

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

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|----------------------------|---|------------------------------------|
| TAGI Ventures, LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 15-3318 (ADM-TNL) |
| |) | |
| |) | JURY TRIAL DEMANDED |
| NASCAR Digital Media, LLC; |) | |
| |) | |
| Defendant. |) | |

THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT

As for its Third Amended Complaint against the above-named Defendant, Plaintiff TAGI Ventures, LLC, by and through its undersigned counsel, states and alleges as follows:

THE PARTIES

1. TAGI Ventures, LLC (“Plaintiff” or “TAGI”) is a Minnesota Limited Liability Company, having its principal place of business located at 35 Crystal Creek Road, Orono, Minnesota 55356.

2. On information and belief, Defendant NASCAR Digital Media, LLC (“NASCAR” or “Defendant”) is a limited liability company organized under Florida law operating as a multi-media production company and having its principal place of business located in Daytona Beach, Florida.

3. NASCAR Digital Media, LLC provides multi-media coverage for vehicle racing events, including race events organized, sponsored, and conducted by NASCAR, Inc., throughout the United States including within the state of Minnesota.

JURISDICTION AND VENUE

4. This is a case for patent infringement arising under the Acts of Congress relating to patents, 35 U.S.C. §§ 271 and 281–285.

5. This Court has federal question subject matter jurisdiction over the matter in controversy under 28 U.S.C. §§ 1331 and 1338(a) because the claims alleged herein arise under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

6. On information and belief, at all times material, Defendant has regularly solicited and transacted business in the State of Minnesota and in this District by making, using, importing, selling and/or offering to sell products, devices, systems and/or methods including those identified below. Minimally, Defendant has deliberately placed at least those infringing products, devices, systems and/or methods identified in this Third Amended Complaint into the stream of commerce knowing the same have been and will be made, used, imported, sold and/or offered for sale within the State of Minnesota and this District. Defendant's infringing activities have caused and will continue to cause harm and damage to Plaintiff.

7. This Court has personal jurisdiction over Defendant by virtue of its purposeful contacts with the State of Minnesota, described herein.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

BACKGROUND

9. On January 9, 2007, the United States Patent and Trademark Office (sometimes referred to as “USPTO”) duly issued U.S. Patent No. 7,162,532 (“the ‘532 Patent”), entitled System and Method for Listening to Teams in a Race Event, to co-inventors Steven Koehler (“Koehler”) and Eric Moe (“Moe”). A true copy of the ‘532 Patent is attached hereto as Exhibit A.

10. On June 16, 2015, the United States Patent and Trademark Office duly issued U.S. Patent No. 9,059,809 (“the ‘809 Patent”), entitled System and Method for Listening to Teams in a Race Event, to co-inventors Koehler and Moe. The ‘532 and ‘809 Patents are hereinafter referred to as the “patents in suit”. A true copy of the ‘809 Patent is attached hereto as Exhibit B.

11. By previous written assignments duly recorded with the USPTO, TAGI is the owner and assignee of all right, title and interest in and to the patents in suit, including the right to pursue recovery for past infringement of the patents in suit. *See* Assignments recorded at Reel/Frame Nos. 17096-486 (January 31, 2006), 25789-491 (November 8, 2010), and 30197-623 (April 11, 2013), as shown at <http://assignment.uspto.gov/>.

12. In or about 2011, at precise times to be later determined, NASCAR began to make, import, sell, offer for sale and/or use a computer implemented method and

application called Racebuddy that can complement race events by providing video, visual, and audio content online via the Internet to remote spectators. The Racebuddy method and application allows remote spectators of a NASCAR race event to selectively render desired video images and audio associated with a selected team including images from camera(s) mounted to the race vehicle and audio heard in the race vehicle, including replays thereof, as well as other information pertaining to one or more drivers and/or teams in races (the “Infringing Racebuddy Products and Methods”).

13. The Infringing Racebuddy Products and Methods were contemplated for use in conjunction with a traditional television broadcast of race events.

14. On information and belief, Defendant directs and controls the use of the Infringing Racebuddy Products and Methods, by *inter alia*, (1) providing online assistance and direction to third parties dictating the operation and use of the Infringing Racebuddy Products and Methods; and (2) otherwise directing and controlling the manner in which the Infringing Racebuddy Products and Methods are used by third parties including spectators of NASCAR race events, including but not limited to conditioning participation in an activity, such as using Infringing Racebuddy Products and Methods, and/or conditioning receipt of a benefit upon performance of one or more steps of methods claimed by the patents in suit, and by establishing the manner and/or timing of that performance.

15. On information and belief, the Infringing Racebuddy Products and Methods directly and substantially enhance the economic value of race events via increased viewer engagement, additional advertising platforms, and internet traffic.

16. Upon information and belief, the Infringing Racebuddy Products and Methods, are an integral element in NASCAR's marketing and television broadcast strategy.

17. Defendant's infringing activities aforesaid, and described further below, have been without authority or license from TAGI.

18. On information and belief, Defendant had knowledge of the patents in suit before the filing of the original Complaint in this matter.

19. On information and belief, Defendant's infringing activities aforesaid, and described further below, have been deliberate and intentional, in willful and wanton disregard of TAGI's rights in the patents in suit.

20. Defendant's infringing activities aforesaid, and described further below, have caused, and will continue to cause, substantial injury and damage to TAGI, in an amount to be determined at trial.

21. TAGI has been and will continue to be irreparably harmed by Defendant's infringing activities described herein, unless preliminarily and permanently enjoined by order of this Court.

22. TAGI has no adequate remedy at law.

COUNT I—DIRECT INFRINGEMENT OF U.S. PATENT NO. 7,162,532

23. The foregoing allegations are incorporated herein by this reference as though fully set forth herein.

24. On information and belief, by making, selling, offering for sale, importing and/or using the Infringing Racebuddy Products and Methods, NASCAR has infringed at least the following claims of the '532 Patent, literally and/or under the doctrine of equivalents: Claims 4, 6-8, and 12 in violation of 35 U.S.C. § 271(a).

25. On information and belief, NASCAR generates audio, video, and other information pertaining to one or more drivers, team members in a race, teams, or the race, or enables the generation thereof. On further information and belief, NASCAR receives and/or captures the generated audio, video, and other information pertaining to one or more drivers, team members, teams, or the race and transmits and/or routes, or enables the transmission or routing of, the audio, video, and other information from their respective sources to one or more servers or computers located at a race venue. On further information and belief, NASCAR further transmits and/or routes, or enables the transmission or routing of, the audio, video, and other information from the one or more servers or computers located at the race venue to other devices, computers, and products described in this Third Amended Complaint, such that fans, race team members, or spectators at or remote from race events are allowed access to audio, video, and other information pertaining to one or more drivers, team members, teams, or the race in real-time or near real-time, including but not limited to audio and video with audio replays, a

radio scanner, real-time or near real-time statistics, and other information pertaining to one or more drivers, team members, teams in the race, or the race.

26. On information and belief, NASCAR's infringement of claims of the '532 Patent has been willful, deliberate and knowing, in reckless disregard for TAGI's right to exclude others from making, importing, selling, offering for sale and/or using the invention embodied within the '532 Patent.

27. NASCAR's infringement of claims of the '532 Patent has caused, and will continue to cause, substantial injury and damage to TAGI, in an amount to be determined at trial.

28. TAGI has been and will continue to be irreparably harmed by NASCAR's deliberate infringement of the '532 Patent, unless preliminarily and permanently enjoined by order of this Court.

29. On information and belief, based on the allegations set forth herein and its making, importing, selling, offering for sale and/or using the Infringing Racebuddy Products and Methods, NASCAR is directly, jointly, severally, or alternatively liable for infringing the '532 patent literally or under the doctrine of equivalents.

COUNT II—DIRECT INFRINGEMENT OF U.S. PATENT NO. 9,059,809

30. The foregoing allegations are incorporated herein by this reference as though fully set forth herein.

31. By making, selling, offering for sale, importing and/or using the Infringing Racebuddy Products and Methods NASCAR has infringed at least the following claims

of the '809 Patent, literally and/or under the doctrine of equivalents: Claims 75, 77-79, 81 and 82, in violation of 35 U.S.C. § 271(a).

32. On information and belief, NASCAR generates audio, video, and other information pertaining to one or more drivers, team members in a race, teams, or the race, or enables the generation thereof. On further information and belief, NASCAR receives and/or captures the generated audio, video, and other information pertaining to one or more drivers, team members, teams, or the race and transmits and/or routes, or enables the transmission or routing of, the audio, video, and other information from their respective sources to one or more servers or computers located at a race venue. On further information and belief, NASCAR further transmits and/or routes, or enables the transmission or routing of, the audio, video, and other information from the one or more servers or computers located at the race venue to other devices, computers, and products described in this Third Amended Complaint, such that fans, race team members, or spectators at or remote from race events are allowed access to audio, video, and other information pertaining to one or more drivers, team members, teams, or the race in real-time or near real-time, including but not limited to audio and video with audio replays, a radio scanner, real-time or near real-time statistics, and other information pertaining to one or more drivers, team members, teams in the race, or the race.

33. On information and belief, NASCAR's infringement of claims of the '809 Patent has been willful, deliberate and knowing, in reckless disregard for TAGI's right to

exclude others from making, importing, selling, offering for sale and/or using the invention embodied within the '809 Patent.

34. NASCAR's infringement of claims of the '809 Patent has caused, and will continue to cause, substantial injury and damage to TAGI, in an amount to be determined at trial.

35. TAGI has been and will continue to be irreparably harmed by NASCAR's infringement of the '809 Patent, unless permanently enjoined by order of this Court.

36. On information and belief, NASCAR's infringement of claims of the '809 Patent has been in disregard for TAGI's right to exclude others from making, importing, selling, offering for sale and/or using the invention embodied within the '809 Patent.

37. On information and belief, based on the allegations set forth herein and their making, importing, selling, offering for sale and/or using the Infringing Racebuddy Products and Methods, NASCAR is directly, jointly, severally, or alternatively liable for infringing the '809 patent literally or under the doctrine of equivalents.

**COUNT III—ACTIVE INDUCEMENT OF INFRINGEMENT OF
U.S. PATENT NOS. 7,162,532 AND 9,059,809**

38. The foregoing allegations are incorporated by this reference as though fully set forth herein.

39. 35 U.S.C. § 271(b) provides, “[w]hoever actively induces infringement of a patent shall be liable as an infringer.”

40. Defendant has actual knowledge of the patents in suit and the inventions claimed therein.

41. Defendant has communicated with third parties, including spectators of NASCAR race events, regarding the Infringing Racebuddy Products and Methods, and how to use same.

42. Despite its actual knowledge, Defendant continues to make, sell, offer to sell, import and/or use the Infringing Racebuddy Products and Methods, and thereby induce third parties, including spectators of NASCAR race events, to directly infringe one or more claims of the patents in suit.

43. On information and belief, Defendant has actively and knowingly aided and abetted direct infringement of the patents in suit by third parties.

44. On information and belief, Defendant intends to cause the acts which it knows constitute direct infringement of the patents in suit by third parties.

45. On information and belief, Defendant either performs the steps contained in the asserted method claims of the patents in suit, or so exercises control and direction over the performance of the steps within such claims by third parties, including spectators of NASCAR race events, that the performance of every such step is attributable to Defendant.

46. Defendant's active inducement of infringement of the patents in suit has been willful, deliberate and knowing, in reckless disregard for TAGI's right to exclude others from making, importing, selling, offering for sale and/or using the inventions therein.

47. Defendant's active inducement of infringement of the patents in suit has caused, and will continue to cause, substantial injury and damage to TAGI, in an amount to be determined at trial.

48. TAGI has been and will continue to be irreparably harmed by Defendant's active inducement of infringement of the patents in suit.

49. On information and belief, based on the allegations set forth herein and for further reasons described above with respect to direct infringement of each patent in suit, Defendant is directly, jointly, severally, or alternatively liable for inducing infringement of the '532 and '809 patents literally or under the doctrine of equivalents.

**COUNT IV—CONTRIBUTING TO INFRINGEMENT OF
U.S. PATENT NOS. 7,162,532 AND 9,059,809**

50. Plaintiff incorporates by this reference all of the previous allegations as though fully set forth herein.

51. 35 U.S.C. § 271(c) provides, “[w]hoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use, shall be liable as a contributory infringer.”

52. On information and belief, by making, importing, selling, and/or offering for sale the Infringing Racebuddy Products and Methods to third parties—including

spectators of NASCAR race events—knowing the Infringing Racebuddy Products and Methods to be especially made or adapted for infringement of the patents in suit, Defendant is liable for contributory infringement. Defendant has made the infringing Racebuddy Products and Methods available to NASCAR customers. Defendant thus has encouraged and contributed to its own and/or its customer's infringing uses of the Infringing Racebuddy Products and Methods, in violation of TAGI's exclusive rights in the patents in suit. Defendant's Infringing Racebuddy Products and Methods include a material part of an invention embodied in one or more patents in suit.

53. Defendant's and/or customers' use of Defendant's Infringing Racebuddy Products and Methods, including but not limited to spectators' use of the Infringing Racebuddy Products and Methods, constitutes direct infringement of the patents in suit, as set forth herein.

54. Defendant has actual knowledge of the patents in suit and the inventions claimed therein. Further, Defendant knows and has reason to know that its Infringing Racebuddy Products and Methods made, imported, sold, offered for sale, licensed and/or rented to its customers are especially made or adapted for uses that infringe the patents in suit.

55. The Infringing Racebuddy Products and Method made available, imported, sold, offered for sale, licensed and/or rented by Defendant are not staple articles or commodities of commerce capable of substantial non-infringing use.

56. Defendant's contributory infringement of the patents in suit has been willful, deliberate and knowing, in reckless disregard for TAGI's right to exclude others from making, importing, selling, offering for sale and/or using the inventions therein.

57. Defendant's contributory infringement of the patents in suit has caused, and will continue to cause, substantial injury and damage to TAGI, in an amount to be determined at trial.

58. TAGI has been and will continue to be irreparably harmed by Defendant's contributory infringement of the patents in suit.

59. On information and belief, based on the allegations set forth herein and for further reasons described above with respect to direct infringement of each patent in suit, Defendant is directly, jointly, severally, or alternatively liable for contributing to the infringement of the '532, and '809 patents literally or under the doctrine of equivalents.

DEMAND FOR JURY TRIAL

TAGI hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- A. A judgment in favor of TAGI on its patent infringement claims and against Defendant;
- B. A judgment that Defendant has committed willful infringement of the patents in suit;

- C. A judgment against Defendant and in favor of TAGI for an award of monetary damages sufficient to compensate TAGI for all of its substantial losses and harm suffered as a consequence of Defendant's infringement of the patents in suit but in no event less than a reasonable royalty amount;
- D. A judgment against Defendant and in favor of TAGI for an award trebling TAGI's damages herein, ordering Defendant to pay pre-judgment and post-judgment interest, declaring this case to be "exceptional," and ordering Defendant to pay TAGI's reasonable costs and attorneys' fees in prosecuting this action;
- E. An Order preliminarily and permanently enjoining Defendant, each of them, and each of their respective officers, agents, employees and other persons acting in concert or participation with them, from making, using, selling or offering to sell the Infringing Racebuddy Products and Methods and from importing same into the United States, and from otherwise infringing the claims of the patents in suit in violation of 35 U.S.C. § 271; and
- F. Such other and further relief as the Court deems just and proper.

Dated: May 6, 2016

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