

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

ELECTRONIC COMMUNICATION  
TECHNOLOGIES, LLC,

Plaintiff,

v.

CLEVER ATHLETICS CO, LLC  
d/b/a CLEVER TRAINING

Defendant.  
\_\_\_\_\_ /

**COMPLAINT FOR PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiff Electronic Communication Technologies, LLC (“Plaintiff” or “ECT”), by and through its undersigned counsel, brings this complaint for Patent Infringement against Defendant CLEVER ATHLETICS CO, LLC d/b/a CLEVER TRAINING (“Defendant” or “Clever Training”), and in support alleges as follows:

**NATURE OF THE LAWSUIT**

1. This is an action for patent infringement of U.S. Pat. No. 9,373,261, invented by Scott A. Horstemeyer, entitled Secure Notification Messaging With User Option to Communicate with Delivery or Pickup Representative issued on June 21, 2016 (the “261 Patent” attached as **Exhibit A**), arising under the patent laws of the United States. *See*, 35 U.S.C. §§ 1 et seq.

**JURISDICTION AND VENUE**

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

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3. This Court has personal jurisdiction over Defendant pursuant to, *inter alia*, Fla. Stat. § 48.193 (the “Florida Long Arm Statute”), as Defendant: a) operates, conducts, engages in, and carries on business in Florida and/or has an office or agency in Florida; b) has committed one or more tortious acts within Florida; c) and is engaged in substantial and not isolated activity within Florida; and d) has purposely availed itself of the laws, services and/or other benefits of the State of Florida and therefore should reasonably anticipate being hailed into one or more of the courts within the State of Florida.

**PLAINTIFF**

4. Plaintiff ECT is a Florida Limited Liability Company with a principal place of business located in Boynton Beach, Palm Beach County, Florida.

5. Plaintiff has engaged the undersigned attorneys and agreed to pay them a reasonable fee.

**DEFENDANT**

6. On information and belief, Defendant Clever Athletics Co, LLC D/B/A Clever Training is a Delaware Limited Liability Company, registered to do business in Florida with offices at 201 NORTH FRANKLIN ST SUITE 2000 TAMPA, FL 33602.

**THE ‘261 PATENT**

7. Over a decade ago, the escalation of online purchasers and the use of order confirmations and shipment notification messages presented unique problems for online retailers. Online retailers like Defendant were increasingly faced with customer account break-ins, loss of products that were ordered and shipped to hacker addresses and maybe the most important - the loss of customer’s trust.

8. Mr. Horstemeyer innovated many unique solutions to minimize hacker's impacts when mimicking order confirmations and shipment notification emails (the hacker's methods are known as "phishing").

9. More specifically, with respect to the '261 Patent, Mr. Horstemeyer invented methods and systems to enable online retailers to assist their customers in determining the difference between trusted and non-trusted shipment and order confirmation emails.

10. The '261 Patent has a priority date relating back to 2003 and addresses systems and methods for retailers and their associated customers to avoid "phishing" scams. The innovations allow confidential customer supplied information to be used within the retailer's communications to verify authenticity.

11. Providing customer verifiable information within shipment and order confirmations helps to stop or at least reduce fraud associated with the illegal mimicking of order and shipment confirmation emails.

12. Online retailers engaging in electronic communication via order confirmations and shipment notifications needed a means to help the customers "verify" and know the difference between an authentic communication or a fake "phishing" communication (impersonating the online retailer).

13. The U.S. Patent office determined the Mr. Horstemeyer's invention was both novel and useful and granted Mr. Horstemeyer's assignees the right to exclude others from practicing the invention, to recover at least a reasonable royalty for infringement of the patent, and where the infringement is willful to recover treble damages.

14. Plaintiff owns all right, title and interests in, and has standing to sue for infringement of the '261 Patent.

**DEFENDANT’S INFRINGEMENT**

15. The automated messaging features of Defendants ’ Order Confirmation and also its Shipping Confirmation online systems infringe claims of at least the ‘261 Patent.

16. Defendant also contributes to and induces the infringement of methods and functions covered within the ‘261 Patent.

17. Defendant uses the patented systems and methods to authenticate information sent to customers when orders are processed for shipping or when shipped.

18. Defendant includes customer information within these notifications/messages to provide confidence to the notification-receiving party that the order confirmation and or shipment notification is from Defendant (the proper authorized source) and if more information about the shipment is needed, the links may be trusted and used within the confirmation or notification.

19. Defendant has and willfully continues its infringement of the ‘261 Patent in at least the following representative manner:

<p>Claim 11 An automated notification system, comprising:</p> <p style="padding-left: 40px;">one or more transceivers designed to communicate data; one or more memories; one or more processors; and computer program code stored in the one or more memories and executed by the one or more processors, the computer program code comprising:</p> <p>code that enables a first party associated with a personal communication device (PCD) to input or select authentication information for use in connection with a subsequent notification communication session involving advance notice of a delivery or pickup of a good or service at a stop location by a mobile thing (MT);</p>	<p>Clever Training uses an automated order confirmation and shipment (“automated notification systems”) to send customers updated shipment information when products are picked up.</p> <p>Clever Training’s automated notification systems comprises, one or more memories, one or more processors, and computer program code that is stored within one or more memories and executed by one or more processors, Clever Training’s computer program code comprises:</p> <p>Clever Training’s online code allows mobile customers to input personalized authentication information to be used at a future time when products are picked up and notifications emails are sent back to the customer.</p>
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	<p>Clever Training stores authentication information including (among others), personalized credit card name, credit card billing address, last 4 digits of credit card used to authenticate the Clever Training communications about their product being picked-up and shipped is an email from Clever Training. When customers need to respond and enter account or login or different credit card(s), they are safe and entering this information at Clever Training.</p> <div style="border: 1px solid black; padding: 5px;"> <p><b>Payment Method:</b></p> <p><b>Credit Card</b></p> <p>Credit Card Type MasterCard</p> <p>Credit Card Number xxxx-4110</p> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><b>Billing Information:</b></p> <div style="background-color: black; width: 100px; height: 20px; margin-bottom: 5px;"></div> <p>Delray Beach, Florida, 33444 United States T: 561-<span style="background-color: black; color: black;">[REDACTED]</span></p> </div>
<p>code that causes storage of the authentication information;</p>	<p>Clever Training uses code to capture and store customer authentication information when (a.) users set up accounts, (b.) when users modify account information or (c.) when they purchase products from the Clever Training website;</p>
<p>code that monitors location or travel information in connection with the MT;</p>	<p>Clever Training uses computer program code to monitor products when moved from inventory, packaging, labeling, fulfillment, waiting to be picked up, and picked up by a carrier, and also when the product leaves Clever Training and is in route to the customer's address;</p>
<p>code that causes initiation of the notification communication session to the PCD with the one or more transceivers, in advance of arrival of the MT at the stop location, based at least in part upon the location or travel information associated with the MT;</p>	<p>Clever Training uses computer program code to determine and initiate notifications to mobile users (personal communication devices) using transceivers such as email and electronic data communication systems, when a shipment is designated for shipment and delivery at a customer's address, and before the shipment</p>

	arrives at the delivery address. and at anytime it is considered “shipped” or “being shipped”.
code that, during the notification communication session, provides the authentication information to the PCD that indicates to the first party that the notification communication session was initiated by an authorized source; and	<p>Clever Training’s computer program code retrieves the authentication information including (among others), last 4 digits of credit card used, type of credit card, billing address of the credit card, and others to confirm / authenticate the shipment confirmation email was initiated by Clever Training (the authorized source), and .</p> <div style="border: 1px solid black; padding: 5px;"> <p><b>Payment Method:</b></p> <p><b>Credit Card</b></p> <p>Credit Card Type MasterCard</p> <p>Credit Card Number xxxx-4110</p> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><b>Billing Information:</b></p> <div style="background-color: black; width: 100px; height: 20px; margin-bottom: 5px;"></div> <p>Delray Beach, Florida, 33444 United States T: 561-██████████</p> </div>
code that, during the notification communication session, enabling the first party to select whether or not to engage in a communication session with a second party having access to particulars of the pickup or delivery.	<p>Clever Training’s computer program code sends shipment confirmation emails and embeds links within the notification to allow customers to get account information, shipment information, shipment tracking information, to the website and to customer service representatives – for additional information about the pickup, ETA and or delivery.</p> <p>we will send an email with a link to track y tact us at <a href="mailto:sales@clevertraining.com">sales@clevertraining.com</a> or call</p>

20. Defendant’s automated notification system is not a staple article or commodity of commerce suitable for substantial noninfringing use.

21. All conditions precedent to bringing the action have occurred or have been waived.

**COUNT I - INFRINGEMENT OF THE '261 PATENT**

22. Plaintiff realleges paragraphs 1-21, as fully and completely as if set forth verbatim herein.

23. Defendant has infringed at least one claim of the '261 Patent by the activities referred to in this Complaint in violation of 35 U.S.C. § 271(a).

24. Defendant's activities alleged in this Count have been without license permission or authorization from Plaintiff.

25. The activities of Defendant as set forth in this Count have been to the injury, detriment and irreparable harm of Plaintiff.

**WHEREFORE**, Plaintiff demands judgment, prays for relief against Defendant, and respectfully requests that the Court:

- A. enter a finding of infringement against Defendant under '261 Patent;
- B. award in favor of Plaintiff and against Defendant as Plaintiff may have suffered, but in to event less than a reasonably royalty pursuant to 35 U.S.C. § 284;
- C. award in favor of Plaintiff and against Defendant an enhancement of damages;
- D. find that this is an exceptional case;
- E. enter an injunction preliminarily and permanently enjoining infringement;
- F. award Plaintiff its attorneys' fees against Defendant under 35 U.S.C. § 285;
- G. award Plaintiff its costs against Defendant; and,
- H. award in favor of Plaintiff and against Defendant such other further relief as is just, fair or equitable.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all claims so triable.

DATED: August 19, 2016

Respectfully submitted,

**ASSOULINE & BERLOWE, P.A.**

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**Attorneys for Plaintiff,**

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