

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

FOTOMEDIA TECHNOLOGIES, LLC,

Plaintiff,

vs.

AOL LLC, AMERICA ONLINE, INC.,
PHOTOBUCKET.COM, INC., SHUTTERFLY,
INC., CNET NETWORKS, INC., AND
YAHOO! INC.,

Defendants.

CIVIL ACTION
2:07-CV-255-TJW
JURY TRIAL

PLAINTIFF'S AMENDED COMPLAINT

Plaintiff FotoMedia Technologies, LLC (“FotoMedia”) files this Amended Complaint for patent infringement against Defendants, AOL LLC, PhotoBucket, Inc., Shutterfly, Inc., CNET Networks, Inc., and Yahoo! Inc., (collectively “Defendants”).

PARTIES

1. Plaintiff FotoMedia Technologies, LLC, is a Delaware limited liability company having its principal place of business at 155 Fleet Street, Portsmouth, New Hampshire, 03801.
2. Upon information and belief, Defendant AOL LLC (“AOL”) is a Delaware limited liability company having its principal place of business at 22000 AOL Way, Dulles, Virginia 20166.
3. Upon information and belief, Defendant PhotoBucket.Com, Inc. (“PhotoBucket”) is a corporation existing under the laws of Delaware with its principal place of business at 921 Walnut St., Suite 200, Boulder, Colorado 80302.

4. Upon information and belief, Defendant Shutterfly, Inc. (“Shutterfly”) is a corporation existing under the laws of Delaware with its principal place of business at 2800 Bridge Parkway, Redwood City, CA 94065.

5. Upon information and belief, Defendant CNET Networks, Inc. (“CNET Networks”) is a corporation existing under the laws of Delaware with its principal place of business at 235 Second Street, San Francisco, CA 94105.

6. Upon information and belief, Defendant Yahoo! Inc. (“Yahoo”) is a corporation existing under the laws of Delaware with its principal place of business at 701 First Avenue, Sunnyvale, CA 94089.

JURISDICTION AND VENUE

7. This is an action for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 271.

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. The Defendants do business in this State and District and have sufficient contacts to subject them to the personal jurisdiction of this Court for this patent infringement action. The Defendants have placed their products and services, including infringing products and services, into the stream of commerce, knowing or reasonably expecting that such products will be used, sold, or offered to be sold in this State and in this District.

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

BACKGROUND

11. On January 25, 2000, the USPTO duly and legally issued United States Patent No. 6,018,774 (“the ’774 patent”), entitled “Method and System for Creating Messages Including Image Information.” FotoMedia holds all right, title, and interest in and to the ’774 patent (a true and correct copy of which is attached hereto as Exhibit A).

12. On April 1, 2003, the USPTO duly and legally issued United States Patent No. 6,542,936 B1 (“the ’936 patent”), entitled “System for Creating Messages Including Image Information.” FotoMedia holds all right, title, and interest in and to the ’936 patent (a true and correct copy of which is attached hereto as Exhibit B).

13. On March 22, 2005, the USPTO duly and legally issued United States Patent No. 6,871,231 B2 (“the ’231 patent”), entitled “Role-Based Access to Image Metadata.” FotoMedia holds all right, title, and interest in and to the ’231 patent (a true and correct copy of which is attached hereto as Exhibit C).

14. AOL owns, operates, or otherwise controls photosharing web sites, including <http://pictures.aol.com>.

15. Defendant PhotoBucket owns, operates, or otherwise controls photosharing web sites, including <http://photobucket.com>.

16. Defendant Shutterfly owns, operates, or otherwise controls photosharing web sites, including <http://www.shutterfly.com>.

17. Defendant CNET Networks owns, operates, or otherwise controls photosharing web sites, including the Webshots web site at <http://www.webshots.com>.

18. Defendant Yahoo owns, operates, or otherwise controls photosharing web sites, including the Flickr site found at <http://www.flickr.com> and the Yahoo! Photos site found at <http://photos.yahoo.com>.

19. Upon information and belief, Defendants make, use, license, sell, offer for sale, or import in the State of Texas, in this judicial district, and elsewhere within the United States photosharing web site services that alone or in combination with personal computers infringe the '774, '936, and '231 patents, as well as related services.

COUNT I: INFRINGEMENT OF THE '774 PATENT

20. FotoMedia realleges and incorporates by reference herein the allegations contained in Paragraphs 1 through 19.

21. AOL, PhotoBucket, Shutterfly, CNET Networks, and Yahoo have been and are now directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of, the '774 patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing photosharing web site services alone or in combination with personal computers, as well as related services covered by one or more claims of the '774 patent, all to the injury of FotoMedia.

22. AOL's, Shutterfly's, and Yahoo's acts of infringement of the '774 patent have been willful, deliberate, and in reckless disregard of FotoMedia's patent rights.

23. FotoMedia has been damaged by AOL's, PhotoBucket's, Shutterfly's, CNET Networks', and Yahoo's infringement of the '774 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Defendants are permanently enjoined from infringing the '774 patent.

COUNT II: INFRINGEMENT OF THE '936 PATENT

24. FotoMedia realleges and incorporates by reference herein the allegations contained in Paragraphs 1 through 19.

25. AOL, PhotoBucket, Shutterfly, CNET Networks, and Yahoo have been and are now directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of, the '936 patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling, offering for sale, or importing photosharing web site services alone or in combination with personal computers, as well as related services covered by one or more claims of the '936 patent, all to the injury of FotoMedia.

26. AOL's and Yahoo's acts of infringement of the '936 patent have been willful, deliberate, and in reckless disregard of FotoMedia's patent rights.

27. FotoMedia has been damaged by AOL's, PhotoBucket's, Shutterfly's, CNET Networks', and Yahoo's infringement of the '936 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Defendants are permanently enjoined from infringing the '936 patent.

COUNT III: INFRINGEMENT OF THE '231 PATENT

28. FotoMedia realleges and incorporates by reference herein the allegations contained in Paragraphs 1 through 19.

29. AOL, PhotoBucket, Shutterfly, CNET Networks, and Yahoo have been and are now directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of, the '231 patent in the State of Texas, in this judicial district, and elsewhere within the United States by, among other things, making, using, licensing, selling,

offering for sale, or importing photosharing web site services alone or in combination with personal computers, as well as related services covered by one or more claims of the '231 patent, all to the injury of FotoMedia.

30. AOL's and Yahoo's acts of infringement of the '231 patent have been willful, deliberate, and in reckless disregard of FotoMedia's patent rights.

31. FotoMedia has been damaged by AOL's, PhotoBucket's, Shutterfly's, CNET Networks', and Yahoo's infringement of the '231 patent in an amount to be determined at trial, and has suffered and will continue to suffer irreparable loss and injury unless Defendants are permanently enjoined from infringing the '231 patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FotoMedia Technologies, LLC prays for the following relief against Defendants:

A. A judgment in favor of FotoMedia that Defendants have infringed, directly and indirectly by way of inducing infringement and/or contributing to the infringement of, FotoMedia's '774, '936, and '231 patents;

B. A permanent injunction, enjoining Defendants and their officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, and parents from infringing, inducing the infringement of, or contributing to the infringement of FotoMedia's '774, '936, and '231 patents;

C. A judgment and order requiring Defendants to pay FotoMedia damages for the infringement of FotoMedia's '774, '936, and '231 patents, together with interest (both pre- and post-judgment), costs and disbursements as fixed by this Court under 35 U.S.C. § 284;

D. A judgment and order finding AOL's and Yahoo's infringement of the '774, '936, and '231 patents willful and awarding treble the amount of damages and losses sustained by FotoMedia as a result of AOL's and Yahoo's infringement under 35 U.S.C. § 284;

E. A judgment and order finding Shutterfly's infringement of the '774 patent willful and awarding treble the amount of damages and losses sustained by FotoMedia as a result of Shutterfly's infringement under 35 U.S.C. § 284;

F. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to FotoMedia its reasonable attorneys' fees; and

G. Such other and further relief in law or in equity to which FotoMedia may be justly entitled.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of any and all issues triable of right before a jury.

Respectfully submitted,

McKOOL SMITH P.C.

By: /s/ Mike McKool, Jr.

Mike McKool, Jr.
Lead Attorney
Texas State Bar No. 13732100
mmckool@mckoolsmith.com
Lewis T. LeClair
Texas State Bar No. 12072500
lleclair@mckoolsmith.com
300 Crescent Court, Suite 1200
Dallas, Texas 75201
Telephone: (214) 978-4000
Facsimile: (214) 978-4044

Sam F. Baxter
Texas State Bar No. 01938000
sbaxter@mckoolsmith.com
McKool Smith P.C.
505 E. Travis, Suite 105
Marshall, Texas 75670
Telephone: (903) 927-2111
Telecopier: (903) 927-2622

Travis Gordon White
Texas State Bar No. 21333000
gwhite@mckoolsmith.com
John M. Shumaker
Texas State Bar No 24033069
jshumaker@mckoolsmith.com
300 W. 6th Street, Suite 1700
Austin, Texas 78701
Telephone: (512) 692-8700
Facsimile: (512) 692-8744

**ATTORNEYS FOR PLAINTIFF
FOTOMEDIA TECHNOLOGIES, LLC**

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-4(c)(2), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by certified mail, on this the 6th day of November, 2007.

<p>Harry Lee Gillam, Jr. gil@gillamsmithlaw.com GILLAM & SMITH, LLP 303 South Washington Avenue Marshall, Texas 75670</p> <p>ATTORNEYS FOR AOL, INC. and PHOTOBUCKET.COM, INC.</p>	<p>Of Counsel:</p> <p>Paul R. Gupta pgupta@orrick.com ORRICK, HERRINGTON & SUTCLIFFE LLP 666 Fifth Avenue New York, NY 10103-0001</p> <p>William W. Oxley woxley@orrick.com I. Neal Chatterjee (CSB No. 173985) nchatterjee@orrick.com ORRICK, HERRINGTON & SUTCLIFFE LLP 1000 Marsh Road Menlo Park, CA 94025</p> <p>ATTORNEYS FOR AOL, INC. and PHOTOBUCKET.COM, INC.</p>
<p>Darryl M. Woo dwoo@fenwick.com FENWICK & WEST, LLP 555 California Street 12th Floor San Francisco, California 94041</p> <p>ATTORNEYS FOR SHUTTERFLY, INC.</p>	<p>G. William Lavender blav@lavenderlaw.com LAVENDER LAW 210 N. State Line Ave., Suite 503 P. O. Box 1938 Texarkana, Arkansas 75504</p> <p>ATTORNEYS FOR CNET NETWORKS, INC.</p>
<p>Beth L. Mitchell bmitchell@nixonpeabody.com Laura K. Carter lcarter@nixonpeabody.com Patrick T. Michael pmichael@nixonpeabody.com NIXON PEABODY LLP One Embarcadero Center, 18th Floor San Francisco, California 94111</p> <p>ATTORNEYS FOR CNET NETWORKS, INC.</p>	

<p>Scott F. Partridge scott.partridge@bakerbotts.com Lisa Catherine Kelly lisa.kelly@bakerbotts.com Paul R. Morico paul.morico@bakerbotts.com BAKER BOTTS One Shell Plaza 910 Louisiana Street, Suite 3000 Houston, Texas 77002</p> <p>ATTORNEYS FOR YAHOO! INC.</p>	<p>Michael E. Jones mikejones@potterminton.com POTTER MINTON 110 N. College, Suite 500 (75702) P.O. Box 359 Tyler, Texas 75710</p> <p>ATTORNEYS FOR YAHOO! INC.</p>
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/s/ Mike McKool, Jr.