

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

Civil Action No. _____

NEOMEDIA TECHNOLOGIES, INC.,

Plaintiff,

v.

Judge

JUST BORN, INC.,

Jury Trial Demand

Defendant.

COMPLAINT

Plaintiff NeoMedia Technologies, Inc. for its Complaint for patent infringement against Defendant Just Born, 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 Just Born, Inc. (“Just Born”) is organized and existing under the laws of the State of Pennsylvania, having its principal place of business and registered office at 1300 Stefko Blvd., Bethlehem, PA 18017. Just Born sells products available at numerous locations in this district.

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

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.

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

13. Just Born has been aware of the Asserted Patent no later than approximately January 29, 2013, when a letter dated January 24, 2013 was delivered by Federal Express to Just Born. 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 Just Born was "inducing the direct infringement of method claims and system claims by providing these codes and encouraging and instructing its consumers to scan Just Born'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 24, 2013 letter and claim chart, this Complaint serves as additional notice to Just Born of the Asserted Patent and the manner in which it is infringed.

16. Since sending the January 24, 2013 letter, NeoMedia, through counsel and licensing agents, has corresponded multiple times with representatives of Just Born via phone and e-mail, beginning in January of 2013 and most recently on February 28, 2014.

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

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

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

20. As was explained in the January 24th letter, QR Codes produced and distributed by Just Born 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. Just Born 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, Just Born has continued to produce and distribute Indirect QR Codes that, when scanned, infringe the Asserted Patent.

22. For example, Just Born has produced, distributed, and/or sold products with packaging containing Indirect QR Codes that, on information and belief, Just Born coordinates or mandates be placed on certain products sold in stores.

23. One such Indirect QR Code, on the packaging of Mike and Ike candy, is encoded with the following information that includes an index:

“http://mikeandike.delivr.com/1b2t3_qr.”

24. The index is used to look up the address of the content server, which is “https://m.facebook.com/mikeandike?refsrc=http%3A%2F%2Fmikeandike.delivr.com%2F1b2t3_qr&_rdr,” and that address is returned to the device that scanned the Indirect QR Code.

25. A second such Indirect QR Code, on the packaging of Hot Tamales candy, is encoded with the following information that includes an index:

“http://hottamales.delivr.com/1b2rb_qr.”

26. The index is used to look up the address of the content server, which is “https://m.facebook.com/HotTamalesCandy?refsrc=http%3A%2F%2Fhottamales.delivr.com%2F1b2rb_qr&_rdr,” and that address is returned to the device that scanned the Indirect QR Code.

27. On information and belief, Just Born does cause and has caused product packaging to be produced and distributed to the general public intending to strengthen the value of its brand, featuring at least one QR code.

28. On information and belief, Just Born’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 Just Born has induced or contributed to such acts of direct infringement.

29. Indirect QR Codes like the examples 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.

30. 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.

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

32. The full extent of Just Born’s distribution and promotion of Indirect QR Codes that, when scanned, infringe the Asserted Patent is not known to NeoMedia.

33. In light of its knowledge of the Asserted Patent and knowledge of the manner in which it is infringed, Just Born was objectively reckless in continuing to engage in actions that directly and indirectly infringe the Asserted Patent. Just Born 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

34. NeoMedia incorporates by reference the allegations set forth in paragraphs 1 through 33 of this Complaint as though set forth fully herein.

35. Just Born 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.

36. Just Born’s conduct is willful and deliberate.

37. As a direct and proximate result of Just Born’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.

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

COUNT II: INDUCING INFRINGEMENT OF THE ‘597 PATENT

39. NeoMedia incorporates by reference the allegations set forth in paragraphs 1 through 33 of this Complaint as though set forth fully herein.

40. Just Born, through previous correspondence from NeoMedia, and based upon this Complaint, is actually aware of the ‘597 patent and the acts that constitute infringing conduct.

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

42. Specific acts undertaken by Just Born 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.

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

44. Just Born's conduct is willful and deliberate.

45. As a direct and proximate result of Just Born'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.

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

COUNT III: CONTRIBUTORY INFRINGEMENT OF THE '597 PATENT

47. NeoMedia incorporates by reference the allegations set forth in paragraphs 1 through 33 of this Complaint as though set forth fully herein.

48. Indirect QR Codes made and distributed by Just Born are material to practicing the '597 Patent's invention.

49. Indirect QR Codes made and distributed by Just Born are especially made or especially adapted to indirectly link to a webserver.

50. Indirect QR Codes made and distributed by Just Born have no substantial non-infringing uses.

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

52. Just Born's conduct is willful and deliberate.

53. As a direct and proximate result of Just Born'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.

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

REQUEST FOR RELIEF

WHEREFORE, NeoMedia requests that this Court enter judgment:

- A. Adjudging, finding and declaring that Just Born 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 Just Born is willful and deliberate;
- C. Ordering Just Born to pay NeoMedia an amount that, as adequately as possible, compensates NeoMedia for infringement by Just Born, in no event less than a reasonable royalty fee;

- D. Ordering Just Born 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/ David Berten

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