IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

LEXOS MEDIA IP, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. _____
	§	
THE NEIMAN MARCUS GROUP LLC,	§	
	§	
Defendant.	§	

PLAINTIFF LEXOS MEDIA IP, LLC'S
COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Lexos Media IP, LLC files this Complaint for patent infringement against Defendant The Neiman Marcus Group LLC, and alleges as follows:

PARTIES

1.   Plaintiff Lexos Media IP, LLC ("Lexos Media") is a limited liability company organized and existing under the laws of the State of Texas, with its principal place of business located at 555 Republic Drive, 2nd Floor, Plano, Texas 75074.

2.   Upon information and belief, Defendant The Neiman Marcus Group LLC ("NMG") (formerly The Neiman Marcus Group, Inc.) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1201 Elm Street, Suite 2900, Dallas, Texas 75270. NMG may be served with process through its registered agent CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

3.   This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code.

4.   This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5.   Upon information and belief, NMG is subject to the specific personal jurisdiction of this Court's because Lexos Media's claims for patent infringement against NMG arise from NMG's acts of infringement in the State of Texas. These acts of infringement include selling infringing products in the State of Texas, placing infringing products into the stream of commerce through an established distribution channel with full awareness that substantial quantities of the products have been shipped into the State of Texas, and operating an interactive website facilitating the sale of infringing products in the State of Texas. Therefore, this Court has personal jurisdiction over the NMG under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE §17.042.

6.   Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). Upon information and belief, NMG has engaged in acts of infringement in the State of Texas described above sufficient to subject it to personal jurisdiction in this District if the district were a separate State.

ASSERTED PATENTS

7.   On November 30, 1999, the United States Patent and Trademark Office issued United States Patent No. 5,995,102 ("the `102 Patent") entitled "Server system and method for modifying a cursor image," a true copy of which is attached as Exhibit 1.

8.   On September 12, 2000, the United States Patent and Trademark Office issued United States Patent No. 6,118,449 ("the `449 Patent") entitled "Server system and method for modifying a cursor image," a true copy of which is attached as Exhibit 2.

9.   Lexos Media is the owner by assignment of the Asserted Patents and owns all right, title, and interest in the Asserted Patents, including the right to sue for and recover all past, present, and future damages for infringement of the Asserted Patents.

ACCUSED INSTRUMENTALITIES

10.   NMG has made and/or used certain server systems and methods for modifying a cursor image, including those available by and through the websites it operates at http://www.neimanmarcus.com/ and http://www.lastcall.com/ that infringe the Asserted Patents ("the Accused Instrumentalities").   In particular, NMG is the operating entity that operates, among other things, the Accused Instrumentalities on behalf of Neiman Marcus Group Ltd LLC ("NMG LTD") (formerly Neiman Marcus Group LTD Inc., and Neiman Marcus, Inc.).

FIRST CLAIM FOR RELIEF
(Infringement of the `102 Patent)

11.   Lexos Media incorporates paragraphs 1 through 10 as though fully set forth herein.

12.   Upon information and belief, NMG has been and is now directly and/or indirectly infringing one or more claims of the `102 Patent by (1) making, importing, using, offering for sale, and/or selling the patented inventions and/or (2) by actively inducing others to use the patented inventions in an infringing manner.

13.   More particularly, without limitation, upon information and belief, NMG is now directly infringing one or more claims of the `102 Patent by making and/or using (including use for testing purposes) the Accused Instrumentalities in violation of 35 U.S.C. § 271(a).  Each of the Accused Instrumentalities includes on or more of the server systems and methods for modifying a cursor image described and claimed in the `102 Patent.

14.   In addition, or in the alternative, NMG has been and is now indirectly infringing one or more claims of the Asserted Patents by inducing customers to use the Accused Instrumentalities to directly infringe one or more claims of the `102 Patent in violation of 35 U.S.C. § 271(b).

15.   In accordance with Claim 1 of the `102 Patent, for example, each of the Accused Instrumentalities comprises a server system for modifying a cursor image to a specific image having a desired shape and appearance displayed on a display of a remote user's terminal.

16.   Each of the Accused Instrumentalities includes a cursor image data corresponding to said specific image.

17.   Each of the Accused Instrumentalities includes cursor display code, said cursor display code operable to modify said cursor image.

18.   Each of the Accused Instrumentalities includes a first server computer for transmitting specified content information to said remote user terminal.

19.   The specified content information includes at least one cursor display instruction indicating a location of said cursor image data.

20.   The cursor display instruction and said cursor display code are operable to cause said user terminal to display a modified cursor image on said user's display in the shape and appearance of said specific image.

21.   The specified content information is transmitted to said remote user terminal by said first server computer responsive to a request from said user terminal for said specified content information.

22.   The specified content information further comprises information to be displayed on said display of said user's terminal.

23.   The specific image includes content corresponding to at least a portion of said information to be displayed on said display of said user's terminal.

24.   The cursor display code is operable to process said cursor display instruction to modify said cursor image to said cursor image in the shape and appearance of said specific image responsive to displaying of said at least a portion of said information to be displayed on said display of said user's terminal.

25.   In accordance with Claim 28 of the `102 Patent, for example, each of the Accused Instrumentalities comprises a method for modifying an initial cursor image displayed on a display of a user terminal connected to at least one server.

26.   The method performed by each of the Accused Instrumentalities includes the step of receiving a request at said at least one server to provide specified content information to said user terminal.

27.   The method performed by each of the Accused Instrumentalities includes the step of providing said specified content information to said user terminal in response to said request, said specified content information including at least one cursor display instruction and at least one indication of cursor image data corresponding to a specific image.

28.   The method performed by each of the Accused Instrumentalities includes the step of transforming said initial cursor image displayed on said display of said user terminal into the shape and appearance of said specific image in response to said cursor display instruction.

29.   The specified content information includes information that is to be displayed on said display of said user's terminal.

30.   The specific image includes content corresponding to at least a portion of said information to be displayed on said display of said user's terminal.

31.   The cursor display instruction indicates a cursor display code operable to process said cursor display instruction to modify said cursor image to said cursor image in the shape and appearance of said specific image responsive to displaying of said at least a portion of said information that is to be displayed on said display of said user's terminal.

32.   In accordance with Claim 70 of the `102 Patent, for example, each of the Accused Instrumentalities comprises a server system for modifying a cursor image to a specific image having a desired shape and appearance displayed on a display of a remote user's terminal.

33.   Each of the Accused Instrumentalities includes a cursor image data corresponding to said specific image.

34.   Each of the Accused Instrumentalities includes a cursor display code, said cursor display code operably to modify said cursor image.

35.   Each of the Accused Instrumentalities includes a first server computer for transmitting specified content information to said remote user terminal, said specified content information including at least one cursor display instruction indicating a location of said cursor image data, said cursor display instruction and said cursor display code operable to cause said user terminal to display a modified cursor image on said user's display in the shape and appearance of said specific image.

36.   The specified content information is transmitted to said remote user terminal by said first server computer responsive to a request from said user terminal for said specified content information.

37.   The specified content information further comprises information to be displayed on said display of said user's terminal, said specific image including content corresponding to at least a portion of said information to be displayed on said display of said user's terminal.

38.   The cursor display code is operable to process said cursor display instruction to modify said cursor image to said cursor image in the shape and appearance of said specific image responsive to movement of said cursor image over a display of said at least a portion of said information to be displayed on said display of said user's terminal.

39.   In accordance with Claim 71 of the `102 Patent, for example, each of the Accused Instrumentalities comprises a server system for modifying a cursor image to a specific image having a desired shape and appearance displayed on a display of a remote user's terminal.

40.   Each of the Accused Instrumentalities includes a cursor image data corresponding to said specific image.

41.   Each of the Accused Instrumentalities includes a cursor display code, said cursor display code operable to modify said cursor image.

42.   Each of the Accused Instrumentalities includes a first server computer for transmitting specified content information to said remote user terminal, said specified content information including at least one cursor display instruction indicating a location of said cursor image data, said cursor display instruction and said cursor display code operable to cause said user terminal to display a modified cursor image on said user's display in the shape and appearance of said specific image.

43.   The specified content information is transmitted to said remote user terminal by said first server computer responsive to a request from said user terminal for said specified content information.

44.   The specified content information further comprises information to be displayed on said display of said user's terminal, said specific image including content corresponding to at least a portion of said information to be displayed on said display of said user's terminal.

45. The cursor display code is operable to process said cursor display instruction to modify said cursor image to said cursor image in the shape and appearance of said specific image responsive to movement of said cursor image over a specified location on said display of said user's terminal.

46. In accordance with Claim 72 of the `102 Patent, for example, each of the Accused Instrumentalities comprises a method for modifying an initial cursor image displayed on a display of a user terminal connected to at least one server.

47. The method performed by each of the Accused Instrumentalities includes the step of receiving a request at said at least one server to provide specified content information to said user terminal.

48. The method performed by each of the Accused Instrumentalities includes the step of providing said specified content information to said user terminal in response to said request, said specified content information including at least one cursor display instruction and at least one indication of cursor image data corresponding to a specific image.

49. The method performed by each of the Accused Instrumentalities includes the step of transforming said initial cursor image displayed on said display of said user terminal into the shape and appearance of said specific image in response to said cursor display instruction.

50. The specified content information includes information that is to be displayed on said display of said user's terminal.

51. The specific image includes content corresponding to at least a portion of said information that is to be displayed on said display of said user's terminal.

52. The cursor display instruction indicates a cursor display code operable to process said cursor display instruction to modify said cursor image to said cursor image in the shape and

appearance of said specific image responsive to movement of said cursor image over a display of said at least a portion of said information to be displayed on said display of said user's terminal.

53.   In accordance with Claim 73 of the `102 Patent, for example, each of the Accused Instrumentalities comprises a method for modifying an initial cursor image displayed on a display of a user terminal connected to at least one server.

54.   The method performed by each of the Accused Instrumentalities includes the step of receiving a request at said at least one server to provide specified content information to said user terminal.

55.   The method performed by each of the Accused Instrumentalities includes the step of providing said specified content information to said user terminal in response to said request, said specified content information including at least one cursor display instruction and at least one indication of cursor image data corresponding to a specific image.

56.   The method performed by each of the Accused Instrumentalities includes the step of transforming said initial cursor image displayed on said display of said user terminal into the shape and appearance of said specific image in response to said cursor display instruction.

57.   The specified content information includes information that is to be displayed on said display of said user's terminal.

58.   The specific image includes content corresponding to at least a portion of said information that is to be displayed on said display of said user's terminal.

59.   The cursor display instruction indicates a cursor display code operable to process said cursor display instruction to modify said cursor image to said cursor image in the shape and appearance of said specific image responsive to movement of said cursor image over a specified location on said display of said user's terminal.

60.   NMG has been aware of the `102 Patent no later than the service of this complaint upon NMG.

61.   NMG has engaged in indirect infringement by its conduct of providing its infringing Accused Instrumentalities to end users of those products for the purpose of enabling those end users to use the Accused Instrumentalities to directly infringe the `102 Patent.  On information and belief, NMG has intended, and continues to intend, to induce such patent infringement by end users of its Accused Instrumentalities, and has had knowledge that its inducing acts would cause infringement of the `102 Patent or has been willfully blind to the possibility that its inducing acts would cause direct infringement of the patent.

62.   On information and belief, NMG's customers use the Accused Instrumentalities and, when the customers use the Accused Instrumentalities in accordance with NMG's instructions, the method for modifying a cursor image is performed as described and claimed in the `102 Patent.  Thus, NMG's customers directly infringe the claimed methods of the `102 Patent by using the Accused Instrumentalities. Because the performance of the claimed method for modifying a cursor image is an essential part of the functionality of the Accused Instrumentalities, the Accused Instrumentalities does not have any substantial uses that do not infringe the `102 Patent.  In addition, NMG provides instructions to end users of its Accused Instrumentalities instructing the end users how to use the Accused Instrumentalities in a manner which directly infringes the `102 Patent. On information and belief, NMG is aware that the Accused Instrumentalities performs the claimed method for modifying a cursor image and, therefore, that NMG's customers directly infringe the `102 Patent by using the Accused Instrumentalities.

63.   Lexos Media has been damaged by NMG's infringing activities.

SECOND CLAIM FOR RELIEF
(Infringement of the `449 Patent)

64.   Lexos Media incorporates paragraphs 1 through 10 as though fully set forth herein.

65.   Upon information and belief, NMG has been and is now directly and/or indirectly infringing one or more claims of the `449 Patent by (1) making, importing, using, offering for sale, and/or selling the patented inventions and/or (2) by actively inducing others to use the patented inventions in an infringing manner.

66.   More particularly, without limitation, upon information and belief, NMG is now directly infringing one or more claims of the `449 Patent by making and/or using (including use for testing purposes), offering for sale, and/or selling the Accused Instrumentalities, all in violation of 35 U.S.C. § 271(a). Each of the Accused Instrumentalities includes one or more of the server systems and methods for modifying a cursor image described and claimed in the `449 Patent.

67.   In addition, or in the alternative, NMG has been and is now indirectly infringing one or more claims of the Asserted Patents by inducing customers to use the Accused Instrumentalities to directly infringe one or more claims of the `449 Patent in violation of 35 U.S.C. § 271(b).

68.   In accordance with Claim 1 of the `449 Patent, for example, each of the Accused Instrumentalities comprises a server system for modifying a cursor image to a specific image having a desired shape and appearance displayed on a display of a remote user's terminal.

69.   Each of the Accused Instrumentalities includes a cursor image data corresponding to said specific image.

70.   Each of the Accused Instrumentalities includes a cursor display code, said cursor display code operable to modify said cursor image.

71.   Each of the Accused Instrumentalities includes a first server computer for transmitting specified content information to said remote user terminal, said specified content information including at least one cursor display instruction indicating a location of said cursor image data, said cursor display instruction and said cursor display code operable to cause said user terminal to display a modified cursor image on said user's display in the shape and appearance of said specific image.

72.   The specified content information is transmitted to said remote user terminal by said first server computer responsive to a request from said user terminal for said specified content information.

73.   The specified content information further comprises information to be displayed on said display of said user's terminal, said specific image including content corresponding to at least a portion of said information to be displayed on said display of said user's terminal.

74.   The cursor display code is operable to process said cursor display instruction to modify said cursor image to said cursor image in the shape and appearance of said specific image in response to movement of said cursor image over a display of said at least a portion of said information to be displayed on said display of said user's terminal.

75.   The specific image relates to at least a portion of said information to be displayed on said display of said remote user's terminal.

76.   In accordance with Claim 27 of the `449 Patent, for example, each of the Accused Instrumentalities comprises a server system for modifying a cursor image to a specific image having a desired shape and appearance displayed on a display of a remote user's terminal.

77. Each of the Accused Instrumentalities includes cursor image data corresponding to said specific image.

78. Each of the Accused Instrumentalities includes cursor display code, said cursor display code operable to modify said cursor image.

79. Each of the Accused Instrumentalities includes a first server computer for transmitting specified content information to said remote user terminal, said specified content information including at least one cursor display instruction indicating a location of said cursor image data, said cursor display instruction and said cursor display code operable to cause said user terminal to display a modified cursor image on said user's display in the shape and appearance of said specific image.

80. The specified content information is transmitted to said remote user terminal by said first server computer responsive to a request from said user terminal for said specified content information.

81. The specified content information further comprises information to be displayed on said display of said user's terminal, said specific image including content corresponding to at least a portion of said information to be displayed on said display of said user's terminal.

82. The cursor display code is operable to process said cursor display instruction to modify said cursor image to said cursor image in the shape and appearance of said specific image in response to movement of said cursor image over a specified location on said display of said user's terminal.

83. The specific image relates to at least a portion of said information to be displayed on said display of said remote user's terminal.

84.   In accordance with Claim 53 of the `449 Patent, for example, each of the Accused Instrumentalities comprises a method for modifying an initial cursor image displayed on a display of a user terminal connected to at least one server.

85.   The method performed by each of the Accused Instrumentalities includes the step of receiving a request at said at least one server to provide specified content information to said user terminal.

86.   The method performed by each of the Accused Instrumentalities includes the step of providing said specified content information to said user terminal in response to said request, said specified content information including at least one cursor display instruction and at least one indication of cursor image data corresponding to a specific image.

87.   The method performed by each of the Accused Instrumentalities includes the step of transforming said initial cursor image displayed on said display of said user terminal into the shape and appearance of said specific image in response to said cursor display instruction.

88.   The specified content information includes information that is to be displayed on said display of said user's terminal.

89.   The specific image includes content corresponding to at least a portion of said information that is to be displayed on said display of said user's terminal.

90.   The cursor display instruction indicates a cursor display code operable to process said cursor display instruction to modify said cursor image to said cursor image in the shape and appearance of said specific image in response to movement of said cursor image over a display of said at least a portion of said information to be displayed on said display of said user's terminal.

91.   The specific image has a shape and appearance relating to said information to be displayed.

92.   In accordance with Claim 72 of the `449 Patent, for example, each of the Accused Instrumentalities comprises a method for modifying an initial cursor image displayed on a display of a user terminal connected to at least one server.

93.   The method performed by each of the Accused Instrumentalities includes the step of receiving a request at said at least one server to provide specified content information to said user terminal.

94.   The method performed by each of the Accused Instrumentalities includes the step of providing said specified content information to said user terminal in response to said request, said specified content information including at least one cursor display instruction and at least one indication of cursor image data corresponding to a specific image.

95.   The method performed by each of the Accused Instrumentalities includes the step of transforming said initial cursor image displayed on said display of said user terminal into the shape and appearance of said specific image in response to said cursor display instruction.

96.   The specified content information includes information that is to be displayed on said display of said user's terminal.

97.   The specific image includes content corresponding to at least a portion of said information that is to be displayed on said display of said user's terminal.

98.   The cursor display instruction indicates a cursor display code operable to process said cursor display instruction to modify said cursor image to said cursor image in the shape and appearance of said specific image in response to movement of said cursor image over a specified location on said display of said user's terminal.

99.   The specific image has a shape and appearance relating to said information to be displayed.

100.   NMG has been aware of the `449 Patent no later than the service of this complaint upon NMG.

101.   NMG has engaged in indirect infringement by its conduct of providing its infringing Accused Instrumentalities to end users of those products for the purpose of enabling those end users to use the Accused Instrumentalities to directly infringe the `449 Patent.  On information and belief, NMG has intended, and continues to intend, to induce such patent infringement by end users of its Accused Instrumentalities, and has had knowledge that its inducing acts would cause infringement of the `449 Patent or has been willfully blind to the possibility that its inducing acts would cause direct infringement of the patent.

102.   On information and belief, NMG's customers use the Accused Instrumentalities and, when the customers use the Accused Instrumentalities in accordance with NMG's instructions, the method for modifying a cursor image is performed as described and claimed in the `449 Patent.  Thus, NMG's customers directly infringe the claimed methods of the `449 Patent by using the Accused Instrumentalities. Because the performance of the claimed method for modifying a cursor image is an essential part of the functionality of the Accused Instrumentalities, the Accused Instrumentalities does not have any substantial uses that do not infringe the `449 Patent.  In addition, NMG provides instructions to end users of its Accused Instrumentalities instructing the end users how to use the Accused Instrumentalities in a manner which directly infringes the `449 Patent. On information and belief, NMG is aware that the Accused Instrumentalities performs the claimed method for modifying a cursor image and,

therefore, that NMG's customers directly infringe the `449 Patent by using the Accused Instrumentalities.

103.   Lexos Media has been damaged by NMG's infringing activities.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Lexos Media hereby demands a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Lexos Media requests the following relief:

(a)   A judgment in favor of Lexos Media that NMG has directly infringed and/or has indirectly infringed by way of inducement of one or more claims of the Asserted Patents;

(b)   A judgment that Lexos Media has been irreparably harmed by the infringing activities of NMG, and is likely to continue to be irreparably harmed by NMG's continued infringement;

(c)   A judgment and order requiring NMG to pay Lexos Media damages adequate to compensate for infringement under 35 U.S.C. § 284, which damages may include lost profits but in no event shall be less than a reasonable royalty for its usage made of the inventions of the Asserted Patents, including pre- and post-judgment interest and costs, including expenses and disbursements;

(d)   A judgment awarding Lexos Media its costs as provided under FED. R. CIV. P. 54(d)(1);

(e)   A judgment for pre- and post-judgment interest on all damages awarded;

(f)   A judgment awarding Lexos Media post-judgment royalties; and

(g)   Any and all such further necessary or proper relief as this Court may deem just and equitable.

Dated: December 18, 2015

Respectfully submitted,

BUETHER JOE & CARPENTER, LLC

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