

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

America's Collectibles Network, Inc.

Plaintiff,

vs.

The Jewelry Channel, Inc. USA d/b/a
Liquidation Channel,

Defendant.

Civil Action No. 3:13-cv-003344

Judge Harry S. Mattice, Jr.

Magistrate Judge H. Bruce Guyton

FIRST AMENDED COMPLAINT

Plaintiff America's Collectibles Network, Inc. ("Plaintiff" or "America's Collectibles"), complaining of Defendant The Jewelry Channel, Inc. USA d/b/a Liquidation Channel, ("Defendant" or "Liquidation Channel "), alleges and asserts the following in this First Amended Complaint:

Parties

1. Plaintiff, America's Collectibles, is a corporation of the State of Tennessee, and maintains its principal place of business at 9600 Parkside Drive, Knoxville, Tennessee 37922 ("America's Collectibles" or "Plaintiff"). America's Collectibles operates a home shopping network, through which it sells jewelry, gemstones and related items through its national television broadcast and through its website, www.jtv.com.

2. Upon information and belief, Defendant, The Jewelry Channel, Inc. USA, is a corporation doing business under the name "Liquidation Channel" and maintains its principal place of business at 100 Michael Angelo Way, Suite 400D, Austin, Texas 78728 ("Liquidation Channel" or "Defendant"). Liquidation Channel operates a home shopping network, selling

jewelry, gemstones and related items under the name LIQUIDATION CHANNEL, doing business throughout the United States. Liquidation Channel is a competitor to America's Collectibles.

Timing of Filing Amended Complaint

3. The original Complaint in this action was filed on June 13, 2013.

4. This First Amended Complaint is being filed under Federal Rule of Civil Procedure 15(a)(1)(B) within twenty-one (21) days after service of a motion under Rule 12(b) by Liquidation Channel, is the first amendment to the original Complaint and, is therefore, allowed as a matter of course.

Jurisdiction and Venue

5. This is a suit for infringement of United States Patent No. 8,370,211 (the '211 patent) and involves Defendant's use of a method and system for conducting reverse auctions. A copy of the '211 patent is attached as Exhibit A hereto.

6. Upon information and belief, Defendant, through its Liquidation Channel television broadcasts and its Liquidation Channel website, which can be found at www.liquidationchannel.com/tvauction.html, has made, used, sold, offered for sale, and/or imported a method and system into the United States that infringes the '211 patent. Liquidation Channel's method and systems are used and distributed, at least in part, through its national television broadcasts, which are carried on DISH TV and DirecTV, and which can also be viewed live online from any location in the United States at www.liquidationchannel.com/tvauction.html. Upon information and belief, the Liquidation Channel television broadcast has been broadcast into, accessed from, and used in Tennessee, in this judicial district and elsewhere in the United States and that, upon information and belief,

has been used by customers in Tennessee, in this judicial district, and elsewhere in the United States, to purchase jewelry and gemstone products.

7. The action herein alleged arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.* and, more particularly, 35 U.S.C. §§ 271 and 281-87.

8. Subject matter jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1332(a), and 1338(a).

9. Personal jurisdiction is invoked under the provisions of Tennessee Code §§ 20-2-201, 20-2-214, 20-2-223 and/or 20-2-225.

10. Venue is proper under the provisions of 28 U.S.C. §§ 1391(b)-(c).

Factual Allegations

11. The allegations of paragraphs 1 – 10 are incorporated by reference as if fully set forth herein.

12. The '211 patent, entitled “Computer System,” was issued on February 5, 2013.

13. The inventors, Clive Bryant, Dylan Bartlett, and Chris Lawton, assigned all right, title, and interest in and to the '211 patent to Gems TV Ltd.

14. America's Collectibles acquired, by assignment, all right, title, and interest in and to the '211 patent through assignments originating from Gems TV Ltd.

15. Upon information and belief, Defendant, through its Liquidation Channel television broadcasts and its Liquidation Channel website, found at www.liquidationchannel.com/tvauction.html, has made, used, sold, offered for sale, and/or imported a method and system into the United States that infringes the '211 patent by employing a system and method embodying the invention of the '211 patent, including by conducting reverse auctions according to a method and using a system available, at least in

part, through its national broadcasts ("Infringing Reverse Auctions"). Defendant is also selling products in and/or importing products into the United States (including Tennessee and this judicial district) through use of the method and system utilized by the Infringing Reverse Auctions.

16. According to Liquidation Channel, its reverse auctions, which it refers to as a "drop auction", have at least the following characteristics:

- a. How does a drop auction work?: The initial price is displayed on screen once an item is available for auction. As the auction continues, this amount will drop and each bidder will receive the lowest price indicated for that particular auction. As soon as the items have been purchased the auction will end. Each bid is accepted on a first come first served basis.
- b. When does an auction end?: An auction ends when the total number of items has been purchased or the time has run out for that particular piece to be aired. In certain auctions, a clock is shown on screen which will end when the count-down reaches 0:00.
- c. What is the starting price?: The starting price is a value established at the beginning of an auction. However, the Liquidation Channel does not claim that it is the substitute value, appraised value or suggested retail price of the item.
- d. Prices: For Products purchased via the LC television channel, the Price is set for each Product at the conclusion of the television [auction], by the software program auctioneer (the "Auctioneer"). The Price for the applicable Product is only effective for customers who have Successful Bids. A "Successful Bid" means the auction bid price offered by you and accepted by the Auctioneer on

the LC channel for a specified Product. There is no guaranty that you will have a Successful Bid. For Products purchased directly through the LC Web site, the amount advertised is the Price for such Products.

e. The following are successive screenshots of a live auction from the Liquidation Channel's internet website:


LIVE NOW

Item: 1435153
 KARIS Collection - Thai Black Spinel (Cush 3.25 Ct) 3 Stone Ring in Platinum Bond Brass (Size 10) TGW 6.40 cts.

Size 6	Press 1
Size 7	Press 2
Size 8	Press 3
Size 9	Press 4
Size 10	Press 5

Start: \$99
 Quantity: 106
~~\$99.99~~
 S&H \$1.99 (US) **LC** 1-877-899-0099 **Everything Under \$20**

Current on Air Item:



KARIS Collection - Thai Black Spinel (Cush 3.25 Ct) 3 Stone Ring in Platinum Bond Brass (Size 7) TGW 6.40 cts.

\$99.99

Starting Price: \$99.99
 Item No: 1435153
 Quantity: 106

Select your Choice

VIEW PRODUCT
ADD TO CART

Notice:- Live Stream is delayed between 0-30 secs depending on your internet connection.

LIVE NOW


Item: 1435154
 KARIS Collection - Thai Black Spinel (Cush 3.25 Ct) 3 Stone Ring in Platinum Bond Brass (Size 6) TGW 6.40 cts.

Size 6	Press 1
Size 7	Press 2
Size 8	Press 3
Size 9	Press 4
Size 10	Press 5

LIMITED QUANTITY

Start: \$99
 Quantity: 105
~~\$99.99~~
 S&H \$1.99 (US) **LC** 1-877-899-0099 **Bill Me Later** No Payments! No Interest for 6 Months!

Current on Air Item:



KARIS Collection - Thai Black Spinel (Cush 3.25 Ct) 3 Stone Ring in Platinum Bond Brass (Size 7) TGW 6.40 cts.

\$14.99

Starting Price: \$99.99
 Item No: 1435153
 Quantity: 105

Select your Choice

VIEW PRODUCT
ADD TO CART

Notice:- Live Stream is delayed between 0-30 secs depending on your internet connection.

17. On June 13, 2013, America's Collectibles sent to Liquidation Channel the letter attached as Exhibit B, thus placing Liquidation Channel on notice of the '211 patent.

18. The acts specified in Paragraph 15 above have been performed in the United States both before and after February 5, 2013.

19. The acts specified in Paragraph 15 above have continued after the original Complaint was filed and after the letter referred to in Paragraph 17 was sent to Liquidation Channel.

Count for Patent Infringement

20. The allegations of paragraphs 1 – 19 are incorporated by reference as if fully set forth herein.

21. Upon information and belief, Defendant has infringed and continues to infringe the '211 patent by making, using, selling, offering for sale and/or importing methods and systems embodying the patented invention, including through broadcasting and using Infringing Reverse Auctions through Liquidation Channel's national television broadcasts, which broadcasts are carried on DISH TV and DirecTV, and which can also be viewed live online from any location in the United States at www.liquidationchannel.com/tvauction.html, to customers in the United States, including customers in Tennessee, either directly or through intermediaries controlled by Defendant.

22. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method, either literally or equivalently, that:

- a. is a telephone based reverse auction for selling units where the reverse auction is transmitted to users on a medium by a system;

- b. provides a number of units for sale and stores a preliminary available quantity in an allocation database initially indicative of the number provided for sale;
- c. provides a telephone number to which calls from callers can be placed to enter the reverse auction;
- d. records the time at which one or more calls were received on the telephone number in a call record in a call database;
- e. places each caller into a queue and assigning them to a call operator or the system in order to sell a unit;
- f. conducts a reverse auction in which the system reduces the indicated price of a unit over time and reduces the preliminary available quantity, wherein the preliminary available quantity is reduced based at least partly on one or more preliminary indicators associated with the caller, and wherein the reducing of the preliminary available quantity occurs before a sale of a unit is completed;
- g. concludes the reverse auction at a time the preliminary available quantity is reduced to a pre-determined number; and
- h. stores in an auction database the price at the conclusion of the auction.

23. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 22 and further, either literally or equivalently, puts calls through to the call operator or system in an order dependent on the stored time on the call record.

24. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing

Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 22 and further, either literally or equivalently, determines the price at which a unit is sold from the price at the conclusion stored in the action database.

25. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 22 and prompts each caller to enter a piece of data, before entering them into the queue and storing that data on the call record.

26. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 22 and the aspect set forth in Paragraph 25 and further, either literally or equivalently, places the call into the queue dependent on the data entered.

27. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 22 and the aspect set forth in Paragraph 25 and further, either literally or equivalently, where a preliminary indicator includes the data entered and stored in the call record.

28. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 22 and the aspect set forth in Paragraph 25 and further, either literally or

equivalently, where a preliminary indicator includes the time that the data is entered and stored in the call record.

29. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 22 and the aspect set forth in Paragraph 25 and further, either literally or equivalently, where the user is prompted to enter a number on their telephone and where one or more numbers are taken as a preliminary indicator and zero, one or more numbers are taken to not be a preliminary indicator.

30. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 22 and further, either literally or equivalently, where the number of units provided and a final allocation is also stored in the allocation database and the final allocation is increased whenever a final sale is completed with the system determining whether a sale can be made by determining if the allocation is still below the numbers of units provided.

31. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 22 and, either literally or equivalently, generates an order record whenever a sale is confirmed, with the order record including payment details.

32. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing

Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 22 and wherein, either literally or equivalently, when there are more callers giving preliminary indicators than available units, the callers with the earlier times on their call record are sold the units or the callers who gave appropriate preliminary indicators are sold the units and when there are more callers who gave the appropriate preliminary indicator than there are available units, the callers who gave the appropriate indicator and have the earlier stored time are sold the units.

33. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 22 and further, either literally or equivalently, also stores in the call database a product that was part of the auction at the time the caller called and when the caller is put through to the operator or system, the unit offered for sale to them is determined from the stored product in the call record.

34. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 22 where orders can be placed by internet as well as by telephone.

35. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 21 and the aspect set forth in Paragraph 34 where the auction is transmitted both over the internet and by television.

36. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 21 and the aspect set forth in Paragraph 34 and wherein, either literally or equivalently, when the auction is transmitted over the internet, the act of a user notifying an intent to buy a unit on the internet by placing it in a shopping cart may comprise a preliminary indicator.

37. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, and/or using, in the United States, a computer system, either literally or equivalently, that:

- a. conducts a reverse auction of units;
- b. includes
 - i. a processor that is configured to
 1. display a price on the display;
 2. reduce the displayed price over time and to reduce a preliminary available quantity;
 3. determine when the preliminary available quantity is reduced to a pre-determined number;
 4. store the displayed price at that time in an auction database; and
 5. prevent new telephone calls to a telephony system being entered into the auction;

- ii. a memory connected to the processor including an allocation database, wherein the allocation database contains a preliminary available quantity indicative of the number of units provided in an auction;
 - iii. an auction database;
 - iv. a call database;
 - v. a telephony system that is configured to
 - 1. record the time at which a call is received and a number which was dialed in a call record in the call database;
 - 2. place each caller into a queue assigning them to a call operator or system in order to sell a unit; and
 - vi. a display; and
- c. reduces the preliminary available quantity based at least partly on one or more preliminary indicators associated with, the caller, wherein the reducing of the preliminary available quantity occurs before a sale of the unit is completed.

38. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that sell units on a television by using a system, either literally or equivalently, that:

- a. conducts a reverse auction;
- b. displays a unit for sale on television along with an initial price and the number of the units available for sale in the reverse auction;
- c. allows telephone calls to be made to the system for callers to take part in the reverse auction;

- d. determines by the system that a caller has given sufficient indications based on one or more preliminary indicators that a sale is likely to occur;
- e. reduces the displayed available quantity based at least partly on the one or more preliminary indicators associated with the caller, wherein the reducing of the preliminary available quantity occurs before a sale of a unit is completed;
- f. reduces the displayed price for the unit to encourage more callers to reduce the television time taken up by the auction; and
- g. concludes the auction when the displayed available quantity reaches zero.

39. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 38 and freezes the price once the displayed available quantity has reached zero and sells all the units in the auction at the frozen price.

40. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method that includes all the aspects set forth above in Paragraph 38 and the aspect in Paragraph 39 where the information concerning the auction is provided on a website substantially simultaneously as on television and allows entries into the auction to be made from the internet.

41. Upon information and belief, Defendant has infringed the '211 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale and/or importing Infringing Reverse Auctions that utilize a method, either literally or equivalently, that:

- a. conducts an internet-based reverse auction for selling units where the reverse auction is transmitted to users on a medium;
- b. provides a number of units for sale;
- c. stores a preliminary available quantity in an allocation database initially indicative of the number provided for sale;
- d. provides a website purchasing facility to which orders from users can be placed to enter the reverse auction;
- e. records the time at which one or more calls were received by callers on a telephone number in a call record in a call database;
- f. places each caller into a queue and assigns them to a system in order to sell a unit; and
- g. conducts the reverse auction in which
 - i. the system reduces the indicated price of a unit over time and reduces the preliminary available quantity;
 - ii. the preliminary available quantity is reduced based at least partly on one or more preliminary indicators associated with the caller;
 - iii. the reducing of the preliminary available quantity occurs before a sale of a unit is completed;
 - iv. the reverse auction is concluded at a time the preliminary available quantity is reduced to a pre-determined number; and
 - v. the price at the conclusion of the auction is stored in an auction database.

42. Upon information and belief, the acts set forth in Paragraphs 15 and 20 – 43 have been committed, at least in part, after Liquidation Channel received notice of the '211

patent and, have thus, been committed with the knowing, deliberate, and willful intent to infringe the '211 patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for entry of judgment:

- (a) Holding that Defendant has infringed the '211 patent;
- (b) Preliminarily and permanently enjoining Defendant, its officers, agents, employees, representatives, and all others acting in concert therewith, from further infringement of the '211 patent;
- (c) Awarding Plaintiff damages adequate to compensate for such infringement, and in no event less than a reasonable royalty, and increasing such damages three (3) times by reason of this being an exceptional case, together with interest and costs;
- (d) Awarding Plaintiff its reasonable attorneys' fees in prosecuting this action; and
- (e) Affording such further and other relief as this Court may deem just and proper.

PLAINTIFF DEMANDS A JURY TRIAL

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Respectfully Submitted,
NELSON MULLINS RILEY & SCARBOROUGH, LLP

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Attorneys for Plaintiff America's Collectibles Network, Inc.

November 12, 2013.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

America's Collectibles Network, Inc.

Plaintiff,

vs.

The Jewelry Channel, Inc. USA d/b/a
Liquidation Channel,

Defendant.

Civil Action No. 3:13-cv-00334

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough, LLP, do hereby certify that on this 12th day of November, 2013 a true and correct copy of the pleading(s) hereinbelow specified was served on all counsel of record who are participants in the CM/ECF system, as well as via U.S. Mail upon the counsel listed below not participating in the CM/ECF system.

Pleadings: FIRST AMENDED COMPLAINT

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