

1 WAYNE R. GROSS, State Bar No. 138828
WGross@GGTrialLaw.com
2 MICHAEL I. KATZ, State Bar No. 181728
MKatz@GGTrialLaw.com
3 GREENBERG GROSS LLP
601 S. Figueroa St., 30th Floor
4 Los Angeles, California 90017
Telephone: (213) 334-7000
5 Facsimile: (213) 334-7001

6 Attorneys for Plaintiff

7

8

UNITED STATES DISTRICT COURT

9

CENTRAL DISTRICT OF CALIFORNIA

10

11

INVESTEL CAPITAL
CORPORATION,

Case No. 2:17-cv-00872

12

13

Plaintiff,

**COMPLAINT FOR
DECLARATORY JUDGMENT**

14

15

v.

DEMAND FOR JURY TRIAL

16

SNAP INC.,

17

Defendant.

18

19

20

Plaintiff Investel Capital Corporation (“Investel”), through counsel, hereby
21 brings its Complaint for Declaratory Judgment against Snap Inc. (“Snap”), and
22 alleges as follows:

23

NATURE OF THE ACTION

24

1. This is a declaratory judgment action seeking a declaration of non-
25 infringement and invalidity of United States Patent No. 9,407,816 (“816 Patent”).

26

THE PARTIES

27

2. Investel is a corporation duly registered in the British Virgin Islands,
28 having its principal place of business at 200 Granville Street, Suite 1210,

1 Vancouver, British Columbia, Canada V6C 1G4.

2 3. Investel has developed technology related to integration of location-
3 based advertisements into user-generated social media content and protected the
4 same through a portfolio of patents.

5 4. Snap is a Delaware corporation with its principal place of business at
6 Venice, California and has a registered agent for service of process in Sacramento,
7 California. Prior to a September 2016 re-branding, Snap Inc. was known as
8 Snapchat, Inc.

9 5. Snap owns and operates a social media network called Snapchat that is
10 accessible through applications published by Snap for iOS and Android-based user
11 systems.

12 JURISDICTION AND VENUE

13 6. This action arises under the Patent Laws of the United States, 35 U.S.C.
14 § 100 et seq., and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This
15 matter presents an actual case or controversy between the parties and serves the
16 purpose of resolving the legal rights of the parties, including that Investel is free to
17 carry on its business in the United States.

18 7. This Court has original jurisdiction over the subject matter of these
19 claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

20 8. Upon information and belief, this Court has personal jurisdiction over
21 Snap because it conducts business in and directed at California, it is headquartered
22 in California, and has designated an agent in California for service of process.

23 9. Venue is proper in this District under 28 U.S.C. §§ 1391 (b) and (c).

24 THE PATENT AT ISSUE

25 10. The '816 Patent, entitled "Apparatus and Method for Supplying
26 Content Aware Photo Filters," on its face states it was issued by the United States
27 Patent and Trademark Office on August 2, 2016. A copy of the '816 Patent is
28 attached as **Exhibit A**.

1 11. According to the records at the United States Patent and Trademark
2 Office, Snapchat, Inc. (aka Snap) is the assignee of the '816 Patent.

3 12. The '816 Patent is a continuation of U.S. Patent No. 9,225,897, filed on
4 July 7, 2014, and under the America Invents Act, Snap is given a priority date over
5 other inventions based on the July 7, 2014 priority date of U.S. Patent No.
6 9,225,897.

7 **INVESTEL'S PATENTS**

8 13. Investel is the owner of a portfolio of patents and pending applications
9 worldwide, including in the United States, based on the inventions of Canadian
10 inventor Benoît Laliberté, who assigned the patents and pending applications to
11 Investel. The Investel patents and pending applications cover technical advances and
12 improvements over the state of the art as it relates to content sharing solutions for
13 mobile applications, including the Snap™ messaging platform.

14 14. On January 3, 2014, Investel filed U.S. Provisional Patent Application
15 No. 61/923,315 ("Provisional Application") covering content integration using user-
16 related data, including geolocation data, and sharing integrated content originating
17 from the user.

18 15. Investel has a priority in its invention rights with respect to the subject
19 matter disclosed in the Provisional Application as of January 3, 2014.

20 16. Investel filed a formal Patent Cooperation Treaty ("PCT") application
21 on December 30, 2014, application number PCT/CA2014/0151268, entitled "User
22 Content Sharing System and Method with Automated External Content Integration."
23 This PCT application claimed the benefit of the Provisional Application and priority
24 date of January 3, 2014.

25 17. On December 30, 2014, Investel filed a Canadian patent based on the
26 PCT Application, entitled "User Content Sharing System and Method with
27 Automated External Content Integration." The Canadian patent issued on June 14,
28 2016, with a priority date of January 3, 2014, Patent No. 2,887,596 ("596 CDN

1 Patent”). A copy of the ’596 CDN Patent is attached as **Exhibit B**.

2 18. On July 1, 2016, Investel filed U.S. Patent Application No. 15/200,631,
3 entitled “User Content Sharing System and Method With Automated External
4 Content Integration.” On August 18, 2016, Investel filed U.S. Patent Application
5 number 15/240,515, entitled “User Content Sharing System and Method With
6 Location-Based External Content Integration.” Both U.S. patent applications have a
7 priority date of January 3, 2014 and are based on the same subject matter and are a
8 continuation of the PCT application.

9 **INVESTEL SEEKS TO LAUNCH ITS iFRAMED CONTENT SHARING**
10 **SOLUTIONS FOR MOBILE APPLICATIONS**

11 19. Investel, having secured rights through its issued patent and patent
12 applications in Canada and the United States with a priority date of January 3, 2014,
13 sought investments sufficient to launch a product based on its content sharing
14 solutions for mobile applications, which includes content integration using user-
15 related data such as geolocation data, and sharing integrated content originating
16 from the user. Investel developed both an application platform and the requisite
17 back-end technology for a content sharing product called iFramed that is covered by
18 Investel’s content sharing patented inventions.

19 20. iFramed is a system for creating advertising campaigns on social media
20 where users post branded content. iFramed allows users to enhance their shared
21 content by selectively including in their posts external content which may include,
22 but is not limited to, external advertisements, user location, and other content based
23 on various user parameters including user location. Users are then paid for posting
24 this branded content by the advertiser or sponsor through iFramed. iFramed allows
25 advertisers to more closely target their message based in part on user location, and
26 for users to share in the monetization of social media.

27 21. iFramed Canada Ltd. (“iFramed Canada”) has licensed the ’596 CDN
28 Patent covering the iFramed system for use in North America. In January 2014,

1 Investel launched the iFramed application in beta mode.

2 22. Investel desires to bring the complete commercial iFramed to market in
3 the United States and to allow the public to enjoy the benefits of its content sharing
4 innovations. To that end, Investel initiated attempts to raise capital sufficient to
5 launch iFramed in North America and beyond.

6 **SNAP’S CLAIMED PRIORITY RIGHTS HAVE INTERFERED WITH THE**
7 **LAUNCH OF INVESTEL’S iFRAMED APPLICATION IN THE UNITED**
8 **STATES**

9 23. Investel had planned a commercial launch for the Fall of 2016 in the
10 United States and Canada, but Investel’s launch was delayed as a result of Snap’s
11 massive campaign to introduce its own sponsored and location-based filters
12 (“geofilters”), in its content sharing app, under a claim of having the patent rights to
13 the technology, including under its ’816 Patent. Snap’s conflicting claim to
14 ownership of the intellectual property rights to this invention have raised questions
15 among potential investors and potential clients regarding whether Investel, on the
16 one hand, or Snap, on the other hand, own the rights to the invention in the United
17 States.

18 24. Snap’s claim to own the patented rights has had the effect of interfering
19 with Investel’s ability to raise capital to launch its business. This was compounded
20 when, in mid-November 2015, Snap announced that it would seek an initial public
21 offering of \$3 billion, setting its valuation at between \$25 and \$35 billion.

22 25. Snap has levered its claimed rights to the technology, including with
23 respect to the ’816 Patent, to attempt to occupy the field, including by seeking to
24 secure long-term commercial contracts with advertisers such as McDonald’s and
25 Universal Pictures, as well as multiple advertising consortiums, such as the
26 InterPublic Group of Companies.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CLAIM FOR RELIEF
DECLARATORY JUDGMENT OF INVALIDITY
OF THE '816 PATENT

30. Investel repeats and realleges each of the allegations in paragraphs 1-29 as if fully set forth herein.

31. Investel's Provisional Application and its subsequent U.S. patent applications have a priority date of January 3, 2014, and cover content integration using user-related data, including geolocation data, and sharing integrated content originating from the user.

32. Snap's '816 Patent has a later priority date of July 7, 2014.

33. Investel contends that one or more of the claims of the '816 Patent are invalid and/or unenforceable for failure to meet the conditions of patentability and/or otherwise comply with the requirements of 35 U.S.C. § 1, et seq., including but not limited to §§ 101, 102, 103, 112.

34. As one example, claim 1, the only independent claim of the '816 Patent, is invalid under 35 U.S.C. §§ 102 and/or 103, over certain prior art, including but not limited to Investel's own Provisional Application and its other U.S. patent applications.

35. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

36. An actual and justiciable controversy exists between Investel and Snap with respect to whether the '816 Patent is invalid. A judicial declaration is necessary and appropriate so that Investel may ascertain its rights regarding the '816 Patent.

37. Investel is entitled to further necessary or proper relief based on the Court's declaratory judgment or decree.

1 be effectively foreclosed from entering the market, will be monetarily harmed, as it
2 will lose sales of its product by virtue of not being able to enter the market at the
3 earliest possible date, will not be able to raise funds through investments and enter
4 into long-term and short term contracts necessary to scale its business to enable
5 consumers and the public to effectively use the product. Investel has already
6 invested significant resources preparing to enter the U.S. market and has been
7 foreclosed from doing so by Snap's actions.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff Investel respectfully requests the following relief:

10 A. A declaration that the '816 Patent is invalid over prior art, including
11 without limitation, Investel's own U.S. Provisional Application No. 61/923,315,
12 filed on January 3, 2014;

13 B. A declaration that the claims of the '816 Patent will not be infringed by
14 the iFramed methods and systems;

15 C. A declaration that the manufacture, marketing, use, offer for sale, sale,
16 and/or importation of the iFramed application have not infringed, do not infringe,
17 and would not, if marketed, infringe or induce or contribute to the infringement by
18 others of any claims of the '816 Patent;

19 D. An order declaring that Investel is the prevailing party and that this is
20 an exceptional case under 35 U.S.C. § 285 and awarding Investel its costs, including
21 attorneys' fees, in connection with this action; and

22 E. Such other relief that the Court deems just and proper under the
23 circumstances.

24 DATED: February 2, 2017

GREENBERG GROSS LLP

25
26 By: /s/ Michael I. Katz

Wayne R. Gross

Michael I. Katz

Attorneys for Plaintiff

