

Preliminary Injunction Entered Preventing Transfer of Allegedly Infringing Software With Sale of Company

Bungie, Inc. v. Aimjunkies.com, No. C21-811 TSZ, 2022 WL 2391705 (W.D. Wash. July 1, 2022)

By: Reid Huefner & Anthony Hao | July 15, 2022

On July 1, 2022, the Western District of Washington granted a motion for a preliminary injunction sought by Bungie, the owner of the popular video game “Destiny 2,” to stop certain cheat software created for the game from being transferred from the defendant in the case to an international, third-party acquiring entity unless and until such a transfer is authorized by the Court.

Bungie owns and has registered copyrights for both Destiny 2 and its expansion, Destiny 2: Beyond Light. Bungie alleged that defendants sold cheat software on Aimjunkies.com that would give players unfair advantage in the games. For example, the cheat software has features such as Extra-Sensory Perception (allows users to see the locations of other players in the game through solid walls), AIMBOT (allows users to aim their weapons automatically and accurately at other players), and One Position Kill (automatically teleports other players in front of the user in order for the user to easily damage other players). Learning that Aimjunkies.com was being acquired, Bungie filed a motion seeking a “narrowly tailored” preliminary injunction to stop only the transfer of the cheat software to any third party prior to the final disposition of this case.

In deciding whether to grant Bungie’s motion, the court turned to the four factors established by the U.S. Supreme Court: “(1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) a balancing of equities tips in favor of a preliminary injunction; and (4) an injunction is in the public interest.” First, the court found that Bungie satisfied the first factor because evidence showed that in order to create the cheat software, defendants had to copy and reverse engineer the software code in Destiny 2. Regarding the second factor, Bungie argued that (1) the cheat software could be re-released on the market if the transfer was allowed and (2) Bungie’s business reputation and goodwill would be irreparably harmed as the result. In response, defendants argued that Bungie’s request for a preliminary injunction is moot because (1) defendants stopped distributing the cheat software in December 2020 and (2) the defendants did not have the cheat software source/object code because it was developed by third parties.

The court was not persuaded by the defendants’ arguments. In granting Bungie’s motion, the court observed that evidence showed that the defendants still had knowledge and/or access to the servers from which future purchasers could download the cheat software. Further, defendants’ press release showed that after the acquisition, Aimjunkies.com would be an independent subsidiary and run by its current management team. Therefore, the court found that Bungie’s request was not moot, and any further sale of the cheat software would likely cause immediate irreparable harm to Bungie’s reputation and goodwill. Finally, the court found the last two factors also weighed in Bungie’s favor. This case is a good example of how a “narrowly tailored” preliminary injunction can be used to great effect.