

UPDATE re: The Ghosts of Past Licensing Agreements Continue to Haunt Ms. Pac-Man

November 25, 2019 – *The TMCA*

by Ryan Meyer



On November 6, 2019, I discussed a licensing dispute regarding Ms. Pac-Man between Bandai Namco and AtGames Holdings. At that time, Bandai Namco sought a preliminary injunction against AtGames based on AtGames' alleged unauthorized infringement

of Bandai Namco's IP rights in Ms. Pac-Man. AtGames countered that it had not infringed Bandai Namco's rights and had no plans to use Ms. Pac-Man without a license. Rather, AtGames had created a prototype of a potential Ms. Pac-Man arcade product, and it had been negotiating with Bandai Namco for over a year to acquire the rights it needs to commercialize the product.

Since then, the players parties have progressed to the next level. On November 19, 2019, United States District Court Judge Vince Chhabria of the Northern District of California, denied Bandai Namco's request for a preliminary injunction in a strongly-worded, one-paragraph order. Judge Chhabria ruled that "Bandai's likelihood of success on the merits is questionable at best," and its "allegations of reputational harm fall somewhere between speculative and fanciful." Discouraging words like these might as well have been accompanied by the sound Ms. Pac-Man makes when she gets clobbered by a ghost: <https://www.youtube.com/watch?v=jpkxkKcLsho>.

On November 14, 2019, a few days before the Court issued its order, AtGames filed its answer to Bandai Namco's complaint. AtGames also asserted three counterclaims against Bandai Namco for (1) breach of contract, (2) declaratory judgement that Bandai Namco's termination of certain agreements it had with AtGames is null, void, and without legal effect, and (3) breach of implied covenant of good faith and fair dealing. Thus, the

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dynamics of the litigation have shifted and not in Bandai Namco's favor. With a preliminary injunction denied and the stakes raised by AtGames counterclaims, will Bandai Namco and AtGames be able to resolve their differences with a mutually beneficial settlement? Or will they litigate until one of them reaches the legal equivalent of a game over screen? Keep watch on TheTMCA.

