

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

HBAC MATCHMAKER MEDIA, INC.

Plaintiff,

v.

VEVO LLC,

Defendant.

C.A. No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff HBAC MatchMaker Media, Inc. (“HBAC”) files this Complaint for patent infringement against VEVO LLC (“VEVO” or “Defendant”), 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, VEVO is a limited liability company organized and existing under the laws of the state of Delaware, with its principal place of business at 825 8th Avenue, 23d Floor, New York, New York 10019. VEVO may be served in Delaware through its registered agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

**JURISDICTION AND VENUE**

3. 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).

4. This Court has personal jurisdiction over Defendant for at least the following reasons: (1) Defendant is incorporated under the laws of the State of Delaware; (2) Defendant

has committed acts of patent infringement in this District and in Delaware; (3) Defendant engages in other persistent courses of conduct and derives substantial revenue from products and/or services provided to individuals in this District and in Delaware; and (4) Defendant has purposefully established systematic and continuous contacts with this District and should reasonably expect to be haled into Court here.

5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c), and 1400(b) because Defendant is incorporated under the laws of the State of Delaware, Defendant does business in Delaware, and Defendant has committed acts of infringement in Delaware and in this District.

#### **THE ASSERTED PATENTS**

6. 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.

7. 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.

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

## **FACTUAL BACKGROUND**

9. 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.

10. 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)**

11. HBAC incorporates and re-alleges the allegations of paragraphs 1-10 as if fully set forth above.

12. Upon information and belief, VEVO 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. VEVO performs a claimed method by targeting advertisements to consumers who visit websites owned or controlled by VEVO. VEVO itself states in its "Privacy Policy": "[W]e may associate the information obtained through these Tracking Technologies, and your UDID [Unique Device Identifier], Third Party Platform anonymous identifiers and other identifiers and data, with your Personal Information so we can . . . provide tailored advertisements, Promotions, recommendations and other content related to your specific interests, activities or profile . . . ." See <http://www.vevo.com/legal/privacy-policy>. For example, upon information and belief, VEVO 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, VEVO may deliver the advertisement from a server corresponding to the web domain <http://assets.vevo.com/adsales/>. VEVO 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 VEVO websites, in a manner claimed in the '170 Patent.

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

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

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

15. Upon information and belief, VEVO 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. VEVO performs a claimed method by targeting advertisements to consumers who visit websites owned or controlled by VEVO. VEVO itself states in its "Privacy Policy": "[W]e may associate the information obtained through these Tracking Technologies, and your UDID [Unique Device Identifier], Third Party Platform anonymous identifiers and other identifiers and data, with your Personal Information so we can . . . provide tailored advertisements, Promotions, recommendations and other content related to your specific interests, activities or profile . . . ." See <http://www.vevo.com/legal/privacy-policy>. For example, upon information and belief, VEVO 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, VEVO may deliver the advertisement from a server corresponding to the web domain <http://assets.vevo.com/adsales/>. VEVO also supplies program materials, such as music videos and other video content, into which advertisements are inserted. See, e.g., <http://www.vevo.com/about/Advertising> (describing video advertising opportunities available to those who wish to advertise on VEVO). VEVO 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 VEVO websites, in a manner claimed in the '393 Patent.

16. VEVO's acts of infringement have caused damage to HBAC, and HBAC is entitled to recover from VEVO the damages sustained by HBAC as a result of VEVO's 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 VEVO has infringe one or more claims of each of the Asserted Patents;

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

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

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

March 15, 2013

OF COUNSEL:

Eric J. Carsten  
Marc A. Fenster  
RUSS, AUGUST & KABAT  
12424 Wilshire Boulevard 12th Floor  
Los Angeles, California 90025  
ecarsten@raklaw.com  
mfenster@raklaw.com  
(310) 826-7474

BAYARD, P.A.

/s/ Stephen B. Brauerman  
Richard D. Kirk (rk0922)  
Stephen B. Brauerman (sb4952)  
Vanessa R. Tiradentes (vt5398)  
222 Delaware Avenue, Suite 900  
P.O. Box 25130  
Wilmington, DE 19899  
rkirk@bayardlaw.com  
sbrauerman@bayardlaw.com  
vtiradentes@bayardlaw.com  
(302) 655-5000

*Attorneys for Plaintiff HBAC MatchMaker  
Media, Inc.*