

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

Civil Action No. _____

NEOMEDIA TECHNOLOGIES, INC.,

Plaintiff,

v.

Judge

MARRIOTT INT’L, INC.,

Jury Trial Demand

Defendant.

COMPLAINT

Plaintiff NeoMedia Technologies, Inc. for its Complaint for patent infringement against Defendant Marriott Int’l, Inc., alleges as follows:

PARTIES

1. Plaintiff NeoMedia Technologies, Inc. (“NeoMedia”) is a Delaware corporation with its principal place of business at 1515 Walnut Avenue, Suite 100, Boulder, Colorado 80302 that provides mobile barcode creation and technology solutions including 2-dimensional (“2D”) products and services.

2. NeoMedia is the owner of record and assignee of a family of related patents (including US Patent Nos. 5,978,773; 6,199,048; 7,383,209; and 7,765,126), which family includes US Patent 8,131,597 (“the ‘597 Patent”) (the “Asserted Patent”). NeoMedia has and has had the exclusive right to enforce and collect damages for infringement of the Asserted Patent during all relevant time periods.

3. On information and belief, Defendant Marriott Int'l, Inc. ("Marriott") is organized and existing under the laws of the State of Delaware, having its headquarters at 10400 Fernwood Road, Bethesda, MD 20817 and having a place of business (a company-owned or franchise hotel) at 2660 Canyon Blvd, Boulder, CO 80302. Marriott's registered agent in Colorado is: John Frederick Marriott, 9763 Ironstone Place, Parker, CO 80134.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, and more particularly 35 U.S.C. § 271.

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

6. Personal jurisdiction over the defendant is proper under C.R.S. § 13-1-124 and the United States Constitution because this action arises from the Defendant's commission of at least (a) transacting business and (b) committing the complained of tortious acts within this jurisdiction.

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

BACKGROUND

8. NeoMedia is a leader in mobile barcode creation and technology solutions including 2-dimensional ("2D") products and services. NeoMedia's platform technology enables consumers easy and quick access to information by scanning mobile barcodes with cameras such as those on smartphones or tablets. NeoMedia provides a barcode scanner application, NeoReader®, which allows users to scan multiple types of 1-

Dimensional (“1D”), such as Uniform Product Codes (“UPC”) and 2D barcodes, such as Quick-Response Codes (“QR Codes”).

9. NeoMedia has the technical capacity to provide QR Codes and QR Code-related services to Marriott. NeoMedia has also licensed its patents to other companies that have the technical capacity to provide QR Codes and QR Code-related services to Marriott. Marriott, however, has not used the services of NeoMedia or a provider licensed by NeoMedia to create and manage QR Codes produced and distributed by Marriott.

THE PATENT-IN-SUIT

10. On March 6, 2012, the ‘597 Patent, entitled “System and Method for Using an Ordinary Article of Commerce to Access a Remote Computer” was duly and legally issued by the USPTO. A true and correct copy of the ‘597 Patent is attached as Exhibit A.

11. The ‘597 patent has been asserted in several previous patent infringement lawsuits, each of which resolved by default judgment in favor of NeoMedia or by the accused defendants agreeing to enter license agreements with NeoMedia.

12. In addition to the licenses discussed above, NeoMedia has licensed certain of its patents, including the ‘597 patent, to other companies including but not limited to Kraft Foods, Microsoft, Progressive Insurance, Mondelez Global LLC, Skechers USA, Tyson Foods, a global life science and high-tech materials company, a beverage manufacturer, a consumer packaged goods company, a Global 500 financial services company, a global manufacturer and marketer of high-quality food and beverage company, large quick service restaurants, and a major US automobile manufacturer.

**Marriott's Knowledge Of The Asserted Patent, How They Are Infringed,
And Continued Infringement Despite That Knowledge**

13. Marriott has been aware of the Asserted Patent no later than approximately February 5, 2013, when a letter dated January 31, 2013 was delivered by Federal Express to Marriott. The letter identifies the Asserted Patent and the activity NeoMedia contends infringes it.

14. In addition to an accusation of direct infringement, the letter states that Marriott was “inducing the direct infringement of method claims and system claims by providing these codes and encouraging and instructing its consumers to scan Marriott’s mobile barcodes/QR codes.” An IP overview claim chart setting forth NeoMedia’s contention of infringement was included in the letter.

15. In addition to the January 31, 2013 letter and claim chart, this Complaint serves as additional notice to Marriott of the Asserted Patent and the manner in which it is infringed.

16. Since sending the January 31, 2013 letter, NeoMedia, through counsel, has corresponded multiple times with representatives of Marriott via phone and e-mail, beginning in February of 2013.

17. Marriott has not agreed to enter into a licensing agreement with NeoMedia.

18. Marriott has not offered an explanation that Marriott does not infringe the Asserted Patent.

19. Marriott has not stated to NeoMedia that the Asserted Patent is invalid for any reason.

20. As was explained in the January 31st letter, QR Codes produced and distributed by Marriott infringe the Asserted Patent because the QR Codes enable a user device (such as a smartphone) to connect indirectly with a content server over the Internet. Marriott does this by encoding the QR Code with an index that is sent to a server and used to lookup the URL of a content server, which is then returned to the user device to enable it to connect with the content server. QR Codes designed to operate in this manner are referred to as “Indirect QR Codes” in this Complaint.

21. With knowledge of the Asserted Patent and knowledge of the manner in which the Asserted Patent is infringed, Marriott has continued to produce and distribute Indirect QR Codes that, when scanned, infringe the Asserted Patent.

22. For example, Marriott has produced, distributed, and/or sold products and/or services and/or advertisements featuring Indirect QR Codes that, on information and belief, Marriott coordinates or mandates be placed on certain products and/or displayed throughout Marriott hotels.

23. One such Indirect QR Code, on a Marriott room key, is encoded with the following information that includes an index:

“<http://2d-co.de/33131596023>.”

24. The index is used to look up the address of the content server, which is “<https://play.google.com/store/apps/details?id=com.marriott.mrt&hl=en>,” and that address is returned to the device that scanned the Indirect QR Code.

25. The room key expressly instructs individuals to “Point Scan Download” above the code itself.

26. A second such Indirect QR Code, on the packaging of a hotel key holder, is encoded with the following information that includes an index: “http://2d-co.de/68401596023.”

27. The index is used to look up the address of the content server, which is “https://play.google.com/store/apps/details?id-com.marriott.mrt,” and that address is returned to the device that scanned the Indirect QR Code.

28. A third such Indirect QR code, on an online advertisement for Marriott’s Mobile App, is encoded with the following information that includes an index: “http://2d-co.de/33127596023.”

29. The index is used to look up the address of the content server, which is “https://play.google.com/store/apps/details?id-com.marriott.mrt&hl=en,” and that address is returned to the device that scanned the Indirect QR Code.

30. The advertisement expressly instructs individuals to “Point. Scan. Free Download” next to the code itself.

31. On information and belief, Marriott does cause and has caused advertisements and/or room keys to be published to the general public intending to strengthen the value of its brand, featuring at least one QR Code. According to its website, Marriott indicates that it is a “leading lodging company with more than 3,400 lodging properties in 68 countries and territories.”

32. On information and belief, Marriott publishes and has published these advertisements and/or room keys on behalf of its brand in order to instruct users to scan the QR Code provided by Marriott with a free barcode reader.

33. On information and belief, Marriott's Indirect QR Codes have been scanned in this judicial district, meaning that acts of direct infringement have taken place in this judicial district, and Marriott has induced or contributed to such acts of direct infringement.

34. Indirect QR Codes like the example above that are encoded with an index that are used to look up the address of a content server (which, in turn, will be returned to the device that scanned the Indirect QR Code) are especially made and designed for that purpose.

35. Indirect QR Codes have no purpose except to be scanned, and the information encoded in them has no purpose except to cause a server to use the index to lookup the address of a content server and return the address of the content server to the device that scanned the Indirect QR Code.

36. Indirect QR Codes are not staple articles of commerce; they lack any substantial non-infringing uses.

37. The full extent of Marriott's distribution and promotion of Indirect QR Codes that, when scanned, infringe the Asserted Patent is not known to NeoMedia. Marriott's refusal to discuss the matter further with NeoMedia prevents NeoMedia from assessing the full extent of Marriott's use of Indirect QR Codes.

38. In light of its knowledge of the Asserted Patent and knowledge of the manner in which it is infringed, Marriott was objectively reckless in continuing to engage in actions that directly and indirectly infringe the Asserted Patent. Marriott knew or should have known that there was an objectively high likelihood that its actions constituted infringement of a valid patent.

COUNT I: DIRECT INFRINGEMENT OF THE '597 PATENT

39. NeoMedia incorporates by reference the allegations set forth in paragraphs 1 through 38 of this Complaint as though set forth fully herein.

40. Marriott has 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.

41. Marriott's conduct is willful and deliberate.

42. As a direct and proximate result of Marriott'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.

43. In addition, NeoMedia has and will continue to suffer irreparable harm as a direct and proximate result of Marriott's acts of patent infringement.

COUNT II: INDUCING INFRINGEMENT OF THE '597 PATENT

44. NeoMedia incorporates by reference the allegations set forth in paragraphs 1 through 38 of this Complaint as though set forth fully herein.

45. Marriott, through previous correspondence from NeoMedia, and based upon this Complaint, is actually aware of the '597 patent and the acts that constitute infringing conduct.

46. With knowledge of the '597 patent and knowledge of the acts that constitute infringement of the '597 patent, Marriott acted with the specific intent to induce and cause the direct infringement of the '597 patent.

47. Specific acts undertaken by Marriott to induce infringement of the claims of the '597 patent include: (1) producing and distributing Indirect QR Codes encoded

with an index, with the knowledge that when the index is scanned by a user device, the index will be sent to a server and used to lookup the URL of a content server, which is then returned to the user device to enable it to connect with the content server; and (2) expressly encouraging or instructing individuals to scan Indirect QR Codes.

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

49. Marriott’s conduct is willful and deliberate.

50. As a direct and proximate result of Marriott’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.

51. In addition, NeoMedia has and will continue to suffer irreparable harm as a direct and proximate result of Marriott’s acts of patent infringement.

COUNT III: CONTRIBUTORY INFRINGEMENT OF THE ‘597 PATENT

52. NeoMedia incorporates by reference the allegations set forth in paragraphs 1 through 38 of this Complaint as though set forth fully herein.

53. Indirect QR Codes made and distributed by Marriott are material to practicing the ‘597 Patent’s invention.

54. Indirect QR Codes made and distributed by Marriott are especially made or especially adapted to indirectly link to a webserver.

55. Indirect QR Codes made and distributed by Marriott have no substantial non-infringing uses.

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

57. Marriott's conduct is willful and deliberate.

58. As a direct and proximate result of Marriott'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.

59. In addition, NeoMedia has and will continue to suffer irreparable harm as a direct and proximate result of Marriott's acts of patent infringement.

REQUEST FOR RELIEF

WHEREFORE, NeoMedia requests that this Court enter judgment:

- A. Adjudging, finding and declaring that Marriott has directly infringed and indirectly infringed (both via induced infringement and contributory infringement) the asserted claims of the Patent-In-Suit under 35 U.S.C. §271;
- B. Adjudging, finding and declaring that infringement by Marriott is willful and deliberate;
- C. Ordering Marriott to pay NeoMedia an amount that, as adequately as possible, compensates NeoMedia for infringement by Marriott, in no event less than a reasonable royalty fee;
- D. Ordering Marriott to pay court costs, pre-judgment interest, post-judgment interest, and attorneys' fees under 35 U.S.C. §§284 and 285;
- E. Finding that this is an "exceptional" case pursuant to 35 U.S.C. §285, and awarding enhanced damages up to and including treble the amount of damages and the payment of attorneys' fees; and
- F. 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.

Dated: June 23, 2014

Respectfully submitted,

/s/ Alexander J. Debski

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