

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

LODSYS, LLC, *et al.*  
Plaintiffs,

v.

BROTHER INTERNATIONAL  
CORPORATION, *et al.*;  
Defendants.

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CIVIL ACTION NO. 2:11-cv-90-JRG  
**LEAD CASE**

LODSYS GROUP, LLC,  
  
Plaintiff,

v.

ROSETTA STONE, INC.;  
  
Defendant.

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CIVIL ACTION NO. 2:12-cv-288-JRG  
**JURY TRIAL DEMANDED**

**AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Lodsys Group, LLC (“Lodsys”), for its Amended Complaint against defendant Rosetta Stone, Inc. (“Rosetta Stone”), alleges as follows:

**THE PARTIES**

1. Lodsys is a Texas limited liability company with its principal place of business in Marshall, Texas.

2. Defendant Rosetta Stone is a Delaware corporation with its principal place of business in Arlington, Virginia.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* Venue is proper in this federal district pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) in that defendant resides in this district, a substantial part of the events giving rise to the claims

occurred in this district, and/or the defendant has a regular and established practice of business in this district and have committed acts of infringement in this district.

4. This Court has general and specific personal jurisdiction over defendant, because defendant has substantial contacts with the forum as a result of conducting substantial business in the State of Texas and within this district. Upon information and belief, defendant regularly solicits business in the State of Texas and this district; derives revenue from products and/or services provided to individuals residing the State of Texas and this district; conducts business utilizing the claimed systems and methods with and for customers residing in the State of Texas and this district; and provides and/or markets products and services directly to consumers in the State of Texas and this district.

#### **INFRINGEMENT OF U.S. PATENT NO. 7,620,565**

5. On November 17, 2009, U.S. Patent No. 7,620,565 (the “‘565 patent”) was duly and legally issued for a “Customer-Based Product Design Module.” A true and correct copy of the ‘565 patent is attached hereto as Exhibit A. Lodsys is the owner by assignment of all rights, title, and interest in and to the ‘565 patent.

6. Defendant Rosetta Stone has infringed, directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others, one or more of the claims of the ‘565 patent. Rosetta Stone has manufactured, used, sold, imported, and/or offered to sell infringing products and/or services — including but not limited to Rosetta Stone’s website [www.rosettastone.com](http://www.rosettastone.com), with live interactive chat, post-chat survey, and user feedback form features — which infringe at least claims 15, 17, 18, 22, 27, 28, and 29 of the ‘565 patent under 35 U.S.C. § 271.

7. Defendant Rosetta Stone’s acts of infringement have caused damage to Lodsys, and Lodsys is entitled to recover from defendant the damages sustained by Lodsys as a result of defendant’s wrongful acts in an amount subject to proof at trial. Defendant’s infringement is willful and deliberate, including because defendant became aware of the infringing nature of its products and services at the latest when it received a notice letter from Lodsys and/or the filing

of Lodsys' Complaint, entitling Lodsys to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

**INFRINGEMENT OF U.S. PATENT NO. 7,222,078**

8. On May 22, 2007, U.S. Patent No. 7,222,078 (the "'078 patent") was duly and legally issued for "Methods and Systems for Gathering Information from Units of a Commodity Across a Network." A true and correct copy of the '078 patent is attached hereto as Exhibit B. Lodsys is the owner by assignment of all rights, title, and interest in and to the '078 patent.

9. Defendant Rosetta Stone has infringed, directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others, one or more of the claims of the '078 patent. Rosetta Stone has manufactured, used, sold, imported, and/or offered to sell infringing products and/or services — including but not limited to Rosetta Stone's website [www.rosettastone.com](http://www.rosettastone.com), with live interactive chat, post-chat survey, and user feedback form features — which infringe at least claims 1, 2, 3, 4, 5, 7, 10, 15, 16, 18, 19, 22, 25, 37, 38, 40, 42, 43, 45, 46, 47, 48, 51, 52, 60, 61, 62, 64, 65, 66, 67, 69, 71, 72, 73, and 74 of the '078 patent under 35 U.S.C. § 271.

10. Defendant Rosetta Stone's acts of infringement have caused damage to Lodsys, and Lodsys is entitled to recover from defendant the damages sustained by Lodsys as a result of defendant's wrongful acts in an amount subject to proof at trial. Defendant's infringement is willful and deliberate, including because defendant became aware of the infringing nature of its products and services at the latest when it received a notice letter from Lodsys and/or the filing of Lodsys' Complaint, entitling Lodsys to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Lodsys respectfully requests a trial by jury on all issues.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Lodsys Group, LLC, respectfully requests entry of judgment in its favor and against defendant as follows:

(a) Declaration that (1) defendant Rosetta Stone has infringed U.S. Patent No. 7,620,565; and (2) defendant Rosetta Stone has infringed U.S. Patent No. 7,222,078;

(b) Awarding the damages arising out of (1) defendant Rosetta Stone's infringement of U.S. Patent No. 7,620,565; and (2) defendant Rosetta Stone's infringement of U.S. Patent No. 7,222,078 to Lodsys, together with pre-judgment and post-judgment interest, in an amount according to proof;

(c) Finding defendant's infringement to be willful from the time that defendant became aware of the infringing nature of its products and services, which is the time of receiving a notice letter from Lodsys or the filing of Lodsys' complaint at the latest, and awarding treble damages to Lodsys for the period of such willful infringement pursuant to 35 U.S.C. § 284;

(d) Awarding attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and

(e) Awarding such other costs and further relief as the Court may deem just and proper.

Dated: January 18, 2013

Respectfully Submitted,

By: /s/ Kit W. Roth  
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Attorneys for Plaintiff Lodsys Group, 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 are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), 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 email, on January 18, 2013.

By: s/Kit W. Roth  
Kit W. Roth