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NORTHERN DISTRICT OF CALIFORNIA

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Attorneys for Plaintiff
StumbleUpon, Inc.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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STUMBLEUPON, INC., a Delaware corporation,

Case No.:

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5419

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Plaintiff,

COMPLAINT FOR:

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v.

(1) PATENT
INFRINGEMENT (35
U.S.C. § 271),

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INFOAXE, INC., a Delaware corporation, and DOES 1 to 10,

(2) TRADE DRESS
INFRINGEMENT
(Lanham Act § 43(a)),

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Defendants.

AND

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(3) UNFAIR COMPETITION
(Cal. Bus. & Prof. Code §§
17200 et seq.)

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JURY TRIAL DEMANDED

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FAXED

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1 Plaintiff STUMBLEUPON, INC. ("Plaintiff") complains as follows:
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3 **NATURE OF THE ACTION**

4 1. This matter involves Plaintiff's patent for a single-action
5 personalized content recommendation service designed for the Internet, as
6 well as the protectable trade dress of Plaintiff's webpages, in-browser
7 toolbar, and browser extensions that employ the patented technology.

8 2. Plaintiff STUMBLEUPON, INC. launched the StumbleUpon®
9 service in 2002. The StumbleUpon service can be accessed at
10 <www.stumbleupon.com>. It assists users in finding Internet content that
11 will be of interest to that particular user based on his or her selected interests
12 and other users' recommendations. Users can receive a recommendation for
13 a webpage at any time by simply selecting the "Stumble!"® button in either
14 the StumbleUpon in-browser toolbar or in the browser extensions.

15 3. In or around June 2012, Defendant INFOAXE, INC. launched
16 their Flipora service, available at <www.flipora.com>. The Flipora service,
17 similar to Plaintiff's StumbleUpon service, guides users to Internet content
18 based on that user's selected interests and/or other users' recommendations.
19 Users can access a recommended webpage by either selecting the "flip to the
20 next page" button on the Flipora in-browser toolbar or by selecting the
21 Flipora icon on the Flipora browser extension.

22 4. In addition to the similarities of the parties' services, many
23 aspects of the Flipora webpages, in-browser toolbar, and browser extension
24 share the same look and feel as StumbleUpon's webpages, in-browser
25 toolbar, and browser extensions.
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JURISDICTION AND VENUE

5. This action arises under the Patent Laws of the United States, 35 U.S.C. §§ 100, *et seq.* This is also a claim for trade dress infringement arising under the Lanham Act, Title 15 of the United States Code.

6. This Court has subject matter jurisdiction over the claims under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b).

7. This Court has subject matter jurisdiction over the related state law claim for Unfair Competition because that claim arises from the same nucleus of facts as the patent and trade dress claims and therefore falls within this Court's pendent subject matter jurisdiction pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

8. Upon information and belief, Plaintiff alleges that Defendant INFOAXE, INC. has conducted business, including the acts giving rise to this complaint, within this judicial district. Therefore, this Court has personal jurisdiction over Defendant INFOAXE, INC.

9. A substantial portion of the acts giving rise to this complaint were committed within this judicial district. California law applies to the state law claim arising between the parties. Venue is therefore proper in this judicial district under 28 U.S.C. §§ 1391(b)-(c) and 1400(a)-(b).

INTRADISTRICT ASSIGNMENT

10. This is an Intellectual Property matter, and, therefore, there is no basis for assignment to any particular division pursuant to Civil L.R. 3-2(c).

THE PARTIES

11. Plaintiff STUMBLEUPON, INC. is a Delaware corporation with its principal place of business in San Francisco, California.

1 12. Upon information and belief, Defendant INFOAXE, INC. is a
2 Delaware corporation with its principal place of business in Sunnyvale,
3 California.

4 13. The identities of DOES 1 to 10 are not known to the Plaintiff at
5 this time. Plaintiff asks leave of this Court to amend this Complaint when
6 the identities of these Defendants become known.

7
8 **FACTUAL BACKGROUND**

9
10 **Plaintiff STUMBLEUPON, INC.'s StumbleUpon Service**

11 14. Plaintiff STUMBLEUPON, INC. was founded in 2001 by a
12 group of post-graduate students. Plaintiff currently owns and operates the
13 Internet service StumbleUpon[®], which includes webpages associated with
14 <www.stumbleupon.com>, the StumbleUpon in-browser toolbar, the
15 StumbleUpon browser extensions, and the StumbleUpon mobile and tablet
16 applications.

17 15. The essence of Plaintiff's StumbleUpon service is to provide its
18 users with a convenient way to discover new and interesting Internet
19 content, such as webpages, videos, and pictures, using StumbleUpon's
20 website, in-browser toolbar, or browser extensions. Internet users have
21 flocked to Plaintiff's StumbleUpon service. Since 2002, more than 25
22 million users have registered for Plaintiff's StumbleUpon's service and have
23 used its single-action recommendation functionality billions of times to
24 receive personalized content based on their interests.

25 16. Plaintiff's StumbleUpon service creates virtual networks of
26 Internet users based on their respective interests, both express and inferred
27 from their use of the StumbleUpon service. The StumbleUpon service
28 recommends Internet content that is calculated to be of interest to a specific

1 user based upon that user's express and inferred interests and other users'
2 recommendation of Internet content within the same virtual network and/or
3 interest categories. To display new content recommended by the
4 StumbleUpon service, the user simply selects the "Stumble!"[®] button,
5 present on both the StumbleUpon in-browser toolbar and the browser
6 extensions. A user may rate (e.g., indicate approval) the webpages
7 recommended to them by the StumbleUpon service by selecting the "I Like
8 It!" button. The StumbleUpon service uses ratings of the recommended
9 webpages to improve future recommendations provided to that user and to
10 other similarly situated users. New Internet content is added into the
11 StumbleUpon service, for possible recommendation to other users, when a
12 user selects the "I Like It!" button in connection with a web page not already
13 included in the StumbleUpon index.

14 17. Plaintiff employs its StumbleUpon service—primarily available
15 at <www.stumbleupon.com>—through Internet webpages framed by the
16 StumbleUpon toolbar, through browser extensions for Firefox, Google
17 Chrome and Safari, as well as through a suite of mobile, tablet and other
18 applications available for the Apple iOS, Google Android and the upcoming
19 Microsoft Windows 8 platform.

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21 Plaintiff's Valuable Intellectual Property Rights

22 18. Plaintiff proactively protects its valuable intellectual property
23 assets by seeking patent protection and registering foreign and domestic
24 trademarks, e.g., U.S. Trademark Registration Nos. 3,524,588, 3,556,044,
25 3,448,694, and 4,171,142. Plaintiff also has taken extensive measures to
26 prevent the disclosure of trade secrets and proprietary information and to
27 resolve instances of infringement.

28

1 19. On December 13, 2011, U.S. Patent Number 8,078,615 (“the
2 ‘615 Patent”), titled “Method and System for Single-Action Personalized
3 Recommendation and Display of Internet Content,” was issued to Plaintiff.
4 The ‘615 Patent describes a system that recommends Internet content—
5 referred to by URL address—to users based upon a number of factors,
6 including the users’ preferences, categories the content belongs to, and/or
7 the content’s rating history. The ‘615 Patent further describes the display of
8 recommended content occurring in response to a single action. A copy of
9 the ‘615 Patent is attached hereto as Exhibit A.

10 20. Plaintiff’s StumbleUpon website, in-browser toolbar, browser
11 extensions, and applications contain many unique design elements that
12 provide for an attractive, pleasing, and modern design. This is not by
13 accident or happenstance. Plaintiff employs a dedicated creative design
14 team tasked with designing and incrementally updating the StumbleUpon
15 website, in-browser toolbar, browser extensions, applications, and various
16 logo designs.

17 21. The design of Plaintiff’s in-browser toolbar: The StumbleUpon
18 in-browser toolbar appears in the user’s Internet browser window whenever
19 the user visits the StumbleUpon.com website or accesses web pages
20 recommended by the StumbleUpon service and persists as long as the user
21 continues to browse webpages recommended by the StumbleUpon service.
22 The user accesses additional recommended content by selecting the
23 “Stumble!”[®] icon, present on the upper left-hand side of the in-browser
24 toolbar. Adjacent to the “Stumble!”[®] button, the in-browser toolbar contains
25 a button stating “I Like It!” with a thumbs up icon. A screenshot of the
26 StumbleUpon in-browser toolbar is attached hereto as Exhibit B.

27 22. The design of Plaintiff’s browser extensions: The StumbleUpon
28 browser extensions can be downloaded and installed by a user and appear in

1 the browser toolbar area at all times, regardless of the webpage the user is
2 currently viewing. There are currently browser extensions for the Firefox,
3 Google Chrome, and Safari Internet browsers.

4 23. Like the StumbleUpon in-browser toolbar, the StumbleUpon
5 browser extension for Firefox features a “Stumble!”[®] icon that, when
6 selected, takes a user to another webpage recommended by the
7 StumbleUpon service followed, to the right, by a thumbs up icon with the
8 text “I Like It!”. A screenshot of the StumbleUpon browser extension for
9 Firefox is attached hereto as Exhibit C.

10 24. The StumbleUpon browser extension for Google Chrome
11 features a toolbar button adorned with a stylized StumbleUpon logo (the
12 “SU Logo”) that, when selected, redirects the user to a webpage that
13 includes StumbleUpon’s in-browser toolbar. A screenshot of the
14 StumbleUpon browser extension for Google Chrome is attached hereto as
15 Exhibit D and includes an arrow labeled “A” indicating the aforementioned
16 toolbar button.

17 25. The design of Plaintiff’s Profile page: Users of StumbleUpon are
18 able to set up a Profile page with unique design elements that display the
19 user’s profile picture in the upper left-hand corner with that user’s
20 StumbleUpon participation information, including the webpages that the
21 user has selected as their “Likes” displayed beneath the user’s picture. A
22 screenshot of an example StumbleUpon Profile page is attached hereto as
23 Exhibit E.

24 26. The design of Plaintiff’s Interests page: The StumbleUpon
25 Interests page from which users select the subjects they wish to follow
26 includes unique design elements such as displaying different categories in a
27 grid format, each with text and a demonstrative picture, and allows users to
28

1 “Follow” categories that are of interest. A screenshot of StumbleUpon’s
2 Interests page is attached hereto as Exhibit F.

3
4 Defendant INFOAXE INC.’s Infringing Flipora Service and Webpages

5 27. On or around June 25, 2012, Defendant INFOAXE, INC.
6 rebranded and updated its service, previously known as InfoAxe, to Flipora.

7 28. Upon information and belief, Defendant’s Flipora service
8 provides a user with an in-browser toolbar and browser extensions that
9 include a “Flip to the next page” button that, when singly selected, provides
10 the user with webpage recommendations that are based on factors such as
11 the topics of interest to the user, the user’s preferences, and the user’s
12 “likes”. The Flipora service redirects the user to additional recommended
13 Internet content when the user again simply selects the “Flip to the next
14 page” button. Defendant’s Flipora single-action Internet content
15 recommendation service, operated by a user selecting the “Flip to the next
16 page” button, is identical to or equivalent to Plaintiff’s patented
17 StumbleUpon single-action Internet Content recommendation service,
18 operated by a user simply selecting the “Stumble!”[®] button.

19 29. Further, Defendant’s Flipora in-browser toolbar contains similar
20 elements to StumbleUpon’s in-browser toolbar and browser extensions. The
21 Flipora in-browser toolbar includes an icon with the text “Flip to the next
22 page” and a thumbs-up icon with the text “Like” for the user to like (i.e.,
23 indicate approval) of the featured page. A screenshot of Defendant’s Flipora
24 in-browser toolbar is attached hereto as Exhibit G.

25 30. Like StumbleUpon’s browser extensions, Defendant’s Flipora
26 browser extensions feature a toolbar button adorned with a Flipora logo that,
27 when selected, redirects the user to a webpage that includes Flipora’s in-
28 browser toolbar. Defendant’s Flipora browser extensions also contain

1 similar design elements to StumbleUpon's browser extensions, including a
2 similarly sized, solid color circle with a single design element in the center.
3 A screenshot of Defendant's Flipora browser extension is attached hereto as
4 Exhibit H and includes an arrow labeled "B" indicating the aforementioned
5 Flipora toolbar button.

6 31. Defendant's Flipora service also features user profile pages. A
7 Flipora Profile page includes the same distinctive elements as
8 StumbleUpon's Profile pages, including the user's picture in the upper left-
9 hand corner with information about that user's Flipora activity directly
10 below the picture, along with a list of webpages the user has "liked" in the
11 center. A screenshot of an example Flipora Profile page is attached hereto
12 as Exhibit I. The user name has been redacted from Exhibit I for privacy.

13 32. Just as StumbleUpon allows users to "follow" categories of
14 interest, Flipora allows users to "follow" different categories based on their
15 interests. Further, the Flipora Topics page incorporates many distinctive
16 elements from the StumbleUpon Interests page, including displaying the
17 different categories in a grid, featuring a picture and text for each category,
18 and allowing users to "follow" a category. A screenshot showing the Flipora
19 Topics page with two categories "followed" is attached hereto as Exhibit J.

20
21 **First Cause of Action**

22 **Patent Infringement**

23 [Against Defendant INFOAXE, INC.]

24 33. Plaintiff repeats and realleges each and every allegation of the
25 previous paragraphs as if separately set forth at length and incorporated
26 herein.

27 34. Defendant has infringed and is still infringing the '615 Patent
28 directly, contributorily, and/or by inducement, in violation of 35 U.S.C. §

1 271, by making, using, marketing, and/or distributing, products and/or
2 services that fall within one or more claims of the '615 Patent literally and/or
3 under the doctrine of equivalents.

4 35. Upon information and belief, Defendant had or should have had
5 knowledge of the '615 Patent prior to the filing of this Complaint but has
6 engaged in their infringing conduct nonetheless.

7 36. Defendant's infringement of the '615 Patent has proximately
8 caused, and will continue to cause Plaintiff to suffer damages from lost sales
9 and profits in an amount thus far undetermined but, in no event, no less than
10 a reasonable royalty for use of Plaintiff's patent rights.

11 37. Unless enjoined by this Court, Defendant will continue to
12 infringe the '615 Patent, and Plaintiff will continue to suffer irreparable
13 harm for which there is no adequate remedy at law. Accordingly, Plaintiff is
14 entitled to preliminary and/or injunctive relief against such infringement
15 pursuant to 35 U.S.C. § 283.

16 38. Due to Defendant's infringement of the '615 Patent, Plaintiff has
17 been and will continue to be injured in its business and property rights, and
18 is entitled to damages for such injuries pursuant to 35 U.S.C. § 284 in an
19 amount to be determined at trial.

20 39. Defendant's infringement of the '615 Patent has been and
21 continues to be deliberate and willful, therefore rendering this an exceptional
22 case pursuant to 35 U.S.C. §§ 284 and 285.

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Second Cause of Action

Trade Dress Infringement in Violation of the Lanham Act

[Against Defendant INFOAXE, INC.]

40. Plaintiff repeats and realleges each and every allegation of the previous paragraphs as if separately set forth at length and incorporated herein.

41. The unique look and feel of Plaintiff's StumbleUpon webpages, including their design elements, words, terms, symbols, and placement of each, all constitute protectable trade dress.

42. The unique look and feel of Plaintiff's StumbleUpon in-browser toolbar and browser extensions, including their design elements, words, terms, symbols, and placement of each all constitute protectable trade dress.

43. Defendant's use of Plaintiff's trade dress on the Flipora webpages, Flipora in-browser toolbar, and Flipora browser extensions is without permission or consent.

44. The similarities between the design and presentation of the Flipora webpages, the Flipora in-browser toolbar, and/or the Flipora browser extensions and Plaintiff's webpages, in-browser toolbar and browser extensions is likely to cause confusion or mistake, or to deceive users as to the affiliation, connection, and/or association of Defendant's Flipora service with Plaintiff's StumbleUpon service. This is likely to deceive or confuse users as to the origin, sponsorship, and/or approval of Defendant's Flipora service, related webpages, Flipora in-browser toolbar, and Flipora browser extensions as emanating from and/or being associated with Plaintiff.

45. Upon information and belief, Plaintiff alleges that at all relevant times Defendant INFOAXE, INC. exercised ownership and control over the Flipora webpages, Flipora in-browser toolbar, and Flipora browser

1 extensions and/or intentionally induced or encouraged the infringement of
2 Plaintiff's rights under 15 U.S.C. § 1125(a).

3 46. The use of Plaintiff's trade dress on the Flipora webpages,
4 Flipora in-browser toolbar, and Flipora browser extensions constitutes
5 infringement of Plaintiff's trade dress under 15 U.S.C. § 1125(a).

6 47. Plaintiff is entitled to an injunction restraining Defendant from
7 engaging in further unlawful acts, specifically relating to their use of
8 Plaintiff's trade dress.

9 48. Plaintiff is informed and believes, and thereon alleges, that
10 Defendant has derived and received, and will continue to derive and receive
11 gains, profits, and advantages from the abovementioned acts of trade dress
12 infringement in an amount that is presently unknown to Plaintiff. By reason
13 of Defendant's acts, Plaintiff has been damaged and is entitled to monetary
14 relief in the form of actual damages, Defendant's profits resulting from the
15 infringing acts, and the costs of the action pursuant to 15 U.S.C. § 1117(a).

16 49. Plaintiff is informed and believes and, on that basis, alleges that
17 Defendant's use of Plaintiff's trade dress in violation of the Lanham Act is
18 willful, malicious, oppressive, and fraudulent, justifying an award of
19 attorneys' fees and treble actual damages.

20
21 **Third Cause of Action**

22 **Unfair Competition in violation of Cal. Bus. & Prof. Code §§**

23 **17200 et seq.**

24 [Against Defendant INFOAXE, INC.]

25 50. Plaintiff repeats and realleges each and every allegation of the
26 previous paragraphs as if separately set forth at length and incorporated
27 herein.

1 51. Plaintiff is informed and believes and, on that basis alleges, that
2 Defendant's wrongful conduct, including but not limited to their
3 infringement of the '615 Patent and copying of Plaintiff's protectable trade
4 dress as alleged and set forth herein constitutes statutory unfair competition
5 under California Business and Professions Code §§ 17200 *et seq.* ("Section
6 17200").

7 52. These acts, as described herein, are unlawful, unfair, and in
8 violation of Section 17200.

9 53. Upon information and belief, Defendant proposes to perform
10 further acts of unfair competition and that, unless enjoined, Plaintiff will
11 continue to suffer irreparable harm for which there is no adequate remedy at
12 law.

13
14 **Prayer for Relief**

15 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

16 1. That Defendant has infringed, contributorily infringed and/or
17 actively induced infringement of the '615 Patent;

18 2. That Plaintiff be awarded its damages from patent infringement
19 according to proof and ordering that such damages be multiplied up to treble
20 their amount;

21 3. That the Court declare this to be an exceptional case pursuant to
22 35 U.S.C. § 285, and award Plaintiff reasonable attorneys' fees;

23 4. That Plaintiff be awarded such damages Plaintiff has sustained
24 due to Defendant's trade dress infringement;

25 5. That Plaintiff be awarded up to treble actual damages due to
26 Defendant's trade dress infringement, and Plaintiff be awarded reasonable
27 attorneys' fees.

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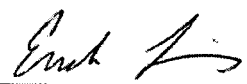
1 6. That Defendant be preliminarily and then permanently enjoined
2 from further infringements;

3 7. That Plaintiff be awarded its costs of suit, and pre- and post-
4 judgment interest on any money judgment;

5 8. For such other relief as the Court deems proper.
6

7 DATED: October 19, 2012

LEE TRAN & LIANG APLC

8
9
10 By: 

11 Enoch H. Liang


12 Attorneys for Plaintiff
13 STUMBLEUPON, INC.

14 **DEMAND FOR JURY TRIAL**

15 Pursuant to Rule 38 of the Federal Rules of Civil Procedure and the
16 Constitution of the United States, Plaintiff STUMBLEUPON, INC. demands
17 a trial by jury for all issues so triable.
18

19 DATED: October 19, 2012

LEE TRAN & LIANG APLC

20
21
22 By: 

23 Enoch H. Liang

24 Attorneys for Plaintiff
25 STUMBLEUPON, INC.
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27
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