

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NM, LLC

Plaintiff,

v.

THE TJX COMPANIES, INC.,

Defendant.

Civil Action No.:

JURY TRIAL DEMANDED

COMPLAINT

NM, LLC (hereafter “Plaintiff NM”), Plaintiff, brings this action against Defendant TJX Companies, Inc. (hereafter “Defendant TJX”), and alleges the following:

THE PARTIES

1. Plaintiff NM is a limited liability company organized and doing business under the laws of Delaware.
2. Plaintiff NM is the owner of record and assignee of U.S. Patent No. 6,199,048 (“the ‘048 Patent”) and U.S. Patent No. 8,131,597 (“the ‘597 Patent”) (collectively, “the Asserted Patents”) and Plaintiff NM has the full right, title, and interest to pursue this lawsuit based on infringement of the Asserted Patents. Both the ‘048 and ‘597 Patents expired on October 3, 2015.
3. Defendant TJX is a Delaware corporation, with its principal place of business at 770 Cochituate Road, Framingham, MA 01701; its agent for service of process is Corporation Service Company, located at 2711 Centerville Rd, Suite 400, Wilmington, DE 19808.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the

United States, 35 U.S.C. § 271, *et seq.*

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendant TJX since Defendant TJX is a Delaware corporation and Defendant TJX has transacted business in this judicial district, directly or through intermediaries, and/or committed acts of infringement in this judicial district. On information and belief, Defendant TJX operates within Delaware at least three retail outlets under the name T.J. Maxx, located at 5627 Concord Pike, Wilmington, DE 19803, at 1313 Churchmans Road, Newark, DE 19713, and at 1091 N. Dupont Highway, Dover, DE 19901.

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

BACKGROUND

8. Inventors Frank C. Hudetz and Peter R. Hudetz are pioneers in two-dimensional barcode technology and infrastructure solutions. The inventions of the Asserted Patents involve proprietary platform technology enabling consumers easy and quick access to information by scanning data carriers, such as Quick Response (“QR”) codes as claimed in the patents asserted in this action.

9. This suit alleges infringement by Defendant TJX of two of Plaintiff NM’s patents, specifically the Asserted Patents.

10. Defendant TJX has been expressly aware of the Asserted Patents since at least on or about February 7, 2013 (the “date of actual notice”), when counsel for Plaintiff NM’s predecessor in title, NeoMedia Technologies, wrote to Defendant TJX’s Manager of Intellectual Property, identified the Asserted Patents specifically and placed Defendant TJX on notice of

infringement by stating, *inter alia*: “TJX has both directly infringed system claims by using an infringing system and by inducing the direct infringement of method claims and system claims by providing these codes and encouraging and instructing its consumers to scan TJX’s mobile barcodes/QR codes.” Following that written notice, multiple telephone and email contacts regarding the asserted infringement of the ‘048 and ‘597 Patents occurred between NeoMedia Technologies and Defendant TJX’s legal department. NeoMedia received no further responses from Defendant TJX after about June 11, 2015.

COUNT I: INFRINGEMENT OF THE U.S. PATENT 6,199,048

11. Plaintiff NM realleges and incorporates by reference the prior paragraphs 1 through 10 of this Complaint, as if fully set forth herein.

12. On March 6, 2001, U.S. Patent No. 6,199,048 was issued to Frank C. Hudetz and Peter R. Hudetz, as the inventors thereof. A true and correct copy of the ‘048 Patent, which is entitled “System and Method for Automatic Access of a Remote Computer over a Network,” is attached hereto as Exhibit A.

13. Upon information and belief, Defendant TJX infringed the ‘048 Patent in violation of 35 U.S.C. § 271(a) by using the patented invention to, *inter alia*, use a method infringing the claims of the ‘048 Patent. An Infringement Chart detailing the infringement by Defendant TJX of Claim 1 of the ‘048 Patent, as an example of infringement of that patent, is attached hereto as Exhibit B.

14. Upon information and belief, Defendant TJX also infringed the ‘048 Patent in violation of 35 U.S.C. § 271(b) by intentionally actively inducing infringement after actual notice of infringement of the ‘048 Patent during the time period from on or about February 7, 2013, the date of actual notice, through the date of expiration of the Patent on October 3, 2015.

15. Defendant TJX intentionally actively induced infringement of the '048 Patent at least by placing obvious and easily noticeable QR codes on advertisement and sales information associated with Defendant TJX's products for sale with the intention of inducing customers to access the QR codes and information accessible via the QR codes, in order to increase sales of Defendant TJX's products.

16. Plaintiff NM is entitled to recover from Defendant TJX damages as a result of Defendant TJX's acts of infringement of the '048 Patent prior to its expiration on October 3, 2015, and as a result of Defendant TJX's acts of intentional active inducement of infringement of the '048 Patent from on or about February 7, 2013 through October 3, 2015, with both damages in amounts subject to proof at trial.

COUNT II: INFRINGEMENT OF THE '597 PATENT

17. Plaintiff NM realleges and incorporates by reference the prior paragraphs 1 through 10 of this Complaint, as if fully set forth herein.

18. On March 6, 2012, U.S. Patent No. 8,131,597 was issued to Frank C. Hudetz and Peter R. Hudetz, as the inventors thereof. A true and correct copy of the '597 Patent, which is entitled "System and Method for Using an Ordinary Article of Commerce to Access a Remote Computer," is attached hereto as Exhibit C.

19. Upon information and belief, Defendant TJX infringed the '597 Patent in violation of 35 U.S.C. § 271(a) by using the patented invention to, *inter alia*, use a method infringing Claim 1. An Infringement Chart detailing the infringement by Defendant TJX of Claim 1 of the '597 Patent, as an example of infringement of that patent, is attached hereto as Exhibit D.

20. Upon information and belief, Defendant TJX also infringed the '597 Patent in

violation of 35 U.S.C. § 271(b) by intentionally actively inducing infringement after actual notice of infringement of the '597 Patent during the time period from on or about February 7, 2013, the date of actual notice, through the date of expiration of the Patent on October 3, 2015.

21. Defendant TJX intentionally actively induced infringement of the '597 Patent at least by placing obvious and easily noticeable QR codes on advertisement and sales information associated with Defendant TJX's products for sale with the intention of inducing customers to access the QR codes and information accessible via the QR codes, in order to increase sales of Defendant TJX's products.

22. Plaintiff NM is entitled to recover from Defendant TJX damages as a result of Defendant TJX's acts of infringement of the '597 Patent prior to its expiration on October 3, 2015, and as a result of Defendant's acts of intentional active inducement of infringement of the '597 Patent from on or about February 7, 2013 through October 3, 2015, with both damages in amounts subject to proof at trial.

PRAYER AND RELIEF

WHEREFORE, Plaintiff NM, LLC prays for judgment against Defendant TJX for the following relief:

- A. a judgment declaring that Defendant TJX infringed the '048 and '597 Patents;
- B. an accounting for damages under 35 U.S.C. § 284 from Defendant TJX Companies, Inc. for its infringement of the '048 and '597 Patents, prior to its expiration on October 3, 2015, and an award of damages ascertained against Defendant TJX Companies, Inc. in favor of Plaintiff NM, LLC, together with interest and costs thereon;
- C. an accounting for damages under 35 U.S.C. § 271(b) from Defendant TJX Companies, Inc. for its intentional active inducement of infringement of the '048 and '597

Patents, from the date of actual notice of the patent, on or about February 7, 2013, through the patent's expiration on October 3, 2015, and an award of damages ascertained against Defendant TJX Companies, Inc. in favor of Plaintiff NM, LLC, together with interest and costs thereon; and,

D. such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff NM, LLC demands a trial by jury of all issues properly triable by jury in this action.

Respectfully submitted,

O'KELLY & ERNST, LLC

Dated: September 16, 2016

/s/ Sean T. O'Kelly

Sean T. O'Kelly (No. 4349)
Daniel P. Murray (No. 5785)
901 N. Market Street, Suite 1000
Wilmington, Delaware 19801
(302) 778-4000
(302) 295-2873 (facsimile)
sokelly@oelegal.com
dmurray@oelegal.com

Attorneys for Plaintiff NM, LLC