

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

HBAC MATCHMAKER MEDIA, INC.

Plaintiff,

v.

THE WALT DISNEY COMPANY;
ESPN, INC.; and ABC, INC.,

Defendants.

C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff HBAC MatchMaker Media, Inc. (“HBAC”) files this Complaint for patent infringement against The Walt Disney Company (“Disney”), ESPN, Inc. (“ESPN”), and ABC, Inc. (“ABC”) (collectively, “Defendants”), and alleges as follows:

THE PARTIES

1. HBAC is a Delaware corporation with a principal place of business at 3 Center Knolls, Bronxville, New York 10708.

2. On information and belief, Disney is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 500 S. Buena Vista Street, Burbank, California 91521. Disney may be served in Delaware through its registered agent for service of process, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

3. On information and belief, ESPN is a subsidiary of Disney. ESPN is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business located at ESPN Plaza, 700 Birch Street, Bristol, Connecticut 06010. ESPN may be served in Delaware through its registered agent for service of process, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.

4. On information and belief, ABC is a subsidiary of Disney. ABC is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business located at 77 West 66th Street, New York, New York 10023. On information and belief, ABC can be served in Delaware through its registered agent for service of process, National Registered Agents, Inc. 160 Greentree Drive, Suite 101, Dover, Delaware 19904.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendants for at least the following reasons: (1) Defendants are incorporated under the laws of the State of Delaware; (2) Defendants have committed acts of patent infringement in this District and in Delaware; (3) Defendants engage in other persistent courses of conduct and derive substantial revenue from products and/or services provided to individuals in this District and in Delaware; and (4) Defendants have purposefully established systematic and continuous contacts with this District and should reasonably expect to be haled into Court here.

7. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c), and 1400(b) because, Defendants are incorporated under the laws of the State of Delaware, Defendants do

business in Delaware, and Defendants have committed acts of infringement in Delaware and in this District.

THE ASSERTED PATENTS

8. On June 30, 1998, the United States Patent and Trademark Office (“USPTO”) duly and legally issued U.S. Patent No. 5,774,170 (the “’170 Patent”), entitled “System and Method for Delivering Targeted Advertisements to Consumers,” to Kenneth C. Hite, Walter S. Ciciora, Tom Alison, and Robert G. Beauregard. A true and correct copy of the ’170 Patent is attached as Exhibit A. HBAC is the owner by assignment of the ’170 Patent, and holds all rights and interest in the ’170 Patent.

9. On December 14, 1999, the USPTO duly and legally issued U.S. Patent No. 6,002,393 (the “’393 Patent”), entitled “System and Method for Delivering Targeted Advertisements to Consumers Using Direct Commands,” to Messrs. Hite, Ciciora, Alison, and Beauregard. A true and correct copy of the ’393 Patent is attached as Exhibit B. HBAC is the owner by assignment of the ’393 Patent, and holds all rights and interest in the ’393 Patent.

10. Collectively, the ’170 Patent and the ’393 Patent are referred to as the “Asserted Patents.”

FACTUAL BACKGROUND

11. In the early 1990s, four inventors – Messrs. Hite, Ciciora, Alison, and Beauregard – recognized the potential for advanced advertising with the proliferation of digital devices, and developed the core technology and techniques for addressable advertising. Each inventor brought significant relevant experience to the endeavor. Ken Hite, HBAC’s Chief Executive Officer, is a twenty-five year advertising veteran. Tom Alison, a Harvard MBA and HBAC’s President and Chief Operating Officer, has over three decades of experience in marketing and new media, with extensive experience in direct marketing. Robert Beauregard, HBAC’s

Executive Vice President, Treasurer and Secretary, has over forty years of experience in advertising, marketing, and publishing. Walt Ciciora, Ph.D., HBAC's Executive Vice President and Chief Technology Officer, literally co-wrote the book on cable television. The first edition of *Modern Cable Television Technology: Video, Voice, and Data Communications* received a book award from The Cable Center in 2000. With decades of experience in the cable technology field, Dr. Ciciora has been elected to the Cable Technology Hall of Fame, has twice been named "Man of the Year" by CED magazine, and has been inducted into the Academy of Digital Television Pioneers. He has been issued sixteen U.S. patents, and his work has been widely published.

12. These four individuals developed the fundamental inventions behind addressable advertising in digital media – the capability to target, deliver, and display specific ads to specific households. For their work, they received two pioneering patents – the '170 and '393 Patents. The significance of their work is evidenced in part by the overwhelming recognition these patents have received in the field. The '170 Patent has been cited nearly 400 times in other patents, and the '393 Patent has been cited nearly 200 times. Patents issued to entities such as Google, Microsoft, IBM, Sony, Intel, Hughes, The Nielson Company, Sprint, and General Motors, among many more, cite the groundbreaking HBAC patents.

COUNT I
(Infringement of U.S. Patent No. 5,774,170)

13. HBAC incorporates and re-alleges the allegations of paragraphs 1-12 as if fully set forth above.

14. Upon information and belief, ESPN has infringed directly and continues to infringe directly, within the United States, one or more claims of the '170 Patent in violation of 35 U.S.C. § 271. ESPN performs a claimed method by targeting advertisements to consumers

who visit websites owned or controlled by ESPN. As evidenced by ESPN's adoption of its parent company's privacy policy, ESPN "[p]rovide[s] you with advertising based on your activity on our sites and applications and on third-party sites and applications." *See* <http://corporate.disney.go.com/corporate/pp.html>. For example, upon information and belief, ESPN maintains a central storage system storing video advertisements, and delivers targeted advertisements for display to a user's computer, tablet, or other web-enabled device. For instance, ESPN may deliver the advertisement from a server corresponding to the web domain <http://vod.espn.go.com/ads/>. ESPN also has infringed directly and continues to infringe directly, within the United States, one or more claims of the '170 Patent by, among other things, making, using, importing, offering for sale, and/or selling systems that provide targeted advertisements to consumers visiting ESPN websites, in a manner claimed in the '170 Patent.

15. Upon information and belief, ABC has infringed directly and continues to infringe directly, within the United States, one or more claims of the '170 Patent in violation of 35 U.S.C. § 271. ABC performs a claimed method by targeting advertisements to consumers who visit websites owned or controlled by ABC. As evidenced by ABC's adoption of its parent company's privacy policy, ABC "[p]rovide[s] you with advertising based on your activity on our sites and applications and on third-party sites and applications." *See* <http://corporate.disney.go.com/corporate/pp.html>. For example, upon information and belief, ABC maintains a central storage system storing video advertisements, and delivers targeted advertisements for display to a user's computer, tablet, or other web-enabled device. For instance, ABC may deliver the advertisement from a server corresponding to the web domain http://cdn.video.abc.com/abcvideo/video_fep/ads/. ABC also has infringed directly and continues to infringe directly, within the United States, one or more claims of the '170 Patent by, among other things, making, using, importing, offering for sale, and/or selling systems that

provide targeted advertisements to consumers visiting ABC websites, in a manner claimed in the '170 Patent.

16. Upon information and belief, Disney has infringed directly and continues to infringe directly, within the United States, one or more claims of the '170 Patent in violation of 35 U.S.C. § 271. Disney performs a claimed method by targeting advertisements to consumers who visit websites owned or controlled by Disney. Disney itself states on its website that it “[p]rovide[s] you with advertising based on your activity on our sites and applications and on third-party sites and applications.” See <http://corporate.disney.go.com/corporate/pp.html>. Disney owns and controls various subsidiaries, including but not limited to, ESPN and ABC, which operate websites that target advertisements to consumers in a manner claimed in the '170 Patent. Disney infringed directly and continues to infringe directly, within the United States, one or more claims of the '170 Patent by, among other things, making, using, importing, offering for sale, and/or selling systems that provide targeted advertisements to consumers visiting Disney websites, in a manner claimed in the '170 Patent.

17. Defendants’ acts of infringement have caused damage to HBAC, and HBAC is entitled to recover from Defendants the damages sustained by HBAC as a result of Defendants’ wrongful acts in an amount subject to proof at trial.

COUNT II
(Infringement of U.S. Patent No. 6,002,393)

18. HBAC incorporates and re-alleges the allegations of paragraphs 1-17 as if fully set forth above.

19. Upon information and belief, ESPN has infringed directly and continues to infringe directly, within the United States, one or more claims of the '393 Patent in violation of 35 U.S.C. § 271. ESPN performs a claimed method by targeting advertisements to consumers

who visit websites owned or controlled by ESPN. As evidenced by ESPN's adoption of its parent company's privacy policy, ESPN "[p]rovide[s] you with advertising based on your activity on our sites and applications and on third-party sites and applications." *See* <http://corporate.disney.go.com/corporate/pp.html>. For example, upon information and belief, ESPN maintains a central storage system storing video advertisements, and delivers targeted advertisements for display to a user's computer, tablet, or other web-enabled device. For instance, ESPN may deliver the advertisement from a server corresponding to the web domain <http://vod.espn.go.com/ads/>. ESPN also supplies program materials, such as video content, into which advertisements are inserted. *See, e.g.,* http://espn.go.com/espn/mediakit/index/_/id/6246460/ (describing various video advertising opportunities available to those who wish to advertise on ESPN websites). ESPN also has infringed directly and continues to infringe directly, within the United States, one or more claims of the '393 Patent by, among other things, making, using, importing, offering for sale, and/or selling systems that provide targeted advertisements to consumers visiting ESPN websites, in a manner claimed in the '393 Patent.

20. Upon information and belief, ABC has infringed directly and continues to infringe directly, within the United States, one or more claims of the '393 Patent in violation of 35 U.S.C. § 271. ABC performs a claimed method by targeting advertisements to consumers who visit websites owned or controlled by ABC. As evidenced by ABC's adoption of its parent company's privacy policy, ABC "[p]rovide[s] you with advertising based on your activity on our sites and applications and on third-party sites and applications." *See* <http://corporate.disney.go.com/corporate/pp.html>. For example, upon information and belief, ABC maintains a central storage system storing video advertisements, and delivers targeted advertisements for display to a user's computer, tablet, or other web-enabled device. For

instance, ABC may deliver the advertisement from a server corresponding to the web domain http://cdn.video.abc.com/abcvideo/video_fep/ads/. ABC also supplies program materials, such as video content, into which advertisements are inserted. *See, e.g.,* <http://mediakit.go.com/abc/index.html> (describing various video advertising opportunities available to those who wish to advertise on ABC websites). ABC also has infringed directly and continues to infringe directly, within the United States, one or more claims of the '393 Patent by, among other things, making, using, importing, offering for sale, and/or selling systems that provide targeted advertisements to consumers visiting ABC websites, in a manner claimed in the '393 Patent.

21. Upon information and belief, Disney has infringed directly and continues to infringe directly, within the United States, one or more claims of the '393 Patent in violation of 35 U.S.C. § 271. Disney performs a claimed method by targeting advertisements to consumers who visit websites owned or controlled by Disney. Disney itself states on its website that it “[p]rovide[s] you with advertising based on your activity on our sites and applications and on third-party sites and applications.” *See* <http://corporate.disney.go.com/corporate/pp.html>. Disney owns and controls various subsidiaries, including but not limited to, ESPN and ABC, which operate websites that target advertisements to consumers in a manner claimed in the '393 Patent. Disney infringed directly and continues to infringe directly, within the United States, one or more claims of the '393 Patent by, among other things, making, using, importing, offering for sale, and/or selling systems that provide targeted advertisements to consumers visiting Disney websites, in a manner claimed in the '393 Patent.

22. Defendants' acts of infringement have caused damage to HBAC, and HBAC is entitled to recover from Defendants the damages sustained by HBAC as a result of Defendants' wrongful acts in an amount subject to proof at trial.

DEMAND FOR JURY TRIAL

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

PRAYER FOR RELIEF

For the above reasons, HBAC respectfully requests that this Court grant the following relief in favor of HBAC:

(a) A judgment in favor of HBAC that Defendants have infringed one or more claims of each of the Asserted Patents;

(b) A judgment and order requiring Defendants to pay HBAC its damages, costs, expenses, and pre-judgment and post-judgment interest for Defendants' infringement of each of the Asserted Patents;

(c) A judgment against Defendants declaring that this is an exceptional case within the meaning of 35 U.S.C. § 285 as against Defendants and awarding HBAC its reasonable attorneys' fees against Defendants; and

(d) Any and all such other relief as the Court deems just and proper.

March 15, 2013

BAYARD, P.A.

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