

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

NEOMEDIA TECHNOLOGIES, INC.,)	
)	
Plaintiff,)	Civil Action No. 1:14-cv-01379-AT
)	
vs.)	JURY DEMAND
)	
SCANBUY, INC.,)	
)	
Defendant.)	
)	

AMENDED COMPLAINT

Plaintiff NeoMedia Technologies, Inc. (“NeoMedia”) hereby files its Amended Complaint against Defendant Scanbuy, Inc. (“Scanbuy”), and alleges as follows:

INTRODUCTION

1. NeoMedia and Scanbuy are direct competitors in the provision of “Quick Response” or “QR” codes and services. They have a long history of conflict stemming from one critical difference between the companies: NeoMedia owns patents that cover the technology used by both companies; Scanbuy doesn’t. After years of patent infringement litigation, NeoMedia granted Scanbuy a license to certain of NeoMedia’s patents, including the patents-in-suit in 2009. Scanbuy,

however, repeatedly breached its obligations under the license agreement, and NeoMedia terminated Scanbuy's license in September 2013. Since the license was terminated, Scanbuy has both infringed NeoMedia's patents and engaged in a series of attacks on NeoMedia. This Complaint seeks to end Scanbuy's improper and illegal activities.

PARTIES

2. Plaintiff NeoMedia is a Delaware corporation with its principal place of business at 1515 Walnut Avenue, Suite 100, Boulder, Colorado 80302.

NeoMedia is an operating company that provides QR codes and services to customers. Many of the QR Codes NeoMedia provides are "Indirect QR Codes" described and defined in paragraph 17 below.

3. Defendant Scanbuy is organized and existing under the laws of the State of Delaware, having its headquarters at 10 East 39th Street, New York, New York 10016.

4. Scanbuy is an operating company that provides QR codes and services to customers. Like those of NeoMedia, many of the QR Codes Scanbuy provides are "Indirect QR Codes" described and defined in paragraph 17 below.

5. NeoMedia and Scanbuy are parties to a Settlement and License Agreement effective October 16, 2009 (the "2009 NeoMedia-Scanbuy

Agreement”). The 2009 NeoMedia-Scanbuy Agreement is described more fully in paragraphs 8 and 58 below. A public version of the 2009 NeoMedia-Scanbuy Agreement is attached as Exhibit 1.

JURISDICTION AND VENUE

6. This action is brought under the Patent Laws of the United States, 35 U.S.C. § 101, *et seq.*, and the Lanham Act, 15 U.S.C. § 1051, *et seq.*

7. This Court has jurisdiction over the subject matter of the Federal claims action under 15 U.S.C. §§ 1121, and 28 U.S.C. §§ 1331 and 1338.

8. The 2009 NeoMedia-Scanbuy Agreement includes, in section 11, a choice of law provision requiring the application of the law of the United States and Georgia law. The agreement also includes a forum selection clause requiring that this dispute be brought in a Federal or state court seated in Atlanta, Georgia, United States of America, and stating that the parties consent to the exclusive jurisdiction and venue of such court. *See* Exhibit 1, section 11.

9. This Court also has personal jurisdiction over Scanbuy under the Georgia Long Arm Statute, O.C.G.A. § 9-10-91, and the Court’s exercise of personal jurisdiction over Scanbuy comports with federal due process.

10. Scanbuy transacts business in Georgia, including in connection with Scanbuy’s infringing QR Code products and services.

11. Scanbuy has offered for sale and sold its infringing QR code products and services to such Georgia-headquartered corporations as The Coca-Cola Company (Exhibits. 8–10), The Home Depot (Exhibits. 8, 11–12), United Parcel Service (UPS) (Exhibits 8, 13–14), and AT&T Mobility (Exhibits 15–16), among others.

12. On information and belief, Scanbuy has sold and made offers to sell its infringing QR code products and services to such Georgia-headquartered companies through telephone calls, emails, and correspondence with representatives of such companies located in Georgia.

13. On information and belief, Scanbuy has sold and made offers to sell its infringing QR code products and services through personal visits, solicitations, and negotiations while physically present in the State of Georgia.

14. On information and belief, Scanbuy has committed tortious acts in Georgia.

15. On information and belief, Scanbuy has sold and made offers to sell its infringing QR code products and services in Georgia to Georgia-headquartered companies such as The Coca-Cola Company, The Home Depot, UPS, and AT&T Mobility, among others.

16. Scanbuy has caused and is causing tortious injury in Georgia.

17. The infringing QR code products and services sold by Scanbuy are integrated into common consumer goods sold throughout Georgia.

18. The scanning of Scanbuy's infringing QR codes by consumers is an act that directly infringes NeoMedia's patents.

19. Georgia consumers have access to and make use of Scanbuy's infringing QR codes in Georgia.

20. Scanbuy supplies infringing QR codes that are used and scanned by Georgia consumers and induces and contributes to such use, scanning and direct infringement.

21. On information and belief, Scanbuy has regularly done or solicited business, or engaged in other persistent course of conduct in Georgia, and continues to do so, including with its Georgia-based customers and prospective customers.

22. On information and belief, Scanbuy derives substantial revenue from Scanbuy goods or services used or consumed in Georgia.

23. On information and belief, Scanbuy regularly solicits business from Georgia-based or headquartered customers and prospective customers to promote the sales of its infringing QR code products and services.

24. Scanbuy has purposefully directed its activities at Georgia residents at least by (1) forming business ties with Georgia-based companies; (2) selling and offering for sale its infringing QR code products and services to Georgia-based customers and prospective customers; (3) making personal visits and solicitations, and having negotiations regarding such offers and sales while physically present in the State of Georgia; and (4) supplying infringing QR codes that are used and scanned by Georgia consumers and inducing and contributing to such use and scanning and direct infringement.

25. Scanbuy has also made false and misleading representations (detailed below) that are targeted to its customers and prospective customers.

26. A significant portion of the customers and prospective customers targeted by Scanbuy, including The Coca-Cola Company, The Home Depot, UPS, and AT&T Mobility, among others, reside or are based in Georgia.

27. The false and misleading representations detailed below are part of a campaign by Scanbuy to penetrate the marketplace and discredit NeoMedia and its business, products and services.

28. For example, Scanbuy has launched a “Stop the Trolls” promotional campaign, which includes statements and representations made by Scanbuy on its

website, in press releases, and in phone calls made to customers and prospective customers.

29. The “Stop the Trolls” promotional campaign is targeted to Scanbuy’s customers and prospective customers, a significant portion of which customers reside or are based in Georgia, including The Coca-Cola Company, The Home Depot, UPS, and AT&T Mobility.

30. Scanbuy’s purposeful contacts with Georgia are directly related to NeoMedia’s claims in this action.

31. Furthermore, Scanbuy’s contacts with Georgia are and have been continuous and systematic.

32. Scanbuy has engaged in significant business dealings with Georgia-based customers, which include providing its services and products to numerous companies based in Georgia, including The Coca-Cola Company, The Home Depot, UPS, and AT&T Mobility, over the long term.

33. Venue is proper in this District under 28 U.S.C. § 1391(b), because Scanbuy is subject to the personal jurisdiction of this Court and thus is deemed to reside in this district under § 1391(c)(2) and because a substantial part of the events giving rise to NeoMedia’s claims occurred in this Judicial District.

FACTUAL BACKGROUND

A. The Underlying Technology & NeoMedia's Patents

34. This case involves “Quick Response” or “QR” Codes, which are sometimes called “two dimensional” bar codes that look like this:



35. NeoMedia is an operating company that is a leader in 2-dimensional (“2D”) barcode creation and technology solutions.

36. NeoMedia’s mobile barcode technology and platform is used by numerous companies and their brands to power their respective mobile barcode campaigns through its code creation products NeoSphere™ and QodeScan™.

37. NeoMedia provides a barcode scanner application, the NeoReader®, which allows users to scan 2D barcodes, such as QR Codes, as well as multiple types of 1-Dimensional (“1D”) barcodes, such as Uniform Product Codes (“UPC”).

38. The sequencing of black and white squares in the QR Code is used to encode information into the code, such as a uniform resource locator—a URL—which can be the address of a webpage on the Internet. With the right equipment

such as a smartphone running an appropriate application, a user can scan the QR Code and decode it into an alphanumeric sequence such as a URL. Companies use QR Codes and encourage users to scan them as a quick and efficient way to get users information about their products, for example.

39. Some QR Codes are encoded with the exact URL address of the content server the company wants to present to the users. QR Codes designed to operate in this manner are “Direct QR Codes.”

40. Such Direct QR Codes are *not* the focus of this action because they are not the kind of QR Codes that either NeoMedia or Scanbuy typically supply to their customers.

41. Other QR Codes enable a user device (such as a smartphone) to connect *indirectly* with a content server over the Internet. QR Codes designed to operate in an indirect manner are not encoded with the URL address of the content server. Instead, they are encoded with different information that includes an “index.” The index is sent to an intermediary server, which returns the address of the content server to the user device. QR Codes designed to operate in this manner are referred to as “Indirect QR Codes” in this Complaint.

42. Both NeoMedia and Scanbuy refer to the process run on the intermediary server as “resolving” the Indirect QR Codes. The phrase “code resolution” is also used to describe this process.

43. The vast majority or all of the QR Codes made and sold by both Scanbuy and NeoMedia are Indirect QR Codes.

44. Indirect QR Codes are fundamental to the business plans of both companies, enabling them to charge fees to customers for managing the Indirect QR Codes and providing analytical data about the effectiveness of advertising campaigns using QR Codes.

B. NeoMedia’s Patents

45. Among the many patents it owns, NeoMedia owns all right, title and interest in two United States patents, described below, that are relevant to Indirect QR Codes.

46. United States Patent Number 6,199,048, entitled “System and Method for Automatic Access of a Remote Computer Over a Network,” was duly and legally issued on March 6, 2001 by the United States Patent and Trademark Office (“the USPTO”). The Complaint refers to this patent as the “‘048 Patent.”

47. The claims of the ‘048 Patent were subjected to two *ex parte* reexamination proceedings before the USPTO.

48. The first reexamination proceeding was instituted on July 26, 2007 (“the 2007 Reexamination”), and concluded on June 9, 2009, when the USPTO issued an Ex Parte Reexamination Certificate (6867th).

49. The second reexamination was instituted on September 20, 2010 (“the 2010 Reexamination”), and concluded on September 6, 2011, when the USPTO issued an Ex Parte Reexamination Certificate (8519th).

50. A true and correct copy of the ‘048 Patent with its Reexamination Certificates is attached as Exhibit 2.

51. Scanbuy challenged a foreign counterpart to NeoMedia’s patents and, on information and belief, one or both of the reexamination requests for the ‘048 Patent were initiated by Scanbuy.

52. United States Patent Number 8,131,597, entitled “System and Method for Using an Ordinary Article of Commerce to Access a Remote Computer,” was duly and legally issued on March 6, 2012 by the USPTO. The Complaint refers to this patent as the “‘597 Patent.”

53. A true and correct copy of the ‘597 Patent is attached as Exhibit 3.

54. NeoMedia has licensed certain of its patents, including the ‘048 and ‘597 Patents, to dozens of companies including but not limited to Microsoft, Kraft

Foods, Progressive Insurance, Mondelez Global LLC, Skechers USA, Tyson Foods, and others.

C. Scanbuy's Historic and Ongoing Patent Infringement and Recent Wrongful Acts Against NeoMedia

55. Scanbuy's disregard for NeoMedia's intellectual property and contractual rights spans more than a decade.

56. Scanbuy began infringing NeoMedia's patents in the first years after Scanbuy was formed, forcing NeoMedia to file, in 2004, a patent infringement action against Scanbuy in the United States District Court for the Southern District of New York, Civil Action No. 1:04-CV-3026 (RJH) (the "2004 Case").

57. The 2004 Case involved Scanbuy's Indirect QR Codes and at least one of the patents that NeoMedia accuses Scanbuy of infringing in this action: the '048 Patent.

58. The 2004 Case ended in 2009, when NeoMedia and Scanbuy entered into the 2009 NeoMedia-Scanbuy Agreement, which provided Scanbuy with a license to the '048 and '597 Patents and ended all pending litigation among Scanbuy, NeoMedia, and a third company, Marshall Feature Recognition ("MFR").

59. Late in 2010, Scanbuy hired a new Chief Executive Officer, Michael Wehrs.

60. Soon after Mr. Wehrs became Chief Executive Officer, Scanbuy breached the 2009 NeoMedia-Scanbuy Agreement and failed to operate under the 2009 NeoMedia-Scanbuy Agreement in good faith.

61. In 2011, Scanbuy restated its revenue for the first and second quarters, leading NeoMedia to question Scanbuy's royalty reporting to NeoMedia required by the 2009 NeoMedia-Scanbuy Agreement.

62. As would be confirmed by both an auditor and an arbitrator, Scanbuy underreported its revenue to NeoMedia for Scanbuy's 2011 calendar year, and accordingly did not pay NeoMedia all of the royalties due.

63. Ultimately, NeoMedia was forced to invoke audit rights provided for under the 2009 NeoMedia-Scanbuy Agreement, and retained Duff & Phelps to complete the audit.

64. The Duff & Phelps audit concluded that Scanbuy had only paid about 60% of the amount it owed NeoMedia under the 2009 NeoMedia-Scanbuy Agreement.

65. Even after the audit, Scanbuy refused to pay the amount it owed NeoMedia, forcing NeoMedia to initiate arbitration to collect the amount Scanbuy owed but had failed to report or pay to NeoMedia.

66. After a three day hearing, on May 13, 2013, the arbitrator rejected arguments by Scanbuy and ruled in NeoMedia's favor.

67. The arbitrator concluded, for instance, that "the recalculated reports for Q1, Q2, Q3 and Q4 2011 have all been reduced based on certain deductions for services such as 'Set-Up' fees. This calculation is inconsistent with the clear meaning of the terms of the License Agreement."

68. The arbitrator's Award confirmed that Scanbuy was in material breach of the 2009 NeoMedia-Scanbuy Agreement:

I find that Scanbuy's actions since 2011 have been inconsistent with the terms and the intent of the License Agreement. By its failure to pay the amounts due per the audit results and its failure to pay the Minimum Annual Payment on October 16, 2012 Scanbuy is in material breach of the License Agreement.

69. Soon after losing the arbitration, Scanbuy again breached the 2009 NeoMedia-Scanbuy Agreement by refusing to provide audited financial statements to NeoMedia.

70. Given Scanbuy's previous underreporting of revenue, audited financial statements were critical to determining if Scanbuy was underreporting revenue again.

71. Consistent with remedies afforded NeoMedia in the 2009 NeoMedia-Scanbuy Agreement, NeoMedia terminated Scanbuy's license to NeoMedia's patents by letter on September 17, 2013.

72. Since September 17, 2013, without license, Scanbuy has made, sold and/or offered for sale products and services that directly infringe the '597 Patent, including in this Judicial District.

73. Since September 17, 2013, without license, Scanbuy has induced the infringement of the '048 Patent.

74. Since September 17, 2013, without license, Scanbuy has induced the infringement of the '597 Patent.

75. Since September 17, 2013, without license, Scanbuy has contributed to the infringement of the '048 Patent.

76. Since September 17, 2013, without license, Scanbuy has contributed to the infringement of the '597 Patent.

77. Instead of accepting the termination of its license, Scanbuy initiated a wrongful, multi-front attack on NeoMedia. Such attacks by Scanbuy include the following, as described in paragraphs 54 to 98 below:

78. Scanbuy filed and then withdrew an arbitration demand regarding NeoMedia's termination of the license granted in the 2009 NeoMedia-Scanbuy Agreement.

79. Such arbitration demand was baseless.

80. Scanbuy disparaged and made false and misleading statements about NeoMedia through Scanbuy's website.

81. Scanbuy disparaged NeoMedia and made false and misleading representations in sales calls with potential customers of both companies.

82. Additional details regarding each of Scanbuy's wrongful acts and omissions referred to above are set forth below.

83. On September 18, 2013, Scanbuy purported to initiate an arbitration under the 2009 NeoMedia-Scanbuy Agreement, this time seeking to challenge NeoMedia's termination of the license based on Scanbuy's material breach of the agreement.

84. Scanbuy, however, never paid the fee required to initiate the arbitration.

85. NeoMedia incurred significant expense in preparing a response to Scanbuy's arbitration demand.

86. Scanbuy withdrew the arbitration demand in December 2013.

87. In the letter withdrawing the arbitration, Scanbuy “accepted” NeoMedia’s termination of the license.

88. On information and belief, Scanbuy did not intend to follow through with its arbitration demand, but instead used the demand as a stall tactic and to cause NeoMedia to incur unnecessary cost and expense.

89. Twelve days after initiating the arbitration (that it would later withdraw), on September 30, 2013 Scanbuy issued a press release entitled “Scanbuy and Marshall Feature Recognition Team to Educate Industry on How to Stop Frivolous QR Code Patent Attacks.” A copy of the press release is attached as Exhibit 4.

90. The press release includes numerous statements that, as directed toward NeoMedia, are disparaging, defamatory, false and misleading. Such statements include:

- “Scanbuy to Offer a ‘Stop the Trolls’ Toolkit for Brands Battling Patent Threats” (implying NeoMedia is a “Troll”).
- “Over the last year Scanbuy has noticed an alarming rise in QR Code patent litigation filings and letter threats of litigation. These facts combined with the frivolous nature of some of the claims made has compelled the companies to educate and provide the tools that any firm so threatened can use to protect themselves against much of this litigation blackmail.” (implying NeoMedia’s lawsuits are “frivolous” and “litigation blackmail”).

- “With its new licensing of the MFR portfolio, together with its other patent holdings, Scanbuy will offer a “Stop the Trolls!” toolkit to help firms combat lawsuits that claim their QR Code usage violates other’s patents.” (implying NeoMedia is a “Troll”).
- “The toolkit will have features such as a white paper, legal precedents, prior art, advice from other companies, and additional resources for firms to defend themselves against gratuitous patent lawsuits.” (implying NeoMedia’s lawsuits are “gratuitous”).
- “Mike Wehrs, CEO and president of Scanbuy. ‘Some companies who provide QR Code services are claiming they have a license from MFR where none exist. That’s not stopping Non Practicing Entities, NPEs (trolls) from suing firms to force a settlement through threat of high legal fees.’” (implying that NeoMedia does not have a license from MFR, that NeoMedia is a Non Practicing Entity (NPE) (troll), and that NeoMedia sues to force a settlement through threat of high legal fees).

91. The press release contains hyperlinks to Scanbuy’s website where hyperlinks point to, focus on and identify NeoMedia. The manner in which the website and hyperlinks point to, focus on and identify NeoMedia is set forth in paragraphs 69 to 79.

92. Considering the press release and Scanbuy’s website in its entirety, the message conveyed by necessary implication is that the statements set forth in the press release and highlighted in paragraph 66 refer to NeoMedia.

93. Around the same time as Scanbuy’s press release, Scanbuy modified the homepage of its website to include a link to “Stop QR Code Patent Trolls.”

See Exhibit 5.

94. Clicking the “Click here” link takes the viewer to a webpage entitled “Intellectual Property Protection” which includes the following language:

If your company is using any 2D barcode technology in your business and aren’t using Scanbuy, your company is very likely going to receive one of these threatening letters and face the very real possibility of being sued. The costs of defending your company from these *trolls that have no business* and nothing to lose can mount up quickly to the hundreds of thousands of dollars.

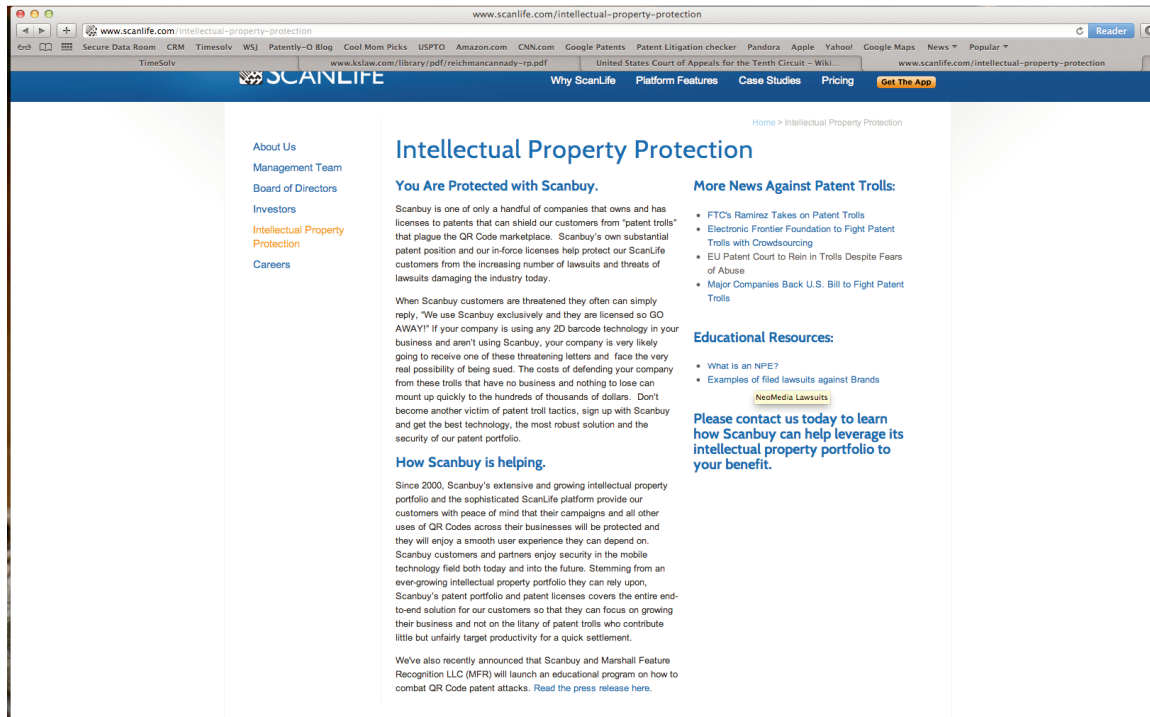
Exhibit 6 (emphasis added). A reader of the on-line September 30, 2013 press release can connect directly to this page by clicking on the phrase “intellectual property” to link to this page.

95. In addition to the language above, Scanbuy defines a “Non-Practicing Entity” or “NPE” on its website as follows:

Non-Practicing Entity (NPE), also referred to as patent trolls, have grown at alarming rates within many industries, including the QR Code Industry. An NPE refers to a company or individual that owns patents *but does not intend to build, manufacture or market a product to use the patents*. They instead aggressively assert or litigate against operating companies for financial gain. NPEs make profits by threatening companies and extracting licensing fees and settlement payments. Exhibit 7 (emphasis added).

A user accesses the NPE definition by clicking on the “What is an NPE?” link on the Intellectual Property Protection page.

96. Scanbuy's Intellectual Property Protection page contains a link entitled "Examples of filed lawsuit against Brands." When a user hovers her mouse over the link, the text "*NeoMedia Lawsuits*" appears, as shown below :



97. A user clicking on the "Examples of filed lawsuits against Brands" link is taken directly to a results page from a search on <http://www.patexia.com> for the keyword: "neomedia," as shown below:

Patexia. Research

Earn money for patent research in Patexia Contests [Request an Invitation to Join](#)

Research

- Patents
- Lawsuits
- Papers
- Stats

Help and Resources

- Using Patexia's Patent Research Tools
- Intellectual Property Glossary
- Patent and Prior Art Basics

Patent Lawsuit and Patent Litigation Search

Lawsuits Search Criteria ▾

Keyword

Date range to

[\[+\] Add Criteria](#)

Visualization ▾

Year	Number of lawsuits
2009	2.5
2010	1.5
2011	1.5
2012	1.5
2013	11.5

Showing 1 - 15 of 15 total

Number	Title	Filing date
1:2013-cv-02351	NeoMedia Technologies, Inc. v. Dunkin' Brands Group, Inc.	Sep 3, 2013
1:2013-cv-02350	v. NeoMedia Technologies, Inc. et al	Aug 30, 2013
1:2013-cv-02351	NeoMedia Technologies, Inc. v. Dunkin' Brands Group, Inc.	Aug 30, 2013
1:2013-cv-01521	NeoMedia Technologies, Inc. v. Michaels Stores, Inc.	Jun 13, 2013
1:2013-cv-01312	NeoMedia Technologies, Inc. v. The Wendy's Co.	May 20, 2013
1:2013-cv-01177	NeoMedia Technologies, Inc. v. Conair Corp.	May 3, 2013
1:2013-cv-01152	NeoMedia Technologies, Inc. v. Bed Bath & Beyond, Inc.	May 1, 2013

98. This page linked by Scanbuy on its website discloses only those lawsuits where NeoMedia is or was a plaintiff or defendant.

99. Similarly, Scanbuy's Intellectual Property Protection page contains a link entitled "Patent Docket and Filings." When a user hovers her mouse over the link, the text "*Patent Troll Lawsuites [sic]*" appears.

100. A user clicking on the “Patent Docket and Filings” link is taken to a results page from a search on <http://www.justia.com> for the keyword: “neomedia,” and the case type “830” (which is the designation for patent cases). The full URL of the link is: <http://dockets.justia.com/search?query=neomedia&nos=830>. Like the patexia site, the listing at justia.com lists only patent cases involving NeoMedia.

101. This page linked by Scanbuy on its website discloses only those lawsuits where NeoMedia is or was a plaintiff or defendant.

102. Neither page linked by Scanbuy discloses any patent infringement lawsuits filed by MFR.

103. MFR is, by Scanbuy’s own definition, a non-practicing entity (NPE) that owns patents but does not intend to build, manufacture or market a product to use the patents.

104. Considering Scanbuy’s website in its entirety, the message conveyed by necessary implication is that Scanbuy is asserting that: (1) NeoMedia is a “patent troll”; (2) NeoMedia is a “non-practicing entity (NPE)”; (3) NeoMedia “has no business”; (4) NeoMedia “does not intend to build, manufacture, or market a product”; (5) NeoMedia engages in “litigation blackmail”; (6) NeoMedia is the only company suing other companies regarding patents relating to QR Codes; (7)

NeoMedia has engaged in “frivolous” and “gratuitous” patent litigation; and (8) NeoMedia does not have a license from MFR.

105. Scanbuy’s representation that NeoMedia is a “patent troll” is disparaging, defamatory, false and misleading.

106. Scanbuy’s representation that NeoMedia is a “non-practicing entity (NPE)” is disparaging, defamatory, false and misleading.

107. Scanbuy’s representation that NeoMedia “has no business” is disparaging, defamatory, false and misleading.

108. Scanbuy’s representation that NeoMedia “does not intend to build, manufacture, or market a product” is disparaging, defamatory, false and misleading.

109. Scanbuy’s representation that NeoMedia engages in “litigation blackmail” is disparaging, defamatory, false and misleading.

110. Scanbuy’s representation that NeoMedia is the only company suing other companies regarding patents relating to QR Codes is disparaging, defamatory, false and misleading.

111. Scanbuy’s representation that NeoMedia’s patent litigation is “frivolous” or “gratuitous” is disparaging, defamatory, false and misleading.

112. Scanbuy's representation that NeoMedia does not have a license from MFR is false and misleading.

113. At the time Scanbuy made the representations set forth above and summarized in paragraph 80, Scanbuy knew that the assertions were disparaging, defamatory, false and misleading.

114. At the time Scanbuy made the representations set forth above and summarized in paragraph 80, Scanbuy knew NeoMedia was in the business of providing QR Codes and QR Code resolution products and services.

115. It is particularly disparaging and damaging to falsely label NeoMedia as a "patent troll" or "non-practicing entity (NPE)" in the 2013-14 time frame, because entities so labeled have come under disrepute, scrutiny and attack in the press, in the business community including customers and potential customers of NeoMedia, in Congress, and by select Attorneys General of certain states.

116. In the letter confirming it was abandoning the arbitration it filed, Scanbuy asserted, for the first time, that it had supposed rights to NeoMedia's patents through a separate agreement NeoMedia had entered with Microsoft (Scanbuy's "Microsoft License" Argument).

117. After running a variety of traces on Scanbuy Indirect Codes and completing its determination that Scanbuy's "Microsoft License" Argument was

not applicable, NeoMedia sent in good faith letters to certain customers of Scanbuy's services notifying them about NeoMedia's patents.

118. Scanbuy's assertions that its products and services have been licensed since September 17, 2013 and also since December 2, 2013 are false and misleading.

119. Furthermore, in recent months, Scanbuy has represented to prospective NeoMedia customers that NeoMedia was infringing patents and that NeoMedia's prospective customers could face a patent infringement lawsuit if they used NeoMedia's services instead of Scanbuy's services.

120. Such representations by Scanbuy were made in bad faith and are disparaging, defamatory, false and misleading.

121. At least one prospective customer was deceived by one or more of Scanbuy's false and misleading statements and as a result expressed concern regarding entering into a business relationship with NeoMedia.

122. One or more of the false and misleading statements made by Scanbuy was material to the purchasing decisions of at least one prospective customer for NeoMedia's QR Code products and services.

123. On information and belief, prospective customers have been or are likely to be deceived by Scanbuy's false and misleading statements. On its

website, Scanbuy also makes the following representations regarding the competitive advantage Scanbuy offers through patent rights that it extends to its customers.

124. Under the heading “You Are Protected With Scanbuy,” Scanbuy asserts:

Scanbuy is one of only a handful of companies that owns and has licenses to patents that can shield our customers from ‘patent trolls’ that plague the QR Code (/platform-features) marketplace. Scanbuy’s own substantial patent position and our in-force licenses help protect our ScanLife customers from the increasing number of lawsuits and threats of lawsuits damaging the industry today.

Exhibit 16.

125. On the same webpage described above, and under the headings “Scanbuy Patent Lists” and “Scanbuy MFR Patents,” Scanbuy provides a link to the list of the patents in which it claims rights and to which it refers in the above-quoted representations on its website. Exhibit 6. A user of the website can access the list of the “Scanbuy MFR Patents” by clicking on the link. Exhibit 17.

126. By so listing those patents in connection with the statements referred to in paragraph 129 below, Scanbuy implies to its current and prospective customers and the general public that all of the listed patents are currently in force and are or will be licensed to Scanbuy customers.

127. However, such representation regarding the “Scanbuy MFR Patents” is false and misleading.

128. In fact, a majority of the “Scanbuy MFR Patents” have expired and are no longer in force.

129. For example, currently the terms of at least the following patents listed by Scanbuy have expired: U.S. Patent No. 5,932,863; No. 6,866,196; No. 6,843,419; No. 6,827,267; No. 6,834,804; No. 6,886,750; No. 6,830,188; No. 6,830,187; No. 6,929,182; No. 6,843,411; No. 6,824,057; No. 6,827,259; No. 6,7395,969; No. 7,232,057; No. 7,500,596; No. 7,143,947; No. 7,213,763; No. 7,600,691; No. 7,712,668; and No. 7,717,344.

130. Scanbuy’s failure to exclude from the list of “Scanbuy MFR Patents” any patent that has expired, or to state which patents have expired is false and misleading.

131. On information and belief, Scanbuy is aware that such patents have expired.

132. On information and belief, Scanbuy is aware that its failure to exclude from the list of “Scanbuy MFR Patents” any patent that has expired, or to state which patents have expired, is false and misleading.

133. On information and belief, Scanbuy's representations regarding such patents Scanbuy have been made in bad faith.

134. Scanbuy provides the list of "Scanbuy MFR Patents" to attract potential customers and retain existing customers.

135. Customers, prospective customers and the general public viewing Scanbuy's website are likely to be deceived into believing that rights to the listed patents that have expired are part of the benefits that Scanbuy promotes to its customers in choosing Scanbuy QR Code products and services over competing QR Code products and services.

136. Customers, prospective customers and the general public who view the Scanbuy website are likely to be deceived into believing that the expired patents are currently in force.

137. Such mistaken belief by customers, prospective customers and the general public has had or is likely to have a material effect on a decision to do business with Scanbuy over its competitors, including NeoMedia.

D. Scanbuy's Delaware Lawsuit

138. On March 21, 2014, Scanbuy filed a Verified Complaint against NeoMedia in Delaware's Court of Chancery (the "Delaware Complaint"). Scanbuy cannot seek resolution of any dispute regarding the date its license was terminated in any court other than this Court. Under section 11 of the 2009 NeoMedia-Scanbuy Agreement, this Court has "exclusive jurisdiction" over "any dispute" involving the 2009 NeoMedia-Scanbuy Agreement.

Count I: Direct Infringement of the '597 Patent

139. NeoMedia incorporates by reference the allegations set forth in paragraphs 1 through 138 of this Complaint as though set forth fully herein.

140. Scanbuy develops and sells products and services named "ScanLife," and operates and controls a server computer that meets each and every element of one or more of the claims in the '597 patent, resulting in direct infringement of the '597 patent. Scanbuy's infringement of the '597 Patent has been and is willful and deliberate.

141. As a direct and proximate result of Scanbuy's acts, NeoMedia has been, and continues to be injured, and has sustained, and will continue to sustain, substantial damages in an amount not yet determined.

142. In addition, NeoMedia has and will continue to suffer irreparable harm as a direct and proximate result of Scanbuy's acts of patent infringement, for which there is no adequate remedy at law.

Count II: Inducing Infringement of the '597 Patent

143. NeoMedia incorporates by reference the allegations set forth in paragraphs 1 through 142 of this Complaint as though set forth fully herein.

144. Scanbuy is actually aware of the '597 Patent and the acts that constitute infringing conduct under the '597 Patent.

145. With knowledge of the '597 Patent and knowledge of the acts that constitute infringement of the '597 Patent, Scanbuy acted with the specific intent to induce and cause the direct infringement of the '597 Patent by individuals scanning Indirect QR Codes produced and distributed by Scanbuy.

146. Specific acts undertaken by Scanbuy to induce infringement of the claims of the '597 Patent include: (1) producing and distributing Indirect QR Codes; and (2) expressly encouraging or instructing individuals to scan Indirect QR Codes.

147. Scanbuy is liable to NeoMedia for inducing infringement of the '597 Patent, in violation of 35 U.S.C. § 271(b).

148. Such conduct by Scanbuy has been and is willful and deliberate.

149. As a direct and proximate result of Scanbuy's acts, NeoMedia has been, and continues to be injured, and has sustained, and will continue to sustain, substantial damages in an amount not yet determined.

150. In addition, NeoMedia has and will continue to suffer irreparable harm as a direct and proximate result of Scanbuy's acts of inducing patent infringement, for which there is no adequate remedy at law.

Count III: Inducing Infringement of the '048 Patent

151. NeoMedia incorporates by reference the allegations set forth in paragraphs 1 through 150 of this Complaint as though set forth fully herein.

152. Scanbuy is actually aware of the '048 Patent and the acts that constitute infringing conduct under the '048 Patent.

153. With knowledge of the '048 Patent and knowledge of the acts that constitute infringement of the '048 Patent, Scanbuy acted with the specific intent to induce and cause the direct infringement of the '048 Patent by individuals scanning Indirect QR Codes produced and distributed by Scanbuy.

154. Specific acts undertaken by Scanbuy to induce infringement of the claims of the '048 Patent include: (1) producing and distributing Indirect QR Codes; and (2) expressly encouraging or instructing individuals to scan Indirect QR Codes.

155. Scanbuy is liable to NeoMedia for inducing infringement of the '048 Patent, in violation of 35 U.S.C. § 271(b).

156. Such conduct by Scanbuy has been and is willful and deliberate.

157. As a direct and proximate result of Scanbuy's acts, NeoMedia has been, and continues to be injured, and has sustained, and will continue to sustain, substantial damages in an amount not yet determined.

158. In addition, NeoMedia has and will continue to suffer irreparable harm as a direct and proximate result of Scanbuy's acts of inducing patent infringement, for which there is no adequate remedy at law.

Count IV: Contributory Infringement of the '597 Patent

159. NeoMedia incorporates by reference the allegations set forth in paragraphs 1 through 158 of this Complaint as though set forth fully herein.

160. Indirect QR Codes and related services sold by Scanbuy are material to practicing the '597 Patent's invention.

161. Indirect QR Codes sold by Scanbuy are especially made or especially adapted to indirectly link to a webserver and therefore are especially made or adapted for use in an infringement of the '597 Patent.

162. Indirect QR Codes sold by Scanbuy have no substantial non-infringing uses.

163. Indirect QR Codes sold by Scanbuy contribute to individuals scanning such Indirect QR Codes, which scanning constitutes direct infringement of the '597 Patent.

164. Scanbuy is liable to NeoMedia for contributing to the infringement of the '597 Patent, in violation of 35 U.S.C. § 271(c).

165. Scanbuy's contributory infringement has been and is willful and deliberate.

166. As a direct and proximate result of Scanbuy's acts, NeoMedia has been, and continues to be injured, and has sustained, and will continue to sustain, substantial damages in an amount not yet determined.

167. In addition, NeoMedia has and will continue to suffer irreparable harm as a direct and proximate result of Scanbuy's acts of patent infringement, for which there is no adequate remedy at law.

Count V: Contributory Infringement of the '048 Patent

168. NeoMedia incorporates by reference the allegations set forth in paragraphs 1 through 167 of this Complaint as though set forth fully herein

169. Indirect QR Codes and related services sold by Scanbuy are material to practicing the '048 Patent's invention.

170. Indirect QR Codes sold by Scanbuy are especially made or especially adapted to indirectly link to a webserver and therefore are especially made or adapted for use in an infringement of the '048 Patent.

171. Indirect QR Codes sold by Scanbuy have no substantial non-infringing uses.

172. Indirect QR Codes sold by Scanbuy contribute to individuals scanning such Indirect QR Codes, which scanning constitutes direct infringement of the '048 Patent.

173. Scanbuy is liable to NeoMedia for contributing to the infringement of the '048 Patent, in violation of 35 U.S.C. § 271(c).

174. Scanbuy's contributory infringement has been and is willful and deliberate.

175. As a direct and proximate result of Scanbuy's acts, NeoMedia has been, and continues to be injured, and has sustained, and will continue to sustain, substantial damages in an amount not yet determined.

176. In addition, NeoMedia has and will continue to suffer irreparable harm as a direct and proximate result of Scanbuy's acts of patent infringement, for which there is no adequate remedy at law.

Count VI:
Violation of the Lanham Act (15 U.S.C. § 1125(a))

177. NeoMedia hereby incorporates the allegations set forth in paragraphs 1 through 176 above as though fully set forth herein.

178. NeoMedia's sixth claim for relief arises under Section 43(a) of the Federal Trademark Act of 1946 as amended (15 U.S.C. § 1125(a)).

179. Defendant Scanbuy has made and sponsored, and continues to make and sponsor, false and misleading representations of facts regarding NeoMedia and its business and regarding the "Scanbuy MFR Patents."

180. Scanbuy's false and misleading statements were made in advertising or promotional materials in the form of a press release and/or information and links on Scanbuy's website, and in direct communications with prospective customers.

181. A reader of the totality of the presentation on Scanbuy's press release and website would falsely conclude that, among other things, NeoMedia is a "non-

practicing entity” and “patent troll” that “ha[s] no business” and “do[es] not intend to build, manufacture or market a product to use the patents,” has and continues to commit “litigation blackmail,” engages in “frivolous” and “gratuitous” patent litigation, that the other false and misleading representations made by Scanbuy described in paragraphs 104–112 are true, and that all of the “Scanbuy MFR Patents” are currently in force, will be licensed to Scanbuy customers and are included in the benefits of doing business with Scanbuy and of purchasing its QR Code products and services.

182. Scanbuy has falsely promoted its own services and disparaged the services of NeoMedia by asserting to potential customers of NeoMedia that NeoMedia’s good and services “infringe patents” and that NeoMedia’s prospective customers could face a patent infringement lawsuit if they used NeoMedia’s products or services instead of Scanbuy’s services.

183. Defendant Scanbuy’s statements have actually deceived or have the tendency to deceive a substantial segment of its audience.

184. Defendant Scanbuy’s deception is material and is likely to influence the purchasing decisions of potential clients.

185. Defendant Scanbuy’s false and misleading statements and representations were and are made in interstate commerce.

186. Defendant Scanbuy's improper activities, as described above, have been willful and deliberate and were made by Scanbuy with actual knowledge that NeoMedia is an operating business and is Scanbuy's direct competitor, and that the other representations described above were false and misleading.

187. This is an exceptional case under the Lanham Act.

188. As a result of defendant Scanbuy's improper and wrongful activities, Plaintiff NeoMedia has suffered and continues to suffer substantial injuries, including irreparable injuries for which there is no adequate remedy at law and damages.

189. NeoMedia has also suffered damages that include but are not limited to loss of sales and profits to NeoMedia resulting from the false and deceptive statements made by Scanbuy.

190. NeoMedia's injuries will continue unless Scanbuy is preliminarily and permanently enjoined by this Court.

191. In addition, because Scanbuy's false statements were willful, the award of actual damages should be trebled pursuant to 15 U.S.C. §1117(b).

192. NeoMedia is also entitled to recover its attorneys' fees, expenses of litigation and costs of suit pursuant to 15 U.S.C. § 1117.

REQUEST FOR RELIEF

WHEREFORE, NeoMedia requests that this Court enter judgment:

- A. In favor of NeoMedia and against Scanbuy finding and declaring that Scanbuy has infringed and is infringing NeoMedia's patents-in-suit and that such infringement was and is willful;
- B. Awarding NeoMedia damages for Scanbuy's patent infringement;
- C. Finding that this is an "exceptional case" under 28 U.S.C. § 285 and awarding NeoMedia enhanced damages for Scanbuy's willful infringement;
- D. Permanently and preliminarily enjoining and restraining Scanbuy, its agents, sales representatives, distributors, employees, attorneys, affiliates, subsidiaries, successors and assigns and any and all persons or entities acting through, under or in active concert or in participation with any or all of them, from infringing NeoMedia's patents-in-suit;
- E. Adjudging, finding and declaring that Scanbuy, its agents, sales representatives, distributors, employees, attorneys, affiliates, subsidiaries, successors and assigns and any and all persons or entities acting through, under or in active concert or in participation with any or all of them, be enjoined, restrained and ordered preliminarily and permanently:

1. From making any of the false and misleading statements and representations as set forth in paragraphs 89 through 137 above, and any similar statements or representations, including without limitation that NeoMedia is a “Non-Practicing Entity,” “NPE,” “patent troll,” “not in business,” engages in “litigation blackmail,” files “frivolous” or “gratuitous” patent litigation, that NeoMedia is infringing, or “not licensed” or authorized under, any patents, that Scanbuy has a license under NeoMedia’s patents, and any similar statements or representations, and from representing or implying that any expired patent owned or licensed by Scanbuy is in force, and from displaying or describing such expired patent without prominently disclosing such expiration;
2. To disseminate appropriate and effective corrective advertising and materials to Scanbuy’s customer base, including but not limited to, on the homepage of the www.scanlife.com website, via press release and other media, to correct Scanbuy’s false, misleading and deceptive statements;

- F. An award of damages and costs sustained by NeoMedia pursuant to 15 U.S.C. § 1117(a) (1)-(3), and as otherwise permitted by law;
- G. Trebling of all damages where appropriate;
- H. An award of prejudgment and post-judgment interest; and
- I. An award to NeoMedia of any other relief, in law and in equity, to which the Court finds NeoMedia justly entitled.
- J. Granting NeoMedia such other and further relief as is just and proper, or as the Court deems appropriate.

JURY DEMAND

NeoMedia demands a trial by jury on all issues that may be so tried.

/s/ William M. Ragland, Jr.

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Of Counsel for Plaintiff NeoMedia
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CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2014, I caused a true and correct copy of the foregoing **PLAINTIFF'S AMENDED COMPLAINT** to be served on counsel of record for Defendant Scanbuy, Inc., Jeffrey D. Blake and John Michael Hintz, by the Court's ECF system.

This 19th day of June, 2014.

/s/ William M. Ragland, Jr.
William M. Ragland, Jr.
Georgia State Bar No. 591888