SAN DIEGO IP LAW GROUP LLP
TREVOR Q. CODDINGTON, PH.D. (CSB NO. 243,042)
trevorcoddington@sandiegoiplaw.com
DONNY K. SAMPORNA (CSB NO. 316,456)
donnysamporna@sandiegolaw.com
703 Palomar Airport Rd., Suite 210
Carlsbad, CA 92011
Telephone: (442) 325-1024
Facsimile: (858) 408-4422

JAMES V. FAZIO, III (CSB NO. 183,353)
jamesfazio@sandiegoiplaw.com
12526 High Bluff Dr., Suite 300
San Diego, CA 92130
Telephone: (858) 792-3446

Attorneys for Plaintiff,
CONFIDENT TECHNOLOGIES, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CONFIDENT TECHNOLOGIES, INC., a Delaware corporation, *Plaintiff* v. BEST BUY CO., INC., a Minnesota corporation, *Defendant*	Case No.: '18 CV2552 LAB LL **COMPLAINT FOR: (1) PATENT INFRINGEMENT – 35 U.S.C. § 271; AND (2) DECLARATORY RELIEF DEMAND FOR JURY TRIAL**

Plaintiff Confident Technologies, Inc. ("Confident" or "Plaintiff"), by and through its attorneys, makes and files this Complaint against Defendant Best Buy Co., Inc. ("Best Buy" or "Defendant") and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 271, *et seq*.

THE PARTIES

2. Plaintiff Confident is a Delaware corporation with a principal place of business in Solana Beach, CA.

3. On information and belief, Defendant Best Buy is a Minnesota company with a principal place of business in Richfield, MN.

JURISDICTION AND VENUE

4. This Court has original and exclusive subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) because Confident's claim of patent infringement arises under the laws of the United States, including 35 U.S.C. §§ 271.

5. This Court has personal jurisdiction over Defendant because it has a continuous, systematic and substantial presence in this District, because it regularly conducts business and/or solicits business within this District, because it has committed and continues to commit patent infringement in this District, including without limitation by directing and controlling the methods claimed in United States Patent No. 8,621,578 ("the '578 patent") in this District.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because Defendant has done business, has infringed, and continues to infringe the 578 patent in this District, and has a regular and established place of business in this District. For example, there are numerous Best Buy stores located within San Diego County.

COMPLAINT FOR: (1) PATENT INFRINGEMENT – 35 U.S.C. § 271; AND (2) DECLARATORY RELIEF DEMAND FOR JURY TRIAL

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FACTUAL BACKGROUND

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7.   On December 31, 2013, the United States Patent and Trademark

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Office (PTO) duly and lawfully issued United States Patent No. 8,621,578 ("the '578

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patent"), entitled "Methods and Systems for Protecting Website Forms from Automated

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Access." A true and correct copy of the '578 patent is attached hereto as **Exhibit A**.

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Confident owns all rights to the '578 patent via an Assignment, which was recorded at

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the PTO on February 4, 2015, at Reel/Frame 034886/0691.

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8.   The '578 patent is directed to methods and systems of telling apart a

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human from a computer using a graphical image verification system. The methods

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generally describe generating a matrix of images in response to an access request from a

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user, wherein at least one image is known to belong to a selected image category, at

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least one image is known to not belong to the selected image category, and at least one

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image is suspected to belong to the selected image category. The user is granted access

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to the website when the input from the user access device comprises selection of the at

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least one image known to belong to the selected image category and selection or

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omission of the at least one image suspected to belong to the selected image category.

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The information gathered from users concerning the image suspected to belong to the

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selected image category may be utilized to provide an interpretation as to the proper

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category for the suspected image.

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9.   Defendant Best Buy directs users that wish to purchase electronic

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goods to go to the www.Bestbuy.com website. On the homepage there is a link to

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"Forums, Blog & More." The "Forums, Blog & More" page contains links to a number

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of different support pages. Each support page has a number of articles and

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advertisements, which encourage users to explore and research varying products under

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titles such as "Bust Buy Gaming" and "Latest & Greatest." To join the community and

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enjoy all the benefits, Best Buy uses and continues to use Google's ReCaptcha V2

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technology as a precondition to joining. Users seeking to enjoy all the benefits of the

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**COMPLAINT FOR: (1) PATENT INFRINGEMENT –   35 U.S.C. § 271; AND (2) DECLARATORY RELIEF
DEMAND FOR JURY TRIAL**

Best Buy website are directed, by Best Buy's website, to complete a Recptcha V2 verification, as shown below:
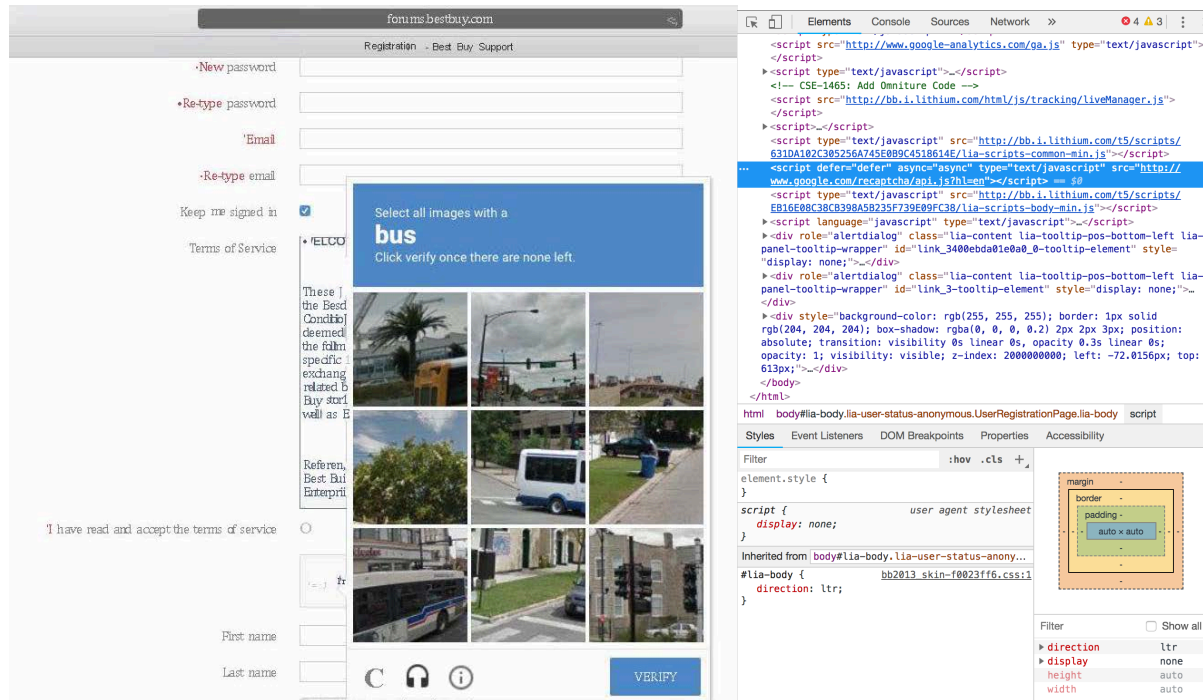
The right portion of the image shown above presents a portion of the code utilized in Best Buy's website. This code includes a Google service script, which is uniquely associated with Best Buy.

10.   In order to use Google's ReCaptcha V2, Best Buy registered a ReCaptcha account with Google and obtained from Google a ReCaptcha V2 public key and a private key. When a third party, e.g., a user, wishes to access the Best Buy website (shown above) with the embedded service script, the Best Buy website contacts Google's server with Best Buy's public key. The Google server then provides the user with a matrix of non-overlapping images (shown above) and tokens identifying those images. The user then enters his/her/its interpretation of those images and submits those interpretations to Best Buy's website, along with the tokens associated with the images. Best Buy's website then sends the user's interpretations and the tokens to Google's server using Best Buy's private key. The Google server then determines whether the user has interpreted the images sufficiently well that there is high confidence that the third party is a human.

11.   The ReCaptcha V2 technology employed by Best Buy's website utilizes the claimed '578 technology in granting access to certain website content authorizing certain electronic transactions by presenting users with images wherein at least one image is known to belong to a selected image category, at least one image is known to not belong to the selected image category, and at least one image is suspected to belong to the selected image category. The user gains access by, inter alia, selecting one or more images that belong to the selected category. Best Buy conditions participation of the user in the Best Buy Support process upon performance of a step or steps of the '578 patented method, and establishes the manner or timing of that performance.

FIRST CLAIM FOR RELIEF

(Infringement of the '578 patent)

12.   Plaintiff realleges and incorporates by reference the allegations contained in the previous paragraphs of this Complaint as though fully set forth herein.

13.   Best Buy has infringed and continues to infringe, and/or induce infringement of the '578 patent, either literally or under the doctrine of equivalents. Best Buy's infringing activities in the United States and this District include, among other things using ReCaptcha V2 technology to prevent abuse to its websites.

14.   Best Buy registered itself with Google in order to utilize Google's ReCaptcha V2 technology. Upon registration, Best Buy received a unique public key and private key to enable use of Google's ReCaptcha V2 technology. Moreover, during registration, Best Buy selected to use Google's ReCaptcha V2 specifically, as opposed to other possible versions of ReCaptcha such as Invisible ReCaptcha, which does not infringe the '578 patent. Best Buy incorporated a Google application programming interface (API) or service script into its website code in order to direct and control Google to provide ReCaptcha V2 verification upon certain conditions being met, e.g., a user request access to "Join the Community." The Google API in Best Buy's website includes Best Buy's public key obtained from Google. Without Best Buy's registration,

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and without the inclusion of Google's API and Best Buy's public key into Best Buy's website, Best Buy would not be able to utilize Google's ReCaptcha V2.

15. As shown in **Exhibit B**, which is incorporated herein, Best Buy infringes at least claim 1 of the '578 patent. Best Buy directs and controls a Google server to perform the claimed steps of "generating a matrix of non-overlapping randomly selected images …" and "presenting the dynamic graphical arrangement of randomly selected images …" as recited in claim 1. For example, Best Buy's website includes a Google service script that utilizes a public key registered by Best with Google. When a third party, e.g., user, wishes to access all the benefits of a Best Buy support website, the Best Buy website contacts Google's server, which provides the third party with a matrix of non-overlapping images and tokens identifying those images, along with an image recognition task. Best Buy's website conditions Google's performance of these steps upon a user requesting access to certain Best Buy resources, e.g., enjoying all the benefits of the Best Buy Support websites.

16. Best Buy's website performs the step of "receiving an input from user access device …." as recited in claim 1. For example, upon presentation of the matrix of non-overlapping images, the third party then enters his/her/its interpretation of those images and submits those interpretations to Best Buy's website, along with the tokens associated with the images. Google also performs this step at Best Buy's direction and control because Best Buy's website passes the third party's interpretations and the tokens associated with the images that it received from the third party, along with Best Buy's private key to the Google server. Again, Best Buy's website conditions Google's performance of this step upon a user requesting access to certain Best Buy resources, e.g., enjoying all the benefits of the Best Buy Support websites.

17. Best Buy directs and controls the Google server to perform the step of "comparing the input …" as recited in claim 1. For example, Best Buy's website sends the third party's interpretations and the tokens to Google's server using Best Buy's private key, which then determines whether the third party has interpreted the images

sufficiently well that there is high confidence that the third party is a human. The Google server then relays to Best Buy's website its determination of whether or not there is high confidence that the third party is a human. Again, Best Buy's website conditions Google's performance of this step upon a user requesting access to certain Best Buy resources, e.g., enjoying all the benefits of the Best Buy Support websites.

18.   The infringement chart of Exhibit B is based on Confident's current understanding of Best Buy's use of infringing ReCaptcha technology, which only considers publicly available information. The chart does not set forth all of Confident's infringement theories – Best Buy's use of infringing ReCaptcha V2 technology embodies other claims set forth in the '578 patent.

19.   Confident reserves the right to amend or supplement its infringement theories upon more information becoming available through formal discovery and/or this Court completing its claim construction proceedings.

20.   Confident is informed and believes that Best Buy, with actual knowledge of the '578 patent, induces Google to infringe the '578 patent, by requiring its users to solve a Google ReCaptcha V2 image recognition task to purchase tickets and/or stream content through Best Buy's websites. Best Buy directs and controls Google to perform all the steps recited in at least claim 1 of the '578 patent upon a Best Buy user attempting to enjoy all the benefits of the Best Buy Support websites through Best Buy's websites. Best Buy profits from the use of the infringing ReCaptcha V2 technology by, among other things, having a secure platform to advertise and explain products to users. Through this platform Best Buy offers product literature, customer service articles, and offer coupons. Google benefits from said infringement by harnessing the power of humans to classify images presented in ReCaptcha V2 image recognition tasks to Best Buy users.

21.   As part of Google's Terms of Service for its ReCaptcha V2 technology, Best Buy agreed to "indemnify, defend and hold Google, its agents, affiliates, and licensors harmless from any claim, costs, losses, damages, liabilities,

judgments and expenses (including reasonable fees of attorneys and other professionals), arising out of or in connection with any claims arising out of or related to [Best Buy's] use of the [Google ReCaptcha V2] Services, Content, or Google brand features." *See* Exhibit B, reCAPTCHA Terms of Services. Best Buy is therefore responsible for Google's infringement of the '578 patent.

22.   Defendant was aware or should have been aware or were willfully ignorant of the '578 patent by at least January of 2014.

23.   Upon information and belief, Defendant has indirectly generated millions of dollars in annual revenue from online electronic purchases and the use of Plaintiff's technology.

24.   Upon information and belief, unless enjoined, Defendant, and/or others acting on behalf of Defendant, will continue their infringing acts, thereby causing irreparable harm to Confident for which there is no adequate remedy at law.

25.   As a result of Defendant's infringement of the '578 patent, Confident has suffered and will continue to suffer harm and injury, including monetary damages in an amount to be determined at trial, and is entitled to recovery of all said damages.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

26.   Plaintiff realleges and incorporate by reference the allegations contained in the previous paragraphs of this Complaint as though fully set forth herein.

27.   An actual and justiciable controversy exists as to Defendant's infringement of the '578 patent.

28.   Confident is entitled to a declaration that Defendant infringes the '578 patent.

PRAYER FOR RELIEF

WHEREFORE, Confident prays for entry of judgment in its favor and against Defendant as follows:

**COMPLAINT FOR: (1) PATENT INFRINGEMENT –   35 U.S.C. § 271; AND (2) DECLARATORY RELIEF
DEMAND FOR JURY TRIAL**

1   (a)   An Order adjudging Defendant to have infringed, or induced the

2 infringement of the '578 patent under 35 U.S.C. § 271;

3   (b)   A permanent injunction under 35 U.S.C. § 283 enjoining Defendant, its

4 officers, directors, agents, servants, resellers, retailers, employees and attorneys, and

5 those persons acting in concert or participation with them, from infringing or inducing the

6 infringement of the '578 patent in violation of 35 U.S.C. § 271;

7   (c)   An award to Confident of its lost profits and/or a reasonably royalty;

8   (d)   An Order adjudicating that this is an exceptional case;

9   (e)   An award to Confident of all attorneys' fees and costs incurred by

10 Confident in connection with this action under 35 U.S.C. § 285;

11   (f)   An award of pre-judgment and post-judgment interest and costs of this

12 action against Defendant;

13   (g)   For such other and further relief as the Court deems just and proper.

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16   Respectfully submitted,

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18 Dated: November 6, 2018   SAN DIEGO IP LAW GROUP LLP

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                                     By: /s/Trevor Q. Coddington/
20   James V. Fazio, III
                                     Trevor Q. Coddington, Ph.D.
21   Donny K. Samporna
                                     703 Palomar Airport Rd., Suite 210
22   Carlsbad, CA 92011
                                     Phone: (442) 325-1024
23   Fax: (858) 405-4422
24
25
                                     Attorneys for Plaintiff,
26   CONFIDENT TECHNOLOGIES, INC.
27
28

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DEMAND FOR A JURY TRIAL

Pursuant to Rule 38 of the Federal rules of Civil Procedure, Plaintiff hereby demands a trial by a jury of all issues so triable.

Respectfully submitted,

Dated: November 6, 2018

SAN DIEGO IP LAW GROUP LLP

By: /s/Trevor Q. Coddington/
James V. Fazio, III
Trevor Q. Coddington, Ph.D.
Donny K. Samporna
703 Palomar Airport Rd., Suite 210
Carlsbad, CA 92011
Phone: (442) 325-1024
Fax: (858) 405-4422

Attorneys for Plaintiff,
CONFIDENT TECHNOLOGIES, INC.

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