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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

WAG ACQUISITION, L.L.C.,

Plaintiff,

v.

**FLYING CROCODILE, INC., d/b/a FCI,
Inc.;**

FCI, Inc., f/k/a Flying Crocodile, Inc.;

**ACCRETIVE TECHNOLOGY GROUP,
INC., d/b/a Accretive Networks;**

ICF TECHNOLOGY, INC.;

RISER APPS LLC;

STREAMATES LIMITED;

**STREAMATES LIMITED DBA
STREAMATES LIMITED, LLC; and**

DOES 1-20,

Defendants.

Civil Action No.:

**COMPLAINT FOR PATENT
INFRINGEMENT**

and

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff WAG ACQUISITION, L.L.C., for its complaint against Defendants, alleges that Defendants infringe United States Patent Nos. 8,122,141, 8,327,011, 8,185,611, and 8,364,839 (the “patents-in-suit”) by conduct including without limitation Internet delivery of live adult video webcam performances in a manner that infringes these patents.

THE PARTIES

1. Plaintiff WAG Acquisition, L.L.C. is a New Jersey limited liability company with its principal place of business at 3 Gold Mine Road, Suite 104, Flanders, New Jersey 07836. Plaintiff operates an Internet broadcasting business based in New Jersey, under the trade name SurferNETWORK.

2. Defendants are an international group of entities with substantial operations in Seattle, Washington, that operate a worldwide network of adult live interactive webcam performers and Internet sites. Defendants are the largest such group in the world. Defendants have live performers who work throughout the United States and in far reaches of the world, and stream their performances through a multitude of web sites, including without limitation streamates.com, streamen.com, tsmate.com, xhamstercams.com, pornhublive.com, redtubelive.com, youjizzlive.com, ypmate.com, cam4ultimate.com, livefreefun.com, streev.com, perfectcamgirls.com, privatehdcams.com, camonster.com, tube8live.com, keezlive.com, spankwirecams.com, fuckcams.com, xvideoslive.com, livefreefun.net, cam4ultimate.net, wantlive.com, and literally hundreds of other similar sites. (On

their recruiting site at streamatemodels.com, Defendants claim to have over 500 such sites “within our network.”)

3. On information and belief, Defendant FLYING CROCODILE, INC. (“Flying Croc”) is a Washington corporation, now known as FCI, Inc. and/or ICF Technology, Inc., with a business address listed by it, at 417 Virginia Avenue, Suite 200, Seattle, Washington 98121. Flying Croc has a long history of involvement in the adult live webcam business and has been responsible for the adoption of many of the business practices and technologies used in its industry.

4. On information and belief, Defendant FCI, INC. (“FCI”) is a Washington corporation with offices at 2019 Third Avenue, Seattle, Washington 98121, that succeeded to a substantial part of Flying Croc’s business.

5. On information and belief, Defendant ICF TECHNOLOGY, INC. (“ICF”) is a Washington corporation with offices at 800 Stewart Street, Seattle, Washington 98101. On information and belief, effective on or about June 1, 2013, Defendant ICF acquired substantially all of the business of Defendant FCI. On information and belief, in addition to its live webcam streaming operations, Defendant ICF does business under trade names including but not limited to Mtree and Money Tree.

6. On information and belief, Defendant ACCRETIVE TECHNOLOGY GROUP, INC. (“ATG”) is a Washington corporation with offices at 2019 Third Avenue, Seattle, Washington 98121. On information and belief, at least Defendants FCI and ICF are wholly-owned subsidiaries of Defendant ATG.

7. On information and belief, Defendant RISER APPS LLC (“Riser Apps”) is a Washington limited liability company with offices at 2019 Third Avenue, Suite 200,

Seattle, Washington 98121, which is nominally the developer of an iPhone app called the “B-Line Browser” specially designed for viewing Defendants’ web sites.

8. On information and belief, Defendant Streamates Limited (“Streamates-Cyprus”) is a corporation organized under the laws of Cyprus with offices at Margarita House 15, Themistocles Dervis Street, P.O. Box 27, Nicosia 1642, Cyprus, and/or 196 Arch Makarios Avenue, Ariel Corner, 1st Floor, Office 102, PO Box 57528, Limassol 3316, Cyprus. Defendant Streamates-Cyprus owns the streamate.com Internet domain, which is Defendants’ flagship live webcam site, and other Internet domains material to Defendants’ operations, and is named as the contracting party on written contracts for individuals to perform as “Web Cam Models” on Defendants’ sites.

9. On information and belief, Defendant STREAMATES LIMITED DBA STREAMATES, LLC (“Streamates-Seattle”) is a Washington limited liability company with offices at 2019 Third Avenue, Suite 200, Seattle, Washington 98121.

10. On information and belief, Defendants DOE 1 – DOE 20 are entities whose precise identities are unknown to Plaintiff at this time, which operate in concert with Defendants Flying Croc, FCI, ATG, ICF, Streamates-Cyprus, and Streamates-Seattle in connection with the conduct complained of herein.

JURISDICTION AND VENUE

11. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 et seq.

12. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

PLAINTIFF'S BUSINESS AND DEVELOPMENTS

13. Plaintiff, operating under the trade name SurferNETWORK, is in the business of providing Internet broadcasting services for live and on-demand audio and video program material. Plaintiff began this business in 1998, and has been one of the leading providers of such services to the terrestrial radio stations and other content providers that comprise its customer base.

14. Early in developing its business, two of Plaintiff's principals, William A. Grywalski, ("Grywalski") and Harry Emerson ("Emerson"), recognized a need that existed in the field of Internet delivery of broadcast media due to the shortcomings in then current Internet streaming technologies. They observed that long startup delays due to "buffering" and frequent program interruptions (sometimes referred to as "jitter") made the experience of trying to listen to or view streaming Internet content frustrating to the end user, and therefore impractical as a content delivery mechanism. They were interested in making the Internet streaming experience more like radio or television, including the immediacy of having the programming appear to start instantly on demand (e.g., turning on a radio or flipping channels), and continue playing once started without random interruptions.

15. Plaintiff engaged the assistance of a software design engineer, Harold Price ("Price"), to develop solutions for the shortcomings that Grywalski and Emerson saw in the current technology, with respect to streaming media playback performance, as well as other technological issues concerning Internet delivery of

broadcast media. Price worked on several aspects of this matter for Plaintiff over the period 1999-2001.

16. Price was aware of the then current approach to streaming, which attempted to overcome streaming transmission delays and jitter by a variety of techniques, including, for example, establishing a content buffer of 20-seconds or so in duration, on the receiving (user or “client”) end of the communication, within the client’s media player or media player browser plugin. After the user selected (e.g., clicked on) a stream, the player would start filling this buffer at the playback rate and then start playing when the buffer was full. While this method did provide some protection against interruptions for the duration of whatever content was initially buffered, it entailed an undesirable startup delay for “buffering,” and provided no means for graceful recovery once the 20 seconds worth of content in the buffer was consumed.

17. Price conceived of solutions to these problems. He built a prototype that implemented one embodiment of those solutions, and he demonstrated that a system according to his new design could overcome the problems put to him by Grywalski and Emerson.

18. Plaintiff and its predecessors in interest filed a number of U.S. patent applications on these solutions, as enumerated below. To date, these applications have resulted in a number of issued U.S. patents, including the patents-in-suit. All of these patent applications were assigned to Plaintiff, or to a predecessor-in-interest of Plaintiff and reassigned to Plaintiff.

19. Plaintiff has been conducting an active, operating business ever since the developments described above, and has actively practiced under the technology taught in the patents-in-suit, from then to the present. Plaintiff has developed commercial arrangements under which it streams content for numerous terrestrial radio stations and content providers in New Jersey, regionally, nationally, and internationally. It also provides a One-Click Royalty Reporter™ for radio stations to report streaming media performance royalty information to SoundExchange (a performing rights organization that collects royalties on the behalf of sound recording copyright owners), among other services.

20. Despite its successes, Plaintiff's business has been damaged by infringement such as that practiced by the Defendants.

THE PATENTS-IN-SUIT

21. United States Patent No. 8,122,141 (the '141 patent") was duly and legally issued on February 21, 2012, for an invention entitled "STREAMING MEDIA BUFFERING SYSTEM." Plaintiff is the owner by assignment of the '141 patent and owns all rights to recover for past and ongoing infringement thereof.

22. United States Patent No. 8,327,011 (the '011 patent") was duly and legally issued on December 4, 2012, for an invention entitled "STREAMING MEDIA BUFFERING SYSTEM." Plaintiff is the owner by assignment of the '011 patent and owns all rights to recover for past and ongoing infringement thereof.

23. United States Patent No. 8,185,611 (the '611 patent") was duly and legally issued on May 22, 2012, for an invention entitled "STREAMING MEDIA

DELIVERY SYSTEM.” Plaintiff is the owner by assignment of the ’611 patent and owns all rights to recover for past and ongoing infringement thereof.

24. United States Patent No. 8,364,839 (the ’839 patent”) was duly and legally issued on January 29, 2013, for an invention entitled “STREAMING MEDIA DELIVERY SYSTEM.” Plaintiff is the owner by assignment of the ’839 patent and owns all rights to recover for past and ongoing infringement thereof.

DEFENDANTS’ ACTIVITIES

25. Defendants are the leading worldwide providers of live, interactive adult webcam streaming video performances over the Internet. Defendants provide these performances over web sites completely under their own control, including without limitation streamates.com, streamen.com, and tsmate.com, as well as a multitude of “affiliate” sites (as noted above), co-branded with third parties, which Defendants service by providing the live model streams and delivery and payment infrastructure.

26. On information and belief, Defendants’ live webcam streaming business generates hundreds of millions of dollars in annual revenues. These revenues are derived from consumer payments via credit card for the performances of individual webcam performers, as well as advertising, commercial tie-ins, and other forms of Internet content monetization.

27. Defendants aggressively market their live webcam services to a worldwide audience, including, on information and belief, users in this District, from which Defendants derive substantial revenues.

28. On information and belief, Defendants, through their web site at streamate.com, and through other facilities and channels, have recruited a large number of webcam performers in the U.S., Western and Eastern Europe, Asia, Africa, South America, and elsewhere, to form a vast online pornography enterprise of national and international scope.

29. On information and belief, Defendants' worldwide collection of performers includes numerous New Jersey residents, who perform online over Defendants' infringing services, from New Jersey, using facilities provided by Defendants. Further on information and belief, Defendants have a long-standing business relationship with a "talent agency" named Sticky Studios LLC in Palmyra, New Jersey, which recruits webcam performers for Defendants and features the logos of several of Defendants' web sites on its recruiting site.

30. Defendants also provide an "Affiliate" program, under which Defendants' webcam sites can be adapted ("white labeled") for other Internet service providers on a revenue splitting basis, or simply linked to, on a similar basis. Through such affiliation, providers of other prominent pornography sites (frequently "Tube" (Youtube-style) sites offering short, low-quality, prerecorded clips on a free basis), provide a paid, revenue-generating webcam adjunct service under the Tube site provider's own branding. The live webcam Affiliate site will appear to the user of the Tube site as a click-through site, or in a window that pops over the Tube site. Though branded and decorated to look like the Tube site, the Affiliate site is actually served by ATG and/or one of the other Defendants herein. The Affiliate site

provider and the Defendants split the revenue resulting from the Affiliate site activity, in accordance with the terms of Defendants' Affiliate program.

31. Adult streaming media is an extremely high volume business, which is well known as consuming a high percentage of the total bandwidth available on the Internet. Operating in this market requires sophisticated technology and complex infrastructure, paid for by the high revenues that this business generates, as described above.

32. Success in Defendants' business is highly dependent on fast, smooth, uninterrupted delivery of streaming media content, such as that made possible by Plaintiff's patents. Defendants derive great value as a result of operating under Plaintiff's patented technology, for which they have not compensated Plaintiff.

33. Defendants' live webcam performances are streamed to Internet users through server installations under Defendants' ownership or control, including without limitation servers at the domain naiadsystems.com, registered in the name of Defendant Streamates-Cyprus. The streaming transmissions are targeted to Internet users around the world, on diverse systems, including, without limitation, desktop computers, as well as smartphones and tablets running under various operating systems and environments, including without limitation, as the case may be, Apple® iOS and Android™ mobile operating systems ("Mobile Platforms"); the Windows®, and OS X® desktop operating systems ("Desktop Platforms"), and Safari®, Chrome™, Firefox®, Opera™, Internet Explorer®, and other Internet browsers ("Browser Platforms"), as well as Defendants' own B-Line Browser, provided by Defendant Riser Apps.

34. Defendants' servers are configured to stream Defendants' live webcam performances and other video streams over a variety of delivery technologies to, *inter alia*, the smartphones, tablets, media players, and other Mobile Platforms, Desktop Platforms, and Browser Platforms, as described above, in a manner that infringes Plaintiff's patents. Defendants' Streaming to Mobile Platforms includes, without limitation, sending instructions and/or programs (including without limitation the B-Line Browser) to users' mobile devices, that cause the devices to operate in an infringing manner. Defendants' streaming to Desktop Platforms and Browser Platforms includes, without limitation, streams delivered via the Real Time Media Protocol ("RTMP") in a manner that infringes others of Plaintiff's patents.

35. On information and belief, defendants DOE 1- DOE 20 ("Doe Defendants") include persons and entities that materially aid and assist in carrying out the infringing acts alleged herein. The Doe Defendants include without limitation operators of "Affiliated" web sites that are cosmetically modified versions of streamate.com or others of Defendants' webcam sites, carrying the branding of such Doe Defendants. These Doe Defendants participate in revenue split deals with the other Defendants named herein (as described above in connection with Defendants' Affiliate program), under which they take a substantial share in revenues derived from infringing Plaintiff's patents.

36. As a consequence of the above described activities, Defendants have infringed and are continuing to infringe Plaintiff's patents, including at least the patents-in-suit.

COUNT I: INFRINGEMENT OF THE '141 PATENT

37. Plaintiff repeats and realleges the allegations of paragraphs 1-36 above as if fully set forth at length herein.

38. Defendants have and continue to directly and indirectly infringe at least claims 1-8, 10-17, 19-21, 23, and 24-28 of the '141 patent by the manner in which they provide streaming performances over the Internet. Such infringement occurs as a result of Defendants' streaming of live performance webcam video to Mobile Platforms, in which Defendants perform, use, or provide, without limitation, methods and systems for the following:

- preparing the streaming media program content for transmission by assigning serial identifiers to sequential media data elements comprising the program,
- providing a server programmed to receive requests from user system for media data elements corresponding to specified serial identifiers, and to send the specified media data elements to the user systems responsive to said requests, at a rate more rapid than the rate at which said streaming media is played back by the user,
- providing programming that implements, invokes, and/or incorporates a media player on the Mobile Platform that operates by maintaining a record of the last data element it has received, and by transmitting requests to the server to send one or more data elements as so prepared by Defendants, specifying the identifiers of the data elements, as said media player requires for uninterrupted playback.

As a consequence of said acts, and variations thereof as recited in the identified claims, all of which are performed or provided by Defendants, Defendants are liable for their infringement of the '141 patent pursuant to 35 U.S.C. §§ 271(a)-(c).

39. Defendants' acts of infringement have caused and are continuing to cause damage to Plaintiff, and Plaintiff is entitled to recover from Defendants the damages

sustained by Plaintiff as a result of Defendants' infringing acts in an amount subject to proof at trial.

40. Defendants' widespread infringement has injured Plaintiff's ability to expand its operations based on its patented technology. Plaintiff's remedy in damages for such continuing infringing activity is inadequate to fully compensate Plaintiff for the invasion of its exclusive rights, and Plaintiff is entitled to an injunction to protect its business against such continuing infringement.

COUNT II: INFRINGEMENT OF THE '011 PATENT

41. Plaintiff repeats and realleges the allegations of paragraphs 1-40 above as if fully set forth at length herein.

42. Defendants have and continue to directly and indirectly infringe at least claims 1-4 the '011 patent by, without limitation, their development, distribution, use, sale, and offering for sale, alone and/or in concert with others, of apparatus and articles, for:

- requesting from Defendants' servers a predetermined number of media data elements, requesting the elements by serial identifier,
- receiving media data elements sent to by Defendants' servers responsive to said requests,
- implementing a buffer manager to store media data elements received from Defendants' servers and maintain a record of the serial number of the last media data element received,
- playing the media data elements sequentially from the buffer,
- repeating such requests so as to maintain a pre-determined number of media data elements in the buffer.

As a consequence of said acts, and variations thereof as recited in the identified claims, all of which are performed or provided by Defendants, Defendants are liable for their infringement of the '011 patent pursuant to 35 U.S.C. §§ 271(a)-(c).

43. Defendants' acts of infringement have caused and are continuing to cause damage to Plaintiff, and Plaintiff is entitled to recover from Defendants the damages sustained by Plaintiff as a result of Defendants' infringing acts in an amount subject to proof at trial.

44. Defendants' widespread infringement has injured Plaintiff's ability to expand its operations based on its patented technology. Plaintiff's remedy in damages for such continuing infringing activity is inadequate to fully compensate Plaintiff for the invasion of its exclusive rights, and Plaintiff is entitled to an injunction to protect its business against such continuing infringement.

COUNT III: INFRINGEMENT OF THE '611 PATENT

45. Plaintiff repeats and realleges the allegations of paragraphs 1-44 above as if fully set forth at length herein.

46. Defendants have and continue to directly and indirectly infringe at least at least claims 1-6, 8-10, and 12-17 of the '611 patent, in their manner of providing streaming performances over the Internet. Such infringement occurs, *inter alia*, as a result of Defendants' streaming of live performance webcam video to Desktop Platforms, Mobile Platforms, and Browser Platforms, in which Defendants perform, use, or provide, without limitation, methods and systems for the following:

- sending initial streaming media elements to the user system at an initial sending rate more rapid than the playback rate, to fill the user buffer,

configuring the elements so that the amount of the initial elements and the initial sending rate are sufficient for the user system to begin playing back the streaming media while the user buffer continues to fill,

- thereafter, sending further streaming media data elements to the user system at about the playback rate, which matches the rate at which the server buffer is filled from the live performance, and where the further streaming data elements are received by the user's computer at about the playback rate if there are no interruptions in the transmission of media data between the server and the user's computer, and
- where the server has determined that such an interruption has occurred, sending streaming media elements to the user system at a sending rate more rapid than the playback rate, to refill the user buffer.

As a consequence of said acts, and variations thereof as recited in the identified claims, all of which are performed or provided by Defendants, Defendants are liable for their infringement of the '611 patent pursuant to 35 U.S.C. § 271(a)-(c).

47. Defendants' acts of infringement have caused and are continuing to cause damage to Plaintiff, and Plaintiff is entitled to recover from Defendants the damages sustained by Plaintiff as a result of Defendants' infringing acts in an amount subject to proof at trial.

48. Defendants' widespread infringement has injured Plaintiff's ability to expand its operations based on its patented technology. Plaintiff's remedy in damages for such continuing infringing activity is inadequate to fully compensate Plaintiff for the invasion of its exclusive rights, and Plaintiff is entitled to an injunction to protect its business against such continuing infringement.

COUNT IV: INFRINGEMENT OF THE '839 PATENT

49. Plaintiff repeats and realleges the allegations of paragraphs 1-48 above as if fully set forth at length herein.

50. Defendants have and continue to directly and indirectly infringe at least at least claims 1-5, 7-12, 14-19, and 21 of the '839 patent, in their manner of providing streaming performances over the Internet. Such infringement occurs, *inter alia*, as a result of Defendants' streaming of live performance webcam video to Desktop Platforms, Mobile Platforms, and Browser Platforms, in which Defendants perform, use, or provide, without limitation, methods and systems for the following:

- loading a server buffer with streaming media data elements,
- sending an initial amount of streaming media data elements to the user system at an initial sending rate more rapid than the playback rate, such that the user system can begin playing back the program while the user buffer continues to fill,
- thereafter, sending further streaming media data elements to the user system at about the playback rate and filling the server buffer at about the playback rate, where the further streaming data elements are received by the user's computer at about the playback rate if there are no interruptions in the transmission of media data between the server and the user's computer,
- detecting interruptions wherein media data elements have been delayed or not received by the user system, and sending unsent streaming media data elements in the server buffer at a sending rate more rapid than the playback rate.

As a consequence of said acts, and variations thereof as recited in the identified claims, all of which are performed or provided by Defendants, Defendants are liable for their infringement of the '839 patent pursuant to 35 U.S.C. § 271(a)-(c).

51. Defendants' acts of infringement have caused and are continuing to cause damage to Plaintiff, and Plaintiff is entitled to recover from Defendants the damages sustained by Plaintiff as a result of Defendants' infringing acts in an amount subject to proof at trial.

52. Defendants' widespread infringement has injured Plaintiff's ability to expand its operations based on its patented technology. Plaintiff's remedy in damages for such continuing infringing activity is inadequate to fully compensate Plaintiff for the invasion of its exclusive rights, and Plaintiff is entitled to an injunction to protect its business against such continuing infringement.

COUNT V: WILLFUL INFRINGEMENT AND KNOWING INDUCEMENT

53. Plaintiff repeats and realleges the allegations of paragraphs 1-52 above as if fully set forth at length herein.

54. The filing of this action for infringement constitutes notice to Defendants of such infringement, pursuant to 35 U.S.C. § 287. Defendants were also simultaneously notified of their infringement by letters sent to their business addresses. At least upon receipt of such notices Defendants should have understood that there was an objectively high likelihood that their actions thereafter constituted, and were inducing and contributing to, patent infringement.

55. Defendants' continued infringement at least after such notice is willful and deliberate, entitling Plaintiff to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

DEMAND FOR JURY TRIAL

56. Plaintiff demands trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff WAG ACQUISITION, L.L.C. requests an entry of judgment in its favor and against Defendants as follows:

a) Declaration that Defendants have each infringed United States Patent Nos. 8,122,141, 8,327,011, 8,185,611, and 8,364,839;

b) Declaration that each of Defendants' infringement has been willful, and awarding enhanced damages and fees as a result of that willfulness under 35 U.S.C. § 284, jointly and severally against the Defendants;

c) Permanently enjoining Defendants, their officers, directors, employees, agents, and all those in concert and participation with them from continued infringement of infringed United States Patent Nos. 8,122,141, 8,327,011, 8,185,611, and 8,364,839;

d) Awarding the past and future damages arising out of Defendants' infringement of United States Patent Nos. 8,122,141, 8,327,011, 8,185,611, and 8,364,839 to Plaintiff, together with prejudgment and post-judgment interest, in an amount according to proof, jointly and severally against the Defendants;

e) Awarding attorneys' fees, costs, or other damages pursuant to 35 U.S.C. §§ 284 or 285 or as otherwise permitted by law, jointly and severally against the Defendants; and

f) For such other costs and further relief as the Court may deem just and proper.

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