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Leslie L. Jacobs, Jr.
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Dear Mr. Jacobs:

I write in response to your letters directed to Playsaurus, Inc. ("Playsaurus") dated Mar. 23rd and 26th of 2018.

GTX Corp.'s attempt to stifle freedom of speech for the benefit of a patent licensing campaign is inappropriate. The impropriety is especially pronounced given that the campaign is transparently predicated on the threat of legal costs: your Feb. 20th letter demands "$35,000 … by the end of [a] ten (10) day period to avoid costly litigation." In that letter, GTX Corp. alleged that Playsaurus' mobile software infringed a server claim. Yet, a month later, those client-focused infringement allegations were dropped entirely and replaced with allegations that Kongregate infringes, and that Playsaurus induces Kongregate to infringe. This fact makes it very clear that GTX Corp. had no basis to write the Feb. 20th letter.

Your new threat of "libel" is another transparent attempt to threaten litigation costs to strong-arm Playsaurus into giving GTX Corp. a payout. Playsaurus did not commit libel against GTX Corp., but instead let the public at large know about GTX Corp.'s letter writing campaign. As you know "the truth … is a complete defense" against libel. *See, e.g., Gorrel v. Sneath*, No. 1:12-cv-00554, 2013 WL 5469859, *10 (E. D. Cal. Sept. 30, 2013). And the truth is exactly what was told in Playsaurus' blog post; the fact that Playsaurus exposed GTX Corp.'s behavior is not libel.

You should look at GTX Corp.'s own letters should you have any doubt about whether or not Playsaurus's Mar. 1st post that called your claims meritless and bogus was true. Your Feb. 20th letter accused mobile software of infringing, but your Mar. 23rd and 26th letters dropped this claim altogether. The fact that you dropped these allegations proves that the original Feb. 20th letter lacked any rational basis to begin with. You cannot turn around and then threaten libel when Playsaurus exposed GTX Corp.'s demand for what it was.

Your new infringement allegations now focus on Kongregate's alleged infringement. But, before I discuss the lack of merit, you must know that Playsaurus makes very little money from Kongregate. Playsaurus has only made $280 from Kongregate since Mar. 23rd. Second, as of Nov. 20, 2017 (long before your letters), Playsaurus officially abandoned in-app purchases for

future games and intends to release Clicker Heroes 2 in mid-2018.[1] Playsaurus also expects revenue from Clicker Heroes 1 to significantly drop after Clicker Heroes 2's release. In addition, Playsaurus offers unlimited refunds for in-app purchases to anyone who asks. *Id.* The fact that there exists negligible revenue, and the fact that Playsaurus is abandoning the in-app purchase model hardly justifies GTX Corp.'s demand of $35,000 or threat of "costly litigation."

Your new allegations that Playsaurus induces Kongregate to infringe the method claims of U.S. Pat. Nos. 7,177,838 (the "'838 patent") and 7,328,189 (the "'189 patent") are equally as baseless as the allegations in your Feb. 20th letter. Inducement requires "that [Playsaurus] intended to encourage" infringement. *MEMC Elec. Materials, Inc. v. Mitsubishi Materials Silicon Corp.*, 420 F.3d 1369, 1380 (Fed. Cir. 2005). GTX Corp. must prove that "[Playsaurus's] actions led to direct infringement" of the patent. *Power Integrations, Inc. v. Fairchild Semiconductor Int'l Inc.*, 843 F.3d 1315, 1331 (2016). Playsaurus does not induce; nor does Kongregate infringe.

First, you cannot say that Playsaurus induces Kongregate to use tokens when Kongregate's regular use of Kreds[2] predates Clicker Heroes' Aug. 6, 2014 release[3] by many years. In fact, Kongregate requested to Playsaurus that Clicker Heroes implement in-app purchases on Kongregate's web-site. Your allegations that focus on Playsaurus's alleged inducement are misplaced.

Second, the majority of the claims of the '189 and '838 patent focus on functionality that is entirely separate from how Clicker Heroes operates on Kongregate. Claim 1 of the '838 patent requires: (a) opening an account ('838 patent at 19:45), which you allege is a Kongregate account; (b) issuing tokens (*id.* at 19:46-50), which you allege are Kreds on Kongregate; (c) computing a price and authorizing a purchase in tokens (*id.* at 19:58-64), which you allege are done on Kongregate; and (d) deducting tokens from the user's account (*id.* at 19:65-20:4), which you allege is Kreds from a Kongregate account.[4] At most, Playsaurus offers Rubies, which you allege are the claimed "products and services."

But Playsaurus cannot induce Kongregate for simply offering alleged "products and services" into an e-commerce system. You obviously could not sue a shoe maker if you believed that a third-party online retailer infringed simply for selling those shoes. What makes you believe that you can sue Playsaurus for offering Rubies? You have no basis to allege inducement.

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[1] https://www.clickerheroes2.com/paytowin.php; *see also* https://www.clickerheroes2.com/
[2] *See, e.g.*, https://web.archive.org/web/20100309083916/https://www.kongregate.com/kreds (showing Kreds available in 2010)
[3] *See, e.g.*, https://www.kongregate.com/games/playsaurus/clicker-heroes (stating publication date of Aug. 6, 2014)
[4] The claims of the '189 patent suffer from similar deficiencies.

Furthermore, Playsaurus cannot induce infringement because Kongregate itself does not infringe the claims of the '838 or '189 patents. Claim 1 of the '838 patent requires both "products and services." *See* '838 patent at 19:21. You allege that a Ruby in Clicker Heroes is both "products" and "services." Nevermind the fact that both elements are plural, a Ruby cannot be both a product and a service. The '838 patent makes it clear that a product and a service are two separate things. *See, e.g.*, '838 patent at 2:30 (showing a search engine service); Fig. 6 (describing a computer game as a product); *see also* 12:26 (describing product ***or*** service); *see also* '189 patent at claim 1 (describing product ***or*** service).[5] Your infringement theory is defeated by simple logic; 2 does not equal 1.

Nor does Kongregate infringe the '189 patent. The '189 patent is directed to an open system where users exchange tokens to use across vendors. *See, e.g.*, '189 patent at 5:33-35. Claim 1 requires that purchases be made with tokens "through the second vendor," which you allege is Rubies and Playsaurus (*see, e.g.*, Ex. C at ¶68). But nothing can be purchased ***through*** Playsaurus at Kongregate's servers. All transactions are at Kongregate, with games being housed with Kongregate's servers.

The differences in the claims of the '189 and '838 patents and Kongregate's servers lies in the fact that Rubies are not currency, and in-app features are not products or services. The claims are focused on using tokens as currency to purchase products. Rubies and other items (*e.g.*, gilded heroes) are simply in-app features that can be unlocked. They hold no value as required by claim 1 of the '189 patent (35:7-7). Further illustrating that Rubies are not a currency and hold no value, Playsaurus offers full refunds for those who have purchased rubies. *See* https://www.clickerheroes2.com/paytowin.php. Playsaurus allows players to keep the rubies they unlocked even after they have been given a refund.

As already explained to you in my Mar. 1st letter, the claims of the '838 patent are subject matter ineligible under 35 U.S.C. § 101. The same applies to the '189 patent because its claims describe exchanging different tokens for use as currency. This is no different than simple currency exchange. The inventor, in his own words, succinctly described the gist of the invention, stating that "Applicant's invention is reminiscent of having a vendor mint his own currencies." *See* Related U.S. App. No. 09/665,237, 2006-06-15 Response to Office Action at 16. "[M]int[ing] … currencies" as a general concept is not subject matter eligible. *See Alice Corp. Pty. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2360 (2014). The claims describe exactly what occurs when a user exchanges currency between their home and foreign bank, and makes purchases through their foreign bank.

Beyond this, the '189 patent barely implicates technology; the only remotely technical word found within the claims is "electronic." But there is no requirement that any piece of technology

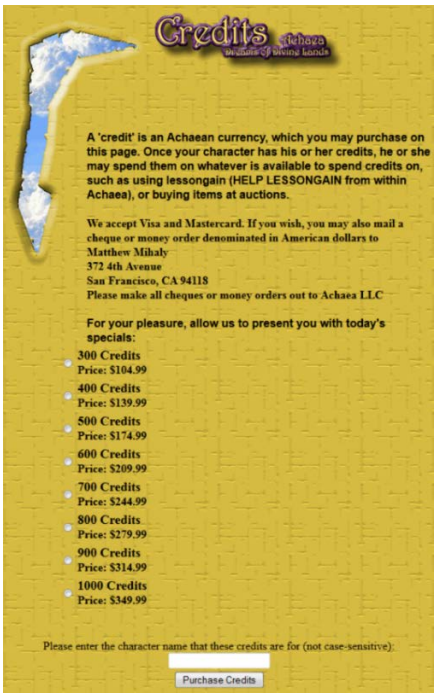
[5] Never mind the fact that a Ruby is not a product or a service.

perform this method—it can be performed entirely by a person talking to tellers at a home and a foreign bank. Simply throwing "electronic" on an abstract method, which could be performed by a person without technology, is not patent eligible under *Alice.*

In addition to the art provided to you in my Mar. 1st letter, other popular games such as Achaea by Iron Realms Entertainment had in-game microtransactions prior to the filing date of the '838 and '189 patents. Achaea had "an item mall [in its] MMORPG" in 1998, where it made profits off the sale of virtual goods.[6] In Achaea, "players have the option of purchasing credits, which can be converted into lessons to be used to acquire more skills."[7] Iron Realms Entertainment is still operational, makes games, and supports Achaea. *See* https://www.achaea.com/; *see also* http://wiki.achaea.com/Main_Page.

Matt Mihaly, the creator of Achaea and CEO of Iron Realms Entertainment, has agreed to assist developers like Playsaurus in invalidating the '838 and '189 patents if GTX Corp. decides to pursue its infringement claim.[8] Mr. Mihaly can prove how Achaea had each and every feature that you claim to have invented long before GTX Corp.'s patents were filed. Shown on the next page is an excerpt from a web page published in 1999 that Mr. Mihaly provided, which definitively shows that credits could be purchased with real money and that purchased credits could be used to purchase items in Achaea.

[6] *See, e.g.*, http://oldsite.ironrealms.com/are-microtransactions-the-mmo-item-mall-killers.
[7] *See, e.g.*, https://web.archive.org/web/20000816001218/http://www.mpog.com/reviews/software/rpg/achaea_2/
[8] For a little background on Mr. Mihaly, I point you to the Wikipedia page about him: https://en.wikipedia.org/wiki/Matt_Mihaly.




GTX Corp.'s letters amount to harassment; these letters must stop immediately. Playsaurus refuses to provide pay-outs for meritless infringement claims simply to "avoid costly litigation," so stop sending baseless letters with draconian demands. Playsaurus fully intends to have the merits of its case decided in court and the Patent Trials and Appeals Board if GTX Corp. does not stop.

For all of the above reasons, should Playsaurus need to defend itself on such meritless claims, we intend to seek attorney's fees.

Sincerely,

Miguel J. Bombach