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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

AMERANTH, INC.,

Plaintiff,

v.

HOTEL TONIGHT, INC.,

Defendant.

Case No. 12-cv-1633 JLS (NLS)

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Ameranth, Inc. (“Ameranth”), for its Complaint against defendant
3 Hotel Tonight, Inc. (“Hotel Tonight”), avers as follows:

4 **PARTIES**

5 1. Plaintiff Ameranth is a Delaware corporation having a principal place of
6 business at 5820 Oberlin Drive, Suite 202, San Diego, California 92121.
7 Ameranth develops, manufactures and sells, *inter alia*, hospitality industry,
8 entertainment, restaurant and food service information technology solutions
9 under the trademarks 21st Century Communications™, and 21st Century
10 Restaurant™, among others, comprising the synchronization and integration of
11 hospitality information and hospitality software applications between fixed,
12 wireless and/or internet applications, including but not limited to computer
13 servers, web servers, databases, affinity/social networking systems, desktop
14 computers, laptops, “smart” phones and other wireless handheld computing
15 devices.

16 2. Defendant Hotel Tonight is, on information and belief, a Delaware
17 corporation having a principal place of business and headquarters in San
18 Francisco, California. On information and belief, Hotel Tonight makes, uses,
19 offers for sale or license and/or sells or licenses hotel and lodging, property
20 management system (PMS) and other hospitality information-technology
21 products, software, components and/or systems within this Judicial District,
22 including the Hotel Tonight Reservation System as defined herein.

23 **JURISDICTION AND VENUE**

24 3. This is an action for patent infringement arising under the Patent Laws of
25 the United States, 35 U.S.C. §§ 271, 281-285.

26 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331
27 and 1338(a).

1 cruise ships and other entertainment and sports venues). Ameranth has been
2 widely recognized as a technology leader in the provision of wireless and
3 internet-based systems and services to, *inter alia*, restaurants, hotels, casinos,
4 cruise ships and entertainment and sports venues. Ameranth's award winning
5 inventions enable, in relevant part, generation and synchronization of menus,
6 including but not limited to restaurant menus, event tickets, reservations and
7 other products across fixed, wireless and/or internet platforms as well as
8 synchronization of hospitality information and hospitality software applications
9 across fixed, wireless and internet platforms, including but not limited to,
10 computer servers, web servers, databases, affinity/social networking systems,
11 desktop computers, laptops, "smart" phones and other wireless handheld
12 computing devices.

13 9. Ameranth began development of the inventions leading to the patents in
14 this patent family in the late Summer of 1998, at a time when the then-available
15 wireless and internet hospitality offerings were extremely limited in functionality,
16 were not synchronized and did not provide an integrated system-wide solution to
17 the pervasive ordering, reservations, affinity program and information
18 management needs of the hospitality industry. Ameranth uniquely recognized the
19 actual problems that needed to be resolved in order to meet those needs, and
20 thereafter conceived and developed its breakthrough inventions and products to
21 provide systemic and comprehensive solutions directed to optimally meeting
22 these industry needs. Ameranth has expended considerable effort and resources
23 in inventing, developing and marketing its inventions and protecting its rights
24 therein.

25 10. Ameranth's pioneering inventions have been widely adopted and are
26 thus now essential to the modern wireless hospitality enterprise of the 21st
27

1 Century. Ameranth's solutions have been adopted, licensed and/or deployed by
2 numerous entities across the hospitality industry.

3 11. The adoption of Ameranth's technology by industry leaders and the wide
4 acclaim received by Ameranth for its technological innovations are just some of
5 the many confirmations of the breakthrough aspects of Ameranth's inventions.
6 Ameranth has received twelve different technology awards (three with "end
7 customer" partners) and has been widely recognized as a hospitality
8 wireless/internet technology leader by almost all major national and hospitality
9 print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today
10 and many others. Ameranth was personally nominated by Bill Gates, the
11 Founder of Microsoft, for the prestigious Computerworld Honors Award that
12 Ameranth received in 2001 for its breakthrough synchronized
13 reservations/ticketing system with the Improv Comedy Theatres. In his
14 nomination, Mr. Gates described Ameranth as "one of the leading pioneers of
15 information technology for the betterment of mankind." This prestigious award
16 was based on Ameranth's innovative synchronization of wireless/web/fixed
17 hospitality software technology. Subsequently, the United States Patent and
18 Trademark Office granted Ameranth a number of currently-issued patents, some
19 which are the basis for this lawsuit. Ameranth has issued press releases
20 announcing these patent grants on business wires, on its web sites and at
21 numerous trade shows since the first of the presently-asserted patents issued in
22 2002. A number of companies have licensed patents and technology from
23 Ameranth, recognizing and confirming the value of Ameranth's innovations. At
24 all relevant times, Ameranth marked its own products with the numbers of the
25 Ameranth patents then issued, thereby providing companies, competitors and
26 participants in the hospitality industry with notice of Ameranth's patents.
27 Furthermore, companies that license Ameranth's products have marked their

1 products with Ameranth's patent numbers, thereby also providing notice of
2 Ameranth's patents.

3 **RELATED CASES PREVIOUSLY FILED**

4 12. The Ameranth patents asserted herein, U.S. Patent No. 6,384,850 (the
5 "'850 patent"), U.S. Patent No. 6,871,325 (the "'325 patent"), and U.S. Patent
6 No. 8,146,077 (the "'077 patent"), are all patents in Ameranth's "Information
7 Management and Synchronous Communications" patent family.

8 13. Ameranth is also currently asserting claims of these same patents in
9 separate lawsuits, against other defendants, that are already pending in this Court.
10 The first-filed lawsuit asserts claims of the '850 and '325 patents and is entitled
11 *Ameranth v. Pizza Hut, Inc. et al.*, Case No. 3:11-cv-01810-JLS-NLS. Lawsuits
12 subsequently filed by Ameranth in this Court, asserting claims of the '077 patent,
13 include Case Nos. 3:12-cv-00729-JLS-NLS; 3:12-cv-00731-JLS-NLS; 3:12-cv-
14 00732-JLS-NLS; 3:12-cv-00733-JLS-NLS; 3:12-cv-00737-JLS-NLS; 3:12-cv-
15 00738-JLS-NLS (settled); 3:12-cv-00739-JLS-NLS and 3:12-cv-00742-JLS-
16 NLS. Other lawsuits filed by Ameranth in this Court asserting claims of the
17 '850, '325, and '077 patents are Case No. 3:12-cv-00858-JLS-NLS; 3:12-cv-
18 1201-JLS-NLS (settled): 3:12-cv-01651-JLS-NLS; 3:12-cv-01629-JLS-NLS;
19 3:12-cv-01630-JLS-NLS; 3:12-cv-01631-JLS-NLS; 3:12-cv-01634-JLS-NLS;
20 3:12-cv-01654-JLS-NLS; 3:12-cv-01636-JLS-NLS; 3:12-cv-01640-JLS-NLS;
21 3:12-cv-01642-JLS-NLS; 3:12-cv-01643-JLS-NLS; 3:12-cv-01644-JLS-NLS;
22 3:12-cv-01646-JLS-NLS 3:12-cv-01647-JLS-NLS (settled); 3:12-cv-01648-JLS-
23 NLS; 3:12-cv-01649-JLS-NLS; 3:12-cv-01650-JLS-NLS; 3:12-cv-01652-JLS-
24 NLS; 3:12-cv-01653-JLS-NLS; 3:12-cv-01627-JLS-NLS; 3:12-cv-01655-JLS-
25 NLS; 3:12-cv-01656-JLS-NLS; 3:12-cv-01659-JLS-NLS; 3:13-cv-00350-JLS-
26 NLS; 3:13-cv-00352-JLS-NLS; 3:13-cv-00353-JLS-NLS; 3:13-cv-0836-JLS-
27 NLS and 3:13-cv-01072-MMA-BGS. All of the above still-pending cases have

1 been consolidated for pre-trial through claim construction except for 3:13-cv-
2 00350-JLS-NLS; 3:13-cv-00352-JLS-NLS; 3:13-cv-00353-JLS-NLS; 3:13-cv-
3 0836-JLS-NLS and 3:13-cv-01072-MMA-BGS. These include lawsuits against
4 business partners of Defendant, such as hotel companies with whom Defendant
5 does business.

6 14. The original complaint in this matter was filed in this Court on June 29,
7 2012, and subsequently served upon Hotel Tonight. At least since that time,
8 Hotel Tonight has had direct and knowledge of Ameranth's patents and that
9 Hotel Tonight's online and mobile reservations system infringes those patents as
10 alleged therein. Nonetheless, Defendant has continued, and is continuing, to
11 make, use, offer for sale or license and/or sell or license infringing systems,
12 products, and/or services in the United States without authority or license from
13 Ameranth and to engage in acts of infringement as set forth herein.

14 **COUNT I**

15 **Patent Infringement (U.S. Pat. No. 6,384,850)**

16 **(35 U.S.C. § 271)**

17 15. Plaintiff reiterates and incorporates the allegations set forth in paragraphs
18 1-14 above as if fully set forth herein.

19 16. On May 7, 2002, United States Patent No. 6,384,850 entitled
20 "Information Management and Synchronous Communications System with Menu
21 Generation" ("the '850 patent") (a true and copy of which is attached hereto as
22 **Exhibit A**) was duly and legally issued by the United States Patent & Trademark
23 Office.

24 17. Plaintiff Ameranth is the lawful owner by assignment of all right, title
25 and interest in and to the '850 patent.

26 18. On information and belief, Defendant directly infringes and continues to
27 directly infringe one or more valid and enforceable claims of the '850 patent, in

1 violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
2 and/or selling or licensing infringing systems, products, and/or services in the
3 United States without authority or license from Ameranth, including but not
4 limited to the Hotel Tonight Reservation system/product/service, which includes,
5 *inter alia*, hotel/lodging-reservation and property management system (PMS)
6 integration, online and mobile hotel/lodging reservations, integration with e-mail
7 and affinity program and social media applications such as Facebook, Twitter,
8 Groupon, and YouTube, and/or other third-party web-based applications, and
9 other hospitality aspects (the “Hotel Tonight Reservation System”). Ameranth
10 has previously served Hotel Tonight with infringement contentions in this action
11 further describing the details of Hotel Tonight’s infringement of Ameranth’s
12 patents. Those infringement contentions are attached hereto as **Exhibit D** and
13 incorporated herein by reference.

14 19. On information and belief, the Hotel Tonight Reservation System, as
15 deployed and/or used at or from one or more locations by Hotel Tonight, its
16 agents, distributors, partners, affiliates, licensees, and/or their customers,
17 infringes one or more valid and enforceable claims of the ‘850 patent, by, *inter*
18 *alia*, doing at least one of the following: (a) Generating and transmitting menus in
19 a system including a central processing unit, a data storage device, a computer
20 operating system containing a graphical user interface, one or more displayable
21 main menus, modifier menus, and sub-modifier menus, and application software
22 for generating a second menu and transmitting it to a wireless handheld
23 computing device or a Web page; and/or (b) Enabling reservations and other
24 hospitality functions via iPhone, Android, and other internet-enabled wireless
25 handheld computing devices as well as via Web pages, storing hospitality
26 information and data on at least one central database, on at least one wireless
27 handheld computing device, and on at least one Web server and Web page, and

1 synchronizing applications and data, including but not limited to applications and
2 data relating to ordering, between at least one central database, wireless handheld
3 computing devices, and at least one Web server and Web page; utilizing an
4 interface that provides a single point of entry that allows the synchronization of at
5 least one wireless handheld computing device and at least one Web page with at
6 least one central database; allowing information to be entered via Web pages,
7 transmitted over the internet, and automatically communicated to at least one
8 central database and to wireless handheld computing devices; allowing
9 information to be entered via wireless handheld computing devices, transmitted
10 over the internet, and automatically communicated to at least one central database
11 and to Web pages.

12 20. On information and belief, defendant Hotel Tonight has indirectly
13 infringed and continues to indirectly infringe one or more valid and enforceable
14 claims of the '850 patent, in violation of 35 U.S.C. § 271(b), by actively,
15 knowingly, and intentionally inducing direct infringement by other persons.

16 21. On information and belief, customers of Hotel Tonight, including
17 consumers and hotel/restaurant operators, use the Hotel Tonight Reservation
18 System in a manner that infringes the Ameranth patents. Hotel Tonight provides
19 instruction and direction regarding the use of the Hotel Tonight Reservation
20 System, and advertises, promotes, and encourages the use of the Hotel Tonight
21 Reservation System in a manner understood and intended by Hotel Tonight to
22 infringe Ameranth's patents. Hotel Tonight provides such instruction, direction
23 and encouragement regarding infringing use of the Hotel Tonight Reservations
24 System on its webpages, in advertising, in user videos, in offerings on mobile
25 "app stores," in press releases and in statements in industry news articles, as
26 demonstrated in the infringement contentions attached hereto as **Exhibit D** and in
27 the references cited in the appendix thereto.

1 22. On information and belief, the Hotel Tonight Reservation System
2 infringes one or more valid and enforceable claims of the ‘850 patent for the
3 reasons set forth hereinabove.

4 23. At least since the filing and service of the original complaint against
5 Hotel Tonight in this matter, Hotel Tonight has had knowledge of the ‘850 patent,
6 and knew or should have known that its continued offering and deployment of the
7 Hotel Tonight Reservation System, and its continued support of consumers,
8 hotel/restaurant operators, and other users of this system/product/service, would
9 induce direct infringement by those users. Additionally, Hotel Tonight intended
10 that its actions would induce direct infringement of Ameranth’s patents by those
11 users.

12 24. On information and belief, Defendant has indirectly infringed and
13 continues to indirectly infringe one or more valid and enforceable claims of the
14 ‘850 patent, in violation of 35 U.S.C. § 271(c).

15 25. By distributing, selling, offering, offering to sell or license and/or selling
16 or licensing the Hotel Tonight Reservation System, Hotel Tonight provides non-
17 staple articles of commerce to others, including consumers and hotel/restaurant
18 operators, for use in infringing systems, products, and/or services. Additionally,
19 Hotel Tonight provides instruction and direction regarding the use of the Hotel
20 Tonight Reservation System, and advertises, promotes, and encourages the use of
21 the Hotel Tonight Reservation System in a manner understood and intended by
22 Hotel Tonight to infringe Ameranth’s patents, as described above. Users of the
23 Hotel Tonight Reservation System, including consumers and hotel/restaurant
24 operators, directly infringe one or more valid and enforceable claims of the ‘850
25 patent for the reasons set forth hereinabove.

1 26. On information and belief, the Hotel Tonight Reservation System
2 infringes one or more valid and enforceable claims of the ‘850 patent, for the
3 reasons set forth hereinabove.

4 27. On information and belief, Hotel Tonight has had knowledge of the ‘850
5 patent at least since the filing and service of the original complaint in this action
6 against Hotel Tonight, including knowledge that the Hotel Tonight Reservation
7 System, which is a non-staple article of commerce, has been used as a material
8 part of the claimed invention of the ‘850 patent, and that there are no substantial
9 non-infringing uses for the Hotel Tonight Reservation System.

10 28. The aforesaid infringing activity of defendant Hotel Tonight has directly
11 and proximately caused damage to plaintiff Ameranth, including loss of profits
12 from sales or licensing it would have made but for the infringements. Unless
13 enjoined, the aforesaid infringing activity will continue and cause irreparable
14 injury to Ameranth for which there is no adequate remedy at law.

15 **COUNT II**

16 **Patent Infringement (U.S. Pat. No. 6,871,325)**

17 **(35 U.S.C. § 271)**

18 29. Plaintiff reiterates and reincorporates the allegations set forth in
19 paragraphs 1-28 above as if fully set forth herein.

20 30. On March 22, 2005, United States Patent No. 6,871,325 entitled
21 “Information Management and Synchronous Communications System with Menu
22 Generation” (“the ‘325 patent”) (a true and correct copy of which is attached
23 hereto as **Exhibit B**) was duly and legally issued by the United States Patent &
24 Trademark Office.

25 31. Plaintiff Ameranth is the lawful owner by assignment of all right, title
26 and interest in and to the ‘325 patent.

1 32. On information and belief, Defendant directly infringes and continues to
2 directly infringe one or more valid and enforceable claims of the '325 patent, in
3 violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
4 and/or selling or licensing infringing systems, products, and/or services in the
5 United States without authority or license from Ameranth, including but not
6 limited to the Hotel Tonight Reservation System. Ameranth has previously
7 served Hotel Tonight with infringement contentions in this action further
8 describing the details of Hotel Tonight's infringement of Ameranth's patents.
9 Those infringement contentions are attached hereto as **Exhibit D** and
10 incorporated herein by reference.

11 33. On information and belief, the Hotel Tonight Reservation System, as
12 deployed and/or used at or from one or more locations by Hotel Tonight, its
13 agents, distributors, partners, affiliates, licensees, and/or their customers,
14 infringes one or more valid and enforceable claims of the '325 patent, by, *inter*
15 *alia*, doing at least one of the following: (a) Generating and transmitting menus in
16 a system including a central processing unit, a data storage device, a computer
17 operating system containing a graphical user interface, one or more displayable
18 main menus, modifier menus, and sub-modifier menus, and application software
19 for generating a second menu and transmitting it to a wireless handheld
20 computing device or a Web page; and/or (b) Enabling reservations and other
21 hospitality functions via iPhone, Android, and other internet-enabled wireless
22 handheld computing devices as well as via Web pages, storing hospitality
23 information and data on at least one central database, on at least one wireless
24 handheld computing device, and on at least one Web server and Web page, and
25 synchronizing applications and data, including but not limited to applications and
26 data relating to orders, between at least one central database, wireless handheld
27 computing devices, and at least one Web server and Web page; and sending

1 alerts, confirmations, and other information regarding orders to various wireless
2 mobile devices.

3 34. On information and belief, Defendant has indirectly infringed and
4 continues to indirectly infringe one or more valid and enforceable claims of the
5 ‘325 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
6 intentionally inducing direct infringement by other persons.

7 35. On information and belief, customers of Hotel Tonight, including
8 consumers and hotel/restaurant operators, use the Hotel Tonight Reservation
9 System in a manner that infringes upon one or more valid and enforceable claims
10 of the ‘325 patent. Hotel Tonight provides instruction and direction regarding the
11 use of the Hotel Tonight Reservation System and advertises, promotes, and
12 encourages the use of the Hotel Tonight Reservation System in a manner
13 understood and intended by Defendant to infringe Ameranth’s patents. Hotel
14 Tonight provides such instruction, direction and encouragement regarding
15 infringing use of the Hotel Tonight Reservations System on its webpages, in
16 advertising, in user videos, in offerings on mobile “app stores,” in press releases
17 and in statements in industry news articles, as demonstrated in the infringement
18 contentions attached hereto as **Exhibit D** and in the references cited in the
19 appendix thereto.

20 36. On information and belief, Defendant actively induces others to infringe
21 the ‘325 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging,
22 aiding and abetting customers of Hotel Tonight, including consumers and
23 hotel/restaurant operators, to use the infringing Hotel Tonight Reservation
24 System in the United States without authority or license from Ameranth in a
25 manner understood and intended by Defendant to infringe Ameranth’s patents.

26 37. On information and belief, Defendant contributorily infringes and
27 continues to contributorily infringe one or more valid and enforceable claims of

1 the '325 patent, in violation of 35 U.S.C. § 271(c) by offering to sell and/or
2 selling components of systems on which claims of the '325 patent read,
3 constituting a material part of the invention, knowing that the components were
4 especially adapted for use in systems which infringe claims of the '325 patent.

5 38. By distributing, selling, offering, offering to sell or license and/or selling
6 or licensing the Hotel Tonight Reservation System, Defendant provides non-
7 staple articles of commerce to others for use in infringing systems, products,
8 and/or services. Additionally, Hotel Tonight provides instruction and direction
9 regarding the use of the Hotel Tonight Reservation System and advertises,
10 promotes, and encourages the use of the Hotel Tonight Reservation System in
11 manner understood and intended by Defendant to infringe Ameranth's patents, as
12 described above. Users of the Hotel Tonight Reservation System directly
13 infringe one or more valid and enforceable claims of the '325 patent, for the
14 reasons set forth hereinabove.

15 39. On information and belief, the Hotel Tonight Reservation System
16 infringes one or more valid and enforceable claims of the '325 patent, for the
17 reasons set forth hereinabove.

18 40. On information and belief, Hotel Tonight has had knowledge of the '325
19 patent at least since the filing and service of the original complaint in this matter
20 upon Hotel Tonight, including knowledge that the Hotel Tonight Reservation
21 System, which is a non-staple articles of commerce, has been used as a material
22 part of the claimed invention of the '325 patent, and that there are no substantial
23 non-infringing uses for the Hotel Tonight Reservation System.

24 41. The aforesaid infringing activity of defendant Hotel Tonight has directly
25 and proximately caused damage to plaintiff Ameranth, including loss of profits
26 from sales or licensing it would have made but for the infringements. Unless
27

1 enjoined, the aforesaid infringing activity will continue and cause irreparable
2 injury to Ameranth for which there is no adequate remedy at law.

3 **COUNT III**

4 **Patent Infringement (U.S. Pat. No. 8,146,077)**

5 **(35 U.S.C. § 271)**

6 42. Plaintiff reiterates and incorporates the allegations set forth in paragraphs
7 1-41 above as if fully set forth herein.

8 43. On March 27, 2012, United States Patent No. 8,146,077 entitled
9 “Information Management and Synchronous Communications System with Menu
10 Generation, and Handwriting and Voice Modification of Orders” (a true copy of
11 which is attached hereto as **Exhibit C** and incorporated herein by reference) was
12 duly and legally issued by the United States Patent & Trademark Office.

13 44. Plaintiff Ameranth is the lawful owner by assignment of all right, title
14 and interest in and to the ‘077 patent.

15 45. On information and belief, Defendant directly infringes and continues to
16 directly infringe one or more valid and enforceable claims of the ‘077 patent, in
17 violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
18 and/or selling or licensing infringing systems, products, and/or services in the
19 United States without authority or license from Ameranth, including but not
20 limited to the Hotel Tonight Reservation System.

21 46. On information and belief, the Hotel Tonight Reservation System, as
22 deployed and/or used at or from one or more locations by Hotel Tonight, its
23 agents, distributors, partners, affiliates, licensees, and/or their customers,
24 infringes one or more valid and enforceable claims of the ‘077 patent, by, *inter*
25 *alia*, doing at least one of the following: (a) Configuring and transmitting menus
26 in a system including a central processing unit, a data storage device, a computer
27 operating system containing a graphical user interface, one or more displayable

1 master menus, menu configuration software enabled to generate a menu
2 configuration for a wireless handheld computing device in conformity with a
3 customized display layout, and enabled for synchronous communications and to
4 format the menu configuration for a customized display layout of at least two
5 different wireless handheld computing device display sizes, and/or (b) Enabling
6 reservations and other hospitality functions via iPhone, Android, and other
7 internet-enabled wireless handheld computing devices as well as via Web pages,
8 storing hospitality information and data on at least one database, on at least one
9 wireless handheld computing device, and on at least one Web server and Web
10 page, and synchronizing applications and data, including but not limited to
11 applications and data relating to orders, between at least one database, wireless
12 handheld computing devices, and at least one Web server and Web page; utilizing
13 communications control software enabled to link and synchronize hospitality
14 information between at least one database, wireless handheld computing device,
15 and web page, to display information on web pages and on different wireless
16 handheld computing device display sizes, and to allow information to be entered
17 via Web pages, transmitted over the internet, and automatically communicated to
18 at least one database and to wireless handheld computing devices; allowing
19 information to be entered via wireless handheld computing devices, transmitted
20 over the internet, and automatically communicated to at least one database and to
21 Web pages.

22 47. On information and belief, Defendant has indirectly infringed and
23 continues to indirectly infringe one or more valid and enforceable claims of the
24 '077 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
25 intentionally inducing direct infringement by other persons.

26 48. On information and belief, customers of Hotel Tonight, including
27 consumers and hotel/restaurant operators, use the Hotel Tonight Reservation

1 System in a manner that infringes upon one or more valid and enforceable claims
2 of the '077 patent. Hotel Tonight provides instruction and direction regarding the
3 use of the Hotel Tonight Reservation System and advertises, promotes, and
4 encourages the use of the Hotel Tonight Reservation System in a manner
5 understood and intended by Defendant to infringe Ameranth's patents. Hotel
6 Tonight provides such instruction, direction and encouragement regarding
7 infringing use of the Hotel Tonight Reservations System on its webpages, in
8 advertising, in user videos, in offerings on mobile "app stores," in press releases
9 and in statements in industry news articles, as demonstrated in the infringement
10 contentions attached hereto as **Exhibit D** and in the references cited in the
11 appendix thereto.

12 49. On information and belief, Defendant actively induces others to infringe
13 the '077 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging,
14 aiding and abetting customers of Hotel Tonight, including consumers and
15 hotel/restaurant operators, to use the infringing Hotel Tonight Reservation
16 System in the United States without authority or license from Ameranth in a
17 manner understood and intended by Hotel Tonight to infringe Ameranth's
18 patents.

19 50. On information and belief, Defendant contributorily infringes and
20 continues to contributorily infringe one or more valid and enforceable claims of
21 the '077 patent, in violation of 35 U.S.C. § 271(c), by offering to sell and/or
22 selling components of systems on which claims of the '077 patent read,
23 constituting a material part of the invention, knowing that the components were
24 especially adapted for use in systems which infringe claims of the '077 patent.

25 51. By distributing, selling, offering, offering to sell or license and/or selling
26 or licensing the Hotel Tonight Reservation System, Defendant provides non-
27 staple articles of commerce to others for use in infringing systems, products,

1 and/or services. Additionally, Hotel Tonight provides instruction and direction
2 regarding the use of the Hotel Tonight Reservation System and advertises,
3 promotes, and encourages the use of the Hotel Tonight Reservation System in
4 manner understood and intended by Hotel Tonight to infringe Ameranth's
5 patents, as described above. Users of the Hotel Tonight Reservation System,
6 including but not limited to consumers and hotel/restaurant operators, directly
7 infringe one or more valid and enforceable claims of the '077 patent, for the
8 reasons set forth hereinabove.

9 52. On information and belief, the Hotel Tonight Reservation System
10 infringes one or more valid and enforceable claims of the '077 patent, for the
11 reasons set forth hereinabove.

12 53. On information and belief, Hotel Tonight has had knowledge of the '077
13 patent at least since the filing and service of the original complaint in this matter
14 upon Hotel Tonight, including knowledge that the Hotel Tonight Reservation
15 System, which is a non-staple article of commerce, has been used as a material
16 part of the claimed invention of the '077 patent, and that there are no substantial
17 non-infringing uses for the Hotel Tonight Reservation System.

18 54. The aforesaid infringing activity of defendant Hotel Tonight has directly
19 and proximately caused damage to plaintiff Ameranth, including loss of profits
20 from sales or licensing it would have made but for the infringements. Unless
21 enjoined, the aforesaid infringing activity will continue and cause irreparable
22 injury to Ameranth for which there is no adequate remedy at law.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, plaintiff Ameranth respectfully prays for judgment against
25 Defendant, as follows:

26 1. Adjudging that the manufacture, use, offer for sale or license and /or
27 sale or license of the Hotel Tonight Reservation System infringes valid and

1 enforceable claims of the '850 patent, and the '325 patent, and the '077 patent, as
2 set forth hereinabove;

3 2. Adjudging that Defendant has infringed, actively induced others to
4 infringe and/or contributorily infringed valid and enforceable claims of the '850
5 patent, and the '325 patent, and the '077 patent, as set forth hereinabove;

6 3. Enjoining Defendant, and its officers, directors, employees,
7 attorneys, agents, representatives, parents, subsidiaries, affiliates and all other
8 persons acting in concert, participation or privity with Defendant, and their
9 successors and assigns, from infringing, contributorily infringing and/or inducing
10 others to infringe the valid and enforceable claims of the '850 patent, and the
11 '325 patent, and the '077 patent;

12 4. Awarding Ameranth the damages it has sustained by reason of
13 Defendant's infringement, together with interest and costs pursuant to 35 U.S.C.
14 § 284;

15 5. Awarding to Ameranth its costs of suit, and interest as provided by
16 law; and

17 6. Awarding to Ameranth such other and further relief that this Court
18 may deem just and proper.

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DEMAND FOR JURY TRIAL

Ameranth demands trial by jury of its claims set forth herein to the maximum extent permitted by law.

Respectfully submitted,

Dated: July 25, 2013

CALDARELLI HEJMANOWSKI & PAGE LLP

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