

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

GHALY DEVICES LLC,	)	
	)	
<b>Plaintiff,</b>	)	
v.	)	<b>Civil Action No. 19 Civ. 2318</b>
	)	
<b>HUMOR RAINBOW, INC.</b>	)	
	)	<b>JURY TRIAL DEMANDED</b>
<b>Defendant.</b>	)	
_____	)	

**COMPLAINT FOR PATENT INFRINGEMENT**

This is an action for patent infringement under 35 U.S.C. § 271, *et seq.*, in which Ghaly Devices LLC (“Ghaly Devices” or “Plaintiff”), makes the following allegations against Humor Rainbow, Inc. (“Humor Rainbow” or “Defendant):

**Parties**

1. Plaintiff Ghaly Devices is a Texas Company, with its principal place of business located at 815 Brazos St., Ste. 500 Austin, TX 78701.

2. Ghaly Devices is the owner of United States Patent No. 6,685,479 (the “479 Patent” or “Patent-in-Suit). Ghaly Devices owns all rights to recover for all past, present, and future infringement, including past damages with respect to the 479 Patent. A true and correct copy of the 479 Patent is attached hereto as **Exhibit A**.

3. On information and belief, Defendant Humor Rainbow is a New York corporation with its principle place of business at 129 West 29th St. 10th Floor New York, New York, 10001. Humor Rainbow can be served process on the following addresses: C T Corporation System, 28 Liberty St., New York, New York, 10005.

4. On information and belief, Humor Rainbow makes, uses, imports into the United States, sells and/or offers for sale in the United States products and services under the brand “OKCupid” in this district and around the United States, including a mobile application, which is subject to the patent infringement herein. A product and/or service under the brand OKCupid includes the OKCupid mobile application, which is configured for installation on mobile devices.

**Nature of the Action**

5. This is a civil action for the infringement of the 479 Patent.

**Jurisdiction and Venue**

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b). Humor Rainbow maintains a regular and established place of business in this District, has transacted business in this District, and committed acts of patent infringement in this District.

8. Humor Rainbow is subject to this Court’s specific and general personal jurisdiction pursuant to due process, due at least to their substantial business in this forum, including (i) certain acts of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in New York and in this District.

**The Patent-in-Suit**

9. The 479 Patent lawfully issued on February 3, 2004, and claims priority to U.S. Application No. 09/255,644, filed on February 22, 1999. The 479 Patent is titled “Personal Hand Held Device.”

10. The 479 Patent is valid and enforceable.

11. Nabil N. Ghaly is the sole inventor of the 479 Patent.

12. The 479 Patent is directed to methods, and devices that use an interface for obtaining specific user inputs for match-making. The 479 Patent describes determining a degree of compatibility between two people as part of its match-making interface. For example, according to some embodiments, a device may store a user's data and use a personality profile system to process a user's stored data. The device may implement a control program to produce user's personality attributes or behavioral pattern parameters. The device may communicate data to and from another device and calculate a degree of compatibility between the two users, based in part on the number of common items between desired and calculated attributes or parameters.

13. The claims of the 479 Patent encompass novel and non-obvious technology that was neither well-understood, routine nor conventional to a skilled artisan at the time of the invention. Such novel technology includes but is not limited to using a device implementing an interface to obtain specific inputs and that communicates with another device to calculate a degree of compatibility between the two users. The calculation is based on at least the number of common items between desired and calculated attributes or parameters.

14. Prior to the time of invention, it was not known to implement a device to utilize personality attributes generated by a personality profile system in a match process to assess or predict the degree of compatibility between two individuals.

15. The 479 Patent also resolves the match-making problem by providing an interface that facilitates a choice to the user to indicate his or her preferences of the personality attributes for a companion while also determining the actual personality attributes of individuals through the use of a personal profile system. Such a combination of desired personality traits, and

personality traits derived by a personal profile system makes a device that practices the 479 Patent independent of any apparent contradictions between various personality type compatibility theories. This sets the 479 Patent from prior art solutions of match-making.

16. On information and belief, Match Group, Inc. (“Match Group”) is the parent company of Humor Rainbow.

17. Match Group is the owner of United States Patent Nos. 9,959,023 and 9,733,811 (collectively “the Match Group Patents”). True and correct copies of United States Patent Nos. 9,959,023 and 9,733,811 are attached hereto as **Exhibit B** and **Exhibit C**, respectively.

18. The claims of the Match Group Patents are directed to user interface technology for particular use in a matchmaking application.

19. The Match Group Patents each claim priority to the same provisional patent application filed on March 15, 2013.

20. To date, the Match Group Patents are subject to litigation in the matter of *Match Group, Inc. v. Bumble Trading Inc.*, Case No. 6:18-cv-00080-ADA (W.D. Tx) (“Match Group Litigation”).

21. During the Match Group Litigation, Match Group explained that the interface technology for particular use in a matchmaking app, as described in the Match Group Patents, is not routine and conventional as of around 2013.

22. During the Match Group Litigation, Match Group explained that the interface technology for particular use in a matchmaking app, as described in the Match Group Patents, is not abstract concept.

23. The fact that the technology claimed in the 479 Patent is not routine, generic or conventional is illustrated by the fact that years after its February 1999 priority date, other companies in the industry were creating similar technology to that of the 479 Patent, and

representing to the U.S. Patent and Trademark Office that their “inventions” were, in fact, patentable (i.e., novel and non-obvious). They certainly would not have spent their time, money and effort attempting to patent technology that was merely conventional, routine or generic at the time.

24. For example, Sparkstarter, LLC obtained U.S. Patent No. 9,355,358 titled “Systems and Methods for Determining Compatibility” (“the 358 Patent”). A true and correct copy of the 358 Patent is attached hereto as **Exhibit D**. The 358 Patent claims a priority date of May 2012, which is more than a decade after the Patent-in-Suit.

25. The 358 Patent claims “[a] computer-implemented method for determining a relationship compatibility between a first user and a second user of a plurality of users of an online matchmaking system.” **Exhibit C** at p. 23. The claimed method involves “determining said relationship compatibility that reflects a matchmaking likelihood between said first user and said second user using an algorithm that incorporates at least said at least one personal profile attribute from each of said first and said second user profiles as variables.” *Id.*

26. As another example, Sony Computer Entertaining America LLC obtained U.S. Patent No. 8,825,802 titled “Systems and Methods for Identifying Compatible Users” (“the 802 Patent”). A true and correct copy of the 802 Patent is attached hereto as **Exhibit E**. The 802 Patent claims a priority date of September 2007. The claims of the 802 involve “comparing the created profile of a subject user with the created profiles of other users on the network and calculating a compatibility score for each set of compared profiles, the compatibility score based at least on a degree of overlap of users’ respective play time information and game information.”

27. The U.S. Patent and Trademark Office relied on the 479 Patent as prior art when examining several patent applications that described alleged innovations in the same field. For

example, U.S. Pat. Nos. 9,866,920 and 9,055,197 along with U.S. Pat. Pub No. US20150256897 share the title “Intelligent peer-to-peer system and method for collaborative suggestions and propagation of media” and were each prosecuted by TiVo Solutions Inc. During prosecution of these patents and applications, the U.S. Patent and Trademark Office relied on the 479 Patent as prior art.

28. Similarly, U.S. Pat. No 7,457,768 titled “Methods and apparatus for predicting and selectively collecting preferences based on personality diagnosis” was prosecuted by Microsoft Technology Licensing LLC and was also faced with the 479 Patent as prior art.

29. U.S. Pat. Pub. No. US20060216680 titled “Selection of relationship improvement content for users in a relationship” was prosecuted by eHarmony, Inc. and also faced the 479 Patent as prior art.

**Count 1: Direct Infringement of U.S. Patent No. 6,685,479 by Humor Rainbow**

30. Ghaly Devices herein incorporates the contents of the preceding paragraphs as if restated fully herein.

31. The term “Accused Instrumentality” as used herein refers to a networked device having the OKCupid mobile application installed thereon, whether for device testing, system testing or other purposes.

32. On information and belief, Humor Rainbow uses or has used the Accused Instrumentality for at least the purpose of developing, designing, testing, evaluating, debugging, qualifying, demonstrating, or preparing educational materials for the OKCupid Application.

33. On information and belief, Humor Rainbow uses or has used the Accused Instrumentality in the context of a smartphone such as, for example an iPhone or Android-based phone, to install the OKCupid mobile application.

34. On information and belief, Humor Rainbow installed the OKCupid mobile application on a device for the purpose of developing, designing, testing, evaluating, debugging, qualifying, demonstrating, or preparing educational materials for the OKCupid mobile application.

35. On information and belief, Humor Rainbow developed the OKCupid server application to work in conjunction with the OKCupid mobile application.

36. The functionality, operation, and capabilities of the Accused Instrumentality is described in **Exhibit F**, **Exhibit G**, **Exhibit H**, and **Exhibit I**.

37. **Exhibit F** is true and correct copy of a screenshot of the website <https://www.okcupid.com/> as of February 15, 2019. **Exhibit F** provides general information about installing OKCupid on a device such as an Android or iPhone based smart phone.

38. **Exhibit G** is true and correct copy of the website <http://www.sitepronews.com/2013/01/16/want-a-crazy-blind-date-theres-an-app-for-that/> as of February 1, 2019. **Exhibit G** provides general information about OKCupid's algorithm to determine a degree of compatibility between two individuals.

39. **Exhibit H** is true and correct copy of the website <https://okcupid.desk.com/customer/en/portal/articles/2161212-how-to-re-answer-match-questions> as of February 1, 2019. **Exhibit H** provides general information about OKCupid's functionality.

40. **Exhibit I** is true and correct copy of the website <https://www.apple.com/shop/buy-iphone/iphone-8as> of February 1, 2019. **Exhibit I** an example of a device that may be configured to practice the claims of the 479 Patent.

41. Claim 42 of the 479 Patent is presented below with alphanumeric labels added in brackets to identify each claim element:

**[42.P]** A device for determining a degree of compatibility between a first set of data corresponding to a first person and a second set of data corresponding to a second person comprising:

**[42.a]** a housing;

**[42.b]** a plurality of entry control mechanisms to operate the device,

**[42.c]** computer memory to store user's data,

**[42.d]** means to communicate data to and from another device,

**[42.e]** a microprocessor to control the operation of the device,

**[42.f]** a control program to produce user's personality attributes, or behavioral pattern parameters, using a personality profile system to process stored user's data, and to match stored and processed data with data corresponding to a second user and received from another device, and to calculate a degree of compatibility between the two users, based in part on the number of common items between desired and calculated attributes or parameters; and

**[42.g]** a liquid crystal display, or light emitting diodes display, to indicate said degree of compatibility between the two users.

42. The Accused Instrumentality infringed at least Claim 42 of the 479 Patent as follows [with claim language underlined] in the following paragraphs.

43. To the extent the preamble **[42.P]** is limiting, the Accused Instrumentality is a device for determining a degree of compatibility between a first set of data corresponding to a first person and a second set of data corresponding to a second person.

44. The Accused Instrumentality may include, for example a networked smart phone with the OKCupid mobile application installed thereon. As discussed in further detail below, using OKCupid in its normal court of operation involves determining a degree of compatibility between a first set of data corresponding to a first person and a second set of data corresponding to a second person.



45. The Accused Instrumentality includes **[42.a]** a housing. According to the OKCupid website, OKCupid is installed on a device using, for example, using Google's Play store or Apple's App store. **Exhibit F** (stating "GET THE APP"). An example of a device having a housing is an iPhone as depicted in **Exhibit I** and presented below.



46. The Accused Instrumentality includes **[42.b]** a plurality of entry control mechanisms to operate the device.

47. According to the 479 Patent (*e.g.*, Claim 1, FIG. 1, FIG. 3, FIG. 5 *etc.*), the entry control mechanisms to operate the device, includes, but are not limited to, push buttons, a keypad, a keyboard, and equivalents thereof.

48. With respect to the Accused Instrumentality, a device, such as the one described in **Exhibit I**, includes controls such as, for example, power button, volume button, touch points on a touch screen. The OKCupid mobile application is designed to be controlled using at least the touch points on a touch screen. These touch point controls are, at a minimum, equivalents of push buttons and a keyboard.

49. The Accused Instrumentality includes **[42.c]** computer memory to store user's data.

50. For example, the OKCupid mobile application executes on a device that includes computer memory (*e.g.*, the device's built in RAM or ROM) to store user's data (*e.g.*, raw data such as answers to questions or other information about a user). **Exhibit H** ("We have a 24 hour hold in place to re-answer new match questions so that you can be sure that everyone is answering honestly the first time").

51. The Accused Instrumentality includes **[42.d]** means to communicate data to and from another device.

52. According to the 479 Patent (*e.g.*, claim 18, 11:34-43.), the means to communicate data to and from another device, includes, but are not limited to, an infrared transmitter/receiver, a radio frequency transmitter/receiver, magnetic coupling modules, and equivalents thereof.

53. For example, the OKCupid mobile application is designed to use the device's network capabilities to communicate with another device, such as the server, which executes the OKCupid server application. The OKCupid mobile application is also designed to use the device's network capabilities to communicate with another device, such as another mobile device, via the OKCupid server application. Devices, such as those in **Exhibit I**, include a radio frequency transmitter/receiver such as a Wi-Fi or cellular radio to provide network connectivity to other devices.

54. The Accused Instrumentality includes **[42.e]** a microprocessor to control the operation of the device.

55. For example, the device in **Exhibit I**, includes a microprocessor (*e.g.*, the A11 chip, CPU, or any other microprocessor) to control the operation of the device by executing the

OKCupid mobile application. The OKCupid mobile application can only run if the device has a microprocessor to execute the OKCupid mobile application.

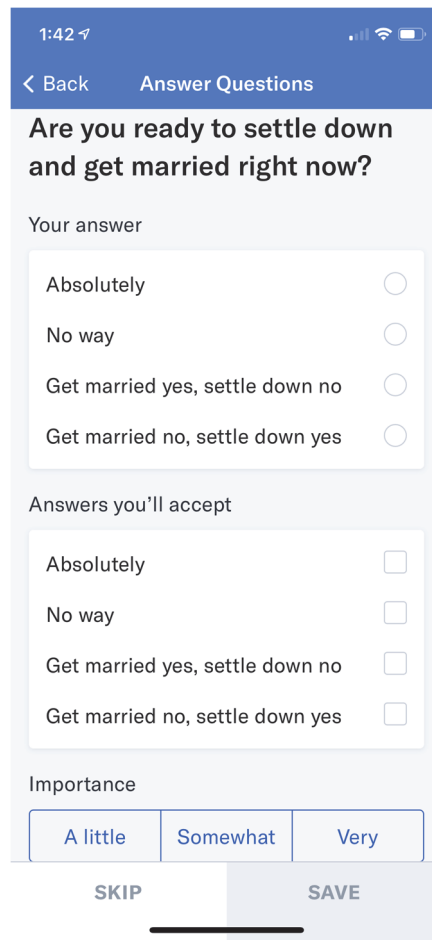
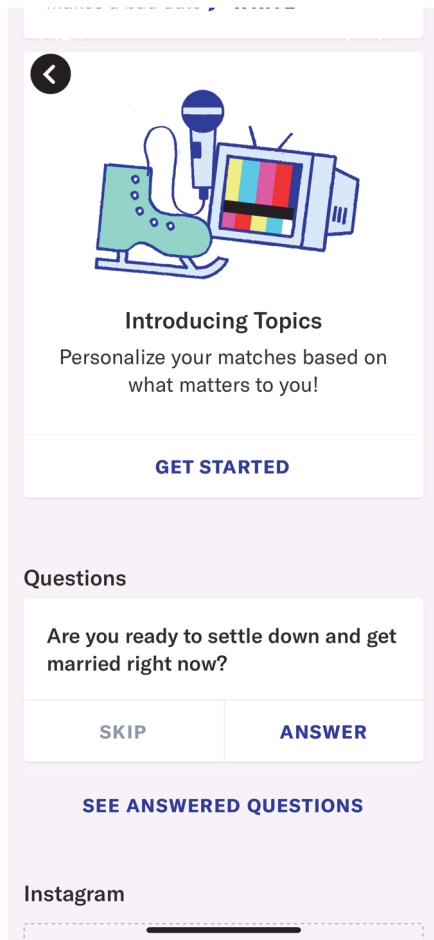
56. The Accused Instrumentality includes [42.f] a control program to produce user's personality attributes, or behavioral pattern parameters, using a personality profile system to process stored user's data, and to match stored and processed data with data corresponding to a second user and received from another device, and to calculate a degree of compatibility between the two users, based in part on the number of common items between desired and calculated attributes or parameters.

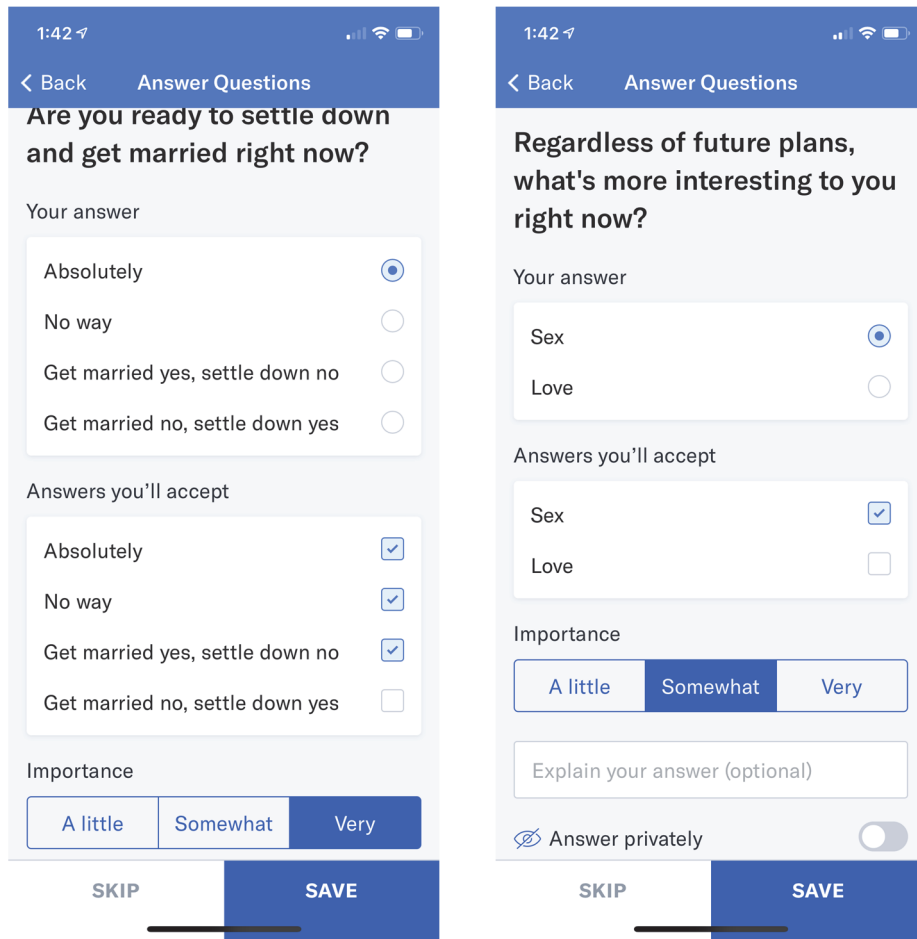
57. For example, the OKCupid mobile application executes on a device that includes a control program (*e.g.*, functionality of the OKCupid mobile application) to produce user's personality attributes, or behavioral pattern parameters (*e.g.*, calculates, determines, renders, displays and/or presents at least what the user has indicated that he or she believes is an acceptable answer to a question), using a personality profile system (*e.g.*, OKCupid server application and related functionality) to process stored user's data (*e.g.*, process a user's answers into a weighted score), and to match stored and processed data with data corresponding to a second user (*e.g.*, the second user's answers that he or she will accept) and received from another device (*e.g.*, another smart phone, the OKCupid server application), and to calculate a degree of compatibility between the two users, based in part on the number of common items between desired and calculated attributes or parameters.

58. For example, the OkCupid mobile application includes software/program code for receiving user responses to various questions, an associated "importance" level for such questions, and to use such information to produce a user's personality attributes and/or

behavioral pattern parameters using, among other information, a point-based system. This converts raw user input data into calculated attributes (e.g., a weighted score).

59. Below are screen shots taken from the OkCupid mobile application that demonstrate the relevant functionality discussed above:





60. **Exhibit G** provides a description of how a personality profile system calculates a degree of compatibility between the two users, based in part on the number of common items between desired and calculated attributes or parameters.

We start wanting to calculate a match percentage for you and someone else. And we want to avoid mistakes at all costs. We collect three values for all users. When you answer a question on our [Improve Matches](http://www.okcupid.com/questions) (<http://www.okcupid.com/questions>) page, we learn:

Your answer,

How you'd like someone else to answer, and

How important the question is to you.

Your match percentage with a given person on OkCupid, let's call him B, is based on the values of (1), (2), and (3) for questions you've both answered.

When we look at how each of your answers satisfied the other's preferences, we'll use these values to give our calculations the correct weight. Your match percentage with B is figured by answering the following two questions:

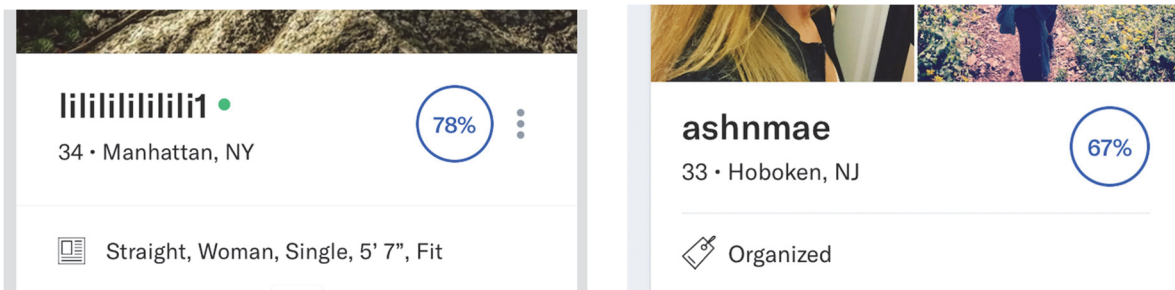
How much did B's answer make you happy? You indicated that B's answer to the first question was very important to you. And that his answer to the second question was not. So we placed 50 importance points on the first question and 1 point on the second question. Of those 51 possible points, B earned 50 by answering the first question how you wanted. So B's answers were 50/51 equals 98 percent satisfactory.

How much did your answers make B happy? Well, B placed 1 importance point on your answer to the first question and 10 on your answer to the second. Of those 11, you earned 10 points. So your answers were 10/11 equals 91percent satisfactory.

To get a match percentage for you and B, we just multiply your satisfactions, and then take the square root which in this case would be 94 percent.

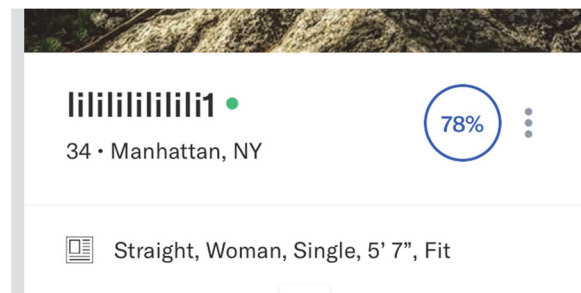
This is a mathematical expression of how happy you'd be with each other... if these two questions were the only things that mattered in a relationship!

61. The OkCupid mobile application uses a personality profile system to process such stored user's data and determine, based on data associated with a second user, a degree of compatibility between such two users. This is depicted below in the following screen shots.



62. The Accused Instrumentality includes **[42.g]** a liquid crystal display, or light emitting diodes display, to indicate said degree of compatibility between the two users.

63. For example, the device executing the OkCupid mobile application includes a liquid crystal display (LCD) or light emitting diodes display (LEDD) for providing a visual depiction of data to a user. (See **Exhibit I**). When the OkCupid mobile application is in use, the LCD or LEDD presents the degree of compatibility between the two users, such as percentage of compatibility. This is depicted below in the following screen shots.



64. To the extent that the foregoing analysis demonstrating infringement of at least Claim 42 of the 479 Patent on an element-by-element basis does not meet any particular element of Claim 42 of the 479 Patent literally, the Accused Instrumentality infringed under the Doctrine of Equivalents, as it performs substantially the same function in substantially the same way to get substantially the same result as the claimed technology.

65. As a result of the past infringement of the 479 Patent, Ghaly Devices has suffered damages, and is entitled, at a minimum, to recover a reasonable royalty from Humor Rainbow to compensate for the infringement.

66. On or around October 16, 2017, Match Group received a letter (“First Letter”) from Empire IP LLC discussing the 479 Patent and its relevance to the OKCupid mobile

application. In the First Letter, Match Group was asked to discuss a potential license agreement to the 479 Patent.

67. The First Letter provided Match Group with a detailed analysis mapping multiple claims of the 479 Patent to the Accused Instrumentality to demonstrate an objectively high likelihood of infringement.

68. On information and belief, Match Group shared the First Letter with Humor Rainbow.

69. On October 25, 2017, Match Group responded to the First Letter indicating that it was not interested in licensing the 479 Patent.

70. On or around February 5, 2019, Match Group received a letter (“Second Letter”) from Ghaly Devices discussing the 479 Patent and its relevance to the OKCupid mobile application. In this letter, Match Group was again asked to discuss a potential license agreement to the 479 Patent.

71. The Second Letter provided Match Group with a detailed analysis mapping a claim of the 479 Patent to the Accused Instrumentality to demonstrate an objectively high likelihood of infringement.

72. Match Group shared the Second Letter with Humor Rainbow.

73. Humor Rainbow responded to the Second Letter in February 2019.

74. On information and belief, Humor Rainbow was aware of the 479 Patent and the potential infringement thereof at least as early as October 16, 2017.

75. Humor Rainbow continued to test, validate, update, and use the Accused Instrumentality with knowledge of the 479 Patent for the purpose of selling subscriptions to the OKCupid product/service.



76. On information and belief, Humor Rainbow continued to test, validate, update, and use the Accused Instrumentality with knowledge of the infringement analysis provided in at least the First Letter and Second Letter.

77. Since having knowledge of the 479 Patent at least as early as October 2017, Humor Rainbow knew or should have known that, without taking a license to the Patent-in-Suit, its actions directly infringed one or more claims of the 479 Patent. Therefore, Humor Rainbow's infringement was willful.

**Count 2: Indirect Infringement of U.S. Patent No. 6,685,479 By Humor Rainbow**

78. Ghaly Devices herein incorporates the contents of the preceding paragraphs as if restated fully herein.

79. Humor Rainbow's efforts to market and sell subscriptions for using the OKCupid mobile application, combined with its provision of instruction materials, marketing materials and customer service related to the features and functions which give rise to infringement of the 479 Patent, demonstrate that Humor Rainbow induced further infringement of the 479 Patent on the part of the consumers who download, install, and use the OKCupid mobile application. As noted, these efforts on the part of Humor Rainbow were ongoing, as is the direct infringement of the 479 Patent by Humor Rainbow's customers.

80. Humor Rainbow has induced infringement of one or more claims of the 479 Patent under 35 U.S.C. § 271(b). With knowledge of the 479 Patent since at least as early as October 16, 2017, Humor Rainbow actively, knowingly, and intentionally induced infringement of the 479 Patent by selling or otherwise supplying the OKCupid mobile application with the knowledge and intent that third parties, such as its customers, will install it and use it in the United States for the purpose of infringing the 479 Patent; and with the knowledge and intent to

encourage and facilitate said infringement through the dissemination of the OKCupid mobile application and/or the creation and dissemination of documentation and technical information related to the OKCupid mobile application which encourage said infringement.

81. Humor Rainbow instructed its customers to download the OKCupid mobile application using the Google Play store or Apple App store, as shown below in a portion of **Exhibit F**.



82. Humor Rainbow's customers download and install the OKCupid mobile application on their respective smart phone devices such as, for example, android-based cell phones or iPhones.

83. Humor Rainbow instructed its customers to use the OKCupid mobile application on their respective smart phone devices for the purpose of identifying a match score with respect to at least some other users of the OKCupid mobile. **Exhibit F**.

84. Humor Rainbow's customers use the OKCupid mobile application on their respective smart phone devices for the purpose of identifying a match score with respect to at least some other users of the OKCupid mobile.

85. Humor Rainbow's customers directly infringed at least Claim 42 of the 479 Patent for the reasons set forth in Count 1 by using the Accused Instrumentality to identify a degree of compatibility between the two users.

86. With knowledge of the 479 Patent since at least as early as October, 2017, Humor Rainbow has also contributed to said infringement by third parties, including Humor Rainbow's customers of one or more claims of the 479 Patent under 35 U.S.C. § 271(c), by selling and/or

offering for sale in the United States subscriptions to using the OKCupid mobile application knowing that those products and/or services constitute a material part of the inventions of the 479 Patent, knowing that those products and/or services are especially made or adapted to infringe the 479 Patent, and knowing that those products are not staple articles of commerce suitable for substantial noninfringing use.

87. Humor Rainbow instructed its customers to download and use the OKCupid mobile application knowing that it would lead to the Accused Instrumentality.

88. As a result of Humor Rainbow's indirect infringement of the 479 Patent, Ghaly Devices has suffered damages, and is entitled, at a minimum, to recover a reasonable royalty from Humor Rainbow to compensate for the infringement.

89. On information and belief, Humor Rainbow continued to sell subscriptions to the OKCupid product/service with knowledge of the infringement analysis provided in at least the First Letter and Second Letter.

90. On information and belief, Humor Rainbow continued to encourage others to download and use the OKCupid mobile application on an iPhone or Android-based device with knowledge of the infringement analysis provided in at least the First Letter and Second Letter.

91. Since having knowledge of the 479 Patent at least as early as October 16, 2017, Humor Rainbow knew or should have known that, without taking a license to the Patent-in-Suit, its actions continue to indirectly infringe one or more claims of the 479 Patent. Therefore, Humor Rainbow's infringement has and will continue to be willful.

### **Prayer for Relief**

Wherefore, Ghaly Devices respectfully requests that this Court enter judgment against Humor Rainbow as follows:

- a) Humor Rainbow's use of the Accused Instrumentalities has directly infringed the 479 Patent, literally or, alternatively, under the Doctrine of Equivalents;
- b) Humor Rainbow has indirectly infringed the 479 Patent, literally or, alternatively, under the Doctrine of Equivalents by inducing consumers to use the Accused Instrumentalities;
- c) Ghaly Devices is entitled to its damages resulting from these infringements in the amount that is no lower than a reasonable royalty, together with prejudgment and post-judgment interest thereon;
- d) Humor Rainbow's infringement was willful and that such damages be trebled;
- e) The Court declare this case to be exceptional and award Ghaly Devices his reasonable fees, costs and expenses;
- f) The Court grant Ghaly Devices such other and additional relief as the Court determines to be just and proper.

### **Demand for Jury Trial**

Ghaly Devices hereby demands a trial by jury on all claims and issues so triable.

Dated: March 14, 2019

Respectfully submitted,

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