

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SHUTTERFLY, INC.,)	
)	
Plaintiff,)	
)	Civil Action No. 13-1198-LPS
v.)	
)	
INTERACTIVE MEMORIES, INC.,)	JURY TRIAL DEMANDED
)	
Defendant.)	

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

For its Complaint, plaintiff Shutterfly, Inc. (“Shutterfly”), by and through its attorneys, alleges as follows:

NATURE OF THE ACTION

1. This is an action brought by Shutterfly against Interactive Memories, Inc. (“Mixbook”) for infringement of U.S. Patent Nos. 7,082,227 (“the ’227 patent”); and 7,146,575 (“the ’575 patent”) (collectively, the “Asserted Patents”).

THE PARTIES

2. The plaintiff, Shutterfly, is a Delaware corporation with its principal place of business at 2800 Bridge Parkway, Redwood City, California.

3. The defendant, Interactive Memories, Inc. (d/b/a Mixbook) is a Delaware corporation with a principal place of business at 409 Sherman Avenue, Palo Alto, California. On information and belief, Mixbook operates a website, www.mixbook.com, and publishing service entitled Mixbook.

JURISDICTION AND VENUE

4. This is an action for patent infringement under the patent laws of the United States. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Mixbook. Mixbook is incorporated in Delaware and, on information and belief, Mixbook has transacted business in this District, supplied goods or services in this District, purposefully availed itself of the privileges and benefits and of the laws of this state, and committed acts of patent infringement during the course of its business in this District.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b).

COUNT 1: INFRINGEMENT OF U.S. PATENT NO. 7,082,227

7. Paragraphs 1-6 are incorporated by reference as if fully stated herein.

8. The '227 patent issued on July 25, 2006 and is entitled "Producing Printed Images Having Personalized Features." A true, and correct copy of the '227 patent is attached as **Exhibit 1** and is incorporated herein by reference.

9. Shutterfly owns by assignment the entire right, title and interest in and to the '227 patent.

10. The '227 patent is valid and enforceable under the United States Patent Laws.

11. Mixbook has directly and indirectly infringed and is directly and indirectly infringing at least claim 1 of the '227 patent, in violation of 35 U.S.C. § 271 *et seq.*, by using the patented method and system in connection with its website, www.mixbook.com, in the United States without authority and by making, using, offering for sale, selling in the United States and/or importing into the United States without authority, products such as photo books made

with Mixbook's photo product creation and editing software on www.mixbook.com in a manner that uses the personalization architecture of the patented invention.

12. Since at least October 2013, Mixbook has had actual knowledge of the '227 patent and knowledge that its photo product creation and editing software on www.mixbook.com infringes one or more claims of the '227 patent.

13. While knowing of the '227 patent, Mixbook has and continues to actively induce infringement of the '227 patent by at least encouraging and instructing visitors to its website to use the www.mixbook.com website and associated publishing services in a manner that infringes at least claim 1 of the '227 patent – all while knowing that Mixbook's actions would induce infringement of the '227 patent, knowing and intending that infringement of the '227 patent would take place. Mixbook's ongoing inducement with knowledge that infringement of the '227 patent will take place and intent that infringement take place subjects Mixbook to liability as an indirect infringer.

14. Mixbook's infringement is exceptional and entitles Shutterfly to attorneys' fees and costs incurred in prosecuting this action under 35 U.S. C. § 285. Shutterfly has been damaged by Mixbook's infringement of the '227 patent and will continue to be damaged unless enjoined by this Court. Shutterfly does not have an adequate remedy at law.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 7,146,575

15. Paragraphs 1-14 are incorporated by reference as if fully stated herein.

16. The '575 patent issued on December 5, 2006 and is entitled "Image Uploading." A true and correct copy of the '575 patent is attached as **Exhibit 2** and is incorporated herein by reference.

17. Shutterfly owns by assignment the entire right, title and interest in and to the '575 patent.

18. The '575 patent is valid and enforceable under the United States Patent Laws.

19. Mixbook has directly and indirectly infringed and is directly and indirectly infringing at least claim 1 of the '575 patent, in violation of 35 U.S.C. § 271 *et seq.*, by making, using, offering for sale, selling in the United States and/or importing into the United States without authority, products such as photo books made with Mixbook's photo product creation and editing software on www.mixbook.com in a manner that uses the image processing methods and systems of the patented invention.

20. Since at least May 15, 2009, Mixbook has had actual knowledge of the '575 patent and knowledge that its photo product creation and editing software on www.mixbook.com infringes one or more claims of the '575 patent.

21. Mixbook has knowledge of the '575 patent and knowledge that its photo product creation and editing software is specially made and adapted for infringing the '575 patent and that it is not a staple article or commodity of commerce suitable for substantial non-infringing use. Mixbook's ongoing use and sale of its photo product creation and editing software on www.mixbook.com with such knowledge therefore contribute to its users' infringement and further subject Mixbook to liability as an indirect infringer.

22. Similarly, Mixbook has knowledge of the '575 patent, and knowledge that its actions will induce infringement of the '575 patent by encouraging and instructing visitors to its website to use the www.mixbook.com website and associated publishing services in a manner that infringes at least claim 1 of the '575 patent. Mixbook's ongoing inducement with knowledge that infringement of the '575 patent will take place and intent that infringement take place further subjects Mixbook to liability as an indirect infringer.

23. Mixbook's infringement of the '575 patent is willful and deliberate, justifying an increase of damages up to three times under 35 U.S.C. § 284. Since at least May 15, 2009, Mixbook has had actual knowledge of the '575 patent and has continued to infringe the '575 patent with reckless disregard of Shutterfly's patent rights.

24. Mixbook's infringement is exceptional and entitles Shutterfly to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285. Shutterfly has been damaged by Mixbook's infringement of the '575 patent and will continue to be damaged unless enjoined by this Court. Shutterfly does not have an adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE SHUTTERFLY prays that this Court:

- a. Enter judgment that Mixbook has infringed each and every one of the Asserted Patents;
- b. Enter an order enjoining Mixbook, its officers, agents, employees, and those persons in active concern or participation with any of them, and its successors and assigns, from infringing each and every one of the Asserted Patents;
- c. Award Shutterfly its damages resulting from Mixbook's infringement pursuant to 35 U.S.C. § 284;
- d. Find that Mixbook's infringement of at least the '575 patent has been willful and increase damages awarded to Shutterfly to three times the amount assessed, pursuant to 35 U.S.C. § 284;
- e. Find this to be an exceptional case and award Shutterfly its attorneys' fees, pursuant to 35 U.S.C. § 285;
- f. Award Shutterfly prejudgment and post-judgment interest on its damages;
- g. Award Shutterfly its costs; and

h. Award Shutterfly such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Pursuant to Fed. R. Civ. P. 38(b), Shutterfly demands a trial by jury on all counts of the Complaint so triable.

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

Daralyn J. Durie
Joshua H. Lerner
Timothy C. Saulsbury
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, CA 94111
(415) 362-6666

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1154580

By: /s/ Philip A. Rovner
Philip A. Rovner (#3215)
Jonathan A. Choa (#5319)
Hercules Plaza
P.O. Box 951
Wilmington, DE 19899
(302) 984-6000
provner@potteranderson.com
jchoa@potteranderson.com

*Attorneys for Plaintiff
Shutterfly, Inc.*