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*Attorneys for Plaintiffs Ebates Performance Marketing, Inc. d/b/a  
Rakuten Rewards and Cartera Commerce, Inc.*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

EBATES PERFORMANCE MARKETING,  
INC. d/b/a RAKUTEN REWARDS and  
CARTERA COMMERCE, INC.,

Plaintiffs,

v.

MYMAIL, LTD.,

Defendant.

CASE NO. 3:20-cv-4768

**COMPLAINT FOR DECLARATORY  
JUDGMENT OF NON-INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Ebates Performance Marketing, Inc. d/b/a Rakuten Rewards (“Rakuten Rewards”) and  
2 Cartera Commerce, Inc. (“Cartera”) (collectively “Plaintiffs”), for their Complaint against Defendant  
3 MyMail, Ltd. (“MyMail”) seeking declaratory judgment of non-infringement as to the following patents:  
4 U.S. Patent Nos. 10,228,838 (the “’838 patent”), 9,021,070 (the “’070 patent”), 9,141,263 (the “’263  
5 patent”), and 8,275,863 (the “’863 patent”) (collectively, the “Asserted Patents”), allege as follows:

#### 6 NATURE OF THE ACTION

7 1. This is an action arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*,  
8 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking a declaratory judgment of non-  
9 infringement of the Asserted Patents and for such other relief as the Court deems just and proper.

10 2. True and correct copies of the Asserted Patents are attached as Exhibits 1-4.

#### 11 THE PARTIES

12 3. Plaintiff Rakuten Rewards is a corporation organized and existing under the laws of  
13 Delaware, with its principal place of business at 800 Concar Drive, Suite 175, San Mateo, California 94402.

14 4. Plaintiff Cartera Commerce, Inc. is a corporation organized and existing under the laws of  
15 Delaware, with its principal place of business at 1 Cranberry Hill, Lexington, Massachusetts 02421.  
16 Plaintiffs Rakuten Rewards and Cartera are wholly-owned subsidiaries of the same parent, Ebates, Inc.

17 5. On information and belief, Defendant MyMail, Ltd. is a Texas Limited Partnership, with its  
18 principal place of business at 5244 County Road 3901, Athens, Texas 75752.

19 6. On information and belief, MyMail is the assignee of the ’838 patent, the ’070 patent, the  
20 ’263 patent, and the ’863 patent.

#### 21 JURISDICTION AND VENUE

22 7. This action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*, and  
23 the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202. This Court has subject matter jurisdiction over  
24 this matter pursuant to 28 U.S.C. 1331 and 1338(a).

25 8. An actual and justiciable controversy exists between Plaintiffs and MyMail as to the non-  
26 infringement of the Asserted Patents.

27 9. This Court has personal jurisdiction over MyMail because, among other reasons, MyMail  
28 has purposefully directed its enforcement activities related to the Asserted Patents in the Northern District

of California. For example, and without limitation, on June 12, 2020, MyMail, through counsel, sent a letter to Ebates, Inc.—Rakuten Rewards’ parent—in this Judicial District alleging that the Rakuten Rewards “Chrome extension called ‘Rakuten: Get Cash Back For Shopping’” (“Rakuten Rewards Accused Product”) infringes the Asserted Patents. The Rakuten Rewards Accused Product was developed by Rakuten Rewards. The letter included claim charts purporting to demonstrate the alleged infringement and a proposed license agreement. A true and correct copy of the June 12, 2020 letter and the claim charts and proposed license agreement are attached as Exhibit 5.

10. In addition, on June 12, 2020, MyMail, through counsel, sent a letter to Delta Airlines, Inc. (“Delta”), alleging that its “SkyMiles® Shopping button” available at: <https://www.skymilesshopping.com/> (“Cartera Accused Product”) infringes the Asserted Patents. The letter was sent, via email, to Cartera at the following email address: skymilesshopping@cartera.com. The letter included claim charts purporting to demonstrate the alleged infringement and a proposed license agreement. A true and correct copy of the June 12, 2020 letter and the claim charts and proposed license agreement are attached as Exhibit 6.

11. The technology underlying the Cartera Accused Product is licensed to Delta, and operated, by Cartera. In the Terms & Conditions for the Cartera Accused Product, it is stated that “The Delta SkyMiles Shopping Mall website located at <http://www.skymilesshopping.com> (the ‘Site’) is owned by the Delta Air Lines and operated by Cartera Commerce, Inc.”

12. Cartera has an obligation to indemnify Delta for claims of infringement made against the Cartera Accused Product, including the claims made by MyMail.

13. Cartera also licenses the Cartera Accused Product to, and operates the product for, other Cartera partners, including American Airlines, Alaska Airlines, Southwest, United, and USAA. Cartera has an obligation to indemnify these partners for claims of infringement.

14. On information and belief, MyMail is an intellectual property licensing company and does not practice the alleged inventions claimed in the Asserted Patents.

15. MyMail has purposefully availed itself of the privilege of conducting activities within this Judicial District by maintaining suit against ooVoo, LLC (“ooVoo”) and IAC Search & Media, Inc. (“IAC”) in this Judicial District, and in particular by asserting the ’070 and ’863 patents in *MyMail, Ltd. v.*

1 *ooVoo, LLC*, Case No. 17-cv-04487-LHK (N.D. Cal.) and *MyMail, Ltd. v. IAC Search & Media, Inc.*, Case  
2 No. 17-cv-004488-LHK (N.D. Cal.).

3 16. MyMail admitted that this District is a proper venue for litigating the '070 and '863 patents  
4 in *MyMail, Ltd. v. ooVoo, LLC*, Case No. 17-cv-04487-LHK (N.D. Cal.) and *MyMail, Ltd. v. IAC Search*  
5 *& Media, Inc.*, Case No. 17-cv-004488-LHK (N.D. Cal.).

6 17. MyMail, by seeking to enforce the Asserted Patents against Plaintiffs, offering to license  
7 the Asserted Patents, and maintaining suit against ooVoo and IAC in this Judicial District, has purposefully  
8 availed itself of the benefits and protections of California's laws such that it should reasonably anticipate  
9 being haled into court here.

10 18. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §§ 1391 because  
11 MyMail is subject to personal jurisdiction in this District.

#### 12 INTRADISTRICT ASSIGNMENT AND RELATED ACTIONS

13 19. For purposes of intradistrict assignment under Civil Local Rules 3-2(c) and 3-5(b), this  
14 intellectual property action will be assigned on a district-wide basis.

15 20. This action is related to consolidated actions *MyMail, Ltd. v. ooVoo, LLC*, Case No. 17-cv-  
16 04487-LHK (N.D. Cal.) and *MyMail, Ltd. v. IAC Search & Media, Inc.*, Case No. 17-cv-04488-LHK (N.D.  
17 Cal.) (collectively, the "Related Actions"). As here, the '070 and '863 patents were at issue in the Related  
18 Actions. In addition, Judge Koh issued multiple orders on the merits in the Related Actions with respect to  
19 the '070 and '863 patents, including an Order granting the defendants' motion for judgment on the  
20 pleadings with respect to patent eligibility. The '838 and '263 patents are continuations of the '070 and  
21 '863 patents. Each of the '838 patent, the '263 patent, the '070 patent, and the '863 patent have the same  
22 specification. Therefore, Judge Koh is likely familiar with all of the patents at issue in this action.

#### 23 THE ASSERTED PATENTS

24 21. The '838 patent is titled "Dynamically Modifying a Toolbar." The '838 patent issued on  
25 March 12, 2019 to named inventors Thomas Drennan Selgas, Michael Brian Massing, and John Everett  
26 Gmuender. The '838 patent also states that the initial assignee was MyMail. The '838 patent expired on  
27 May 13, 2020.

28 22. The '070 patent is titled "Dynamically Modifying a Toolbar." The '070 patent issued on

1 April 28, 2015 to named inventors Thomas Drennan Selgas, Michael Brian Massing, and John Everett  
2 Gmuender. The '070 patent also states that the initial assignee was MyMail. The '070 patent expired on  
3 June 19, 2018.

4 23. The '263 patent is titled "Method of Modifying a Toolbar." The '263 patent issued on  
5 September 22, 2015 to named inventors Thomas Drennan Selgas, Michael Brian Massing, and John Everett  
6 Gmuender. The '263 patent also states that the initial assignee was MyMail. The '263 patent expired on  
7 January 3, 2019.

8 24. The '863 patent is titled "Method of Modifying a Toolbar." The '863 patent issued on  
9 September 25, 2012 to named inventors Thomas Drennan Selgas, Michael Brian Massing, and John Everett  
10 Gmuender. The '863 patent also states that the initial assignee was MyMail. The '863 patent expired on  
11 June 19, 2018.

#### 12 **THE PARTIES' DISPUTE CONCERNING THE ASSERTED PATENTS**

13 25. On June 12, 2020, Mr. Christopher A. Michaels of Brown & Michaels, PC delivered a letter  
14 ("Rakuten Rewards Letter") (Exhibit 5), along with printouts of portions of the source code of the Rakuten  
15 Rewards Accused Product, a claim chart and a proposed license agreement, to Amit Patel at Rakuten  
16 Rewards' parent, Ebates Inc., in San Mateo, California. The letter states that Mr. Michaels represents  
17 MyMail and that "[t]his letter, source code print out, and claim chart serve as a notice of infringement" of  
18 the four Asserted Patents. The Rakuten Rewards Letter further states that the claim chart included with the  
19 letter "provides a detailed analysis of [the Rakuten Rewards] product's infringement of the patent claims."  
20 The claim chart identifies the following asserted claims: claims 1, 5, 9 and 17 of the '070 patent; claims 1  
21 and 24 of the '863 patent; claim 1 of the '263 patent; and claim 5 of the '838 patent. The Rakuten Rewards  
22 Letter further states that MyMail is offering a "license agreement in the form attached to this letter." The  
23 Rakuten Rewards Letter concludes by stating that "[t]he offer to license described above will terminate" if  
24 a response is not received by June 24, 2020, after which Mr. Michaels "will turn [his] files over to litigation  
25 counsel."

26 26. Also on June 12, 2020, Mr. Michaels sent a very similar letter to Ed Bastian at Delta  
27 Airlines, Inc. by delivering the same to Cartera (Exhibit 6). The letter includes the same allegations as the  
28 Rakuten Rewards Letter. For example, the letter states that the claim chart included with the letter

1 “provides a detailed analysis of your product’s infringement of the patent claims.” In addition, the claim  
2 chart identifies the same asserted claims. Further, the letter states that MyMail is offering a “license  
3 agreement in the form attached to this letter” and concludes by stating that “[t]he offer to license described  
4 above will terminate” if a response is not received by June 24, 2020, after which Mr. Michaels “will turn  
5 [his] files over to litigation counsel.”

6 27. On July 2, 2020, Mr. Joshua L. Raskin sent a response to Mr. Michaels’ June 12, 2020 letter  
7 on behalf of both Rakuten Rewards and Cartera (collectively “Rakuten” in the July 2, 2020 letter). A true  
8 and correct copy of the July 2, 2020 letter is attached hereto as Exhibit 7. The letter states that “Rakuten  
9 values the intellectual property of others and takes matters like this one very seriously. However, before  
10 deciding whether and to what extent [Rakuten] will engage in licensing discussions with MyMail, Rakuten  
11 requests that you address the issues raised below.” The letter also states, among other things, that, in  
12 *MyMail, Ltd. v. ooVoo, LLC*, 2020 WL 2219036 (N.D. Cal. May 7, 2020) (“Oovoo Decision”), “claims 1–  
13 5, 9–13, 16–17, 19–20, and 23 of the ’863 Patent and 1–13 and 15–22 of the ’070 Patent have been  
14 invalidated by the Northern District of California,” and therefore “MyMail is collaterally estopped from  
15 asserting any infringement allegations based on those claims.” In addition, the letter states that the asserted  
16 claims are not infringed because, among other reasons, “each of these claims includes at least one step  
17 which is performed or initiated by an end user.” In addition, the July 2, 2020 letter points out that there is  
18 no infringement of the “MIME type identification” limitations in claim 1 of the ’263 patent and claim 24  
19 of the ’863 patent, as well as the following limitations in claim 5 of the ’838 patent: (1) “sending, from the  
20 remote source via the network to the user Internet device, the updated toolbar data to be stored in the one  
21 or more toolbar-defining databases of the user Internet device;” and (2) “causing, by the remote source in  
22 response to the sending, a client dispatch application of the user Internet device to execute a script, wherein  
23 the executing the script causes the toolbar button to instantiate a connection to a further remote source  
24 comprising a web page.” The July 2, 2020 letter concludes by stating that “before commencing any  
25 licensing discussions, please let us know your thoughts on the [issues raised in the letter].”

26 28. MyMail has initiated at least thirty patent litigations over the past seven years, including at  
27 least eleven actions relating to one or more of the Asserted Patents.

28 29. Based on the above-described actions, Plaintiffs are under a reasonable apprehension that

they will be sued by MyMail for infringement of the Asserted Patents. Accordingly, as further described herein, an actual and justiciable controversy exists between Plaintiffs and MyMail as to the non-infringement of the Asserted Patents.

#### FIRST CLAIM FOR RELIEF

##### (Declaratory Judgment of Non-Infringement of the '838 Patent)

30. Plaintiffs restate and reallege each of the assertions set forth in the paragraphs above.

31. Plaintiffs have not infringed and do not infringe any claim of the '838 patent directly or indirectly, either literally or under the doctrine of equivalents.

32. For example, and without limitation, claim 5 of the '838 patent requires: "establishing a connection with a user Internet device, the connection initiated by the user Internet device."

33. Rakuten Rewards and Cartera do not practice this limitation because, at a minimum, neither Rakuten Rewards nor Cartera "initiate[] [a connection] by the user Internet device."

34. Further, claim 5 of the '838 patent requires a first step of "sending, from the remote source via the network to the user Internet device, the updated toolbar data to be stored in the one or more toolbar-defining databases of the user Internet device" ("Step 1") followed by a second step of "causing, by the remote source in response to the sending, a client dispatch application of the user Internet device to execute a script, wherein the executing the script causes the toolbar button to instantiate a connection to a further remote source comprising a web page" ("Step 2").

35. Rakuten Rewards does not practice Step 2 because, at a minimum, Rakuten Rewards does not "caus[e], by the remote source in response to the sending, a client dispatch application of the user Internet device to execute a script [which] instantiate[s] a connection to a further remote source" in response to the transmission of toolbar data.

36. Cartera does not practice Step 1 and Step 2 because, at minimum, Step 1 must be performed before Step 2 and MyMail alleges that the Cartera Accused Product performs Step 2 before Step 1 (Exhibit 6, Claim Chart at 3-5).

37. Further, Rakuten Rewards and Cartera have not indirectly infringed and do not indirectly infringe the '838 patent because, at a minimum, neither Rakuten Rewards nor Cartera had any knowledge of the '838 patent prior to its expiration.



1           38.     There is an actual controversy, within the meaning of 28 U.S.C. § 2201 and § 2202, between  
2 Plaintiffs and MyMail concerning the non-infringement of the '838 patent.

3           39.     Plaintiffs are therefore entitled to a declaratory judgment that they have not infringed the  
4 '838 patent, directly or indirectly, either literally or under the doctrine of equivalents.

5                               **SECOND CLAIM FOR RELIEF**

6                               **(Declaratory Judgment of Non-Infringement of the '070 Patent)**

7           40.     Plaintiffs restate and reallege each of the assertions set forth in the paragraphs above.

8           41.     Plaintiffs have not infringed and do not infringe any claim of the '070 patent directly or  
9 indirectly, either literally or under the doctrine of equivalents.

10          42.     For example, and without limitation, claims 1, 9, and 17 of the '070 patent require:  
11 “displaying [the/a] toolbar, at a user Internet device.”

12          43.     Rakuten Rewards and Cartera do not practice this limitation because, at a minimum, neither  
13 Rakuten Rewards nor Cartera “display[] [a] toolbar at a user Internet device.”

14          44.     Further, claim 9 of the '070 patent requires: “establishing a connection with a user Internet  
15 device, the connection invoked by the user Internet device.”

16          45.     Rakuten Rewards and Cartera do not practice this limitation because, at a minimum, the  
17 Accused Products do not “invoke[] [a connection] by the user Internet device.”

18          46.     Further, claim 5 of the '070 patent requires: “[o]ne or more computer-readable memory  
19 embodied with computer-executable instructions that, when executed by one or more processors, perform  
20 a method for dynamically modifying a toolbar.”

21          47.     Rakuten Rewards and Cartera do not meet this limitation because, at minimum, neither  
22 Rakuten Rewards nor Cartera make, use, offer to sell, or sell within the United States or import into the  
23 United States a device including “computer-readable memory embodied with computer-executable  
24 instructions that, when executed by one or more processors, perform a method for dynamically modifying  
25 a toolbar” including all of the steps of claim 5.

26          48.     Further, Rakuten Rewards and Cartera have not indirectly infringed and do not indirectly  
27 infringe the '070 patent because, at a minimum, neither Rakuten Rewards nor Cartera had any knowledge  
28 of the '070 patent prior to its expiration.



49. There is an actual controversy, within the meaning of 28 U.S.C. § 2201 and § 2202, between Plaintiffs and MyMail concerning the non-infringement of the '070 patent.

50. Plaintiffs are therefore entitled to a declaratory judgment that they have not infringed the '070 patent, directly or indirectly, either literally or under the doctrine of equivalents.

### THIRD CLAIM FOR RELIEF

#### (Declaratory Judgment of Non-Infringement of the '263 Patent)

51. Plaintiffs restate and reallege each of the assertions set forth in the paragraphs above.

52. Plaintiffs have not infringed and do not infringe any claim of the '263 patent directly or indirectly, either literally or under the doctrine of equivalents.

53. For example, and without limitation, claim 1 of the '263 patent requires: "displaying, at a user Internet device, a toolbar."

54. Rakuten Rewards and Cartera do not practice this limitation because, at a minimum, neither Rakuten Rewards nor Cartera "[display a toolbar] at a user Internet device."

55. Further, claim 1 of the '263 patent requires: "receiving, at the user Internet device, the toolbar update data in response to the user Internet device accessing the reference, wherein the received toolbar update data comprises a MIME type identification of the content type of the toolbar update data" and "determining, at the user Internet device, that the MIME type identification is associated in the user Internet device with a database update program."

56. Rakuten Rewards and Cartera do not practice this limitation because, at a minimum, the Accused Products do not receive "a MIME type identification of the content type of the toolbar update data" and further do not determine "that the MIME type identification is associated . . . with a database update program."

57. Further, Rakuten Rewards and Cartera have not indirectly infringed and do not indirectly infringe the '263 patent because, at a minimum, neither Rakuten Rewards nor Cartera had any knowledge of the '263 patent prior to its expiration.

58. There is an actual controversy, within the meaning of 28 U.S.C. § 2201 and § 2202, between Plaintiffs and MyMail concerning the non-infringement of the '263 patent.

59. Plaintiffs are therefore entitled to a declaratory judgment that they have not infringed the

1 '263 patent, directly or indirectly, either literally or under the doctrine of equivalents.

2 **FOURTH CLAIM FOR RELIEF**

3 **(Declaratory Judgment of Non-Infringement of the '863 Patent)**

4 60. Plaintiffs restate and reallege each of the assertions set forth in the paragraphs above.

5 61. Plaintiffs have not infringed and do not infringe any claim of the '863 patent directly or  
6 indirectly, either literally or under the doctrine of equivalents.

7 62. For example, and without limitation, claims 1 and 24 of the '863 patent require: "a user  
8 Internet device displaying a toolbar."

9 63. Rakuten Rewards and Cartera do not practice this limitation because, at a minimum, neither  
10 Rakuten Rewards nor Cartera "display[] a toolbar [on a user Internet device]."

11 64. Further, claim 24 of the '863 patent requires: "the user Internet device receiving a MIME  
12 type identification of the content type of the toolbar update data in response to the user Internet device  
13 accessing the reference" and "the user Internet device determining the MIME type identification is  
14 associated in the user Internet device with a database update program."

15 65. Rakuten Rewards and Cartera do not practice this limitation because, at a minimum, the  
16 Accused Products do not receive "a MIME type identification of the content type of the toolbar update,"  
17 and further do not determine any received "the MIME type identification is associated . . . with a database  
18 update program."

19 66. Further, Rakuten Rewards and Cartera have not indirectly infringed and do not indirectly  
20 infringe the '863 patent because, at a minimum, neither Rakuten Rewards nor Cartera had any knowledge  
21 of the '863 patent prior to its expiration.

22 67. There is an actual controversy, within the meaning of 28 U.S.C. § 2201 and § 2202, between  
23 Plaintiffs and MyMail concerning the non-infringement of the '863 patent.

24 68. Plaintiffs are therefore entitled to a declaratory judgment that they have not infringed the  
25 '863 patent, directly or indirectly, either literally or under the doctrine of equivalents.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs respectfully request the following relief:

28 A. That the Court enter a judgment declaring that Plaintiffs have not infringed and do not

1 infringe any claim of the '838 patent, directly or indirectly, either literally or under the doctrine of  
2 equivalents;

3 B. That the Court enter a judgment declaring that Plaintiffs have not infringed and do not  
4 infringe any claim of the '070 patent, directly or indirectly, either literally or under the doctrine of  
5 equivalents;

6 C. That the Court enter a judgment declaring that Plaintiffs have not infringed and do not  
7 infringe any claim of the '263 patent, directly or indirectly, either literally or under the doctrine of  
8 equivalents;

9 D. That the Court enter a judgment declaring that Plaintiffs have not infringed and do not  
10 infringe any claim of the '863 patent, directly or indirectly, either literally or under the doctrine of  
11 equivalents;

12 E. That the Court enter a judgment that this is an exceptional case under 35 U.S.C. § 285 and  
13 award Plaintiffs their costs, expenses, and reasonable attorneys' fees incurred in this action;

14 F. That the Court award Plaintiffs any and all other relief to which Plaintiffs may show  
15 themselves to be entitled; and

16 G. That the Court award Plaintiffs any other relief it may deem just and proper under the  
17 circumstances.

18 **DEMAND FOR JURY TRIAL**

19 Pursuant to Fed. R. Civ. P. 38(b) and Civil Local Rule 3-6, Plaintiffs demand a trial by jury on all  
20 issues and claims so triable.  
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1 DATED: July 16, 2020

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