

January 2006

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Berkeley Technology Law Journal

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Recommended Citation

Berkeley Technology Law Journal, *Marvel Enterprises, Inc. v. NCSoft Corp.*, 21 BERKELEY TECH. L.J. 364 (2006).

Link to publisher version (DOI)

<https://doi.org/10.15779/Z38T981>

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MARVEL ENTERPRISES, INC. v. NCSOFT CORP.

74 U.S.P.Q.2d 1303 (C.D. Cal. 2005)

The District Court for the Central District of California dismissed plaintiffs' secondary trademark liability claims because plaintiff failed to allege infringement on the part of defendant's users.

Plaintiffs Marvel Enterprises, Inc. and Marvel Characters, Inc. ("Marvel"), creators and owners of various comic book characters, sued NCSOFT Corp. for distributing and hosting a computer game that "allows players to play online and create characters that are virtually identical in name, appearance, and characteristics to characters owned by Plaintiffs." Plaintiffs charged, *inter alia*, direct and secondary copyright and trademark infringement. Defendant moved to dismiss plaintiffs' complaint for failure to state a claim.

The court declined to dismiss plaintiff's claims for direct, contributory, and vicarious copyright infringement. The court also let stand plaintiffs' claims for direct trademark infringement, both under statutory and common law. However, the court dismissed plaintiffs' claims for both contributory and vicarious trademark infringement. The court held that Marvel failed to allege that NCSOFT's users had used Marvel's marks in commerce or in connection with the sale, offering for sale, distribution, or advertising of any goods or services, and thus there was no infringement on the part of defendants' users for which defendant could be secondarily liable.