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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

DRIVETIME AUTOMOTIVE GROUP, INC., a)	
Delaware corporation,)	Case No.
)	
Plaintiff,)	COMPLAINT FOR DECLARATORY
)	JUDGMENT
vs.)	
)	(Jury Trial Requested)
LODSYS, LLC, a Texas limited liability company,)	
)	
Defendant.)	
)	
)	
)	

DriveTime Automotive Group, Inc. (“DriveTime” or “Plaintiff”), for its Complaint for Declaratory Judgment against Lodsyst, LLC (“Lodsyst” or “Defendant”), alleges as follows:

NATURE OF THE ACTION

1. This is an action for declaratory judgment that DriveTime does not infringe any valid claim of United States Patent Nos. 5,999,908 (“the ‘908 patent”), 7,133,834 (“the ‘834 patent”), 7,222,078 (“the ‘078 patent”), 7,620,565 (“the ‘565 patent”) (collectively the “Asserted Patents”), and for declaratory judgment that the claims of each of the Asserted Patents are invalid.
2. A true and correct copy of the ‘908 patent is attached as **Exhibit A**.
3. A true and correct copy of the ‘834 patent is attached as **Exhibit B**.
4. A true and correct copy of the ‘078 patent is attached as **Exhibit C**.

1 12. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and/or 1400.

2 **ALLEGATIONS SUPPORTING DECLARATORY JUDGMENT JURISDICTION**

3 13. DriveTime realleges and incorporates herein by reference each and every allegation
4 contained in the foregoing paragraphs.

5 14. On information and belief, Lodsys has a well-known reputation as a “patent troll,”
6 which refers to companies that acquire broad or ambiguous patents and then claim they cover
7 specific and financially productive activities in attempt to generate revenue from litigation or the
8 threat of litigation. These companies never actually manufacture anything covered by the patents
9 they acquire – they generate revenue from litigation and the threat of litigation alone. This practice
10 is becoming more and more common, much to the concern of the technological and legal
11 communities. Lodsys is one of the latest to attempt to profit from this disturbing trend.

12 15. On information and belief, Lodsys has targeted numerous companies throughout the
13 United States with demands that the companies either pay a license or settlement fee in exchange for
14 a covenant not to sue, or in the alternative, face the exorbitant cost of defending a patent
15 infringement lawsuit.

16 16. On information and belief, many of the companies targeted by Lodsys accede to its
17 demands despite the lack of merit to the patent infringement claims, because by design, the cost of
18 settlement, while not cheap, is much less significant than the average cost of a patent infringement
19 defense.

20 17. On February 11, 2011, Lodsys filed a lawsuit against 12 companies alleging
21 infringement of the Asserted Patents. The case is styled *Lodsys, LLC v. Brother International*
22 *Corporation, et al.*, Case No. 2:11-cv-090 and is pending in the Eastern District of Texas, Marshall
23 Division.

24 18. On May 31, 2011, Lodsys filed a second lawsuit in the Eastern District of Texas
25 against ten companies, all developers of Apple, Inc. iPhone applications, alleging infringement of
26 the Asserted Patents. The case is styled *Lodsys, LLC v. Combay, Inc., et al.*, Case No. 2:11-cv-272.

27 19. On June 10, 2011, Lodsys filed a third lawsuit in the Eastern District of Texas against
28 ten more companies alleging infringement of the Asserted Patents. The case is styled *Lodsys, LLC v.*

1 *Adidas America, Inc., et al.*, Case No. 2:11-cv-283.

2 20. In all three Texas cases, counsel of record to Lodsys are Kelley, Donion, Gill, Huck
3 & Goldfarb, PLLC, based in Seattle, Washington, and The Davis Firm, P.C., based in Longview,
4 Texas.

5 21. On June 7, 2011, after learning that at least three of its customers received demands
6 from Lodsys, Foresee Results, Inc. filed suit against Lodsys in the Northern District of Illinois
7 seeking a declaratory judgment that the Asserted Patents are invalid and/or not infringed. The case
8 is styled *Foresee Results, Inc. v. Lodsys, LLC*, Case No. 11-cv-3886.

9 22. On June 10, 2011, after receiving a demand from Lodsys, ESet, LLC filed suit against
10 Lodsys in the Southern District of California seeking a declaratory judgment that the Asserted
11 Patents are invalid and/or not infringed. The case is styled *ESet, LLC v. Lodsys, LLC*, Case No.
12 3:11-cv-1285.

13 23. On June 13, 2011, after learning that some of its customers received demands from
14 Lodsys, and yet others had been named in the lawsuit referenced in Paragraph 19 above,
15 OpinionLab, Inc. filed suit against Lodsys in the Northern District of Illinois seeking a declaratory
16 judgment that the Asserted Patents are invalid and/or not infringed. The case is styled *OpinionLab,*
17 *LLC v. Lodsys, LLC*, Case No. 1:11-cv-4015.

18 24. Also on June 13, 2011, after receiving a demand from Lodsys, The New York Times
19 Company filed suit against Lodsys in the Northern District of Illinois seeking a declaratory judgment
20 that the Asserted Patents are invalid and/or not infringed. The case is styled *New York Times Co. v.*
21 *Lodsys, LLC*, Case No. 1:11-cv-4004.

22 25. And on June 15, 2011, after learning that its customers received demands from
23 Lodsys, LivePerson, Inc. filed suit against Lodsys in the Northern District of Illinois seeking a
24 declaratory judgment that the Asserted Patents are invalid and/or not infringed. The case is styled
25 *LivePerson, Inc. v. Lodsys, LLC*, Case No. 1:11-cv-4088.

26 26. On or about June 21, 2011, DriveTime received a demand from Lodsys (the
27 “Demand”), a copy of which is attached hereto as **Exhibit E**, alleging “use of the Lodsys Patents” by
28 DriveTime, and enclosing an “Infringement Claim Chart” allegedly demonstrating how DriveTime

1 utilizes the inventions embodied in the Asserted Patents.

2 27. Specifically, the Demand states:

3 [w]e have reviewed your use of the Lodsys Patents and have prepared the
4 enclosed claim chart demonstrating at least one instance of how you utilize the
5 inventions embodied in the Lodsys Patents. The images used in the charts are
6 representative only and in addition to the charted claim of the referenced patent,
7 you should consider the remaining claims of that patent and the other Lodsys
8 Patents both with respect to the charted utilization and to other products and
9 services offered by you.

10 28. The Demand also states:

11 [w]e are interested in reaching a negotiated non-litigation licensing arrangement
12 with you for all of your uses of the Lodsys Patents under your brand names and
13 would like to discuss this matter with you within 21 days of your receipt of this
14 letter.

15 29. The Demand further states that Lodsys has retained the above-referenced firms to
16 “assist the company” with the licensing of the Lodsys Patents.

17 30. Finally, the Demand states:

18 Lodsys LLC *reserves all rights* with regard to the ‘908, ‘834, ‘078, and ‘565
19 patents, including: (1) the *right to seek damages* anytime within the last six years
20 that your company started to make use of Lodsys’ patented technology; (2) the
21 right to change its royalty rates at any time; (3) the right to change this licensing
22 program at any time without notice, including variance to conform to applicable
23 laws. You should not rely on any communication or lack of communication from
24 Lodsys, Kelley, Donion, Gill, Huck & Goldfarb PLLC, or The Davis Firm Group
25 as a relinquishment of any of Lodsys’ rights.

26 31. DriveTime reasonably believes that under the circumstances outlined above there is a
27 substantial controversy between DriveTime and Lodsys of sufficient immediacy and reality to
28 warrant the issuance of a declaratory judgment.

1 **FIRST CAUSE OF ACTION**

2 **(Declaratory Judgment of Non-Infringement of the '908 Patent)**

3 32. DriveTime realleges and incorporates herein by reference each and every allegation
4 contained in the foregoing paragraphs.

5 33. DriveTime's website, www.drivetime.com, and specifically the DriveTime Live Chat
6 web chat functionality identified by Lodsys in the Infringement Claim Chart (hereinafter "Web Chat
7 Functionality") does not infringe any valid claim of the '908 patent.

8 **SECOND CAUSE OF ACTION**

9 **(Declaratory Judgment of Non-Infringement of the '834 Patent)**

10 34. DriveTime realleges and incorporates herein by reference each and every allegation
11 contained in the foregoing paragraphs.

12 35. DriveTime's website, www.drivetime.com, and specifically the Web Chat
13 Functionality, does not infringe any valid claim of the '834 patent.

14 **THIRD CAUSE OF ACTION**

15 **(Declaratory Judgment of Non-Infringement of the '078 Patent)**

16 36. DriveTime realleges and incorporates herein by reference each and every allegation
17 contained in the foregoing paragraphs.

18 37. DriveTime's website, www.drivetime.com, and specifically the Web Chat
19 Functionality, does not infringe any valid claim of the '078 patent.

20 **FOURTH CAUSE OF ACTION**

21 **(Declaratory Judgment of Non-Infringement of the '565 Patent)**

22 38. DriveTime realleges and incorporates herein by reference each and every allegation
23 contained in the foregoing paragraphs.

24 39. DriveTime's website, www.drivetime.com, and specifically the Web Chat
25 Functionality, does not infringe any valid claim of the '565 patent.

26 **FIFTH CAUSE OF ACTION**

27 **(Declaratory Judgment of Invalidity of the '908 Patent)**

28 40. DriveTime realleges and incorporates herein by reference each and every allegation

1 contained in the foregoing paragraphs.

2 41. On information and belief, the '908 patent is invalid under one or more provisions of
3 Title 35 of the U.S. Code, §§ 101, 102, 103 or 112.

4 **SIXTH CAUSE OF ACTION**

5 **(Declaratory Judgment of Invalidity of the '834 Patent)**

6 42. DriveTime realleges and incorporates herein by reference each and every allegation
7 contained in the foregoing paragraphs.

8 43. On information and belief, the '834 patent is invalid under one or more provisions of
9 Title 35 of the U.S. Code, §§ 101, 102, 103 or 112.

10 **SEVENTH CAUSE OF ACTION**

11 **(Declaratory Judgment of Invalidity of the '078 Patent)**

12 44. DriveTime realleges and incorporates herein by reference each and every allegation
13 contained in the foregoing paragraphs.

14 45. On information and belief, the '078 patent is invalid under one or more provisions of
15 Title 35 of the U.S. Code, §§ 101, 102, 103 or 112.

16 **EIGHTH CAUSE OF ACTION**

17 **(Declaratory Judgment of Invalidity of the '565 Patent)**

18 46. DriveTime realleges and incorporates herein by reference each and every allegation
19 contained in the foregoing paragraphs.

20 47. On information and belief, the '565 patent is invalid under one or more provisions of
21 Title 35 of the U.S. Code, §§ 101, 102, 103 or 112.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, DriveTime prays that the Court declare as follows:

- 24 1. DriveTime does not infringe, directly or indirectly, any valid claim of the '908 patent;
25 2. DriveTime does not infringe, directly or indirectly, any valid claim of the '834 patent;
26 3. DriveTime does not infringe, directly or indirectly, any valid claim of the '078 patent;
27 4. DriveTime does not infringe, directly or indirectly, any valid claim of the '565 patent;
28 5. The claims of the '908 patent are invalid under one or more of 35 U.S.C. §§ 101, 102,

1 103 or 112;

2 6. The claims of the '834 patent are invalid under one or more of 35 U.S.C. §§ 101, 102,
3 103 or 112;

4 7. The claims of the '078 patent are invalid under one or more of 35 U.S.C. §§ 101, 102,
5 103 or 112;

6 8. The claims of the '565 patent are invalid under one or more of 35 U.S.C. §§ 101, 102,
7 103 or 112;

8 9. DriveTime be awarded its costs associated with bringing this action;

9 10. DriveTime be awarded its attorneys' fees pursuant to 35 U.S.C. § 285; and

10 11. DriveTime be awarded such other and further relief as this Court deems is just and
11 proper.

12 **DEMAND FOR A JURY TRIAL**

13 DriveTime hereby demands a trial by jury in this action.

14
15
16 DATED: June 30, 2011

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