chess re-alleges and incorporates by reference paragraphs 1 through 37 of this Complaint.

61. To clarify its rights under the law and avoid any uncertainty surrounding the enforceability of its terms for live admission and use of its website, World Chess seeks a declaratory judgment that (1) its Terms of Use, once accepted by a website user by clicking "I agree" in the course of subscribing to the website, constitute valid and enforceable contracts, (2) its conditions of admission to the live Championship event constitute valid and enforceable

contracts once accepted by an attendee by purchasing an admission ticket or entering the premises where the Championship is played, (3) Defendants' retransmission of the moves obtained directly or indirectly from World Chess's website or through live attendance is in violation of one or both of these contracts, and (4) irrespective of the source from which they obtain the moves, Defendants' retransmission of the moves at substantially the same time as they are published by World Chess constitutes actionable hot news misappropriation.

PRAYER FOR RELIEF

WHEREFORE, World Chess demands judgment:

- A.** awarding to World Chess its actual compensatory and punitive damages with respect to each cause of action in an amount to be determined at trial but not less than \$4.5 million;
- B.** requiring disgorgement to World Chess of the profits made by Defendants attributable to its unlawful conduct on all Claims for Relief to the extent not taken into account in computing World Chess's actual damages;
- C.** temporarily restraining, and preliminarily and permanently enjoining Defendants from continuing to misappropriate World Chess's hot news and continuing to induce breach of and interfere with World Chess's contracts with its subscribers and employees;
- D.** ordering that Verisign, Inc., Network Solutions, LLC, and united-domains AG shall take all actions necessary to ensure that they and any other registrars and the generic top level domain registries responsible for Defendants' websites transfer, change the registrar of record, and/or disable Defendants' websites as directed by the Court. Verisign, Inc., Network Solutions, LLC, united-domains AG, and any other registrars and registries shall be required to transfer the domain names associated with Defendants' websites to a registrar to be appointed by

World Chess to re-register the domain names in the name of World Chess's authorized representative or agent and under World Chess's ownership;

E. ordering that those in privity with Defendants and those with notice of the injunction, including any Internet search engines, Web hosts, Web servers, domain-name registrars, and domain-name registries or their administrators that are provided with notice of the injunction, cease facilitating access to any or all domain names and websites through which Defendants engage in the distribution of World Chess's hot news;

F. canceling or, at World Chess's election, transferring Defendants' websites and any other domain names used by the Defendants to engage in their misappropriation of World Chess's hot news to World Chess's control so they may no longer be used for illegal purposes;

G. declaring that (1) its Terms of Use, once accepted by a website user by clicking "I agree" in the course of subscribing to the website, constitute valid and enforceable contracts, (2) its conditions of admission to the live Championship event constitute valid and enforceable contracts once accepted by an attendee by purchasing an admission ticket or entering the premises where the Championship is played, (3) Defendants' retransmission of the moves obtained directly or indirectly from World Chess's website or through live attendance is in violation of one or both of these contracts, and (4) irrespective of the source from which they obtain the moves, Defendants' retransmission of the moves at substantially the same time as they are published by World Chess constitutes actionable hot news misappropriation.

H. awarding World Chess its costs in this action, including reasonable attorney's fees;

I. awarding World Chess such other and further relief as this Court deems just, proper, and equitable.

Dated: New York, New York
November 7, 2016

Respectfully submitted,



Robert P. LoBue
Julia Stepanova
Terra Hittson
PATTERSON BELKNAP WEBB & TYLER LLP

JURY DEMAND

Plaintiffs hereby demand trial by jury of all issues as to which jury trial is available.

Respectfully submitted,



Robert P. LoBue
Julia Stepanova
Terra Hittson
PATTERSON BELKNAP WEBB & TYLER LLP