

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

LEXOS MEDIA IP, LLC,

*Plaintiff,*

v.

TARGET CORPORATION,

*Defendant.*

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Civil Action No. 2:22-cv-175

**PLAINTIFF LEXOS MEDIA IP, LLC’S  
COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Lexos Media IP, LLC (“Lexos Media IP”) files this Complaint for patent infringement against Defendant Target Corporation (“Target”), and alleges as follows:

**PARTIES**

1. Plaintiff Lexos Media IP, LLC (“Lexos Media IP”) is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business located at 555 Republic Drive, 2nd Floor, Plano, Texas 75074-5481. Lexos Media IP is the intellectual property holding company of Lexos Media, Inc. (“Lexos Media”) and owns intellectual property associated with the business of that company. Lexos Media IP has had its principal place of business located in Plano Texas since 2015.

2. Lexos Media was founded in 2009. Lexos Media is a digital advertising technology company that pioneered the use of dynamic cursor modification to promote the online purchase and use of products and services likely of interest to users of e-commerce websites. Lexos Media has provided a technology framework for delivering online advertising in which images and content are deployed in connection with a cursor. Lexos Media has provided this technology framework through two divisions -- AdBull and Cursor Marketing -- both of which provided

technology that could be used to modify an Internet user's cursor to display content such as an image or other message to promote the online purchase and use of products and services. Lexos Media IP has been engaged in licensing this technology both in the online marketing space as well as other fields.

3. Defendant Target Corporation ("Target") is a Minnesota corporation with its principal executive offices located at 1000 Nicollet Mall, Minneapolis, Minnesota. Target may be served with process through its registered agent, CT Corporation System, at 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

### **JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code.

5. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Target is subject to the specific personal jurisdiction of this Court because Lexos Media IP's claims for patent infringement against Target arise from Target's acts of infringement in the State of Texas. These acts of infringement include operating an interactive website using the patented inventions and making that website available to persons in the State of Texas, facilitating the sale of products and services through that website to those persons. Target operates and controls the Target.com interactive website.

7. Target operates over 150 stores in Texas. This represents approximately 8% of Target's total store count in the United States. Texas is among three of Target's largest states by total sales. Target has stores located in the following cities located in Texas:

**Target Stores in Texas**[Target / Find a store / Store Directory / Texas](#)

Abilene	El Paso	Longview	Rosenberg
Addison	Eules	Lubbock	Round Rock
Allen	Flower Mound	Lufkin	Rowlett
Amarillo	Fort Worth	Magnolia	San Angelo
Arlington	Frisco	Mansfield	San Antonio
Austin	Galveston	McAllen	San Marcos
Balcones Heights	Garland	Mcallen	Selma
Baytown	Georgetown	McKinney	Sherman
Beaumont	Grand Prairie	McKinney	Spring
Bee Cave	Grapevine	Mesquite	Sugar Land
Brownsville	Harker Heights	Midland	Temple
Bryan	Harlingen	Mission	Texarkana
Burleson	Houston	Missouri City	The Woodlands
Cedar Hill	Humble	New Braunfels	Tomball
Cedar Park	Huntsville	North Richland Hills	Tyler
Clear Lake Shores	Hurst	Odessa	Victoria
College Station	Irving	Pasadena	Waco
Conroe	Katy	Pearland	Watauga
Corpus Christi	Kyle	Pflugerville	Waxahachie
Cypress	Lake Jackson	Plano	Weatherford
Dallas	Lake Worth	Port Arthur	Webster
Denton	Laredo	Richardson	Wichita Falls
Dickinson	Lewisville	Richmond	Wylie
		Rockwall	

<https://www.target.com/store-locator/store-directory/texas>. Target has thousands of employees located in Texas. The activities conducted by Target and its employees at these facilities located in Texas are substantially related to Target's infringing activities conducted in this state.

8. In view of these facts, this Court has personal jurisdiction over Target under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE § 17.042.

9. Target also has committed the acts of infringement alleged herein and has regular and established places of business in the Eastern District of Texas.

10. Target, during the time frame when the Asserted Patents were in effect and thereafter, has made available and offered its Target.com interactive website to persons located in the Eastern District of Texas. Target's stores located in this District support its Target.com e-commerce operation. Target stores fulfilled 80% of Target's digital sales—including pick up, drive up, same day delivery, and shipping to home—in the first quarter of 2019. Craig Guillot, *For a Fast Supply Chain, Target Is Betting on in-Store Fulfillment*, SUPPLY CHAIN DIVE (April 6, 2019), <https://www.supplychaindive.com/news/fulfillment-brick-and-mortar-retail-inventory/560262/>. Target currently operates 15 stores in this District in the following cities: Allen,

Denton, Flower Mound, Frisco, Lewisville, Longview, McKinney, Plano, Sherman, Texarkana and Tyler.

11. Target, pursuant to its Terms and Conditions applicable to the Target.com website, entered into a license agreement with users of the Target.com website granting those individuals “a limited license to access and make personal use of the Site [the Target.com website] and the Content” of the website. The Target Terms and Conditions also provide that the website user “not modify or alter the Content” of the website. The Target.com website provided to these individuals by Target implemented features and functionality that infringed the Asserted Patents.

12. These facilities located in the Eastern District of Texas are physical, geographical locations in the district from which the business of Target is carried out. These facilities located in the Eastern District of Texas are **regular and established places of business** of Target. Furthermore, these facilities located in the Eastern District of Texas are places of business **of Target**.

13. Target owns and operates these facilities or, alternatively, leases these facilities. Target directs and controls the operation of those facilities conducted for the benefit of Target. The activities and operations conducted at these facilities for the benefit of Target are a regular and established part of the business of Target. The individuals conducting these activities and operations for the benefit of Target are employees of Target or, alternatively, are operating under the direction and control of Target when conducting these activities and operations.

#### **THE ASSERTED PATENTS**

14. On November 30, 1999, the United States Patent and Trademark Office issued United States Patent No. 5,995,102 (“the `102 Patent”) entitled “Server system and method for modifying a cursor image,” a true copy of which is attached as Exhibit 1.

15. On September 12, 2000, the United States Patent and Trademark Office issued United States Patent No. 6,118,449 (“the ‘449 Patent”) entitled “Server system and method for modifying a cursor image,” a true copy of which is attached as Exhibit 2.

16. Lexos Media IP is the owner by assignment of these Asserted Patents and owns all right, title, and interest in the Asserted Patents, including the right to sue for and recover all past, present, and future damages for infringement of the Asserted Patents.

### **THE INNOVATION OF THE ASSERTED PATENTS**

17. The Asserted Patents are directed to improvements in the field online advertising, and provide technical solutions to problems being encountered in that burgeoning field. In order to put the innovation of the Asserted Patents into perspective, it bears emphasis that the application for the asserted ‘102 Patent was filed in June 1997, a mere few years after online advertisements emerged in the ecommerce marketplace. See [https://en.wikipedia.org/wiki/Online\\_advertising](https://en.wikipedia.org/wiki/Online_advertising).

18. At the time of the invention underlying the Asserted Patents, there were several drawbacks to prevalent forms of online advertising, such as banner advertisements, web page “frames,” and “self-appearing” advertising screens. Thus, as the Asserted Patents emphasized, at the time of the invention of the Asserted Patents, “[t]here is a need for a simple means to deliver advertising elements without the annoyance of totally interrupting and intrusive content delivery, and without the passiveness of ordinary banner and frame advertisements which can be easily ignored.”

19. The Asserted Patents provided a specific technical solution to improve online advertising technology and overcome these problems. The specification of the Asserted Patents pointed out that, while it was not new at the time for pointers and cursors to change

shape, “[i]n conventional systems, the appearance of the cursor or pointer does not change to correspond with on-line content being displayed on the screen.”

20. The claims of the Asserted Patents explain how the invention improves on conventional methods of online advertising. In particular, the Asserted Patents disclosed “a server system for modifying a cursor image to a specific image displayed on a video monitor of a remote user’s terminal for the purposes of providing on-screen advertising.”

21. The claims of the Asserted Patents specifically teach how the invention works to provide the improved online advertising technology. A web browser retrieves a web page stored on a server that is then transmitted to and viewed by a user. The retrieved web page contains a set of predetermined instructions referred to as “cursor display instructions.” The browser interprets the information contained in cursor display instructions and instructs the operating system of the user’s terminal to bringing about the change in appearance of the cursor within the web page. As the Asserted Patents explain, “the server system provides certain information that causes the cursor image on the video monitor of the user terminal to display an image as specified by the server system. As a result, the server system remotely defines and manages the shape and appearance of the cursor image in accordance with a pre-specified condition.”

22. The claims of the Asserted Patents contain steps or elements that embody this specific process for implementing the cursor modification invention and improving online advertising. The claims focus on a specific means or method that improves online advertising technology, and are not directed to a desired result or effect that itself merely employs generic processes and machinery. They claim a technological solution to the technological problems and drawbacks encountered in the prior art methods for creating effective online advertising – a

specific process and system for modifying the appearance of a cursor implemented on the display of a user's computer. The asserted claims directed to a new and useful technique for performing online advertising. They are not directed to a law of nature, natural phenomena, or a business method or algorithm.

### **THE ESTABLISHED VALIDITY OF THE ASSERTED PATENTS**

23. In 2018, Ralph Lauren ("RL") petitioned the U.S. Patent Trial and Appeal Board (the "PTAB") for *inter partes* review of the '102 and '449 patents. In particular, RL petitioned for *inter partes* review of claims 70-73 of the '102 Patent and claims 1-3, 5-7, 12-15, 27-29, 31-33, 38-41, 53-56, 58-63, 72-75, and 77-82 of the '449 Patent. Although the PTAB cancelled some of the claims, in two final written decisions it found that RL had **not** shown that claims 70 and 72 of the '102 Patent and claims 1-3, 5-7, 12-15, 28, 29, 31, 32, 38, 39, 53-56, 58-63, 73-75, and 77-80 of the '449 Patent are unpatentable. RL appealed the PTAB's final written decisions, and the Federal Circuit affirmed those decisions.

### **THE CURSOR MODIFICATION ACCUSED INSTRUMENTALITY**

24. One of the innovations Target has used to build the popularity and profitability of its Target.com website is the cursor modification technology covered by the Asserted Patents (the "Accused Instrumentality"). More than a decade ago, Target discussed in its annual report its "multichannel strategy" whereby it was placing increased emphasis on its digital distribution channels, including its website Target.com, to increase the revenue and profits generated by the Target.com website. [Target 2011 Annual Report]. In this connection, Target explained that:

Multichannel retailing is rapidly evolving and we must keep pace with changing guest expectations and new developments by our competitors. If we are unable to attract and retain team members or contract third parties with the specialized skills needed to support our multichannel platforms, or are unable to implement improvements to our guest-facing technology in a timely manner, our ability to compete and our results of operations could be adversely affected. In addition, if Target.com and our other guest-facing technology systems do not function as designed, we may experience a loss of guest confidence, data security breaches,

lost sales or be exposed to fraudulent purchases, which could adversely affect our reputation and results of operations.

*Id.* Target's adoption and continued use of the patented cursor modification technology has been an important aspect of its "multichannel strategy" to increase revenue and profits.

**FIRST CLAIM FOR RELIEF  
(Infringement of the '102 Patent)**

25. Target has directly infringed Claim 72 of the '102 Patent by using the method claimed and patented in Claim 72. In particular, Target has infringed Claim 72 by using the claimed method when providing the cursor modification technology to individuals for use on the Target.com website.

26. At all times relevant to the asserted claims, the Accused Instrumentality has comprised a method for modifying an initial cursor image displayed on a display of a user terminal connected to at least one server owned, operated and/or controlled by Target.

27. The method performed by Target via the Accused Instrumentality has included the step of Target receiving a request at a Target server to provide specified content information to a user terminal.

28. The method performed by Target via the Accused Instrumentality has included the step of Target providing specified content information to the user terminal in response to the request, which includes a cursor display instruction and an indication of cursor image data corresponding to a specific image.

29. The method performed by Target via the Accused Instrumentality has included the step of Target providing the cursor display instructions and cursor display code that controls and transforms the initial cursor image displayed on the display of the user's terminal into the shape and appearance of a specific image in response to Target's cursor display instruction.



30. The specified content information provided by Target via its server has included information that is to be displayed on the display of the user's terminal.

31. The transformed specific image resulting from Target's infringing process has included content corresponding to at least a portion of said information that is to be displayed on said display of said user's terminal.

32. Target's cursor display instruction has indicated a cursor display code provided and controlled by Target that is operable to process the cursor display instruction to modify the initial cursor image to the cursor image in the shape and appearance of the specific image responsive to movement of the cursor image over a display of at least a portion of the information to be displayed on said display of the user's terminal.

33. To the extent that any required steps of the claim occurred on a device in the possession, custody and control of and used by a third party, Amazon performed those steps because it initiated and controlled the performance of those steps.

34. The duty to mark under 35 U.S.C. § 287 is inapplicable to the asserted method claims of the '102 Patent. There is no applicable marking requirement that has not been complied with.

35. Lexos Media IP has been damaged by Target's activities that infringed Claim 72 of the '102 Patent.

**SECOND CLAIM FOR RELIEF  
(Infringement of the '449 Patent)**

36. Target has directly infringed Claims 1, 38, and 53 of the '449 Patent by using those patented inventions in connection with providing individuals with access to the Target.com website and to shop for products and services on the website. By doing so, Target has infringed Claims 1 and 38 of the '449 Patent by using the claimed system and making that system and the

Target.com website available to others for use. In addition, Target has infringed Claim 53 of the '449 Patent by using the claimed method when providing the Target.com website for use by others.

37. In accordance with Claim 1 of the '449 Patent, at all times relevant to the asserted claims, the Accused Instrumentality has comprised a server system for modifying a cursor image to a specific image having a desired shape and appearance displayed on a display of a remote user's terminal.

38. Target's Accused Instrumentality has included cursor image data corresponding to the specific image.

39. Target's Accused Instrumentality has included cursor display code which is operable to modify the cursor image.

40. Target's Accused Instrumentality has included a server computer for transmitting specified content information to a remote user terminal which has included at least one cursor display instruction indicating a location of cursor image data. Target's cursor display instruction and cursor display code has been operable to cause the user terminal to display a modified cursor image on the user's display in the shape and appearance of the specific image.

41. Target, through one of its server computers, has transmitted specified content information to a user's terminal in response to a request from the user terminal for the specified content information.

42. Target's specified content information has further comprised information to be displayed on the display of the user's terminal which has included content corresponding to at least a portion of the information to be displayed on the display of the user's terminal.

43. Target's cursor display code has been operable to process the cursor display instruction to modify the cursor image to a cursor image in the shape and appearance of the specific

image in response to movement of the cursor image over a display of at least a portion of the information to be displayed on said display of the user's terminal.

44. The specific image has related to at least a portion of the information to be displayed on said display of said remote user's terminal.

45. Target, through the Accused Instrumentality, has used the claimed system for purposes of infringement by putting the invention into service. In particular, Target has controlled each element of the system and the system as a whole and has obtained a benefit from doing so in the form of improved marketing of products and services sold by Target through its website. Target has provided and controlled any functionality required by the claimed system that has taken place on the user/customer's computer.

46. In accordance with Claim 53 of the '449 Patent, at all times relevant to the asserted claims, Target's Accused Instrumentality has comprised a method for modifying an initial cursor image displayed on a display of a user terminal connected to at least one server owned, operated and/or controlled by Target.

47. In addition, the specific image generated in response to Target's cursor display instruction has a shape and appearance relating to the information to be displayed.

48. In this connection, Plaintiff incorporates by reference its allegation in Paragraphs 27-33 above.

49. The duty to mark under 35 U.S.C. § 287 is inapplicable to the asserted method claim of the '449 Patent, and there are no unmarked 'patented articles' that were sold or offered for sale by Lexos Media IP or its licensees of the '449 Patent that were subject to § 287. In addition, Lexos Media marked its website, lexosmedia.com, with the patent numbers of the Asserted

Patents. Consequently, Lexos Media IP has complied with the marking requirement under § 287, to the extent it is applicable.

50. Lexos Media IP has been damaged by Target's infringing activities.

#### **DEMAND FOR JURY TRIAL**

51. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Lexos Media IP hereby demands a trial by jury of all issues so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Lexos Media IP requests the following relief:

(a) A judgment in favor of Lexos Media IP that Target has directly infringed one or more claims of the Asserted Patents;

(b) A judgment and order requiring Target to pay Lexos Media IP damages adequate to compensate for infringement under 35 U.S.C. § 284, which, in no event shall be less than a reasonable royalty for its usage made of the inventions of the Asserted Patents, including pre- and post-judgment interest and costs, including expenses and disbursements;

(c) A judgment awarding Lexos Media IP post-judgment royalties to the extent applicable; and

(d) Any and all such further necessary or proper relief as this Court may deem just and equitable.

Dated: May 25, 2022

Respectfully submitted,

**BUETHER JOE & COUNSELORS, LLC**

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