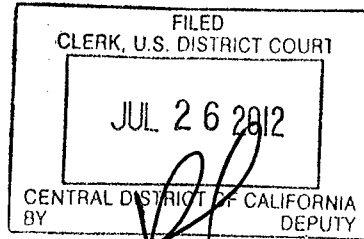


108 17



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NEXON AMERICA, INC., a Delaware corporation, and NEXON KOREA CORPORATION, a Korean corporation,

CASE NO. 2:12-cv-00160-RSWL-FFM

Honorable Ronald S.W. Lew

Plaintiffs,

v.

RYAN MICHAEL CORNWALL a/k/a "Riu Kuzaki" and "Alexandria Cornwall"; YANGYU ZHOU a/k/a "Yang Yu," "W8baby," and "Gamersoul"; DOUGLAS CRANE a/k/a "DJ" and "Lonerboy"; WILLIAM "BILLY" KEISTER a/k/a "ThePhoneGuy"; AMARJOT GILL a/k/a "Alphaamar"; DEREK OSGOOD a/k/a "Jayce"; COLIN JOHNSON a/k/a "Colin "; LINDA LIU a/k/a "linnyda942"; JEREMY SIMPSON; V.H. a/k/a "Vince"; DOE 1 a/k/a "Bizarro" and "Andrew," DOE 2 a/k/a "Cam1596," and DOES 3 through 10, inclusive,

Defendants.

Motion by Defendant- Motion to quash Nexon's Terms of Service from use in this case.

Defendant Doug Crane moves the Court for an order barring the use of the plaintiff's terms of service and forbid its use in this case and further as the court see's fit.

Nexon's Terms of Service Agreement as shown on their site appears to differ from the one presented to the Judge in their responses to Doug Crane's motions to Dismiss, this TOS is still posted so its unclear why many things were seemingly changed prior to your Honor's eye's viewing it.

http://nxcache.nexon.net/nx/global/legal_info/terms.html

as listed below the paragraph of the TOS and the reasons it should be quashed in red with parenthesis

A. 1.1 Any changes we make will be effective immediately upon notice, which we may provide by any means including,

without limitation, posting on the Site. Your continued use of the Site or Service after such notice will be deemed

acceptance of such changes.

Upon our request, you agree to sign a non-electronic version of this Agreement.

(Illusory promise)

1 B. 1.2 Registration Process/Information. To register an Account, you
2 will be required to provide us with certain

3 Information about yourself, including, without limitation, your name,
4 e-mail address, birthday, and gender,
5

6 Country of residence, state, zip code and ethnicity.
7

8
9 (Discriminatory Practice)
10

11
12 C. 2.3.1 You understand that much of the information included in the
13 Forums is from other players who are

14 not employed by or under the control of the Company. You further
15 acknowledge that a large volume
16

17 of information is available in the Forums and that people participating
18 in such Forums occasionally

19 post messages or make statements, whether intentionally or
20 unintentionally, that are inaccurate,
21

22 misleading, deceptive, abusive or even unlawful. We neither endorse
23 nor are responsible for such
24

25 messages or statements, or for any opinion, advice, information or
26 other utterance made or displayed
27

1 in the Forums by you or the other players. The opinions expressed in
2 the Forums reflect solely the

3 opinion(s) of you and the other players and may not reflect the
4 opinion(s) of the Company. We are

5
6 not responsible for any errors or omissions in postings, for hyperlinks
7 embedded in messages or for

8 any results obtained from the use of the information contained in the
9 Forums. Under no

10
11 circumstances will we or our affiliates, suppliers or agents be liable
12 for any loss or damage caused

13 by your reliance on the information in the Forums or your use of the
14 Forums. You should be aware

15
16 that, when you disclose information about yourself in a Forum while
17 using the Service, the

18 information is being made publicly available and may be collected
19 and used by other users. When

20
21 you disclose any information in a Forum, you do so at your own risk.
22 We have no obligation to

23 monitor the Forums, or any postings or other materials that you or
24 other players transmit or post on

25
26 the Forums. However, you acknowledge and agree that we have the
27 right (but not the obligation) to

1 monitor the Forums and the postings and other materials you and the
2 other players transmit and post;

3 to alter or remove any such materials (including, without limitation,
4 any posting to a Forum); and to
5

6 disclose such materials and the circumstances surrounding their
7 transmission to any third party in
8

9 order to operate the Service properly, to protect ourselves, our
10 sponsors and our members and

11 visitors and/or to comply with legal obligations or governmental
12 requests.
13

14
15 (Contradictory/clashing statement since they take "NO
16 RESPONSIBILITY for any information on their site and that this

17 information CANNOT be relied on"... yet they can simply post their
18 TOS on it as "agreement to TOS".)
19

20
21 D. 2.3.2 Cash Shop / Cash Items. While playing our games, you will
22 have the opportunity to visit our online
23

24 store ("Cash Shop") and use online "cash" ("Nexon Cash") to license a
25 variety of virtual items
26

27 ("Cash Items") that can be used while playing various games. In order
28 to obtain Nexon Cash, you

1 may be required to provide us or another payment service designated
2 by us (e.g., PayPal) with your

3 credit card information and other information related to your credit
4 card transaction (e.g., your

5
6 billing and shipping address on record with the applicable credit card
7 company, your credit card

8 expiration date, etc.). For each "real world" U.S. Dollar that you
9 authorize us to charge to your

10
11 credit card, you will be awarded one thousand (1000) units of Nexon
12 Cash; provided, however, that

13 we reserve the right in our sole discretion at any time to change the
14 number of units you will be

15
16 entitled to for each "real world" U.S. Dollar. YOU UNDERSTAND
17 AND AGREE THAT ONCE

18
19 YOU AUTHORIZE US OR OTHER DESIGNATED PAYMENT
20 SERVICE TO CHARGE

21 YOUR CREDIT CARD FOR A CERTAIN AMOUNT, SUCH
22 AMOUNT SHALL UNDER NO

23 CIRCUMSTANCES BE REFUNDABLE, INCLUDING, WITHOUT
24 LIMITATION, UPON

25
26 TERMINATION OF YOUR ACCOUNT FOR ANY REASON,
27 TERMINATION OF THIS

1 AGREEMENT, TERMINATION OF THE CASH SHOP AND/OR
2 THE
3 DISCONTINUATION OF THE SERVICE. You may also be awarded
4 points ("Game Points")
5

6 for use in the Cash Shop or through certain of our promoted events.
7 These Game Points have no

8 "real world" value, but may be exchanged by you for designated Cash
9 Items in the Cash Shop.
10

11 Certain Cash Items have an expiration date, while others have no
12 expiration date ("Lifetime

13 Items"). Each Cash Item that you obtain using Nexon Cash or Game
14 Points will be included in your
15

16 Account until the earlier of that Cash Item's expiration date (if it is not
17 a Lifetime Item), your

18 Account's expiration or termination date, or such date when the
19 Service ends. REGARDLESS OF
20

21 THE CONSIDERATION OFFERED OR PAID IN EXCHANGE
22 FOR CASH ITEMS, YOU
23

24 DO NOT HAVE ANY OWNERSHIP RIGHTS IN THE CASH
25 ITEMS. We have no liability

26 for "hacking" or loss of your Cash Items from your Account, provided
27 we will use reasonable efforts
28

1 to replace such items under certain circumstances in our reasonable
2 discretion. We have no
3 obligation or responsibility to and will not reimburse you for any Cash
4 Item or any experience lost
5
6 due to your violations of this and any other Company rules, policies,
7 notices and/or agreements.
8
9

10 above 1.1 "Be sure to return to this page periodically to ensure
11 familiarity with the most current
12 version of this Agreement."
13
14

15 end user licence agreement is NOT included with Terms of service
16 contracts as shown here in Nexons link
17

18 http://nxcache.nexon.net/nx/global/legal_info/terms.html, Maybe they
19 hint at links to show FULL versions
20

21 that includes privacy policy, etc. but i certainly cant see them or locate
22 them easily)
23
24

25 (Law seemingly tells me that this method of changing, accepting and
26 agreeing to this contract are illegal as stated in standard form contract as
27 follows "Access to the full terms may be difficult or impossible before

1 acceptance Often the document being signed is not the full contract or
2 the purchaser is told that the terms are in

3 another location which you must locate on your own. This reduces the
4 likelihood of the terms being read and in some situations, such

5 as software license agreements, can only be read after they have been
6 notionally accepted by purchasing the good

7 and opening the box. These contracts are typically NOT ENFORCED,
8 since common law dictates that all terms of a

9 contract must be disclosed before the contract is executed".)

10 Nexon changes their contract then forces other "links" and/or
11 "segments" of that contract to be viewed in another location)

12
13
14
15
16 E. 1.1 Acceptance of Agreement/Age Requirements. In order to
17 access and use the Service for any purpose, you

18 must sign up for an account ("Account") with us. Prior to completing
19 the signup process for your Account,

20 you will be required to indicate your acceptance of all of the terms
21 and conditions of this Agreement. If

22 you do not agree to all of the terms and conditions of this Agreement,
23 you may not sign up for an Account

24 and you shall not have the right to use the Service, which includes the
25 right to play any games. By signing

1 up for an Account and using the Service, you represent and warrant
2 that you are 18 years of age or over and

3 have the right, authority and capacity to enter into this Agreement,
4

5
6 THE GAME AND SERVICE ARE AVAILABLE ONLY TO
7 ADULTS (I.E., THOSE PERSONS 18 YEARS OF

8
9 AGE OR OLDER, OR THE LEGAL AGE REQUIRED TO FORM A
10 BINDING CONTRACT IN YOUR

11 JURISDICTION IF THAT AGE IS GREATER THAN 18) OR, IN
12 THEIR DISCRETION, THE MINOR CHILD

13
14 (NO YOUNGER THAN 13 YEARS OF AGE) OF A PARENT OR
15 GUARDIAN WHO IS AN ADULT. IF YOU

16 ARE A MINOR CHILD, THEN BOTH YOU AND YOUR
17 PARENT(S) OR GUARDIAN(S) TAKE FULL

18
19 RESPONSIBILITY FOR ALL OBLIGATIONS UNDER THIS
20 AGREEMENT. BY CLICKING ON THE "I

21 ACCEPT" BUTTON BELOW, YOU REPRESENT THAT YOU
22 AND AN ADULT, PARENT OR GUARDIAN,
23

24 6

25 EX B PG 20
26
27

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ARE ACCEPTING THIS AGREEMENT ON BEHALF OF
THEMSELVES AND ON YOUR BEHALF.

PARENTS OR GUARDIANS ARE LIABLE FOR ALL
ACTIVITIES OF THEIR MINOR CHILD.

BY CLICKING ON THE "I ACCEPT" BUTTON BELOW, YOU
ACKNOWLEDGE THAT (1) YOU HAVE

READ AND REVIEWED THIS AGREEMENT IN ITS ENTIRETY,
(2) YOU AGREE TO BE BOUND BY THIS

AGREEMENT, (3) YOU HAVE THE POWER, AUTHORITY AND
LEGAL RIGHT TO ENTER INTO THIS

AGREEMENT, (4) THIS AGREEMENT CONSTITUTES A
BINDING AND ENFORCEABLE AGREEMENT,

AND (5) WITHOUT LIMITING YOUR CONSENT TO OR THE
SCOPE OF THIS AGREEMENT OR THE

LICENSES GRANTED HEREIN, OR ANY FUTURE GRANT OF
RIGHTS, CONSENT, AGREEMENTS,

ASSIGNMENTS, AND WAIVERS YOU MAKE WITH RESPECT
THERE TO, YOU HEREBY RATIFY ANY

1 PRIOR GRANT OF RIGHTS, CONSENTS, AGREEMENTS,
2 ASSIGNMENTS AND WAIVERS MADE BY
3 YOU.
4
5

6 (I absolutely content that the majority of the millions of people who
7 have accepted this contract are well under the age of 18 and i also contend
8 that Nexon in fact "targets" the under age 18 population! The ramifications
9 and consequences to our youth by Nexon having ZERO checks or
10 confirmations that those who agree to this contract are indeed truly over age
11 18 is catastrophic and i can only leave it in the hands of people with more
12 wisdom then I to determine if this clause and its non-function to perform any
13 age check with a credit card and/or other more proper method is legal. i
14 submit to the court that this falls under "Unconscionability" because any
15 reasonable person will conclude that minors are NOT going to their parents
16 to seek approvals or permissions to execute this contract and a reasonable
17 person would conclude that nexon makes, markets and distributes this game
18 for children specifically under age 18)
19

20
21 F. 2.3.2 "We reserve the right,
22
23 without prior notification, to limit the order quantity on any Cash Item
24 and/or to refuse to provide

25 you with any Cash Item. Verification of certain information applicable
26 to a transaction involving a
27

1 Cash Item may be required prior to our acceptance thereof. Price and
2 availability of the Cash Items
3 are subject to change without notice."
4

5
6 (Without notice is Illusory)
7
8

9
10 G. 2.4.3 The Company has the right to obtain, without notification to
11 you, information from your
12 computer, software, and parts or portions thereof, including, without
13 limitation, your computer's
14 random access memory, video card, central processing unit, hard
15 drive(s) and any other storage
16
17 devices to assist our efforts in policing users who may develop and/or
18 use "hacks" and/or "cheats"
19
20 to gain advantage over other users. The information obtained in this
21 Section will only be used for
22 the purpose of identifying persons or entities not in compliance or
23 believed by the Company to not
24
25 be in compliance with this Agreement and any and all other Company
26 rules, policies, notices
27 and/or agreements.

(illusory & Unconscionable)

H, 16. LIQUIDATED DAMAGES.

You acknowledge and agree that you are not permitted for any reason or under any circumstances to hack, attempt file

decryptions, crack encryptions, use cheats and/or memory altering scripts or codes or utilize unauthorized third-party

manipulations programs, re-packer programs, game or client altering software or client re-interpretation methods or codes

to alter the play experience or gain an unfair advantage in any of the Nexon games. You also are prohibited from doing the

following: (1) use any type of hacks, bypass, decryptions (including but not limited to file decryption software/methods),

cheats and/or memory altering scripts or codes to gain an unfair advantage over other users in any Nexon game; (2) manipulate

and/or alter the game client and/or server memory in order to gain unearned and unjustified Nexon Cash, in-game currency and/or

any other Items from any Nexon game ; and (3) elevate your ranking in any Nexon game fraudulently or by any wrongful or

1 unauthorized means. In addition you agree not to create, design,
2 disseminate, link, distribute, provide access to or use any

3 third party programs, bots, scripts, codes, bypass, memory scanning
4 software, hacks or cheats designed to alter the game play or

5
6 to modify the code to play the game differently than it was intended
7 by means of programs not permitted or authorized by Nexon,

8 which include, but are not limited to: hacks, private servers, cheat
9 engines, memory altering scripts or codes (including but not

10
11 limited to disconnection hacks), auto clickers, any type of bots and/or
12 game cheats. Any use, dissemination or design of such programs

13 shall be deemed a material breach by you of these Terms of Service
14 for which you will be liable to Nexon for any resulting damages.
15

16 You agree that if you host or operate a private server of a Nexon game
17 or host or operate a hack site that sells hacks to a Nexon

18 game or if you distribute, disseminate, design, code, moderate and/or
19 provide free or paid access to private forums that sell or

20
21 distribute hacks, or assist in the design of any private servers or third
22 party programs (such as hacks) that alter the game

23 play of any Nexon game, you will have the unconditional obligation
24 to pay Nexon America Inc. the sum of One Hundred Thousand

25 (\$100,000) Dollars for each such program (including patches) and
26 versions thereof as liquidated damages. You also agree that
27

1 if you use such a program to play any of the Nexon games, or engage
2 in the use of a private server, you will have the unconditional

3 obligation to pay Nexon America Inc. the sum of One Thousand
4 (\$1,000) Dollars as liquidated damages for each time you use such a
5

6 program, which shall be due and payable immediately upon
7 notification to you of said infraction.
8
9

10 (please let a US Judge apply his Wisdom to paragraph 16. its the
11 epitome of Unconscionability and with this paragraph alone a Judge should
12 quash the entire contract as absurd and quash any actions attempted by
13 Nexon up until the point they remove this paragraph , I have presented proof
14 of Nexon attorney Llyod Korn using this exact paragraph to threaten &
15 intimidate and god forbid if a childs parents are sent a bill for \$10,000,000
16 because their child bought a gaming mouse at best buy which uses "Macros"
17 to "auto click" in the game of maplestory over a long period)
18
19

20 In closing i contend to the court that this contract is a Contract of
21 "adhesion" and "Unconscionable" because Nexon has
22

23 allowed players/users to build by way of years of work and efforts and
24 by way of investing large amounts of moneys into

25 their player accounts and then seemingly each year that goes by
26 Nexon continues to overwhelming flop side a forced contract
27

1 like this onto those players who have zero choice in this "take it or
2 leave it" contract with little or no ability to negotiate

3 terms more favorable after having invested years of efforts and
4 money's.
5

6
7
8
9 Defendant Doug Crane Pro SE respectfully moves the Court for an order to
10 quash and bar the use of Nexon's terms of service in this case.

11 I declare under penalty of perjury under the laws of the United States of
12 America that the foregoing is true and correct.
13

14 Doug Crane 366 Temple St. Duxbury, Ma. 02332

15 July 24, 2012
16
17
18
19
20
21
22
23
24



Certificate of Service

I undersigned hereby certify that copies of the above were delivered to all council in this case by Norma Crane am over the age of eighteen years and am not a party to this action; my business address is 253 Ames St. Brockton, Ma. 02302

On July 25, 2012 I delivered the documents named "Motion to dismiss by reason of Laches" and "Motion to Quash Nexon Terms of Service" via USPS to:

MARC E. MAYER (SBN 190969),
mem@msk.com
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, California 90064-1683

Cival Intake Dept.

312 N. Spring St.

Los Angeles, CA 90012

Ryan Michael Cornwall at

riukuzaki@gmail.com

1818 2nd Street Apt 55

Waco, TX 76706

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on July 25, 2012 Norma Crane

