

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

Case No. _____

NEW CONCEPTS IN MARKETING, INC.,

Plaintiff,

v.

MASS CONNECTIONS, INC.

Defendant.

**COMPLAINT FOR
DECLARATORY JUDGMENT OF
PATENT NONINFRINGEMENT
AND INVALIDITY**

Demand for Jury Trial

New Concepts in Marketing, Inc. (“New Concepts”) complains and alleges as its Complaint against Defendant Mass Connection, Inc. (“Mass Connections”) as follows:

The Parties

1. Plaintiff New Concepts is a North Carolina corporation with its principal place of business in Charlotte, North Carolina. New Concepts provides and/or arranges marketing services, including product demonstration services.

2. Defendant Mass Connections is, upon information and belief, a California corporation with its principal place of business in Cerritos, California. Mass Connections is also in the business of providing marketing services and technology, including services in connection with product and service demonstrations.

Nature of the Action

3. This is a declaratory judgment action for patent invalidity and non-infringement rising under the patent laws of the United States, Title 35, U.S.C., §§ 100 *et seq.*

Jurisdiction and Venue

4. This court has subject matter jurisdiction of this action under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 and pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Personal jurisdiction and venue are proper in this Court pursuant to 28 U.S.C. § 1391, in that, *inter alia*, a substantial part of the events giving rise to this action occurred in this judicial district. Further, this Court has personal jurisdiction over Mass Connections by virtue of its doing business in North Carolina and its continuous and systematic contacts with North Carolina.

First cause of Action
(Declaratory Judgment of Noninfringement)

6. Mass Connections claims that it owns United States Patent No. 7,444,305 (“the ‘305 Patent”), entitled, “Methods of Coordinating Products and Service Demonstrations.” A true and correct copy of the ‘305 Patent is attached as Exhibit A.

7. Mass Connections has expressly charged New Concepts with infringing the ‘305 Patent. On October 14, 2008, Mass Connections sent New Concepts a letter stating that the “card” utilized by New Concepts infringes the ‘305 Patent and demanding that New Concepts “immediately cease and desist any further infringement of the MC Card.” The letter further states that if further infringement occurs Mass Connections will “immediately seek injunction relief and seek damages including attorneys’ fees.”

8. New Concepts contends that it has not infringed and is not now infringing any valid claim of the ‘305 Patent.

9. Based on Mass Connections’ allegations of infringement and other demands and threats, Mass Connections has put New Concepts in the position of either of pursuing behavior that Mass Connections alleges constitutes an infringement or abandoning a course of action which New Concepts believes it has a lawful right to pursue. Therefore, there exists an actual and justiciable controversy between the parties, and New Concepts requests a declaratory judgment in its favor of noninfringement of the ‘305 Patent. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

Second Cause of Action
(Declaratory Judgment of Patent Invalidity)

10. New Concepts realleges and incorporates by reference all of the allegations contained in paragraphs 1 through 10 above.

11. Mass Connections has alleged that the ‘305 Patent was duly and legally issued.

12. Mass Connections has accused New Concepts of patent infringement of the ‘305 Patent, which Mass Connections contends is valid and enforceable.

13. The claims of the ‘305 Patent are invalid and void at least under one or more of the provision of Title 35, U.S.C., §§ 102, 103 and 112.

14. Because of its allegations of patent infringement, Mass Connections has put New Concepts in the position of either pursuing behavior that Mass Connections alleges constitutes an infringement of a valid U.S. Patent or abandoning a course of action which New Concepts believes it has a lawful right to pursue. Therefore, there exists an actual and justiciable controversy between the parties as to the validity of the '305 Patent, and New Concepts requests a declaratory judgment in its favor that the '305 Patent is invalid. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

Prayer for Relief

WHEREFORE, Plaintiff New Concepts requests entry of judgment in its favor and against Defendant Mass Connections as follows:

- a. Declaring that New Concepts has not infringed, induced others to infringe or contributed to the infringement of any valid claim of the '305 Patent;
- b. Declaring that the '305 Patent is invalid;
- c. Enjoining Mass Connections, its officers, partners, employees, agents, parents, subsidiaries, attorneys, and any one acting in concert or participation with any of them from making any claims that New Concepts infringes the '305 Patent;
- d. Awarding New Concepts a judgment in its favor that this case is exceptional and granting an award of reasonable attorneys' fees and expenses to New Concepts pursuant to Title 35, U.S.C., § 285 or awarding New Concepts its attorneys' fees and costs pursuant to any other right or statute; and
- e. Awarding such other relief as the Court deems just and proper.

JURY DEMAND

New Concepts demands a trial by jury as to all claims so triable.

This the 29th day of October, 2008.

/s/ Irving M. Brenner

Irving M. Brenner

N.C. State Bar No. 15483

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