



# WARGAMING LEGAL CHALLENGE 2018

CASE

Presented by



Organized by



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## FACTS OF THE CASE

*All personal and company names are a work of fiction. Nothing here represents any specific individuals.*

1. **Creative Development Interactive Ltd.** (the “**CDI**”) is a very well-known studio in the industry: one of their games is mentioned in Guinness World Records as the most popular first-person shooter video game in the world. Generally, games developed by CDI are considered to be of AAA quality, and have a long life cycle compared to majority of contemporary online games. CDI also became notorious for hiring talented game developers who pitched in production of world famous games. Currently company has more than 15 offices all over the globe featuring in total more than 5,000 employees.
2. One of the first games released by CDI was the game called **Mission Impossible**. Mission Impossible was launched in 1996 as an FPS. The plot unravels in the imaginary future world invented by CDI. The player finds himself aboard of a spacecraft heading to the outer space in search of an inhabited planet. The spacecraft suddenly wrecks on the unknown planet called Zeus. Most of the passengers die; the inhabitants of the planet, creatures called Thunderers, kill those who have survived. Player’s mission is to pull through the Thunderers and to find the way out from Zeus.
3. Thanks to the new engine developed by CDI specifically for Mission Impossible, the graphics of Mission Impossible went far beyond other FPS games available at the time. The landscape was as detailed as never before allowing for coloured lighting and texture filtering.
4. The game immediately started gaining immense popularity, and CDI, inspired with such success, decided to publish a sequel. The next released game was **Mission Impossible II: Prophet** in December 1997 with two editions coming out in 1999 and 2000.
5. In 2002, CDI launched a long-awaited third edition of Mission Impossible under the title **Mission Impossible: The Ultimate** (the “**MItU**”). More than 3.5 mln of pre-orders were awaiting release of the game. MItU became another important step in establishing the franchise based on the imaginary future world of Mission Impossible. The franchise currently embraces not only video games, but also two novels, a few comic books, and even a same-title first-person movie shooter premiered in 2015. The movie *Mission (Im)Possible* grossed more than USD 430 mln worldwide and is considered to be one of the highest-grossing video game adaptation of all time.
6. As a game, MItU was largely based on two predecessors; however, it also introduced new features. The major difference of MItU from Mission Impossible and Mission Impossible II: Prophet consisted in availability of multiplayer mode. The players were no longer forced to play against computer-controlled opponents; they got an opportunity to fight against the characters manipulated by other players. Thanks to that, the game started spreading rapidly with people playing via Internet, local area networks (LANs) as well as in special game playing centers (such as cyber cafés and computer gaming centers).
7. The game offered to the players two basic game types, specifically:
  - a) *Deathmatch*: a PvP regime where a player was supposed to kill all other players in order to win;
  - b) *Team Deathmatch*: the same as Deathmatch, but instead of individual players trying to kill the rest, up to four teams were struggling to out-kill each other.
8. MItU’s plot revolved around the war between the humans and the Thunderers. A man that survived the wreck of a spacecraft on Zeus managed to defeat the Thunderers and to continue human race. Hundreds of years later human race on Zeus is at the brink of extinction: humans have used up all resources on Zeus and start fighting for food with each other. One day, humans come up with a plan to revitalise the Thunderers in the hope of getting to know the secret of survival on a wild planet. However, this idea turns out to be a disaster since the Thunderers have neither forgotten nor forgiven humans for what they have done.

9. CDI shipped MItU together with a free editor **Create Your Mod**. The editor technically allowed the players to create mods for MItU. The mods created by the players were distributed, among other channels, via CDI's online distribution platform, and each player was allowed to use any custom mod free of charge. Create Your Mod provided a number of tools to facilitate modding. One of these tools was a programming language allowing users to have a control over nearly every aspect of the MItU game world.
10. MItU EULA specifically regulated both user-generated content and modifications of the games developed by the users with the help of Create Your Mod. Respective extracts from EULA can be found in Exhibit 1. In addition to that, CDI published a separate Mod Policy in order to address particular issues arising in connection with usage of created mods (see Exhibit 2).
11. Many players eagerly used Create Your Mod editor, and, as a result, a big number of user-generated mods became available within the game community. Some mods were particularly famous among the players. One of the mods called **Crimson Dawn** a/k/a **Crida** proved to be the most contagious and very rapidly gained distinctive popularity within user community. This mod was developed by a player under the nickname *GameGenius*. As the mod continued its journey, GameGenius created a special forum dedicated to discussion of the mod where he collected feedback and ideas from other players on suggested improvements of gameplay. GameGenius would later introduce some of those ideas into a new edition of the game that was further made available on the forum and on CDI's platform. As a result, over time Crida gained a huge pool of players.
12. Crida's plot substantially differs from MItU's plot. The action takes place on Earth around the year 2200. In the far-away future, the humans got the hang of majority of diseases except for cancer. In an attempt of finding medicine against cancer, scientists from Biodynamic World Corp expose marginal population to radiation, thus turning them into mutated creatures called REXs ('results of experiment') to only vaguely resemble human beings. Now it is time for humans to correct the mistake.
13. Apart from different game plot, the mod represented a complete overhaul of the gameplay. While much of MItU's success was largely due to the exciting PvP modes it offered, Crida mod turned it into a co-op FPS.
14. Crida supported only one game type, which was called *Killing All*. Killing All allowed up to six players to fight together as teammates against computer-controlled (AI) characters – REXs. In order to win, the players needed to unite their forces and to follow common strategy in fight against the enemy. The game ends when all the REXs are exterminated (players win), or after all players are dead (players lose).
15. Crida also enabled players to choose their character out of the following classes:
  - a) *SWAT* – specialises in automatic weapons, and is moving a bit faster than other classes;
  - b) *Sniper* – specialises in precision shooting from large distances;
  - c) *Specialist* – is proficient in the use of grenades and explosives as well as is capable of healing other players.
16. Thanks to the evolution of the genre, introduction of character classes and user feedback system, popularity of Crida increased over time. The mod was featured by Computer Gaming World in a review of new mods in MItU. Furthermore, in 2007 some reputable game-related media, among which Gamasutra and PC Gamer, called Crida '*the most popular free, non-supported game mod in the world*'.
17. Realising how successful Crida has become, in December 2008 GameGenius decided to approach CDI in order to negotiate a revenue share deal. Even though the mod was distributed free of charge, GameGenius wanted to convince CDI to turn Crida into Mission Impossible IV: Crimson Dawn and to start monetising it under CDI's auspices and brand. The meeting was held at the highest level: CDI was represented by CEO and CFO teams. After some consideration, CDI decided to turn down GameGenius' offer. No written agreement or meeting minutes were ever signed by the participants of the meeting.
18. In January 2009, when giving an interview to GamesIndustry.biz, the CEO of CDI said that the company rejected GameGenius' offer, because they '*did not want to be associated with Crida, since the mod was created by external developers, and CDI had no control whatsoever over the process of creation*'. He added

that ‘*CDI, therefore, is unwilling to take any risk with regard to Crida, either as its publisher, or as its licensor*’.

19. Relying on CDI’s spoken out position, GameGenius chose to continue the journey on his own. In 2009, GameGenius established a company **Sparkle Entertainment Ltd.** (the “**SpEnt**”) and embarked upon development of a new game under the title **Crida2**. Prior to commencing development of a sequel, GameGenius assigned all rights to Crida to SpEnt.
20. In the beginning of 2010, SpEnt applied for registration of trademarks ‘*Crida*’. Upon becoming aware of the application filed by SpEnt, CDI issued an official communication condemning such behavior on the side of GameGenius, and claiming that the trademark should not be granted protection, since it derived from Mission Impossible world, which clearly belonged to CDI. CDI also recalled that back in 2008 in one of the countries it was prohibited to sell T-shirts with the word ‘CRIDA’ printed on them, since, according to the judge, such prints ‘*are capable of misleading consumers about the actual source of the merchandise making consumers believe that the T-shirts were produced or sales thereof were otherwise authorised by CDI*’. Notwithstanding CDI’s objections, SpEnt refused to cease usage of the trademark.
21. Meanwhile, GameGenius continued working on Crida2. The game was eventually released by SpEnt in 2013, and was officially announced as ‘*a stand-alone sequel of Crimson Dawn*’. The game immediately gained immense popularity. It is still considered to be one of the most played games in the world reaching more than 1 mln concurrent players at its peaks.
22. The plot of Crida2 also unravels on Earth somewhere around year 2100. The planet is divided between two quasi-state formations called Tanama and Siperia which are in constant state of war with each other. At some point, the militants from Tanama decide to create super soldiers, but the experiment fails when newly created living beings refuse to come under human’s command and start killing soldiers. From now on Tanama and Siperia unite their forces in fight against REXs.
23. Comparison of visual appearance of REXs in Crida and Crida2 can be found in Exhibit 3. The screenshots from the games appear in Exhibit 4. The examples of the gameplay videos are available on <https://gameslawsummit.org/wargaming-legal-challenge-2018/>.
24. One of the differences between Crida and Crida2 was extension of game types. Two new game types were added to already existing Killing All:
  - a) *Combat Mission*: the player’s team was tasked to carry out certain mission at the same time killing REXs and lots of it;
  - b) *Overkill*: the player’s team is tasked with slaughtering of as many REXs as possible until the time limit elapses;
  - c) *Invasion*: the players are being attacked by numerous REXs and their only aim is to survive; the game ends when the time limit elapses (players win), or after all players are dead (players lose).
25. One of the new features highly appraised by the users was possibility to use vehicles in the game. In Crida2 the characters were divided into the following classes:
  - a) *Marine* – specialises in automatic weapons, and is moving a bit faster than other classes;
  - b) *Sharpshooter* – specialises in precision shooting from large distances;
  - c) *Demolitionist* – is proficient in the use of grenades and explosives;
  - d) *Medic* – specialises in self-healing and healing other players;
  - e) *Flamethrower Operator* – specialises in incendiary weapons and is less vulnerable to the fire than other characters;
  - f) *Scout* – has the ability to reveal invisible REXs and mark them to increase the damage they get.
26. Overall, Crida2 was very well received by both players and game critics. Many game journalists have pointed out that Crida2 successfully builds on the strengths of its predecessor while introducing many new features which allow Crida2 to reach an even wider audience.

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CLAIM

*Creative Development Interactive Ltd. file a claim against Sparkle Entertainment Ltd. for copyright and trademark infringement.*

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EXHIBITS

1. *Mission Impossible: The Ultimate* End User License Agreement;
2. *Mission Impossible: The Ultimate* Mod Policy;
3. Crida & Crida2 REXs\*;
4. Crida & Crida2 Screenshots\*;
5. Clarifications;
6. Intellectual Property Act of the Republic of Nauland (1994).

– END OF EXHIBIT LIST –

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\*All game related materials appearing in the case and on <https://gameslawsummit.org/wargaming-legal-challenge-2018/> are the property of their respective owners. All game related materials have been taken from public sources and are used for educational purposes only.

**EXHIBIT 1****MISSION IMPOSSIBLE: THE ULTIMATE  
END USER LICENSE AGREEMENT**

[Excerpts]

PLEASE CAREFULLY READ THE FOLLOWING END USER LICENSE AGREEMENT (THE “EULA”) BEFORE INSTALLING OR USING CDI’S GAME(S) OR ONLINE GAMING PLATFORM. IF YOU DO NOT AGREE WITH ALL OF THE TERMS OF THIS EULA, YOU MAY NOT INSTALL THIS SOFTWARE.

This EULA is a legal agreement between you (either in your individual capacity, or on behalf of an entity), and Creative Development Interactive Ltd. (“CDI”) in order to give you a license to use the games (“Games”) available on the CDI’s online platform (“Platform”), as well as to use the additional services provided by CDI. The term “Software,” as further used in this EULA, means and refers collectively, and at times individually, to (1) Platform Client software, (2) the gaming services offered and administered by CDI in connection with Platform Client and the Games, (3) the Games, (4) CDI’s Game-related websites and their associated forums, and (5) all features and components of each of them, whether installed or used on a computer. By clicking the acceptance button that follows this EULA and/or using the Platform or any Game, you acknowledge that you have read this EULA, understand its terms and conditions, and agree to be bound by such terms and condition.

[...]

**7. User Content.**

- a) The Software may allow you to create content, including, but not limited to scenario, screenshot, character design, vehicle design, item, or video of your game play (collectively, the “User Content”).
- b) User Content specifically does not include a Mod, as defined in Section 18 below.
- c) In exchange for use of the Software, and to the extent that your contributions through use of the Software give rise to any copyright interest, you hereby grant CDI a non-exclusive, perpetual, irrevocable, fully transferable, fully paid-up, and sub-licensable worldwide right and license to exploit the User Content and all elements thereof in any way and for any purpose in connection with the Software and related goods and services, including, but not limited to, the rights to reproduce, copy, adapt, modify, perform, translate, prepare derivatives, display, publish, broadcast, transmit, or otherwise communicate to the public by any means whether now known or unknown and distribute the User Content without any further notice or compensation to you of any kind for the whole duration of protection granted to intellectual property rights by applicable laws and international conventions.
- d) You represent and warrant that the User Content which you upload to the Software, does not infringe upon the copyright, trademark, patent, trade secret or other rights of any third party.
- e) You further represent and warrant that you will not use or contribute User Content that is unlawful, tortious, defamatory, obscene, invasive of the privacy of another person, threatening, harassing, abusive, hateful, racist or otherwise objectionable or inappropriate.
- f) You hereby waive the right to be identified as the author of the User Content and agree never to assert any moral rights of paternity, publication, reputation, or attribution with respect to CDI’s and other players’ use and enjoyment of such assets in connection with the Software and related goods and services under applicable law.
- g) This license grant to CDI, and terms above regarding any applicable moral rights, will survive any termination of this EULA.

[...]

18. Game Editors.

- a) Certain Games include software that will allow you to create mods, scenarios or other content (“Mods”) for use in connection with the Game (hereafter referred to as “Game Editor(s”).
- b) For purposes of this EULA and any agreements referenced herein, “Mods” includes the digital files associated with such mods, scenarios, and other content, as well as (1) all content contained within such files, including but not limited to characters, audio and video elements, environments, objects, items, skins, and textures, (2) all titles, trademarks, trade names, character names, or other names and phrases included within the Mod, and (3) any other intellectual property rights contained within the Mod, including any and all content, game concepts, methods or ideas.
- c) The manner in which Mods can be used or exploited is set forth in the Mod Policy, the terms of which are incorporated into this EULA by this reference.
- d) CDI may modify, remove, disable, or delete Mods at any time in its sole and absolute discretion.

[...]

22. CDI’s Ownership.

- a) The Software, including the code, graphics, game play, user interface, audio and other content, Mods derived from a Game, and all of the features and components thereof, contain proprietary information and material that is protected by copyright and other laws including but not limited to intellectual property. You agree that CDI owns or licences all of this proprietary information and material, unless such right has been expressly waived by CDI, and that you may not use or exploit any of it without CDI’s permission.
- b) The following components of the Software, without limitation, are owned or licensed by CDI:
  - (i). All virtual content appearing within the Software, including the Games, such as:
    - Visual Components: Locations, artwork, structural or landscape designs, animations, and audio-visual effects;
    - Narrations: Themes, concepts, stories, and storylines;
    - Characters: The names, likenesses, inventories, and catch phrases of Game characters;
    - Items: Virtual goods, such as weapons, armor, wearable items, skins, mounts, etc.;
  - (ii). All data and communications generated by, or occurring through, the Platform;
  - (iii). All sounds, musical compositions and recordings, and sound effects originating in the Platform;
  - (iv). All recordings, Game replays, or reenactments of in-game matches, battles, duels, etc.;
  - (v). Computer Code, including but not limited to source code;
  - (vi). Titles, methods of operation, software, related documentation, and all other original works of authorship contained in the Software;
  - (vii). All Accounts. All use of an Account shall inure to CDI’s benefit. CDI does not recognize the transfer of Accounts. You may not purchase, sell, gift or trade any Account, or offer to purchase, sell, gift, or trade any Account, and any such attempt shall be null and void and may result in the forfeiture of the Account;
  - (viii). All Moral Rights that relate to the Software, including Mods derived from a Game, such as the right of attribution, and the right to the integrity of certain original works of authorship; and
  - (ix). The right to create derivative works, and as part of this EULA, you agree that you will not create any work based on the Software, except as expressly set forth in this EULA or otherwise communicated by CDI.

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**EXHIBIT 2****MISSION IMPOSSIBLE: THE ULTIMATE  
MOD POLICY**

[Full text]

BY PARTICIPATION IN DEVELOPMENT, DISTRIBUTION AND/OR USE OF MODS FOR THE GAMES, YOU AGREE TO BE BOUND BY THIS MOD POLICY. VIOLATIONS MAY RESULT IN TEMPORARY OR PERMANENT BAN IN THE GAMES IN CASE OF CHEATING, AS WELL AS ACTION AGAINST YOU FOR VIOLATION OF THIS MOD POLICY, OTHER BINDING DOCUMENTS APPLICABLE TO CDI PRODUCTS AND SERVICES, OR APPLICABLE LAWS, INCLUDING COPYRIGHT.

1. Prohibited Mods.

Mods that infringe third-party rights, give unfair advantage in the Games, or otherwise violate this Mod Policy are prohibited. Mod developers may not develop Mods that include a mechanism that allows the developer to limit access to Mod to certain users.

2. Development of Mods.

Users may develop Mods that are not prohibited under clause 1 of this Mod Policy. CDI grants users a limited, non-exclusive, non-assignable, non-sublicensable, revocable and worldwide license to reproduce, copy and modify the Games content solely for the purpose of creating Mods for the respective Game in accordance with this Mod Policy (“CDI License”). The CDI License is conditional on compliance with this Mod Policy and other binding documents applicable to CDI products and services (including but not limited to Mission Impossible: The Ultimate End User License Agreement).

3. Ownership.

All title, ownership rights and intellectual property rights in and to the Games content are owned by CDI and/or its licensors. All rights are reserved, except as expressly stated herein. Mods are and shall remain the sole and exclusive property of CDI. Without limiting the foregoing, you hereby assign to CDI all of your rights, title and interest in and to all Mods, and agree that should CDI decide that it is necessary, you agree to execute future assignments promptly upon receiving such a request from CDI.

4. Use of Third Party Content in Mods.

If you incorporate any third-party content in any Mod, you must obtain all necessary rights from the owner of that content. CDI does not screen Mods for non-infringement of third-party copyright, trademark, patent, trade secret or other intellectual property (collectively, the “Intellectual Property Rights”) or compliance with applicable laws and assumes no responsibility for such non-infringement or compliance. You represent and warrant that neither the content you use to create any Mods, nor the compilation, arrangement or display of such content (collectively, the “User Content”), infringes or will infringe any Intellectual Property Rights of any third party. You further represent and warrant that you will not use or contribute User Content that is unlawful, tortious, defamatory, obscene, invasive of the privacy of another person, threatening, harassing, abusive, hateful, racist or otherwise objectionable or inappropriate.

5. Commercial Exploitation of Mods.

Mods shall be distributed free of charge. Accordingly, a Mod cannot be sold, licensed, rented, nor can the Mod contain features that would support purchase transactions of any tangible or intangible content.

6. Incorporation of Mission Impossible: The Ultimate End User License Agreement.

The terms and conditions of Mission Impossible: The Ultimate End User License Agreement are specifically incorporated into this Mod Policy by this reference. In the event that the terms of this Mod Policy are in conflict with the terms of Mission Impossible: The Ultimate End User License Agreement, the terms of this Mod Policy shall supersede and govern over any such conflicting terms in Mission Impossible: The Ultimate End User License Agreement.



**EXHIBIT 3**

**REXS**

**Crida**



**Zombie**

**Crida2**



**Zombie**



**Creeper**



**Spider**



**Berserker**



**Ravager**



**Butcher**



**Skinner**



**Leviathan**



**Executioner**

**EXHIBIT 4**  
**SCREENSHOTS**  
**Crida**









## Crida2








Trader Closes in 00:00  
Wave: 1/4

£5843

Selected Item Info

**G36C**



Power:

Range:

Speed:

**Weight: 5 blocks**

The G36C is a German-made assault rifle manufactured by Heckler und Koch

Encumbrance Level: 7 (+5)/15

**Sell Weapon**    1 Mag    Fill

AK47 SE	148/375	£ 10	£ 62
9mm Pistol SE	120/240	£ 10	£ 80

**Purchase Weapon**

Sniper	Weapon group
Machine Guns	Weapon group
Bullpup SE	£ 200
Mkb42	£ 329
M4 SE	£ 299
Tommy Gun	£ 269
SCARMK17 SE	£ 749
FNFAL ACOG SE	£ 824
<b>G36C</b>	<b>£ 644</b>
Explosives	Weapon group

**Equipment**

Knife	
Grenades SE	3/5    £ 40    £ 80
Combat Armor	100%    Purchased

**Auto Fill Ammo (£ 222)**

**Exit Trader Menu**



**EXHIBIT 5****CLARIFICATIONS**

1. CDI is registered in Calemont. SpEnt is registered in Nauland. The main market for Crida is Nauland, while the main market for Crida2 is Feronica.
2. CDI claims that the law applicable to dispute is the law of Nauland. SpEnt does not dispute this.
3. Nauland is a developing country with the legislation remaining unchanged to a greater degree for decades. It is a contracting party to the Berne Convention for the Protection of Literary and Artistic Works (1886) and the Paris Convention for the Protection of Industrial Property (1883). Nauland maintains monist approach to international law.
4. A few years ago Nauland initiated substantive legal reform; however, as things stand, legal acts regulating majority of IP related issues still fall behind development of technology. Courts and law enforcement agencies tend to fill in the gaps and interpret existing laws with case law adopted from other jurisdictions. Excerpts from Nauland's Intellectual Property Act (1994) can be found in Exhibit 6.
5. CDI claims copyright infringement of Crida by SpEnt. No claim of MItU copyright infringement has been raised by CDI. In its claim, CDI refers only to those visual and other materials that are contained in the facts of the case and accompanying video materials. Nature and amount of remedies claimed by CDI is out of scope of discussion.
6. Neither CDI, nor SpEnt has ever attempted to register trademark 'Crida' in Calemont or Nauland. At the same time, SpEnt managed to successfully register the trademark in Feronica. Trademark registration in Feronica can be refused only as a result of a successful opposition of an interested party. For unknown reason CDI failed to file an opposition in Feronica in due time.

**EXHIBIT 6****INTELLECTUAL PROPERTY ACT OF THE REPUBLIC OF NAULAND (1994)**

[Excerpts]

[...]

**Article 16. Subject matter of copyright: In general**

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

**Article 17. Subject matter of copyright: Compilations and derivative works**

(a) The subject matter of copyright as specified in Article 16 includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

(b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material.

**Article 18. Ownership of copyright**

(a) Initial Ownership.—Copyright in a work protected under this title vests initially in the author or authors of the work.

(b) Transfer of Ownership.—

(1) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law.

(2) Any of the exclusive rights comprised in a copyright may be transferred as provided by clause (1) and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by applicable laws.

Article 19. Infringement of copyright

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by Articles 16-17 and applicable international treaties, is an infringer of the copyright or right of the author, as the case may be.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, to institute an action for any infringement of that particular right committed while he or she is the owner of it.

[...]

Article 28. Confusingly similar marks

(a) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which —

(1) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(2) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

[...]