

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

SHIPPING and TRANSIT, LLC,

Plaintiff,

Case No. \_\_\_\_\_

vs.

**DEMAND FOR JURY TRIAL**

CHEATER FIVE, INC. d/b/a POINTER  
FOOTWEAR,

Defendant.

\_\_\_\_\_ /

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff, Shipping and Transit, LLC, by and through its undersigned counsel, hereby sues Defendant, CHEATER FIVE, INC. d/b/a POINTER FOOTWEAR (“CHEATER”), and in support, alleges as follows:

**NATURE OF THE LAWSUIT**

1. This is an action for patent infringement of United States Patent Number: 7,400,970 arising under the patent laws of the United States, Title 35 of the United States Code.

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1338; and 35 U.S.C. § 271.

3. This Court has personal jurisdiction over CHEATER pursuant to, *inter alia*, Florida’s long-arm statute, § 48.193, in that CHEATER: (a) operates, conducts, engages in, and/or carries on a business or business adventure(s) in Florida and/or has an office or agency in Florida; (b) has committed one or more tortious acts within Florida; (c) was and/or is engaged in substantial and not isolated activity within Florida; and/or (d) has purposely availed itself of

Florida's laws, services and/or other benefits and therefore should reasonably anticipate being haled into one or more of the courts within the State of Florida.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400.

**THE PLAINTIFF**

5. Plaintiff, Shipping and Transit, LLC, is a Florida Limited Liability Company with a principal place of business located in Boynton Beach, Florida.

**THE DEFENDANT**

6. Defendant, CHEATER, is a Washington Corporation with a principal place of business in Seattle, Washington. Upon information and belief, CHEATER transacts business in Florida and within this Judicial District, and has, at a minimum, offered to provide and/or has provided to customers within this Judicial District and throughout the State of Florida services and/or products that infringe claims of the 7,400,970.

**THE PLAINTIFF'S PATENTS**

7. Plaintiff owns all rights, titles and interests in, and/or has standing to sue for infringement of United States Patent Number 7,400,970 ("the '970 patent"), entitled "System and Method for an Advance Notification System for Monitoring and Reporting Proximity of a Vehicle", issued July 15, 2008. A copy of the '970 patent is attached hereto as Exhibit 1.

**COUNT I**  
**DIRECT PATENT INFRINGEMENT**

8. Plaintiff hereby incorporates Paragraphs 1 through 7 set forth above as if fully set forth herein.

9. Pursuant to 35 U.S.C. § 271(a), CHEATER has directly infringed claims of the 7,400,970 patent through, among other activities, products, programs, applications, functions, systems and methods, the use of tracking and notification technologies within its "ADVANCE

**SHIP NOTICE**” (“First you will receive from us a confirmation of receipt of your order by e-mail; this confirmation is also not a legally binding acceptance of your order; We will use your e-mail address to send you status information about your order " www.pointerfootwear.com) and **“SHIPPING CONFIRMATION EMAIL”** (“Along with the shipping confirmation, we provide you with a tracking number that you can use to track the status of the shipment on the carrier’s website" www.pointerfootwear.com) services that are protected within the 7,400,970 patent, as every claim limitation, or its equivalent, is found in these functions, applications, solutions, devices, programs, products, services, methods and/or systems.

10. Furthermore, Plaintiff would argue that a means plus function claim is present. By way of example, claim 8 of the 970' Patent, " A computer based notification system, comprising: means for monitoring travel data associated with a plurality of mobile vehicles; means for enabling communication with a user that wishes to use a service provided by a particular vehicle at a particular vehicle stop; means for requesting entry of a stop identification number; means for identifying the particular vehicle based upon the stop identification number; means for presenting one or more selectable options to the user, the selectable options including at least an option for requesting information pertaining to the particular vehicle, the information being a vehicle type, a number of vehicle stops that will be encountered while the vehicle is en route to a stop location, or both; and means for initiating a notification communication pertaining to the vehicle with the user, based upon the travel data.”

11. CHEATERS'S direct infringement has injured and will continue to injure Plaintiff unless and until a monetary judgment is entered in favor of Plaintiff and/or the Court enters an injunction prohibiting further infringement and, specifically, enjoining further use of methods and systems that come within the scope of the 7,400,970 patent.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment against CHEATER and its subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with CHEATER, granting the following relief:

- A. An award of damages against CHEATER adequate to compensate Plaintiff for the infringement that has occurred with respect to CHEATER, together with prejudgment interest from the date that CHEATER'S infringement of the patents at issue began;
- B. Increased damages as permitted pursuant to 35 U.S.C. § 284;
- C. A finding that this case is exceptional and award to Plaintiff its attorney's fees and costs as provided by 35 U.S.C. § 285;
- D. A permanent injunction against CHEATER prohibiting further infringement of the patents at issue; and,
- E. All other relief as the Court or a jury may deem proper and just in this instance.

**COUNT II**  
**INDIRECT PATENT INFRINGEMENT**

12. Plaintiff hereby incorporates Paragraphs 1 through 7 set forth above as if fully set forth herein.

13. Pursuant to 35 U.S.C. §§ 271(b) and (c), CHEATER has indirectly infringed claims of the 7,400,970 patent through, among other activities, products, programs, applications, functions, systems and methods, the use of tracking and notification technologies within its **“ADVANCE SHIP NOTICE”** (“First you will receive from us a confirmation of receipt of your order by e-mail; this confirmation is also not a legally binding acceptance of your order; We will use your e-mail address to send you status information about your order ” www.pointerfootwear.com) and **“SHIPPING CONFIRMATION EMAIL”** (“Along with the shipping confirmation, we provide you with a tracking number that you can use to track the status of the shipment on the carrier's website” www.pointerfootwear.com) services that are protected within the 7,400,970 patent, as CHEATER actively

and intentionally induced infringement with knowledge that the induced acts constituted infringement, or acted with willful blindness; and/or contributed to infringement by one or more third parties as CHEATER had knowledge, rather than intent, that its activity caused such infringement.

14. Furthermore, Plaintiff would argue that a means plus function claim is present. By way of example, claim 8 of the 970' Patent, " A computer based notification system, comprising: means for monitoring travel data associated with a plurality of mobile vehicles; means for enabling communication with a user that wishes to use a service provided by a particular vehicle at a particular vehicle stop; means for requesting entry of a stop identification number; means for identifying the particular vehicle based upon the stop identification number; means for presenting one or more selectable options to the user, the selectable options including at least an option for requesting information pertaining to the particular vehicle, the information being a vehicle type, a number of vehicle stops that will be encountered while the vehicle is en route to a stop location, or both; and means for initiating a notification communication pertaining to the vehicle with the user, based upon the travel data."

15. CHEATER'S contributory infringement and/or inducement to infringe has injured and will continue to injure Plaintiff unless and until a monetary judgment is entered in favor of Plaintiff and/or the Court enters an injunction prohibiting further infringement and, specifically, enjoining further use of methods and systems that come within the scope of the 7,400,970 patent.

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment against CHEATER and its subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with CHEATER, granting the following relief:

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- C. A finding that this case is exceptional and award to Plaintiff its attorney's fees and costs as provided by 35 U.S.C. § 285;
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- E. All other relief as the Court or a jury may deem proper and just in this instance.

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: June 24, 2015.

Respectfully submitted,

/s/ Jason P. Dollard  
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