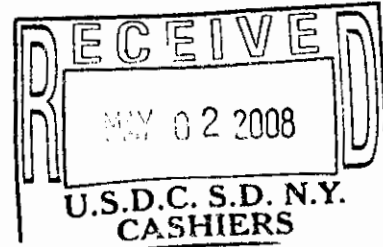


JUDGE HOLWELL

08 CV 4223

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ATTORNEYS FOR
PLAINTIFF PIXFUSION LLC



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PixFusion LLC, :
 :
 Plaintiff, :
 :
 v. :
 :
 MushyGushy.com, LLC, :
 :
 Defendant. :

**COMPLAINT
AND JURY DEMAND**

Plaintiff PixFusion LLC, by their attorneys, Day Pitney LLP, files this Complaint and Jury Demand against Defendant MushyGushy.com, LLC., and states as follows:

PARTIES

1. Plaintiff PixFusion LLC (“PixFusion”) is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 390 Park Avenue South, 3rd Floor, New York, NY 10016.

2. Defendant MushyGushy.com, LLC. (“MushyGushy”) is a New Jersey corporation, having an address at 26 Eastmans Road, Parsippany, NJ 07054.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the Acts of Congress relating to patents, including Sections 101 *et seq.* of Title 35 of the United States Code.

4. This Court has subject matter jurisdiction over this action under Sections 1331 and 1338(a) of Title 28 of the United States Code.

5. This Court has personal jurisdiction over Defendant MushyGushy by virtue of, among other things, Defendant’s offer for sale of the infringing products in the Southern District of New York.

6. Venue is proper in the Southern District of New York pursuant to Sections 1391(b) and (d) of Title 28 of the United States Code.

FACTUAL BACKGROUND

Plaintiff PixFusion’s Products and Services

7. PixFusion is known as an innovator in the personalized media field.

8. PixFusion manufactures and produces high quality, customized media products.

9. For example, PixFusion, under its Kideo brand, manufactures and produces personalized media productions for children using licensed characters such as Spider-Man, Dora the Explorer, Barney, Arthur, Care Bears and Baby Genius.

10. PixFusion has sold over 500,000 of its Kideo personalized media productions.

11. PixFusion also develops and provides promotional media products.

12. PixFusion distributes its personalized media products and services throughout the United States and around the world.

Plaintiff PixFusion's Technology and Patents

13. PixFusion has developed proprietary software and technology to manufacture and produce its media products and services.

14. PixFusion also owns patents that embody the fruits of its innovations.

15. One such patent is United States Patent Number 6,351,265 ("the '265 Patent"), which is entitled "Method and Apparatus For Producing an Electronic Image" and has an issue date of February 26, 2002, attached hereto as Exhibit A.

16. Another such patent is United States Patent Number 5,623,587 ("the '587 patent"), which is entitled "Method and Apparatus For Producing an Electronic Image" and has an issue date of April 22, 1992, attached hereto as Exhibit B.

17. PixFusion is the current assignee of the '265 and '587 Patents.

18. PixFusion has licensed to third parties its proprietary intellectual property platform, including the '265 and '587 patents, for uses in consumer products, television and promotional applications.

Defendant MushyGushy's Infringement

19. MushyGushy operates a web site that has several pages and that has the following main address: <http://www.MushyGushy.com> ("Website").

20. On the Website, MushyGushy offers for use GushyGrams e-cards or e-greetings that contain personalized animated video.

21. To create a GushyGram, a Website user navigates the Website to upload a photograph.

22. A Website user uses tools on the Website to, *inter alia*, outline a head in the photograph.

23. The Website cuts the head out of the photo and prepares the head for use in an e-card video.

24. A Website user selects an e-card.

25. The Website user confirms use of the head in an e-card video and the Website loads the head into the e-card video.

26. Once the Website produces the e-card video, the Website user may forward via email to another user a link to the e-card video on the Website.

27. Upon information and belief, MushyGushy makes, uses and offers for use personalized videos that infringe the '265 Patent and may infringe the '587 Patent.

COUNT I
(Infringement of the '265 Patent)

28. PixFusion repeats and re-alleges Paragraphs 1-25 as if fully set forth herein.

29. MushyGushy has infringed, and will continue to infringe the '265 Patent in violation of Section 271 of Title 35 of the United States Code by making, using, selling and or offering to sell the inventions claimed in the '265 Patent, and/or inducing or contributing to such infringement by others, in the Southern District of New York and without the consent of PixFusion.

30. Unless enjoined by the Court, MushyGushy will continue its alleged infringement of the '265 Patent.

31. As a direct and proximate result of MushyGushy's alleged infringing conduct, PixFusion has suffered, and will continue to suffer, irreparable harm, for which they have no adequate remedy at law.

32. Unless this Court enjoins MushyGushy's alleged infringing conduct, PixFusion will continue to be irreparably harmed by MushyGushy's infringement of the '265 Patent.

33. As a direct and proximate result of MushyGushy's alleged infringing conduct, PixFusion has suffered, and will continue to suffer, damages.

34. Unless this Court enjoins MushyGushy's alleged infringing conduct, PixFusion will continue to suffer damages by MushyGushy's infringement of the '265 Patent.

35. MushyGushy had actual notice its personalized media products infringed the '265 Patent, in response to which, MushyGushy did not cease its alleged infringement of the '265 Patent in wanton disregard of PixFusion's rights thereunder.

36. As a direct and proximate result of MushyGushy's conduct, MushyGushy's alleged infringement of the '265 Patent has been willful and deliberate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff PixFusion prays for the following relief:

- A. A declaration that MushyGushy has infringed, contributorily infringed and/or induced the infringement of one or more of the claims of the '265 Patent;
- B. A declaration that MushyGushy has willfully infringed the '265 Patent;
- C. An injunction permanently restraining and enjoining MushyGushy (and its officers, directors, employees, agents, servants, successors, assigns, and any and all persons in

privy or in concert with it, directly or indirectly) from infringing any of the claims of the '265 Patent in any manner;

D. Damages adequate to compensate PixFusion for injuries sustained as a result of MushyGushy's infringement of the '265 Patent, but in no event less than a reasonable royalty, together with interest thereon;

E. Enhanced damages as a result of MushyGushy's willful infringement of the '265 Patent;

F. A declaration that this case is exceptional;

G. An assessment and award of interest, costs, and attorneys fees against MushyGushy; and

H. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff PixFusion respectfully requests a jury trial on all issues so triable.

DATED: May 2, 2008

Day Pitney LLP
Attorneys for Plaintiff
PixFusion LLC

By:



Marc A. Lieberstein (ML 7116)
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