

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PENNSYLVANIA SKILL GAMES, LLC,	)	Civil Action
	)	
Plaintiff/Counterclaim	)	No. 2:20-cv-01177-PLD
Defendant,	)	
	)	Magistrate Judge Patricia L. Dodge
v.	)	
	)	<i>Electronically filed</i>
ACTION SKILL GAMES, LLC,	)	
	)	
Defendant/Counterclaim	)	
Plaintiff,	)	
	)	
and	)	
	)	
POM OF PENNSYLVANIA, LLC AND	)	
SAVVY DOG SYSTEMS, LLC,	)	
	)	
Intervenors.	)	

**PROPOSED ORDER**

Reference is made to this Court's Order, dated December 14, 2020 [ECF 41]. The Court hereby certifies the Order for appeal to the U.S. Third Circuit Court of Appeals, pursuant to 28 U.S.C. § 1292(b). The case is stayed pending review of the Third Circuit.

\_\_\_\_\_  
Magistrate Judge Patricia L. Dodge

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PENNSYLVANIA SKILL GAMES, LLC,	)	Civil Action
	)	
Plaintiff/Counterclaim	)	No. 2:20-cv-01177-PLD
Defendant,	)	
	)	Magistrate Judge Patricia L. Dodge
v.	)	
	)	<b>NOTIFICATION TO THE ADR</b>
ACTION SKILL GAMES, LLC,	)	<b>COORDINATOR</b>
	)	
Defendant/Counterclaim	)	
Plaintiff,	)	

and

POM OF PENNSYLVANIA, LLC AND  
SAVVY DOG SYSTEMS, LLC,

Intervenors.

Please take notice that Exhibit A was sent to the Western District of Pennsylvania ADR Coordinator at the email address set forth in Section 2.3 of the Alternative Dispute Resolution Policies and Procedures.

Dated: January 4, 2021

Respectfully submitted,

**TECHNOLOGY & ENTREPRENEURIAL  
VENTURES LAW GROUP, PC**

s/Gregg Zegarelli

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*Attorney for Plaintiff/Counterclaim Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of January 2021, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system with the Clerk of the Court using the CM/ECF system, which the undersigned believes will send a copy to all counsel of record.

**TECHNOLOGY & ENTREPRENEURIAL  
VENTURES LAW GROUP, PC**

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Writer's Direct Information  
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January 4, 2021

VIA ELECTRONIC MAIL: [ADRCordinator@pawd.uscourts.gov](mailto:ADRCordinator@pawd.uscourts.gov)  
Delivery Receipt Requested

ADR Coordinator  
United States District Court  
for the Western District of Pennsylvania  
700 Grant Street  
Pittsburgh, PA 15219

Re: Pennsylvania Skill Games v. Action Skill Games: 2:20-cv-01177-PLD  
Constitutional Challenge to ADRPP

Dear ADR Coordinator:

1. Kindly take notice that the undersigned, as Officer of the Court and pursuant to Oath of Office, has respectfully challenged the Western District Alternative Dispute Resolution Policies and Procedures in the above-referenced case and seeks appeal to the Third Circuit Court of Appeals. The procedural posture can be reviewed in the filing of record at ECF 50.

2. The undersigned respectfully summarizes the context as follows:

By mere speculation of a hypothetical “good” for a party, this Court has ordered a party into a servitude with a third-party, involuntarily against the indentured party’s will, by the hypocritical travesty of a collateral “agreement” defined by this Court *in law* inherently to be a relationship of “voluntary assent,” and thereby taking, taxing and spending the party’s hard-earned money like water with punitive effect, without any hearing on the merits of that collateral taking, taxing and spending, making the indentured party to pay for its compelled collateral servitude without any reasonable limitation of the ultimate cost thereof, concomitant with additional necessary and appurtenant unlimited direct and indirect costs, and in a manner that imposes such ultimate unlimited costs of the collateral servitude to be a direct function of the indentured party’s ostensible adversary’s wealth, strategy and adverse self-interest, with similarly situated parties ultimately to pay various unequal resultant costs in a manner untethered to a discrete policy of objectivity, simply for the indentured party to exercise the Constitutional right to trial, and notwithstanding the Court has options that can be universally applied equally, objectively, and in a more tailored, less costly and less imposing manner in order for the Court to serve its own self-interest for general program administration.

**Z E G A R E L L I**

January 4, 2021  
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3. The undersigned respectfully suggests that this Court has an obligation immediately to determine if the undersigned's challenge is definitely utterly without merit or might have some merit. Unless the undersigned's challenge is definitely utterly without merit, then the undersigned respectfully suggests that this Court has the obligation to suspend or to qualify the ADRPP without delay until such time as appropriate determinations and/or revisions are implemented. The undersigned notes, respectfully, that history teaches that the brilliant engineers of automobile manufacturers, train makers and airplane manufacturers have made products that are implemented over many miles or for many years without injury, until a precise context exposes a catastrophic systemic flaw. Once that flaw manifests in the rare car explosion, train wreck or plane crash, the manufacturer is legally obliged and is socially responsible to implement a review and appropriate corrections without delay.

Respectfully submitted,

  
Z E G A R E L L I  
Technology & Entrepreneurial  
Ventures Law Group, P.C.

By: s/Gregg Zegarelli  
Gregg R. Zegarelli

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PENNSYLVANIA SKILL GAMES, LLC,	)	Civil Action
	)	
Plaintiff / Counterclaim Defendant,	)	No. 2:20-cv-01177-PLD
	)	
v.	)	Magistrate Judge Patricia L. Dodge
	)	
ACTION SKILL GAMES, LLC,	)	<i>Electronically filed</i>
	)	
Defendant / Counterclaim Plaintiff	)	JURY TRIAL DEMANDED
	)	
and	)	
	)	
POM OF PENNSYLVANIA, LLC and	)	
SAVVY DOG SYSTEMS, LLC,	)	
	)	
Intervenors.	)	

**DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION TO CERTIFY**

Pursuant to the Order of December 21, 2020 (Dkt. 51), Defendant, Action Skill Games, LLC (“Defendant”), hereby submits this brief in opposition to Plaintiff’s Motion to Certify (Dkt. 48).

Plaintiff’s request for interlocutory certification is wholly inappropriate in this commercial matter concerning a trademark license agreement and alleged trademark infringement. Plaintiff is attempting to turn a routine alternative dispute resolution (ADR) requirement in a simple commercial dispute into a manufactured matter of public interest. *See, e.g.*, Dkt. 48 at 3 (“[M]andatory ADR is grounded in a hypothetical at best as to any particular party, and it must be viewed with the strictest scrutiny because it impinges upon a fundamental Constitutional right. And, upon this hypothetical, with struggling businesses in need . . . the Western District commands potentially thousands of dollars of extra fees . . . for the right to redress at trial.”).

Plaintiff’s motion is emblematic of Plaintiff’s unwillingness to cooperate in even the most routine matters, and Plaintiff’s generally unreasonable approach to its case, which itself stands on

spurious legal grounds. Indeed, Plaintiff's complaints about the cost of ADR ring hollow in view of its Motion to Certify, the resulting responsive briefs, and ultimate appeal it may necessitate.

Despite Plaintiff's unorthodox conduct and motions, Plaintiff's request should also be denied on its substance.<sup>1</sup>

District courts may approve the interlocutory appeal of an order not otherwise appealable only when (1) the order involves a "controlling question of law," (2) there is a "substantial ground for difference of opinion" concerning the legal question, and (3) "an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). This is simply not the case here. The issues here do not involve a "controlling" question of law and immediate appeal will not "materially advance the ultimate termination of the litigation." Interlocutory appeal of the Court's Order regarding ADR (Dkt. 41) will complicate this case unnecessarily and work only to resolve the question of whether the parties can be compelled to participate in non-consensual ADR. It will not advance any substantive legal question in any meaningful way.

This Court's ADR Program is based on the policy of promoting economical and efficient resolution of civil disputes, *see* LR 16.2(B), which policy the District has successfully advanced for the past 20 years. The ADR Program stems from the Alternative Dispute Resolution Act of 1998, 28 U.S.C. §§ 651-658, (the "ADR Act") wherein Congress recognized the need for

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<sup>1</sup> However, Defendant notes that Plaintiff apparently agrees to stay the litigation at least for purposes of its specious request for interlocutory appeal. Defendant believes that the most efficient course of action is granting its Motion to Stay (Dkt. 42). Resolution of co-pending Case No. 2:18-cv-00722-PLD (the "POM case") has the potential to resolve most, if not all, issues in the present case, including Plaintiff's objections to the ADR ordered in this case. If this case survives resolution of the POM case, ADR would still be required under L.R. 16.2, and Plaintiff can lodge its objections and seek interlocutory certification at that time.

inexpensive and efficient resolutions of cases. *See, e.g., Pucci v. 19th Dist. Court*, No. 07-10631, 2009 WL 596196, at \*4 (E.D. Mich. Mar. 6, 2009) (“Congress has recognized that alternative dispute resolution (ADR) options are valuable tools that district courts may utilize to promote the speedy, just, and economical resolution of civil disputes.”) (citing 28 U.S.C. §§ 651-658).

The ADR Act expressly authorizes mandatory ADR: “Any district court that elects to ***require*** the use of alternative dispute resolution in certain cases may do so only with respect to ***mediation, early neutral evaluation***, and, if the parties consent, arbitration.” 28 U.S.C. § 652(a) (emphasis added). Thus, while Plaintiff argues that the issue presented in its Motion for Certification is one of first impression, authorization for the Court’s ADR Program is at least expressly authorized by statute.

Additionally, at least some courts have recognized both the express authorization of mandatory ADR under the ADR Act and district courts’ inherent authority to compel the same. *See, e.g., In re Atl. Pipe Corp.*, 304 F.3d 135, 141 (1st Cir. 2002) (“the Act requires district courts to obtain litigants’ consent only when they order arbitration . . . not when they order the use of other ADR mechanisms (such as non-binding mediation)”) (citation omitted); *id.* at 145 (“[W]e hold that it is within a district court’s inherent power to order non-consensual mediation in those cases in which that step seems reasonably likely to serve the interests of justice.”) (citing *Reilly v. United States*, 863 F.2d 149, 156–57 (1st Cir.1988) (finding that district courts have inherent power to appoint technical advisors in especially complex cases)).

Indeed, even the Third Circuit Court of Appeals has a mandatory mediation policy. *See* 3d Cir. L.A.R. 33.0.

Further, at least the Eleventh Circuit Court of Appeals has held that compelled ADR, in the form of mediation, is not an abuse of discretion where costs have not been shown to be



unreasonable and were ordered to be shared equally by the parties. *Abele v. Hernando County*, 161 Fed. Appx. 809, 813 (2005) (“A federal district court may take appropriate action with respect to settlement and the use of special procedures to assist in resolving a dispute when authorized by statute or local rule.”) (citing Fed.R.Civ.P. 16(c)(9)). Here, the costs would be split three ways. There is also no current agreement on a neutral so cost is not even apparent at this stage.<sup>2</sup>

Accordingly, Plaintiff is objecting to a routine and widely-accepted stage in civil litigation that has only been shown to promote resolution. Plaintiff’s request for interlocutory certification appears calculated only to run up costs – costs which will dwarf any costs associated with court mandated ADR – and complicate an otherwise simple matter.

For the above reasons, Plaintiff’s motion should be denied

Respectfully submitted,

**THE WEBB LAW FIRM**

Dated: January 8, 2021

s/John W. McIlvaine  
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<sup>2</sup> Defendant notes, however, that neutral fees are very readily available on the Court’s Neutral Page ([https://www2.pawd.uscourts.gov/Applications/pawd\\_adr/Pages/ADRNeutralSearch.cfm](https://www2.pawd.uscourts.gov/Applications/pawd_adr/Pages/ADRNeutralSearch.cfm)).

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of January, 2021, I electronically filed the foregoing **DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO CERTIFY** with the Clerk of the Court using the CM/ECF system which sent notification to all counsel of record.

**THE WEBB LAW FIRM**

s/ John W. McIlvaine  
John W. McIlvaine

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**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PENNSYLVANIA SKILL GAMES, LLC,

CIVIL ACTION

Plaintiff/Counterclaim  
Defendant,

No. 2:20-cv-01177-PLD

The Honorable Patricia L. Dodge

v.

ACTION SKILL GAMES, LLC,

Defendant/Counterclaim  
Plaintiff,

and

POM OF PENNSYLVANIA, LLC t/d/b/a  
PACE-O-MATIC, and SAVVY DOG  
SYSTEMS, LLC,

Intervenors.

**INTERVENORS' BRIEF IN OPPOSITION TO  
PLAINTIFF'S MOTION TO CERTIFY ORDER  
DATED DECEMBER 14, 2020 [ECF 41]  
FOR INTERLOCUTORY APPEAL PURSUANT TO 28 U.S.C. § 1292(b)**

Pennsylvania Skill Games, LLC's ("PSG") Motion to Certify [ECF No. 41] is frivolous, improper and should not be granted.

PSG brought this lawsuit to enforce rights in a trademark: (1) it did not create; (2) it took from Pace-O-Matic, Inc.; and (3) it attempted to register with the USPTO to gain leverage in a contract dispute. PSG had the audacity to file this case, and now seeks to overturn a valid and longstanding method of early case resolution in this district based on incomprehensible reasons.

L.R. 16.2 authorizes mandatory ADR in this district<sup>1</sup>. Based on the processes set forth in that Rule, the parties need to meet and confer at the Rule 26(f) conference and select an ADR

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<sup>1</sup> [https://www.pawd.uscourts.gov/sites/pawd/files/lr16\\_2.pdf](https://www.pawd.uscourts.gov/sites/pawd/files/lr16_2.pdf)

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option. If the parties cannot agree on a process, the "Judicial Officer will make an appropriate determination and/or selection for the parties." Id. Plaintiff has failed to articulate a single basis why it should be able to sidestep the rules or be able to second-guess the judges and practitioners who created the ADR program.

PSG objected to the ADR process during the Rule 26 conference, unilaterally rejected proposed and qualified neutrals, and has obstructed progress of what should be a routine matter (among other things). PSG demanded that it not be required to execute a stipulation, this Court accommodated PSG's request, and this Motion followed.

It must be noted that PSG will participate in a mediation "only to the extent the ADR is either contemplated by and subsumed by the case filing fee or by some other transparent fixed administrative fee or tax reasonably matched to the ADR program administration cost." (Motion, ¶ 18). PSG goes on to state, "Any effective fee to exercise the right to trial, based upon a variable cost, by collateral external compelled contract, with a portion of that fee determined by the actions of a [sic] litigation adversaries, is beyond the proper jurisdiction of the Western District, and is otherwise unconstitutional." Id. Therefore, PSG cannot argue that it will participate in the established ADR program—it will only do so under terms it deems to be acceptable.

The 17-page screed by PSG cites to "negative public perception," and "chilling effects" with respect to a program proven to reduce litigation costs and resolve cases early in their lifecycle. PSG states that this Court's routine Order is "inherently abusive." (Motion pg. 9, fn. 15). Despite the highfalutin language, PSG fails to explain why all parties to this litigation must endure an exploratory exercise regarding "due process" before the Third Circuit under these circumstances.

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If PSG wants to challenge the validity of the entire ADR program of the United States District Court of the Western District of Pennsylvania, it should find another time and place to do so. Intervenor should not be forced to ride along. PSG also is free to withdraw its claims to avoid the expense and apparent oppression of this district's ADR process. Ironically, PSG has probably spent more in fees challenging this Court's lawful and appropriate order regarding a hybrid ENE/mediation than it would in the ADR session itself.

PSG pontificates about costs and fees and due process. It lectures the Court and the parties about freedoms and even cites to Plessy v. Ferguson, 163 U.S. 537 (1896) and Brown v. Board of Education, 347 U.S. 483 (1954) — to avoid a valid and established ADR procedure. PSG even makes some bizarre wag of the finger towards the Court, saying the "ant is in some jeopardy for criticizing the anteater" and quotes to Charles Dickens and Andersen (Motion at pg. 13, fn. 22). Respectfully, Intervenor has no idea what PSG is talking about.

PSG brought this case. Litigation is expensive. Some costs are warranted, and some are not. PSG forcing these litigants into a bizarre procedural morass to prove a point is not one of those warranted expenses Intervenor should bear. The only parties prejudiced thus far are Intervenor and Defendant because they had to spend client time and money in response to PSG.

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As PSG has said several times in the companion case to this litigation, "Thou doth protest too much."

Respectfully submitted,

SPILMAN THOMAS & BATTLE, PLLC

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**Attorneys for Intervening Defendants  
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**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PENNSYLVANIA SKILL GAMES, LLC,

CIVIL ACTION

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and

POM OF PENNSYLVANIA, LLC t/d/b/a  
PACE-O-MATIC, and SAVVY DOG  
SYSTEMS, LLC,

Intervenors.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **Intervenors' Response to Plaintiff's Motion to Certify Order Dated December 14, 2020 [ECF 41] for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b)** was served upon the undersigned counsel of record this 8<sup>th</sup> day of January, 2020 via the Court's CM/ECF System:

Via email to [mailroom.grz@zegarelli.com](mailto:mailroom.grz@zegarelli.com)

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/s/ Julian E. Neiser

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