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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BIG DUCK GAMES, LLC,

Plaintiff,

v.

CHARLES QU and THINKCUBE, INC.

Defendants.

Case No.:

**COMPLAINT FOR COPYRIGHT,
TRADE DRESS, AND TRADEMARK
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff, Big Duck Games, LLC (“BIG DUCK”) by and through its attorneys, brings this Complaint against Defendants THINKCUBE, INC. and CHARLES QU (hereinafter referred to collectively as “THINKCUBE”) for injunctive relief and damages for copyright infringement, trademark infringement, unfair competition, false designation of origin, and trade dress infringement under the laws of the United States. BIG DUCK complains of THINKCUBE as follows:

NATURE OF THE ACTION

1. This action arises out of THINKCUBE’s willful infringement of BIG DUCK’s valuable intellectual property. BIG DUCK designed and developed two popular games, Flow

COMPLAINT FOR COPYRIGHT,
TRADE DRESS, AND TRADEMARK
INFRINGEMENT - 1

Civil Action No.
BDUK-6-0002 CMP

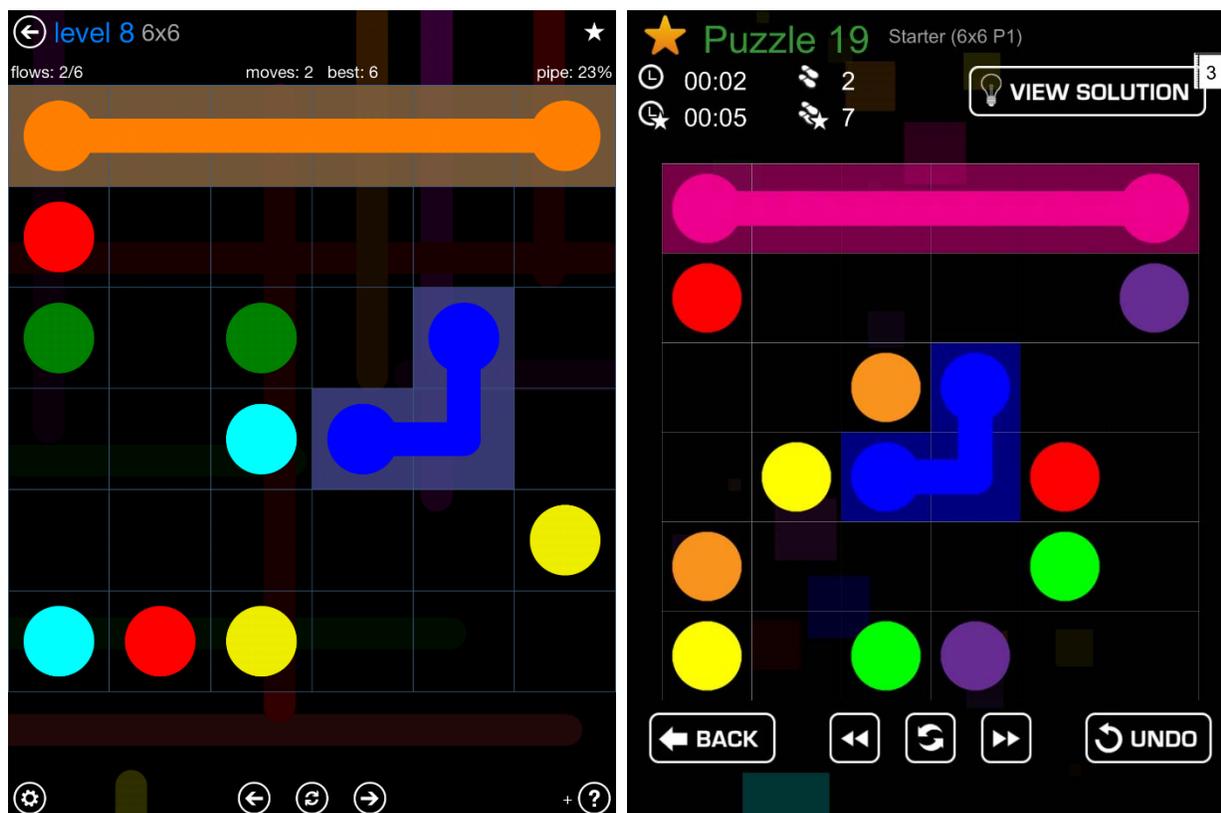
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1 Free and Flow Free: Bridges (hereinafter referred to collectively as the “Flow Games”), which
 2 are logic puzzle video games. Through hard work, BIG DUCK nurtured the Flow Games into
 3 what are now iconic, worldwide bestselling video games with over 165 million downloads
 4 worldwide.

5 2. THINKCUBE sells and distributes at least ten iOS and Android logic puzzle
 6 games named Link Classic, Link Bridge, Link Cross, Link Ultimate, Link Blocked, Hexic Flow,
 7 Hexic Flow: Bridges, Hexic Flow: Bend, Hexic Flow: Color Frames, and Hexic Flow: Blocked
 8 (collectively, “Defendants’ Games”), five of which are nearly identical to BIG DUCK’s Flow
 9 Free and Flow Free: Bridges. THINKCUBE has blatantly copied and misappropriated the
 10 original and distinctive elements of the Flow Free and Flow Free Bridge games, duplicating the
 11 graphics, design, and nearly every other creative element of the Flow Games. Below are
 12 screenshots of BIG DUCK and THINKCUBE’s games, side-by-side.



COMPLAINT FOR COPYRIGHT,
 TRADE DRESS, AND TRADEMARK
 INFRINGEMENT - 2

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3. THINKCUBE is also undercutting BIG DUCK by distributing a free version of BIG DUCK’s paid game, Flow Free: Bridges. Three months after BIG DUCK first released Flow Free: Bridges, THINKCUBE released its identical “Flow Bridges” game, and advertised that “Flow Bridges [is] now COMPLETELY FREE!” User reviews of THINKCUBE’s games leave no doubt that consumers are choosing to download THINKCUBE’s free clones instead of paying for BIG DUCK’s games. For example, one user wrote: “I don’t know why anyone would pay for the real flow when they could just get the knock off game for free with just a slightly different name.” Another user wrote, “I know this game’s a ripoff but hey, it’s free!”

AWESOME!!!!!!!!!!!! ★★★★★

by Lively girl – Mar 10, 2013

Attention attention I have come across an awesome game that should be owned by many. This game is so awesome. I don't know why anyone would pay for the real flow when they could just get the knock off game for free with just a slightly different name. I just do not understand why anyone would do so. It makes zero sense. So anyway I think u should TOTALY get this game do not spend your time paying for the real one when u could get the exact same one for free. Hop u take my edvice and go for this one

Was this review helpful? Yes | No | Report a Concern

Fun ★★★★★

by Cheeze X) – Feb 27, 2013

I know this game's a ripoff but hey, it's free! The lag annoys me so that needs fixed but besides those it's a great game.

Was this review helpful? Yes | No | Report a Concern

4. Others users admitted to being confused by THINKCUBE into thinking they were downloading BIG DUCK’s Flow Free: Bridges when they instead mistakenly downloaded THINKCUBE’s game. One reviewer wrote that “when I first downloaded it, I thought it WAS Flow Free Bridges.”

Not crazy about the squares, but... ★★★★★

by kingbird76 – Mar 26, 2013

It's still a decent game if you can adjust to the changes. And if you can't, there's still Flow Free Bridges (which is frankly a better designed game anyway). I have the feeling they were forced to make the changes because this game was very nearly an exact copy of Flow Free Bridges before the change - in fact when I first downloaded it, I thought it WAS Flow Free Bridges.

Was this review helpful? Yes | No | Report a Concern



1 5. Another THINKCUBE customer summed up his feelings after downloading the
2 infringing game: “This game is a complete rip off of the game called ‘Flow.’ ThinkCube should
3 be sued.”

4 **Sue ThinkCube!** ★★★★★
5 by Twisterrules8 – Jan 3, 2014

This game is a complete rip off of the game called "Flow." ThinkCube should be sued.

6 Was this review helpful? Yes | No | Report a Concern

7 6. Today, THINKCUBE continues to illegally distribute clones of BIG DUCK’s
8 Flow Games and wrongfully divert customers and revenue from BIG DUCK.

9 7. BIG DUCK has patiently worked directly with THINKCUBE to resolve the
10 dispute, but THINKCUBE refuses to respect BIG DUCK’s intellectual property. Accordingly,
11 due to THINKCUBE’s blatant and willful infringement and refusal to cease and desist, BIG
12 DUCK has no choice but to file this lawsuit seeking injunctive relief and damages that they have
13 suffered as a result of THINKCUBE’s (a) copyright infringement under the Copyright Act of
14 1976, as amended, 17 U.S.C. § 101 et seq., (b) false designation of origin, false endorsement,
15 and unfair competition under the Lanham Act, 15 U.S.C. § 1125(a)(1)(A), (c) violation of the
16 Washington State Consumer Protection Act RCW 19.86.010, et seq., (d) federal trademark
17 infringement.

18 **JURISDICTION AND VENUE**

19 8. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C.
20 §§ 1114-1117, 1121 and 28 U.S.C. §§ 1121, 1331, 1332, and 1338(a). There is diversity
21 between the parties and the matter in controversy exceeds, exclusive of interest and costs, the
22 sum of seventy-five thousand dollars.

23 9. This Court has personal jurisdiction over Defendant, who has minimum contacts
24 with this State and District, by conducting business, committing torts, and causing injury in this
25 State and District. Defendants have purposefully availed itself of the jurisdiction of federal
26

COMPLAINT FOR COPYRIGHT,
TRADE DRESS, AND TRADEMARK
INFRINGEMENT - 4

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1 district court in the Western District of Washington at Seattle by distribution of the infringing
2 games to players within the Western District.

3 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 17 U.S.C. §
4 512(g)(3)(D) as Defendants have distributed its games and committed tortious acts in this
5 jurisdiction. Venue is also proper because Plaintiff’s headquarters is located in this District.

6 **PARTIES**

7 11. Big Duck Games, LLC is a Washington corporation and has its principal place of
8 business in Redmond, Washington.

9 12. Upon information and belief, Defendant Charles Qu, a.k.a. Chao Qu, is an
10 individual whose specific residential address is unknown, though Plaintiff asserts Defendant
11 Charles Que, upon information and belief, resides in Toronto, Canada.

12 13. Upon information and belief, Defendant ThinkCube Inc., is a Canadian
13 corporation with its principal place of business at 5 Deerbrook Trail, Toronto, Ontario M1W
14 1V3, Canada.

15 **PLAINTIFF’S INTELLECTUAL PROPERTY RIGHTS**

16 14. BIG DUCK was formed by a husband and wife team to develop and sell games
17 and today it remains a two-employee independent game development company.

18 15. BIG DUCK created Flow Free in 2011 and BIG DUCK’s two founders have
19 worked hard to make it a success. They named their game “Flow Free” because they thought it
20 was suggestive of the Zen mental state caused while playing the game.

21 16. Flow Free is a digital puzzle game. In Flow Free, a player must connect dots of
22 the same color by drawing a continuous line across a grid that ranges from 5x5 to 14x14. The
23 player must pair all colors and cover each square of the grid without ever crossing any two lines.

24 17. Flow Free is extremely engaging in its simplicity, in that each one of this free
25 game's hundreds of levels boils down to two key challenges: 1) join a selection of colored dots



1 together with pathways, and make sure that the lines you leave behind, when combined and 2)
2 without overlapping, cover every square on the grid.

3 18. The game gets progressively more difficult with each solution. There are over a
4 thousand uniquely designed levels in Flow Free.

5 19. BIG DUCK first published Flow Free as “Flow” for play on the Windows Phone
6 in 2011.

7 20. With the success of Flow Free, BIG DUCK elected to develop and publish the
8 game for play on iOS platforms such as the iPhone and the iPad and, thereby, for distribution
9 through the iOS App Store beginning on June 7, 2012.

10 21. BIG DUCK enjoyed instant success and Free Flow became the most downloaded
11 free application in the U.S. iPhone and iPad App Store within two weeks. For all of 2012, Flow
12 Free was the 16th most downloaded app in the App Store out of about 775,000 total apps.

13 22. Again, spurred by the popularity of Free Flow, on June 28, 2012, BIG DUCK
14 developed and published Flow Free in an identical form on Google Play.

15 23. In December 2012, TechCrunch.com (self-described as “leading technology
16 media property, dedicated to obsessively profiling startups, reviewing new Internet products, and
17 breaking tech news”) charted Flow Free as the fourth most played iOS game.

18 24. For 2013, Flow Free was the 10th most downloaded free iPhone game.

19 25. Flow Free’s success is more than just a flash in the pan. It has remained within the
20 top 50 most downloaded games in the Apple iOS and Google Play stores for two and a half years
21 since release.

22 26. Flow Free’s success has spread worldwide. Flow Free is a number one most
23 downloaded game in fifty countries.

24 27. Flow Free has received an abundance of critical acclaim and numerous industry
25 awards recognizing its success, creativity, uniqueness, and quality of game design. It has been
26

1 endorsed by TechCrunch, Slate, Washington Post, Business Insider, PC Magazine, and was used
2 by Microsoft Windows President Steven Sinofsky in his Mobile World Congress Windows 8
3 Keynote.

4 28. Flow Free was named as one of the “10 Best Free Games for Windows Phone 7”
5 by PC Magazine.

6 29. Flow Free was included on Apple’s “App Store Best of 2012” and “App Store
7 Best of 2013” lists.

8 30. In 2012, BIG DUCK created and published Flow Free: Bridges, a version of Flow
9 Free with a unique and original twist: a “bridge” in the game grid that allows the player to draw a
10 line in order to cross a second line at a bridge. The addition of this feature allowed BIG DUCK
11 to develop and publish even more complex and engaging puzzles.

12 31. BIG DUCK has since continuously distributed Flow Free and Flow Free: Bridges
13 through online retailers including the Apple App Store, Google Play, Amazon, Microsoft
14 Windows Store, and Microsoft Windows Phone Store.

15 32. Today, Flow Free has been downloaded over 148 million times worldwide. Flow
16 Free: Bridges has been downloaded over 17 million times worldwide.

17 33. Flow Free and Flow Free: Bridges are registered with the United States Copyright
18 Office with Registration Numbers PA 1-907-001, PA 1-907-000, PA-1-908-714,
19 PA 1-915-664, and PA 1-917-339. Attached hereto as **Exhibits A, B, C, D, and E** are true and
20 correct copies of the certificates of registration.

21 34. BIG DUCK owns federally registered trademarks to “Flow” (U.S. Reg. No.
22 4,395,937), “Flow Free” (U.S. Reg. No. 4,320,256), “Flow Free: Bridges” (U.S. Reg. No.
23 4,396,260), and the tile logos for Flow Free (U.S. Reg. No. 4,356,856) and Flow Free: Bridges
24 (U.S. Reg. No. 4,414,889), (collectively, the “Flow Trademarks”). Attached hereto as **Exhibits**
25 **F, G, H, I and J** are true and correct copies of the federal trademark registrations.

26 COMPLAINT FOR COPYRIGHT,
TRADE DRESS, AND TRADEMARK
INFRINGEMENT - 7

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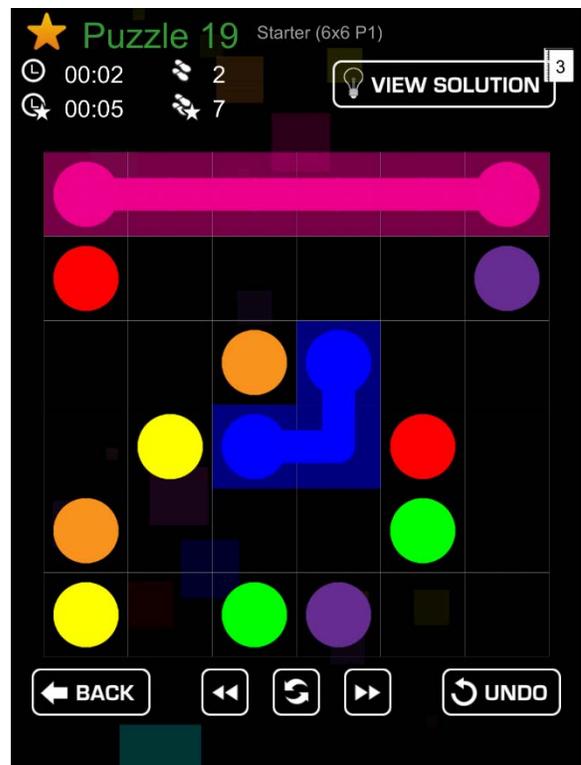
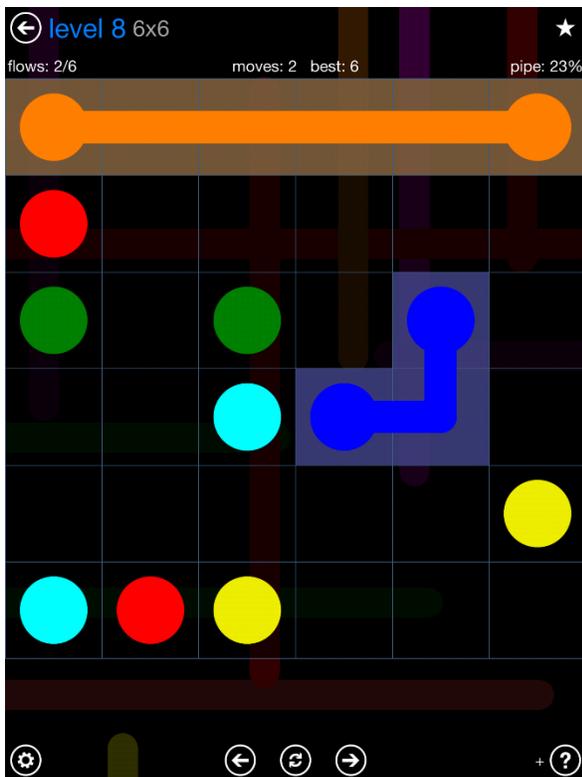
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1 39. Comparing Link Classic to Flow Free, the colors are the same, the shapes are the
2 same, the game grid is the same, the rules and game mechanics are the same, the levels are
3 substantially similar, and even the sound effects are the same. The creative and artistic methods
4 that BIG DUCK chose to define and shape the experience of the player were copied wholesale
5 by THINKCUBE.

6 40. A side by side comparison of Flow Free to Link Classic shows that they are
7 virtually identical. Below, Flow Free is on the left and Link Classic is on the right:



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24 41. THINKCUBE distributes Defendants' Games through at least the iOS App Store,
25 Google Play app store, its website <http://thinkcubegames.com/>, and its Facebook page located at

26
COMPLAINT FOR COPYRIGHT,
TRADE DRESS, AND TRADEMARK
INFRINGEMENT - 9

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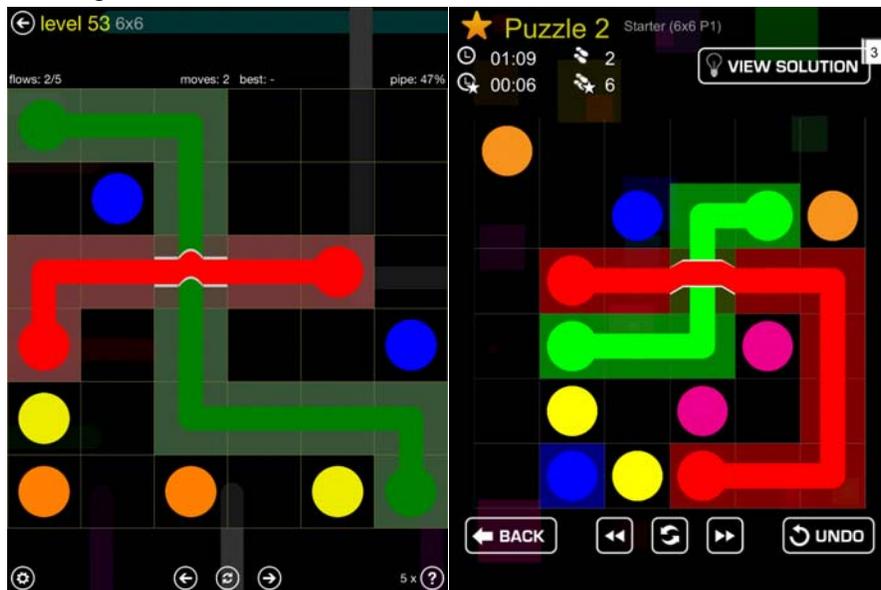

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1 <https://www.facebook.com/ThinkCubeGames>.

2 42. THINKCUBE has distributed Defendants' Games through the iOS Apple Store
3 and Google Play app store to customers in Seattle, Washington.

4 43. THINKCUBE directly copied the content and expression of the idea behind the
5 Flow Games.

6 44. THINKCUBE also distributes a Flow Free: Bridges clone that it calls "Link
7 Bridge." Three months after BIG DUCK first released Flow Free: Bridges, THINKCUBE
8 released its copycat game, and advertised that "Flow Bridges [is] now COMPLETELY FREE!"
9 The advertisements reflect that BIG DUCK's Flow Bridges costs \$0.99 cents to download on
10 iOS while THINKCUBE's Link Bridge clone, on the other hand, is free to download (relying
11 instead on in-application purchases and advertising to supply revenue). As seen in the
12 screenshots below, the expressive elements are identical in THINKCUBE's clone. Below are
13 side by side screenshots of BIG DUCK's Flow Free: Bridges on the left and THINKCUBE's
14 Link Bridge on the right.



24 45. More side by side screenshots of the two games demonstrate that they are nearly
25 identical, all the way down to the menu screens. As described above, the successful completion
26

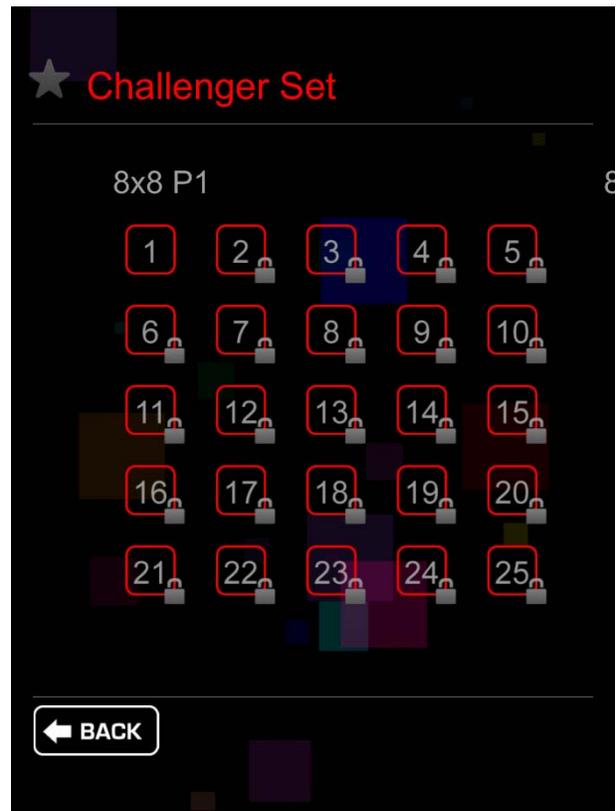
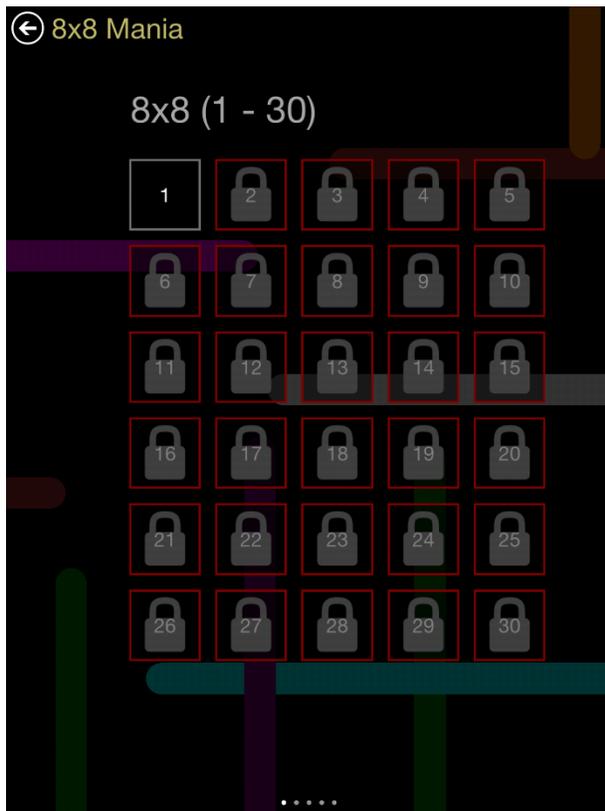
COMPLAINT FOR COPYRIGHT,
TRADE DRESS, AND TRADEMARK
INFRINGEMENT - 10

Civil Action No.
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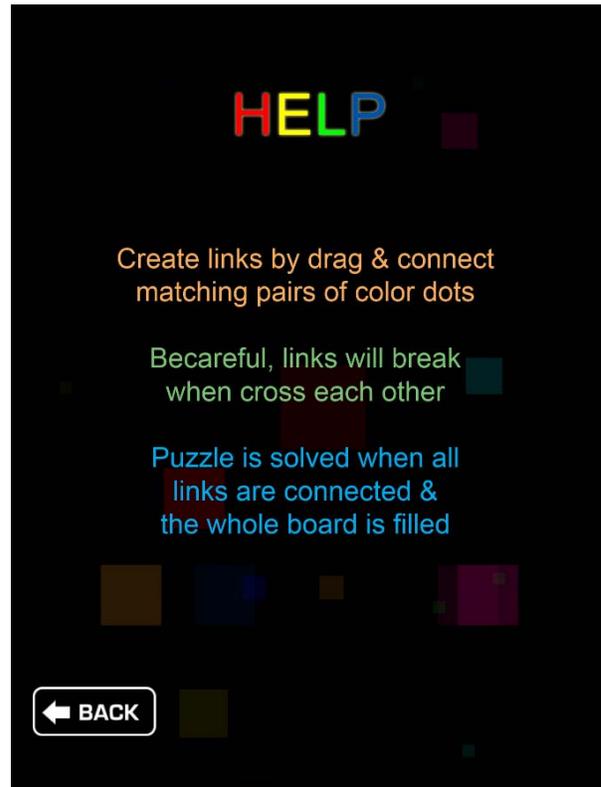
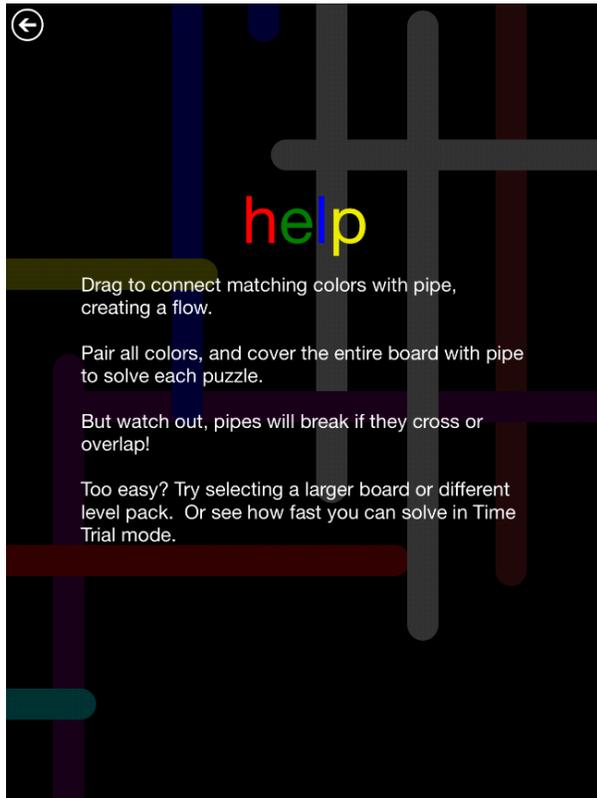
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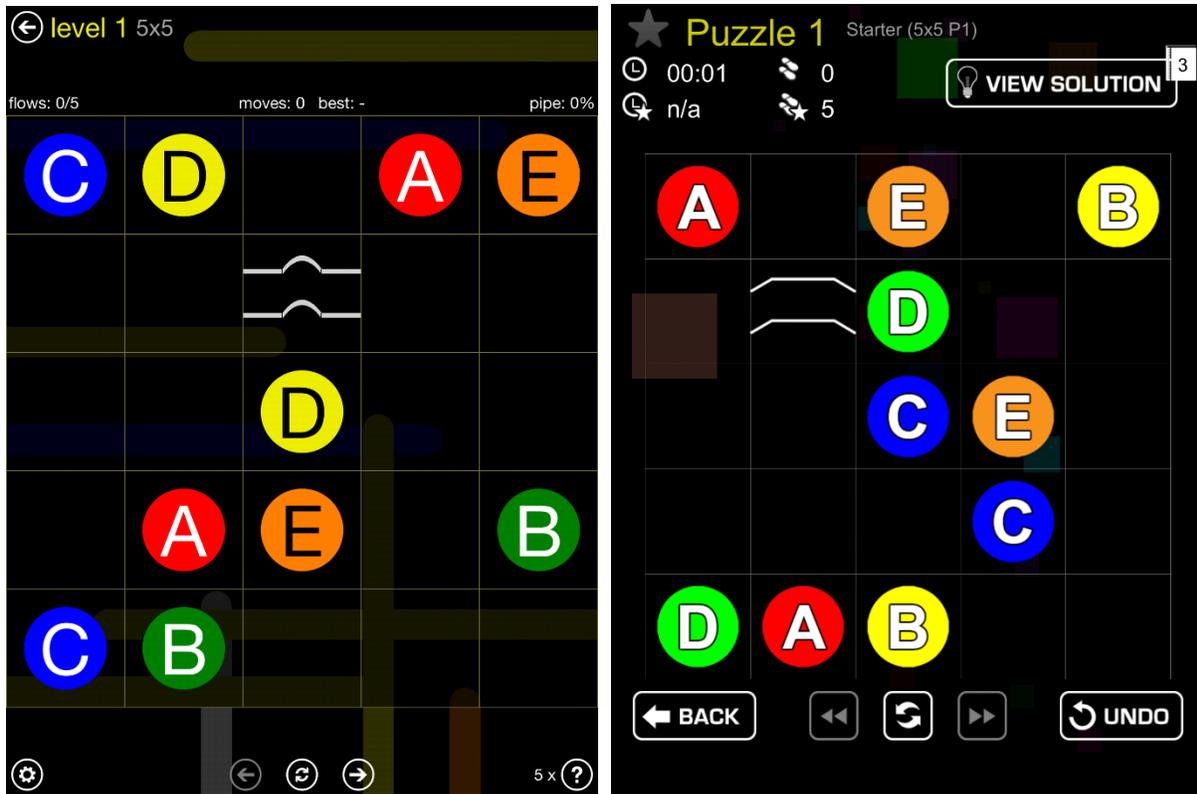
1 of a puzzle allows access to the next puzzle provided. A player may check their progress through
2 the series of puzzles on a level select screen. Below is the level select screen of BIG DUCK's
3 original Flow Free game side by side with the level select screen of the infringing Link Classic
4 game. There are countless ways a game developer could create a level select screen.
5 THINKCUBE copied the screen as BIG DUCK has expressed the corresponding screen in Flow
6 Free.



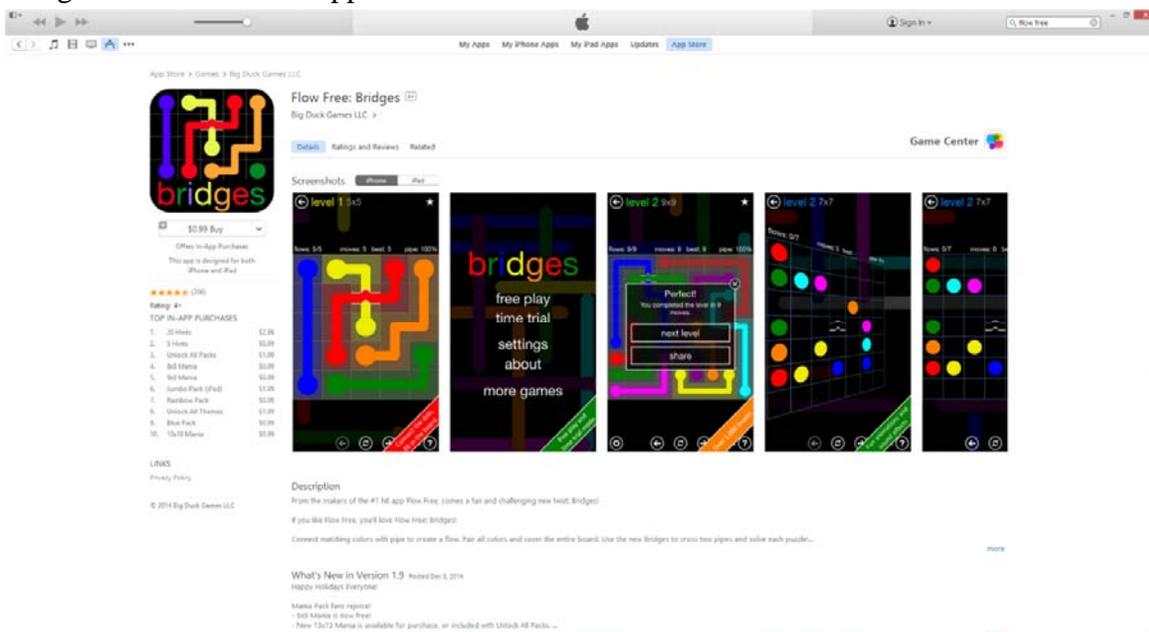
1 46. Similarly, THINKCUBE copies the BIG DUCK expression of a provided help
 2 screen within the game application. Below, on the left is Flow Free’s “Help” screen, and on the
 3 right is THINKCUBES’ substantially similar “Help” screen.



47. BIG DUCK also created an option to “label” the colored dots in its game with
 numbers. THINKCUBE copied those labels in its clones. Below, for example, are the first levels
 on the 5x5 board of both Flow Free: Bridges and Link Bridge with labels turned on.

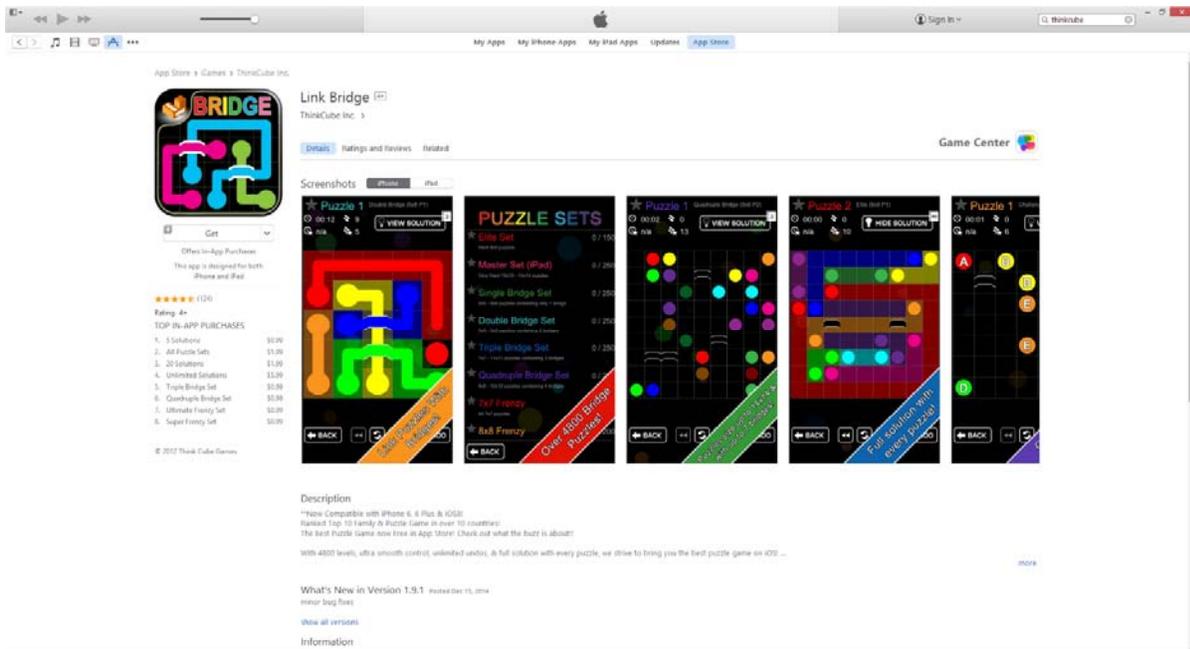


48. Below are screenshots of BIG DUCK’s original advertisement for the Flow Free: Bridges game as it appears on the iOS app store followed by the substantially similar Link Bridge clone on the iOS app store.



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49. Reference to the user reviews of THINKCUBE’s games make it clear that the average consumer is either confused about which game is which, or acknowledges that Defendants’ Games are substantially similar clones. One user calls Hexic Flow a “blatant ripoff,” while another notes that it even copied the sound from BIG DUCK’s games. Another user describes Defendants’ Games as a “cheap rip off of the game ‘flow free’”.

Very fun, but a blatant ripoff ★★★★★
by Stingjc – Mar 3, 2013

Of course this game is fun because the original flow free bridges is fun. This is nothing more than a blatant ripoff. The style, the menu system, and the general feel were copied screen by screen from another developer. This man is basically stealing money from them. I don't know how things like this keep happening in the App Store. Why hasn't apple learned to stop stuff like this by now. It's been years!

Was this review helpful? Yes | No | Report a Concern

Another cheap rip off! ★★★★★
by Birdie31 – Mar 14, 2013

This is just a cheap rip off of the game "flow free".. Don't waste your time with this crap and go play the actual game. 0/5 stars

Was this review helpful? Yes | No | Report a Concern

Complete runoff of flow ★★★★★
by lobuo – Sep 21, 2013

complete runoff of the game flow with all sounds copied ☐

Was this review helpful? Yes | No | Report a Concern

COMPLAINT FOR COPYRIGHT,
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INFRINGEMENT - 14

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do not like ★☆☆☆☆

by Sara Stock – May 17, 2014
very annoying, cheap version of flow.

Was this review helpful? Yes | No | Report a Concern

Cheap ★☆☆☆☆

by Jokerrrrrrreerer – Mar 12, 2013
Chap knockoff. And by cheap I mean free. Crep compares to the original. Not bad tho

Was this review helpful? Yes | No | Report a Concern

It's no flow free! ★★★★★

by Keithortiz – Mar 10, 2013
This game is a cheap version of flow free. The touch technology isn't as good and the lines should never zigzag or cross next to each other. Makes the game less fun or even challenging.

Was this review helpful? Yes | No | Report a Concern

Link ★★★★★

by DannyHerb – Aug 30, 2013
This game is a fun rip-off of Flow. Although I do like this game a lot, I think Flow is much better. Great game.

Was this review helpful? Yes | No | Report a Concern

50. THINKCUBE is also undercutting and unfairly competing with BIG DUCK by distributing a free version of BIG DUCK's purchasable game, Flow Free: Bridges. User reviews of THINKCUBE's games leave no doubt that consumers are choosing to download THINKCUBE's free games instead of paying for BIG DUCK's games. For example, one user wrote: "I don't know why anyone would pay for the real flow when they could just get the knock off game for free with just a slightly different name." A second user opined that downloading THINKCUBE's clone "is better than paying for flow bridges". Another user writes, "I know this game's a ripoff but hey, it's free!"

AWESOME!!!!!!!!!!!! ★★★★★

by Lively girl – Mar 10, 2013
Attention attention I have come across an awesome game that should be owned by many. This game is so awesome. I don't know why anyone would pay for the real flow when they could just get the knock off game for free with just a slightly different name. I just do not understand why anyone would do so. It makes zero sense. So anyway I think u should TOTALY get this game do not spend your time paying for the real one when u could get the exact same one for free. Hop u take my edvice and go for this one

Was this review helpful? Yes | No | Report a Concern

Fun ★★★★★

by Cheeze X) – Feb 27, 2013
I know this game's a ripoff but hey, it's free! The lag annoys me so that needs fixed but besides those it's a great game.

Was this review helpful? Yes | No | Report a Concern

COMPLAINT FOR COPYRIGHT,
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INFRINGEMENT - 15

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AWESOME! ★★★★★

by MyaW368 – Feb 28, 2013

Even better than Flow Free Bridges because it is not freakin .99 cents:)

Was this review helpful? Yes | No | Report a Concern

Better than paying for flow briges ★★★★★

by Kitttttttygiiiiirl – Jul 8, 2014

I think this app is great it is better than paying for flow briges because you still get the advertisements so I would recamend these apps

Was this review helpful? Yes | No | Report a Concern

51. Others users admitted to being confused by THINKCUBE into thinking they were

Not crazy about the squares, but... ★★★★★

by kingbird76 – Mar 26, 2013

It's still a decent game if you can adjust to the changes. And if you can't, there's still Flow Free Bridges (which is frankly a better designed game anyway). I have the feeling they were forced to make the changes because this game was very nearly an exact copy of Flow Free Bridges before the change - in fact when I first downloaded it, I thought it WAS Flow Free Bridges.

Was this review helpful? Yes | No | Report a Concern

For the makers of this app..... ★★★★★

by Love Forever:) – Mar 3, 2013

Thank you for making this free version of Flow!!!! It is a GR8 app but it needs some adjustments: sometimes when your on a level, the specific color doesn't follow your finger to the acclaimed dot. And that's it for now and keep on improving the app and I KNOW it will make it to #1 in the USD

Was this review helpful? Yes | No | Report a Concern

52. Another THINKCUBE customer summed up his feelings after downloading the infringing game: “This game is a complete rip off of the game called ‘Flow’. ThinkCube should be sued.”

53.

Sue ThinkCube! ★☆☆☆☆

by Twisterrules8 – Jan 3, 2014

This game is a complete rip off of the game called "Flow." ThinkCube should be sued.

Was this review helpful? Yes | No | Report a Concern

54. On his LinkedIn page, Mr. Qu lists himself as the “founder and principle developer/designer for Thinkcube Inc.” and brags about ThinkCube, Inc. having over 10 million downloads and “a yearly net-profit of half a million Canadian dollars.” Attached hereto as **Exhibit K** is a true and correct copy of Mr. Qu’s LinkedIn page, downloaded on January 17, 2015.

COMPLAINT FOR COPYRIGHT,
TRADE DRESS, AND TRADEMARK
INFRINGEMENT - 16

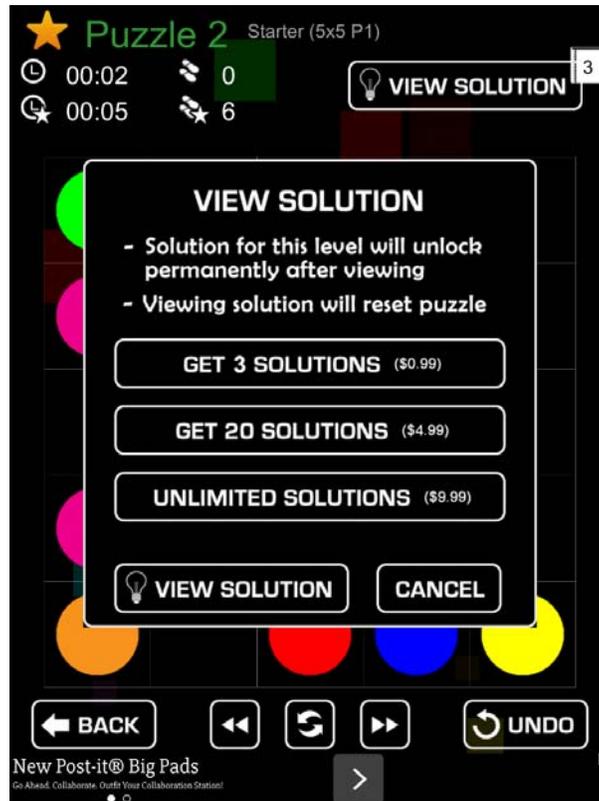
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1 55. Each of the accused THINKCUBE games contain advertisements and in-
 2 application purchases, as shown in the screenshot below of THINKCUBE’s Link Classic game.
 3 THINKCUBE unfairly competes with BIG DUCK by diverting from BIG DUCK those two
 4 primary revenue streams.



18 56. Due to Defendants’ flagrant and willful infringement and refusal to cease and
 19 desist, BIG DUCK is left with no choice but to file this lawsuit seeking injunctive relief and
 20 damages that have resulted from each Defendants’ copyright infringement under the Copyright
 21 Act of 1976, as amended, 17 U.S.C. § 101 et seq., and trademark infringement, false designation
 22 of origin, false endorsement, and unfair competition under the Lanham Act, 15 U.S.C. §
 23 1125(a)(1)(A).
 24
 25
 26

FIRST CLAIM FOR RELIEF

**(Federal Copyright Infringement)
[17 U.S.C. §§ 106 et seq. and 501]**

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4 57. BIG DUCK repeats and realleges each and every allegation in paragraphs 1 to 56,
5 above as if fully set forth herein.

6 58. This Count arises under the Copyright Act of 1976, Title 17 United States Code
7 §101 et seq.

8 59. THINKCUBE intentionally copied the game design, rules, levels, color scheme,
9 shapes, plot elements, circumstances, play sequence, layout, ornamental aspects, visual
10 presentation, sound effects, and the total concept and feel of the Flow Games from BIG DUCK.
11 Defendants' Games are substantially similar to the Flow Games.

12 60. BIG DUCK's Flow Games are wholly original, creative works that constitute
13 copyrightable subject matter under the Copyright Act, 17 U.S.C. § 101 et seq. BIG DUCK owns
14 the exclusive rights and privileges in and to the above referenced copyrighted works, and in
15 compliance with the law, has received from the Register of Copyrights the appropriate
16 certificates of registration, which constitute prima facie evidence of the validity of the copyrights
17 in the works and of the facts stated in the certificates. At all relevant times, BIG DUCK has
18 owned all applicable rights, titles and interest in and to these copyrighted works.

19 61. By its actions alleged above, THINKCUBE has infringed and will continue to
20 infringe BIG DUCK's copyrights in the Flow Games by, inter alia, copying, publicly displaying,
21 and distributing Defendants' Games, which are substantially similar to and derived from the
22 Flow Games, without any authorization or other permission from BIG DUCK. THINKCUBE has
23 violated BIG DUCK's exclusive rights under 17 U.S.C. § 106

24 62. On information and belief, THINKCUBE's infringement of BIG DUCK's
25 copyrights has been deliberate, willful and in utter disregard of BIG DUCK's rights.

1 63. THINKCUBE has realized unjust profits, gains and advantages as a proximate
2 result of its infringement, and will continue to realize unjust profits, gains and advantages as a
3 proximate result of its infringement as long as such infringement is permitted to continue.

4 64. As a direct and proximate result of THINKCUBE's willful copyright
5 infringement, BIG DUCK has suffered, and will continue to suffer actual damages. BIG DUCK
6 is entitled to its actual damages and any gains, profits, and advantages obtained by THINKCUBE
7 as a result of its acts of infringement and its use and publication of the copied materials, 17
8 U.S.C. § 504(b). Alternatively, at BIG DUCK's election, it is entitled to an award of the
9 maximum statutory damages as permitted by the Copyright Act, 17 U.S.C. § 504(c).

10 65. Upon information and belief, THINKCUBE has obtained gains, profits and
11 advantages as a result of its wrongful acts in an amount not yet to be determined.

12 66. BIG DUCK has no adequate remedy at law for the injuries currently being
13 suffered, and the additional injuries that are threatened, and THINKCUBE will continue to
14 engage in their wrongful conduct and BIG DUCK will continue to suffer irreparable injury that
15 cannot be adequately remedied at law unless THINKCUBE is enjoined from engaging in any
16 further such acts of infringement.

17 67. BIG DUCK is entitled to a preliminary and permanent injunction preventing the
18 further reproduction and distribution of the Flow Games, all profits received by THINKCUBE
19 from the sale of Defendants' Games, all consequential damages suffered by BIG DUCK, or
20 statutory damages for willful infringement in the amount of no less than \$600,000, and BIG
21 DUCK's expenses of litigation, including BIG DUCK's reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF

(Federal Trademark Infringement)

[15 U.S.C. §§ 1114-1117]

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4 68. BIG DUCK repeats and realleges each and every allegation in paragraphs 1 to 67,
5 above as if fully set forth herein.

6 69. Defendants' distribution, marketing, promotion, offering for sale, and sale of
7 video games bearing the Flow Trademarks is likely to cause confusion, mistake, or deception as
8 to the source, affiliation, sponsorship, or authenticity of Defendants' goods. As a result of
9 Defendants' unauthorized use of trademarks that are identical to and/or confusingly similar to
10 BIG DUCK's federally registered marks, the public is likely to believe that the Defendants'
11 goods have been manufactured, approved by, or are affiliated with BIG DUCK. Thus, BIG
12 DUCK's ability to gain revenue through the sale of video games bearing the Flow Trademarks is
13 limited.

14 70. Defendants' unauthorized use of the Flow Trademarks falsely represents
15 Defendants' video games as emanating from or being authorized by BIG DUCK and places
16 beyond BIG DUCK's control the quality of products bearing the Flow Trademarks.

17 71. Defendants' infringement of BIG DUCK's Flow Trademarks is willful intended to
18 reap the benefit of the goodwill of BIG DUCK, and violates Section 32(1) of the Lanham Act, 15
19 U.S.C. § 1114(1).

20 72. As a result of Defendants' wrongful conduct, BIG DUCK has suffered, and will
21 continue to suffer, substantial damages. Under 15 U.S.C. § 1117(a), BIG DUCK is entitled to
22 recover damages, which includes any and all profits Defendants has made as a result of their
23 wrongful conduct.

24 73. In addition, because Defendants' infringement of BIG DUCK's Flow Trademarks
25 is willful, the award of actual damages and profits should be trebled pursuant to 15 U.S.C. §

1 1117(b). In the alternative, BIG DUCK is entitled to statutory damages for each counterfeit
2 mark, under 15 U.S.C. § 1117(c).

3 74. BIG DUCK is also entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a).
4 BIG DUCK has no adequate remedy at law for Defendants' wrongful conduct because, among
5 other things, Defendants' infringement constitutes harm to BIG DUCK such that BIG DUCK
6 could not be made whole by any monetary award; if Defendants' wrongful conduct is allowed to
7 continue, the public is likely to become further confused, mistaken, or deceived as to the source,
8 origin, or authenticity of the infringing materials; and Defendants' wrongful conduct, and the
9 resulting damage to BIG DUCK, is continuing.

10 75. BIG DUCK is also entitled to an order compelling the impounding of all
11 infringing materials being used, offered, marketed, or distributed by Defendant, and to trebled
12 damages, because Defendants' violations consist of the use of counterfeit trademarks pursuant to
13 15 U.S.C. § 1116(d).

14 76. BIG DUCK is also entitled to recover its attorneys' fees and costs of suit pursuant
15 to 15 U.S.C. § 1117.

16
17 **THIRD CLAIM FOR RELIEF**

18 **(Lanham Act Unfair Competition, False Endorsement and False Designation of Origin)**
19 **[15 U.S.C. § 1125(A)]**

20 77. BIG DUCK repeats and realleges each and every allegation in paragraphs 1 to 76,
21 above as if fully set forth herein.

22 78. THINKCUBE deliberately and intentionally copied the game play, rules, level
23 design, grid, player interaction with the game, layout and arrangement, visual presentation,
24 sound effects, sequence and flow, menu screen, shapes and colors, and Flow Free and Flow Free:
25 Bridges' overall look and feel. By duplicating the "total image and overall appearance of a
26

1 product,” THINKCUBE has copied the Flow Games’ particular trade dress, creating confusion
2 among BIG DUCK’s customers.

3 79. At no time has BIG DUCK authorized THINKCUBE to distribute, reproduce, or
4 adapt the Flow Games.

5 80. The distinctive design of the Flow Games is not functional as it is not essential to
6 the use or purpose of the game nor does the design affect the cost or quality of the game; the
7 design is merely an ornamental arrangement of features. The game could just as easily be made
8 using different shapes, colors, sound effects, or even with numbers or other designs that look
9 nothing like the Flow Games’ distinctive circles and color pattern. For these reasons, the
10 distinctive design of Flow Free and Flow Free: Bridges are protectable as trade dress.

11 81. THINKCUBE is knowingly and intentionally misrepresenting and falsely
12 designating to the general public the affiliation, connection, association, origin, source,
13 endorsement, sponsorship, and approval of Defendants’ Games so as to create a likelihood of
14 confusion by the public as to the affiliation, connection, association, origin, source endorsement,
15 sponsorship, and approval of Defendants’ Games.

16 82. BIG DUCK’s trade dress in the Flow Games is non-functional and is inherently
17 distinctive or has acquired distinction within the meaning of the Lanham Act.

18 83. THINKCUBE’s conduct has been intentional and willful, and is calculated
19 specifically to trade off the goodwill that BIG DUCK has developed in its bestselling Flow
20 Games, making this an exceptional case under 15 U.S.C. § 1117.

21 84. THINKCUBE’s acts constitute false designation of origin, false endorsement, and
22 unfair competition in violation of 15 U.S.C. § 1125(a)(1)(A).

23 85. As a direct result of THINKCUBE’s actions infringing BIG DUCK’s trade dress
24 rights, BIG DUCK has sustained and will continue to sustain substantial injury, loss, and
25 damages in an amount exceeding \$75,000 and as proven at trial. BIG DUCK is entitled to a
26

1 permanent injunction restraining THINKCUBE and their agents, employees, representatives, and
2 all persons acting in concert with them, from engaging in further acts of trade dress infringement.

3
4 **FOURTH CLAIM FOR RELIEF**

5 **(Lanham Act Unfair Competition, Trade Dress Dilution)**
6 **[15 U.S.C. § 1125(C)]**

7 86. BIG DUCK repeats and realleges each and every allegation in paragraphs 1 to 85,
8 above as if fully set forth herein.

9 87. The Flow Games' trade dress is non-functional, famous, and inherently distinctive
10 or has acquired distinction within the meaning of the Lanham Act. By copying the total image
11 and overall appearance of the Flow Games, THINKCUBE has copied and diluted their particular
12 trade dress.

13 88. The distinctive design of the Flow Games is not functional and is not essential to
14 the use or purpose of either game. The design of each game is merely an ornamental arrangement
15 of features. Accordingly, the distinctive design of the Flow Games and the arrangement of
16 features of the games are protectable as trade dress.

17 89. Through their intentional copying of the Flow Games' trade dress and using them
18 in commerce, THINKCUBE is knowingly and intentionally diluting their trade dress in the eyes
19 of the general public.

20 90. THINKCUBE's conduct has been intentional and willful, and is calculated
21 specifically to trade off the goodwill that BIG DUCK has developed in its bestselling Flow
22 Games, making this an exceptional case under 15 U.S.C. § 1117.

23 91. THINKCUBE's acts constitute false designation of origin, false endorsement, and
24 unfair competition in violation of 15 U.S.C. § 1125(a)(1)(A).

25 92. As a direct result of THINKCUBE's actions infringing BIG DUCK's trade dress
26 rights, BIG DUCK has sustained and will continue to sustain substantial injury, loss, and

COMPLAINT FOR COPYRIGHT,
TRADE DRESS, AND TRADEMARK
INFRINGEMENT - 23

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701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301

1 damages in an amount exceeding \$75,000 and as proven at trial. BIG DUCK is entitled to a
2 permanent injunction restraining THINKCUBE and their agents, employees, representatives, and
3 all persons acting in concert with them, from engaging in further acts of trade dress infringement.

4
5 **FIFTH CLAIM FOR RELIEF**

6 **(Washington State Unfair Competition)**

7 **[RCW 19.86.010 et seq.]**

8 93. BIG DUCK repeats and realleges each and every allegation above as if fully set
9 forth herein.

10 94. Defendants' distribution, marketing, promotion, offering for sale, and sale of
11 video games bearing the Flow Trademarks is likely to cause confusion, mistake, or deception as
12 to the source, affiliation, sponsorship, or authenticity of Defendants' goods. As a result of
13 Defendants' unauthorized use of trademarks that are identical to and/or confusingly similar to
14 BIG DUCK's federally registered marks, the public is likely to believe that the Defendants'
15 goods have been manufactured, approved by, or are affiliated with BIG DUCK. Thus, BIG
16 DUCK's ability to gain revenue through the sale of video games bearing the Flow Trademarks is
17 limited.

18 95. Defendants' unauthorized use of BIG DUCK's intellectual property falsely
19 represents Defendants' websites and video games as emanating from or being authorized by BIG
20 DUCK and places beyond BIG DUCK's control the quality of products those infringing
21 products. This unauthorized use constitutes an unfair trade practice under Washington's
22 Consumer Protection Act.

23 96. Defendants' unfair trade practice is willful and intended to reap the benefit of the
24 goodwill BIG DUCK has developed in the Flow Free games.

1 97. As a result of Defendants' wrongful conduct, BIG DUCK has suffered, and will
2 continue to suffer, substantial damages. Under RCW.19.86 BIG DUCK is entitled to recover
3 damages, which includes any and all profits Defendants have made as a result of their wrongful
4 conduct.

5 98. In addition, because Defendants' unfair trade practice is willful, the award of
6 actual damages and profits should be trebled pursuant to RCW 19.86.090 as well as appropriate
7 attorneys' fees and costs.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, BIG DUCK prays for judgment against each of the Defendants and for
11 the following relief:

12 1. For a permanent injunction enjoining the THINKCUBE Defendants and all
13 persons acting in concert with them from manufacturing, producing, distributing, adapting,
14 displaying, advertising, promoting, offering for sale or selling, or performing any materials that
15 are substantially similar to Flow Free or Flow Free: Bridges and to deliver to the Court for
16 destruction or other reasonable disposition all materials and means for producing the same in
17 Defendants' possession or control;

18 2. For a permanent injunction, enjoining all Defendants and all persons acting in
19 concert with them from using the Flow Trademark or any other trademarks that are confusingly
20 similar to the Flow Trademarks, or using any trade dress of Flow Free and Flow Free: Bridges in
21 connection with any video game or from otherwise using BIG DUCK's trade dress in any way
22 causing the likelihood of confusion, deception, or mistake as to the source, nature, or quality of
23 Defendants' goods and to deliver to the Court for destruction or other reasonable disposition all
24 materials bearing the infringing trade dress in Defendants' possession or control;

25
26 COMPLAINT FOR COPYRIGHT,
TRADE DRESS, AND TRADEMARK
INFRINGEMENT - 25

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Seattle, Washington 98104
206.381.3300 • F: 206.381.3301

1 3. For any and all actual damages, trebled, sustained by BIG DUCK in an amount to
2 be determined at trial;

3 4. For all of THINKCUBE'S profits wrongfully derived from its flagrantly
4 intentional and willful infringement of BIG DUCK's intellectual property rights;

5 5. For exemplary and punitive damages to deter any future willful infringement as
6 the Court finds appropriate;

7 6. For costs of suit herein;

8 7. For reasonable attorney's fees; and

9 8. For any other relief as the Court deems proper.

10
11
12 RESPECTFULLY SUBMITTED this 17th day of February, 2015.

13
14 

15 Mark L. Lorbiecki, WSBA No. 16796

16 LOWE GRAHAM JONES^{PLLC}

17 701 Fifth Avenue, Suite 4800

18 Seattle, WA 98104

19 T: 206.381.3300

20 F: 206.381.3301

21 Lorbiecki@LoweGrahamJones.com

22 Attorney for Big Duck Games

23
24
25
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TRADE DRESS, AND TRADEMARK
INFRINGEMENT - 26

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LOWE GRAHAM JONES^{PLLC}



701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301

DEMAND FOR JURY TRIAL

Big Duck Games, LLC hereby demands a trial by jury of all issues so triable.

Dated: February 17, 2015

By: 

Mark L. Lorbiecki, WSBA No. 16796
LOWE GRAHAM JONES^{PLLC}
701 Fifth Avenue, Suite 4800
Seattle, WA 98104
T: 206.381.3300
F: 206.381.3301
Lorbiecki@LoweGrahamJones.com
Attorney for Big Duck Games

COMPLAINT FOR COPYRIGHT,
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INFRINGEMENT - 27

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LOWE GRAHAM JONES^{PLLC}



701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301

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