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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

AT PORTLAND

LEATHERMAN TOOL GROUP, INC., an
Oregon corporation,

PLAINTIFF,

v.

NEOMEDIA TECHNOLOGIES, INC., a
Delaware corporation,

DEFENDANT.

Case No. 3:15-cv-215

COMPLAINT

Patent Infringement (35 U.S.C. §271)

DEMAND FOR JURY TRIAL

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Leatherman Tool Group, Inc. (“Leatherman Tool”), by its undersigned counsel, hereby alleges for its Complaint against Defendant NeoMedia Technologies, Inc. (“NeoMedia”) as follows:

SUBJECT MATTER JURISDICTION

1. This is a declaratory judgment action in which Leatherman Tool seeks a determination that it does not infringe U.S. Patent No. 8,131,597 (“the 597 Patent”) under 35 U.S.C. §271.

2. Upon information and belief, NeoMedia is the assignee of the 597 Patent.

3. As described below, on or about January 12, 2015, NeoMedia sent Leatherman Tool a letter alleging that Leatherman Tool’s inclusion of QR codes on certain of its advertising or product packaging infringes the 597 Patent, demanding that Leatherman either cease and desist from using QR codes or take a license from NeoMedia, and threatening litigation. As a result, a judicable controversy exists between the parties.

4. This Court has subject matter jurisdiction over Leatherman Tool’s federal law claim under 28 U.S.C. §§1331 and 1338, and 28 U.S.C. §§2201(a) and 2202, and has supplemental jurisdiction over Leatherman Tool’s state law claim under 28 U.S.C. §1367(a).

PARTIES, IN PERSONAM JURISDICTION, AND VENUE

5. Leatherman Tool is an Oregon corporation with a principal place of business at 12106 NE Ainsworth Circle, Portland, Oregon 97220. Leatherman Tool manufactures and distributes engineered multi-tools and knives that are designed for outdoor, tactical, professional, and general use. Leatherman Tool’s products are produced in its factory in Portland, Oregon, and are distributed throughout the United States and internationally.

6. Upon information and belief, NeoMedia is a Delaware corporation with a principal place of business at 1515 Walnut Avenue, Suite 100, Boulder, Colorado, 80302. NeoMedia also maintains a registered agent address at 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.

7. Upon information and belief, NeoMedia is subject to personal jurisdiction in Oregon because it transacts or attempts to transact business in Oregon.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391(b) and/or (c) and 1400(b) because a substantial portion of the events or omissions giving rise to Leatherman's claims occurred in this district.

FACTUAL BACKGROUND

9. Quick Response Codes, typically known as "QR codes," are a type of two-dimensional barcode that are typically placed on consumer goods, or contained in advertising. One particular use of these QR codes is to allow a consumer to take a picture of, or scan, the QR code and then be directed to a particular website.

10. The 597 Patent is entitled "System and Method for Using an Ordinary Article of Commerce to Access a Remote Computer" and issued on March 6, 2012. A true and correct copy of the 597 Patent is attached hereto as Exhibit 1. In general, and among many other specific requirements, the 597 Patent claims require a user computer system, a remote computer system, and correspondence between the two. The claims do not cover the act of simply printing the QR codes on products or advertising.

11. Since the granting of the 597 Patent, NeoMedia has engaged in a pattern of conduct of sending demand letters to companies that provide the back-end technology for QR codes, as well as to companies like Leatherman Tool, that simply print QR codes on their products or advertising. Leatherman Tool does not supply or operate the user computer system or the remote computer system, and at the very least, NeoMedia's claims are not made in good faith.

12. Similarly, since 2012 NeoMedia has engaged in a pattern of conduct of threatening and instigating litigation against many such companies.

13. For example, upon information and belief, NeoMedia has filed well over a dozen lawsuits alleging infringement of the 597 Patent.

14. Additionally, on or about March 12, 2014, Starbucks Corporation filed a declaratory judgment suit in the U.S. District Court for the Western District of Washington,

which was assigned case number 2:14 cv 365. That case is currently stayed pending separate litigation between NeoMedia and Starbucks' vendor for services relating to QR codes.

15. Upon information and belief, NeoMedia sent one or more of the above demand letters when it knew, or should have known, that the recipient's products or actions did not actually infringe any claim of the 597 Patent.

16. On or about January 12, 2015, NeoMedia sent a demand letter to Leatherman Tool, which, inter alia, threatened litigation. A true and correct copy of such letter is attached hereto as Exhibit 2.

17. In that letter, NeoMedia claims that, "The use of the code for its intended purpose has not been authorized by NeoMedia and infringes, at a minimum, U.S. Patent No. 8,131,597."

18. In that letter, NeoMedia states that "Leatherman needs to address this unauthorized use of NeoMedia's technology as soon as possible."

19. In that letter, NeoMedia also threatens to file suit for patent infringement.

20. Upon information and belief, NeoMedia sent the letter to Leatherman Tool when it knew, or should have known, that neither Leatherman's products nor actions actually infringe any claim of the 597 Patent.

**COUNT I – DECLARATORY JUDGMENT OF
NONINFRINGEMENT OF THE 597 PATENT**

21. Leatherman Tool incorporates by reference Paragraphs 1-20 as if fully set forth herein.

22. NeoMedia has accused Leatherman Tool of infringing the 597 Patent by its inclusion of QR codes on certain of Leatherman's product packaging.

23. Leatherman Tool has not directly or indirectly infringed and is not directly or indirectly infringing any valid claim of the 597 Patent.

24. None of Leatherman Tool's products or its actions directly or indirectly infringing any valid claim of the 597 Patent.

25. To resolve the legal and factual questions NeoMedia has raised, and to afford relief from the uncertainty and controversy that NeoMedia's allegations have precipitated, Leatherman Tool is entitled to a declaratory judgment that it has not infringed and is not infringing any valid, enforceable claim of the 597 Patent.

26. This case is exceptional within the meaning of 35 U.S.C § 285, and Leatherman Tool is entitled to its costs, including reasonable attorneys fees.

**COUNT II – VIOLATION OF OREGON
UNLAWFUL TRADE PRACTICES ACT
O.R.S. §646.638**

27. Leatherman Tool incorporates by reference Paragraphs 1-26 as if fully set forth herein.

28. On or about January 12, 2015, NeoMedia, as a "Patentee," sent a "Demand" to Leatherman Tool, a "Recipient" who resides and maintains a place of business and transacts business in Oregon. The words in quotes are defined terms in sections 2(1)(c)(d) and (e), chapter 19, Oregon Laws 2014 (not yet codified). O.R.S. §646.608(1) as amended by section 3, chapter 19 Oregon Laws 2014.

29. In doing so, NeoMedia communicated a demand to Leatherman Tool, which alleges, asserts, and claims in bad faith that Leatherman has infringed or contributed to infringing the 597 Patent.

30. As such, NeoMedia has committed an unlawful practice under O.R.S. §646.608(1)(yyy) that is subject to a private right of claim under O.R.S. §646.638.

31. Pursuant to O.R.S. §646.638, Leatherman Tool is entitled to its actual damages or statutory damages of \$200, whichever is greater, punitive damages, and its reasonable attorneys fees.

PRAYER FOR RELIEF

WHEREFORE, Leatherman Tool prays for a judgment:

- (a) declaring that Leatherman Tool has not infringed and is not infringing the 597 Patent;
- (b) declaring this case exceptional within the meaning of 35 U.S.C. §285, thereby entitling Leatherman Tool to a recovery of its costs including reasonable attorneys' fees;
- (c) awarding Leatherman Tool its actual damages or statutory damages of \$200, whichever is greater;
- (d) awarding Leatherman Tool punitive damages as result of NeoMedia's unlawful trade practices pursuant to O.R.S. §646.638 (1);
- (e) awarding Leatherman Tool its reasonable attorney fees and costs pursuant to O.R.S. §646.638(3); and
- (f) awarding such other and further relief as the Court deems just and proper.

DATED this 6th day of February, 2015.

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