

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

SHIPPING and TRANSIT, LLC,

Plaintiff,

Case No. _____

vs.

DEMAND FOR JURY TRIAL

CHOXI.COM, INC. f/k/a
NOMORERACK.COM. INC.,

Defendant.
_____ /

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, SHIPPING AND TRANSIT, LLC ("SHIPPING"), by and through its undersigned counsel, hereby sues Defendant, CHOXI.COM, INC. f/k/a NOMORERACK.COM, INC. ("CHOXI"), and in support, alleges as follows:

NATURE OF THE LAWSUIT

1. This is an action for patent infringement of United States Patent Numbers 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 CHOXI pursuant to, *inter alia*, Florida's long-arm statute, § 48.193, in that CHOXI: (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 hailed 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, is a Florida Limited Liability Company with a principal place of business located in Boynton Beach, Florida.

THE DEFENDANT

6. Defendant, CHOXI, is a Delaware Corporation with a principal place of business in New York, New York. Upon information and belief, CHOXI transacts business in Florida and within this Judicial District through use of its electronic tracking, text, email and other messaging to customers within this State and 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), CHOXI 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**” (ie. "we will always send you an email confirmation of the purchase made, which will serve as a receipt" choxi.com) and “**SHIPPING CONFIRMATION EMAIL**” (ie "once your order has been processed and shipped to the address you provided, you'll receive a shipping confirmation email to let you know your order is on the way" choxi.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. CHOXI'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 CHOXI and its subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with CHOXI, granting the following relief:

- A. An award of damages against CHOXI adequate to compensate Plaintiff for the infringement that has occurred with respect to CHOXI, together with prejudgment interest from the date that CHOXI'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 CHOXI 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

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

12. Pursuant to 35 U.S.C. §§ 271(b) and (c), CHOXI 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**” (ie. "we will always send you an email confirmation of the purchase made, which will serve as a receipt" choxi.com) and “**SHIPPING CONFIRMATION EMAIL**” (ie "once your order has been processed and shipped to the address you provided, you'll receive a shipping confirmation email to let you know your order is on the way" choxi.com) services that are protected within the 7,400,970 patent, as CHOXI 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 CHOXI had knowledge, rather than intent, that its activity caused such infringement.

13. CHOXI’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 7,030,781, 6,975,998, 7,400,970 and 6,904,359 patents.

REQUEST FOR RELIEF

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

- A. An award of damages against CHOXI adequate to compensate Plaintiff for the infringement that has occurred with respect to CHOXI, together with prejudgment interest from the date that CHOXI'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 CHOXI 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.

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: July 24, 2015.

Respectfully submitted,

/s/ Jason P. Dollard
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